

1 ERIN E. MEYER - # 274244  
emeyer@keker.com  
2 JULIA L. ALLEN - # 286097  
jallen@keker.com  
3 CLAIRE C. BONELLI - #317735  
cbonelli@keker.com  
4 ELLEN WATLINGTON - # 336422  
ewatlington@keker.com  
5 JACQUIE P. ANDREANO - # 338354  
jandreano@keker.com  
6 KAYLA CROWELL - # 349061  
kcrowell@keker.com  
7 MICHAELA FIRMAGE - # 366184  
mfirmage@keker.com  
8 KEKER, VAN NEST & PETERS LLP  
633 Battery Street  
9 San Francisco, CA 94111  
Telephone: (415) 391-5400

10 Attorneys for Petitioner

11 *[ADDITIONAL COUNSEL ON NEXT PAGE]*

BREE BERNWANGER - # 331731  
bbernwanger@aclunc.org  
MICHELLE (MINJU) Y. CHO - # 321939  
mcho@aclunc.org  
NEIL K. SAWHNEY - # 300130  
nsawhney@aclunc.org  
LAUREN M. DAVIS - # 357292  
ldavis@aclunc.org  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN  
CALIFORNIA  
39 Drumm Street  
San Francisco, CA 94111  
Telephone: (415) 621-2493

ABBY SULLIVAN ENGEN- # 270698  
asullivanengen@centrolegal.org  
JESSE NEWMARK - # 247488  
jessenewmark@centrolegal.org  
NIKOLAS DE BREMAEKER (admitted pro  
hac vice)  
ndebremaeker@centrolegal.org  
CENTRO LEGAL DE LA RAZA  
3400 E. 12th Street  
Oakland, CA 94601  
Telephone: (510) 437-1863

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN JOSE DIVISION

17 FRESCIA GARRO PINCHI,

18 Petitioner,

19 v.

20 SERGIO ALBARRAN, Field Office Director  
21 of the San Francisco Immigration and  
22 Customs Enforcement Office; KRISTI  
23 NOEM, Secretary of the United States  
24 Department of Homeland Security; TODD  
25 LYONS, Acting Director of United States  
26 Immigration and Customs Enforcement,  
27 acting in their official capacities; U.S.  
28 DEPARTMENT OF HOMELAND  
SECURITY; U.S. IMMIGRATION AND  
CUSTOMS ENFORCEMENT,

Respondents.

Case No. 5:25-cv-10831-PCP

**TRAVERSE IN SUPPORT OF WRIT OF  
HABEAS CORPUS**

Date Filed: July 3, 2025

1 JUDY RABINOVITZ (admitted pro hac vice)  
jrabinovitz@aclu.org  
2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
125 Broad Street, 18th Floor  
3 New York, NY 10004  
Telephone: (212) 549-2660

4 OSCAR SARABIA ROMAN - # 341385  
osarabia@aclu.org  
5 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
425 California Street, Ste 7th Floor  
6 San Francisco, CA 94104  
7 Telephone: (916) 813-7891

8 Attorneys for Petitioner  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

TABLE OF CONTENTS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

I. INTRODUCTION .....1

II. ARGUMENT.....1

    A. The INA does not deprive this Court of jurisdiction over the petition. ....1

        1. 8 U.S.C. § 1252(e)(3) does not apply. ....1

        2. 8 U.S.C. §§ 1252(g), (b)(9), and (a)(5) do not apply.....3

    B. Ms. Garro Pinchi has established violations of her constitutional rights.....5

        1. Ms. Garro Pinchi’s re-detention violates the Due Process Clause.....5

        2. Ms. Garro Pinchi’s re-detention violates the Fourth Amendment.....8

        3. Ms. Garro Pinchi is not subject to § 1225(b)(2)(A).....8

        4. The Court has jurisdiction to enter the relief Ms. Garro Pinchi seeks.....11

    C. Ms. Garro Pinchi is entitled to fees.....13

III. CONCLUSION.....13

**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Page(s)**

**Federal Cases**

*Alvarez v. ICE*,  
818 F.3d 1194 (11th Cir. 2016) .....3

*Barco Mercado v. Francis*,  
2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025).....9

*Bautista Pico v. Noem*,  
2025 WL 3295382 (N.D. Cal. Nov. 26, 2025) .....7

*Daniel v. Williams*,  
474 U.S. 327 (1986).....7

*DHS v. Regents of the Univ. of Cal.*,  
591 U.S. 1 (2020).....3, 4

*Doe v. Becerra*,  
723 F. Supp. 3d 688 (N.D. Cal. 2024) .....12

*Doe v. Becerra*,  
732 F. Supp. 3d 1071 (N.D. Cal. 2024) .....12

*Doe v. Chestnut*,  
--- F. Supp. 3d ---, 2025 WL 3240400 (E.D. Cal. Nov. 20, 2025) .....12

*Doe v. Garland*,  
109 F.4th 1188 (9th Cir. 2024) .....3

*Duran v. Bernacke*,  
2025 WL 3237451 (D. Nev. Nov. 19, 2025) .....1

*Faizyan v. Casey*,  
2025 WL 3208844 (S.D. Cal. Nov. 17, 2025) .....5

*Garro Pinchi v. Noem*,  
--- F. Supp. 3d ---, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025) ..... *passim*

*Garro Pinchi v. Noem*,  
5:25-cv-05632-PCP (July 9, 2025) .....8

*Garro Pinchi v. Noem*,  
792 F. Supp. 3d 1025 (N.D. Cal. 2025) .....5, 6, 12

*Gonzalez v. ICE*,  
975 F.3d 788 (9th Cir. 2020) .....8

1 *Hernandez Roman v. Wolf*,  
 2 829 F. App'x 165 (9th Cir. 2020) .....12

3 *Hernandez v. Sessions*,  
 4 872 F.3d 976 (9th Cir. 2017) .....7, 13

5 *Herrera-Correra v. United States*,  
 6 2008 WL 11336833 (C.D. Cal. Sep. 11, 2008).....4

7 *Home Depot U. S. A., Inc. v. Jackson*,  
 8 587 U.S. 435 (2019).....2

9 *Innovation L. Lab v. Nielsen*,  
 10 342 F. Supp. 3d 1067 (D. Or. 2018) .....1

11 *J.E.F.M. v. Lynch*,  
 12 837 F.3d 1026 (9th Cir. 2016) .....4

13 *Jackson v. Indiana*,  
 14 406 U.S. 715 (1972).....7

15 *Jennings v. Rodriguez*,  
 16 583 U.S. 281 (2018).....3, 4

17 *Leiva Flores v. Albarran*,  
 18 2025 WL 3228306 (N.D. Cal. Nov. 19, 2025) .....7

19 *Lepe v. Andrews*,  
 20 801 F. Supp. 3d 1104 (E.D. Cal. 2025).....9, 10

21 *Liu v. Waters*,  
 22 55 F.3d 421 (9th Cir. 1995) .....12

23 *Lopez v. Barr*,  
 24 2021 WL 195523 (D. Minn. Jan. 20, 2021).....5

25 *M.M.V. v. Garland*,  
 26 1 F.4th 1100 (D.C. Cir. 2021).....2

27 *Martinez v. Clark*,  
 28 124 F.4th 775 (9th Cir. 2024) .....11

*Mathews v. Eldridge*,  
 424 U.S. 319 (1976).....5, 6

*Milan-Rodriguez v. Sessions*,  
 2018 WL 400317 (E.D. Cal. Jan. 12, 2018) .....11

*Morrissey v. Brewer*,  
 408 U.S. 471 (1972).....6, 9

1 *Mosqueda v. Noem*,  
 2 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025).....5

3 *Nadarajah v. Gonzales*,  
 4 443 F.3d 1069 (9th Cir. 2006) .....3, 4

5 *Nasrallah v. Barr*,  
 6 590 U.S. 573 (2020).....5

7 *Oliveros v. Kaiser*,  
 8 2025 WL 2677125 (N.D. Cal. Sep. 18, 2025) .....11

9 *Ortega v. Kaiser*,  
 10 2025 WL 2243616 (N.D. Cal. Aug. 6, 2025) .....5

11 *Ozturk v. Hyde*,  
 12 136 F.4th 382 (2nd Cir. 2025) .....11

13 *Ozturk v. Trump*,  
 14 779 F. Supp. 3d 462 (D. Vt. 2025).....11

15 *Pablo Sequen v. Kaiser*,  
 16 800 F. Supp. 3d. 998 (N.D. Cal. 2025) .....2, 6, 12

17 *Padilla v. ICE*,  
 18 704 F. Supp. 3d 1163 (W.D. Wash. 2023).....6

19 *Matter of R-A-V-P-*,  
 20 27 I&N Dec. 803 (BIA 2020) .....12

21 *Reno v. American-Arab Anti-Discrimination Comm.*,  
 22 525 U.S. 471 (1999).....4

23 *Rodriguez Diaz v. Garland*,  
 24 83 F.4th 1177 (9th Cir. 2023) (Paez, J., respecting the denial of rehearing en  
 25 banc).....11

26 *Rodriguez v. Kaiser*,  
 27 2025 WL 2855193 (E.D. Cal. Oct. 8, 2025) .....5

28 *Saravia v. Sessions*,  
 280 F. Supp. 3d 1168 (N.D. Cal. 2017) .....8

*Singh v. Holder*,  
 638 F.3d 1196 (9th Cir. 2011) .....11

*Sissoko v. Rocha*,  
 509 F.3d 947 (9th Cir. 2007) .....4

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Regulations**

8 C.F.R. § 236.1(c)(8) (2016) ..... 7

**Other Authorities**

H.R. Rep. No. 104-469 (1996)..... 10

H.R. Rep. No. 104-828 (1996)..... 10

Ximena Bustillo & Anusha Mathur, *Trump administration to shutter an immigration court, adding to judges' backlog*, NPR (Jan. 13, 2026), <https://www.npr.org/2026/01/13/g-s1-105679/san-francisco-immigration-court-closure> ..... 12, 13

1 **I. INTRODUCTION**

2 Respondents do not dispute that Petitioner Frescia Garro Pinchi, a 27-year-old asylum  
3 seeker, poses no flight risk or danger to the community. Respondents also do not contest Ms.  
4 Garro Pinchi’s claims that her re-detention violates the Due Process Clause and Fourth  
5 Amendment. Instead, Respondents insist that Ms. Garro Pinchi’s claims are not justiciable and  
6 her detention is mandated by statute, relying on arguments this Court has repeatedly rejected.  
7 Remarkably, Respondents *still* do not disclaim their intent to re-detain Ms. Garro Pinchi, even  
8 though this Court has separately held that the policy authorizing her re-detention is likely  
9 unlawful. *See Garro Pinchi v. Noem*, --- F. Supp. 3d ---, 2025 WL 3691938, at \*11 (N.D. Cal.  
10 Dec. 19, 2025) (“*Garro Pinchi II*”). Because this Court has jurisdiction and Ms. Garro Pinchi has  
11 established that her re-detention would violate the Constitution, this Court should grant her  
12 petition.

13 **II. ARGUMENT**

14 **A. The INA does not deprive this Court of jurisdiction over the petition.**

15 **1. 8 U.S.C. § 1252(e)(3) does not apply.**

16 8 U.S.C. § 1252(e)(3) is a “limited grant of jurisdiction to the D.C. district court to decide  
17 challenges to regulations that are entirely linked to the expedited removal process,” which is  
18 codified at § 1225(b)(1). *Garro Pinchi II*, 2025 WL 3691938, at \*11 (*quoting Mendoza- Linares*  
19 *v. Garland*, 51 F.4th 1146, 1156-57 (9th Cir. 2022)).<sup>1</sup> It does not apply to Ms. Garro-Pinchi’s  
20 habeas challenge to her re-detention, which has nothing to do with expedited removal. *See id.*; *see*  
21 *also Duran v. Bernacke*, 2025 WL 3237451, at \*5 (D. Nev. Nov. 19, 2025) (rejecting government  
22 argument that § 1252(e)(3) applies to § 1225(b)(2)); *Innovation L. Lab v. Nielsen*, 342 F. Supp.  
23 3d 1067, 1075 (D. Or. 2018) (same).

24 As this Court has held, the text and structure of § 1252(e) and § 1225(b), read together,  
25 foreclose the government’s argument that § 1252(e)’s provisions cover § 1225(b)(2) for at least  
26 three reasons: (1) the title of § 1252(e) “concerns review only of orders *under section*

27 \_\_\_\_\_  
28 <sup>1</sup> Except as noted otherwise, all emphasis has been added and all internal citations and quotations  
have been omitted.

1 *1225(b)(1)*”; (2) § 1252(e)(3) authorizes challenges to implementing regulations and directives  
2 issued by the Attorney General, but only § 1225(b)(1)—not § 1225(b)(2)—confers express  
3 authority on the Attorney General to issue regulations and directives; and (3) § 1252(e)(3)  
4 requires courts to “expedite” cases, consistent with the expedited process set forth in § 1225(b)(1)  
5 – not the un-expedited process under § 1225(b)(2). *Garro Pinchi II*, 2025 WL 3691938, at \*10  
6 (emphasis in original).

7 Respondents argue that because § 1252(e)(3) refers generally to “determinations under  
8 section 1225(b),” § 1252(e)(3) must apply to every provision of § 1225(b). Their position cannot  
9 be reconciled with the rest of § 1252. *Cf. Home Depot U. S. A., Inc. v. Jackson*, 587 U.S. 435, 441  
10 (2019) (“[T]he words of a statute must be read in their context and with a view to their place in  
11 the overall statutory scheme.”). Section 1252(e) is the corollary statute to § 1252(a)(2)(A), which  
12 *expressly applies only to § 1225(b)(1)*. Section 1252(a)(2)(A) provides the general rules setting  
13 limits on judicial review of expedited removal issues, whereas § 1252(e) is the source of  
14 exceptions to those general rules. Section 1252(e) can thus be understood only in relation to §  
15 1252(a)(2)(A); it serves no purpose other than providing the exceptions to § 1252(a)(2)(A)’s  
16 limits on judicial review of expedited removal. There is no basis for reading § 1252(e)(3)’s  
17 limited preservation of jurisdiction to somehow cover § 1225(b)(2) when nothing in the statute  
18 strips jurisdiction over § 1225(b)(2) in the first place. Respondents cite no authority to support  
19 their alternative interpretation, *see* Opp. at 3, which cannot be squared with the text of § 1252.  
20 *M.M.V. v. Garland* does not hold otherwise; there, the plaintiffs challenged expedited removal  
21 policies under § 1225(b)(1), which are not at issue here. *See* 1 F.4th 1100, 1109 (D.C. Cir. 2021).

22 Even if Respondents were correct that § 1252(e)(3) somehow covered detention under  
23 § 1225(b)(2)—and they are not—it still would not apply here, because Ms. Garro Pinchi is not  
24 detained under § 1225(b)(2) at all. *See Garro Pinchi II*, 2025 WL 3691938, at \*26-29 (holding  
25 that § 1225(b)(2) likely does not apply to Ms. Garro Pinchi); *see also Pablo Sequen v. Kaiser*,  
26 800 F. Supp. 3d. 998, 1010-13 (N.D. Cal. 2025). Respondents’ interpretation of § 1252(e)(3) as  
27 controlling habeas venue for detention challenges arising under § 1225(b)(2) also cannot be  
28 reconciled with the Supreme Court’s holding that for immigration habeas petitioners challenging

1 present physical confinement, as Ms. Garro Pinchi was when she filed her petition, venue lies  
2 solely in the district of confinement. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025); *see also Doe v.*  
3 *Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024). Section § 1252(e)(3) does not deprive this  
4 Court of jurisdiction.

5 **2. 8 U.S.C. §§ 1252(g), (b)(9), and (a)(5) do not apply.**

6 For the same reasons this Court held that §§ 1252(g) and (b)(9) do not bar Ms. Garro  
7 Pinchi’s challenge to ICE’s Re-Detention Policy, those statutes do not bar her habeas challenge  
8 here. *See Garro Pinchi II*, 2025 WL 3691938, at \*9.

9 Both §§ 1252(g) and 1252(b)(9) are narrow provisions applicable to only the specific  
10 situations enumerated within their text. *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 19  
11 (2020). Neither apply to claims, like the ones at issue here, challenging detention. *Id.*  
12 Section 1252(g) covers only challenges to three discretionary actions not at issue here: the  
13 decision to “commence proceedings,” “adjudicate cases,” or “execute removal orders,” not “all  
14 claims arising from deportation proceedings.” *Id.*; *see also Jennings v. Rodriguez*, 583 U.S. 281,  
15 293-94 (2018) (holding that § 1252(g) does not “sweep in any claim that can technically be said  
16 to ‘arise from’ the three listed actions[,]” such as detention). And § 1252(b)(9) applies only to  
17 claims that are related to final removal orders, not habeas petitions “that do not involve final  
18 orders of removal.” *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075-76 (9th Cir. 2006); *Regents*,  
19 591 U.S. at 19.

20 Respondents argue that Ms. Garro Pinchi’s detention falls under § 1252(g) because it  
21 “arises from” DHS’s decision to commence removal proceedings. *Opp.* at 4. But this is  
22 inconsistent with the facts of the case at hand. Ms. Garro Pinchi was already in removal  
23 proceedings before being *re*-detained by Respondents. *Pet.* ¶ 2. Thus, her re-arrest could not have  
24 been based on the decision to commence removal proceedings.

25 Respondents’ cases do not help them. Unlike this case, *Alvarez* and *Tazu* concern  
26 detention at the commencement of proceedings or for the purpose of executing a removal order.  
27 *Opp.* at 4; *see Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) (detention at commencement  
28 of proceedings); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 298 (3d Cir. 2020) (detention to execute

1 removal order). *Sissoko v. Rocha* applies only to “th[e] limited context” of a *Bivens* claim for  
2 false arrest and adopted a broad reading of § 1252(g) that the Supreme Court has since rejected.  
3 Opp. at 4; *contrast Sissoko*, 509 F.3d 947, 950 (9th Cir. 2007) *with Jennings*, 583 U.S. at 294  
4 (affirming that § 1252(g) applies only to the “three specific actions” listed in the statute).<sup>2</sup>  
5 Respondents’ final argument that § 1252(g) applies because detention pending removal is a  
6 “specification” of the decision to commence proceedings, is unsupported by the caselaw. Opp. at  
7 5. The only case Respondents cite, *Reno v. American-Arab Anti-Discrimination Comm.*, does not  
8 even mention detention, let alone apply § 1252(g) to a detention claim. 525 U.S. 471, 485 (1999).  
9 Section 1252(g) has no bearing on jurisdiction here.

10 Respondents’ arguments as to §§ 1252(b)(9) and (a)(5) fare no better. Section 1252(b)(9)  
11 channels only claims that are related to *final* removal orders. *Regents*, 591 U.S. at 19; *see also*  
12 *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016) (explaining that § 1252(b)(9) does not  
13 apply to “claims that are . . . collateral to the removal process”). As Ms. Garro Pinchi’s claims do  
14 not involve a final order of removal and are collateral to the removal process, § 1252(b)(9) does  
15 not apply. *Nadarajah*, 443 F.3d at 1075-76. Similarly, Respondents’ argument that § 1252(a)(5)  
16 strips this court of jurisdiction fails because § 1252(a)(5) applies only to challenges to removal  
17 orders. *See* 8 U.S.C. § 1252(a)(5) (a “petition for review filed with an appropriate court of appeals  
18 in accordance with this section shall be the sole and exclusive means for judicial review of *an*  
19 *order of removal . . .*”) (emphasis added).

20 Last, Respondents’ reliance on *Jennings* to suggest that Ms. Garro Pinchi’s claims trigger  
21 § 1252(b)(9) is misplaced. Opp. at 6. The Supreme Court in *Jennings* held that § 1252(b)(9) did  
22 *not* apply to challenges to detention because requiring people in detention to wait to receive  
23 removal orders to challenge their custody would lead to “results that no sensible person would  
24 have intended” and eliminate any meaningful chance for judicial review. *Jennings*, 583 U.S. at  
25 293-94 (citation omitted).

26 \_\_\_\_\_  
27 <sup>2</sup> Respondents’ district court cases also are inapposite; they all adopt the broad reading of §  
28 1252(g) that the Supreme Court rejected in *Jennings*, 583 U.S. at 294. *See Wang v. United States*,  
2010 WL 11463156, at \*6 (C.D. Cal. Aug. 18, 2010); *Herrera-Correra v. United States*, 2008  
WL 11336833, at \*3 (C.D. Cal. Sep. 11, 2008); *Valencia-Mejia v. United States*, 2008 WL  
4286979, at \*4 (C.D. Cal. Sep. 15, 2008).

1 For these reasons, courts in this circuit have repeatedly rejected Respondents' arguments  
2 that §§ 1252(g) and 1252(b)(9) strip courts of jurisdiction in the context of re-detention  
3 challenges, and this Court should do the same. *See, e.g., Faizyan v. Casey*, 2025 WL 3208844, at  
4 \*2-3 (S.D. Cal. Nov. 17, 2025); *Rodriguez v. Kaiser*, 2025 WL 2855193, at \*3-4 (E.D. Cal. Oct.  
5 8, 2025); *Mosqueda v. Noem*, 2025 WL 2591530, at \*3 (C.D. Cal. Sep. 8, 2025); *Ortega v.*  
6 *Kaiser*, 2025 WL 2243616, at \*4 (N.D. Cal. Aug. 6, 2025). Respondents offer no legal basis for a  
7 different outcome here.<sup>3</sup>

8 **B. Ms. Garro Pinchi has established violations of her constitutional rights.**

9 Ms. Garro Pinchi has established that her re-arrest and detention violate the Due Process  
10 Clause and the Fourth Amendment. Respondents do not contest, and thus concede, the merits of  
11 Ms. Garro Pinchi's constitutional claims. Instead, they rely exclusively on their faulty  
12 interpretation of § 1225 to purportedly justify Ms. Garro Pinchi's re-arrest and detention. Though  
13 Respondents' re-interpretation of § 1225 is wrong, Ms. Garro Pinchi prevails on her constitutional  
14 claims regardless of the applicable detention statute.

15 **1. Ms. Garro Pinchi's re-detention violates the Due Process Clause.**

16 This Court should grant Ms. Garro Pinchi's due process claims, which Respondents do  
17 not contest. Respondents do not argue that Petitioner is a flight risk or danger, suggest that they  
18 conducted any individualized analysis in re-detaining her, or offer *any* individualized basis for  
19 her re-detention at all. Thus, this Court should hold that Ms. Garro Pinchi has established  
20 violations of her due process rights.

21 In analyzing procedural due process claims, courts weigh the strength of the private  
22 interest, the risk of erroneous deprivation absent procedural safeguards, and the government's  
23 interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). As this Court held, Ms. Garro Pinchi has  
24 a protected liberty interest and strong private interest in remaining out of custody. *Garro Pinchi v.*  
25 *Noem*, 792 F. Supp. 3d 1025, 1032-34 (N.D. Cal. 2025) ("*Garro Pinchi I*"). In explaining her

26 <sup>3</sup> Respondents' remaining cases offer no additional support. *Opp.* at 4-5. *Nasrallah v. Barr*  
27 involved a challenge related to a CAT order, which the Court found was not a final order of  
28 removal and was thus reviewable. 590 U.S. 573, 579-80 (2020). *Lopez v. Barr* is a case from the  
District of Minnesota that does not involve a challenge to detention. 2021 WL 195523, at \*2 (D.  
Minn. Jan. 20, 2021).

1 liberty interest, this Court cited that Ms. Garro Pinchi “has an interest in remaining in her home,  
2 continuing her employment, providing for her family, obtaining necessary medical care,  
3 maintaining her relationships in the community, and continuing to attend her church.” *Id.* at 1033.  
4 Her re-detention deprived her of those “enduring attachments of normal life.” *See Morrissey v.*  
5 *Brewer*, 408 U.S. 471, 482 (1972).

6 Applying the *Mathews v. Eldridge* factors, this Court also explained that a pre-deprivation  
7 bond hearing is required in order for Ms. Garro Pinchi’s re-detention to meet constitutional  
8 muster. *Garro Pinchi I*, 792 F. Supp. 3d at 1033-36; *Mathews*, 424 U.S. at 331. In so holding, this  
9 Court noted that civil immigration detention is justified only when a noncitizen presents a risk of  
10 flight or danger. *Garro Pinchi I*, 792 F. Supp. 3d at 1032 (citing *Zadvydas v. Davis*, 533 U.S. 678,  
11 690 (2001); *See also Padilla v. ICE*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). As Ms.  
12 Garro Pinchi has attended every check-in and hearing and has no criminal history, and was  
13 subsequently arrested without any procedural safeguards to determine whether her detention was  
14 justified, the probable value of additional procedural safeguards is high. *Garro Pinchi I*, 792 F.  
15 Supp. 3d at 1035.

16 Ms. Garro Pinchi’s due process rights as a person who has entered the United States are  
17 constitutional and are not limited to what Congress has provided by statute. *Zadvydas*, 533 U.S. at  
18 693 (once a person has entered the United States, the Due Process Clause imposes constitutional  
19 limits on the government’s authority to detain them, regardless of whether the person’s presence  
20 in the country is “lawful, unlawful, temporary, or permanent”). Ms. Garro Pinchi thus prevails on  
21 her procedural due process claim regardless of whether she is detained under § 1225(b)(2) or  
22 § 1226(a). As this Court has explained, in the context of procedural due process analysis, the key  
23 distinction between detention under § 1225(b)(2) and § 1226(a) is that only § 1226(a) allows for  
24 post-deprivation bond hearing, whereas § 1225(b)(2) provides no right to review *at all*. *Pablo*  
25 *Sequen*, 800 F. Supp. 3d at 1013. If Respondents were correct that Ms. Garro Pinchi is detained  
26 under § 1225(b)(2)—for the reasons explained below, they are not—she would have no  
27 opportunity for review of her custody even after being deprived of her liberty, which would  
28 “*strengthen* her due process claim”—not weaken it. *Id.* As Respondents have not offered any

1 caselaw or facts that would disrupt this Court’s prior holding, this Court should hold that Ms.  
2 Garro Pinchi’s re-detention violates procedural due process.

3 As to substantive due process, though this Court previously did not decide this claim, it  
4 can readily do so now. Whereas procedural due process “promotes fairness” in government  
5 decisions to deprive persons of their liberty by “requir[ing] the government to follow appropriate  
6 procedures[,]” substantive due process “prevent[s] governmental power from being used for  
7 purposes of oppression” by “barring certain government actions regardless of the fairness of the  
8 procedures used to implement them.” *Daniel v. Williams*, 474 U.S. 327, 331 (1986).

9 Freedom from detention “lies at the heart of liberty” protected by the Due Process Clause.  
10 *Zadvydas*, 533 U.S. at 690. When, as here, a noncitizen poses no flight risk or danger to the  
11 community, immigration detention serves no legitimate government purpose and becomes  
12 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*  
13 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the  
14 government’s interests in preventing flight and danger); *see also Valencia Zapata v. Kaiser*, 801  
15 F. Supp. 3d 919, 939-40 (N.D. Cal. 2025) (holding that a similarly situated petitioner  
16 demonstrated serious questions going to the merits of their substantive due process claim); *Leiva*  
17 *Flores v. Albarran*, 2025 WL 3228306, at \*5 (N.D. Cal. Nov. 19, 2025) (same); *Bautista Pico v.*  
18 *Noem*, 2025 WL 3295382, at \*3 (N.D. Cal. Nov. 26, 2025) (same).

19 As the Ninth Circuit has held, “the government has no legitimate interest in detaining  
20 individuals who have been determined not to be a danger to the community and whose  
21 appearance at future immigration proceedings can be reasonably ensured by a lesser bond or  
22 alternative conditions.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017). Immigration  
23 agents determined that Ms. Garro Pinchi was not a flight risk or danger when they released her  
24 from custody in 2024. *See* 8 C.F.R. § 236.1(c)(8) (2016) (allowing release only after  
25 determination that noncitizen does not pose a danger and will appear for future hearings); Pet.  
26 ¶¶ 62-63. It is undisputed that Ms. Garro Pinchi has complied with all conditions of release,  
27 including attending all check-ins and immigration court hearings, and has no criminal history at  
28 all. Pet. ¶¶ 2, 14, 64, 72. Because the government cannot show that Ms. Garro Pinchi’s re-

1 detention would advance the only accepted rationales for civil detention—flight risk or danger—  
2 Ms. Garro Pinchi has demonstrated her re-detention would violate her substantive due process  
3 rights. *Zadvydas*, 533 U.S. at 690. Where, as here, the government does not even make bare  
4 allegations of flight risk or danger to justify detention, detention violates the Constitution  
5 regardless of the procedural protections involved.

6 **2. Ms. Garro Pinchi’s re-detention violates the Fourth Amendment.**

7 Respondents do not dispute that the Fourth Amendment prohibits re-seizure without a new  
8 or intervening cause. Pet. ¶¶ 30, 83-86. Nor do Respondents even try to argue that an intervening  
9 cause justifies Ms. Garro Pinchi’s re-arrest. They cannot. As explained in *Saravia*, new probable  
10 cause for re-arrest in the immigration context refers to probable cause to believe that *the*  
11 *petitioner* is a danger or a flight risk. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal.  
12 2017) (emphasis added).<sup>4</sup> The reasons Respondents offer for detention—namely, their meritless  
13 re-interpretation of the detention statutes—are not related to *Ms. Garro Pinchi’s* flight risk or  
14 danger and cannot justify a further seizure of Ms. Garro Pinchi.

15 **3. Ms. Garro Pinchi is not subject to § 1225(b)(2)(A).**

16 Rather than respond to Ms. Garro Pinchi’s constitutional claims, Respondents repeatedly  
17 focus on their mistaken position that Ms. Garro Pinchi is subject to detention under § 1225(b).  
18 This position is counter to Respondents’ *own* arguments at the time that they detained Ms. Garro  
19 Pinchi in June, when they stated she was subject to § 1226(a), not 1225(b). *See Garro Pinchi v.*  
20 *Noem*, 5:25-cv-05632-PCP, Respondents’ Response to Order to Show Cause and Opposition to  
21 Motion for Preliminary Injunction, ECF 20 (July 9, 2025) (arguing throughout that Ms. Garro  
22 Pinchi was subject to § 1226(a)).

23 Respondents acknowledge that this Court has rejected their argument that 8 U.S.C.  
24 § 1225(b)(2) mandates the detention of all “applicant[s] for admission,” and offer no reasons for

25 <sup>4</sup> Courts regularly apply Fourth Amendment principles derived from criminal cases to the  
26 immigration context. *See e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975)  
27 (applying Fourth Amendment principles from the criminal context to “limit” the scope of  
28 immigration agents’ seizure authority); *Gonzalez v. ICE*, 975 F.3d 788, 817 (9th Cir. 2020)  
(explaining that Fourth Amendment limits on seizures apply equally to the criminal and civil  
immigration context). Respondents do not cite any case law that disapproves of, or even  
questions, this frequent practice.

1 this Court to depart from its reasoned analysis. Opp. at 7. The government’s proposed  
2 interpretation of § 1225(b)(2)(A), that it applies to all noncitizens present in the United States  
3 present without admission, fails for at least four reasons: it “(1) disregards the plain meaning of  
4 section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would  
5 render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of  
6 prior statutory interpretation and practice.” *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1112 (E.D.  
7 Cal. 2025). This Court has already so held and explained its analysis in detail. *See Garro Pinchi*  
8 *II*, 2025 WL 3691938, at \*26-29. Respondents do not meaningfully engage with this Court’s prior  
9 holdings and none of their arguments otherwise unsettle this Court’s analysis.

10 As this Court has explained, the phrase “seeking admission” in § 1225(b)(2)(A) refers to a  
11 present-tense action and narrows the statute’s application only to those applicants for admission  
12 who are actively seeking lawful entry. *Id.* at \*26. Indeed, “if every applicant for admission was  
13 necessarily a noncitizen ‘seeking admission,’ . . . then the phrase ‘an alien seeking admission’ in  
14 § 1225(b)(2) would have no meaning.” *Id.*<sup>5</sup> Respondents’ insistence that the statute’s plain  
15 language compels their contrary reading is undermined by the fact that the government has taken  
16 close to 30 years to claim that this is what the statute means. *See Util. Air Regul. Grp. v. EPA*,  
17 573 U.S. 302, 324 (2014) (“When an agency claims to discover in a long-extant statute an  
18 unheralded power . . . [the courts] typically greet its announcement with a measure of  
19 skepticism.”).

20 Respondents cite four cases in this circuit that have gone their way, Opp. at 7-8, but fail to  
21 acknowledge the hundreds of other decisions of district courts nationwide that have rejected their  
22 statutory interpretation arguments. *Barco Mercado v. Francis*, 2025 WL 3295903, at \*3  
23 (S.D.N.Y. Nov. 26, 2025) (documenting over 300 cases in which courts have rejected the  
24 government’s new interpretation of § 1225). Respondents’ cases are also distinguishable from this  
25 one; all involve requests for bond hearings following initial detention, whereas Ms. Garro Pinchi

26 \_\_\_\_\_  
27 <sup>5</sup> Respondents have also argued that applicants for admission may only be released on an §  
28 1182(d)(5) parole. *See e.g.* Case No. 25-cv-05632-PCP, ECF No. 66 at 4. However, Ms. Garro  
Pinchi was clearly designated as subject to § 1226 when she entered the country and was released  
on conditional parole. Pet. ¶¶ 62-63. As explained, her release into the United States imparted a  
liberty interest. *Morrissey*, 408 U.S. at 482.

1 had already been classified as § 1226(a) by the government and challenges *re*-detention following  
2 an initial release from custody.

3 Respondents' interpretation of § 1226 is similarly meritless. Citing no authority or  
4 language in the statute, Respondents argue that § 1226(a) applies only to noncitizens who "have  
5 been admitted and are deportable." Opp. at 8. But Respondents concede, as they must, that  
6 § 1226(c)—which sets forth the limited mandatory detention exception to § 1226(a)'s  
7 discretionary detention rule—applies to noncitizens who have not been admitted and are thus  
8 inadmissible.<sup>6</sup> Opp. at 9. Respondents do not and cannot explain how § 1226(a)'s general rule  
9 could apply only to people who have been admitted when § 1226(c)'s exception to that rule  
10 plainly applies to people who have not. Nor does Respondents' explanation of the Laken Riley  
11 Act help their case. *Id.* at 10. As this Court has recognized, their interpretation of § 1225(b)(2)  
12 would "have the effect of nullifying" those recent amendments. *Garro Pinchi II*, 2025 WL  
13 3691938, at \*27. The "more satisfactory explanation" for the passage of the Laken Riley Act is  
14 that Congress "understood that not all noncitizens present in the United States who entered  
15 without lawful admission were subject to mandatory detention under section 1225(b)(2)(A)."  
16 *Lepe*, 801 F. Supp. 3d at 1115. Respondents' reading of § 1225(b)(2) to require detention of all  
17 noncitizens who are inadmissible would thus render all of § 1226(c) superfluous, not just the  
18 Laken Riley Act amendments.

19 Respondents' additional argument that the passage of the Illegal Immigration Reform and  
20 Immigrant Responsibility Act of 1996 ("IIRIRA") indicates that § 1226 does not apply to  
21 applicants for admission is inconsistent with the congressional record. As a threshold matter,  
22 Respondents' claim that Congress "expanded" § 1225(b) when it enacted IIRIRA in 1996 is  
23 wrong. Opp. at 10. When Congress enacted § 1225 in 1996, the legislative history made clear that  
24 § 1226 still applied to inadmissible noncitizens who enter the country without inspection. H.R.  
25 Rep. No. 104-469, pt.1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996). In passing  
26

27 <sup>6</sup> A person who has been "admitted" is subject to grounds of "deportability," *see* 8 U.S.C.  
28 § 1227(a), whereas a person who has not been admitted is subject to grounds of "inadmissibility,"  
*see* 8 U.S.C. § 1182(a). Accordingly, a person can be inadmissible as described in § 1226(c) only  
if they have not been admitted.

1 IIRIRA, Congress sought to resolve the disparity in the processes for removing people who  
2 entered with inspection and those who entered without inspection, and it did so by eliminating  
3 “exclusion proceedings.” *Torres v. Barr*, 976 F.3d 918, 927-28 (9th Cir. 2020) (describing  
4 changes). The changes that IIRIRA made to the removal process do not extend to the detention  
5 statutes; had Congress intended to subject all inadmissible noncitizens to mandatory detention, it  
6 would have said so. Respondents’ arguments offer no reason for this Court to depart from its prior  
7 holding that Ms. Garro Pinchi is subject to § 1226(a), not § 1225(b)(2).

8 **4. The Court has jurisdiction to enter the relief Ms. Garro Pinchi seeks.**

9 Respondents’ objections to paragraphs (a) and (d) of Ms. Garro Pinchi’s prayer for relief  
10 are unavailing. *First*, a habeas court has the power to order that a petitioner not be moved from  
11 the judicial district or deported pending habeas proceedings—which is all Ms. Garro Pinchi seeks.  
12 *See* 28 U.S.C. §§ 1651(a), 2243. This includes “the inherent authority and responsibility to protect  
13 the integrity of its proceedings which [are] undoubtedly impacted” when a habeas petitioner is  
14 transferred or deported. *Ozturk v. Trump*, 779 F. Supp. 3d 462, 496 (D. Vt. 2025). Contrary to  
15 Respondents’ position, “§ 1231(g) does not address transfers [of noncitizen detainees] *at all*, and  
16 it surely does not *explicitly* grant the Attorney General or the Secretary of Homeland Security  
17 discretion with respect to transfers.” *Ozturk v. Hyde*, 136 F.4th 382, 396 (2nd Cir. 2025) (citation  
18 omitted); *see Oliveros v. Kaiser*, 2025 WL 2677125, at \*8 (N.D. Cal. Sep. 18, 2025).  
19 Respondents’ cited authority does not hold otherwise. *See* Opp. at 10. In *Milan-Rodriguez v.*  
20 *Sessions*, the district court expressly held that it *had* jurisdiction to review a challenge to a  
21 custody transfer. 2018 WL 400317, at \*8 (E.D. Cal. Jan. 12, 2018).

22 *Second*, the government bears a clear-and-convincing burden of proof to redress a due  
23 process violation. The Ninth Circuit so held many years ago. *Singh v. Holder*, 638 F.3d 1196,  
24 1203-05 (9th Cir. 2011). “*Singh*’s constitutional holding . . . remains binding law of our court.”  
25 *Rodriguez Diaz v. Garland*, 83 F.4th 1177, 1179 (9th Cir. 2023) (Paez, J., respecting the denial of  
26 rehearing en banc); *see Martinez v. Clark*, 124 F.4th 775, 784-86 (9th Cir. 2024) (confirming the  
27 government bears the “clear-and-convincing burden of proof” at an immigration bond hearing  
28 ordered pursuant to the Due Process Clause).

1           *Third*, this Court has jurisdiction to determine whether Ms. Garro Pinchi’s re-detention  
2 becomes warranted in the future. District courts have jurisdiction to order release from custody,  
3 bar re-detention, and make findings regarding changed circumstances, consistent with their broad  
4 equitable powers to remedy constitutional violations. *See Zepeda Rivas v. Jennings*, 845 F. App’x  
5 530, 534-35 (9th Cir. 2021) (district court had authority to issue bail orders to detained  
6 noncitizens); *Hernandez Roman v. Wolf*, 829 F. App’x 165, 174 (9th Cir. 2020) (describing  
7 district courts’ “broad equitable authority to remedy a likely constitutional violation” and  
8 upholding district court order requiring release of noncitizens from custody). In exercising that  
9 authority, district courts—including this one—regularly weigh evidence and make determinations  
10 related to danger and risk of flight. *See Doe v. Chestnut*, --- F. Supp. 3d ---, 2025 WL 3240400, at  
11 \*10 (E.D. Cal. Nov. 20, 2025) (making “independent assessment” of flight risk and danger in  
12 substantive due process challenge to immigration detention); *Doe v. Becerra*, 723 F. Supp. 3d  
13 688, 692 (N.D. Cal. 2024) (ordering production of evidence in immigration habeas to evaluate,  
14 among other factors, flight risk and danger to the community); *Doe v. Becerra*, 732 F. Supp. 3d  
15 1071, 1083-87 (N.D. Cal. 2024) (weighing flight risk and danger to the community, among other  
16 factors, and ordering release to remedy constitutional violation).

17           Respondents invoke the administrative immigration system, but its adjudicators do *not*  
18 have authority to address constitutional violations. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 804  
19 n.2 (BIA 2020) (“We do not have the authority to entertain constitutional challenges to the  
20 statutes and regulations we administer”); *Liu v. Waters*, 55 F.3d 421, 425 (9th Cir. 1995) (“the  
21 BIA lacks jurisdiction to adjudicate constitutional questions”). Moreover, there is ample reason to  
22 believe that the immigration court cannot provide the neutral review that the Constitution  
23 demands. *See Pablo Sequen*, 800 F. Supp. 3d at 1010 (holding that due process likely required  
24 pre-deprivation hearing before a “neutral decisionmaker”); *Garro Pinchi I*, 792 F. Supp. at 1033  
25 (same). The San Francisco Immigration Court will be shut down by the end of the year.<sup>7</sup> Most  
26

27 \_\_\_\_\_  
28 <sup>7</sup> Ximena Bustillo & Anusha Mathur, *Trump administration to shutter an immigration court, adding to judges’ backlog*, NPR (Jan. 13, 2026), <https://www.npr.org/2026/01/13/g-s1-105679/san-francisco-immigration-court-closure>.

1 judges in that court have been fired, leaving a tremendous backlog of cases.<sup>8</sup> Those who remain,  
2 and are being hired to replace them, are now titled “deportation judges.”<sup>9</sup> This Court should  
3 exercise its equitable authority to adjudicate any future effort to re-detain Ms. Garro Pinchi.

4 *Fourth*, Contrary to Respondents’ contention, Ms. Garro Pinchi does not seek to enjoin  
5 the execution of a future final removal order (which has not and may never issue). Opp. at 12. She  
6 sought to bar her transfer or unlawful removal pending these proceedings, a temporary form of  
7 relief that she does not seek to make permanent. *See* Pet. ¶ 86(a) (limiting relief to “pending the  
8 duration of these proceedings.”). Respondents do not dispute that they cannot lawfully remove  
9 Ms. Garro Pinchi unless she becomes subject to a final order of removal. And there is no reason  
10 for the possible—but by no means certain—future issuance of a removal order against Ms. Garro  
11 Pinchi to disturb the relief she seeks. Regardless of the underlying statute, “the government’s  
12 discretion to incarcerate non-citizens is always constrained by the requirements of due process.”  
13 *Hernandez*, 872 F.3d at 981. A final removal order may constitute a materially changed  
14 circumstance warranting Ms. Garro Pinchi’s re-detention, but its issuance does not outweigh  
15 constitutional considerations, and the *possibility* that she may ultimately be subject to a removal  
16 order does not undermine her current claims for relief.

17 **C. Ms. Garro Pinchi is entitled to fees.**

18 Should Ms. Garro Pinchi prevail and should the parties be unable to reach a negotiated fee  
19 award, Ms. Garro Pinchi intends to file a motion for attorneys’ fees following the procedure set  
20 forth by the Equal Access to Justice Act.

21 **III. CONCLUSION**

22 For the foregoing reasons and those stated in her Petition, Ms. Garro Pinchi respectfully  
23 requests that the Court issue a writ of habeas corpus and otherwise grant the relief requested in  
24 her Petition.

25  
26  
27 \_\_\_\_\_  
28 <sup>8</sup> *Id.*

<sup>9</sup> *Id.*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: February 17, 2026

KEKER, VAN NEST & PETERS LLP

By: /s/ Erin E. Meyer

ERIN E. MEYER  
JULIA L. ALLEN  
CLAIRE C. BONELLI  
ELLEN WATLINGTON  
JACQUIE P. ANDREANO  
KAYLA CROWELL  
MICHAELA FIRMAGE

Attorneys for Petitioner

Dated: February 17, 2026

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION OF NORTHERN

/s/ Bree Bernwanger

BREE BERNWANGER  
MICHELLE (MINJU) Y. CHO  
NEIL K. SAWHNEY  
LAUREN M. DAVIS

Attorneys for Petitioner

Dated: February 17, 2026

CENTRO LEGAL DE LA RAZA

/s/ Abby Sullivan Engen

ABBY SULLIVAN ENGEN  
JESSE NEWMARK  
NIKOLAS DE BREMAEKER

Attorneys for Petitioner

Dated: February 17, 2026

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

/s/ Judy Rabinovitz

JUDY RABINOVITZ

Attorneys for Petitioner