

1 Marissa Rosenberg-Carlson (SBN 358512)
2 marissa.rosenberg-carlson@missionaction.org
3 Mission Action
4 938 Valencia Street
5 San Francisco, CA 94110
6 Telephone: (415) 857-7754
7

8
9 *Attorney for Petitioner*

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Lizbeth Morelis Ibanez Daza,

Petitioner,

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. Petitioner Lizbeth Morelis Ibanez Daza was unlawfully re-detained at her Immigration and Customs Enforcement (ICE) check-in today in San Francisco.

2. Petitioner is an asylum seeker from Colombia. She entered the United States in 2024 and was apprehended by Department of Homeland Security (DHS) officials at the border. They released her shortly afterward on an Order of Recognizance. Petitioner went to live in the United States while waiting for her immigration court date.

8 3. As part of the conditions of her release, Petitioner was required to attend any
9 appointments ICE scheduled for her, commonly known as ICE check-ins. She was scheduled for
10 an ICE check-in today. She went to her appointment today and, without notice, ICE detained her.

11 4. Petitioner has never been ordered removed. Her asylum application is still
12 pending. Her next immigration court hearing is July 7, 2027. She has no criminal history.

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

18 6. Immigration detention is civil, and thus is permissible for only two reasons: to
19 ensure a noncitizen's appearance at immigration hearings and to prevent danger to the
20 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

21 7. Here, there is no credible argument that Petitioner, *who was arrested while*
22 *attending her ICE check-in*, is a flight risk or danger.

23 8. Petitioner's arrest follows a pattern in recent months of ICE re-arresting
24 noncitizens at their ICE check-ins for alleged violations of conditions of release. In many of
25 these cases, ICE does not argue that the noncitizens are flight risks or dangers to the community.
26 Instead, they claim that the purported technical violations – often based on vague and
27 unsupported allegations - is a sufficient for re-detention.

9. Generally, "the Constitution requires some kind of a hearing *before* the State

1 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990),
2 emphasis added. Consistent with this principle, a growing number of district courts have held
3 that noncitizens re-arrested at ICE check-ins are entitled to pre-deprivation bond hearings and
4 ordered their immediate release. *See, e.g., See Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK,
5 2025 U.S. Dist. LEXIS 219172, at *20 (E.D. Cal., Nov. 6, 2025).

6 10. ICE is under intense pressure by the current presidential administration to meet
7 arrest quotas. The risk of erroneous deprivation without process is thus especially high in the
8 current political context. Pre-deprivation bond hearings are the only way to safeguard against
9 pretextual arrests.

10 11. Petitioner respectfully seeks a writ of habeas corpus ordering the government to
11 immediately release her from her ongoing, unlawful detention, and prohibiting her re-arrest
12 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve
13 this Court’s jurisdiction, Petitioner also requests that this Court order the government not to
14 transfer her outside of the District or deport her for the duration of this proceeding.

15

16 **JURISDICTION AND VENUE**

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

22 13. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and
23 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

24

25 **PARTIES**

26 14. Petitioner Lizbeth Morelis Ibanez Daza is a woman from Colombia. She has a
27 pending application for asylum, withholding of removal, and protection under the Convention
28 Against Torture. She is presently in civil immigration detention at 630 Sansome Street in San
Francisco.

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

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

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

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

EXHAUSTION

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

1 exhaustion requirements would be unreasonable.

2

3 **LEGAL BACKGROUND**

4 ***Revocation of Parole***

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

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

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

18 23. Substantive due process thus requires that all forms of civil detention—
19 including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See*
20 *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two
21 permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s
22 appearance at immigration proceedings and preventing danger to the community. *Zadvydas*,
23 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

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

27 25. Generally, “the Constitution requires some kind of a hearing *before* the State
28 deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is

1 so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C.*, Gov't, 864 F.3d at
 2 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional
 3 supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
 4 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole
 5 context).

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

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

18 ***Detention Framework***

19 28. The Immigration and Nationality Act prescribes three basic forms of detention for
 20 the vast majority of noncitizens in removal proceedings.

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

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

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

3 32. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). The
 4 detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
 5 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–
 6 208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a)
 7 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat.
 8 3 (2025).

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

14 34. Thus, in the decades that followed, most people who entered without inspection
 15 and were placed in standard removal proceedings received bond hearings, unless their criminal
 16 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
 17 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
 18 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
 19 (1994); *see also* H.R. Rep. No. 104–469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
 20 “restates” the detention authority previously found at § 1252(a)).

21 35. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
 22 rejected well-established understanding of the statutory framework and reversed decades of
 23 practice.

24 36. The new policy, entitled “Interim Guidance Regarding Detention Authority for
 25 Applicants for Admission,”¹ claims that all persons who entered the United States without
 26 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The

27
 28 ¹ Available at <https://www.ila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 policy applies regardless of when a person is apprehended, and affects those who have resided in
 2 the United States for months, years, and even decades.

3 37. On September 5, 2025, the BIA adopted this same position in a published
 4 decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the
 5 United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are
 6 ineligible for IJ bond hearings.

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

10 39. Even before ICE or the BIA introduced these nationwide policies, IJs in the
 11 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
 12 entered the United States without inspection and who have since resided here. There, the U.S.
 13 District Court in the Western District of Washington found that such a reading of the INA is
 14 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
 15 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
 16 1239 (W.D. Wash. 2025).

17 40. Subsequently, court after court has adopted the same reading of the INA's
 18 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
 19 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
 20 No. CV 25-11613-BEM, --- F. Supp. 3d ---, 2025 WL 2084238 (D. Mass. July 24, 2025);
 21 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
 22 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
 23 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
 24 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
 25 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
 26 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-
 27 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
 28 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-

1 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
 2 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-
 3 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
 4 (ECT/DJF), --- F. Supp. 3d , 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
 5 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
 6 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
 7 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
 8 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
 9 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
 10 Sept. 9, 2025); *see also*, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
 11 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
 12 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
 13 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
 14 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *O.P.A.M. v. Wofford*, No. 1:25-
 15 cv-01423 JLT SAB (E.D. CA Nov. 7, 2025); *see also*, *F.M.V. v. Wofford*, No. 1:25-cv-01381-
 16 KES-SAB (HC) (E.D. CA Nov. 4, 2025) (Petitioner disputed DHS’ allegations of several missed
 17 ICE check-in dates, yet Petitioner’s immediate release granted and motion for preliminary
 18 injunction was granted.)

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

22 42. Section 1226(a) applies by default to all persons “pending a decision on whether
 23 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
 24 § 1229(a), to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

25 43. The text of § 1226 also explicitly applies to people charged as being inadmissible,
 26 including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph
 27 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
 28 hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress

1 creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
2 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove*
3 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025
4 WL 1869299, at *7.

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

8 45. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
9 recently entered the United States. The statute's entire framework is premised on inspections at
10 the border of people who are "seeking admission" to the United States. 8 U.S.C. §
11 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
12 applies "at the Nation's borders and ports of entry, where the Government must determine
13 whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*,
14 583U.S. 281, 287 (2018).

15 46. To the extent that the government now wants to reclassify Petitioner as detained
16 under § 1225(b)(2)(A) after initially releasing her under § 1226(a), courts have found this to be
17 an impermissible post hoc rationalization. *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL
18 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025); *see, also, C.A.R.V. v. Wofford*, No. 1:25-CV-
19 01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at *27 (E.D. Cal., Nov. 1, 2025) (“Respondents
20 fail to contend with the liberty interest created by the fact that the Petitioner in this case was
21 released on recognizance in 2021, prior to the manifestation of this interpretation.”), emphasis in
22 original.

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

FACTUAL ALLEGATIONS

27 | Petitioner is Unlawfully Arrested at Her ICE Check-In

28 48. Ms. Ibanez Daza fled Colombia and arrived in the United States in approximately

1 November of 2024. She was apprehended by immigration officials at the border. They
2 determined she posed little if any flight risk or danger to the community and released her into the
3 community under 8 USC § 1226(a) to wait for her immigration court date.

4 49. In April 2025, she applied for asylum, withholding of removal, and protection
5 under the Convention Against Torture. A Master Calendar hearing in her case is currently
6 scheduled for July 7, 2027.

7 51. On November 25, 2025, she arrived at the ICE facility at 630 Sansome in San
8 Francisco for her ICE check-in appointment. She was detained without prior warning.

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

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

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

17 54. None of that has changed. Upon information and belief, Petitioner has no
18 criminal record, and there is no basis to believe that she poses any public-safety risk. Nor is
19 Petitioner, who was arrested *while appearing for an ICE check-in*, a flight risk. To the contrary,
20 Petitioner is actively seeking to comply with her ICE and immigration obligations.

21 ///

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**

26 **Violation of the Fifth Amendment to the United States Constitution
27 (Substantive Due Process—Detention)**

28 55. Petitioner repeats and re-alleges the allegations contained in the preceding

1 paragraphs of this Petition as if fully set forth herein.

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

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

9 58. Petitioner is not a flight risk or danger to the community. Respondents’
10 detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being
11 detained in violation of the Due Process Clause of the Fifth Amendment.

12 59. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation”
13 to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus
14 ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s detention
15 appears to be “not to facilitate deportation, or to protect against risk of flight or dangerousness,
16 but to incarcerate for other reasons”—namely, to meet newly-imposed DHS quotas and enact
17 President Donald Trump’s mass deportation campaign. *See Demore*, 538 U.S. at 532–33
18 (Kennedy, J., concurring).

19

20 **SECOND CLAIM FOR RELIEF**

21

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

23 60. Petitioner repeats and re-alleges the allegations contained in the preceding
24 paragraphs of this Petition as if fully set forth herein.

25 61. As part of the liberty protected by the Due Process Clause, Petitioner has a
26 weighty liberty interest in avoiding re-incarceration after her release. *See Young v. Harper*, 520
27 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v.*
28

1 *Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding
2 that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s
3 bond determination).

4 62. Accordingly, “[i]n the context of immigration detention, it is well-settled that
5 due process requires adequate procedural protections to ensure that the government’s asserted
6 justification for physical confinement outweighs the individual’s constitutionally protected
7 interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*,
8 494 U.S. at 127 (Generally, “the Constitution requires some kind of a hearing *before* the State
9 deprives a person of liberty or property.”). In the immigration context, for such hearings to
10 comply with due process, the government must bear the burden to demonstrate, by clear and
11 convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See*
12 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th
13 775, 785, 786 (9th Cir. 2024).

14 63. Petitioners’ re-detention without a pre-deprivation hearing violated due process.
15 Long after deciding to release Petitioner from custody on her own recognizance, Respondents
16 re-detained Petitioner with no notice, no explanation of the justification of her re-detention, and
17 no opportunity to contest her re-detention before a neutral adjudicator before being taken into
18 custody.

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

27
28 **PRAYER FOR RELIEF**

1 Petitioner respectfully request that this Court:

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

16
17 Date: November 25, 2025

Respectfully Submitted,

18 /s/ Marissa Rosenberg-Carlson
19 Marissa Rosenberg-Carlson (SBN 358512)
20 Marissa.rosenberg-carlson@missionaction.org
21 Mission Action
938 Valencia St.
San Francisco, CA 94110
Telephone: (415) 857-7754

22 *Attorney for Petitioner*