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6

7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA**  
9 **SAN FRANCISCO DIVISION**

10 ROSALINDA AYRA LEANDRO,

11 Petitioner,

12 v.

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

18 Respondents.  
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CASE No.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

**INTRODUCTION**

1  
2 1. Petitioner Rosalinda Ayra Leandro is a mother of two young children, S [REDACTED]  
3 (age 4) and J [REDACTED] (age 5). She has no criminal history. Framm-Anton Decl. at ¶ 8.<sup>1</sup> Petitioner is  
4 37 years old.

5 2. This morning, she was unlawfully detained outside her home in Daly City.  
6 Petitioner had just returned from dropping off her kids at school.

7 3. Petitioner is an asylum seeker from Peru. She has filed a timely asylum claim and  
8 was scheduled to have a merits hearing in the San Francisco Immigration Court on December 5,  
9 2025.

10 4. Petitioner is represented by counsel in that removal proceeding. Her two minor  
11 children are joined in the case, as is her husband.

12 5. Petitioner's asylum claim alleges forced labor, sexual abuse, and other  
13 exploitation, along with claims for political asylum. It has been fully briefed and is ready for a  
14 final hearing.

15 6. Petitioner and her family have appeared with their attorney at their hearings—  
16 "several master calendars, and a final hearing on October 31, 2024." Framm-Anton Decl. at ¶ 10.  
17 That final hearing was rescheduled, and still Petitioner remained free.

18 7. Throughout Petitioner's asylum case, she has been on the non-detained docket,  
19 that is, she has been allowed to be free while pursuing her immigration case. After being  
20 apprehended at the border, Respondents released Petitioner and her children to pursue their  
21 immigration case from a position of liberty. According to Petitioner's immigration attorney, Hedi  
22 Framm Anton, "[t]o my knowledge, she was not ever required to check in with ICE or with  
23 ISAP." Framm-Anton Decl. at ¶ 3.

24 8. In this position of freedom, Petitioner and her husband raised their two young  
25 children, took them to school, cared for them, and engaged in all manner of pro-social activities  
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27 <sup>1</sup> This is a verified habeas petition. For clarity and transparency, undersigned counsel has  
28 attached one exhibit: Declaration of Hedi Framm Anton, the immigration attorney who is (and  
has long been) representing Petitioner in her immigration proceedings.

1 that free people carry out.

2 9. Yet, this morning, Respondents abruptly deprived her of this liberty interest.

3 10. Between 8 a.m. and 10 a.m. on today's date, Respondents unlawfully detained her  
4 outside her home in Daly City. ICE agents hailed her by name and told her that she had missed  
5 her check-ins and that they were there to arrest her. They also asked about the whereabouts of  
6 her husband and young children, all of whom are joined on their asylum claim.

7 11. Petitioner's immigration counsel says that assertion is incorrect—that she was not  
8 even on a check-in regime. Framm-Anton Decl. at ¶ 3. No evidence has been presented to  
9 Petitioner to document the grounds for detention. Nor was there any pre-deprivation hearing  
10 where she could confront the facts that supposedly justify her detention.

11 12. Nor are there any "changed circumstances" as would be required before ICE can  
12 detain a person in Petitioner's position. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981).

13 13. On today's date, the day of Petitioner's arrest, the Department of Homeland  
14 Security filed a motion to "pretermite" her pending asylum case, asserting the provisions of the  
15 US-Honduras ACA. Framm-Anton Decl. at ¶ 3. This motion has *not* been ruled upon and cannot  
16 constitute a "changed circumstance."

17 14. The Due Process Clause applies to "all 'persons' within the United States,  
18 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or  
19 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from bodily restraint has  
20 always been at the core of the liberty protected by the Due Process Clause from arbitrary  
21 governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

22 15. In recent months, Courts in this circuit have repeatedly held that noncitizens  
23 suddenly arrested by ICE, like Petitioner, are entitled to pre-deprivation bond hearings and  
24 ordered their immediate release. *See, e.g., J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK,  
25 2025 U.S. Dist. LEXIS 211728 (E.D. Cal., Oct. 27, 2025 (arrested at ICE check-in)); *J.C.L.A. v.*  
26 *Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300 (E.D. Cal., Oct. 17,  
27 2025) (same); *J.S.H.M. v. Wofford*, 1:25-CV-01309 JLT SKO, 2025 U.S. Dist. LEXIS 204422  
28 (E.D. Cal., Oct. 16, 2025) (same); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S.

1 Dist. LEXIS 202706 (E.D. Cal., Oct. 14, 2025) (same).

2 16. Petitioner respectfully seeks a writ of habeas corpus ordering the government to  
3 immediately release her from her ongoing, unlawful detention, and prohibiting her re-arrest  
4 without a hearing to contest that re-arrest before a neutral decisionmaker. At any pre-deprivation  
5 hearing, there must be notice to Petitioner and the government must prove by clear and convincing  
6 evidence that Petitioner is a danger or flight risk.

7 17. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this  
8 Court order the government not to transfer her outside of the District or deport her for the  
9 duration of this proceeding.

10 18. In the alternative, Petitioner requests that this Court order a bond hearing at which  
11 the government bears the burden of proving by clear and convincing evidence that she is a  
12 danger or flight risk.

### 13 **JURISDICTION AND VENUE**

14 19. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal  
15 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),  
16 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension  
17 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706  
18 (Administrative Procedure Act).

19 20. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and  
20 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioners are physically detained within this district.

### 21 **PARTIES**

22 21. Petitioner Rosalinda Ayra Leandro is a woman from Peru. She has a pending  
23 application for asylum, withholding of removal, and protection under the Convention Against  
24 Torture. She is presently in civil immigration detention at 630 Sansome Street in San Francisco.

25 22. Respondent Sergio Albarran is the Field Office Director of the San Francisco  
26 Immigration and Customs Enforcement Office. He is responsible for the administration of  
27 immigration laws and the execution of immigration enforcement and detention policy within  
28 ICE's San Francisco Area of Responsibility, including the detention of Petitioner. He maintains



1 an office and regularly conducts business in this district. He is sued in his official capacity.

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

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

12 25. Respondent Pamela Bondi is the Attorney General of the United States and the  
13 most senior official at the Department of Justice. In that capacity and through her agents, she is  
14 responsible for overseeing the implementation and enforcement of the federal immigration laws.  
15 The Attorney General delegates this responsibility to the Executive Office for Immigration  
16 Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her  
17 official capacity.

#### 18 EXHAUSTION

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

#### 26 LEGAL BACKGROUND

##### 27 *Revocation of Parole*

28

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

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

9       29. These protections extend to noncitizens facing detention, as “[i]n our society  
10 liberty is the norm, and detention prior to trial or without trial is the carefully limited  
11 exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from  
12 imprisonment—from government custody, detention, or other forms of physical restraint—lies  
13 at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

14       30. Substantive due process thus requires that all forms of civil detention—  
15 including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See*  
16 *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two  
17 permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s  
18 appearance at immigration proceedings and preventing danger to the community. *Zadvydas*,  
19 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

20       31. Second, the procedural component of the Due Process Clause prohibits the  
21 government from imposing even permissible physical restraints without adequate procedural  
22 safeguards.

23       32. Generally, “the Constitution requires some kind of a hearing *before* the State  
24 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is  
25 so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at  
26 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional  
27 supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)  
28 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole

1 context).

2 33. After an initial release from custody on conditions, even a person paroled  
3 following a conviction for a criminal offense for which they may lawfully have remained  
4 incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at  
5 482. As the Supreme Court recognized, “[t]he parolee has relied on at least an implicit promise  
6 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* “By whatever  
7 name, the liberty is valuable and must be seen within the protection of the [Constitution].” *Id.*

8 34. This reasoning applies with equal if not greater force to people released from civil  
9 immigration detention at the border, like Petitioner. After all, noncitizens living in the United  
10 States like Petitioners have a protected liberty interest in their ongoing freedom from  
11 confinement. *See Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil context [of immigration  
12 detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than  
13 the interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

#### 14 ***Detention Framework***

15 35. The Immigration and Nationality Act prescribes three basic forms of detention for  
16 the vast majority of noncitizens in removal proceedings.

17 36. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal  
18 proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally  
19 entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d),  
20 while noncitizens who have been arrested, charged with, or convicted of certain crimes are  
21 subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

22 37. Second, the INA provides for mandatory detention of noncitizens subject to  
23 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission  
24 referred to under § 1225(b)(2).

25 38. Last, the INA also provides for detention of noncitizens who have been ordered  
26 removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

27 39. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). The  
28 detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal

1 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104—  
2 208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a)  
3 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat.  
4 3 (2025).

5 40. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining  
6 that, in general, people who entered the country without inspection were not considered detained  
7 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
8 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings;  
9 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

10 41. Thus, in the decades that followed, most people who entered without inspection  
11 and were placed in standard removal proceedings received bond hearings, unless their criminal  
12 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent  
13 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”  
14 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)  
15 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply  
16 “restates” the detention authority previously found at § 1252(a)).

17 42. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that  
18 rejected well-established understanding of the statutory framework and reversed decades of  
19 practice.

20 43. The new policy, entitled “Interim Guidance Regarding Detention Authority for  
21 Applicants for Admission,”<sup>2</sup> claims that all persons who entered the United States without  
22 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The  
23 policy applies regardless of when a person is apprehended, and affects those who have resided in  
24 the United States for months, years, and even decades.

25 44. On September 5, 2025, the BIA adopted this same position in a published  
26 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the

27  
28 <sup>2</sup> Available at [https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-  
authority-for-applications-for-admission](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).



1 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are  
2 ineligible for IJ bond hearings.

3 45. Since Respondents adopted their new policies, dozens of federal courts have  
4 rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected  
5 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

6 46. Even before ICE or the BIA introduced these nationwide policies, IJs in the  
7 Tacoma, Washington, immigration court stopped providing bond hearings for persons who  
8 entered the United States without inspection and who have since resided here. There, the U.S.  
9 District Court in the Western District of Washington found that such a reading of the INA is  
10 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not  
11 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d  
12 1239 (W.D. Wash. 2025).

13 47. Subsequently, court after court has adopted the same reading of the INA's  
14 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,  
15 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,  
16 No. CV 25-11613-BEM, --- F. Supp. 3d , 2025 WL 2084238 (D. Mass. July 24, 2025);  
17 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,  
18 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL  
19 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025  
20 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,  
21 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-  
22 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-  
23 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),  
24 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-  
25 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-  
26 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-  
27 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051  
28 (ECT/DJF), --- F. Supp. 3d , 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*



1 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);  
 2 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,  
 3 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.  
 4 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.  
 5 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.  
 6 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2  
 7 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §  
 8 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL  
 9 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-  
 10 RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same); *O.P.A.M. v. Wofford*, No. 1:25-  
 11 cv-01423 JLT SAB (E.D. CA Nov. 7, 2025); *see also, F.M.V. v. Wofford*, No. 1:25-cv-01381-  
 12 KES-SAB (HC) (E.D. CA Nov. 4, 2025) (Petitioner disputed DHS’ allegations of several missed  
 13 ICE check-in dates, yet Petitioner’s immediate release granted and motion for preliminary  
 14 injunction was granted.)

15 48. Courts have roundly rejected DHS’s and EOIR’s new interpretation because it  
 16 defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the  
 17 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

18 49. Section 1226(a) applies by default to all persons “pending a decision on whether  
 19 the [noncitizen] is to be removed from the United States.” These removal hearings are held under  
 20 § 1229(a), to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

21 50. The text of § 1226 also explicitly applies to people charged as being inadmissible,  
 22 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph  
 23 (E)’s reference to such people makes clear that, by default, such people are afforded a bond  
 24 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress  
 25 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,  
 26 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*  
 27 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025  
 28 WL 1869299, at \*7.

51. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

52. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

53. To the extent that the government now wants to reclassify Petitioner as detained under § 1225(b)(2)(A) after initially releasing her under § 1226(a), courts have found this to be an impermissible post hoc rationalization. *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2371588, at \*13–14 (S.D.N.Y. Aug. 13, 2025); *see, also, C.A.R.V. v. Wofford*, No. 1:25-CV-01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at \*27 (E.D. Cal., Nov. 1, 2025) (“Respondents fail to contend with the liberty interest created by the fact that the Petitioner in this case was released on recognizance in 2021, prior to the manifestation of this interpretation.”), emphasis in original.

54. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

## FACTUAL ALLEGATIONS

### *Petitioner is Unlawfully Arrested at Her Residence*

55. Ms. Rosalinda Ayra Leandro fled Peru and arrived in the United States in May 2023 at the Arizona border. She and her young children were apprehended by immigration officials at the border. Respondents determined she posed little if any flight risk or danger to the community and released her into the community. A Notice to Appear was issued on May 31,

1 2023. Petitioner was alleged to be inadmissible because she entered without inspection. Her  
2 husband, to whom she is legally married, came to the United States one year earlier. They all live  
3 together.

4 56. Petitioner filed an asylum application on December 28, 2023, in which she  
5 applied for asylum, withholding of removal, and protection under the Convention Against  
6 Torture. The asylum application noted that she was subjected to forced labor in dangerous  
7 conditions from a very early age. It also described how she was sexually molested for years as a  
8 pre-pubescent girl. She was also exposed to significant domestic violence and abuse in her  
9 childhood home. She has a grave fear of returning to life in Peru. Petitioner is a member of  
10 Peru's indigenous community.

11 57. A merits hearing on her asylum application is currently scheduled for December  
12 5.

13 51. On today's date, the Department of Homeland Security filed a motion in  
14 immigration court to pretermite. That motion has not been ruled on. Her asylum and related  
15 claims for relief continue to be pending.

16 52. Because Petitioner has never been determined to be a flight risk or danger to the  
17 community, her ongoing detention is not related to either of the permissible justifications for  
18 civil immigration litigation. Her detention does not further any legitimate government interest.

19 53. Further, because of Petitioner's experience suffering sexual assault and other  
20 mistreatment, she is at a heightened risk for harm from this unlawful detention.

21  
22 ***As a Result of Her Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable Harm.***

23 54. Petitioner is being deprived of her liberty without any permissible justification.  
24 The government previously released her on her own recognizance because she did not pose  
25 sufficient risk of flight or danger to the community to warrant detention.

26 55. None of that has changed. Upon information and belief, and on the statement of  
27 Petitioner's immigration attorney, Petitioner has no criminal record, and there is no basis to  
28 believe that she poses any public-safety risk. Nor is Petitioner a flight risk. She has appeared

1 repeatedly at her immigration hearings. Framm-Anton Decl. at ¶ 10.

2 56. Indeed, Petitioner is actively seeking to comply with her ICE and immigration  
3 obligations.

#### 4 **CLAIMS FOR RELIEF**

#### 5 **FIRST CLAIM FOR RELIEF**

#### 6 **Violation of the Fifth Amendment to the United States Constitution** 7 **(Procedural Due Process—Detention)**

8  
9 57. Petitioner repeats and re-alleges the allegations contained in the preceding  
10 paragraphs of this Petition as if fully set forth herein.

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

17 59. Accordingly, “[i]n the context of immigration detention, it is well-settled that  
18 due process requires adequate procedural protections to ensure that the government’s asserted  
19 justification for physical confinement outweighs the individual’s constitutionally protected  
20 interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinerman*,  
21 494 U.S. at 127 (Generally, “the Constitution requires some kind of a hearing *before* the State  
22 deprives a person of liberty or property.”). In the immigration context, for such hearings to  
23 comply with due process, the government must bear the burden to demonstrate, by clear and  
24 convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See*  
25 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th  
26 775, 785, 786 (9th Cir. 2024).

27 60. Petitioners’ re-detention without a pre-deprivation hearing violated due process.  
28 Long after deciding to release Petitioner from custody on her own recognizance, Respondents



1 re-detained Petitioner with no notice, no explanation of the justification of her re-detention, and  
2 no opportunity to contest her re-detention before a neutral adjudicator before being taken into  
3 custody.

4 Petitioner has a profound personal interest in her liberty. Because she received no procedural  
5 protections, the risk of erroneous deprivation is high. And the government has no legitimate  
6 interest in detaining Petitioner without a hearing; bond hearings are conducted as a matter of  
7 course in immigration proceedings. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561, at \*3  
8 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23,  
9 2020) (“the government’s concern that delay in scheduling a hearing could exacerbate flight  
10 risk or danger is unsubstantiated in light of petitioner’s strong family ties and his continued  
11 employment during the pandemic as an essential agricultural worker”).

## 12 SECOND CLAIM FOR RELIEF

### 13 14 **Violation of the Fifth Amendment to the United States Constitution** 15 **(Substantive Due Process—Detention)**

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

18 62. The Due Process Clause of the Fifth Amendment protects all “person[s]” from  
19 deprivation of liberty “without due process of law.” U.S. Const. amend. V. “Freedom from  
20 imprisonment—from government custody, detention, or other forms of physical restraint—lies  
21 at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

25 64. Petitioner is not a flight risk or danger to the community. Respondents’  
26 detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being  
27 detained in violation of the Due Process Clause of the Fifth Amendment.

28 65. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation”



1 to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus  
2 ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention  
3 appears to be “not to facilitate deportation, or to protect against risk of flight or dangerousness,  
4 but to incarcerate for other reasons”—namely, to meet newly-imposed DHS quotas and enact a  
5 mass deportation campaign. *See Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).  
6

7 **PRAYER FOR RELIEF**

8 Petitioner respectfully request that this Court:

- 9 1. Assume jurisdiction over this matter;
- 10 2. Issue a writ of habeas corpus requiring Petitioner’s immediate release and  
11 prohibiting her re-detention unless the government provides seven days’ notice and a hearing  
12 before a neutral arbiter in which it proves by clear and convincing evidence that Petitioner is a  
13 danger or flight risk, and;
- 14 3. Declare that Petitioner’s arrest and detention violates the Due Process Clause of  
15 the Fifth Amendment.
- 16 4. Enjoin Respondents from transferring Petitioner outside this District or deporting  
17 Petitioner pending these proceedings;
- 18 5. Award Petitioners their costs and reasonable attorneys’ fees in this action as  
19 provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 20 6. Grant such further relief as the Court deems just and proper.
- 21

22 Date: November 20, 2025

Respectfully Submitted,

23 /s/ Jonathan Abel

Jonathan Abel (SBN 293086)

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27 *Attorney for Petitioner*  
28

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

I, Jonathan Abel, am submitting this verification on behalf of the Petitioner because I am one of  
Petitioner's attorneys and Petitioner is in custody with limited ability to sign documents.

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.

//

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Executed on November 20th, at Oakland, California.

/s/Jonathan Abel

Jonathan Abel

Attorney for Petitioner