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9 UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Navareh Aein,
12 Petitioner-Plaintiff,

13 v.

14 John CANTU, Field Office Director of Phoenix
15 Office of Detention and Removal, U.S. Immigrations
16 and Customs Enforcement; U.S. Department of
17 Homeland Security;

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

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

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

25 Respondents-Defendants.
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Case No.



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

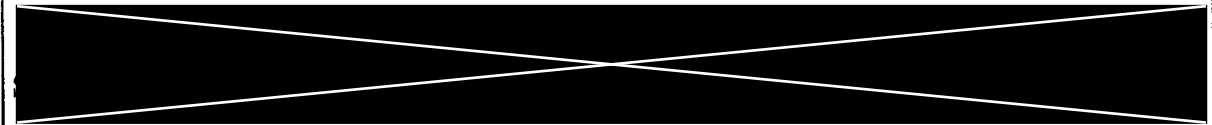
Challenge to Unlawful
Incarceration Under Color of
Immigration Detention Statutes;
Request for Declaratory and
Injunctive Relief

INTRODUCTION

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2 1. Petitioner, Navareh Aein (“Petitioner”), Agency number , by and through her
3 undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for
4 declaratory and injunctive relief to prevent the U.S. Department of Homeland Security (DHS),
5 U.S. Immigration and Customs Enforcement (ICE) from continuing to detain her in an
6 immigration detention pending resolution of her removal case without first providing her a due
7 process hearing where the government bears the burden to demonstrate to a neutral adjudicator
8 that she is a danger to the community or a flight risk by clear and convincing evidence.

9 2. Petitioner also seeks her immediate release from detention in Florence Service Processing
10 Center Facility where ICE unlawfully re-detained and continues to imprison her without a hearing
11 and without demonstrating that she is a flight risk or danger to the community, as required by the
12 Due Process clause of the Fifth Amendment.

13 3. As background, Petitioner and her husband fled Iran to seek asylum. An Immigration
14 Judge granted them with Withholding of Removal under the Convention Against Torture on
15 February 15, 2001. As such they cannot be removed to Iran. The petitioner and her husband have
16 no criminal history. They have two United States children, the youngest being only sixteen years
17 old.



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20 *Exhibit A.* The Petitioner and her husband have been detained since, over one hundred and sixty
21 days.

22 5. Pursuant to INA § 241(a)(6), 8 C.F.R. §1241.14(f), the Department of Homeland Security
23 must remove or release a detained alien within 90 days of a final order of removal when removal
24 is not reasonably foreseeable.

25 6. In recent months, ICE has engaged in highly publicized arrests of individuals who
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1 presented no flight risk or danger, often with no prior notice that anything regarding their status
2 was amiss or problematic, whisking them away to faraway detention centers without warning.¹

3 7. The arresting ICE officers did not articulate a reason as to why the Petitioner was
4 being detained, such as how she is now a flight risk, a danger to her community, or for any
5 purported violations of the conditions associated with her release from 2000.

6 8. Indeed, there have been no changes in the Petitioner's circumstances. For the
7 past two decades that the Petitioner has lived in freedom, she has been a devoted wife and mother
8 to her sons, one of which is a minor.

9 9. By statute and regulation, as interpreted by the Board of Immigration Appeals (BIA), ICE
10 has the authority to re-arrest a noncitizen and revoke their bond, only where there has been a
11 change in circumstances since the individual's release. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9);
12 *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in
13 litigation that any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d
14 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
15 2018) (emphasis added). That authority, however, is proscribed by the Due Process Clause
16 because it is well-established that individuals released from incarceration have a liberty interest
17 in their freedom. In turn, to protect that interest, on the particular facts of Amezcua-Penaloza's
18 case, due process requires notice and a hearing, *prior to any re-arrest*, at which she is afforded
19 the opportunity to advance her arguments as to why her release should not be revoked.

20 10. That basic principle—that individuals placed at liberty are entitled to process before the
21

22 ¹ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y.
23 Times (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
24 (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the
25 Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025),
<https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html>
26 (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein,
27 *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico
28 (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington,
Virginia and transferred to Texas).

1 government imprisons them—has particular meaning here, where the Petitioner’s detention was
2 *already* found to be unnecessary to serve its purpose. An Immigration Judge previously granted
3 her Withholding of Removal.

4 11. Therefore, the government would need to prove the Respondent’s removal is reasonably
5 foreseeable. ICE’s re-arrest of the Petitioner on June 23, 2025, violated these regulations, laws,
6 and due process.

7 **CUSTODY**

8 12. The Petitioner is currently in the custody of ICE at the Florence Service Processing Center
9 in Florence, Arizona. The Petitioner is therefore in “‘custody’ of [the DHS] within the meaning
10 of the habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963).

11 **JURISDICTION**

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

17 **REQUIREMENTS OF 28 U.S.C. § 2243**

18 14. The Court must grant the petition for writ of habeas corpus or issue an order to show
19 cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C.
20 § 2243. If an OSC is issued, the Court must require Respondents to file a return “within *three*
21 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed.” *Id.* (emphasis
22 added).

23 15. Courts have long recognized the significance of the habeas statute in protecting
24 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most
25 important writ known to the constitutional law of England, affording as it does a *swift* and
26 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
27 400 (1963) (emphasis added).

28 16. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs

1 courts to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious
2 hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
3 omitted). The Ninth Circuit warned against any action creating the perception “that courts are
4 more concerned with efficient trial management than with the vindication of constitutional
5 rights.” *Id.*

6 VENUE

7 17. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
8 Respondents are employees or officers of the United States, acting in their official capacity;
9 because a substantial part of the events or omissions giving rise to the claim occurred in the
10 District of Arizona. The Petitioner is under the jurisdiction of the Phoenix ICE Field Office, ICE
11 unlawfully re-arrested her in her Phoenix, Arizona neighborhood, in violation of 8 U.S.C. §
12 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981), and she is
13 being imprisoned in Arizona. There is no real property involved in this action.

14 EXHAUSTION OF ADMINISTRATIVE REMEDIES

15 18. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
16 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
17 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
18 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
19 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
20 quotation marks omitted)). The Petitioner asserts that exhaustion should be waived because
21 administrative remedies are (1) futile and (2) her continued detention results in irreparable harm.

22 19. No statutory exhaustion requirements apply to the Petitioners claim of unlawful custody
23 in violation of her due process rights, and there are no administrative remedies that she needs to
24 exhaust. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940
25 (1999) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction
26 to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D.
27 Cal. 2000) (same).

28 20. Moreover, Petitioner was denied bond on November 21, 2025, the Immigration Judge

1 citing lack of jurisdiction and in the alternative flight risk. Therefore, Petitioner has exhausted all
2 remedies available. *Exhibit B*.

3 **PARTIES**

4 21. The Petitioner is a citizen and national of Iran who entered the U.S. in 2000, and has
5 remained in the country since.

6 22. Respondent John CANTU is the Field Office Director of ICE, in Phoenix, Arizona, and
7 is named in his official capacity. ICE is the component of the DHS that is responsible for detaining
8 and removing noncitizens according to immigration law and oversees custody determinations. In
9 his official capacity, he is the legal custodian of the Petitioner.

10 23. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
11 capacity. Among other things, ICE is responsible for the administration and enforcement of the
12 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
13 he is the legal custodian of the Petitioner.

14 24. Respondent Kristi NOEM is the Secretary of DHS and is named in her official capacity.
15 DHS is the federal agency encompassing ICE, which is responsible for the administration and
16 enforcement of the INA and all other laws relating to the immigration of noncitizens. In her
17 capacity as Secretary, Respondent Noem has responsibility for the administration and
18 enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland
19 Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. §
20 1103(a). Respondent Noem is the ultimate legal custodian of the Petitioner.

21 25. Respondent Pam BONDI is the Attorney General of the United States and the most senior
22 official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the
23 authority to interpret the immigration laws and adjudicate removal cases. The Attorney General
24 delegates this responsibility to the Executive Office for Immigration Review (EOIR), which
25 administers the immigration courts and the BIA.

26 **STATEMENT OF FACTS**

27 26. Petitioner is a citizen and national of Iran who entered the U.S. in 2000, and has remained
28 in the United States since.

1 27. On February 15,2001, she and her husband were granted Withholding of Removal under
2 the Convention Against Torture. *Exhibit C*.

3 28. On June 23, 2025, ICE detained the Petitioner and her husband in their neighborhood.
4 upon their arrest, ICE officers did not articulate why the Petitioner was now a flight risk, a danger
5 to her community, or how they had violated any conditions of their release.

6 29. This is because ICE cannot make such a statement. Over the two decades that the
7 Petitioner has lived in freedom, she has been a devoted wife and mother to her sons. She is
8 gainfully employed. She has had no criminal history.

9 30. Petitioner through counsel has asked ICE to release her through counsel and a request for
10 parole. ICE has denied multiple requests. Additionally, Petitioner was denied bond due to lack of
11 jurisdiction and in the alternative flight risk, on November 21, 2025. Intervention from this Court
12 is therefore required to ensure that the Petitioner is released from her current custody based on
13 her unlawful arrest, returned to her home in Phoenix, Arizona, where ICE can then provide her
14 with a hearing before determining to re-arrest her pursuant to the Due Process Clause of the Fifth
15 Amendment.

16 LEGAL BACKGROUND

17 **Right to Release After 90 days**

18 1. The Petitioner's particular circumstances, pursuant to INA § 241(a)(6), 8 C.F.R.
19 §1241.14(f), the Department of Homeland Security must remove or release a detained alien within
20 90 days of a final order of removal when removal is not reasonably foreseeable.

21 **Petitioner's Protected Liberty Interest in Her Conditional Release**

22 2. Petitioner's liberty from immigration custody is protected by the Due Process Clause:
23 "Freedom from imprisonment—from government custody, detention, or other forms of physical
24 restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
25 *Davis*, 533 U.S. 678, 690 (2001).

26 3. Since 2000, the Petitioner has exercised that freedom under ICE's order releasing her
27 from custody. As she was released from custody, she retains a weighty liberty interest under the
28 Due Process Clause of the Fifth Amendment in avoiding unlawful re-incarceration. *See Young v.*

1 *Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973);
2 *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972).

3 4. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
4 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of
5 her parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
6 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
7 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live
8 up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
9 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
10 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
11 valuable and must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S.
12 at 482.

13 5. This basic principle—that individuals have a liberty interest in their conditional release—
14 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
15 *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole
16 program created to reduce prison overcrowding have a protected liberty interest requiring pre-
17 deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released
18 on felony probation have a protected liberty interest requiring pre-deprivation process). As the
19 First Circuit has explained, when analyzing the issue of whether a specific conditional release
20 rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the
21 specific conditional release in the case before them with the liberty interest in parole as
22 characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010)
23 (internal quotation marks and citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864
24 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
25 that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
26 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
27 and *Morrissey*, 408 U.S. at 482).

28 6. In fact, it is well-established that an individual maintains a protectable liberty interest even

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

8 7. Here, when this Court “compar[es] the specific release in the Petitioner’s with the liberty
9 interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly similar. *See*
10 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him to do
11 a wide range of things open to persons” who have never been in custody or convicted of any
12 crime, including to live at home, work, care for her children, her U.S. citizen sons for whom she
13 cares for, and “be with family and friends and to form the other enduring attachments of normal
14 life.” *Morrissey*, 408 U.S. at 482.

15 **Petitioner’s Private Interest in Her Liberty is Profound**

16 8. Under *Morrissey* and its progeny, individuals conditionally released from serving a
17 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In addition,
18 the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of physical
19 confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles her to
20 constitutional due process before she is re-incarcerated—apply with even greater force to
21 individuals like the Petitioner, who have been released pending civil removal proceedings, rather
22 than parolees or probationers who are subject to incarceration as part of a sentence for a criminal
23 conviction. Parolees and probationers have a diminished liberty interest given their underlying
24 convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S.
25 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts have held that the
26 parolee cannot be re-arrested without a due process hearing in which they can raise any claims
27 they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*,

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1 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, the Petitioner retains a truly weighty liberty
2 interest even though she is under conditional release.

3 9. Thus, it is clear that there is a profound private interest at stake in this case, which must
4 be weighed heavily when determining what process she is owed under the Constitution. *See*
5 *Mathews*, 424 U.S. at 334-35.

6
7 **The Government's Interest in Re-Incarcerating the Petitioner Without a Hearing is Low**
8 **and the Burden on the Government to Refrain from Re-Arresting Her Unless and Until She**
9 **is Provided a Hearing That Comports with Due Process is Minimal**

10 10. The government's interest in detaining Petitioner without a due process hearing is low,
11 and when weighed against the Petitioner's significant private interest in her liberty, the scale tips
12 sharply in favor of enjoining Respondents to release Petitioner from her unlawful custody and
13 refrain from re-arresting Petitioner unless and until the government demonstrates by clear and
14 convincing evidence that she is a flight risk or danger to the community. As immigration detention
15 is civil, it can have no punitive purpose. The government's only interests in holding an individual
16 in immigration detention can be to prevent danger to the community or to ensure a noncitizen's
17 appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the
18 government cannot plausibly assert that it has any lawful basis for detaining Petitioner. She has
19 lived at liberty complying with the conditions of her release since 2000 while acting as the
20 financial caretaker for her two sons. She is a dedicated mother and has no criminal history.

21 11. An Immigration Judge found he did not have jurisdiction to grant a bond and in the
22 alternative that Petitioner was a flight risk on November 21, 2025, simply because the government
23 is seeking a third country for removal.

24 12. It is difficult to see how the government's interest in ensuring her presence at the moment
25 of removal has materially changed since she was released in 2001, when she was granted
26 withholding of removal. The government's interest in detaining the Petitioner at this time is
27 therefore low. That ICE has a new policy to make a minimum number of arrests each day under
28

1 the new administration does not constitute that the Petitioner will be removed in the reasonable
2 foreseeable future.²

3 13. As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
4 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
5 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996. Petitioner has withholding of removal, which
6 means that she will remain in custody until the agency finds a third safe country. ICE’s unlawful
7 action of placing her in custody is more of a financial burden than releasing her and providing
8 any pre-custody hearing before any future re-arrest occurs.

9 14. Releasing Petitioner from unlawful custody and enjoining Petitioner re-arrest until ICE
10 (1) moves for a bond re-determination before a natural adjudicator and (2) demonstrates by clear
11 and convincing evidence that Petitioner is a flight risk or danger to the community is far *less*
12 costly and burdensome for the government than keeping her detained. g to a total daily cost of
13 \$6.5 million.” *Hernandez*, 872 F.3d at 996.

14 **Without a Due Process Hearing Prior to Any Re-Arrest, the Risk of an Erroneous**
15 **Deprivation of Liberty is High, and Process in the Form of a Constitutionally Compliant**
16 **Hearing Where ICE Carries the Burden Would Decrease That Risk**

17 15. Due process also requires consideration of alternatives to detention at any custody
18 redetermination hearing that may occur. The primary purpose of immigration detention is to
19 ensure a noncitizen’s appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.
20 Detention is not reasonably related to this purpose if there are alternatives to detention that could
21 mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to
22 detention must be considered in determining whether Petitioner’s re-incarceration is warranted.

23 ² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January
24 26, 2025), available at: [https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-
25 raids-trump-quota/](https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/); “Stephen Miller’s Order Likely Sparked Immigration Arrests And Protests,”
26 *Forbes* (June 9, 2025), [https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-
27 order-likely-sparked-immigration-arrests-and-protests/](https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/) (“At the end of May 2025, ‘Stephen
28 Miller, a senior White House official, told Fox News that the White House was looking for ICE to
arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than
66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a
day,’ reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests
in a calendar year.”).

1 **FIRST CAUSE OF ACTION**

2 **Procedural Due Process**

3 **U.S. Const. amend. V**

4 16. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the
5 allegations in all the preceding paragraphs.

6 17. The Due Process Clause of the Fifth Amendment forbids the government from depriving
7 any "person" of liberty "without due process of law." U.S. Const. amend. V.

8 18. Petitioner has a vested liberty interest in her lawful conditional release. Due Process does
9 not permit the government to strip her of that liberty without a hearing before this Court. *See*
10 *Morrissey*, 408 U.S. at 487-488.

11 19. The Court must therefore order that ICE release Petitioner from her current unlawful
12 custody.

13 20. Prior to any re-arrest, the government must provide her with a hearing before a neutral
14 adjudicator. At the hearing, the neutral adjudicator would evaluate, *inter alia*, whether clear and
15 convincing evidence demonstrates, taking into consideration alternatives to detention, that
16 Petitioner is a danger to the community or a flight risk, such that her re-incarceration is warranted.
17 During any custody redetermination hearing that occurs, this Court or, in the alternative, a neutral
18 adjudicator must consider alternatives to detention when determining whether Petitioner's re-
19 incarceration is warranted.

20 **SECOND CAUSE OF ACTION**

21 **Substantive Due Process**

22 **U.S. Const. amend. V**

23 21. Petitioner re-alleges and incorporates herein by reference, as is set forth fully herein, the
24 allegations in all the preceding paragraphs.

25 22. The Due Process Clause of the Fifth Amendment forbids the government from depriving
26 individuals of their right to be free from unjustified deprivations of liberty. U.S. Const. amend.
27 V.

28 23. Petitioner has a vested liberty interest in her conditional release. Due Process does not

1 permit the government to strip her of that liberty without it being tethered to one of the two
2 constitutional bases for civil detention: to mitigate against the risk of flight or to protect the
3 community from danger.

4 24. Since 2000, Petitioner has fully complied with the conditions of release imposed on her
5 by ICE, thus demonstrating that she is neither a flight risk nor a danger.

6 25. For these reasons, Petitioner's continued unlawful custody and any subsequent re-arrest
7 without first being provided a hearing would violate the Constitution.

8 26. The Court must therefore order that she be released from custody.

9 27. The Court must order the government to not re-arrest her in any subsequent action
10 without a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator would
11 evaluate, *inter alia*, whether clear and convincing evidence demonstrates, taking into
12 consideration alternatives to detention, that Petitioner is a danger to the community or a flight
13 risk, such that her re-incarceration is warranted. During any custody redetermination hearing that
14 occurs, this Court or, in the alternative, a neutral adjudicator must consider alternatives to
15 detention when determining whether Petitioner's re-incarceration is warranted.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the Petitioner prays that this Court grant the following relief:

- 18 (1) Assume jurisdiction over this matter;
- 19 (2) Declare that ICE's June 23, 2025, apprehension and detention of Petitioner
20 was an unlawful exercise of authority because the ICE officer provided no
21 reason that she presents a danger to the community or is flight risk;
- 22 (3) Order ICE to immediately release Petitioner from her unlawful detention;
- 23 (4) Enjoin re-arresting Petitioner unless and until a hearing can be held before a
24 neutral adjudicator to determine whether her re-incarceration would be lawful
25 because the government has shown that she is a danger or a flight risk by clear
26 and convincing evidence;
- 27 (5) Declare that Petitioner cannot be re-arrested unless and until she is afforded a
28 hearing on the question of whether her re-incarceration would be lawful—i.e.,

whether the government has demonstrated to a neutral adjudicator that she is a danger or a flight risk by clear and convincing evidence;

(6) Award reasonable costs and attorney fees; and

(7) Grant such further relief as the Court deems just and proper.

Dated: December 11, 2025

Respectfully submitted,

/s/ Bianca L. Torres

Bianca L. Torres, Esq.
Attorney for Petitioner

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 with the Petitioner the events described in the Petition. 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 this December 11, 2025, in Phoenix, AZ.

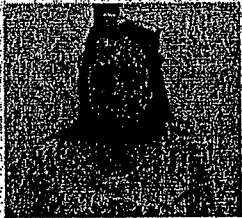


/s/ Bianca L. Torres

Bianca L. Torres, Esq.
Attorney for Petitioner

Exhibit A

Uploaded on: 11/20/2025 at 12:20:45 (Mountain Standard Time) Base City: EL

U.S. Department of Homeland Security Subject ID: [REDACTED] Record of Deportable/Inadmissible Alien

Family Name (CAPS) AEIN, NAYEREH BITA		First	Middle	Sex F	Hair BRO	Eyes BRO	Complexion LBR
Country of Citizenship IRAN	Passport Number and Country of Issue [REDACTED]	File Number [REDACTED]		Height 63	Weight 135	Occupation Unemployed	
U.S. Address [REDACTED]				Scars and Marks See Narrative			
Date, Place, Time, and Manner of Last Entry 02/15/2020 Unknown Time, BOS, DV-Unknown or Not Reported.			Passenger Boarded at	E.B.I. Number [REDACTED]			
Number, Street, City, Province (State) and Country of Permanent Residence				Method of Location/Apprehension N			
Date of Birth [REDACTED]	Age: 52	Date of Action 06/23/2025	Location Code PHO/PHO	At/Near See I-831		Date/Time 06/23/2025 13:21	
City, Province (State) and Country of Birth Tehran, IRAN		AR <input checked="" type="checkbox"/>	Form: (Type and No.) Lited <input type="checkbox"/> Not Lited <input type="checkbox"/>	By J8089 HARRISTHAL			
MIV Issuing Post and MIV Number		Social Security Account Name		Status of Entry		Status When Found	
Date Visa Issued		Social Security Number [REDACTED]		Length of Time Illegally in U.S.			
Immigration Record POSITIVE - See Narrative			Criminal Record				
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate) FAKAZI, AMIN NATIONALITY: IRAN			Number and Nationality of Minor Children None				
Father's Name, Nationality, and Address, if Known AEIN, MASOUD NATIONALITY: IRAN		Mother's Present and Maiden Name, Nationality, and Address, if Known ADJESMAZI, PARVIZ NATIONALITY: UNITED STATES					
Monies Due/Property in U.S. Not in Immediate Possession None Claimed		Fingerprinted? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Systems Checks See Narrative	Charge Code Word(s) See Narrative			
Name and Address of (Last/Current) U.S. Employer		Type of Employment Unemployed or Retired	Salary	Employed from/to			
Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.) IRAN [REDACTED] Left Index fingerprint Right Index fingerprint							
							
SCARS, MARKS AND TATTOOS None Indicated - None							
IMMIGRATION RECORD History was expected but not provided							
Subject Health Status ... (CONTINUED ON I-831)							
Alien has been advised of communication privileges 6-23-25 / AA (Date/Initials)			J8089 HARRISTHAL Deportation Officer (Signature and Title of Immigration Officer)				
Distribution: A. File Copies: State			Receipt (Subject and Documents) (Report of Interview) Officer: J8089 HARRISTHAL on: June 23, 2025 Disposition: Other Examining Officer: BLANCO, J. D03771				

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Continuation Page for Form I-213

Alien's Name: AEIN, NAYEREH BITA	File Number: [REDACTED] Event No: [REDACTED]	Date: 06/23/2025
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The subject claims good health.

Current Criminal Charges

06/23/2025 - 8 USC 1227 - DEPORTABLE ALIEN

Previous Criminal History

Subject has no criminal history

RECORDS CHECKED

CTS Pos
EARM Pos
IAFIS Pos
NCIC Neg
TECS Pos

AT/NEAR

7th Street and Utopia Phoenix, AZ

Record of Deportable/Excludable Alien:

ERO Phoenix JOG 3, working along with HSI Agents received a lead from a Head Quarters Iranian target list identifying the subjects as having removal orders from the United States. Record checks confirmed the subject is a citizen of Iran, born in Iran on [REDACTED]. On June 23, 2025, Fug officers/HSI Agents were doing surveillance at Nayeresh Aein's last known address of 437 E Wascott Dr, Phoenix, AZ. Fug officers observed a subject matching Aein's description walk out of her residence and get in her husband's registered vehicle, a BMW SUV tag # [REDACTED]. An adult male was also observed get into the driver's seat. A vehicle stop was conducted. After identifying ourselves, the driver stated his name was Amin and provided an Arizona ID showing the name Amin Fayazi. After confirming he was our target, Fayazi was taken into custody without incident. The passenger stated her name was Nayeresh Aein, who is also a target on the list of subjects having removal orders from the United States. She was also taken into custody without incident. Fug Officer transported them to the Phoenix ICE/ERO Field Office for further processing.

PROCESSING ENCOUNTER:

Upon arrival at the Phoenix Field Office, fingerprints were run through the Automated Fingerprint Identification System (AFIS) to confirm identity and immigration/criminal history. Record checks and ten-print taken confirmed the identity of Aein.

IMMIGRATION HISTORY:

Record checks confirmed Aein is not a citizen or national of the United States. She is a native and citizen of Iran. Aein was ordered removed by an Immigration Judge on 02/15/2001. Record checks indicate Aein has no pending applications.

CRIMINAL HISTORY:

Aein has no criminal history.

Signature
J8089 HARRISTHAL

Title:
Deportation Officer

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Continuation Page for Form I-213

Alien's Name AEIN, NAYEREH BITA	File Number XXXXXXXXXX	Date 06/23/2025
Event No. XXXXXXXXXX		

HEALTH ASPECTS:

Aein appears to be in good health, she claims to have no medical issues.

GANG AFFILIATION:

Aein claims no gang affiliation.

MILITARY SERVICE:

Aein claimed no service in the Armed Forces of the United States.

COMMUNICATION PRIVILEGES:

Aein accepted a free phone call.

CONSULAR NOTIFICATION:

Aein was advised of her right to communicate with a consular officer from her country of citizenship, which Aein declined.

CASE DISPOSITION:

Aein was processed as a custody re-determination.

Other Identifying Numbers

ALIEN- ~~XXXXXXXXXX~~

Signature
J8089 HARRISTHAL

Title
Deportation Officer

EOIR - 6 of 14

Exhibit B



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ELOY IMMIGRATION COURT

Respondent Name:

AEIN, NAVAREH

To:

Torres, Bianca L
3636 N. Central Avenue
Suite 1000
Phoenix,, AZ 85012-3328

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

11/21/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because
Lack of jurisdiction. Alternatively, significant flight risk.

Granted. It is ordered that Respondent be:
 released from custody on his own recognizance.
 released from custody under bond of \$
 other:

Other:

John Cortes

Immigration Judge: CORTES, JOHN 11/21/2025

Appeal:	Department of Homeland Security:	<input checked="" type="checkbox"/>	waived	<input type="checkbox"/>	reserved
	Respondent:	<input type="checkbox"/>	waived	<input checked="" type="checkbox"/>	reserved

Appeal Due: 12/22/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : AEIN, NAVAREH | A-Number : 

Riders:

Date: 11/21/2025 By: HARCHUT, MARGARET ANN, Court Staff

Exhibit C

IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

In the Matter of:

Case No: 

NAYEREH, AEIN

Applicant

IN ASYLUM-ONLY PROCEEDINGS

On Behalf of the Applicant

On Behalf of the INS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Feb 15, 2001 and is issued solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

ORDER: It is hereby ordered that the applicant's request for:

1. Asylum is:

- Granted
- Withdrawn
- Denied

2. Withholding of Removal under INA 241(b)(3) is:

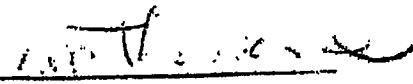
- Granted
- Withdrawn
- Denied

3. Withholding of Removal under the Convention Against Torture is:

- Granted
- Withdrawn
- Denied

4. Deferral of Removal under the Convention Against Torture is granted.

Date: Feb 15, 2001


JILL H. DUFRESNE
Immigration Judge

APPEAL: WAIVED
APPEAL DUE BY:

3/19/01