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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Yamielth Aldana Serrano; Edvin Manuel Fernandez Sanchez; Yong Qi, Rafaela del Rosario Salgado Sotomayor; Andres Daniel Vasquez Oviedo

Petitioners,

v.

SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the United States Department of Homeland Security, PAMELA BONDI, Attorney General of the United States, acting in their official capacities,

Respondents.

CASE NO. _____

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioners are five individuals who were arrested by Department of Homeland Security (DHS) agents today, October 2, 2025, at their immigration court hearings in San Francisco. Petitioners went to immigration court for what should have been routine preliminary immigration hearings before an immigration judge. During their hearings, however, the government orally moved to dismiss their cases. The government did so for the purpose of placing them in so-called "expedited removal" proceedings. Minutes after Petitioners exited the courtroom, DHS agents arrested them before they could leave the courthouse.

2. These arrests are part of a new, nationwide DHS strategy of sweeping up people who attend their immigration court hearings, detaining them, and seeking to re-route them to fast-track deportations. Since mid-May, DHS has implemented a coordinated practice of leveraging immigration detention to strip people like Petitioners of their substantive and procedural rights and pressure them into deportation. Immigration detention is civil, and thus is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. But DHS did not arrest and detain Petitioners—who demonstrably pose no risk of absconding from immigration proceedings or danger to the community—for either of these reasons. Instead, as part of its broader enforcement campaign, DHS detained Petitioners to strip them of their procedural rights, force them to forfeit their applications for relief, and pressure them into fast-track removal.

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

4. The Constitution protects Petitioners—and every other person present in this country—from arbitrary deprivations of his liberty, and guarantees them due process of law. The

government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

5. Petitioners respectfully seek a writ of habeas corpus ordering the government to immediately release them from their ongoing, unlawful detention, and prohibiting their re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve this Court's jurisdiction, Petitioners also request that this Court order the government not to transfer them outside of the District or deport them for the duration of this proceeding.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

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

8. Petitioners are properly joined in this action because they jointly assert a right to release or a bond hearing and raise at least one question of law or fact common to all plaintiffs, namely their detention violates the Fifth Amendment to the United States Constitution.

PARTIES

9. Petitioner Yamileth Aldana Serrano is a woman from Colombia. She has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. She is presently in civil immigration detention at 630 Sansome Street in San Francisco

10. Petitoner Edvin Manuel Fernandez Sanchez is a man from Guatemala. He has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. He is presently in civil immigration detention at 630 Sansome Street in San Francisco.

11. Petitioner Yong Qi is a man from China. He has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. He is presently in civil immigration detention at 630 Sansome Street in San Francisco.

12. Petitioner Rafaela del Rosario Salgado Sotomayor is a woman from Nicaragua. She has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. She is presently in civil immigration detention at 630 Sansome Street in San Francisco.

13. Petitioner Andres Daniel Vasquez Oviedo is a man from Colombia. He has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. He is presently in civil immigration detention at 630 Sansome Street in San Francisco.

14. Respondent Sergio Albarran is the Field Office Director of the San Francisco Immigration and Customs Enforcement Office. He is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Petitioner. He maintains an office and regularly conducts business in this district. He is sued in his official capacity.

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

16. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Noem is sued in her official capacity.

17. Respondent Pamela Bondi is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through her agents, she is

responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her official capacity.

EXHAUSTION

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

LEGAL BACKGROUND

A. The Constitution Protects Noncitizens Like Petitioners from Arbitrary Arrest and Detention.

19. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural.

20. *First*, "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

21. These protections extend to noncitizens facing detention, as "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom 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*, 533 U.S. at 690.

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

23. *Second*, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards.

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

25. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, "[t]he 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.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

26. This reasoning applies with equal if not greater force to people released from civil immigration detention at the border, like Petitioners. After all, noncitizens living in the United States like Petitioners have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of

parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

FACTUAL ALLEGATIONS

A. DHS Dramatically Expands the Scope of Expedited Removal.

27. For decades, DHS applied expedited removal exclusively in the border enforcement context, with only narrow exceptions to that general rule. From 1997 until 2002, expedited removal applied only to inadmissible noncitizens arriving at ports of entry. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

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

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

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

31. In 2021, President Biden directed the DHS Secretary to review the rule expanding

expedited removal and consider whether it comported with legal and constitutional requirements, including due process. In 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

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

33. This state of affairs changed drastically on January 20, 2025, the day that President Trump took office for his second term. That day, President Trump signed Executive Order 14159, "Protecting the American People Against Invasion," the purpose of which was "to faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people." Exec. Order No. 14,159, 90 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take various actions "to ensure the efficient and expedited removal of aliens from the United States." *Id.*

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

35. On January 23, 2025, the Acting Secretary of Homeland Security issued a memorandum "provid[ing] guidance regarding how to exercise enforcement discretion in implementing" the new expedited-removal rule. The guidance directed federal immigration officers to "consider . . . whether to apply expedited removal" to "any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied." As part of that process, the guidance encourages officers to "take steps to terminate any ongoing removal

proceeding and/or any active parole status."[1]

36. Under the administration's expanded approach to expedited removal, hundreds of thousands of noncitizens who have lived in the country for years are at imminent risk of summary removal without any hearing, meaningful process, access to counsel, or judicial review—regardless of the strength of their ties to the United States.

B. To Place More People in Expedited Removal, DHS Undertakes New Campaign of Courthouse Arrests and Detention.

37. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This "coordinated operation" is "aimed at dramatically accelerating deportations" by arresting people at the courthouse and placing them into expedited removal.[2]

38. The first step of this enforcement operation typically takes place inside the immigration court. When people arrive in court for their master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without any notice to the affected individual. Although DHS regulations do not permit such motions to dismiss absent a showing that the "[c]ircumstances of the case have changed," 8 C.F.R. § 239.2(a)(7), (c), DHS attorneys do not conduct any case-specific analysis of changed circumstances before filing these motions to dismiss.

39. Even though individuals are supposed to have ten days to respond to a motion to dismiss, some IJs have granted the government's oral motion on the spot and immediately dismissed the case. This is consistent with recent instructions from the Department of Justice to

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[1] Benjamine C. Huffman, *Guidance Regarding How to Exercise Enforcement Discretion*, Dep't of Homeland Sec. (Jan. 23, 2025), https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf.

[2] Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23, 2025, https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/; *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html.

immigration judges stating that they may allow the government to move to dismiss cases orally, in court, without a written motion, and to decide that motion without allowing the noncitizen an opportunity to file a response.

40. Despite these instructions, some IJs have still asked DHS to re-file the motion as a written motion and continued proceedings to allow individuals to file their response. A smaller group of IJs have expressly denied the motion to dismiss on the record or in a written order.

41. The next step of DHS's new campaign takes place outside the courtroom. ICE officers, in consultation with DHS attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator banks. When an individual exits their immigration hearings, ICE officers—typically masked and in plainclothes—immediately arrest the person and detain them. ICE officers execute these arrests regardless of how the IJ rules on the government's motion to dismiss. On information and belief, they typically do not have an arrest warrant.

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

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

44. The same is true at the San Francisco Immigration Court, where Petitioners were arrested. Over the last month, dozens of people have been arrested and detained after attending their routine immigration hearings.[4]

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

[4] Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron., June 12, 2025, https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-

45. DHS's aggressive tactics at immigration courts appear to be motivated by the Administration's imposition of a new daily quota of 3,000 ICE arrests.[5] In part as a result of this campaign, ICE's arrests of noncitizens with no criminal record have increased more than 800% since before January.[6]

46. The new courthouse arrest and detention campaign is a sharp break from DHS's previous practices, when immigration officers avoided arrests at courthouses given the concern that such enforcement actions would deter people from appearing for their proceedings and complying with court orders.[7]

47. In fact, DHS officials previously permitted ICE officers to conduct "civil immigration enforcement action . . . in or near a courthouse" only in highly limited circumstances, such as when "it involves a national security threat," or "there is an imminent risk of death, violence, or physical harm." These limitations were necessary, DHS explained, because "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and, as a result, impair the fair administration of justice."[8] The new policy includes no such limiting language.[9]

20374755.php; Margaret Kadifa & Gustavo Hernandez, *Immigrants fearful as ICE Nabs at least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*, S.F. Standard, May 27, 2025, https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/.

[5] Ted Hesson & Kristina Cooke, *ICE's Tactics Draw Criticism as it Triples Daily Arrest Targets,* Reuters, June 10, 2025, https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-daily-arrest-targets-2025-06-10/; Alayna Alvarez & Brittany Gibson, *ICE Ramps Up Immigration Arrests in Courthouses Across the U.S.*, Axios, June 12, 2025, https://www.axios.com/2025/06/12/ice-courthouse-arrests-trump.

[6] José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*, The Guardian, June 14, 2025, https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures.

[7] Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE Is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html.

[8] DHS, April 27, 2021, *Civil Immigration Enforcement Actions in or Near Courthouses* memorandum, Tae Johnson and Troy Miller.

[9] ICE, January 21, 2025, *Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses* memorandum from Caleb Vitello; ICE, May 27, 2025 *Civil Immigration Enforcement Actions In or Near Courthouses*, memorandum, Todd M. Lyons.

48. The government's new campaign is also a significant shift from previous DHS practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).

C. Petitioners are Unlawfully Arrested and Detained Pursuant to DHS's New Policy.

Ms. Aldana Serrano

49. Ms. Aldana Serrano fled Colombia and arrived in the United States in November 2023. She was apprehended by immigration officials at the border. They determined she posed little if any flight risk or danger to the community and released her into the community under 8 USC § 1226a to wait for his immigration court date. In October 2024, she applied for asylum, withholding of removal, and protection under the Convention Against Torture. She has complied with all of her ICE and immigration court obligations and has no criminal history anywhere in the world.

Mr. Fernandez Sanchez

50. Mr. Fernandez Sanchez fled Guatemala and arrived in the United States in May 2024. He was apprehended by immigration officials at the border. They determined he posed little if any flight risk or danger to the community and released him into the community under 8 USC § 1226a to wait for his immigration court date. In February 2025, he applied for asylum, withholding of removal, and protection under the Convention Against Torture. He has complied with all of his ICE and immigration court obligations and has no criminal history anywhere in the world.

Mr. Qi

51. Mr. Qi fled China and arrived in the United States in December 2023. He was apprehended by immigration officials at the border. They determined he posed little if any flight risk or danger to the community and released him into the community under 8 USC § 1226a to wait for his immigration court date. In February 2024, he applied for asylum, withholding of removal, and protection under the Convention Against Torture. He has complied with all of his ICE and immigration court obligations and has no criminal history anywhere in the world.

Ms. Salgado Sotomayor

52. Ms. Salgado Sotomayor fled Nicaragua and arrived in the United States in November 2023. She was apprehended by immigration officials at the border. They determined she posed little if any flight risk or danger to the community and released her into the community under 8 USC § 1226a to wait for her immigration court date. In November 2024, she applied for asylum, withholding of removal, and protection under the Convention Against Torture. She has complied with all of her ICE and immigration court obligations and has no criminal history anywhere in the world.

Mr. Vasquez Oviedo

53. Mr. Vasquez Oviedo fled Colombia and arrived in the United States in March 2024. He was apprehended by immigration officials at the border. They determined he posed little if any flight risk or danger to the community and released him into the community under 8 USC § 1226a to wait for his immigration court date. In August 2025, he applied for asylum, withholding of removal, and protection under the Convention Against Torture. He has complied with all of his ICE and immigration court obligations and has no criminal history anywhere in the world.

54. On October 2, 2025, Petitioners appeared in-person at San Francisco Immigration Court for master calendar hearings before an immigration judge. The government made an oral motion to dismiss their cases. The Immigration Judge did not rule on the motion. Instead, he gave Petitioners time to respond and reset their hearings for a future date.

55. Because Petitioners have never been determined to be a flight risk or danger to the community, their ongoing detention is not related to either of the permissible justifications for civil immigration litigation. Their detention does not further any legitimate government interest.

D. As a Result of Their Arrest and Detention, Petitioners are Suffering Ongoing and Irreparable Harm.

68. Petitioners are being deprived of their liberty without any permissible justification. The government previously released them on their own recognizance because they did not pose sufficient risk of flight or danger to the community to warrant detention.

69. None of that has changed. Upon information and belief, Petitioners have no criminal record, and there is no basis to believe that they pose any public-safety risk. Nor are Petitioners, who were arrested *while appearing in court for their immigration cases*, conceivably a flight risk. To the contrary, Petitioners complied with their ICE and immigration court obligations.

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CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process—Detention)

70. Petitioners repeat and re-allege the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

71. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "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*, 533 U.S. at 690.

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

73. Petitioners are not flight risks or dangers to the community. Respondents' detention of Petitioners is therefore unjustified and unlawful. Accordingly, Petitioners are being detained in violation of the Due Process Clause of the Fifth Amendment.

74. Moreover, Petitioners' detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioners' detention appears to be "not

to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas and transfer immigration court venue away from an IJ who refused to facilitate DHS's new expedited removal scheme. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process—Detention)

75. Petitioners repeat and re-allege the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

76. As part of the liberty protected by the Due Process Clause, Petitioners have a weighty liberty interest in avoiding re-incarceration after their release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

77. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

78. Petitioners' re-detention without a pre-deprivation hearing violated due process. Long after deciding to release Petitioners from custody on their own recognizance, Respondents re-detained Petitioners with no notice, no explanation of the justification of their re-detention,

and no opportunity to contest their re-detention before a neutral adjudicator before being taken into custody.

79. Petitioners have a profound personal interest in their liberty. Because they received no procedural protections, the risk of erroneous deprivation is high. And the government has no legitimate interest in detaining Petitioners without a hearing; bond hearings are conducted as a matter of course in immigration proceedings, and nothing in Petitioners' records suggested that they would abscond or endanger the community before a bond hearing could be carried out. *See, e.g.*, *Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner's strong family ties and his continued employment during the pandemic as an essential agricultural worker").

PRAYER FOR RELIEF

Petitioners respectfully request that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioners from custody;
3. Declare that Petitioners' arrest and detention violate the Due Process Clause of the Fifth Amendment.
4. Enjoin Respondents from transferring Petitioners outside this District or deporting Petitioners pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioners unless their re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioners are a flight risk or danger to the community;
6. Award Petitioners their costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
7. Grant such further relief as the Court deems just and proper.

Date: October 2, 2025

Respectfully Submitted,

/s/ Diana Mariscal

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