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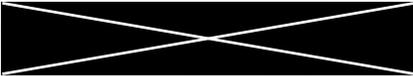
9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**

12 A [redacted] F [redacted] A [redacted] M [redacted]
13 Petitioner,
14 v.
15 SERGIO ALBARRAN, Field Office Director of
16 the San Francisco Immigration and Customs
17 Enforcement Office; TODD LYONS, Acting
18 Director of United States Immigration and
19 Customs Enforcement; KRISTI NOEM,
Secretary of the United States Department of
Homeland Security, PAMELA BONDI,
Attorney General of the United States, acting in
their official capacities,
20 Respondents.
21

CASE NO.

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1
2 1. Petitioner  ("A.F.A.M.")¹ is a gay asylum seeker
3 from Columbia. He is 38 years old and living with HIV and diabetes. He has no criminal history.

4 2. At the time of this filing, he is hospitalized at Highland Hospital in Oakland,
5 California, where he has been since Wednesday, December 3, 2025.

6 3. Petitioner entered the United States without inspection near Brownsville, Texas,
7 on or about July 20, 2024, and was immediately detained.

8 4. On September 9, 2024, Petitioner was paroled into the United States. As part of
9 his parole, Petitioner was fitted with an electronic monitoring device.

10 5. Since being released, Petitioner has consistently reported to all required ICE and
11 ISAP check-ins at 630 Sansome Street. He has also reported monthly via the ISAP application on
12 his phone. After his first appointment with ICE, his ankle monitor was removed. He continued to
13 follow ICE guidelines.

14 6. On Tuesday, December 2, Petitioner received a text message telling him to report
15 to ICE the next day. On Wednesday, December 3, *while he was attending an ICE check-in*, he
16 was told that he was being detained. Subsequent to being arrested, Petitioner was told that he had
17 received a court date. He did not get his Notice to Appear until Saturday, December 6, in the
18 hospital.

19 7. After Petitioner's detention on December 3, he obtained the pro bono services of
20 immigration attorney Nancy Hormachea.

21 8. Petitioner seeks relief from removal based on severe persecution, including sexual
22 abuse and other forms of exploitation. In Colombia, he was violently assaulted by men who

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24 ¹ Petitioner respectfully requests that the Court use his initials, A.F.A.M., rather than his full last
25 name, in any opinion in his case, as suggested by the Committee on Court Administration and
26 Case Management of the Judicial Conference of the United States. *See* Memorandum Re:
27 Privacy Concern Regarding Social Security & Immigration Opinions, May 1, 2018, available at:
28 https://www.uscourts.gov/sites/default/files/18-cv-l-suggestion_cacm_0.pdf. *See also* Walter
A.T., v. Facility Administrator, 2025 WL 1744133, at *10 (E.D. Cal. June 24, 2025).

1 mutilated him, forced him to engage in oral sex, raped him, and beat him while calling him
2 derogatory names because he is gay.

3 9. In the United States, Petitioner was released from his initial immigration detention
4 and permitted to remain at liberty, while checking in with ICE monthly.

5 10. During this period of freedom, Petitioner engaged in ordinary, pro-social
6 activities, spending time with his cousin and friends and integrating into daily community life.

7 11. Shortly after being taken into ICE custody, Petitioner became ill. He showed up at
8 the ICE check-in, already feeling unwell. He was not able to bring his insulin to the check-in, nor
9 did he have any food. He had only a small amount of his HIV medication.

10 12. Soon after being detained at 630 Sansome Street in San Francisco, Petitioner
11 began feeling nausea, headaches, and difficulty breathing. He was transported to Highland
12 Hospital in Oakland, California, where doctors are treating his severe complications from
13 diabetes and ordering additional tests.

14 13. Petitioner fears that he will soon be transferred to an immigration detention
15 facility in the Central Valley, where he will not have access to the critical medical care that he
16 needs. Indeed, this was his experience upon first being detained when he entered the country—a
17 lack of medical care and lack of access to quality food led to a deterioration of his symptoms.

18 14. No evidence has been presented to Petitioner to document the grounds for his re-
19 detention. Nor was there any pre-deprivation hearing where he could confront the facts that
20 supposedly justify his detention.

21 15. Nor are there any “changed circumstances” as would be required before ICE can
22 detain a person in Petitioner’s position. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981).

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

1 17. In recent months, Courts in this circuit have repeatedly held that noncitizens
2 suddenly arrested by ICE, like Petitioner, are entitled to pre-deprivation bond hearings and
3 ordered their immediate release. *See, e.g., J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK,
4 2025 U.S. Dist. LEXIS 211728 (E.D. Cal., Oct. 27, 2025 (arrested at ICE check-in); *J.C.L.A. v.*
5 *Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300 (E.D. Cal., Oct. 17,
6 2025) (same); *J.S.H.M v. Wofford*, 1:25-CV-01309 JLT SKO, 2025 U.S. Dist. LEXIS 204422
7 (E.D. Cal., Oct. 16, 2025) (same); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S.
8 Dist. LEXIS 202706 (E.D. Cal., Oct. 14, 2025) (same).

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

14 19. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this
15 Court order the government not to transfer him outside of the District or deport him for the
16 duration of this proceeding.

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

20 **JURISDICTION AND VENUE**

21 21. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
22 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),
23 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension
24 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706
25 (Administrative Procedure Act).

26 22. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and
27 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioners are physically detained within this district.
28

PARTIES

1
2 23. Petitioner A.F.A.M. is a Colombian national who had been released with an ankle
3 monitor and own recognizance supervision. He has grounds to pursue asylum, withholding of
4 removal, protection under the Convention Against Torture, and other forms of relief from
5 removal. He is currently in civil immigration detention and hospitalized at Highland Hospital in
6 Oakland.

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

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

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

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

1 EXHAUSTION

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

9 LEGAL BACKGROUND

10 *Revocation of Parole*

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

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

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

24 32. Substantive due process thus requires that all forms of civil detention—
25 including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See*
26 *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two
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1 permissible non-punitive purposes for immigration detention: ensuring a noncitizen's
2 appearance at immigration proceedings and preventing danger to the community. *Zadvydas*,
3 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

4 33. Second, the procedural component of the Due Process Clause prohibits the
5 government from imposing even permissible physical restraints without adequate procedural
6 safeguards.

7 34. Generally, “the Constitution requires some kind of a hearing *before* the State
8 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is
9 so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at
10 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional
11 supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
12 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole
13 context).

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

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

26 ***Detention Framework***

27 37. The Immigration and Nationality Act prescribes three basic forms of detention for
28

1 most noncitizens in removal proceedings.

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

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

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

12 41. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). The
13 detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal
14 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104–
15 208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a)
16 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat.
17 3 (2025).

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

23 43. Thus, in the decades that followed, most people who entered without inspection
24 and were placed in standard removal proceedings received bond hearings, unless their criminal
25 history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent
26 with many more decades of prior practice, in which noncitizens who were not deemed “arriving”
27 were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)

1 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
2 “restates” the detention authority previously found at § 1252(a)).

3 44. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that
4 rejected well-established understanding of the statutory framework and reversed decades of
5 practice.

6 45. The new policy, entitled “Interim Guidance Regarding Detention Authority for
7 Applicants for Admission,”² claims that all persons who entered the United States without
8 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
9 policy applies regardless of when a person is apprehended and affects those who have resided in
10 the United States for months, years, and even decades.

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

15 47. Since Respondents adopted their new policies, dozens of federal courts have
16 rejected their new interpretation of the INA’s detention authorities. Courts have likewise rejected
17 *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

18 48. Even before ICE or the BIA introduced these nationwide policies, IJs in the
19 Tacoma, Washington, immigration court stopped providing bond hearings for persons who
20 entered the United States without inspection and who have since resided here. There, the U.S.
21 District Court in the Western District of Washington found that such a reading of the INA is
22 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not
23 apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d
24 1239 (W.D. Wash. 2025).

25 49. Subsequently, court after court has adopted the same reading of the INA’s

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

1 detention authorities and rejected ICE and EOIR's new interpretation. *See, e.g., Gomes v. Hyde*,
2 No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
3 No. CV 25-11613-BEM, --- F. Supp. 3d , 2025 WL 2084238 (D. Mass. July 24, 2025);
4 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
5 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
6 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
7 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
8 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
9 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-
10 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
11 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
12 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
13 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-
14 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
15 (ECT/DJF), --- F. Supp. 3d , 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
16 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
17 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
18 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
19 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
20 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
21 Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
22 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not §
23 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL
24 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-
25 RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same); *O.P.A.M. v. Wofford*, No. 1:25-
26 cv-01423 JLT SAB (E.D. CA Nov. 7, 2025); *see also, F.M.V. v. Wofford*, No. 1:25-cv-01381-
27 KES-SAB (HC) (E.D. CA Nov. 4, 2025) (Petitioner disputed DHS' allegations of several missed
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1 ICE check-in dates, yet Petitioner’s immediate release granted and motion for preliminary
2 injunction was granted.)

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

6 51. Section 1226(a) applies by default to all persons “pending a decision on whether
7 the [noncitizen] is to be removed from the United States.” These removal hearings are held under
8 § 1229(a), to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

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

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

20 54. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
21 recently entered the United States. The statute’s entire framework is premised on inspections at
22 the border of people who are “seeking admission” to the United States. 8 U.S.C. §
23 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme
24 applies “at the Nation’s borders and ports of entry, where the Government must determine
25 whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*,
26 583U.S. 281, 287 (2018).

27 55. To the extent that the government now wants to reclassify Petitioner as detained
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1 under § 1225(b)(2)(A) after initially releasing her under § 1226(a), courts have found this to be
2 an impermissible post hoc rationalization. *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL
3 2371588, at *13–14 (S.D.N.Y. Aug. 13, 2025); *see, also, C.A.R.V. v. Wofford*, No. 1:25-CV-
4 01395 JLT SKO2025 U.S. Dist. LEXIS 216277, at *27 (E.D. Cal., Nov. 1, 2025) (“Respondents
5 fail to contend with the liberty interest created by the fact that the Petitioner in this case was
6 released on recognizance in 2021, prior to the manifestation of this interpretation.”), emphasis in
7 original.

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

11
12 **FACTUAL ALLEGATIONS**

13 ***Petitioner is Unlawfully Arrested at 630 Sansome***

14 57. Petitioner A.F.A.M. fled Colombia after suffering from egregious persecution and
15 entered the United States near the Texas border, where he was immediately detained. On
16 September 9, 2024, Respondents released Petitioner from custody, affixing an ankle monitor to
17 his body and giving him a check-in schedule with ICE in San Francisco. In doing so, they
18 expressly determined that he posed little if any flight risk or danger to the community and
19 released him accordingly.

20 58. Since his release in September, 2024, Petitioner has consistently complied with
21 all requirements imposed by ICE and ISAP, including appearing for all scheduled check-ins at
22 630 Sansome Street and using the ISAP phone application to take photographs and answer
23 questions from ICE officers. He has complied with all requirements.

24 59. On December 3, 2025, he was detained while attending an ICE check-in.
25 Subsequent to his arrest on December 3, Petitioner secured representation from immigration
26 attorney Nancy Hormachea. He will seek relief from removal based on a claim of severe
27 persecution in Colombia, including sexual abuse, mutilation, rape, and violent assaults
28

1 accompanied by homophobic slurs.

2 60. Despite his consistent compliance and lack of any change in circumstances, on
3 December 3, 2025, Respondents abruptly and without lawful justification deprived Petitioner of
4 his liberty.

5 61. Because Petitioner has never been determined to be a flight risk or danger to the
6 community, his ongoing detention is not related to either of the permissible justifications for
7 civil immigration litigation. His detention does not further any legitimate government interest.

8 62. Further, because of Petitioner's severe medical problems, associated with
9 uncontrolled diabetes and with HIV complications, detention poses a significant risk to his
10 health and safety. In addition, his experience suffering sexual assault and other
11 mistreatment, place him at heightened risk of harm in detention. His continued confinement is
12 not only unlawful but affirmatively endangers his physical and psychological well-being.

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

15 63. Petitioner is being deprived of his liberty without any permissible justification.
16 The government previously released him, having established that he did not pose sufficient risk
17 of flight or danger to the community to warrant detention.

18 64. None of that has changed.

19 65. Upon information and belief, Petitioner has no criminal record, and there is no
20 basis to believe that he poses any public-safety risk. Nor is Petitioner a flight risk. Indeed,
21 Petitioner is actively seeking to comply with his ICE and immigration obligations.

22
23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**

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

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

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

9 53. Accordingly, “[i]n the context of immigration detention, it is well-settled that
10 due process requires adequate procedural protections to ensure that the government’s asserted
11 justification for physical confinement outweighs the individual’s constitutionally protected
12 interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinermon*,
13 494 U.S. at 127 (Generally, “the Constitution requires some kind of a hearing *before* the State
14 deprives a person of liberty or property.”). In the immigration context, for such hearings to
15 comply with due process, the government must bear the burden to demonstrate, by clear and
16 convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See*
17 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th
18 775, 785, 786 (9th Cir. 2024).

19 54. Petitioners’ re-detention without a pre-deprivation hearing violated due process.
20 Long after deciding to release Petitioner from custody—first with an ankle monitor, then with
21 only an ISAP and in-person check-in schedule—Respondents re-detained Petitioner with no
22 notice, no explanation of the justification of his re-detention, and no opportunity to contest his
23 re-detention before a neutral adjudicator before being taken into custody. Petitioner has a
24 profound personal interest in his liberty. Because he received no procedural protections, the
25 risk of erroneous deprivation is high. And the government has no legitimate interest in
26 detaining Petitioner without a hearing; bond hearings are conducted as a matter of course in
27 immigration proceedings. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D.
28

1 Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020)
2 (“the government’s concern that delay in scheduling a hearing could exacerbate flight risk or
3 danger is unsubstantiated in light of petitioner’s strong family ties and his continued
4 employment during the pandemic as an essential agricultural worker”).

5
6 **SECOND CLAIM FOR RELIEF**

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

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

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

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

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

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

PRAYER FOR RELIEF

Petitioner respectfully request that this Court:

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

Date: December 6, 2025

Respectfully Submitted,

/s/ Jonathan Abel
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Attorney for Petitioner

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

I, Jonathan Abel, am submitting this verification on behalf of the Petitioner because I am one of

1 Petitioner's attorneys and Petitioner is in custody. I hereby verify that the factual statements
2 made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my
3 knowledge.

4
5 Executed on December 6th, at Oakland, California.

6 /s/Jonathan Abel

7 Jonathan Abel

8 Attorney for Petitioner
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