IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

LILIAN ROXANA **VALLEJO**,

Petitioner,

v.

DIRECTOR, U.S. Department of Homeland Security ("**DHS**") Immigration and Customs Enforcement ("**ICE**") Enforcement and Removal Operations ("**ERO**") **Miami Field Office**; **ACTING DIRECTOR, U.S. DHS ICE**; **SECRETARY, DHS**; **DIRECTOR**, U.S. Department of Justice Executive Office for Immigration Review ("**EOIR**"); and **U.S. ATTORNEY GENERAL**;

Respondents.
_____/

CASE NO.

JUDGE:

MAGISTRATE JUDGE

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW the Petitioner, LILIAN ROXANA VALLEJO, by and through undersigned counsel, and hereby brings this Petition and sues the Respondents and alleges as follows:

I. INTRODUCTION

1. The Petitioner is a citizen and national of Honduras. *See* Exh. 1 (Notice to Appear ("NTA") (Form I-862) dated June 10, 2008).

2. The Petitioner is in the Respondents' physical custody at the DHS ICE ERO Broward Transitional Center ("BTC"), an immigration detention center under the Respondents' and their agents' direct control within this district in Pompano Beach, Florida. *See* Exh. 2 (copy of ICE Online Detainee Locator dated October 23, 2025).

3. The Petitioner respectfully requests *inter alia* that: (1) this Honorable Court issue an Order to Show Cause ("OSC") within three days pursuant to 28 U.S.C. § 2243; (2) declare that the Respondents have violated the Petitioner's Fifth Amendment Constitutional rights; (3) declare that the Respondents have violated the APA; (4) grant a Writ of Habeas Corpus and order the Respondents to release her from custody; and (5) order other relief as described herein.

4. This action arises under the United States Constitution and the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1101 *et seq.*, as the Petitioner challenges detention as a violation of: the Due Process Clause of the Fifth Amendment of the U.S. Constitution; the INA and regulations thereunder; and the Administrative Procedure Act ("APA").

5. In addition, this Honorable Court has jurisdiction over this complaint under: 28 U.S.C. § 2241 (power to grant Writ of Habeas Corpus); the All Writs Act, 28 U.S.C. § 1651; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1346 (United States Defendant); and APA, 5 U.S.C. § 555(b), 5 U.S.C. § 702 (APA waiver of sovereign immunity), 5 U.S.C. § 704 (no other adequate remedy), and 5 U.S.C. § 706 (compel agency action unlawfully withheld or unreasonably delayed).

6. This Honorable Court may grant relief pursuant to 28 U.S.C. § 2241 and the All Writs Act, 28 U.S.C. § 1651.

II. VENUE

7. Venue is proper in this district under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391(e)(1) (U.S. defendant resides in this district), 28 U.S.C. § 1391(e)(2) (cause of action arose in this district), and 28 U.S.C. § 1391(e)(4) (plaintiff resides in this district and no real property is at issue).

8. The Petitioner is in the Respondents' physical custody within this district at BTC, an immigration detention center under the direct control of the Respondents and their agents. *See* 28 U.S.C. § 2241(a) (providing for habeas petitions "within [courts'] respective jurisdictions"); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) ("The plain language of the habeas statute [...] confirms the general rule that for core habeas petitions challenging physical confinement, jurisdiction lies in only one district: the district of confinement").

III. PARTIES

9. Petitioner LILIAN ROXANA VALLEJO is citizen and national of Honduras who is in the Respondents' physical custody; the Respondents have assigned her Alien Registration No. A[redacted]

10. The Petitioner brings a suit against the Respondent DHS ICE ERO Miami Field Office Director. In this official capacity, he is responsible for the ICE Field Office with administrative jurisdiction over the Petitioner and he is a legal custodian of the Petitioner.

11. The Petitioner brings a suit against the Respondent DHS ICE Acting Director. In this official capacity, he is a legal custodian of the Petitioner.

12. The Petitioner brings a suit against the Respondent DHS Secretary. In this official capacity, she is a legal custodian of the Petitioner.

13. The Petitioner brings a suit against the Respondent EOIR Director. In this official capacity, he is responsible for the EOIR, the agency that administers the immigration courts, which conduct custody redetermination (bond) hearings and removal proceedings. *See* 8 U.S.C. § 1103.

14. The Petitioner brings a suit against the Respondent Attorney General of the U.S. Department of Justice. In this official capacity, she is responsible for the EOIR, the agency that

administers the immigration courts, which conduct custody redetermination (bond) hearings and removal proceedings. *See* 8 U.S.C. § 1103.

IV. CUSTODY

15. The Petitioner remains in the Respondents' physical custody within this district at BTC, an immigration detention center in Pompano Beach, Florida, under the direct control of the Respondents and their agents. *See* 28 U.S.C. § 2241(c) (civil habeas statute applies to individuals who are "in custody"); Exh. 2.

V. STATEMENT OF THE FACTS

16. The Petitioner is a citizen and national of Honduras. *See* Exh. 1 (NTA).

17. On or about May 11, 2008, the Petitioner entered the United States at or near Hidalgo, Texas; the Respondents detained the Petitioner because the DHS had not admitted or paroled her to the United States and an asylum officer found that the Petitioner had demonstrated a credible fear of persecution or torture. *See id.*

18. On or about June 10, 2008, the DHS issued the Petitioner the NTA and charged her with removal pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *See id.*

19. On or about June 11, 2008, the DHS issue a Notice of Custody Determination (Form I-286) explaining that pursuant to 8 U.S.C. § 1226 and 8 C.F.R. § 236, the DHS released the Petitioner under a $7,000.00 bond. *See* Exh. 3 (I-286 dated June 11, 2008); *see also* Exh. 4 (bond documents, including TERMS AND CONDITIONS OF IMMIGRATION DELIVERY BOND DISCLOSURE NOTICE, INDEMNITY AGREEMENT, and PROMISSORY NOTE dated June 20, 2008.

20. On or about October 10, 2019, an Immigration Judge ("IJ") at the EOIR Miami Immigration Court issued an Order granting the Petitioner withholding of removal. *See* Exh. 5 (ORDER OF THE IMMIGRATION JUDGE).

21. On or about May 03, 2025, the Respondents issued a NOTICE TO OBLIGOR TO DELIVER ALIEN (ICE Form I-340) ordering the Petitioner to appear at 9:00 a.m. on June 26, 2025, at the Respondent's DHS ICE ERO Sub-Office in Miramar, Florida. *See* Exh. 6 (ICE Form I-340).

22. On or about June 26, 2025, the Respondents detained the Petitioner when she appeared before the Respondents in compliance with the ICE Form I-340 Notice. *See* Exh. 7 (Record of Deportable/Inadmissible Alien (Form I-213)).

23. In the Form I-213, the Respondents explained that the Petitioner "reported to Miramar non-detained unit on June 26, 2025" and the Respondents conducted "a case review resulting in custody redetermination to detain [the Petitioner] in ICE custody." *Id.*

24. The Respondents further noted in the Form I-213 as follows:

> VALLEJO is a citizen of Honduras who entered the United States on or about May 11, 2008 near Hidalgo, Texas. VALLEJO was issued an Expedited Removal on May 11, 2008 by the United States Border Patrol and charged as an intended immigrant without an immigrant visa. VALLEJO made a credible fear claim and ultimately was issued an NTA [...] following a positive fear determination from USCIS. An immigration judge ordered VALLEJO removed on March 3, 2010 in absentia. VALLEJO filed an MTR (motion to re-open) proceedings with the immigration judge in Miami FL, which was granted on April 9, 2010 An immigration judge ordered VALLEJO removed to Honduras on October 10, 2019, however granted withholding of removal to Honduras. VALLEJO has no known applications or petitions pending with the service at this time. OPLA Miami was contacted to verify removability of VALLEJO to a third country and confirmed VALLEJO is removable at this time. VALLEJO will be served notice of removal to a third country.

Id.

25. In the Form I-213, the Respondents acknowledged that the Petitioner has "[o]ne minor [U.S. citizen] child that VALLEJO stated was in the custody of her sister in law," but the Respondents did not claim any change in the Petitioner's circumstances like a criminal conviction or change in country conditions that would support a revocation of her parole. *Id.*

26. On or about June 28, 2025, the IJ granted the Petitioner's motion to reopen removal proceedings. *See* Exh. 8 (ORDER OF THE IMMIGRATION JUDGE).

27. On or about July 07, 2025, the Respondents issued the Petitioner a Notice of Referral to Immigration Judge (Form I-863) noting that the Petitioner had been ordered removed pursuant to 8 U.S.C. § 1228(b), which provides for expedited removal of aliens convicted of committing aggravated felonies, or the DHS reinstated a prior removal order pursuant to 8 U.S.C. § 1230(a)(5), which provides for reinstatement of removal orders after illegal reentry. *See* Exh. 9 (Form I-863); *but see* Exh. 7 (Form I-213 does not allege any criminal history or reentry after removal).

28. The Form I-863 further noted that the Petitioner "has expressed fear of persecution or torture and the claim has been reviewed by an asylum officer who has concluded the alien has a reasonable fear of persecution or torture" and the Respondents referred the matter "for a determination in accordance with [8 C.F.R. § 208.31(e)]." *See* Exh. 9.

29. Accordingly, the Respondents scheduled the Petitioner to appear on July 22, 2025, before an IJ at the BTC Immigration Court. *Id.*

30. On or about July 30, 2025, the Petitioner, through her counsel, filed a Motion to Terminate the removal proceedings at the BTC Immigration Court, and on or about August 19, 2025, the IJ at the BTC Immigration Court entered an order terminating these removal proceedings. *See* Exh. 10 (ORDER OF THE IMMIGRATION JUDGE).

31. In the Order, the IJ explained as follows:

> [Petitioner]'s attorney filed a Motion to Terminate the proceedings on July 30, 2025. The basis of the motion is that since the I-863 was issued, Miami Immigration Judge Stephen Mander granted Applicant counsel's Motion to Reopen reopening the underlying Order of Removal, and reset Applicant's matter to a non-detained docket on January 2, 2026. Since Applicant is no longer under a final order, the I-863 appears to have been improvidently issued.
>
> At the last hearing held at BTC on July 28, 2025, DHS requested until August 18, 2025 to file a written response. As of today's date, August 19, 2025, the Court has not received a written response. The Court will deem it unopposed. [*See*] ICPM 5.12. [*See*] 8 C.F.R. § 1003.23(a). Applicant's Motion to Terminate I-863, Notice of Referral dated July 7, 2025 is hereby GRANTED.

Id.

32. Meanwhile, the Petitioner had sought a custody redetermination pursuant to 8 C.F.R. § 1236 before the IJ at the BTC Immigration Court, and on or about September 12, 2025, the IJ entered an order finding that the Petitioner "is ineligible for release on bond pursuant to [*Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019)]." *See* Exh. 11 (Order).

VI. LEGAL BACKGROUND

A. Habeas Corpus Petition Rights

33. The right to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 provides "a means of reviewing the legality of Executive detention." *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

34. Congress provided that district courts have the power to grant a writ of habeas corpus to a person who is in custody in violation of the Constitution or laws of the United States. *See* 28 U.S.C. § 2241(c)(3).

35. The Supreme Court has noted that habeas corpus review has historically played an important role in immigration cases:

> Before and after the enactment in 1875 of the first statute regulating immigration, 18 Stat. 477, […] [habeas corpus] jurisdiction was regularly invoked on behalf of noncitizens, particularly in the immigration context. […] In case after case, courts answered questions of law in habeas corpus proceedings brought by aliens challenging Executive interpretations of the immigration laws.

St. Cyr, 533 U.S. at 305-06.

36. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *Id.* at 301.

B. <u>Expedited Removal and Detention Under 8 U.S.C. § 1225(b)</u>

37. Section 1225(b)(1)(A)(i) provides that if an immigration officer determines that an alien arriving in the United States or who has not been admitted or paroled in the United States under certain circumstances is inadmissible pursuant to 8 U.S.C. §§ 1182(a)(6)(C) or (a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum or a fear of persecution. *See also* 8 C.F.R. § 235.3(b)(1) (noting that expedited removal provisions apply to such aliens).

38. Section 1225(b)(1)(A)(ii) requires that an officer refer the alien for an interview by an asylum officer if the alien intends to apply for asylum or a fear of persecution. *See also* 8 C.F.R. § 235.3(b)(4) ("If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal until the alien has been referred for an interview by an asylum officer […]").

39. Section 1225(b)(1)(B)(ii) provides that if the asylum officer determines that an alien has a credible fear of persecution, the alien shall be detained for further consideration of the

asylum application. *See also* 8 C.F.R. § 235.3(b)(2)(iii) ("An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal").

40. "Parole of such alien shall only be considered in accordance with [8 U.S.C. § 1182(d)(5)] and [8 C.F.R. § 212.5(b)]." 8 C.F.R. § 235.3(b)(2)(iii); *see also id.* at § 235.3(b)(4)(ii) ("Pending the credible fear detention by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained," but "[p]arole of such alien shall only be considered in accordance with [8 U.S.C. § 1182(d)(5)] and [8 C.F.R. § 212.5(b)]").

41. If the officer finds the fear of persecution is credible, the alien will receive "full consideration of the asylum and withholding of removal claim" in full removal proceedings pursuant to 8 U.S.C. § 1229a or U.S. Citizenship and Immigration Services administrative asylum proceedings. 8 C.F.R. § 208.30(f).

42. In *Matter of M-S-*, 27 I&N Dec. 509, 515 (A.G. 2019), the Attorney General concluded that "aliens who are originally placed in expedited proceedings and then transferred to full proceedings after establishing a credible fear […] remain ineligible for bond, whether they are arriving at the border or are apprehended in the United States."

43. The Attorney General's conclusion in *Matter of M-S-* overruled the Board of Immigration Appeals ("BIA") precedent decision in *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005), which "held that only some aliens transferred after establishing a credible fear are subject to mandatory detention" and "that 'arriving' aliens – such as those 'attempting to come into the United States at a port-of-entry,' […] must be detained, but all other transferred aliens are eligible for bond." *Matter of M-S-*, 27 I&N Dec. at 509-10 (citing *Matter of X-K-*, 23 I&N Dec. at 736) (cleaned up and other citations omitted).

C. Parole and Bond

44. The DHS Secretary may exercise discretion to parole an alien applying for admission "into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit" and when the DHS Secretary finds that the "purposes of such parole shall […] have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission." 8 U.S.C. § 1182(d)(5); *see also* 8 C.F.R. § 212.5(b) (listing groups of detained aliens that present neither a security risk nor risk of absconding for whom parole "would generally be justified on a case-by-case basis").

45. DHS regulations provide that when releasing an alien from custody, officials "may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so," and that such factors include, a bond, community ties including close relatives with known addresses, and agreement to reasonable conditions. 8 C.F.R. § 212.5(d).

46. DHS regulations further provide the following regarding termination of parole:

> On notice. In cases not covered by [automatic termination provisions], upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of [the officials with regulatory parole authority], neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under [8 U.S.C. §§ 1225 or 1229a] and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless in the opinion of the official [with regulatory parole authority] the public interest requires that the alien be continued in custody.

Id. at § 212.5(e)(2)(i).

47. Last August, a Magistrate Judge found as follows regarding revocation of parole:

> By statute and regulation, as interpreted by the [BIA], ICE has the authority to re-arrest a noncitizen and revoke their release pending the outcome of removal proceedings only when there has been a change in circumstances since the individual's initial release. *See Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("thus, absent changed circumstances … ICE cannot redetain Panosyan."); *Matter of Sugay*, [17 I&N Dec. 637, 640 (BIA 1981)]. Additionally, any change in circumstances must be "material." *Saravia v. Barr*, 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).

Rosado v. Figueroa, No. 25-cv-02157, 2025 WL 2337099, at *12 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025).

48. Additionally, the DHS ICE ERO guidance has explained that "[i]mmigration bonds are issued pursuant to the broad grant of authority to the [DHS Secretary] to 'prescribe such forms of bond' to carry out the authority delegated under the [INA]." U.S. DHS ICE ERO Bond Management Handbook, ERO 11301.1, at *2 (dated August 19, 2024) (citing 8 U.S.C. § 1103(a)(3)).

49. "The primary regulatory authority addressing immigration bonds is codified at 8 C.F.R. § 103.6" and pursuant to this provision, "Field Office Directors (FODs) are authorized to approve bonds and to take appropriate action to protect the interests of the United States with respect to such bonds." *See* DHS ICE ERO Bond Management Handbook at *2.

50. "After an immigration bond has been posted to release an alien from ICE custody, a FOD at any time may revoke the bond, rearrest the alien under the original warrant, and detain the alien." *Id.* (citing 8 U.S.C. § 1226(b)).

51. "The district director […] shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor […] of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part." 8 C.F.R. § 103.6(e).

52. "The regulation sets forth the broad standard used to determine whether a bond should be breached or canceled" as it "states that a 'bond is breached when there has been a substantial violation of the stipulated conditions'." DHS ICE ERO Bond Management Handbook at *3 (citing 8 C.F.R. § 103.6(e)).

53. "The bonds terms and conditions list several events that, when they occur before a bond is breaches, automatically terminate the bond," and agency guidance also notes that "[i]n the exercise of discretion, bonds may also be cancelled when […] [t]he alien is granted Withholding of Removal [..] by IJ and the possibilities of removal due to a change in country conditions are unforeseeable […]." *Id.* at **8-9.

54. "Demand notices are issued by using Form I-340, *Notice to Obligor to Deliver Alien*" and they "may be issued when ICE has a reason to call the alien into an ICE office" for reasons including removal pursuant to a final removal order, an interview about status, and "[t]o take the alien back into custody, for example, if the alien committed a crime while released on bond." *Id.* at **10-11.

D. <u>Withholding of Removal and 8 U.S.C. § 1231</u>

55. Section 1231 provides for detention and release of individuals with administratively final removal orders, including individuals granted withholding of removal and relief under the Convention Against Torture. 8 U.S.C. § 1231(a); *see also* 8 C.F.R. § 1241.1 (noting when a removal order becomes final); 8 C.F.R. § 241.4(b)(3) (individuals granted withholding of removal remain subject to detention).

56. This section provides that the DHS "shall detain the alien" and physically remove the alien from the United States within a 90-day "removal period." *Id.* § 1231(a)(1)(A), (2).

57. Despite the statutory 90-day deadline for removal, in certain circumstances the statute authorizes the DHS to detain an alien beyond the removal period, including where the alien

is inadmissible or the DHS determines that the alien is "a risk to the community or unlikely to comply with the order of removal." *Id.* § 1231(a)(6).

58. Due to the "serious constitutional concerns" that would arise if § 1231 were interpreted to authorize "indefinite detention," however, the Supreme Court has "construe[d] the statute to contain an implicit 'reasonable time' limitation, the application of which is subject to federal-court review." *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

59. "Freedom from imprisonment … lies at the heart of the liberty that [the Fifth Amendment's Due Process] Clause protects." *Id.* at 690.

60. The Supreme Court held specifically that § 1231 authorizes post-removal-period detention only for "a period reasonably necessary to bring about that alien's removal from the United States," and that such a period is presumptively six months. *Id.* at 689, 701.

61. After the six-month period, if "the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing" or release the detainee. *Id.* at 701; *see also* 8 C.F.R. § 241.13(a) ("special review procedures for those aliens" who have "provided good reason to believe there is no significant likelihood of removal to the country to which he or she was ordered removed, or to a third country, in the reasonably foreseeable future"); *id.* § 241.4(d)(1) (providing for release under supervision if detainee "would not pose a danger to the community … or a significant risk of flight").

62. "If no exception applies, an alien who is not removed within the 90-day removal period will be released subject to supervision." *Johnson v. Guzman Chavez*, 594 U.S. 523, 529 (2021) (citing to 8 U.S.C. § 1231(a)(3) and 8 C.F.R. § 241.5).

63. District Courts have applied the *Zadvydas* due process argument to detention of arriving aliens under 8 U.S.C. § 1225 to find that "prolonged detention of an arriving alien without

a bond hearing violates due process." *Leke v. Hott*, 521 F.Supp.3d 597, 603 (E.D. Va. 2021) (noting that "at least nine other district courts have reached the same result").

64. Moreover, 8 U.S.C. § 1231(b)(3) provides that "the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." *See also* 8 C.F.R. § 208.16(b) (regulations providing for withholding of removal under 8 U.S.C. § 1231(b)(3); *but see* 8 C.F.R. § 208.16(f) ("Nothing in this section or § 208.17 shall prevent the Service from removing an alien to a third country other than the country to which removal has been withheld or deferred").

E. <u>Due Process Constitutional Rights</u>

65. The Due Process Clause of the Fifth Amendment provides that "[n]o person [...] [shall be] deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

66. "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 [of the Fifth Amendment] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

67. Although the INA does not provide for custody redetermination for aliens placed in expedited removal, the courts have found that aliens detained under 8 U.S.C. § 1225(b) have a due process right to a bond hearing upon unreasonable detention. *See A.L. v. Oddo*, 761 F.Supp.3d 822, 825-26 (W.D. Pa. 2025); *Leke*, 521 F.Supp.3d at 601-05; *Kydrali v. Wolf*, 499 F.Supp.3d 768, 770-73 (S.D. Cal. 2020); *see also Doe v. Becerra*, 787 F.Supp.3d 1083, 1091 (E.D. Cal. 2025) (citing *Rodriguez v. Marin*, 909 F.3d 252, 256-57 (9th Cir. 2018)) ("[T]he Ninth Circuit has raised significant questions about the constitutionality of [8 U.S.C. §1225(b)]"); *Padilla v. ICE*, 704 F.Supp.3d 1163, 1171-72 (W.D. Wash. 2023) ("The holding in [*Dept. of Homeland Security v.*

Thuraissigiam, 591 U.S. 103 (2020)] does not foreclose Plaintiffs' due process claims which seek to vindicate a right to a bond hearing with certain procedural protections").

68. Immigration detention must always "bear [...] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003).

69. "[T]he Due Process Clause [of the Fifth Amendment] applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693-94 (citing *Wong Wing v. U.S.*, 163 U.S. 228 (1896)).

70. "Detention during deportation proceedings [i]s a constitutionally valid aspect of the deportation process [...] [and] the Due Process Clause does not require [the government] to employ the least burdensome means to accomplish its goal," but civil detention of noncitizens is not without limits. *Demore*, 538 U.S. at 523, 528.

71. Specifically, civil immigration detention is constitutional only in "certain special and narrow nonpunitive circumstances" and it must "bear a reasonable relation to the purpose" of the detention. *Zadvydas*, 533 U.S. at 690 (citations, brackets, and quotations omitted).

72. "Rather than punishment, immigration detention must be motivated by the two valid regulatory goals that the government has previously argued motivate the statute: 'ensuring the appearance of aliens at future immigration proceedings and preventing damage to the community." *Ozturk v. Trump*, No. 25-CV-374, 2025 WL 1145250, at *20 (D. Vt. Apr. 18, 2025) (quoting *Zadvydas*, 533 U.S. at 690).

73. Due process cases recognize a broad liberty interest in deportation and removal proceedings. *See Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (deportation "visits a great hardship on the individual and deprives him or the right to stay and live and work in the land of freedom").

74. "The Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional have a liberty interest in their

continued liberty." *Doe v. Becerra*, 787 F.Supp.3d at 1093 (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972), *Young v. Harper*, 520 U.S. 143, 150 (1997), and *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)).

75. To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test that the Supreme Court set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

76. Procedural due process "imposes constraints on government decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Id.* at 332.

77. Once a petitioner has identified a protected liberty or property interest, the Court must determine whether the respondents have provided constitutionally sufficient process. *See id.* at 332-33.

78. In making this determination, the Court balances (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* at 335.

F. The APA

79. Federal agencies must comply with the APA when crafting and enforcing decisions, regulations, and legislative rules. 5 U.S.C. § 553.

80. Courts have authority to review and invalidate final agency actions that are not in accordance with the law, exceed agency authority, lack substantial evidence, or are arbitrary and capricious. 5 U.S.C. § 706.

81. Under the APA, this Honorable Court has authorization to compel agency action that has been unreasonably delayed. 5 U.S.C. § 706(1).

82. An agency must "conclude a matter presented to it [...] within a reasonable time." 5 U.S.C. § 555(b).

83. "A person suffering legal wrong because of agency action [...] is entitled to judicial review thereof." 5 U.S.C. § 702. Agency action includes the failure to act. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 62 (2004).

84. Furthermore, administrative agencies must follow their own rules. *See United States v. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Fort Steward Schs. V. Fed. Lab. Rels. Auth.*, 495 U.S. 641, 654 (1990) ("It is a familiar rule of administrative law that an agency must abide by its own regulations.").

VII. CLAIMS FOR RELIEF

COUNT I

RESPONDENTS HAVE VIOLATED THE PETITIONER'S DUE PROCESS RIGHTS

85. Petitioner VALLEJO repeats and re-alleges paragraphs 1 through 84 as though fully set forth herein.

86. The Respondents have failed to provide the Petitioner with due process pursuant to the Fifth Amendment.

87. The Petitioner's prolonged mandatory detention has violated the Due Process Clause of the Fifth Amendment under the *Mathews* framework.

88. Here, the Petitioner's interest is substantial, as freedom from physical restraint is an interest that "lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

89. The Respondents have failed to provide the Petitioner with sufficient due process. *See Mathews*, 424 U.S. at 335.

90. The first *Mathews* factor, the private interest affected, weighs in the Petitioner's favor as the detention has become prolonged. *See Velasco Lopez v. Decker,* 978 F.3d 842, 855 (2d Cir. 2020) ("While the Government's interest may have initially outweighed short-term deprivation of [the petitioner's] liberty interests, that balance shifted once his imprisonment became unduly prolonged").

91. The second *Mathews* factor, risk of erroneous deprivation of such private interest through the procedures use, and the probable value, if any, of additional or substitute procedural safeguards, also weighs in the Petitioner's favor. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 530 (2004) (in second *Matthews* factor analysis, primary interest is not that of the Respondents but the interest of the detainee).

92. The third *Mathews* factor, the government's interests, also strongly favors the Petitioner because the government's interest in detaining the Petitioner without a bond hearing is weak because her continued detention does not align with the fundamental purposes of detention of mitigating flight risk or preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *see also* Exh. 6 (showing compliance with Respondents' request to appear for interview); Exh. 7 (showing no criminal history pursuant to FBI background check results).

93. Moreover, the prolonged mandatory detention violates the Due Process Clause as it bears no "reasonable relation to the purpose for which the individual was committed," preventing danger to the community or flight risk. *See Demore*, 538 U.S. at 527.

94. Additionally, the Respondents failed to provide the Petitioner with Due Process without giving notice of any parole revocation or bond breach. *See* 8 C.F.R. § 103.6(e) (bond

breach notice); *id.* at § 212.5(e)(2)(i) (parole revocation notice); *Savane v. Francis*, No. 1:25-cv-6666-GHW, 2025 WL 2774452 at *8 (S.D.N.Y. Sept. 28, 2025) ("[E]ven assuming that Petitioner is an 'applicant for admission' subject to [8 U.S.C.] §1225 whose parole was only legally permitted under § 1182(d)(5)(A), Respondents' revocation of his parole violated his statutory due process rights.").

COUNT II

APA VIOLATION

95. Petitioner VALLEJO repeats and re-alleges paragraphs 1 through 84 as though fully set forth herein.

96. Under the APA, "final agency action for which there is no other adequate remedy in court [is] subject to judicial review." 5 U.S.C. § 704.

97. The reviewing court "shall […] hold unlawful and set aside agency action, findings, and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "unsupported by substantial evidence." 5 U.S.C. § 706(2)(A).

98. The Respondents failed to provide the Petitioner with Due Process without giving notice of any parole revocation or bond breach. *See* 8 C.F.R. § 103.6(e) (bond breach notice); *id.* at § 212.5(e)(2)(i) (parole revocation notice); *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796 at **10-11 (W.D.N.Y. July 16, 2025) (opinion analyzing parole revocation requirements based on "both common sense and the words of the statute"); *Accardi,* 347 U.S. at 266-67; *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (applying *Accardi* to violation of internal agency manual).

VIII. RELIEF REQUESTED

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

1. Accept jurisdiction over this action.

2. Issue an Order to Show Cause pursuant to 8 U.S.C. § 2243 directing the Respondents to file a return in three days of the Order directing the Respondents to show cause why the Court should not grant a Writ of Habeas Corpus.

3. Issue a Writ of Habeas Corpus requiring the Respondents to produce the Petitioner.

4. Declare that the Respondents' detention of the Petitioner violates the Due Process Clause of the Fifth Amendment of the U.S. Constitution.

5. Declare that the Respondents have violated the APA.

6. Grant temporary and permanent injunctive relief requiring the Respondents to release the Petitioner from custody.

7. Award Petitioner VALLEJO reasonable costs and attorney fees for bringing this action.

8. Grant such further relief as Petitioner VALLEJO may request and/or this Honorable Court deems just and proper under the circumstances.

Respectfully submitted this 23rd day of October, 2025,

By: **/s/ Andrew W. Clopman**
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VERIFICATION

Pursuant to 28 U.S.C. § 2242, undersigned counsel certifies under penalty of perjury that I am submitting this verification because I am one of the Petitioner's attorneys and I have discussed the facts within this Petition with the Ana Maria Candela, Esq., the Petitioner's counsel in removal and custody redetermination proceedings before the Respondents. Pursuant to these discussions, I have reviewed the foregoing petition and that, to the best of my knowledge, the facts therein are true and accurate and the attachments to the petition are true and correct copies of the originals.

Respectfully submitted this 23rd day of October, 2025,

By: **/s/ Andrew W. Clopman**

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