

1 Mei F Chen*
NJ Bar No. 008812006
2 Connie Chan & Associates, P.C.
405 Sansome Street, 2nd Floor
3 San Francisco, CA 94111
Tel: (415) 956-4809
4 chenpknlaw@gmail.com
Attorney for Plaintiff, Pro Hac Vice

5
6 Meredith Soniat (LA Bar No. 37002)
The Law Office of Mark Kinzler, P.C.
PO Box 684309
7 Austin, TX 78768
Tel: (512) 402-7999
8 Email: meredith@kinzlerimmigration.com
Local Counsel for Plaintiff

9
10 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
11 MONROE DIVISION

12 Monica Liliana ROBLES RODRIGUEZ,

13 Plaintiff,

14 v.

15 Todd M. LYONS, Acting Director,
Immigration and Customs Enforcement; Brian
16 ACUNA, Acting Field Office Director of
Enforcement and Removal Operations, New
17 Orleans; Sergio ALBARRAN, Field Office
Director of Enforcement and Removal
18 Operations, San Francisco Field Office, U.S.
Immigration and Customs Enforcement; Kristi
19 NOEM, Secretary, U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
20 HOMELAND SECURITY; Pamela BONDI,
Attorney General of the United States;
21 EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW; WARDEN, Richwood Correctional
22 Center,

23 Defendants.

Civil Case No. 3:25-cv-01926-JE-KDM

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VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This case challenges the unlawful detention of Monica Liliana Robles-Rodriguez (“Plaintiff” or “Ms. Robles-Rodriguez”), who is currently in the custody of Immigration and Customs Enforcement (“ICE”) at the Richwood Correctional Center.

2. The U.S. Customs and Border Protection (“CBP”) at Laredo Texas issued the expedited removal order on September 22, 2022. The order is defective. It was never properly served on Plaintiff, contains no officer signatures, lacks supervisory concurrence, as required by 8 C.F.R. § 235.3(b)(2)(i) and 8 U.S.C. § 1225(b)(1)(A)(ii).

3. ICE released Plaintiff on September 24, 2022 by issuing her an Interim Notice Authorizing Parole. Since then, Plaintiff has attended regularly scheduled check-ins with ICE.

4. On October 30, 2025, ICE detained her without notice or an opportunity to be heard, based on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules.

5. Plaintiff’s continued detention is unconstitutional and unlawful. It is based on an expedited removal order that was never lawfully issued and that remains legally void.

6. Defendants’ actions violated the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Immigration and Nationality Act and its implementing regulations, and the Administrative Procedure Act, which obligates administrative agencies to follow their own rules, procedures, and instructions. Plaintiff brings this action for injunctive, habeas, and declaratory relief ordering Defendants to release her.

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JURISDICTION

7. Plaintiff is in the physical custody of Defendants. Plaintiff is detained at the Richwood Correctional Center in Monroe, Louisiana.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., the Administrative Procedure Act, 5 U.S.C. § 551, et seq., and the Fifth Amendment of the U.S. Constitution.

9. Venue is proper in this district because Defendant Warden of the Richwood Correctional Center is Plaintiff's immediate custodian and under 28 U.S.C. § 1391(e)(1), because Defendants are officers of the United States and agencies.

VENUE

10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the Western District of Louisiana, the judicial district in which Plaintiff currently is detained.

11. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(e) because Defendants are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Louisiana.

12. Furthermore, Plaintiff is detained at the Richwood Correctional Center in Monroe, Louisiana, which is within the jurisdiction of this District.

REQUIREMENTS OF 28 U.S.C. § 2243

13. The Court must grant the petition for writ of habeas corpus or order Defendants to show cause "forthwith," unless the Plaintiff is not entitled to relief. 28 U.S.C. § 2243. If an order

1 to show cause is issued, Defendants must file a return “within three days unless for good cause
2 additional time, not exceeding twenty days, is allowed.” *Id.*

3 14. Habeas corpus is “perhaps the most important writ known to the constitutional
4 law . . . affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
5 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the
6 writ usurps the attention and displaces the calendar of the judge or justice who entertains it and
7 receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208
8 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

9 15. Plaintiff is “in custody” for the purpose of § 2241 because she is arrested and
10 detained by Defendants.

11 **PARTIES**

12 16. Plaintiff Monica Liliana Robles Rodriguez is a citizen of Colombia who has been
13 in immigration detention since October 30, 2025. She is in the custody, and under the direct
14 control, of Defendants and their agents.

15 17. Defendant Todd M. Lyons is the Acting Director of Immigration and Customs
16 Enforcement. He is named in his official capacity.

17 18. Defendant Sergio Albarran is the Director of the San Francisco Field Office of
18 ICE’s Enforcement and Removal Operations division. As such, Sergio Albarran is Plaintiff’s
19 immediate custodian and is responsible for Plaintiff’s detention and removal. He is named in his
20 official capacity.

21 19. Defendant Brian Acuna is the Acting Director of the New Orleans Field Office of
22 ICE’s Enforcement and Removal Operations division. As such, Defendant Brian Acuna is
23 Plaintiff’s immediate custodian and is responsible for Plaintiff’s detention and removal. He is
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1 named in his official capacity.

2 20. Defendant Kristi Noem is the Secretary of the Department of Homeland Security.
3 She is responsible for the implementation and enforcement of the Immigration and Nationality
4 Act (INA), and oversees ICE, which is responsible for Plaintiff's detention. Ms. Noem has
5 ultimate custodial authority over Plaintiff and is sued in her official capacity.

6 21. Defendant Department of Homeland Security (DHS) is the federal agency
7 responsible for implementing and enforcing the INA, including the detention and removal of
8 noncitizens.

9 22. Defendant Pamela Bondi is the Attorney General of the United States. She is
10 responsible for the Department of Justice, of which the Executive Office for Immigration Review
11 ("EOIR") and the immigration court system it operates are component agencies. She is sued in
12 her official capacity.

13 23. Defendant Executive Office for Immigration Review (EOIR) is the federal agency
14 responsible for implementing and enforcing the INA in removal proceedings, including for
15 custody redeterminations in bond hearings.

16 24. Defendant Warden of the Richwood Correctional Center, where Plaintiff is
17 detained. He or She has immediate physical custody of Plaintiff and is sued in his or her official
18 capacity.

19 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

20 25. Plaintiff is a native and citizen of Colombia who entered the United States on or
21 about September 21, 2022 in Texas. She was detained at the border by CBP.

22 26. CBP took Plaintiff into custody and issued an I-860 Notice and Order of
23 Expedited Removal on September 22, 2022. However, the I-860 was never served on Plaintiff.

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1 27. Indeed, the I-860 provides no indication that CBP ever properly served Plaintiff
2 with the Form I-860, as explicitly required by 8 C.F.R. § 235.3(b)(2)(i). Specifically, the
3 Certificate of Service on Form I-860 remains entirely blank, lacking the signatures or
4 acknowledgements of the examining immigration officer. Furthermore, no portion of the Form
5 I-860 contains any signature from a CBP officer, neither by the examining immigration officer,
6 nor by any supervisory authority, thus directly violating regulatory requirements.

7 28. On September 28, 2022, Plaintiff was issued an Interim Notice Authorizing
8 Parole.

9 29. After her release from custody, Plaintiff was instructed to check in using her
10 mobile phone and subsequently received home visits from ICE. She complied fully with all
11 imposed conditions.

12 30. Plaintiff appeared for a Credible Fear Interview (“CFI”) with ICE on November
13 10, 2022. An asylum officer denied her CFI. On November 23, 2022, an Immigration Judge
14 conducted a negative credible fear review in absentia because Plaintiff never received the
15 hearing notice. The Immigration Judge affirmed the negative credible fear finding.

16 31. On October 30, 2025, Plaintiff appeared for a scheduled ICE check-in at the San
17 Jose ICE Office. ICE arrested and detained her at the check-in, then transferred her to Richwood
18 Correctional Center, where she remains in custody.

19 32. Plaintiff is married to a United States citizen, Orlando Vergara. Mr. Vergara filed
20 an I-130 immigrant petition for her on July 24, 2025, and USCIS continues to process that
21 petition. The immigration consultant who handled the case failed to submit an adjustment of
22 status application. Because DHS paroled Plaintiff into the United States under 8 U.S.C. §
23 1182(d)(5)(A), she qualifies to seek adjustment of status under 8 U.S.C. § 1255(a).

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2 **LEGAL FRAMEWORK**

3 **Expedited Removal Process**

4 33. When a CBP officer determines that a noncitizen arriving at a port of entry is
5 inadmissible for misrepresenting a material fact or lacking necessary documentation, the officer
6 must place the noncitizen in “expedited removal” proceedings. 8 U.S.C. § 1225(b)(1)(A)(i).

7 34. By regulation, the Department of Homeland Security, of which CBP is a
8 constituent agency, also applies expedited removal to inadmissible noncitizens arrested within
9 100 miles of the border and unable to prove that they have been in the United States for more
10 than the prior two weeks. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01,
11 48879-80 (Aug. 11, 2004); see also 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

12 35. Congress gave the Attorney General the authority to extend expedited removal to
13 some or all inadmissible noncitizens who cannot prove that they have been in the United States
14 for more than two years prior; thus, the current regime does not represent the full exercise of
15 executive authority permitted by statute. 8 U.S.C. § 1225(b)(1)(A)(iii). DHS also applies
16 expedited removal to noncitizens who entered the United States by sea and who have not been in
17 the United States for two years. See Notice Designating Aliens Subject to Expedited Removal
18 Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924,
19 68,925-25 (Nov. 13, 2002).

20 36. DHS removes noncitizens eligible for expedited removal “without further hearing
21 or review,” subject to only one exception. 8 U.S.C. § 1225(b)(1)(A)(i). If, in an interview with a
22 CBP officer, the noncitizen indicates an intent to apply for asylum or a fear of persecution, DHS
23 must refer the noncitizen for an interview with an asylum officer. *Id.* § 1225(b)(1)(A)(ii); 8
24 C.F.R. § 208.30. If that asylum officer determines that the noncitizen’s fear of persecution is

1 credible, the noncitizen is referred to non-expedited removal proceedings, in which the
2 noncitizen may apply for asylum or other forms of relief from removal. *See* 8 U.S.C. §
3 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f); 8 C.F.R. § 1003.42(f).

4 37. If an asylum officer finds no credible fear of persecution, the noncitizen will be
5 removed. 8 U.S.C. § 1225(b)(1)(B)(iii). A supervisor reviews the asylum officer’s credible fear
6 determination, 8 C.F.R. §§ 208.30(e)(7), 235.3(b)(2), (b)(7), and a noncitizen may also request
7 *de novo* review by an Immigration Judge (“IJ”). 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §
8 1003.42. All individuals placed in expedited removal proceedings are subject to mandatory
9 detention pending a final determination of credible fear of persecution or until they are removed.
10 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

11 38. In 1996, Congress created “expedited removal: “as a truncated method for rapidly
12 removing certain noncitizens from the United States with very few procedural protections. 8
13 U.S.C. § 1225(b)(1). Congress sharply circumscribed judicial review of the expedited removal
14 process. “[N]o court shall have jurisdiction to review...any individual determination [or]...the
15 application of [§ 1225(b)(1)] to individual aliens” outside of the review permitted by the habeas
16 review provision, § 1252(e). 8 U.S.C. § 1252(a)(2)(A)(iii). Under § 1252(e)(2), a person in
17 expedited removal proceedings may file a habeas petition in federal district court to contest three
18 DHS determinations: whether the person is a noncitizen, whether she “was ordered removed”
19 via expedited removal, and whether she is a lawful permanent resident or has another status
20 exempting her from expedited removal. *Id.* § 1252(e)(2)(A)-(C).

21 39. Review of whether a Plaintiff “was ordered removed” is limited to whether such
22 an order in fact was issued and whether it relates to the Plaintiff. *Id.* § 1252(e)(5). “There shall
23 be no review of whether the alien is actually inadmissible or entitled to any relief from removal.”
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1 *Id.*; see also 8 C.F.R. § 1003.42(f) (“No appeal shall lie from a review of an adverse credible fear
2 determination made by an immigration judge.”).

3 40. Pursuant to 8 C.F.R. § 235.3(b)(2)(i), an expedited removal order issued on Form
4 I-860 requires strict compliance with regulatory safeguards. Specifically, the examining
5 immigration officer is mandated to advise the alien of the charges contained in Form I-860
6 permit the alien an opportunity to respond to those charges, obtain supervisory concurrence, and
7 serve the alien with Form I-860, ensuring the alien acknowledges receipt by signature. These
8 procedural safeguards are critical to ensuring due process, notwithstanding the summary nature
9 of expedited removal proceedings.

10 **Due Process Governs Decisions to Re-detain Individuals**

11 41. “The Due Process Clause applies to all persons within the United States,
12 including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.”
13 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation modified). “Freedom from
14 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
15 the heart of the liberty that Clause protects.” *Id.* at 690.

16 42. Under substantive due process doctrine, a restraint on liberty like re-detention of a
17 non-citizen is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v.*
18 *Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate
19 objectives of immigration detention: preventing danger to the community or preventing flight
20 prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001) (discussing constitutional
21 limitations on civil detention).

22 43. “Procedural due process imposes constraints on governmental decisions which
23 deprive individuals of liberty,” like the decision to re-detain a non-citizen. *Mathews v. Eldridge*,

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1 424 U.S. 319, 332 (1976) (citation modified). “The fundamental requirement of [procedural] due
2 process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Id.* at
3 333 (citation modified).

4 **Right to a Hearing Prior to Re-detention**

5 44. In Plaintiff’s particular circumstances, the Due Process Clause of the
6 Constitution makes it unlawful for Defendants to re-arrest her without first providing a pre-
7 deprivation hearing to determine whether detention would be warranted.

8 45. The Due Process Clause of the Fifth Amendment makes it unlawful for
9 Defendants to detain Plaintiff without first providing a hearing before a neutral decision maker to
10 determine whether detention is justified by a risk of flight or danger to the community

11 46. Civil immigration detention must be justified by a permissible purpose, and must
12 be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two
13 permissible regulatory goals are “ensuring the appearance of [noncitizens] at future immigration
14 proceedings” and “preventing danger to the community.” *Id.*; *see also Matter of Patel*, 17 I&N
15 Dec. 597, 666 (BIA 1976) (“[A noncitizen] generally is not and should not be detained or
16 required to post bond except on a finding that he is a threat to the national security, or that he is a
17 poor bail risk.”) (internal citations omitted).

18 47. ICE’s power to arrest a noncitizen who is at liberty is also constrained by the
19 demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the
20 government’s discretion to incarcerate non-citizens is always constrained by the requirements of
21 due process”). “It is well established that the Fifth Amendment entitles [noncitizens] to due
22 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
23 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
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1 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
2 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
3 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
4 unlawful or arbitrary personal restraint or detention.”).

5 48. Federal district courts in California have repeatedly recognized that the demands
6 of due process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole
7 both require a pre-deprivation hearing for a noncitizen on bond, like Plaintiff, before ICE re-
8 detains her. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v.*
9 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020
10 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
11 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

12 **Plaintiff’s Protected Liberty Interest in Her Release**

13 49. Plaintiff’s liberty from immigration custody and her weighty interest in
14 avoiding incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690
15 (“Freedom from imprisonment...lies at the heart of the liberty” that the Due Process Clause
16 protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a
17 protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47
18 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

19 50. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a
20 parolee has in “[her] continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the
21 conditions of [her] parole, [a parolee] can be gainfully employed and is free to be with family
22 and friends and to form the other enduring attachments of normal life.” *Id.* at 482. “[T]he liberty
23 of a parolee, although indeterminate, includes many of the core values of unqualified liberty and
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1 its termination inflicts a grievous loss on the parolee and often others.” *Id.* Therefore, “[b]y
2 whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
3 Amendment.” *Id.*

4 51. This basic principle—that individuals have a liberty interest in their conditional
5 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
6 occasions since *Morrissey*. *See, e.g., Young*, 520 U.S. at 152. Plaintiff was in fact released after
7 she was paroled under 8 U.S.C. 1182(d)(5). *See also, Hurd v. District of Columbia*, 864 F.3d
8 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that
9 freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
10 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
11 and *Morrissey*, 408 U.S. at 482).

12 52. Procedural due process constrains governmental decision that deprive individuals
13 of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment.
14 *See Mathews v. Eldridge*, 424 U.S. 319,332 (1976) *see also Perry v. Sindermann*, 408 U.S. 593,
15 601-603 (1972) (reliance on informal policies and practices may establish a legitimate claim of
16 entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a
17 right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*,
18 408 U.S. 564, 569-70 (1972).

19 53. Civil detention with no foreseeable end infringes upon a protected liberty interest
20 and thus violates her constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct.
21 2491, 2493. 150 L. Ed. 2d 653 (2001) (“Freedom from imprisonment lies at the heart of the
22 liberty protected by the Due Process Clause. Government detention violates the Clause unless it
23 is ordered in a criminal proceeding with adequate procedural safeguards or a special justification
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1 outweighs the individual's liberty interest. The instant proceedings are civil and assumed to be
2 nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil
3 detention under this statute.”).

4 54. In fact, an individual maintains a protected liberty interest in her freedom even
5 where she obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683;
6 *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982)
7 (noting that due process considerations support the notion that an inmate released on parole by
8 mistake, because she was serving a sentence that did not carry a possibility of parole, could not
9 be re-incarcerated because the mistaken release was not her fault, and she had appropriately
10 adjusted to society, so it “would be inconsistent with fundamental principles of liberty and
11 justice” to return her to prison) (internal quotation marks and citation omitted).

12 55. Here, Plaintiff's release is in relevant ways similar to the liberty interest in
13 parole protected in *Morrissey*. Just as in *Morrissey*, Plaintiff's release “enables [her] to do a
14 wide range of things open to persons” who have never been in custody or convicted of any
15 crime, including to live at home, work, care for her spouse, and “be with family and friends and
16 to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Plaintiff
17 currently has a pending I-130 immigrant petition pending with USCIS and plans to file her I-485
18 adjustment of status application. Plaintiff is married to a United States citizen.

19 56. Plaintiff's three years at liberty provides her a “a liberty interest that entitles
20 [her] to constitutional due process before [she] is incarcerated.” *Hurd*, 864 F.3d at 683; *see also*
21 *Gonzalez-Fuentes*, 607 F.3d at 887 (holding that inmates released to electronic monitoring
22 program had liberty interest protected by the Due Process Clause because the program “allowed
23 the appellees to live with their loved ones, form relationships with neighbors, lay down roots in
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1 their community, and reside in a dwelling of their own choosing (albeit subject to certain
2 limitations) rather than in a cell designated by the government.”); *see also Jorge M.F.*, 534 F.
3 Supp. 3d at 1054 (holding that released noncitizen made a substantial showing that he had liberty
4 interest requiring pre-deprivation hearing before re-arrest, even after original bond order was
5 reversed on appeal); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist.
6 LEXIS 158839, at *4 (E.D. Cal., Aug. 15, 2025).

7 **Plaintiff’s Strong Interest in Her Liberty Required a Hearing Before She Was Incarcerated**
8 **by ICE**

9 57. If a Plaintiff identifies a protected liberty interest, the Court must then determine
10 what process is due. “Adequate, or due, process depends upon the nature of the interest affected.
11 The more important the interest and the greater the effect of its impairment, the greater the
12 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
13 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-
14 82). To determine the process due in this context, courts use the flexible balancing test set forth
15 in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970;
16 *Jorge M. F.*, 534 F. Supp. 3d at 1055.

17 58. Under the *Mathews* test, the Court balances three factors: “first, the private interest
18 that will be affected by the official action; second, the risk of an erroneous deprivation of such
19 interest through the procedures used, and the probative value, if any, of additional or substitute
20 procedural safeguards; and finally the government’s interest, including the function involved and
21 the fiscal and administrative burdens that the additional or substitute procedural requirements
22 would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335
23 (1976)).

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1 59. Importantly, the Supreme Court “usually has held that the Constitution requires
2 some kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v.*
3 *Burch*, 494 U.S. 113, 127-28 (1990) (emphasis in original).

4 60. Here, the *Mathews* factors all favor Plaintiff and establish that the government was
5 required to provide Plaintiff notice and a hearing prior to any detention.

6 61. First, Plaintiff’s private interest in her liberty is substantial. *See Foucha v.*
7 *Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core
8 of the liberty protected by the Due Process Clause.”). The Supreme Court has recognized that
9 individuals released from serving a criminal sentence have a “valuable” liberty interest—even if
10 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. The
11 interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g.,*
12 *Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration detention, a
13 noncitizen’s interest in release on bond is “arguably greater than the interest of parolees in
14 *Morrissey*.”).

15 62. Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally
16 detain Plaintiff without a hearing before a neutral adjudicator that would determine whether
17 detention serves a permissible purpose, i.e., preventing danger or flight risk. *See Zadvydas*, 533
18 U.S. at 690. These developments show that detention is likely not warranted.

19 63. DHS’s choice to detain Plaintiff without a hearing has deprived her of her
20 liberty and separated her from her family and community without any opportunity for Plaintiff to
21 contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-
22 SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for Plaintiff detained at his
23 scheduled check-in without notice or hearing, and where compliance with release terms is in
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1 dispute, and ordering immediate release and enjoining Defendants from re-detention without a
2 pre-deprivation hearing before a neutral adjudicator where Defendants bear the burden of
3 showing by clear and convincing evidence that Plaintiff is a flight risk or danger to the
4 community); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal.
5 Sept. 23, 2025) (same).

6 64. By contrast, the value of a deprivation hearing before a neutral decision-maker is
7 high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*,
8 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v.*
9 *Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous
10 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
11 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081,
12 1091-92 (9th Cir. 2011).

13 65. Third, the government’s interest in detaining Plaintiff without a hearing is low.
14 The government cannot plausibly assert it has any basis for detaining Plaintiff now, when she has
15 lived in the community caring for her family without incident for approximately three years. In
16 any event, providing Plaintiff with a hearing before this Court (or another neutral decisionmaker)
17 to determine whether there is evidence that Plaintiff currently poses any risk of flight or danger
18 to the community imposes a de minimis, if any, burden on the government. Such a hearing is far
19 less costly and burdensome for the government than keeping Plaintiff detained at what the Ninth
20 Circuit described as a “staggering” cost to the public of \$158 each day per detainee in 2017,
21 “amounting to a total daily cost of \$6.5 million” (the current cost is likely significantly higher).
22 *Hernandez*, 872 F.3d at 996.

23 66. Because the government failed to give Plaintiff the notice and hearing she was
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1 due under the *Mathews* factors prior to re-detaining her, the Court should order her released until
2 the government provides her with a constitutionally-compliant hearing.

3 67. At a pre-deprivation hearing, due process requires that the government justify re-
4 detention of Plaintiff by clear and convincing evidence that she poses a flight risk or danger. *See*
5 *Singh v. Holder*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the State
6 in civil proceedings in which the individual interests at stake . . . are both particularly important
7 and more substantial than mere loss of money.”) (internal quotation marks omitted); *Ixchop Perez*
8 *v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among
9 District Courts concluding that, “where . . . the government seeks to detain [a noncitizen] pending
10 removal proceedings, it bears the burden of proving that such detention is justified); *Jorge M.F.*,
11 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before being returned
12 to custody, ordering that the government bear the burden at the hearing by clear and convincing
13 evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

14 **Detention Bears No Reasonable Relationship to Any Legitimate Purpose as Plaintiff’s**

15 **Removal Is Not Reasonably Foreseeable**

16 68. At her ICE check-in, Defendants arrested Plaintiff without giving her the
17 opportunity to fully exercise her due process rights.

18 69. To comport with due process, detention must bear a reasonable relationship to its
19 two regulatory purposes—to ensure the appearance of noncitizens at future hearings and to prevent
20 danger to the community pending the completion of removal. *Zadvydus v. Davis*, 533 U.S. at
21 690-91 (2001); *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011); *Gordon v. Shanahan*, No.15-
22 CIV-261, 2015 WL 1176706 at*10 (S.D.N.Y. Mar. 13, 2015). Such a justification for detention
23 is required to be particularly strong once detention is presumptively unconstitutional.

1 70. Plaintiff's detention is facially arbitrary. ICE failed to produce an arrest warrant
2 and took Plaintiff into custody without making any assessment as to whether she posed a danger
3 to the community or a risk of flight Without any explanation or new basis why she is subject to
4 detention-especially in light of the fact that she has a pending I-130 immigrant petition, her
5 continued detention is arbitrary and violates due process.

6 **CLAIMS FOR RELIEF**

7 **COUNT I**

8 **Violation of the Fifth Amendment of the U.S. Constitution**
9 **Substantive Due Process**

10 71. Plaintiff incorporates by reference the allegations of fact set forth in the preceding
11 paragraphs.

12 72. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
13 prohibits the federal government from depriving any person of "life, liberty, or property, without
14 due process of law." U.S. Const. Amend. V. Due Process protects "all 'persons' within the
15 United States, including [non-citizens], whether their presence here is lawful, unlawful,
16 temporary, or permanent." *Zadvydas*, 533 U.S. at 693. The allegations in the above paragraphs
17 are realleged and incorporated herein.

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

20 74. When Defendants retained Plaintiff, she had complied with the condition of
21 the order. No change in circumstances warranted Defendants' re-detention of Plaintiff.

22 75. Plaintiff's detention therefore does not bear a reasonable relationship to the two
23 regulatory purposes of immigration detention: preventing danger to the community or flight prior
24 to removal.

76. Because Defendants had no legitimate, non-punitive objective in re-detaining

1 Plaintiff, her detention violates substantive due process under the Fifth Amendment to the U.S.
2 Constitution.

3 77. Second, Plaintiff has been detained under an expedited removal order that was
4 never validly issued: she was never served with the Form I-860; the order lacks required
5 signatures; she was never advised of the charges. The procedural deficiencies violate the
6 regulatory framework governing expedited removal order under 8 C.F.R. § 235.3(b)(2)(i) and
7 result in arbitrary detention.

8 78. Plaintiff's prolonged detention, now exceeding one month, under color of an
9 invalid and improperly executed expedited removal order is arbitrary, capricious, and
10 constitutionally intolerable, and lacks the basic safeguards required by the Due Process Clause.
11 The failure of Defendants to follow its own mandatory procedures in issuing and executing the
12 expedited removal order, and its refusal to reopen the defective order despite clear regulatory
13 violations, constitutes a due process violation.

14 **COUNT II**
15 **Violation of the Fifth Amendment of the U.S. Constitution**
16 **Procedural Due Process**

17 79. Plaintiff realleges all paragraphs above as if fully set forth here.

18 80. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three
19 factors to determine whether procedural due process is satisfied: (1) the private interest at issue;
20 (2) the risk of erroneous deprivation of that interest through the procedures used, and the
21 probable value, if any, of additional procedural safeguards; and, (3) the government's interest,
22 including fiscal and administrative burdens that additional or substitute procedural requirements
entail.

23 81. The first factor, the private interest at issue, favors Plaintiff. "Freedom from
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1 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
2 the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects.”
3 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

4 82. The second factor, the risk of erroneous deprivation of liberty and the probable
5 value of procedural safeguards, favors Plaintiff. To safeguard against erroneous deprivations of
6 liberty, the statute specifies the limited number of reasons to re-detain an individual. Regulations
7 specify who may lawfully re-detain and the procedures that must be followed when doing so,
8 including giving notice and an opportunity to be heard. Defendants violated those laws here,
9 leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring
10 Defendants to give notice and an opportunity to respond prior to re-detention is of great value
11 because it reduces the probability of needless detention of a person, like Plaintiff, who is neither
12 dangerous nor a flight risk.

13 83. The third factor, the government’s interest, also favors Plaintiff. When the
14 government ignores law that ensures notice and an opportunity to respond to a person at risk of
15 re-detention, it is more likely to waste limited financial and administrative resources on
16 unnecessary detention of people who are neither flight risks nor dangerous. This waste drags
17 down the efficiency of the entire immigration system. And because the government must also
18 spend resources defending against a habeas corpus petition in federal court to compel Defendants
19 to comply with the law, requiring Defendants to instead provide notice and a meaningful
20 opportunity to respond prior to re-detention reduces fiscal and administrative burdens on the
21 government.

22 84. For these reasons, re-detaining Plaintiff who is subject to an order of
23 supervision without providing notice and a meaningful opportunity to respond violated
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1 procedural due process under the Fifth Amendment to the U.S. Constitution.

2 **COUNT III**
3 **Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**
4 **Contrary to Law and Constitutional Right**

4 85. Plaintiff realleges all paragraphs above as if fully set forth here.

5 86. Under the APA, a court shall “hold unlawful and set aside agency
6 action . . . found to be . . . not in accordance with law” or “contrary to constitutional right, power,
7 privilege, or immunity.” 5 U.S.C. § 706(2)(A), (B).

8 87. The APA’s reference to “law” in the phrase “not in accordance with law,”
9 “means, of course, any law, and not merely those laws that the agency itself is charged with
10 administering.” *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in
11 original).

12 88. Defendants’ decision to re-detain Plaintiff was contrary to the agency’s
13 constitutional authority under the Due Process Clause of the Fifth Amendment, as previously
14 explained.

15 89. To survive an APA challenge, the agency must articulate “a satisfactory
16 explanation” for its action, “including a rational connection between the facts found and the
17 choice made.” *Dep’t of Com. v. New York*, 139 S.Ct. 2551, 2569 (2019) (citation omitted).

18 90. CBP’s issuance of the Form I-860 expedited removal order against Plaintiff was
19 not in accordance with the law, it violated mandatory regulations, and was in excess of its
20 statutory authority. Specifically, the agency failed to comply with 8 C.F.R. § 235.3(b)(2)(i),
21 which requires that the noncitizen be advised of the charges, given an opportunity to respond,
22 and served with the order, all under supervisory review. None of these steps occurred here, as
23 evidenced by the unsigned, incomplete Form I-860 and lack of any Certificate of Service.

1 91. Furthermore, Defendants re-detained Plaintiff without first revoking her order of
2 supervision as required by statute and regulation, and without making the statutorily required
3 findings that she posed a danger to the community or was unlikely to comply with a removal
4 order. Defendants further failed to provide Plaintiff with notice of the grounds for her re-
5 detention or an opportunity to be heard.

6 92. Plaintiff's re-detention should be declared unlawful and set aside because it
7 exceeded the agency's constitutional authority and was not in accordance with the INA or its
8 implementing regulations.

9 **COUNT IV**
10 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**
11 **Arbitrary and Capricious**

12 93. Plaintiff realleges all paragraphs above as if fully set forth here.

13 94. Under the APA, a court shall "hold unlawful and set aside agency action . . .
14 found to be arbitrary [or] capricious." 5 U.S.C. § 706(2)(A).

15 95. Defendants' detention of Plaintiff was arbitrary and capricious because it
16 violated statutes, regulations, and the Constitution, as described above.

17 96. An agency decision that "runs counter to the evidence before the agency" is also
18 arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29,
19 43 (1983).

20 97. Defendants' decision to re-detain Plaintiff ran counter to the evidence before
21 the agency that Plaintiff would comply with a demand to appear for removal without detention.
22 Plaintiff has complied with the condition of her release and no new facts or changed
23 circumstances suggest she would.

24 98. The re-detention also "failed to consider important aspects of the problem"

1 before Defendants, making it arbitrary and capricious for multiple other reasons. *Dep't of*
2 *Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

3 99. First, Defendants failed to consider the serious constitutional concerns raised
4 by re-detaining Plaintiff without notice and opportunity to respond.

5 100. Second, Defendants failed to consider the increased administrative burden to
6 The agency caused by re-detaining Plaintiff, who is neither a flight risk nor a danger to the
7 community, including financial and administrative costs incurred by the agency due to
8 unnecessary detention.

9 101. Third, Defendants failed to consider reasonable alternatives to re-detaining
10 that were before the agency, like simply continuing release on an order of supervision and
11 scheduling a future time and date to appear for removal. This alternative would vindicate the
12 government's interests in effectuating a removal order and save it the expense of detention not
13 needed to guarantee Plaintiff's appearance.

14 102. Fourth, Defendants failed to consider Plaintiff's substantial reliance interest,
15 created by the agency's own release notification indicating that he would be given an opportunity
16 to arrange an orderly departure once travel documents were obtained.

17 103. For these and other reasons, Defendants' re-detention of Plaintiff was
18 arbitrary and capricious and should be held unlawful and set aside.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 21 a. Assume jurisdiction over this matter;
- 22 b. Issue an Order to Show Cause ordering Defendants to show cause why this
23 Petition should not be granted within three days;
- 24

- 1 c. Enjoin Plaintiff's removal or transfer outside the jurisdiction of this Court and the
- 2 United States while this petition is being adjudicated;
- 3 d. Declare that Plaintiff's re-detention violates the Due Process Clause of the Fifth
- 4 Amendment, the INA its implementing regulations, and the APA;
- 5 e. Order Plaintiff's immediate release from custody;
- 6 f. Enjoin Defendants from imposing any additional restrictions or conditions on
- 7 Plaintiff, including but not limited to electronic monitoring or home visits;
- 8 g. Enjoin and restrain Defendants from re-detaining Plaintiff without notice and a
- 9 pre-deprivation hearing before a neutral decisionmaker to evaluate whether
- 10 Plaintiff's re-detention is warranted based on flight risk or a danger to the
- 11 community;
- 12 h. Award Plaintiff costs and reasonable attorneys' fees; and
- 13 i. Order such other relief as this Court may deem just and proper.

14 Respectfully submitted,

15 DATED this 4th day of December, 2025.

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/s/ Mei F Chen

Mei F Chen*

Connie Chan & Associates, P.C.

405 Sansome Street, 2nd Floor

San Francisco, CA 94111

Tel: (415) 956-4809

chenpknlaw@gmail.com

Attorney for Plaintiff, Pro Hac Vice Pending

/s/ Meredith Soniat

Meredith Soniat du Fossat (LA Bar No. 37002)

The Law Office of Mark Kinzler, P.C.

PO Box 684309

Austin, TX 78768

Tel: (512) 402-7999

Email: meredith@kinzlerimmigration.com

Local Counsel for Plaintiff

VERIFICATION UNDER 28 U.S.C. § 2242

Acting on behalf of the Plaintiff, I verify that the foregoing factual allegations are true
and correct to the best of my knowledge as required by 28 U.S.C. § 2242.

/s/ Mei F Chen
Mei F Chen*

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