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8

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION
12

13 JENIFER NOHELIA HERNANDEZ LOPEZ,

14 Petitioner,

15 v.

16 SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and Customs
17 Enforcement Office; CHRISTOPHER
CHESTNUT, Warden of the California City
18 Detention Facility, KRISTI NOEM, Secretary
of the United States Department of Homeland
19 Security; TODD LYONS, Acting Director of
United States Immigration and Customs
20 Enforcement; PAMELA BONDI, Attorney
General of the United States, acting in their
21 official capacities,

22 Respondents.
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Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. Petitioner Jenifer Nohelia Hernandez Lopez was unlawfully re-detained at her Immigration and Customs Enforcement (ICE) check-in on December 8, 2025 in San Francisco.

2. Petitioner is from Honduras and seeks asylum. She entered the United States in 2023 and was apprehended by Department of Homeland Security (DHS) officials at the border. They released her shortly afterward on an Order of Recognizance. She went to live in Northern California while waiting for her immigration court date.

3. As part of the conditions of her release, Petitioner was required to attend any appointments ICE scheduled for her, commonly known as ICE check-ins. She was scheduled for an ICE check-in on December 8, 2025. She was told the purpose of the meeting was to change her monthly BI SmartLINK check-ins to weekly check-ins. She went to her appointment that day and, without notice, ICE detained her.

4. Petitioner has never been ordered removed and intends to seek asylum. Her next immigration court hearing is October 25, 2027. She has no known criminal record.

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

6. Immigration detention is civil and thus is permissible for only two reasons: to ensure an alien’s appearance at immigration hearings and to prevent danger to the community. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, Petitioner, who has no criminal history and was arrested *while attending her ICE check-in*, is not a flight risk or danger. Her re-detention is thus not justified under the Constitution. *See id.*

7. Additionally, generally “the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis added).

8. Consistent with these principles, a growing number of district courts have held that

1 individuals who were previously detained and then released by DHS are entitled to pre-
2 deprivation hearings before ICE can re-detain them.¹

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

8 JURISDICTION AND VENUE

9 10. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
10 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act),
11 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension
12 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706
13 (Administrative Procedure Act).

14 11. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28
15 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

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21 ¹ See *Jocop v. Albarran*, No. 25-cv-09059-JD, 2025 U.S. Dist. LEXIS 209368, at *5-6 (N.D. Cal. Oct. 23,
22 2025); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *43 (N.D. Cal. Sept. 16,
23 2025); *Leandro v. Albarran*, No. 3:25-cv-10042, 2025 U.S. Dist. LEXIS 228978, at *8-9 (N.D. Cal. Nov.
24 20, 2025); *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122 at *21 (N.D. Cal.
25 Nov. 25, 2025); *Andundia-Carillo v. Albarran*, No. 3:25-cv-10380, 2025 LEXIS 544681, at *8-9 (N.D.
26 Cal. Dec. 3, 2025); *Paternina v. Albarran*, No. 4:25-cv-10378-YGR, 2025 LEXIS 555745, at *8 (N.D. Cal.
27 Dec. 3, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706, at
28 *19-20 (E.D. Cal., Oct. 14, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist.
LEXIS 205300, at *20-21 (E.D. Cal., Oct. 17, 2025); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-
KES-SKO (HC), 2025 WL 2996577, at *13 (E.D. Cal. Oct. 24, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-
01381-KES-SAB, 2025 U.S. Dist. LEXIS 217645, at *17-18 (E.D. Cal. Nov. 4, 2025); *Vilela v. Robbins*,
No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *20 (E.D. Cal. Nov. 6, 2025); *J.A.E.M.*
v. Wofford, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *20-21 (E.D. Cal. Oct. 27,
2025); *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO, 2025 U.S. Dist. LEXIS 222923, at *29 (E.D.
Cal. Nov. 12, 2025); *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK, 2025 U.S. Dist. LEXIS 224966, at
*14 (E.D. Cal., Nov. 14, 2025).

PARTIES

12. Petitioner Jenifer Nohelia Hernandez Lopez is a woman from Honduras. She intends to seek asylum. She is presently in civil immigration detention at 22844 Virginia Boulevard, California City, California.

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

14. Respondent Christopher Chestnut is the Warden of the California City Detention Facility in California City, California, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity

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

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

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

EXHAUSTION

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

LEGAL BACKGROUND

A. The Constitution Protects Individuals Like Petitioner from Arbitrary Arrest and Detention.

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

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

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

22. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-

1 punitive purposes for immigration detention: ensuring an alien's appearance at immigration
2 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also*
3 *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28 (2003).

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

7 24. Generally, “the Constitution requires some kind of a hearing *before* the State
8 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This is so
9 even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d 671,
10 683 (D.C. Cir. 2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-
11 parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S.
12 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in
13 parole context).

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

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

26 ***B. Due process requires not only “changed circumstances” but also “evidence of urgent***
27 ***concerns,” if Respondents seek to re-detain a person without a hearing***

28 27. DHS has the authority to release to release certain aliens on an Order of

1 Recognizance (formally called “conditional parole”) while their removal proceedings are pending
2 before an immigration judge. 8 U.S.C. § 1226(a)(2); *Ortega-Cervantes v. Gonzales*, 501 F.3d
3 1111, 1115 (9th Cir. 2007) (“It is apparent that the INS used the phrase ‘release on recognizance’
4 as another name for ‘conditional parole’ under § 1226(a).”).

5 28. DHS may only release an alien on an Order of Recognizance if “such release
6 would not pose a danger to property or persons, and that the alien is likely to appear for any
7 future proceedings.” 8 C.F.R. § 236.1(c)(8). As such, release on an Order of Recognizance
8 “reflects a determination by the government that the noncitizen is not a danger to the community
9 or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom.*
10 *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

11 29. After a determination has been made that an individual is not a flight risk or
12 danger, DHS may not re-arrest them “absent a change of circumstance.” *See Matter of Sugay*, 17
13 I. & N. Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 280 F. Supp. 3d at 1176 (“Once a
14 noncitizen has been released, the law prohibits federal agents from rearresting him merely
15 because he is subject to removal proceedings. Rather, the federal agents must be able to present
16 evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact
17 dangerous or has become a flight risk, or is now subject to a final order of removal.”).

18 30. In the past few months, ICE has started re-arresting individuals at routine ICE
19 check-ins in San Francisco who were previously released on an Order of Recognizance. Many of
20 these individuals had submitted asylum applications, appeared at ICE check-ins for years without
21 issue, and were patiently waiting for their next immigration court date.

22 31. In some cases, Respondents make “half-hearted attempt[s]” to justify the re-arrest
23 based on allegations of minor, technical violations of release conditions. *See Bernal v. Albarran*,
24 No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *15 (N.D. Cal. Nov. 25, 2025).
25 However, Respondents typically do not argue that the individuals are flight risks or dangers to the
26 community based on the purported violations. *See e.g., id.* (“Though [Respondents] point to
27 minor, technical violations, they have not explained how those violations make Bernal dangerous
28 or a flight risk”); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS

205300, at *12 (“Respondents do not argue that petitioner’s two late check-ins mean that he is a flight risk or danger to the community.”); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *12 (E.D. Cal. Nov. 6, 2025) (“While respondents assert that ICE arrested petitioner for those technical violations...they do not argue that a missed check-in or failure to seek advance approval to move means that petitioner is a flight risk or danger to the community.”).

32. Instead, Respondents have argued that the individuals are properly re-detained under the government’s new and implausible interpretation of 8 U.S.C. § 1225(b)(2). However, Respondents arguments “fail to contend with the liberty interests created by the fact” that the people they have been taking into custody without hearing “were released on recognizance *prior to the manifestation of this interpretation.*” See *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025) (emphasis in original). Moreover, Respondents’ mandatory detention argument has failed in almost every court to hear it because it does not accord with basic tenets of statutory interpretation. See *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *20-32 (Sept. 12, 2025).

33. As courts evaluate Respondents’ tenuous justifications for re-detaining aliens previously released on an Order of Recognizance, it has become clear that due process requires not only “changed circumstances” but also “evidence of urgent concerns,” if Respondents seek to re-detain a person without a hearing. See *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) (“absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ”) (emphasis added). *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL 2855193, at *18 (E.D. Cal. Oct. 8, 2025) (concluding that, “given the absence of evidence of urgent concerns . . . a pre-deprivation hearing [was] required to satisfy due process,” and collecting cases); *Y.M.M. v. Wamsley*, No. 2:25-cv-02075, 2025 U.S. Dist. LEXIS 219064, at *5 (W.D. Wash. Nov. 6, 2025) (“Numerous courts in this district and throughout the Ninth Circuit have recognized this requirement” of a pre-deprivation hearing, “absent evidence of urgent concerns”). The legal principle is clear: Once the government makes the release determination, the individual

1 has a liberty interest that cannot be taken away without a hearing—unless an “urgent” “change of
2 circumstances” makes such a pre-deprivation hearing infeasible.

3 **FACTUAL ALLEGATIONS**

4 ***A. Petitioner is Unlawfully Arrested at Her ICE Check-In***

5 33. Ms. Hernandez Lopez fled Honduras and arrived in the United States in June 2023.
6 She was stopped by immigration officials at the border. They determined she posed little if any
7 flight risk or danger to the community and released her into the community under 8 U.S.C. §
8 1226(a) to wait for her immigration court date.

9 34. She has substantial ties to Northern California. Her mother, three siblings, husband
10 and child all reside in Northern California. Her Husband is in the local construction industry. Her
11 daughter is enrolled in a public school in Northern California.

12 35. She intends to apply for asylum and her next immigration court hearing is
13 scheduled for October 25, 2027. She has never been ordered removed.

14 51. On December 8, 2025, despite news reports of ICE detaining those that appeared
15 for routine ICE check-ins, she arrived at the ISAP facility at 393 Blossom Road in San Jose for
16 a routine ICE check-in. ICE suddenly detained her at the check-in. She had no prior warning she
17 would be detained.

18 52. Petitioner has made a good faith attempt to comply with all of her immigration
19 and ICE obligations, including check ins in person and through the use of the BI SmartLINK
20 application as requested.

21 53. She has not been arrested or convicted of any crime during this time.

22 54. Nothing has changed in her case that makes her a flight risk or danger.

23 55. Her detention does not further any legitimate government interest.

24 ***B. As a Result of Her Arrest and Detention, Petitioner is Suffering Ongoing and***
25 ***Irreparable Harm.***

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

1 57. None of that has changed. Upon information and belief, Petitioner has no
2 criminal record, and there is no basis to believe that she poses any public-safety risk. Nor is
3 Petitioner, who was arrested *while appearing for an ICE check-in*, a flight risk. To the contrary,
4 Petitioner is actively seeking to comply with her ICE and immigration obligations.

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

18 60. Petitioner was previously released on her own recognizance (“conditional
19 parole”) by Respondents. This previous release constituted a determination by Respondents that
20 she was neither dangerous to the community nor a flight risk.

21 61. Petitioner has not become a danger or flight risk since her release from custody.
22 Her re-detention thus does not serve a legitimate goal. Accordingly, her re-detention violates the
23 Due Process Clause.

24 **SECOND CLAIM FOR RELIEF**

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

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

27 62. Petitioner repeats and re-alleges the allegations contained in the preceding
28 paragraphs of this Petition as if fully set forth herein.

63. The Fifth Amendment guarantees aliens present in the country due process rights, including the right to not be deprived of a liberty or property interest without notice and a hearing before a neutral decision-maker.

64. Petitioner has already been determined not to pose a flight risk or danger to the community. She has a protected liberty interest in her continued freedom from detention and is entitled to due process before the government can deprive her of her liberty by re-detaining her. The Due Process Clause prohibits Petitioner's re-detention without a pre-deprivation hearing before a neutral decision-maker in which the government bears the burden of demonstrating that she poses a flight risk or danger to the community.

PRAYER FOR RELIEF

Petitioner respectfully request that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody and to return to Petitioner any possessions and documents confiscated upon her detention, including without limitation her identity documents.;
3. Declare that Petitioner's arrest and detention violates the Immigration and Nationality Act, implementing regulations, and Due Process Clause of the Fifth Amendment.
4. Enjoin Respondents from transferring Petitioner outside this District, deporting Petitioner, or subjecting Petitioner to solitary confinement pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community, and that no alternatives to detention can sufficiently protect its interests, before the Respondents can re-detain;

- 1 6. Award Petitioner her costs and reasonable attorneys' fees in this action as provided
2 for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
3 7. Grant such further relief as the Court deems just and proper.

4 DATED: December 16, 2025

STOEL RIVES LLP

5 */s/ Corey M. Day*

6 _____
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