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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

Michelle Montero-Alvarez,

*Petitioner,*

v.

Sergio ALBERRAN, Acting Field Office  
Director of San Francisco Office of  
Detention and Removal, U.S. Immigrations  
and Customs Enforcements; U.S. Department  
of Homeland Security;

Todd M. LYONS, Acting Director,  
Immigration and Customs Enforcement, U.S.  
Department of Homeland Security;

Kristi NOEM, in her Official Capacity,  
Secretary, U.S. Department of Homeland  
Security; and

Pam BONDI, in her Official Capacity,  
Attorney General of the United States;

*Respondents - Defendants,*

No.


PETITION FOR WRIT OF HABEAS  
CORPUS AND COMPLAINT FOR A  
DECLARATORY AND INJUNCTIVE  
RELIEF

Challenge to Unlawful Incarceration Under  
Color of Immigration Detention Statutes;  
Request for Declaratory and Injunctive Relief

**INTRODUCTION**

1  
2  
3 1. Petitioner, Michelle Montero-Alvarez, by and through her undersigned counsel, hereby  
4 files this petition for writ of habeas corpus to remedy Respondents-Defendants' ("Respondents")  
5 unlawful re-detention of Ms. Montero-Alvarez without any process, in violation of the Fifth  
6 Amendment to the U.S. Constitution.

7  
8 2. Ms. Montero-Alvarez is a native and citizen of Peru. Ms. Montero-Alvarez entered the  
9 United States without inspection on July 8, 2022 seeking asylum. When Ms. Montero-Alvarez  
10 arrived in the United States, federal agents briefly detained her, determined that she was not a  
11 flight risk or danger to the community, and released her on her own recognizance with a notice  
12 to appear for removal proceedings in immigration court on August 18, 2026. Since then,  
13 Petitioner had done everything the government asked her to do; she has diligently attended every  
14 Immigration and Customs Enforcement ("ICE") and United States Citizenship and Immigration  
15 Services ("USCIS") appointment and check-in. Although she was late for an ISAP appointment,  
16 she did call to reschedule. Upon calling ISAP she was informed that it was okay for her to return  
17 on November 21, 2025.

18  
19 3. On August 2, 2025, Ms. Montero-Alvarez filed an asylum application with the asylum  
20 office. Ms. Montero-Alvarez attended her biometrics appointment with USCIS. Ms. Montero-  
21 Alvarez's Alien Registration Number is 

22  
23 4. On January 23, 2024, Ms. Montero-Alvarez filed an employment authorization  
24 application. Ms. Montero-Alvarez received her employment authorization granting her legal  
25 work authorization.

26  
27 5. On November 21, 2025, she presented herself to the re-scheduled ICE appointment. On  
28 that date, ICE detained her and informed her that she would be transferred to an ICE detention  
facility.

1  
2 6. When Ms. Montero-Alvarez was released from ICE custody upon entering the United  
3 States, the immigration authorities gave her an I-220B order of supervision and a copy of a Notice  
4 to Appear in Immigration Court. The authorities informed Ms. Montero-Alvarez that she would  
5 have to appear at all ICE appointments and court hearings. The I-220B also indicated that Ms.  
6 Montero-Alvarez appear in person at the time and place specified, upon each and every request  
7 of the agency, for identification and for deportation of removal.

1 7. Over the last three years in which she has lived at liberty, Ms. Montero-Alvarez has  
2 complied with all obligations of the I-220B and ICE orders. Although she had car problems on  
3 November 19, 2025, she called ISAP to inform them that she would not be able to make it until  
4 the following day. ISAP informed Ms. Montero-Alvarez that it was okay for her to return on  
5 November 21, 2025 and that she would still be in compliance with ISAP.

6 8. Ms. Montero-Alvarez has not committed any violation of any local, State or Federal law  
7 since being released. Ms. Montero-Alvarez has been steadily employed since obtaining legal  
8 work authorization in the United States.

9 9. Ms. Montero-Alvarez resides with his significant other in Antioch, California.

10 10. Ms. Montero-Alvarez's arrest and detention have caused her tremendous and ongoing  
11 harm. Every additional day Ms. Montero-Alvarez spends in unlawful detention subjects her to  
12 further irreparable harm.

13 11. The Constitution protects Ms. Montero-Alvarez – and every other person present in this  
14 country – from arbitrary deprivations of his liberty and guarantees her due process of law. The  
15 government's power over immigration is broad, but as the Supreme Court has declared, it  
16 is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).  
17 "Freedom from bodily restraint has always been at the core of this liberty protected by the Due  
18 Process Clause from arbitrary government action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

19 12. By status and regulation, as interpreted by the Board of Immigration Appeals ("BIA"),  
20 ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been  
21 a change in circumstances since the individual's release, 8 U.S.C. § 236.1(c)(9); *Matter of Sugay*,  
22 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any  
23 change in circumstance must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D.  
24 Cal. 2017). That authority, however, is proscribed by the Due Process Clause because it's well-  
25 established that individuals released from incarceration have a liberty interest in their freedom.  
26 In turn, to protect that interest, on the particular facts of Ms. Montero-Alvarez's case, due process  
27 requires notice and a hearing, prior to any revocation of her conditional release, at which she is  
28 afforded the opportunity to advance arguments as to why her release should not be revoked.

13. That basic principle – that individuals placed at liberty are entitled to due process before  
the government imprisons them – has particular force here, where Ms. Montero-Alvarez's  
detention was already found to be unnecessary to serve its purpose.

1 14. Therefore, at a minimum, to lawfully re-arrest Ms. Montero-Alvarez, the government  
2 must first establish, by clear and convincing evidence and before a neutral decision maker, that  
3 she is a danger to the community or a flight risk, such that her re-incarceration is necessary.

4 15. Ms. Montero-Alvarez respectfully seeks a writ of habeas corpus ordering the government  
5 to immediately release her from her ongoing, unlawful detention, and prohibit her re-arrest  
6 without a hearing to contest that re-arrest before a neutral decision maker. In addition, to preserve  
7 this Court's jurisdiction, Ms. Montero-Alvarez also requests that this Court order the government  
8 not to deport her for the duration of this proceeding or transfer her outside of this Court's  
9 jurisdiction.

### 10 JURISDICTION AND VENUE

11 16. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general  
12 federal question jurisdiction; 5 U.S.C. § 701, et seq., All Writs Act; 28 U.S.C. § 2241, et seq.,  
13 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, CL. 2 of the United  
14 States Constitution (the Suspension Clause); Art. 3 of the United States Constitution, and the  
15 common law., the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-  
16 7-6 (Administrative Procedure Act).

17 17. Venue is proper in this district and division pursuant to 28 U.S.C. §2241(a) and 28 U.S.C.  
18 § 1391(b)(2) and (e)(1) because Mr. Cruz is physically detained within this District at the  
19 California City Detention Center.

### 20 EXHAUSTION OF ADMINISTRATIVE REMEDIES

21 18. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.  
22 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if  
23 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies  
24 would be a futile gesture, irreparable injury will result, or the administrative proceedings would  
25 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9<sup>th</sup> Cir. 2004)(citation and quotation  
26 marks omitted)). Ms. Montero-Alvarez asserts that exhaustion should be waived because  
27 administrative remedies are (1) futile and (2) her continued detention results in irreparable harm.  
28 Prudential exhaustion is not required here because it would be futile, and Ms. Montero-Alvarez  
will “suffer irreparable harm if unable to secure immediate judicial consideration of her claim.”  
*McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any attempt to exhaust her administrative  
remedies would be futile because an Immigration would deny her request for a bond hearing

1 under the recent Bureau of Immigration Appeals (“BIA”) decisions *Matter of Yajure Hurtado*,  
2 29 I&N Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Any further  
3 exhaustion requirements would be unreasonable.

4 19. Both *Yajure Hurtado* and *Q. Li* held that IJs do not have the authority to hold a bond  
5 hearing where the moving noncitizens entered the country without inspection. Because Ms.  
6 Montero-Alvarez entered the country without inspection, if she were to move for a bond hearing,  
7 an IJ following these decisions would have to decline jurisdiction over the issue.

#### 8 PARTIES

9 20. Petitioner, Ms. Montero-Alvarez is a 28-year-old woman from Peru. She has no criminal  
10 history anywhere in the world. She is in pending removal proceedings under INA 240. She has  
11 a pending application for Asylum, Withholding of Removal and Relief under the Convention  
12 Against Torture with USCIS. She is presently in civil immigration detention at California City  
13 Detention Facility.

14 21. Respondent, Sergio ALBARRAN is the Acting Field Office Director of the San Francisco  
15 ICE field Office and is named in his official capacity. ICE is the component of the DHS that is  
16 responsible for detaining and removing noncitizens according to the immigration law and  
17 oversees custody determinations. In his official capacity, he is the legal custodian of Ms.  
18 Montero-Alvarez. Mr. Albarran’s field office made the decision to detain Ms. Montero-Alvarez.

19 22. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official  
20 Capacity. Among other things, ICE is responsible for the administration and enforcement of the  
21 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,  
22 he is the legal custodian of Ms. Montero-Alvarez.

23 23. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.  
24 DHS is the federal agency encompassing ICE, which is responsible for the administration and  
25 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her  
26 capacity as Secretary, Respondent Noem has responsibility for the administration and  
27 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland  
28 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. §  
1103(a). Respondent Noem is the ultimate legal custodian of Ms. Montero-Alvarez.

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

1 responsible for overseeing the implementation and enforcement of the federal immigration laws.  
2 The Attorney General delegates this responsibility to the Executive Office for Immigration  
3 Review, which administers the immigration courts and the BIA. She has the authority to interpret  
4 immigration laws and adjudicate removal cases.

5 **LEGAL BACKGROUND**

6 **A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary  
Arrest and Detention.**

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

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

15 30. Substantive due process requires that all forms of civil detention – including immigration  
16 detention bear a “reasonable relation” to a non-punitive purpose. See *Jackson v. Indiana*, 406  
17 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive  
18 purposes of immigration detention: ensuring a noncitizen’s appearance at immigration  
19 proceedings and preventing danger to the community. *Zadvydas*, 53 U.S. at 690-92; see also  
20 *Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28 (2003).

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

22 32. In Ms. Montero-Alvarez’s particular circumstances, the Due Process Clause of the  
23 Constitution makes it unlawful for Respondents to re-arrest her without first providing a pre-  
24 deprivation hearing before a neutral decision maker to determine whether circumstances have  
25 materially changed since her release in 2022, such that detention would now only be warranted  
26 on the basis that she is a danger or flight risk by clear and convincing evidence.

27 33. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s  
28 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §

1 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to  
2 revoke an immigration bond “at any time.” 9 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.  
3 at 640, the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens.  
4 There, the BIA held that “where a previous bond determination has been made by an immigration  
5 judge, no change should be made by the DHS absent a change of circumstance.” *Id.* In practice,  
6 DHS “requires a showing of changed circumstances both where the prior bond determination  
7 was made by an immigration judge and where the previous release decision was made by a DHS  
8 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed  
9 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed  
10 circumstances. *Panosyan v Mayorkas*, 854 F. App’x 787, 788 (9<sup>th</sup> Cir. 2021)(“thus, absent  
11 changed circumstances... ICE cannot detain Panosyan.”).

12 34. ICE has further limited its authority as described in *Sugay*, and ‘generally only re-arrests  
13 (noncitizens) pursuant to § 1226(b) after a material change in circumstances.’ *Saravia*, 280 F.  
14 Supp. 3d at 1197, *aff’d sub nom. Saravia for A.H.*, 905 F.3d 1137 (quoting Defs. ‘ Second Supp.  
15 Br. At 1, Dkt. No 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may  
16 re-arrest a noncitizen who had previously released on bond only after a material change in  
17 circumstances. See *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

18 35. ICE’s power to re-arrest a noncitizen who is at liberty following a release on bond is also  
19 constrained by the demands of due process. See *Hernandez v. Sessions*, 872 F.3d 976, 981 (9<sup>th</sup>  
20 Cir. 2017)(“the government’s discretion to incarcerate non-citizens is always constrained by the  
21 requirements of due process”). In this case the guidance provided by *Matter of Sugay* – that ICE  
22 should not re-arrest a noncitizen absent changed circumstances – is insufficient to protect Ms.  
23 Montero-Alvarez’s weighty interest in her freedom from detention.

24 36. Federal district courts in California have repeatedly recognized the demands of due  
25 process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole set out in  
26 DHS’s stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen  
27 on bond, like Ms. Montero-Alvarez, before ICE re-detains her. See e.g., *Meza v. Bonnar*, 2018  
28 WL 2554572 (N.D. Cal. June 4, 2018); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL  
1382859, at 3 (N.D. Cal. May 12, 2025)(temporary injunction warranted preventing re-arrest at  
plaintiff’s ICE interview when he had been on bond for more than five years). See also *Doe v.*

1 *Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, 4 (E.D. Cal. Mar. 3, 2025)(holding  
2 the Constitution requires a hearing before any re-arrest).

3 **FACTUAL ALLEGATIONS**

4 37. Ms. Montero-Alvarez's liberty from immigration custody is protected by the Due Process  
5 Clause: "Freedom from imprisonment- from government custody, detention, or other forms of  
6 physical restraint – lies at the heart of the liberty that (the Due Process) Clause protects."  
*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

7 38. Since July 8, 2022, Ms. Montero-Alvarez exercised that freedom when she was released  
8 on her own recognizance. As a result, she retained a weighty liberty interest under the Due  
9 Process Clause of the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*, 520  
10 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v.*  
11 *Brewer*, 408 U.S. 471, 482-483 (1972).

12 39. Just as in *Morrissey*, Ms. Montero-Alvarez's release "enables her to do a wide range of  
13 things open to persons" who have never been in custody or convicted of any crime, including to  
14 live at home, work, go to the doctor, take his medication, and "be with family and friends and to  
15 form the other enduring attachments of normal life" *Morrissey*, 408 U.S. at 482.

16 40. Ms. Montero-Alvarez has complied with all conditions for release for well over three  
17 years, as she has litigated her removal proceedings. She has meritorious applications for relief  
18 from removal.

19 **A. Ms. Montero-Alvarez is Unlawfully Arrested and Detained Pursuant  
20 to DHS's New Policy.**

21 41. Deportation, like detention, constitutes a deprivation of liberty protected by the Due  
22 Process Clause. As the Supreme Court has held, a noncitizen's interest in deportation proceedings  
23 "is, without question, a weighty one" because "[s]he stands to lose the right 'to stay and live and  
24 work in this land of freedom.'" *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting *Bridges v.*  
*Wixon*, 326 U.S. 135, 154 (1945)).

25 42. Ms. Montero-Alvarez asserts that, here, (1) where her detention would be civil, (2) where  
26 she has been at liberty for three years, during which time she has complied with all conditions of  
27 release and has maintained steady employment, (3) where she has a substantial applications for  
28 Asylum, withholding and CAT pending before USCIS (4) where no change in circumstances  
exist that would justify her detention, (5) where petitioner has health issues which require

1 continued medication and medical supervision and (6) where the only circumstance that has  
2 changed is ICE's move to arrest as many people as possible because of the new administration,  
3 due process mandates that she receive notice and a hearing before a neutral adjudicator prior to  
4 any re-arrest or revocation of a bond.

5 43. "Adequate, or due, process depends upon the nature of the interest affected. The more  
6 important the interest and the greater the effect of its impairment, the greater the procedural  
7 safeguards the government must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d  
8 1350, 1355-56 (9<sup>th</sup> Cir. 1985)(en banc)(citing *Morrissey*, 408 U.S. at 481-82). This Court must  
9 "balance Ms. Montero-Alvarez's liberty interest against the government's interest in the efficient  
10 administer of" its immigration laws to determine what process she is owed to ensure that ICE  
11 does not unconstitutionally deprive her of her liberty. *Id.* at 1357.

12 44. Under the test set forth in *Mathias v. Eldridge*, this Court must consider these factors in  
13 conducting its balancing test: 'First, the private interest that will be affected by the official action;  
14 second, the risk of an erroneous deprivation of such interest through the process used, and the  
15 probative value, if any, of additional or substitute procedural safeguards; and finally the  
16 government's interest, including the function involved and fiscal and administrative burdens that  
17 the additional or substitute procedural requirements would entail." *Haygood*, 769 F.3d at 1357  
18 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

19 45. Because, in this case, the provision for a pre-deprivation hearing is both possible and  
20 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Ms. Montero-  
21 Alvarez with notice and a hearing prior to any re-incarceration and revocation of her pre-trial  
22 release. See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at  
23 932; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452  
24 (11<sup>th</sup> Cir. 1984)(holding that individuals awaiting involuntary civil commitment proceedings may  
25 be constitutionally be held in jail pending the determination as to whether they can ultimately be  
26 committed). Under *Mathews*, "the balance weighs heavily in favor of Ms. Montero-Alvarez"  
27 and requires a pre-deprivation hearing before a neutral adjudicator.

28 46. In 2022, Petitioner fled to the United States. She was initially arrested by DHS officers  
but was released shortly after on her own recognizance with a notice to appear for removal  
proceedings. In granting her release, DHS determined that she posed little if any risk of flight or  
danger to the community.

1 47. On August 18, 2026 at 9:00 AM, Ms. Montero-Alvarez has a scheduled court hearing.  
2 On August 2, 2023, Ms. Montero-Alvarez re-filed an asylum, withholding and CAT application  
3 with USCIS as her case has not yet been filed with the immigration court. On January 23, 2024,  
4 Ms. Montero-Alvarez filed for work authorization with USCIS.

5 48. Since arriving to the United States, Ms. Montero-Alvarez has no criminal history. Ms.  
6 Montero-Alvarez lives in Antioch, California with her family. Ms. Montero-Alvarez has kept  
7 ICE updated with all her appointments. Ms. Montero-Alvarez has attended all check-ins with  
8 ICE and has complied with all ISAP requirements.

9 49. Ms. Montero-Alvarez has applied for asylum based past persecution and a well-founded  
10 fear of persecution in Peru.

11 50. Ever since Ms. Montero-Alvarez entered the country, she has fully complied with all  
12 court and supervision requirements.

13 51. On November 21, 2025, Petitioner called appeared at her ICE check-in at the ICE San  
14 Francisco Office at 630 Sansome Street in San Francisco, California.

15 52. The ICE agent informed Ms. Montero-Alvarez that she would be detained.

16 53. Petitioner subsequently retained undersigned counsel to represent her in this habeas  
17 corpus proceeding. On December 1, 2025, counsel sent an email to the Bakersfield ICE office  
18 regarding release but received no response.

19 54. Ms. Montero-Alvarez remains in custody. At this time, there are no new circumstances  
20 that would justify a re-arrest of petitioner.

21 55. Because Ms. Montero-Alvarez has never been determined to be a flight risk or danger to  
22 the community, her detention is not related to either of the permissible justifications for civil  
23 immigration litigation. Her detention does not further any legitimate government interest.

24 **B. As a Result of Her Arrest and Detention, Ms. Montero-Alvarez is**  
25 **Suffering Ongoing and Irreparable Harm.**

26 56. Ms. Montero-Alvarez is being deprived of her liberty without any permissible  
27 justification. The government previously released her on her own recognizance because she did  
28 not pose sufficient risk of flight or danger to the community to warrant detention.

57. None of that has changed. Ms. Montero-Alvarez has no criminal record, and there is no  
basis to believe that she poses any public-safety risk. Nor is Ms. Montero-Alvarez, who was

1 arrested while appearing for an ICE check-in is conceivably a flight risk. To the contrary, Ms.  
2 Montero-Alvarez has kept immigration informed about every appearance.

3 58. Ms. Montero-Alvarez is now separated from her family and work.

4 59. Ms. Montero-Alvarez's jobs require her presence.

5 60. Ms. Montero-Alvarez is suffering from debilitating conditions at the California City  
6 Detention Facility.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of the Fifth Amendment to the United States Constitution**

10 **(Substantive Due Process—Detention)**

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

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

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

20 64. Petitioner is not a flight risk or danger to the community. Respondents' detention of  
21 Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in  
22 violation of the Due Process Clause of the Fifth Amendment.

23 65. Moreover, Petitioner's detention is punitive as it bears no “reasonable relation” to any  
24 legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly  
25 “nonpunitive in purpose and effect”). Here, the purpose of Petitioner's detention appears to be  
26 “not to facilitate deportation, or to protect against risk of flight or dangerousness, but to  
27 incarcerate for other reasons”—namely, to meet newly-imposed DHS quotas. *Demore*, 538 U.S.  
28 at 532–33 (Kennedy, J., concurring).

29 **SECOND CLAIM FOR RELIEF**

30 **Violation of the Fifth Amendment to the United States Constitution**

31 **(Procedural Due Process—Detention)**

1 66. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of  
2 this Petition as if fully set forth herein.

3 67. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty  
4 interest in avoiding re-incarceration after her release. See *Young v. Harper*, 520 U.S. 143, 146–  
5 47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,  
6 482–83 (1972); see also *Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a  
7 protected liberty interest in remaining out of custody following an IJ’s bond determination).

8 68. Accordingly, “[i]n the context of immigration detention, it is well-settled that due process  
9 requires adequate procedural protection to ensure that the government’s asserted Justification for  
10 physical confinement outweighs the individual’s constitutionally protected interest in avoiding  
11 physical restraint.” *Hernandez*, 872 F.3d at 990; *Zinerman*, 494 U.S. at 127 (Generally, “the  
12 Constitution requires some kind of a hearing before the State deprives a person of liberty or  
13 property.”). In the immigration context, for such hearings to comply with due process, the  
14 government must bear the burden to demonstrate, by clear and convincing evidence, that the  
15 noncitizen poses a flight risk or danger to the community. See *Singh v. Holder*, 638 F.3d 1196,  
16 1203 (9th Cir. 2011); see also *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

17 69. Petitioner’s re-detention without a pre-deprivation hearing violated due process. Over  
18 three years after deciding to release Petitioner from custody on her own recognizance,  
19 Respondents re-detained Petitioner with no notice, no explanation of the justification of her re-  
20 detention, and no opportunity to contest her re-detention before a neutral adjudicator before being  
21 taken into custody.

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

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3 **THIRD CLAIM FOR RELIEF**

4 **Violation of the Fourth Amendment to the United States Constitution**

5 **(Unlawful Arrest)**

6 71. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of  
7 this Petition as if fully set forth herein.

8 72. The Fourth Amendment protects the right of persons present in the United States to be free  
9 from unreasonable seizures by government officials.

10 73. As a corollary to that right, the Fourth Amendment prohibits government officials from  
11 conducting repeated arrests on the same probable cause. It is axiomatic that seizures have  
12 purposes. When those purposes are spent, further seizure is unreasonable. . . . [T]he primary  
13 purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee  
14 appears before the court, the purpose of the initial seizure has been accomplished. Further seizure  
15 requires a court order or new cause; the original probable cause determination is no justification.  
16 *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020); see also *United States v. Kordosky*, No. 88-  
17 CR-52-C, 1988 WL 238041, at \*7 n.14 (W.D. Wis. Sept. 12, 1988) (“Absent some compelling  
18 justification, the repeated seizure of a person on the same probable cause cannot, by any standard,  
19 be regarded as reasonable under the Fourth Amendment.”).

20 74. In the immigration context, this prohibition means that a person who immigration  
21 authorities released from initial custody cannot be re-arrested “solely on the ground that he is  
22 subject to removal proceedings” and without some new, intervening cause. *Saravia v. Sessions*,  
23 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905  
24 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result  
25 in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7<sup>th</sup> Cir. 1971).  
26 DHS agents arrested Petitioner in 2022 after she entered the United States, charged her with a  
27 violation of civil immigration law, and released her on her own recognizance with a notice to  
28 appear in immigration court. Petitioner appeared at his ICE check-in as instructed.

75. DHS re-arrested Petitioner on November 21, 2025, based on nothing more than the 2022  
civil charge of violating immigration law for which she was previously released. Petitioner had

1 not engaged in any conduct in the intervening time that made her a flight risk or danger to the  
2 community. No material change in circumstances justified Petitioner's re-arrest.

3 76. Petitioner's re-arrest and detention by Respondents absent any material change in  
4 circumstances is thus an unreasonable seizure in violation of the Fourth Amendment.

5 **PRAYER FOR RELIEF**

6 Petitioner respectfully requests that this Court:

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

21 Date: December 1, 2025

22 Respectfully Submitted,

23 /s/ Emilio Parker  
24 Emilio Parker  
25 Attorney For Petitioner  
26 Michelle Montero-Alvarez  
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28

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

I am submitting this verification on behalf of the Petitioner because I am one of  
Petitioner's attorneys. I have discussed the events described in the Petition with the Petitioner.  
Based on those discussions, 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.

Executed on December 1, 2025, in Oakland, CA.

/s/ Emilio Parker  
Emilio Parker  
Attorney for Michelle  
Montero-Alvarez