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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10 In the Matter of:)

File No.: '25CV3334 DMS KSC

11 MAURICIO CANO, Deili Porfidi)



12)
13 Petitioner,)

**Consolidated Petition for Writ of
Habeas Corpus and Order To Show
Cause Within Three Days**

14)
15 v.)

16)
17 CHRISTOPHER J. LAROSE, Senior)
18 Warden, Otay Mesa Detention Center;)
19 PATRICK DIVVER, Field Office)
20 Director, San Diego Office of Detention)
21 and Removal, U.S. Immigration and)
22 Customs Enforcement; TODD M.)
23 LYONS, Acting Director, U.S.)
24 Immigration and Customs Enforcement,)
25 U.S. Department of Homeland Security;)
26 and KRISTI NOEM, Secretary,)
27 U.S. Department of Homeland Security)

28 Respondents.)

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241

PETITIONER'S PETITION FOR WRIT OF HABEAS
In the Matter of Deili MAURICIO CANO

1
2 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
3 release Petitioner from detention.

4
5 **INTRODUCTION**

6 1. Petitioner was detained by Immigration and Customs Enforcement (“ICE”) at the Otay
7 Mesa Detention Center pending removal proceedings since or about March 18, 2025.

8 2. Petitioner has a pending I-589 application with USCIS, filed on or about May 20, 2025.

9 3. Petitioner is a citizen of Guatemala who entered the United States on or about January 1,
10 2025, through the Southern Border out of fear for her life.

11 4. On or about October 29, 2025, DHS filed a Motion to Pretermit, arguing that the 2025
12 Asylum Cooperative Agreement between the United States and Honduras bars consideration of
13 Petitioner’s asylum claim or renders it legally insufficient.

14 5. Petitioner was charged removable under INA § 212(a)(6)(A)(i), Alien Present Without
15 Admission or Parole, and INA § 212(a)(7)(A)(i)(I), Alien not in possession of valid
16 documentation.
17

18 6. Petitioner now challenges his continued detention, which has caused significant
19 hardship to him and his family, and seeks relief to avoid persecution and death in Guatemala.
20

21 **JURISDICTION**

22 7. Petitioner was detained in the custody of Respondents at Otay Mesa Detention Center.
23

24 8. This action arises under the Due Process Clause of the Fifth Amendment of the U.S.
25 Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas
26 corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative
27 Procedure Act. The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
28

1 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
2 § 1651.

3 **VENUE**

4 9. Venue is proper in this District because this is the district in which Petitioner was
5 confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).
6

7 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

8 10. The Court must grant the petition for writ of habeas corpus or issue an order to show
9 cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28
10 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file return “within
11 three days unless good cause additional time, not exceeding twenty days, is allowed.” *Id.*
12 Courts have long recognized the significance of the habeas statute in protecting individuals
13 from unlawful detention. The Great Writ has been referred to as “perhaps the most important
14 writ known to the constitutional law of England, affording as it does a swift and imperative
15 remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
16

17 11. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because she was arrested
18 by Respondents and remains in their legal and physical custody at Otay Mesa Detention center
19 in Otay Mesa, California. She is under Respondents’ and their agents’ direct control.
20

21 **STATEMENT OF FACTS**


22 12. Petitioner is a 24-year-old citizen and national of Guatemala. Petitioner is a citizen of
23 Guatemala who entered the United States for the first time through the Southern Border on
24 January 1, 2025.
25


26 13. Petitioner came to the United States out of fear of persecution on account of her religion.
27 She was targeted in her home country for actively practicing Christianity.
28

1 14. Petitioner is a noncitizen who was detained at Otay Mesa Detention Center pending
2 immigration removal proceedings. Petitioner remains detained at Otay Mesa Detention Center.


3 15. Petitioner was detained in DHS custody since or about March 18, 2025. Petitioner is still
4 in DHS custody and requests release. Petitioner poses no danger or flight risk.

5 16. Petitioner is the daughter of a pastor and her entire family actively participates in

6 Christianity. Petitioner's father has been threatened as the leader of the church, and 

7  Petitioner was

8  and was almost raped. Petitioner's home was shot at by

9 .
10
11 17. On or about October 29, 2025, DHS filed a Motion to Preterm, arguing that the 2025
12 Asylum Cooperative Agreement between the United States and Honduras bars consideration of
13 Petitioner's asylum claim or renders it legally insufficient. On or about November 3, 2025,
14 Petitioner filed an opposition to the Motion to Preterm Asylum Application.

15 18. Petitioner has no past criminal history. Petitioner has a fear of returning to her home
16 country for fear of the criminal gangs and the threat on her life for not renouncing her religion.

17 19. Petitioner has a fear to return to Guatemala where the gangs have threatened her and her
18 family. Her home is not safe and the gang members have alleged that they would return to find
19 her.
20

21 her.
22 20. The Department of Homeland Security (DHS) filed a Motion to Preterm Asylum
23 Application. Petitioner applied for I-589, on the basis of fear that the criminal groups and based
24 on persecution due to her religion.
25

26 21. On March 18, 2025, Ms. Mauricio Cano was issued a Notice to Appear.

27 22. Petitioner has been detained since or about March 18, 2025.
28

PARTIES

1
2 23. Ms. Mauricio Cano (“Petitioner”) is a 24-year-old citizen and national of Guatemala.

3 She first came to the USA in 2025 out of fear for her life when she was [REDACTED]

4 [REDACTED] and when her home was shot at by [REDACTED]

5 [REDACTED]
6 [REDACTED]. She has no criminal convictions. Since the arrest on or about March
7 18, 2025, Ms. Mauricio Cano has remained in Respondents’ custody.

8 24. Ms. Mauricio Cano is currently residing in Respondents’ custody at Otay Mesa
9 Detention Center in San Diego, California, as of the time of the filing of this petition.

10 25. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay Mesa
11 Detention Center in San Diego, California, where Ms. Mauricio Cano is detained. LaRose is
12 responsible for the day-to-day operations and confinement of non-citizens detained at that
13 facility. He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is a
14 custodian of Ms. Mauricio Cano and is named in his official capacity.
15

16 26. Respondent Patrick Divver (“Divver”) is the Field Office Director of ICE in San Diego,
17 California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for
18 local custody decisions relating to non-citizens charged with being removable from the U.S.,
19 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field
20 Office’s area of responsibility includes San Diego and Imperial Counties in California.
21

22 Respondent Divver is a custodian of Ms. Mauricio Cano and is named in his official capacity.

23 27. Respondent Todd Lyons (“Lyons”) is the Acting Director of ICE, and he has authority
24 over the actions of Respondents LaRose and Divver. ICE is responsible for local custody
25 decisions relating to non-citizens charged with being removable from the U.S., including the
26
27
28

1 arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian
2 of Ms. Mauricio Cano and is named in his official capacity.

3 28. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has authority over the
4 actions of all other DHS Respondents in this case, as well as all operations and federal agencies
5 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with
6 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §
7 1103(a). Respondent Noem is a custodian of Ms. Mauricio Cano and is named in her official
8 capacity.
9

10 29. Respondent ICE is responsible for local custody decisions relating to non-citizens
11 charged with being removable from the U.S., including the arrest, detention, custody status, and
12 removal of non-citizens.
13

14 30. Respondent DHS is the federal agency that has authority over the actions of ICE and all
15 other DHS Respondents.
16

17 31. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem
18 (collectively, “Respondents”) all in their official capacities.
19

20 EXHAUSTION OF ADMINISTRATIVE REMEDIES

21 32. The IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who
22 entered the country without inspection were not considered detained under 8 U.S.C. § 1225 or
23 automatically subject to expedited removal. *See* Inspection and Expedited Removal of Aliens,
24 Detention and Removal of Aliens, Conduct of Removal Proceedings, Asylum Procedures, 62
25 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under §
26 1226(a). *See id.*
27
28

1 33. Thus, in the decades that followed, most people who entered without inspection—unless
2 they were subject to some other detention authority—received bond hearings. That practice was
3 consistent with many more decades of prior practice, in which noncitizens who were not
4 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8
5 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §
6 1226(a) simply “restates” the detention authority previously found at § 1252(a)).
7

8 34. Immigration detention should not be used as a punishment and should only be used
9 when, under an individualized determination, a noncitizen is a flight risk because they are
10 unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533
11 U.S. 678, 690 (2001).
12

13 35. On information and belief, Ms. Mauricio Cano alleges that Respondents detained him
14 for the purpose of divesting him of his due process rights in his properly filed cancellation of
15 removal for certain non-legal permanent residents.
16

17 36. Petitioner has demonstrated good moral character while being in the United States.

18 37. On or about October 29, 2025, DHS filled a Motion to Pretermit, arguing that the 2025
19 Asylum Cooperative Agreement between the United States and Honduras bars consideration of
20 Petitioner’s asylum claim or renders it legally insufficient, and the Respondent continues to be
21 detained.
22

23 38. On information and belief, Respondents are using the immigration detention system,
24 including extra-territorial transfer and detention, as a means to punish individuals for asserting
25 rights.
26
27
28

LEGAL ARGUMENT

1
2 39. Courts have recognized the significance of the habeas statute in protecting individuals
3 from unlawful detention, which affords “a swift and imperative remedy in all cases of illegal
4 restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963); *see also Yong v. INS*, 208
5 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination
6 of petitions).

7
8 40. The Court must grant the petition for writ of habeas corpus or issue an order to show
9 cause to Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.

10
11 41. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of
12 law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*
13 *Flores*, 507 U.S. 292, 306 (1993)).

14 42. Due process requires “adequate procedural protections” to ensure that the government’s
15 asserted justification for physical confinement “outweighs the individual’s constitutionally
16 protected interest in avoiding physical restraint.” *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001)
17 (internal quotation marks omitted).

18
19 43. In the immigration context, the Supreme Court has recognized two valid purposes for
20 civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*;
21 *Demore*, 538 U.S. at 528.

22
23 44. The test for procedural due process claims, the *Mathews* test balances: (1) the private
24 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
25 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
26 *Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No.
27 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and*
28

1 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
2 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims and collecting
3 cases doing the same). Here, each factor weighs in Petitioner’s favor, and Petitioner’s release is
4 justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no
5 danger to the community, nor is a flight risk.
6

7 **CAUSES OF ACTION**

8 **COUNT ONE**

9 **Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due**
10 **Process, U.S. Const. Amend. V.**

11 45. Petitioner restates, realleges, and incorporates by reference each and every allegation in
12 the paragraphs above as if fully set forth herein.

13 46. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
14 federal government from depriving any person of “life, liberty, or property, without due process
15 of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States,
16 including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
17 permanent.” *Zadvydas*, 533 U.S. at 693.
18

19 47. Due process requires that government action be rational and non-arbitrary. *See U.S. v.*
20 *Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

21 48. Moreover, Ms. Mauricio Cano has a vital liberty interest in remaining free from DHS
22 custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal.
23 July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June
24 14, 2025) (explaining that a non-citizen that ICE released from custody after initial
25 apprehension “has a substantial private interest in remaining out of custody” which includes an
26 interest in “...obtaining necessary medical care, [and] maintaining her relationships in the
27
28

1 community...”). While on release from DHS custody, Ms. Mauricio Cano was building her
2 emotional support system .

3 49. Even if the initial decision to release a non-citizen from DHS custody is discretionary,
4 “...after that individual is released from custody, he has a protected liberty interest in remaining
5 out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7
6 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
7 2084921, at *3 (N.D. Cal. July 24, 2025)).

8
9 50. Here, Ms. Mauricio Cano was detained in a hasty manner. She did not expect to be taken
10 into custody. She has no prior criminal conviction. She has made significant ties to the
11 community, as stated in her exhibits in her I-589 application. *See generally Mathews v.*
12 *Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before
13 deprivation of a legally protected interest). Nor has the government identified any materially
14 changed circumstances that would warrant detaining Ms. Mauricio Cano.
15

16
17 **COUNT TWO**

18 **Violation of Fifth Amendment Right to Due Process -**

19 **Illegal Retroactive Application of Expedited Removal Designation, U.S. Const. Amend. V.**

20 51. Petitioner restates, realleges, and incorporates by reference each and every allegation in
21 the paragraphs above as if fully set forth herein.

22 52. Administrative rules “will not be construed to have retroactive effect unless their
23 language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244, 272 (1994). When
24 a “new provision attaches new legal consequences to events completed before its enactment”
25 the new provision is not retroactive unless it is unmistakably clear.

26
27 53. The January 2025 designation does not unmistakably apply to individuals who entered
28 the United States prior to its effective date and were already in removal proceedings. The

1 designation’s language thus does not “require that it be applied retroactively.” *See INS v. St Cyr*,
2 533 U.S. 289, 291 (2001).

3 54. Nor does the statutory language that the designation purports to derive from, 8 U.S.C. §
4 1225(b)(1)(A)(iii), include any language indicating Congressional intent to allow retroactive
5 effect. *See INS v. St. Cyr*, 533 U.S. 289, 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320,
6 328, n.4 (1997) (requiring statutory language to be “so clear that it could sustain only one
7 interpretation”).
8

9 55. Accordingly, Respondents unlawfully subjected Ms. Mauricio Cano to indefinite
10 detention.
11

12 **COUNT THREE**

13 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance**
14 **with Law and in Excess of Statutory Authority Violation of 8**
15 **C.F.R. § 239.2(c)**

16 56. Petitioner restates, realleges, and incorporates by reference each and every allegation in
17 the paragraphs above as if fully set forth herein.

18 57. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
19 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction
20 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §
21 706(2)(A)-(D).
22

23 58. Once a removal proceeding has been initiated, regulations enumerate the reasons for
24 which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss,
25 the Immigration Judge must make “an informed adjudication . . . based on an evaluation of the
26 factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).
27
28

1 59. The initiation of expedited removal proceedings is not an enumerated ground upon
2 which a removal proceeding may be dismissed.

3 60. It is a well-established administrative principle that “agency action taken without lawful
4 authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35
5 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*
6 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating
7 agency action because it was taken by unauthorized official).
8

9 61. Under the APA, an agency must provide “reasoned explanation for its action” and “may
10 not depart from a prior policy sub silentio or simply disregard rules that are still on the books.”
11 *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief,
12 Respondents’ intent was to eliminate the due process rights available to Petitioner in removal
13 proceedings under section 240 of the INA, deprive her of her liberty interest despite no evidence
14 of material changed circumstances, or for some other purposes not supported by law. *See Pinchi*
15 *v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025)
16 (“Detention for its own sake, to meet an administrative quota, or because the government has
17 not yet established constitutionally required pre-detention procedures is not a legitimate
18 government interest.”).
19

20 62. In deciding to detain Ms. Mauricio Cano, Respondents further violated the APA by
21 “entirely fail[ing] to consider an important aspect of the problem” – namely, the important
22 procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor*
23 *Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see*
24 *also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020)
25
26
27
28

1 (holding that rescission of immigration policy without considering “particular reliance interests”
2 is arbitrary and capricious in violation of the APA).

3 63. The arbitrary and capricious detention of Ms. Mauricio Cano was not made in
4 furtherance of an enumerated reason set forth in the regulations and causes Ms. Mauricio Cano
5 irreparable harm. For these reasons, the Court should find that the decision to detain Ms.
6 Mauricio Cano is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. §
7 706(2)(A), (E).
8

9
10 **COUNT FOUR**

11 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance
12 with Law and in Excess of Statutory Authority, Unlawful Detention**

13 64. Petitioner restates, realleges, and incorporates by reference each and every allegation in
14 the paragraphs above as if fully set forth herein.

15 65. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
16 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
17 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

18 66. An action is an abuse of discretion if the agency “entirely failed to consider an important
19 aspect of the problem, offered an explanation for its decision that runs counter to the evidence
20 before the agency, or is so implausible that it could not be ascribed to a difference in view or the
21 product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
22 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
23 463 U.S. 29, 43 (1983)).
24

25 67. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for
26 its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
27 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).
28

1 68. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court
2 explained the process of discretionary release from custody in immigration cases and noted that
3 before revoking the release, the non-citizen must be given written notice of the impending
4 revocation, which must include a cogent description of the reasons. Under the APA, non-
5 citizens are entitled to determinations related to their release revocations that are not arbitrary,
6 capricious or an abuse of discretion. *See id.* at *10.

8 69. By detaining Ms. Mauricio Cano without notice or consideration of his individualized
9 facts and circumstances, Respondents have violated the INA, implementing regulations, and the
10 APA.

12 70. Respondents have made no finding that Petitioner is a danger to the community.

13 71. Respondents have made no finding that Petitioner is a flight risk.

14 72. On information and belief, by detaining Ms. Mauricio Cano categorically and without
15 notice, Respondents have further abused their discretion because, since the agency made its
16 initial custody determination, on information and belief, there have been no changes to Ms.
17 Mauricio Cano's specific facts or circumstances that support her detention.

19 **COUNT FIVE**

20 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance**
21 **with Law and in Excess of Statutory Authority, Violation of 8 U.S.C. § 1225(b)**

22 73. Petitioner restates, realleges, and incorporates by reference each and every allegation in
23 the paragraphs above as if fully set forth herein.

24 74. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
25 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
26 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).
27
28

1 75. Congress has made it clear that the expedited removal statute does not apply and may
2 not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It
3 further applies to the non-citizens seeking admission. *Id.* § 1225(b)(2).

4 76. Because Ms. Mauricio Cano is not subject to the January 2025 Designation,
5 Respondents’ use of the January 2025 designation to detain her while her INA section 240
6 proceedings were ongoing is unlawful arbitrary, capricious, and unlawful.
7

8 **COUNT SIX**

9 **Violation of the Fourth Amendment of the Constitution**

10 77. Petitioner restates, realleges, and incorporates by reference each and every allegation in
11 the paragraphs above as if fully set forth herein.

12 78. The Fourth Amendment protects “[t]he right of the people to be secure in their persons .
13 . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has
14 recognized that immigration arrests and detentions are “seizures” within the meaning of the
15 Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that
16 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the
17 person).
18

19 79. The Fourth Amendment requires that arrests entail a neutral, judicial determination of
20 probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
21 determination can occur either before the arrest, in the form of a warrant, or promptly afterward,
22 in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a
23 person, including of a noncitizen, absent a neutral judicial determination of probable cause
24 violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v.*
25 *McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of
26
27
28

1 detention, which includes weekends, unless there is a bona fide emergency or other
2 extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

3 80. Congress enacted a strong preference that immigration arrests be based on warrants. *See*
4 *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act
5 thus provides immigration officers with only limited authority to conduct warrantless arrests. 8
6 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8
7 C.F.R. § 287.8(c)(2)(ii).
8

9 81. Ms. Mauricio Cano did not receive any judicial determination of probable cause for her
10 arrest or continued detention by the Respondents.
11

12 82. The Government cannot salvage this seizure by invoking generalized immigration
13 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and
14 demands individualized justification for both the arrest and the extended detention. *See United*
15 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Ms.
16 Mauricio Cano did not pose any danger to any person in the community at large, and in fact, has
17 a fear of returning to her home country for from the gangs threatening her and her family.
18

19 83. Respondents’ arrest of Ms. Mauricio Cano constitutes an unreasonable and unlawful
20 seizure in violation of the Fourth Amendment.
21

22 COUNT SEVEN

23 **Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const.
Amend. V.**

24 84. Petitioner restates, realleges, and incorporates by reference each and every allegation in
25 the paragraphs above as if fully set forth herein.

26 85. The government may not deprive a person of life, liberty, or property without due
27 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government
28

1 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the
2 Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3 86. Ms. Mauricio Cano has a fundamental interest in liberty and being free from official
4 restraint.

5
6 87. The government’s detention of Petitioner without notice or an opportunity to be heard
7 before detention violates her right to due process.

8 88. The government’s detention of Petitioner without a meaningful bond and custody
9 redetermination hearing to determine whether she is a flight risk or danger to others violates her
10 right to due process.
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 14 (1) Assume jurisdiction over this matter;
15 (2) Issue an Order to Show Cause ordering Respondents to show cause why this
16 Petition should not be granted within three days;
17 (3) Declare that Petitioner’s detention without an individualized determination
18 violates the Due Process Clause of the Fifth Amendment;
19 (4) Declare that refusal to allow Petitioner a meaningful bond and custody
20 redetermination hearing violates the INA, APA, and Due Process;
21 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from
22 custody;
23 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this
24 district without the Court’s approval;
25 (7) Award Petitioner’s counsel reasonable attorney’s fees and costs under the Equal
26 Access to Justice Act, and on any other basis justified under law;
27 (8) Grant such further relief as the Court deems just, equitable, and appropriate; and
28 (9) Grant any and all other further relief this Court deems just or proper.

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Respectfully Submitted,

/S/ Mario Portugal
Mario Portugal, Esq.
Attorney for the Petitioner