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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

7 Qiong-Ling HE,

8 Petitioner,

Case No.

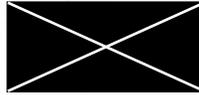
9 v.

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

10 Todd LYONS, Acting Director,  
Immigration and Customs Enforcement; Sergio  
11 ALBARRAN, Field Office Director of  
Enforcement and Removal Operations, San  
12 Francisco Field Office, Immigration and  
Customs Enforcement; Kristi NOEM,  
13 Secretary, U.S. Department of Homeland  
Security; U.S. DEPARTMENT OF  
14 HOMELAND SECURITY; Christoper  
CHESTNUT, Warden, California City  
15 Correctional Facility; Minga WOFFORD,  
Facility Administrator of Mesa Verde ICE  
16 Processing Center; Tonya ANDREWS, Facility  
Administrator of the Golden State Annex  
17 Detention Facility; and Pamela BONDI, U.S.  
Attorney General; EXECUTIVE OFFICE FOR  
18 IMMIGRATION REVIEW,

19 Respondents.

**PETITIONER'S DHS NUMBER:**



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**INTRODUCTION**

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

9 2. ICE found that Petitioner was neither a flight risk nor danger to the community when  
10 it previously released Petitioner from ICE detention on or about May 4, 2020 on an order of  
11 supervision. Since then, Petitioner has fully abided by the order’s terms, including attending  
12 regularly scheduled check-ins with ICE.

13 3. On May 29, 2025, Ms. He attended her last check-in appointment with ICE.

14 4. On December 12, 2025, Ms. He received a text message directing her to report to  
15 ICE on December 15, 2025, at 8:00 a.m. On the same day, undersigned counsel contacted ICE  
16 by electronic mail to inquire about its intention to re-detain Petitioner and has received no  
17 response.

18 5. Numerous credible reports demonstrate that, across the country, including in San  
19 Francisco and other Bay Area cities, individuals are being called in for ISAP check-ins or other  
20 check-ins with ICE and then arrested by ICE.

21 6. On information and belief, many of those individuals who appeared as instructed at  
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1 ICE check-ins in San Francisco and other Bay Area cities were incarcerated or re-incarcerated by  
2 ICE.<sup>1</sup>

3 7. In recent months, ICE has engaged in highly publicized arrests of individuals who  
4 presented no flight risk or danger, often with no prior notice that anything regarding their status  
5 was amiss or problematic, whisking them away to faraway detention centers without warning.<sup>2</sup>

6 8. In light of credible reports of ICE re-incarcerating individuals at their ISAP check-  
7 ins, it is highly likely Ms. He will be arrested and incarcerated at this appointment, despite the  
8 fact that Ms. He is neither a flight risk nor a danger to the community. If he is arrested, he faces  
9 the very real possibility of being transferred outside of Northern California with little or no  
10 notice, far away from his family and two minor U.S. citizen children

11 9. Respondents cannot re-arrest Petitioner without affording her due process rights  
12 under the Fifth Amendment to the U.S. Constitution. Respondents also cannot re-arrest  
13 Petitioner without abiding by the Administrative Procedure Act, and the *Accardi* doctrine, which  
14 obligates administrative agencies to follow their own rules, procedures, and instructions.

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17 <sup>1</sup> “73-year-old Bay Area woman is detained by ICE after more than a decade of check-ins,” NBC News (Sept. 17,  
18 2025), <https://www.nbcnews.com/news/us-news/california-grandmother-detained-ice-check-ins-immigration-rcna231685>; “ICE confirms arrests made in South San Jose,” NBC Bay Area (June 4, 2025),  
19 <https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> (“The Rapid Response Network, an  
20 immigrant watchdog group, said immigrants are being called for meetings at ISAP – Intensive Supervision;  
McKinnon de Kuyper, Mahmoud Khalil’s Lawyers Release Video of His Arrest, N.Y. Times (Mar. 15, 2025),  
available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html> (Mahmoud  
21 Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University PhD student  
22 detained by federal agents,” CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html> (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh  
23 Gerstein, Trump is seeking to deport another academic who is legally in the country, lawsuit says, Politico (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).

24 <sup>2</sup> See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,  
2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>  
(Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University  
PhD student detained by federal agents,” CNN (Mar. 28, 2025).

1 Petitioner brings this action for injunctive, habeas, and declaratory relief ordering Respondents to  
2 release her.

3 10. 8 U.S.C. § 1231(a)(2)(A) mandates detention during the so-called “removal period,”  
4 or 90 days following entry of a final order of removal. If an individual “does not leave or is not  
5 removed within the removal period,” then he or she “shall be subject to supervision under  
6 regulations prescribed by the Attorney General.” Id. § 1231(a)(3).

7 11. Under *Zadvydas v. Davis*, 533 U.S. 678, 701, courts typically presume that six  
8 months of post-removal order detention is reasonable, after which a non-citizen can bring a  
9 habeas petition to seek release, showing “good reason to believe” there is no significant  
10 likelihood of removal.

11 12. Petitioner’s final administrative order was on February 4, 2020 when the Immigration  
12 Judge entered an order of removal. The six-month post order removal period cannot be reset.  
13 courts have found that the re-detention of a petitioner does not reset the six-month detention  
14 period established in *Zadvydas*. See *Phong Thanh Nguyen v. Scott*, No. 25-cv-01389, 2025 WL  
15 2419288, at 13 (W.D. Wash. Aug. 21, 2025).

16 13. Therefore, at a minimum, in order to lawfully re-arrest Petitioner, the  
17 government must first establish, by clear and convincing evidence and before a neutral decision  
18 maker, that she is a danger to the community or a flight risk, such that her re-incarceration is  
19 necessary.

## 20 JURISDICTION

21 14. Ms. He is subject to check-ins like the appointment scheduled on November 19, 2025.  
22 Such stringent requirements “impose[] conditions which significantly confine and restrain [her]  
23 freedom; this is enough to keep [her] in the ‘custody’ of [the DHS] within the meaning of the  
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1 habeas corpus statute.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). *See also Rodriguez v.*  
2 *Hayes*, 591 F.3d 1105, 1118 (“Rodriguez I”) (holding that comparable supervision requirements  
3 constitute “custody” sufficient to support habeas jurisdiction).

4 15. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331,  
5 general federal question jurisdiction; 5 U.S.C. § 701, et seq., All Writs Act; 28 U.S.C. § 2241, et  
6 seq., habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the  
7 United States Constitution (Suspension Clause); Art. 3 of the United States Constitution, the  
8 common law, and the Administrative Procedure Act, 5 U.S.C. § 551, et seq.

9 **VENUE**

10 16. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the  
11 Respondents are employees or officers of the United States, acting in their official capacity, a  
12 substantial part of the events or omissions giving rise to the claim occurred in the Northern  
13 District of California, Ms. He is under the jurisdiction of the San Francisco ICE Field Office,  
14 which is in the jurisdiction of the Northern District of California, and there is no real property  
15 involved in this action.

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

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

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

#### 4 EXHAUSTION OF ADMINISTRATIVE REMEDIES

5 19. For habeas claims, exhaustion of administrative remedies is prudential, not  
6 jurisdictional. *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion  
7 requirement if “administrative remedies are inadequate or not efficacious, pursuit of  
8 administrative remedies would be a futile gesture, irreparable injury will result, or the  
9 administrative proceedings would be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000  
10 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should  
11 be waived because administrative remedies are (1) futile and (2) her continued detention results  
12 in irreparable harm.

13 20. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful  
14 custody in violation of her due process rights, and there are no administrative remedies that she  
15 needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th  
16 Cir. 1995) (finding exhaustion to be a “futile exercise because the agency does not have  
17 jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098,  
18 1099 (C.D. Cal. 2000) (same).

#### 19 PARTIES

20 21. Petitioner Qiong-Ling He is a citizen of China who has a final removal order  
21 issued by the Immigration Judge on February 4, 2020. She is currently subject to an Order of  
22 Supervision.

1           22.     Respondent Todd Lyons is the Acting Director of Immigration and Customs  
2 Enforcement. He is named in his official capacity.

3           23.     Respondent Sergio Albarran is the Director of the San Francisco Field Office of  
4 ICE's Enforcement and Removal Operations division. As such, Sergio Albarran is Petitioner's  
5 immediate custodian and is responsible for Petitioner's detention and removal. He is named in  
6 his official capacity.

7           24.     Respondent Kristi Noem is the Secretary of the Department of Homeland  
8 Security. She is responsible for the implementation and enforcement of the Immigration and  
9 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms.  
10 Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

11          25.     Respondent Department of Homeland Security (DHS) is the federal agency  
12 responsible for implementing and enforcing the INA, including the detention and removal of  
13 noncitizens.

14          26.     Respondent Pamela Bondi is the Attorney General of the United States. She is  
15 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
16 and the immigration court system it operates is a component agency. She is sued in her official  
17 capacity.

18          27.     Respondent Executive Office for Immigration Review (EOIR) is the federal  
19 agency responsible for implementing and enforcing the INA in removal proceedings, including  
20 for custody redeterminations in bond hearings.

21          28.     Respondent Tonya Andrews is the facility administrator at the Golden State  
22 Annex Detention Facility in McFarland, California. If Petitioner is arrested and detained there,  
23 she will have immediate physical custody of Petitioner. She sued in her official capacity.

1 29. Respondent Christopher Chestnut is the warden of the California City Correctional  
2 Facility in California City, California. If Petitioner is arrested and detained there, he will have  
3 immediate physical custody of Petitioner. He is sued in his official capacity.

4 30. Respondent Minga Wofford is the Facility Administrator of Mesa Verde ICE  
5 Processing Center. If Petitioner is arrested and detained there, she will have immediate physical  
6 custody of Petitioner. She is sued in her official capacity.

7 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

8 31. Petitioner is a thirty-three-year-old native and citizen of the People's Republic of  
9 China. She entered the United States over six years ago on September 19, 2019 and has resided  
10 continuously in the United States since that time.

11 32. Petitioner entered the United States without inspection on or about September 19,  
12 2019, near the United States-Mexico border. Upon entry, she was apprehended by immigration  
13 officials, detained, and referred for a credible fear interview. The asylum officer determined that  
14 Petitioner established a reasonable possibility of past or future persecution.

15 33. Petitioner fears returning to China because she has suffered past persecution and  
16 faces a well-founded fear of future persecution on account of her Christian faith. In China,  
17 Petitioner participated in underground Christian gatherings that were deemed illegal by the  
18 government. As a result, she was arrested and detained. She was released only after promising to  
19 stop attending her worship services.

20 34. Petitioner subsequently appeared before an Immigration Judge. On February 4,  
21 2020, the Immigration Judge issued a removal order against her. Petitioner did not appeal the  
22 decision to the Board of Immigration Appeals, and the Immigration Judge's decision therefore  
23 became a final administrative order of removal.

1 35. Since ICE released Petitioner on an order of supervision, Petitioner has complied  
2 with all conditions of the order, including periodic check-ins with ICE. No circumstances have  
3 changed that make Petitioner a flight risk or danger to the community.

#### 4 LEGAL FRAMEWORK

##### 5 Right to a Hearing Prior to Re-incarceration

6 36. In Ms. He's particular circumstances, the Due Process Clause of the Constitution  
7 makes it unlawful for Respondents to re-arrest her without first providing a pre-deprivation  
8 hearing before a neutral decision maker to determine whether circumstances have materially  
9 changed since her release on an Order of Supervision since 2020, such that detention would now  
10 be warranted on the basis that she is a danger or a flight risk by clear and convincing evidence.

11 37. 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 38. 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 39. 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 Petitioner, 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 **Petitioner’s Protected Liberty Interest in Her Conditional Release**

13 40. Petitioner’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 41. 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 42. 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. Petitioner was in fact released on  
7 her own recognizance. *See also, Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir.  
8 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully  
9 revocable—has a liberty interest that entitles him to constitutional due process before he is re-  
10 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S.  
11 at 482).

12 43. 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 Matthews 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  
17 a 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 44. 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.  
21 Ct.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 45. 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 he was serving a sentence that did not carry a possibility of parole, could not be  
9 re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted  
10 to society, so it “would be inconsistent with fundamental principles of liberty and justice” to  
11 return him to prison) (internal quotation marks and citation omitted).

12 46. Here, Petitioner's release is in relevant ways similar to the liberty interest in  
13 parole protected in *Morrissey*. Just as in *Morrissey*, Petitioner'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. Petitioner is  
17 married to Boa Chen, a United States citizen, who plans to file an I-130 immigrant visa petition  
18 for Ms. He. She is deeply traumatized by her spouse's most recent cancer diagnosis.

19 47. Petitioner's six years at liberty provide her “a liberty interest that entitles  
20 [her] to constitutional due process before [she] is incarcerated.” *Hurd v. District of Columbia*,  
21 864 F.3d 671, 676, 683 (D.C. Cir. 2017); *see also Gonzalez-Fuentes*, 607 F.3d at 887 (holding  
22 that inmates released to electronic monitoring program had liberty interest protected by the Due  
23 Process Clause because the program “allowed the appellees to live with their loved ones, form  
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1 relationships with neighbors, lay down roots in their community, and reside in a dwelling of their  
2 own choosing (albeit subject to certain limitations) rather than in a cell designated by the  
3 government.”); *see also Jorge M.F.*, 534 F. Supp. 3d at 1054 (holding that released noncitizen  
4 made a substantial showing that he had liberty interest requiring pre-deprivation hearing before  
5 re-arrest, even after original bond order was reversed on appeal); *Duong*, 2025 U.S. Dist. LEXIS  
6 185024, at \*13-14 (noncitizen released on *Zepeda-Rivas* bail order had strong liberty interest  
7 even after expiration of settlement agreement); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-  
8 EPG (HC), 2025 U.S. Dist. LEXIS 158839, at \*4 (E.D. Cal., Aug. 15, 2025) (same).

9 **Petitioner’s Strong Interest in Her Liberty Required a Hearing Before She Is Incarcerated  
by ICE**

10 48. Ms. He asserts that due process mandates that she receive notice and a hearing  
11 before a neutral adjudicator prior to any re-arrest or revocation of her Order of Supervision.

12 49. “Adequate, or due, process depends upon the nature of the interest affected. The  
13 more important the interest and the greater the effect of its impairment, the greater the procedural  
14 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769  
15 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court  
16 must “balance [Ms. He’s] liberty interest against the [government’s] interest in the efficient  
17 administration of” its immigration laws in order to determine what process she is owed to ensure  
18 that ICE does not unconstitutionally deprive her of her liberty. *Id.* at 1357. Under the test set  
19 forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing  
20 test: “first, the private interest that will be affected by the official action; second, the risk of an  
21 erroneous deprivation of such interest through the procedures used, and the probative value, if  
22 any, of additional or substitute procedural safeguards; and finally the government’s interest,  
23 including the function involved and the fiscal and administrative burdens that the additional or  
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1 substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*  
2 *Eldridge*, 424 U.S. 319, 335 (1976)).

3 50. The Supreme Court “usually has held that the Constitution requires some kind of a  
4 hearing before the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S.  
5 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies  
6 are “the only remedies the State could be expected to provide” can post-deprivation process  
7 satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where “one  
8 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible  
9 in preventing the kind of deprivation at issue” such that “the State cannot be required  
10 constitutionally to do the impossible by providing pre-deprivation process,” can the government  
11 avoid providing pre-deprivation process. *Id.*

12 51. Because, in this case, the provision of a pre-deprivation hearing is both possible  
13 and valuable to preventing an erroneous deprivation of liberty, ICE is required to provide Ms. He  
14 with notice and a hearing prior to any re-incarceration and revocation of her order of supervision.  
15 *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932;  
16 *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v.*  
17 *Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil  
18 commitment proceedings may not constitutionally be held in jail pending the determination as to  
19 whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in  
20 favor of [Ms. He’s] liberty” and requires a pre-deprivation hearing before a neutral adjudicator.

21 52. First, Petitioner’s private interest in her liberty is substantial. *See Foucha v.*  
22 *Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core  
23 of the liberty protected by the Due Process Clause.”). The Supreme Court has recognized that  
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1 individuals released from serving a criminal sentence have a “valuable” liberty interest—even if  
2 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. the  
3 interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g.*,  
4 *Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration detention, a  
5 noncitizen’s interest in release on bond is “arguably greater than the interest of parolees in  
6 *Morrissey*.”). Here, Petitioner’s interest is even more pronounced than the average noncitizen  
7 given that the government has provided her with an employment authorization, allowing her to  
8 work lawfully.

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

13       54. If DHS chooses to detain Petitioner without a hearing, they will deprive her of her  
14 liberty and separate her from her family and community without any opportunity for Petitioner to  
15 contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-  
16 SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at his  
17 scheduled check-in without notice or hearing, and where compliance with release terms is in  
18 dispute, and ordering immediate release and enjoining Respondents from re-detention without a  
19 pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show  
20 by clear and convincing evidence that petitioner is a flight risk or danger to the community);  
21 *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23,  
22 2025) (same).

23       55. By contrast, the value of a deprivation hearing before a neutral decision-maker is  
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1 high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*,  
2 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v.*  
3 *Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous  
4 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather  
5 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081,  
6 1091-92 (9th Cir. 2011). A hearing before a neutral decisionmaker is much more likely than  
7 ICE’s unilateral decision to produce accurate determinations regarding factual disputes, and to  
8 determine whether Petitioner actually currently poses a flight risk or danger such that detention is  
9 justified. *See, e.g., Doe*, 2025 U.S. Dist. LEXIS 37929, at \*15 (“At a hearing, a neutral  
10 decisionmaker can consider all of the facts and evidence before him to determine whether  
11 Petitioner in fact presents a risk of flight or dangerousness.”). Requiring such a hearing be held  
12 before Petitioner is detained serves to protect her liberty interest, facilitate her right to counsel  
13 and to gather evidence, and ensure that ICE’s decision to incarcerate Petitioner’s release does not  
14 evade review. *See Zinermon*, 494 U.S. at 127; *Hurd*, 864 F.3d at 683.

15 56. Third, the government’s interest in detaining Petitioner without a hearing is low. The  
16 government cannot plausibly assert it has any basis for detaining Petitioner now, when she has  
17 lived in the community caring for her family without incident for more than six years. In any  
18 event, providing Petitioner with a hearing before this Court (or another neutral decisionmaker) to  
19 determine whether there is evidence that Petitioner currently poses any risk of flight or danger to  
20 the community imposes a de minimis, if any, burden on the government. Such a hearing is far  
21 less costly and burdensome for the government than keeping Petitioner detained at what the  
22 Ninth Circuit described as a “staggering” cost to the public of \$158 each day per detainee in  
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1 2017, “amounting to a total daily cost of \$6.5 million” (the current cost now is likely  
2 significantly higher). *Hernandez*, 872 F.3d at 996.

3 57. Because the government must give Petitioner the notice and hearing she is due  
4 under the *Matthews* factors prior to re-incarcerating her, the Court should enjoin Respondents  
5 from re-detaining Petitioner until the government provides her with a constitutionally-compliant  
6 hearing.

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

18 **Due Process Governs Decisions to Revoke an Order of Supervision**

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

1           60. Under substantive due process doctrine, a restraint on liberty like revocation of a  
2 non-citizen’s order of supervision is only permissible if it serves a “legitimate nonpunitive  
3 objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only  
4 recognized two legitimate objectives of immigration detention: preventing danger to the  
5 community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92  
6 (discussing constitutional limitations on civil detention).

7           61. “Procedural due process imposes constraints on governmental decisions which  
8 deprive individuals of liberty,” like the decision to revoke a non-citizen’s order of supervision.  
9 *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). “The fundamental  
10 requirement of [procedural] due process is the opportunity to be heard at a meaningful time and  
11 in a meaningful manner.” *Id.* at 333 (citation modified).

12           **Statute and Regulation Govern Procedures for Revoking an Order of Supervision**

13           62. A non-citizen with a final order of removal “who is not removed within the  
14 [90-day] removal period . . . shall be subject to [an order of] supervision under regulations  
15 prescribed by the Attorney General.” 8 U.S.C. § 1231(a)(3) (titled “Supervision after 90-day  
16 period”).

17           63. A non-citizen may only be detained past the 90-day removal period following a  
18 removal order if found to be “a risk to the community or unlikely to comply with the order of  
19 removal” or if the order of removal was on specified grounds. *Id.* § 1231(a)(6).

20           64. But even where initial detention past the 90-day removal period is authorized, if  
21 “removal is not reasonably foreseeable, the court should hold continued detention unreasonable  
22 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and  
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1 should be conditioned on any of the various forms of supervised release that are appropriate in  
2 the circumstances...” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

3 65. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6),  
4 that an order of supervision may be revoked and a non-citizen may be re-detained past the  
5 removal period: “(1) the purposes of release have been served; (2) the alien violates any  
6 condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the  
7 alien, or any other circumstance, indicates that release would no longer be appropriate.” 8 C.F.R.  
8 § 241.4(l)(2); see also *id.* § 241.13(i) (permitting revocation of an order of supervision only if a  
9 non-citizen “violates any of the conditions of release”). Because “[r]egulations cannot  
10 circumvent the plain text of the statute[,]” courts question whether these regulations are ultra  
11 vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)  
12 (comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal  
13 period only if person is a risk to the community, unlikely to comply with the order of removal, or  
14 was ordered removed on specified grounds).

15 66. It is clear, however, that regulations permit only certain officials to revoke an  
16 order of supervision: the ICE Executive Associate Director, a field office director, or an official  
17 “delegated the function or authority . . . for a particular geographic district, region, or area.”  
18 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 161 (W.D.N.Y. 2025) (citing 8 C.F.R. §§ 1.2,  
19 241.4(l)(2) and explaining that the Homeland Security Act of 2002 renamed the position titles  
20 listed in § 241.4). If the field office director or a delegated official intends to revoke an order of  
21 supervision, they must first make findings that “revocation is in the public interest and  
22 circumstances do not reasonably permit referral of the case to the Executive Associate  
23 [Director].” 8 C.F.R. § 241.4(l)(2). And for a delegated official to have authority to revoke an  
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1 order of supervision, the delegation order must explicitly say so. *See Ceesay v. Kurzdorfer*, 781  
2 F.Supp. 3d 137, 161 (finding a delegation order that “refers only to a limited set of powers under  
3 part 241 that do not include the power to revoke release” insufficient to grant authority to revoke  
4 an order of supervision).

5 67. Upon revocation of an order of supervision, ICE must give a non-citizen notice of  
6 the reasons for revocation and a prompt interview to respond. 8 C.F.R. § 241.4(l)(1).

7 **The *Accardi* Doctrine Requires Agencies to Follow Internal Rules**

8 68. Under the *Accardi* doctrine, a foundational principle of administrative law,  
9 agencies must follow their own procedures, rules, and instructions. *See United States ex rel.*  
10 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where  
11 the Board of Immigration Appeals failed to follow procedures governing deportation  
12 proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of  
13 individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even  
14 where the internal procedures are possibly more rigorous than otherwise would be required.”).

15 69. *Accardi* is not “limited to rules attaining the status of formal regulations.” *Montilla*  
16 *v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Courts must also reverse agency action for violation of  
17 unpublished rules and instructions to agency officials. *See Morton v. Ruiz*, 415 U.S. 235  
18 (affirming reversal of agency denial of public assistance made in violation of internal agency  
19 manual); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (under *Accardi*, reversing decision to  
20 admit evidence obtained by IRS agents for violating instructions on investigating tax fraud).

21 70. Where a release notification issued alongside an order of supervision instructs that  
22 a non-citizen with a final order of removal will be given an opportunity to prepare for an  
23 “orderly departure,” ICE’s failure to follow that instruction is an *Accardi* violation. *See Ceesay v.*  
24

1 *Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29,  
2 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d  
3 Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of  
4 petitioners to give an opportunity to prepare for orderly departure).

5 **CLAIMS FOR RELIEF**

6 **COUNT I**

7 **Procedural Due Process**

8 71. Petitioner re-alleges and incorporates herein by reference, as is set forth fully  
9 herein, the allegations in all the preceding paragraphs.

10 72. The Due Process Clause of the Fifth Amendment forbids the government from  
11 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.

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

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

23 75. Petitioner’s previous expedited order was not properly executed by Respondents set  
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1 76. forth in the regulations or laws.

2 **COUNT II**

3 **Substantive Due Process**

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

6 78. The Due Process Clause of the Fifth Amendment forbids the government from  
7 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.  
8 amend. V.

9 79. Petitioner has a vested liberty interest in her conditional release. Due Process  
10 does not permit the government to strip her of that liberty without it being tethered to one of the  
11 two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the  
12 community from danger.

13 80. Since 2020, Petitioner has fully complied with the conditions of release imposed on  
14 her by ICE, thus demonstrating that she is neither a flight risk nor a danger. Re-arresting her  
15 now—while she is the spouse of a United States citizen—would be punitive and violate her  
16 constitutional right to be free from the unjustified deprivation of her liberty.

17 81. For these reasons, Petitioner's re-arrest without first being provided a hearing  
18 would violate the Constitution.

19 82. The Court must therefore order that, prior to any re-arrest, the government must  
20 provide her with a hearing before a neutral adjudicator. At the hearing, the neutral adjudicator  
21 would evaluate, inter alia, whether clear and convincing evidence demonstrates, taking into  
22 consideration alternatives to detention and Petitioner's ability to pay a bond, that Petitioner is a  
23 danger to the community or a flight risk, such that her re-incarceration is warranted. During any  
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1 custody redetermination hearing that occurs, this Court or, in the alternative, a neutral  
2 adjudicator must consider alternatives to detention when determining whether Petitioner's re-  
3 incarceration is warranted.

4 83. Petitioner's previous expedited order was not properly executed by Respondents set  
5 forth in the regulations or laws.

6 **COUNT III**

7 **Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)**

8 84. Petitioner realleges all paragraphs above as if fully set forth here.

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

12 86. The APA's reference to "law" in the phrase "not in accordance with law,"  
13 "means, of course, any law, and not merely those laws that the agency itself is charged with  
14 administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in  
15 original).

16 87. If Respondents take steps to revoke Petitioner's order of supervision, they must  
17 do so in accordance with the INA and implementing regulations governing who may lawfully  
18 revoke an order of supervision and under what circumstances, as cited and discussed in the  
19 Statutory Framework section above.

20 88. The officer who revokes the order must first make findings that revocation was  
21 in the public interest and that circumstance.

22 89. Before revoking the order, Respondents must make findings that Petitioner is  
23 dangerous or unlikely to comply with a removal order, as required by statute.

1 90. Even assuming that regulations purporting to offer additional justifications for  
2 revocation of an order of supervision are not *ultra vires*, Respondents must comply with them.  
3 Respondents must make findings that Petitioner’s conduct indicated release would no longer be  
4 appropriate or that Petitioner violated any condition of release. Respondents must make findings  
5 that the purposes of release had been served or that it was appropriate to enforce a removal order.

6 91. Respondents must give Petitioner notice of the reasons for revocation and  
7 opportunity to be heard.

8 92. The revocation must be lawful and must not be contrary to the agency’s  
9 constitutional power and the INA and implementing regulations.

10 93. Petitioner’s previous expedited order was not properly executed by Respondents set  
11 forth in the regulations or laws.

12 **COUNT IV**

13 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C)**

14 94. Petitioner realleges all paragraphs above as if fully set forth here.

15 95. Under the APA, a court shall “hold unlawful and set aside agency action . . .  
16 found to be . . . in excess of statutory jurisdiction, authority, or limitations, or short of statutory  
17 right.” 5 U.S.C. § 706(2)(C).

18 96. “An agency . . . literally has no power to act—including under its  
19 regulations—unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S.  
20 289, 301 (2022) (internal quotation marks and citation omitted).

21 97. 8 U.S.C. § 1231(a)(6) only authorizes detention past the 90-day removal period  
22 for a person who is found to be a danger to the community, unlikely to comply with a removal  
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24

1 order, or whose removal order is on certain grounds specified in the statute. Even then, if  
2 removal “is not reasonably foreseeable, the court should hold continued detention unreasonable  
3 and no longer authorized by [§ 1231(a)(6)]. In that case, of course, the alien’s release may and  
4 should be conditioned on any of the various forms of supervised release that are appropriate in  
5 the circumstances . . . .” *Zadvydas v. Davis*, 533 U.S. 678, 699-700.

6 98. Regulations that purport to give Respondents authority to revoke an order of  
7 supervision on grounds other than those listed at § 1231(a)(6) are *ultra vires* and in excess of  
8 statutory authority because “[r]egulations cannot circumvent the plain text of the statute.” *You v.*  
9 *Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018).

10 99. Before revoking Petitioner’s order of supervision, Respondents must follow the  
11 regulations.

12 **COUNT V**  
13 **The *Accardi* Doctrine**

14 100. Petitioner realleges all paragraphs above as if fully set forth here.

15 101. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action  
16 that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v.*  
17 *Shaughnessy*, 347 U.S. 260 (“If petitioner can prove the allegation [that agency failed to follow  
18 its rules in a hearing] he should receive a new hearing”).

19 102. Courts have determined that where ICE fails to follow its own regulations in  
20 revoking release, the detention is unlawful and the petitioner’s release must be ordered. *See, e.g.,*  
21 *Orellana v. Baker*, No. 25-1788-TDC, 2025 WL 2444087, at \*25-26 (D. Md. Aug. 25, 2025);  
22 *M.S.L. v. Bostock*, No. 6:25-cv-1204-AA, 2025 WL 2430267, at \*10 (D. Or. Aug. 21, 2025);  
23 *Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 163 (W.D.N.Y. 2025); *Rombot v. Souza*, 296 F.  
24 Supp. 3d 383, 387 (D. Mass. 2017).



**PROOF OF SERVICE**

1  
2 I, the undersigned, declare that my office is in San Francisco, California. I am over the  
3 age of eighteen (18) years and not a party to the action within. My business address is 405  
4 Sansome Street, 2nd Floor, San Francisco, CA 94111. On December 12, 2025, I served the  
5 following documents: PETITION FOR WRIT OF HABEAS CORPUS by placing a true and  
6 correct copy in a sealed envelope, each addressed as follows:

7 Kristi Noem  
8 U.S. Department of Homeland Security  
9 2801 Nebraska Avenue NW  
10 Washington, D.C. 20528

11 Todd Lyons  
12 U.S. Immigration and Customs Enforcement is:  
13 500 12th Street SW  
14 Washington, DC 20536

15 Sergio Albarran  
16 San Francisco Field Office  
17 U.S. Immigration and Customs Enforcement  
18 630 Sansome Street  
19 Rm 590  
20 San Francisco, CA 94111

21 Pamela Bondi  
22 950 Pennsylvania Avenue, NW  
23 Washington, DC 20530-0001

24 Civil Process Clerk  
United States Attorney's Office for the  
Northern District of California  
450 Golden Gate Avenue  
P.O. Box 36055  
San Francisco, CA 94102

**By mail.** I am readily familiar with the business for collection and processing of  
correspondence for mailing in the United States Postal Service and that this document, with

1 postage fully prepaid, will be deposited with the United States Postal Service this date in the  
2 ordinary course of business.

3 I declare under the penalty of perjury that the foregoing is true and correct. Executed on  
4 December 12, 2025, at San Francisco, California.

5 /s/ Connie Chan  
6 Connie Chan  
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