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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MIRNA ESTELA PEREZ MENDOZA,

Petitioner,

vs.

FERETI SEMAIA, WARDEN OF THE GEO GROUP ADELANTO ICE PROCESSING CENTER,

DAVID MARIN, DIRECTOR OF LOS ANGELES FIELD OFFICE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

KRISTI NOEM, SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY; AND

PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES,

IN THEIR OFFICIAL CAPACITIES,

Respondents

PETITION FOR WRIT OF HABEAS CORPUS

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

Case. No. 2:25-cv-9134

INTRODUCTION

1. This habeas petition challenges the government's unlawful treatment of Petitioner's custody as mandatory under 8 U.S.C. § For nineteen months after her release in December 2023, Petitioner Mirna Mendoza lived openly in California with her lawful permanent resident partner, complied with all conditions, and posed no danger or risk of flight. She attended all required appointments, including her scheduled credible fear interview on July 2, 2025. At the close of that proceeding, after she had fully complied and appeared as directed, ICE agents stormed the courtroom, placed her in handcuffs, and removed her without permitting her attorney to return to the room. She was re-detained without notice, without cause, and without any meaningful opportunity to contest her loss of liberty.

2. Once DHS affirmatively released Ms. Mendoza into the community, it extinguished any authority to hold her under § 1225(b)'s mandatory detention scheme. From that point forward, only § 1226(a) applied, under which release on bond is the statutory default and detention is permissible only if the government proves by clear and convincing evidence that the person is a danger or flight risk. By continuing to treat her detention as mandatory under § 1225(b), DHS exceeded its statutory authority and stripped her of the hearing protections guaranteed by § 1226(a).

3. By re-detaining Ms. Mendoza in this manner, Respondents not only acted beyond their statutory authority but also violated the core constitutional principle that liberty cannot be taken away without due process of law. Through this petition, Ms. Mendoza seeks immediate release from unlawful custody, or, if the Court declines to order release outright, a constitutionally adequate bond hearing within seven days before a neutral adjudicator, at which the government must carry the burden of proof.

JURISDICTION & VENUE

4. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in custody under the authority of the United States and seeks a writ of habeas corpus. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution, laws, and treaties of the United States, and under 5 U.S.C. §§ 701–706 because Petitioner challenges agency action that is arbitrary, capricious, and not in accordance with law.

5. This Court has authority to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202.

6. Venue is proper in the Central District of California under 28 U.S.C. § 1391(e) because Petitioner is detained at the Adelanto ICE Processing Center, located within this judicial district, and because a substantial part of the events or omissions giving rise to this action occurred in this district.

PARTIES

7. Petitioner MIRNA ESTELA PEREZ MENDOZA (A# [redacted] is a 33-year-old citizen of El Salvador who is currently detained at the Adelanto ICE Processing Center in Adelanto, California.

8. Respondent FERETI SEMAIA is the Warden of the GEO Group Adelanto ICE Processing Center, where Petitioner is currently detained. He has immediate custody over Petitioner.

9. Respondent DAVID MARIN is the Director of the Los Angeles Field Office of U.S. Immigration and Customs Enforcement ("ICE"). He exercises authority over the detention and removal of noncitizens in the Los Angeles region, including Petitioner.

10. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), the federal agency responsible for immigration enforcement and detention. She is sued in her official capacity.

11. Respondent PAM BONDI is the Attorney General of the United States and the head of the U.S. Department of Justice, which oversees the Executive Office for Immigration Review ("EOIR") and immigration judges. She is sued in her official capacity.

REQUIREMENTS OF 28 U.S.C. § 2243

12. The habeas statute requires courts to act swiftly in reviewing unlawful detention. Under 28 U.S.C. § 2243, the court must "forthwith" grant the writ or issue an order to show cause unless it appears from the petition that the petitioner is not entitled to relief.

13. If an order to show cause is issued, the statute directs that the respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." Id. This statutory framework underscores the urgency of habeas relief, reflecting the historic role of the Great Writ as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." Fay v. Noia, 372 U.S. 391, 400 (1963).

FACTUAL BACKGROUND

14. Petitioner Mirna Mendoza is a 33-year-old woman from El Salvador who fled her country after enduring severe abuse at the hands of gang members and a Salvadoran policeman.

15. On November 10, 2023, she crossed into the United States near Roma, Texas, by raft, seeking safety and protection. She was apprehended by Border Patrol the same day.

16. On November 11, 2023, DHS issued her a Notice and Order of Expedited Removal (Form I-860), charging her as inadmissible under INA § 212(a)(7)(A)(i)(I) for entering without valid documents.

17. During her expedited removal interview, Petitioner told officers she was afraid to return to El Salvador because of the violence she had suffered there.

18. On December 4, 2023, Petitioner was released on her own recognizance.

19. From December 2023 through July 2025, Petitioner lived openly and compliantly in California. She resided with her domestic partner, lawful permanent resident Wilber Lemus Peraza, who provided housing, submitted financial documentation, and pledged to support her. In addition, she developed strong community ties, as reflected in multiple letters of support submitted with her bond filings. Petitioner has no criminal history and spent her time on release working to establish stability and to prepare for eventual reunification with her two children, who remain in El Salvador.

20. On March 26, 2025, Petitioner timely filed her Form I-589 Application for Asylum and Withholding of Removal, further demonstrating her commitment to seeking protection through lawful means.

21. DHS did not schedule her credible fear interview (CFI) until July 2, 2025. Petitioner complied fully with the process and appeared for her interview.

22. At the CFI, Petitioner explained that she feared return to El Salvador because she had been sexually abused by gang members and a Salvadoran policeman, and that she believed she would face further violence if forced to return. The asylum officer found her credible, but determined she was barred from asylum eligibility under DHS's Circumvention of Lawful Pathways (CLP) regulation.

23. Immediately after the CFI, ICE officers entered the interview room, detained Petitioner on the spot, and transferred her first to Santa Ana and then to the Adelanto ICE Processing Center, where she remains today.

24. On September 10, 2025, Petitioner appeared for a custody redetermination hearing.

25. In support of bond, Petitioner's counsel submitted a bond packet demonstrating Petitioner's nineteen months of demonstrated compliance in the community, her strong family and community support, and her lack of criminal history (Exh. A). Despite this, the Immigration Judge declined jurisdiction, ruling that Petitioner was detained under 8 U.S.C. § 1225(b) pursuant to In re Q. Li.

26. The IJ's decision deprived Petitioner of the bond hearing to which she is entitled under § 1226(a).

27. Petitioner has now been detained at Adelanto for nearly three months. Detention at Adelanto has been repeatedly documented as harsh, unsanitary, and inhumane, with reports of overcrowding, inadequate medical care, and abuse. For Petitioner, who had already proven her ability to live compliantly in the community with her lawful permanent resident partner and broader support network, continued detention is both unnecessary and unlawful.

LEGAL FRAMEWORK

Petitioner's Custody is Governed By 8 U.S.C. § 1226, Not § 1225

28. The Immigration and Nationality Act ("INA") establishes two distinct statutory schemes for immigration detention, and the choice of statute is determinative of Petitioner's rights.

29. § 1225 governs "applicants for admission," that is, noncitizens encountered at the border or designated for expedited removal. Detention under § 1225(b) is mandatory, but only during the limited period of threshold processing, including credible fear review. *Jennings v. Rodriguez*,

583 U.S. 281, 303 (2018); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–10 (2020).

30. By contrast, § 1226 governs individuals who are already in removal proceedings under § 240. Under that provision, the government "may continue to detain" such individuals, but also "may release" them on bond or conditional parole if they are not a danger or flight risk. 8 U.S.C. § 1226(a); *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011).

31. Federal regulations confirm that noncitizens detained under § 1226 are entitled to bond hearings before an immigration judge at the outset of detention. *Jennings*, 583 U.S. at 306; 8 C.F.R. §§ 236.1(c)(8), (d)(1).

32. These statutory provisions are mutually exclusive: an individual cannot be simultaneously subject to mandatory detention under § 1225 and discretionary custody under § 1226. *Martinez v. Clark*, 36 F.4th 1219, 1227–29 (9th Cir. 2022).

33. Federal courts have consistently recognized that once DHS affirmatively releases a person from custody, detention under § 1225(b) is no longer authorized. See *Pinchi v. Noem*, No. 25-CV-5632, 2025 WL 2084921, at *4–5 (N.D. Cal. July 24, 2025); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *5–8 (E.D. Cal. Sept. 18, 2025).

34. In *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8–10 (N.D. Cal. Sept. 12, 2025), the court held that the government's decision to release the petitioner during expedited removal processing "eliminated its authority to continue detaining her under § 1225(b)."

35. Likewise, in *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *12–15 (E.D. Cal. Aug. 21, 2025), the court rejected DHS's reliance on *Matter of Q.*

Li and found that a noncitizen who had been living in the community could not lawfully be re-detained under § 1225(b).

36. And in *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *5–8 (E.D. Cal. Sept. 18, 2025), the court emphasized that release necessarily reflects ICE's determination that the individual is not a danger or flight risk, bringing them within § 1226(a)'s bond framework.

Petitioner's Conditional Release Created a Constitutionally Protected Liberty Interest

37. Release gives rise to a constitutionally protected liberty interest. The Supreme Court has emphasized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" the Constitution protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "[L]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

38. When the government confers conditional liberty—through parole, probation, or immigration release—that liberty cannot be stripped away without due process. In *Morrissey*, the Court held that parolees, despite living under conditions imposed by the state, were entitled to procedural safeguards before being reincarcerated. 408 U.S. at 482. Likewise, in *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973), the Court held that probation revocation requires a pre-deprivation hearing. In *Young v. Harper*, 520 U.S. 143, 152 (1997), the Court confirmed that a pre-parole program created a liberty interest, requiring due process before termination.

39. Courts of appeals have repeatedly analogized immigration release to parole and probation. See *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (conditional release "falls squarely within the scope of the liberty interests recognized in Morrissey"); *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("[O]ne free of physical confinement—

even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated."). The Ninth Circuit has held the same in the context of mistaken parole release: "[O]nce a prisoner is released, the liberty interest is triggered, and he cannot be returned to custody absent due process." *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982).

40. These principles apply with full force here. DHS affirmatively released Petitioner in December 2023 after finding she was neither a danger nor a flight risk. She lived for nineteen months in the community, complied with her conditions, built family and community ties, and pursued asylum through lawful channels. Having been allowed to "form the other enduring attachments of normal life," *Morrissey*, 408 U.S. at 482, she had a settled liberty interest that the government could not extinguish without notice and a neutral hearing.

41. Due process requires a *pre-deprivation* hearing in this context. The Supreme Court has stressed that "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

42. Federal courts in this Circuit have applied these principles to immigration cases, holding that re-detention of noncitizens who have been released into the community implicates liberty interests requiring due process protections. See *Pinchi v. Noem*, No. 25-CV-5632, 2025 WL 2084921, at *4–5 (N.D. Cal. July 24, 2025) (holding that once DHS affirmatively released petitioner, re-detention required a new bond hearing under § 1226(a)); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *14 (E.D. Cal. Sept. 18, 2025) (finding that conditional release created a protected liberty interest and ordering a bond hearing before re-detention); *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *12–15 (E.D. Cal. Aug. 21, 2025) (rejecting DHS's reliance on *Matter of Q. Li* and holding that

petitioner, after living in the community, could not be lawfully re-detained under § 1225(b) without due process). These decisions align with the nationwide consensus that conditional release creates a liberty interest that cannot be revoked without due process.

43. "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).

44. 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." *Haygood*, 769 F.2d at 1357 (*citing Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

45. Applying *Mathews*, the private interest in avoiding re-detention is profound; the risk of erroneous deprivation is high without a neutral adjudicator; and the government's interests are minimal, since it already determined Petitioner was not a danger or flight risk when she was released. See *Morrissey*, 408 U.S. at 482; *Gagnon*, 411 U.S. at 782.

DHS Could Not Revoke Petitioner's Release Absent a Material Change in Circumstances And a Pre-Deprivation Hearing

46. Under § 1226(a Even under § 1226, DHS's authority to revoke release and re-detain an individual is limited. By statute and regulation, ICE may revoke a bond or recognizance order "at any time," but the Board of Immigration Appeals has long recognized that such authority exists only where there is a change in circumstances. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA

1981) (revocation of bond requires "new circumstances or information" not considered at the time of release).

47. Federal courts have clarified that the change must be material, not speculative. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), aff'd, 905 F.3d 1137 (9th Cir. 2018) (government cannot revoke release absent materially changed circumstances such as new evidence of danger or flight risk). The Ninth Circuit has similarly observed that "absent changed circumstances … ICE cannot redetain." *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021).

48. Due process compounds this statutory limitation. The Supreme Court has consistently required a pre-deprivation hearing before liberty is revoked. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (parole revocation requires advance notice and a hearing before a neutral decisionmaker); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (probation revocation requires preliminary and final hearings). In the immigration context, district courts across California have enforced this rule, requiring notice and a hearing before DHS may re-detain a previously released noncitizen. See *Meza v. Bonnar*, 2018 WL 2554572, at *2–3 (N.D. Cal. June 4, 2018) (ICE lacked authority to re-detain absent new circumstances and hearing); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 971–73 (N.D. Cal. 2019) (ordering release because DHS failed to show changed circumstances); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (re-detention improper without new material facts and hearing); *Romero v. Kaiser*, 2022 WL 1443250, at *3–4 (N.D. Cal. May 6, 2022) (ordering bond hearing where ICE re-detained petitioner without notice); *Enamorado v. Kaiser*, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (release could not be revoked absent evidence of changed circumstances); *Doe v. Becerra*,

2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025) (holding re-detention unlawful where DHS bypassed bond hearing).

49. Due process also requires consideration of alternatives to detention at any custody determination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

50. Where § 1226(a) governs, any re-detention must be preceded by a bond hearing at which the government bears the burden to prove by clear and convincing evidence that the individual poses a danger or flight risk. *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (acknowledging bond hearing mechanism under § 1226(a)); *Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022) (requiring government to prove necessity of detention by clear and convincing evidence); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *8–10 (N.D. Cal. Sept. 12, 2025) (release during expedited processing eliminated § 1225(b) authority; re-detention required a bond hearing under § 1226(a)).

51. Petitioner's circumstances have not materially changed since DHS released her in December 2023. At that time, the government affirmatively determined she was not a danger or flight risk. She then lived lawfully in the community for nineteen months, complied with release conditions, built family and community ties, and pursued protection claims in good faith (Exhibit A ("Exh. A") Bond Packet + Supplements). DHS has identified no new evidence that would justify a reversal.

52. Accordingly, DHS's decision to re-detain Petitioner without notice, without a showing of changed circumstances, and without a constitutionally adequate bond hearing violated both the

INA and the Due Process Clause. This Court should therefore order her immediate release, or at minimum require a prompt bond hearing at which the government must prove by clear and convincing evidence that detention is necessary and that no less restrictive alternative will assure appearance and community safety. See *Diaz*, 53 F.4th at 1196–97; *Salcedo Aceros*, 2025 WL 2637503, at *8–10.

EXHAUSTION OF REMEDIES

53. There is no statutory exhaustion requirement applicable here. See *McKart v. United States*, 395 U.S. 185, 193 (1969); *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Accordingly, exhaustion is prudential, not jurisdictional.

54. Prudential exhaustion is excused where (1) agency expertise is unnecessary, (2) administrative review would be futile, or (3) the petitioner would suffer irreparable harm. *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Each of these factors favors waiver here.

55. First, agency expertise is not necessary to resolve the question presented, because there are no disputed facts. The issue is a pure question of statutory interpretation: whether Petitioner's detention is governed by § 1225(b) or § 1226(a). Agency interpretation carries little, if any, weight in resolving such questions. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

56. Second, administrative review would be futile. The BIA has already endorsed DHS's interpretation that detention remains mandatory under § 1225(b), adopting that reasoning in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA Sept. 5, 2025). Courts have repeatedly excused exhaustion where the BIA lacks authority to grant relief or where its precedents foreclose the argument raised. See *Singh v. Holder*, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011); *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).

57. Third, requiring exhaustion would cause irreparable harm. Petitioner's next removal hearing is not scheduled until February 20, 2026, leaving her to endure months of detention without access to bond. As courts have recognized, "[e]ach additional day of detention without a bond hearing constitutes irreparable harm that cannot be remedied after the fact." *LG v. Choate*, No. 23-cv-00611, slip op. at 14 (D.N.M. 2024); see also *Salvador F.-G. v. Noem*, 2025 WL 1669356, at *4 (N.D. Okla. June 12, 2025).

58. The Central District of California recently reached the same conclusion in *Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025 WL 2591530, at *6–7 (C.D. Cal. Sept. 8, 2025), holding that the question of whether detention is governed by § 1225(b) or § 1226(a) is purely legal, that BIA review is futile in light of its adoption of DHS's position, and that "[p]etitioners would be immediately and irreparably harmed by their continued deprivation of liberty without bond hearings that they are entitled to under section 1226(a)."

59. Because this case presents purely legal questions, administrative review is futile, and further detention inflicts irreparable harm, exhaustion should not be required. Habeas corpus under 28 U.S.C. § 2241 is therefore the only adequate and appropriate remedy.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

(Misapplication of 8 U.S.C. § 1225(b); Custody Properly Governed by 8 U.S.C. § 1226(a))

60. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

61. Petitioner is presently detained by Respondents under the government's assertion that she is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). The Immigration Judge

expressly declined jurisdiction to consider Petitioner's bond application on September 10, 2025, citing *Matter of Q. Li* and concluding that Petitioner's custody is governed by § 1225(b).

62. This determination is contrary to statute, regulation, and controlling case law. Section 1225(b) governs the mandatory detention of "applicants for admission" during initial expedited removal processing and credible fear screening. See *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (describing § 1225(b)(1) as authorizing mandatory detention "pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed"). It does not authorize indefinite detention long after DHS has exercised its discretion to release an individual and long after an NTA has placed the individual in § 240 removal proceedings.

63. By contrast, 8 U.S.C. § 1226(a) governs detention and release of individuals who are "pending a decision on whether the alien is to be removed." That statutory provision authorizes the Attorney General to detain or to release an individual on bond or conditional parole, subject to an individualized custody determination. The Supreme Court has confirmed that "[f]ederal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings*, 583 U.S. at 306; see also *Diaz v. Garland*, 53 F.4th 1189, 1196–97 (9th Cir. 2022) (describing ICE's custody authority and bond hearings under § 1226(a)); *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011) (NTAs initiate § 240 proceedings, which are governed by § 1226(a)).

64. Petitioner's own history makes clear that she cannot lawfully be detained under § 1225(b). On December 4, 2023, DHS released Petitioner into the community on her own recognizance. Release required an affirmative finding that she was not a danger to persons or

property and was likely to appear for future proceedings. See 8 C.F.R. § 236.1(c)(8). DHS therefore determined that Petitioner was not a flight risk or a public safety concern.

65. For the next nineteen months, Petitioner lived openly and compliantly in California. She resided with her lawful permanent resident partner, worked to reunite with her children, and developed extensive family and community support. This period of release further demonstrates that § 1225(b)'s mandatory detention authority was severed once DHS made the choice to release her.

66. Federal courts in this Circuit have repeatedly recognized that release forecloses the government's ability to rely on § 1225(b). In *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8–10 (N.D. Cal. September 12, 2025), the court held that the petitioner could not be re-detained under § 1225(b) after release, because "§ 1225(b) cannot serve as an endless source of detention authority once DHS has made the choice to release an individual." Similarly, in *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *12–15 (E.D. Cal. Aug. 21, 2025), the court rejected DHS's reliance on *Q. Li* and held that re-detention under § 1225(b) following release was unlawful. And in *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *5–8 (E.D. Cal. Sept. 18, 2025), the court emphasized that release necessarily reflects ICE's finding that an individual is not a flight risk or danger, thereby triggering the discretionary bond framework of § 1226(a).

67. Petitioner's current posture underscores the government's error. On July 2, 2025, DHS issued her a Notice to Appear placing her into full removal proceedings under 8 U.S.C. § 1229a. Her first hearing is scheduled for February 20, 2026. Once in § 240 proceedings, detention authority lies under § 1226(a). See *Jennings*, 583 U.S. at 306; 62 Fed. Reg. 10312, 10323 (Mar.

6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled … will be eligible for bond and bond redetermination.").

68. The government's reliance on *Matter of Q. Li* is misplaced. That case involved individuals apprehended at the border who had never been released and whose detention remained within the scope of § 1225(b). Numerous courts have distinguished *Q. Li* and held that it does not apply to noncitizens who, like Petitioner, were previously released into the community and then re-detained months or years later. See *Aceros*, 2025 WL 2637503, at *8–10; *Hernandez*, 2025 WL 4972011, at *12–15; *Espinoza*, 2025 WL 2675785, at *5–8.

69. In Sum, Petitioner's present detention cannot lawfully be justified under § 1225(b). That statute governs only the narrow period of expedited removal processing, not the circumstances of a person who was affirmatively released, lived compliantly in the community for nearly two years, and is now in full § 240 removal proceedings. Once DHS released Petitioner, § 1225(b)'s mandatory detention authority was severed. Her custody is properly governed by § 1226(a), which requires an individualized bond hearing before an Immigration Judge. By refusing to provide such a hearing and continuing to detain her under § 1225(b), Respondents are acting in violation of the INA and controlling precedent.

COUNT TWO

VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE

(Unlawful Re-Detention Without a Meaningful Hearing)

70. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

71. The Due Process Clause of the Fifth Amendment provides that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. It is well established that

noncitizens within the United States, regardless of status, are "persons" entitled to constitutional protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

72. Release from immigration custody creates a liberty interest protected by the Constitution. Courts have long recognized that when the government affirmatively allows a noncitizen to live in the community—whether on bond, parole, or recognizance—the individual gains a legitimate expectation of freedom that cannot be stripped away without process. See *Pinchi v. Noem*, No. 25-CV-5632, 2025 WL 2084921, at *4–5 (N.D. Cal. July 24, 2025) (recognizing liberty interest in remaining free once released); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (serious questions as to whether due process requires hearing before re-detention); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (re-detention required material change and process).

73. The Supreme Court has similarly held in related contexts that "[l]iberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). See also *Zadvydas*, 533 U.S. at 690 (immigration detention must bear a "reasonable relation" to its purpose).

74. Before re-detaining a noncitizen who has already been living in the community, due process requires a meaningful, individualized hearing before a neutral decisionmaker, at which the government must demonstrate necessity. See *Hernandez v. Wofford*, No. 1:25-CV-00986-KES-CDB (HC), 2025 WL 2420390, at *12–15 (E.D. Cal. Aug. 21, 2025) (ordering release where DHS re-detained petitioner without lawful custody determination); *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *5–8 (E.D. Cal. Sept. 18, 2025) (rejecting DHS's reliance on § 1225(b) to deny bond hearing).

75. This conclusion is reinforced by the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Each factor weighs heavily in Petitioner's favor:

76. **Private interest:** Petitioner's interest in remaining at liberty is fundamental. For nineteen months after DHS released her in December 2023, she lived openly in California, complied with all conditions, cared for her lawful permanent resident partner, and became part of her broader community. That freedom allowed her to rebuild her life and pursue her protection claims. Stripping her of that liberty overnight, without notice or hearing, inflicted the most severe deprivation our legal system recognizes: confinement of the body. See *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (Liberty is the norm, and detention the exception.).

77. **Risk of erroneous deprivation:** The risk of erroneous re-detention is acute when DHS may reverse its own release decision without prior notice or a neutral hearing. Here, ICE unilaterally re-detained Petitioner on July 2, 2025, immediately following her credible fear interview, despite the absence of any new evidence or material change in circumstances suggesting danger or flight risk. At her September 10, 2025 custody redetermination hearing, the Immigration Judge declined jurisdiction, erroneously concluding that detention was mandatory under § 1225(b). Without judicial oversight, there is no check on arbitrary reversal of liberty.

78. **Government's interest:** DHS has minimal legitimate interest in re-detaining someone it already deemed safe to release. Less restrictive alternatives—including bond, supervised release, periodic check-ins, or electronic monitoring—were readily available and would have adequately served any government objectives. Moreover, the fiscal and administrative burden of providing a brief bond hearing is minute compared to the profound deprivation of liberty at stake. See *Haygood v. Younger*, 769 F.2d 1350, 1357 (9th Cir. 1985) (en banc) (due process requires additional safeguards when governmental burden is slight). EOIR immigration judges already

conduct bond hearings on a daily basis; the only additional safeguard required here would have been to provide Petitioner the same ordinary process. The administrative burden of such a hearing is negligible.

79. Balancing these factors confirms that Petitioner's re-detention was unconstitutional. The government's abrupt reversal deprived her of liberty despite her proven compliance, strong family ties, and lack of criminal history. By re-detaining her without an individualized bond hearing, Respondents violated the core constitutional guarantee that liberty cannot be curtailed without due process of law. This conclusion accords with the consistent rulings of courts across this circuit. See *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *5–8 (E.D. Cal. Sept. 18, 2025) (bond hearing required after release); *Pinchi v. Noem*, No. 25-CV-5632, 2025 WL 2084921, at *4–5 (N.D. Cal. July 24, 2025) (liberty interest attaches once released); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction preventing re-arrest absent hearing after five years on bond); *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025) (Constitution requires hearing before re-arrest); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3–4 (N.D. Cal. May 6, 2022) (irreparable harm from re-detention absent notice and hearing); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021) (enjoining re-detention without process); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (material change in circumstances required for re-detention); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 971–73 (N.D. Cal. 2019) (requiring bond hearing before re-detention); *Meza v. Bonnar*, No. 18-CV-02708, 2018 WL 2554572, at *2–3 (N.D. Cal. June 4, 2018) (same).

80. In sum, Petitioner's re-detention under the guise of § 1225(b) mandatory custody, without a case-specific showing of flight risk or dangerousness, deprived her of liberty without due process of law.

COUNT THREE

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)

(Arbitrary, Capricious, and Contrary to Law)

81. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though fully set forth herein.

82. The Administrative Procedure Act ("APA") provides that a reviewing court shall "hold unlawful and set aside agency action, findings, and conclusions found to be … arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations." 5 U.S.C. § 706(2)(A), (C).

83. DHS's decision to re-detain Petitioner in July 2025 without an individualized custody determination, while classifying her detention as mandatory under § 1225(b), constitutes agency action that is arbitrary, capricious, and contrary to law.

84. As detailed above, Petitioner had previously been affirmatively released from custody in December 2023 and lived in the community for nineteen months without incident. DHS's re-detention decision ignored its prior determination that she was not a flight risk or danger, and failed to provide any case-specific explanation as to why her liberty should be revoked.

85. Courts have held that DHS must conduct a reasoned, individualized analysis before revoking release or shifting a noncitizen into mandatory detention. See *Y-Z-H-L v. Bostock*, No. 25-CV-493, 2025 WL 1898025, at *10–12 (D. Or. July 9, 2025) (finding parole revocation unlawful where DHS failed to provide a cogent description of reasons supporting the decision);

Mata Velasquez v. Kurzdorfer, No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025) (requiring parole revocations to attend to the specific reasons parole was initially granted).

86. DHS's actions here are also inconsistent with its own regulations and longstanding practice. When Congress enacted IIRIRA, the implementing regulations expressly recognized that "aliens who are present without having been admitted or paroled … will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until 2025, DHS consistently applied § 1226(a) to noncitizens in Petitioner's posture. Its abrupt reversal—seeking to re-detain long-released individuals under § 1225(b)'s mandatory detention—disregards reliance interests and lacks a reasoned explanation.

87. Federal courts have enjoined similar DHS attempts to expand § 1225(b) detention authority in violation of statutory limits. See *Coalition for Humane Immigrant Rights v. Noem*, No. 25-CV-872, 2025 WL 2192986, at *22–27 (D.D.C. Aug. 1, 2025) (holding that § 1225(b)(1)(A)(iii) "forbids the expedited removal of noncitizens who have been, at any point in time, paroled into the United States" and staying DHS directives that attempted to override this principle); *Make the Road New York v. Noem*, No. 25-CV-190, 2025 WL 2494908, at *12–18, *23 (D.D.C. Aug. 29, 2025) (finding expedited removal policies unlawful where they risked subjecting statutorily ineligible individuals to mandatory detention and removal).

88. By purporting to re-detain Petitioner under § 1225(b) after her release and placement in § 240 proceedings, DHS has acted "in excess of statutory jurisdiction" and "not in accordance with law." 5 U.S.C. § 706(2)(A), (C). Its actions are arbitrary and capricious because they fail to provide a reasoned basis for treating Petitioner as subject to mandatory detention despite her established record of compliance and community ties.

89. In Sum, DHS's decision to re-detain Petitioner under § 1225(b) is arbitrary, capricious, and contrary to law. The agency ignored its own prior release determination, disregarded long-standing regulatory practice, and misapplied statutory authority. Its conduct violates the APA, and Petitioner is entitled to relief.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Declare that ICE's July 2, 2025, apprehension and detention of Ms. Mendoza was an unlawful exercise of authority because ICE provided no lawful basis to conclude that she presented a danger to the community or a risk of flight;
3. Order ICE to immediately release Ms. Mendoza from her unlawful detention;
4. Order, in addition or in the alternative, that if Respondents continue to detain Petitioner, they must provide her with a constitutionally adequate bond hearing within seven (7) days before a neutral adjudicator, at which the government bears the burden of proving by clear and convincing evidence that she is a danger or a flight risk, with written findings;
5. Enjoin Respondents from re-arresting Ms. Mendoza unless and until such a hearing is held and the government meets that burden;
6. Award reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

7. Grant such further relief as the Court deems just and proper.

DATED: September 24, 2025

Respectfully Submitted,

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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.