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7

8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
9

10 Melina Solano Bejarano,
11 *Petitioner,*

No.

12 v.

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

13 Christopher Chestnut, Warden, California
14 City Correctional Facility;

15 Todd M. LYONS, Acting Director,
16 Immigration and Customs Enforcement, U.S.
Department of Homeland Security;

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

17 Kristi NOEM, in her Official Capacity,
18 Secretary, U.S. Department of Homeland
19 Security; and

20 Pam BONDI, in her Official Capacity,
21 Attorney General of the United States;

22 *Respondents - Defendants,*
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INTRODUCTION

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2 1. Petitioner, Melina Solano Bejarano, by and through her undersigned counsel, hereby files
3 this petition for writ of habeas corpus to remedy Respondents-Defendants' ("Respondents")
4 unlawful re-detention of Ms. Solano Bejarano without any process, in violation of the Fifth
5 Amendment to the U.S. Constitution.

6 2. Ms. Solano Bejarano is a native and citizen of Peru. Ms. Solano Bejarano entered the
7 United States with inspection on June 25, 2021 seeking asylum. When Ms. Solano Bejarano
8 arrived in the United States, federal agents briefly detained her, determined that she was not a
9 flight risk or danger to the community, and released her on her own recognizance. On October
10 18, 2021, the court filed a notice to appear for her to appear in court on January 25, 2022. Since
11 then, Petitioner had done everything the government asked her to do; she has diligently attended
12 every Immigration and Customs Enforcement ("ICE") and United States Citizenship and
Immigration Services ("USCIS") appointment and check-in.

13 3. On November 20, 2023, Ms. Solano Bejarano filed an asylum application with the
14 immigration court. Ms. Solano Bejarano subsequently attended her biometrics appointment with
15 USCIS.

16 4. Ms. Solano Bejarano appeared at all her immigration court hearings at the Van Nuys
17 Immigration court. Ms. Solano Bejarano also complied with all her ISAP and ICE appointments.
18 On November 3, 2025, Ms. Solano Bejarano was two minutes late for an ISAP interview at her
19 home. Ms. Solano Bejarano was returning home from taking her daughter to pre-school. When
20 Ms. Solano Bejarano was almost home, she was informed by ISAP that they were at the house.
21 Ms. Solano Bejarano informed ISAP that she was very close to the house but ISAP informed her
22 that it was too late. When Ms. Solano Bejarano made it home, she saw the ISAP officer but the
23 ISAP officer ignored Ms. Solano Bejarano and left. The ISAP officer simply told her that she
24 was in violation. Minutes later, Ms. Solano Bejarano received a message on her phone
25 instructing her to appear at the ISAP office the following day, Tuesday, November 4, 2025.
26 However, to avoid any misunderstanding and acting in good faith, Ms. Solano Bejarano
27 immediately went the same day, November 3, 2025 to the ISAP office to explain to them that
28 she was at home while the ISAP officer was still there but ICE detained her. This occurred at
the ICE office at 2001 N Chester Avenue in Bakersfield, CA 93308.

1 5. On November 3, 2025, she voluntarily presented herself to ISAP to explain that she was
2 returning home from taking her three year old daughter to pre-school when ISAP arrived to her
3 house.

4 6. Ms. Solano Bejarano was informed by ICE that she violated her ISAP check-in.

5 7. Ms. Solano Bejarano does not have an order of deportation. When Ms. Solano Bejarano
6 was released from ICE custody upon entering the United States, the immigration authorities
7 informed her that she would receive a notice to appear in immigration court. The authorities
8 informed Ms. Solano Bejarano that she would have to appear at all ICE appointments and court
hearings.

9 8. Over the last four and a half years in which she has lived at liberty, Ms. Solano Bejarano
10 has complied with all conditions of release and ICE orders. On November 20, 2023, Ms. Solano
11 Bejarano filed an asylum application with the immigration court.

12 9. Ms. Solano Bejarano has not committed any violation of any local, State or Federal law
13 since being released. Ms. Solano Bejarano took care of their two children ages nine years old
14 and three years old while her husband worked as an arborist. Ms. Solano Bejarano's three year
old is a United States citizen.

15 10. Ms. Solano Bejarano suffers from serious health issues related to her gall bladder which
16 required a surgery which she was going to have before being detained. She suffers from a severe
17 inflammation of the gallbladder, a condition that requires urgent surgical intervention. The
18 doctor at the California Detention Facility informed Ms. Solano Bejarano that she continues to
19 need to have the surgery but Ms. Solano Bejarano does not want to have to endure post-operative
20 recover from the surgery while in custody. She has been forced to decline the operation due to
21 the unsanitary conditions of the detention facility and the real fear of contracting severe infections
22 in the surgical wounds. Ms. Solano Bejarano's detention is putting her at risk of substantial harm
and/or hospitalization.

23 11. Before being detained, Ms. Solano Bejarano resided with her significant other and two
24 young children in Bakersfield, California.

25 12. Ms. Solano Bejarano arrest and detention have caused her tremendous and ongoing harm.
26 Every additional day Ms. Solano Bejarano spends in unlawful detention subjects her to further
27 irreparable harm.

1 13. The Constitution protects Ms. Solano Bejarano – and every other person present in this
2 country – from arbitrary deprivations of her liberty and guarantees her due process of law. The
3 government’s power over immigration is broad, but as the Supreme Court has declared, it
4 is subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).
5 “Freedom from bodily restraint has always been at the core of this liberty protected by the Due
6 Process Clause from arbitrary government action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

7 14. By status and regulation, as interpreted by the Board of Immigration Appeals (“BIA”),
8 ICE has the authority to re-arrest a noncitizen and revoke their bond, only where there has been
9 a change in circumstances since the individual’s release, 8 U.S.C. § 236.1(c)(9); *Matter of Sugay*,
10 17 I&N Dec. 647, 640 (BIA 1981). The government has further clarified in litigation that any
11 change in circumstance must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D.
12 Cal. 2017). That authority, however, is proscribed by the Due Process Clause because it’s well-
13 established that individuals released from incarceration have a liberty interest in their freedom.
14 In turn, to protect that interest, on the particular facts of Ms. Solano Bejarano’s case, due process
15 requires notice and a hearing, prior to any revocation of her conditional release, at which she is
16 afforded the opportunity to advance her arguments as to why her release should not be revoked.

17 15. That basic principle – that individuals placed at liberty are entitled to due process before
18 the government imprisons them – has particular force here, where Ms. Solano Bejarano’s
19 detention was already found to be unnecessary to serve its purpose.

20 16. Therefore, at a minimum, to lawfully re-arrest Ms. Solano Bejarano, the government must
21 first establish, by clear and convincing evidence and before a neutral decision maker, that she is
22 a danger to the community or a flight risk, such that her re-incarceration is necessary.

23 17. Ms. Solano Bejarano respectfully seeks a writ of habeas corpus ordering the government
24 to immediately release her from her ongoing, unlawful detention, and prohibit her re-arrest
25 without a hearing to contest that re-arrest before a neutral decision maker. In addition, to preserve
26 this Court’s jurisdiction, Ms. Solano Bejarano also requests that this Court order the government
27 not to deport her for the duration of this proceeding or transfer her outside of this Court’s
28 jurisdiction.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
federal question jurisdiction; 5 U.S.C. § 701, et seq., All Writs Act; 28 U.S.C. § 2241, et seq.,

1 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art , 1, § 9, CL. 2 of the United
2 States Constitution (the Suspension Clause); Art. 3 of the United Sates Constitution, and the
3 common law., the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-
4 7-6 (Administrative Procedure Act).

5 19. Venue is proper in this district and division pursuant to 28 U.S.C. §2241(a) and 28 U.S.C.
6 § 1391(b)(2) and (e)(1) because Ms. Solano Bejarano is physically detained within this District
7 at the California City Detention Center.

8 EXHAUSTION OF ADMINISTRATIVE REMEDIES

9 20. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
10 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
11 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
12 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
13 be void.” *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)(citation and quotation
14 marks omitted)). Ms. Solano Bejarano asserts that exhaustion should be waived because
15 administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.
16 Prudential exhaustion is not required here because it would be futile, and Ms. Solano Bejarano
17 will “suffer irreparable harm if unable to secure immediate judicial consideration of his claim.”
18 *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any attempt to exhaust her administrative
19 remedies would be futile because an Immigration would deny her request for a bond hearing
20 under the recent Bureau of Immigration Appeals (“BIA”) decisions *Matter of Yajure Hurtado*,
21 29 I&N Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Any further
22 exhaustion requirements would be unreasonable.

23 21. Both *Yajure Hurtado* and *Q. Li* held that IJs do not have the authority to hold a bond
24 hearing where the moving noncitizens entered the country without inspection. Because Ms.
25 Solano Bejarano entered the country without inspection, if she were to move for a bond hearing,
26 an IJ following these decisions would have to decline jurisdiction over the issue.

27 22. On December 15, 2025, undersigned counsel emailed ICE in Bakersfield to request
28 immediate release but has received no response from ICE.

26 PARTIES

27 23. Petitioner, Ms. Solano Bejarano is a 30-year-old woman from Peru. She has no criminal
28 history anywhere in the world. She has a pending application for Asylum, Withholding of

1 Removal and relief under the Convention Against Torture with USCIS. She is presently in civil
2 immigration detention at California City Detention Facility.

3 24. Respondent, Christopher Chestnut, is the Warden of California City Correctional Facility
4 In his official capacity, he is the legal custodian of Ms. Solano Bejarano.

5 25. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official
6 Capacity. Among other things, ICE is responsible for the administration and enforcement of the
7 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
8 he is the legal custodian of Ms. Solano Bejarano.

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

16 27. Respondent Pamela BONDI is the Attorney General of the United States and the most
17 senior official at the Department of Justice. In that capacity and through her agents, she is
18 responsible for overseeing the implementation and enforcement of the federal immigration laws.
19 The Attorney General delegates this responsibility to the Executive Office for Immigration
20 Review, which administers the immigration courts and the BIA. She has the authority to interpret
21 immigration laws and adjudicate removal cases.

22 LEGAL BACKGROUND

23 **A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary** 24 **Arrest and Detention.**

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

29. These protections extend to noncitizens facing detention, as “in 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, “freedom from imprisonment – from

1 government custody, detention, or other forms of physical restraint – lies at the heart of the liberty
2 that (the Due Process) Clause protects.” *Zadvydas*, 533 U.S. at 690.

3 30. Substantive due process requires that all forms of civil detention – including immigration
4 detention bear a “reasonable relation” to a non-punitive purpose. See *Jackson v. Indiana*, 406
5 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive
6 purposes of immigration detention: ensuring a noncitizen’s appearance at immigration
7 proceedings and preventing danger to the community. *Zadvydas*, 53 U.S. at 690-92; see also
8 *Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28 (2003).

9 31. The procedural component of the Due Process Clause prohibits the government from
10 imposing even permissible physical restraints without adequate procedural safeguards.

11 32. In Ms. Solano Bejarano’s particular circumstances, the Due Process Clause of the
12 Constitution makes it unlawful for Respondents to re-arrest her without first providing a pre-
13 deprivation hearing before a neutral decision maker to determine whether circumstances have
14 materially changed since her release in 2021, such that detention would now only be warranted
15 on the basis that she is a danger or flight risk by clear and convincing evidence.

16 33. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen’s
17 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
18 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
19 revoke an immigration bond “at any time,” 9 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.
20 at 640, the BIA recognized an implicit limitation on ICE’s authority to re-arrest noncitizens.
21 There, the BIA held that “where a previous bond determination has been made by an immigration
22 judge, no change should be made by the DHS absent a change of circumstance.” *Id.* In practice,
23 DHS “requires a showing of changed circumstances both where the prior bond determination
24 was made by an immigration judge and where the previous release decision was made by a DHS
25 officer.” *Saravia*, 280 F. Supp. 3d at 1197 (emphasis added). The Ninth Circuit has also assumed
26 that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent changed
27 circumstances. *Panosyan v Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021)(“thus, absent
28 changed circumstances... ICE cannot detain Panosyan.”).

34. ICE has further limited its authority as described in *Sugay*, and ‘generally only re-arrests
(noncitizens) pursuant to § 1226(b) after a material change in circumstances.” *Saravia*, 280 F.
Supp. 3d at 1197, aff’d sub nom. *Saravia for A.H.*, 905 F.3d 1137 (quoting Defs. ‘ Second Supp.

1 Br. At 1, Dkt. No 90) (emphasis added). Thus, under BIA case law and ICE practice, ICE may
2 re-arrest a noncitizen who had previously released on bond only after a material change in
3 circumstances. See *Saravia*, 280 F. Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. at 640.

4 35. ICE's power to re-arrest a noncitizen who is at liberty following a release on bond is also
5 constrained by the demands of due process. See *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th
6 Cir. 2017) ("the government's discretion to incarcerate non-citizens is always constrained by the
7 requirements of due process"). In this case the guidance provided by *Matter of Sugay* – that ICE
8 should not re-arrest a noncitizen absent changed circumstances – is insufficient to protect Ms.
9 Solano Bejarano's weighty interest in her freedom from detention.

10 36. Federal district courts in California have repeatedly recognized the demands of due
11 process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in
12 DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen
13 on bond, like Ms. Solano Bejarano, before ICE re-detains her. See e.g., *Meza v. Bonnar*, 2018
14 WL 2554572 (N.D. Cal. June 4, 2018); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL
15 1382859, at 3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at
16 plaintiff's ICE interview when he had been on bond for more than five years). See also *Doe v.*
17 *Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, 4 (E.D. Cal. Mar. 3, 2025) (holding
18 the Constitution requires a hearing before any re-arrest).

19 FACTUAL ALLEGATIONS

20 37. Ms. Solano Bejarano's liberty from immigration custody is protected by the Due Process
21 Clause: "Freedom from imprisonment- from government custody, detention, or other forms of
22 physical restraint – lies at the heart of the liberty that (the Due Process) Clause protects."
23 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

24 38. Since June 2021, Ms. Solano Bejarano exercised that freedom when she was released on
25 her own recognizance. As a result, she retained a weighty liberty interest under the Due Process
26 Clause of the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*, 520 U.S.
27 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*,
28 408 U.S. 471, 482-483 (1972).

39. Just as in *Morrissey*, Ms. Solano Bejarano's release "enables her to do a wide range of
things open to persons" who have never been in custody or convicted of any crime, including to

1 live at home, work, go to the doctor, take her medication, and “be with family and friends and to
2 form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.

3 40. Ms. Solano Bejarano has complied with all conditions for release for well over four years,
4 as she has litigated her removal proceedings. She has meritorious applications for relief from
5 removal.

6 **A. Ms. Solano Bejarano is Unlawfully Arrested and Detained Pursuant
7 to DHS’s New Policy.**

8 41. Deportation, like detention, constitutes a deprivation of liberty protected by the Due
9 Process Clause. As the Supreme Court has held, a noncitizen’s interest in deportation proceedings
10 “is, without question, a weighty one” because “[s]he stands to lose the right ‘to stay and live and
11 work in this land of freedom.’” *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting *Bridges v.*
Wixon, 326 U.S. 135, 154 (1945)).

12 42. Ms. Solano Bejarano asserts that, here, (1) where her detention would be civil, (2) where
13 she has been at liberty for three and half years, during which time she has complied with all
14 conditions of release and has maintained steady employment, (3) where she has a substantial
15 application for Asylum, withholding and CAT pending before USCIS (4) where no change in
16 circumstances exist that would justify her detention, (5) where petitioner has health issues which
17 require a surgery, post-operative rehabilitation and medication, and (6) where the only
18 circumstance that has changed is ICE’s move to arrest as many people as possible because of the
19 new administration, due process mandates that she receive notice and a hearing before a neutral
20 adjudicator prior to any re-arrest or revocation of a bond.

21 43. “Adequate, or due, process depends upon the nature of the interest affected. The more
22 important the interest and the greater the effect of its impairment, the greater the procedural
23 safeguards the government must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
24 1350, 1355-56)9th Cir. 1985)(en banc)(citing *Morrissey*, 408 U.S. at 481-82). This Court must
25 “balance Mr. Cruz’s liberty interest against the government’s interest in the efficient administer
26 of” its immigration laws to determine what process he is owed to ensure that ICE does not
27 unconstitutionally deprive him of his liberty. *Id.* 1at 1357.

28 44. Under the test set forth in *Mathias v. Eldridge*, this Court must consider these factors in
conducting its balancing test: ‘First , the private interest that will be affected by the official action;
second, the risk of an erroneous deprivation of such interest through the process used, and the

1 probative value, if any, of additional or substitute procedural safeguards; and finally the
2 government's interest, including the function involved and fiscal and administrative burdens that
3 the additional or substitute procedural requirements would entail." *Haygood*, 769 F.3d at 1357
4 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

5 45. Because, in this case, the provision for a pre-deprivation hearing is both possible and
6 valuable to prevent an erroneous deprivation of liberty, ICE is required to provide Ms. Solano
7 Bejarano with notice and a hearing prior to any re-incarceration and revocation of her pre-trial
8 release. See *Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at
9 932; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452
10 (11th Cir. 1984)(holding that individuals awaiting involuntary civil commitment proceedings may
11 be constitutionally be held in jail pending the determination as to whether they can ultimately be
12 committed). Under *Mathews*, "the balance weighs heavily in favor of Ms. Solano Bejarano" and
13 requires a pre-deprivation hearing before a neutral adjudicator.

14 46. In 2021, Petitioner fled to the United States. She was initially arrested by DHS officers
15 but was released one day later on her own recognizance with a notice to appear for removal
16 proceedings. In granting her release, DHS determined that she posed little if any risk of flight or
17 danger to the community.

18 47. DHS filed Ms. Solano Bejarano's Notice to Appear with the immigration court. On
19 November 20, 2023, Ms. Solano Bejarano filed an asylum, withholding and CAT application.
20 On February 20, 2025, Ms. Solano Bejarano's work authorization was approved by USCIS.

21 48. Since arriving to the United States, Ms. Solano Bejarano has attended every immigration
22 appointment that she was required to attend. Ms. Solano Bejarano has no criminal history. Ms.
23 Solano Bejarano lives in Bakersfield, California with her fiancé and two young children. Ms.
24 Solano Bejarano has attended all check-ins with ICE.

25 49. Ms. Solano Bejarano has applied for asylum based on well-founded fear of persecution
26 in Peru.

27 50. Ever since Ms. Solano Bejarano entered the country, she has fully complied with all court
28 and supervision requirements.

51. On November 3, 2025, Petitioner appeared at the ISAP office to explain what happened
when ISAP arrived at her house but she was immediately detained by ICE.

1 52. The ICE agent did not give her an opportunity to demonstrate that she was not a flight
2 risk or a danger to the community when she was detained.

3 53. Petitioner's immigration attorney could not secure release as the immigration court does
4 not accept bond hearings for individuals who entered without inspection. Furthermore, ICE does
5 not respond to release requests. Upon learning habeas corpus relief, Ms. Solano Bejarano
6 immediately retained counsel to represent her in this habeas corpus proceeding. On December
7 15, 2025, counsel sent an email to the Bakersfield ICE office requesting immediate release but
8 received no response.

9 54. Ms. Solano Bejarano remains in custody. At this time, there are no new circumstances
10 that would justify a re-arrest of petitioner.

11 55. Because Ms. Solano Bejarano has never been determined to be a flight risk or danger to
12 the community, her detention is not related to either of the permissible justifications for civil
13 immigration litigation. Her detention does not further any legitimate government interest.

14 **B. As a Result of Her Arrest and Detention, Ms. Solano Bejarano is**
15 **Suffering Ongoing and Irreparable Harm.**

16 56. Ms. Solano Bejarano is being deprived of her liberty without any permissible justification.
17 The government previously released her on her own recognizance because she did not pose
18 sufficient risk of flight or danger to the community to warrant detention.

19 57. None of that has changed. Ms. Solano Bejarano has no criminal record, and there is no
20 basis to believe that she poses any public-safety risk. Nor is Ms. Solano Bejarano, who was
21 arrested while voluntarily appearing for at the ISAP office conceivably a flight risk. To the
22 contrary, Ms. Solano Bejarano appeared for every immigration appearance.

23 58. Ms. Solano Bejarano is now separated from her family and work. She suffers from
24 health issues which require hospitalization.

25 59. Ms. Solano Bejarano's fiancé and children require her presence.

26 60. Ms. Solano Bejarano is suffering from debilitating conditions at the California City
27 Detention Facility.

28 **CLAIMS FOR RELIEF**

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process—Detention)

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

62. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.” U.S. Const. amend. V. “Freedom 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.

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

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

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

SECOND CLAIM FOR RELIEF

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

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

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

68. Accordingly, “[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protection to ensure that the government’s asserted Justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding

1 physical restraint.” *Hernandez*, 872 F.3d at 990; *Zinerman*, 494 U.S. at 127 (Generally, “the
 2 Constitution requires some kind of a hearing before the State deprives a person of liberty or
 3 property.”). In the immigration context, for such hearings to comply with due process, the
 4 government must bear the burden to demonstrate, by clear and convincing evidence, that the
 5 noncitizen poses a flight risk or danger to the community. See *Singh v. Holder*, 638 F.3d 1196,
 1203 (9th Cir. 2011); see also *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

6 69. Petitioner’s re-detention without a pre-deprivation hearing violated due process. Over
 7 three years after deciding to release Petitioner from custody on her own recognizance,
 8 Respondents re-detained Petitioner with no notice, no explanation of the justification of her re-
 9 detention, and no opportunity to contest her re-detention before a neutral adjudicator before being
 10 taken into custody.

11 70. Petitioner has a profound personal interest in her liberty. Because she received no
 12 procedural protections, the risk of erroneous deprivation is high. And the government has no
 13 legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a
 14 matter of course in immigration proceedings, and nothing in Petitioner’s record suggested that
 15 she would abscond or endanger the community before a bond hearing could be carried out. See,
 16 e.g., *Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v.*
 17 *Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (“the government’s concern that
 18 delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of
 19 petitioner’s strong family ties and his continued employment during the pandemic as an essential
 agricultural worker”).

20 **THIRD CLAIM FOR RELIEF**

21 **Violation of the Fourth Amendment to the United States Constitution**

22 **(Unlawful Arrest)**

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

24 72. The Fourth Amendment protects the right of persons present in the United States to be free
 25 from unreasonable seizures by government officials.

26 73. As a corollary to that right, the Fourth Amendment prohibits government officials from
 27 conducting repeated arrests on the same probable cause. It is axiomatic that seizures have
 28 purposes. When those purposes are spent, further seizure is unreasonable. . . . [T]he primary

1 purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee
 2 appears before the court, the purpose of the initial seizure has been accomplished. Further seizure
 3 requires a court order or new cause; the original probable cause determination is no justification.
 4 *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020); see also *United States v. Kordosky*, No. 88-
 5 CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) (“Absent some compelling
 6 justification, the repeated seizure of a person on the same probable cause cannot, by any standard,
 7 be regarded as reasonable under the Fourth Amendment.”).

8 74. In the immigration context, this prohibition means that a person who immigration
 9 authorities released from initial custody cannot be re-arrested “solely on the ground that he is
 10 subject to removal proceedings” and without some new, intervening cause. *Saravia v. Sessions*,
 11 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905
 12 F.3d 1137 (9th Cir. 2018). Courts have long recognized that permitting such rearrests could result
 13 in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).
 14 DHS agents arrested Petitioner in 2021 after she entered the United States, charged her with a
 15 violation of civil immigration law, and released her on her own recognizance with a notice to
 16 appear in immigration court. Petitioner appeared at all her check-in as instructed.

17 75. DHS re-arrested Petitioner on November 3, 2025, based on nothing more than the 2021
 18 civil charge of violating immigration law for which she was previously released. Petitioner had
 19 not engaged in any conduct in the intervening time that rendered her a flight risk or danger to the
 20 community. No material change in circumstances justified Petitioner’s re-arrest.

21 76. Petitioner’s re-arrest and detention by Respondents absent any material change in
 22 circumstances is thus an unreasonable seizure in violation of the Fourth Amendment.

23 PRAYER FOR RELIEF

24 Petitioner respectfully requests that this Court:

- 25 1. Assume jurisdiction over this matter;
- 26 2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner
 27 from custody;
- 28 3. Declare that Petitioner’s arrest and detention violate the Due Process Clause of the
 Fifth Amendment, the Fourth Amendment, the First Amendment, and the Administrative
 Procedure Act;
4. Enjoin Respondents from deporting Petitioner pending these proceedings;

- 1 5. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a
- 2 custody hearing before a neutral arbiter in which the government bears the burden of
- 3 proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the
- 4 community;
- 5 6. Award Petitioner her costs and reasonable attorneys' fees in this action as provided
- 6 for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 7 7. Grant such further relief as the Court deems just and proper.

8 Date: December 17, 2025

Respectfully Submitted,

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10
11 /s/ Robert Beles
12 Robert J Beles
13 Attorney For Petitioner
14 Melina Solano Bejarano
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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 the events described in the Petition with the Petitioner. 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 December 17, 2025, in Oakland, CA.

/s/ Robert J. Beles
Robert Beles
Attorney for Melina Solano
Bejarano