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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Leander FRAI GARICA,

12
13 Petitioner,

14 v.

15 Kristi NOEM, Secretary of Homeland
16 Security; Christopher J. LAROSE,
17 Warden, Otay Mesa Detention Center;
18 Daniel A BRIGHTMAN, Field Office
19 Director, San Diego Field Office, United
20 States Immigration and Customs
21 Enforcement; Todd M. LYONS, Acting
22 Director, United States Immigration
23 and Customs Enforcement; Pamela Jo
BONDI, Attorney General, in their
official capacities,

24 Respondents.

Case No.: '25CV3759 LL BLM

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

25
26 Petitioner Leander Frai Garcia petitions this Court for a writ of habeas
27 corpus under 28 U.S.C. § § 2241 to remedy Respondents' detaining him
28 unlawfully, and states as follows:

1

PETITION FOR WRIT OF HABEAS CORPUS AND
ORDER TO SHOW CAUSE WITHIN THREE DAYS

INTRODUCTION

1
2 1. Petitioner Leander Frai Garcia is a noncitizen who was previously
3 released from immigration custody but was abruptly re-detained and jailed for no
4 legitimate reason. The Department of Homeland Security necessarily determined
5 that he was neither a flight risk nor a danger to the community when it previously
6 released him from its custody.

7 2. Petitioner has no criminal history of any kind. Nor does Petitioner,
8 who has dutifully attended his hearings in his ongoing removal proceedings,
9 present risk of flight that justify re-detention. Yet ICE continues to unlawfully
10 detain him in prison-like conditions, keeping him separated from his community.

11 3. ICE provided Petitioner with no pre-deprivation hearing prior to his
12 re-detention at the ICE check-in to determine whether material changes in his
13 circumstances warrant his re-detention based on danger to the community or risk
14 of flight, despite a growing consensus among United States district courts that
15 such a hearing is necessary in similar circumstances.

16 4. Petitioner's detention under these circumstances violates his right to
17 substantive and procedural Due Process, as it is not justified by a legitimate
18 government purpose. Additionally, under *Mathews v. Eldridge*, 424 U.S. 319
19 (1976), his fundamental liberty interest far outweighs the government's interest
20 in detaining him, and the risk of error is great where, as here, there has been no
21 pre-deprivation process to ensure his loss of liberty is justified. For similar
22 reasons, his detention also contravenes the Immigration and Nationality Act (INA)
23 and the Administrative Procedure Act (APA), thereby violating the doctrine laid
24 out in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

25 5. After his arrest, Petitioner was transported to 880 Front Street in
26 downtown San Diego, where he was detained in the basement for five days.

27 6. While detained there, Petitioner was permitted only one phone call,
28 which he used to contact a friend to inform her that he had been arrested.

1 Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const.
2 art. I, 2.

3 **VENUE**

4 13. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C.
5 § 2242 because at least one Respondent is in this District, Petitioner is detained in
6 this District, Petitioner’s immediate physical custodian is located in this District,
7 and a substantial part of the events giving rise to the claims in this action have
8 taken place in this District.

9 **PARTIES**

10 14. Petitioner Francisco Carlos Romero Diaz is currently detained by the
11 Respondents at the Otay Mesa Detention Center, an immigration detention facility
12 in San Diego, California. He has been in ICE custody since on or about October
13 16, 2025. His removal proceedings are pending at the Otay Mesa Immigration
14 Court.

15 15. Respondent Christopher J. LaRose is the Senior Warden at the Otay
16 Mesa Detention Center, where Petitioner is being held. Respondent Larose is
17 Petitioner’s immediate custodian. Petitioner sues him in his official capacity.

18 16. On information and belief, Respondent Daniel A Brightman is the
19 current Field Office Director responsible for the San Diego Field Office of ICE with
20 administrative jurisdiction over Petitioner’s immigration case. He is a Petitioner’s
21 legal custodian. Petitioner sues him in his official capacity.

22 17. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is a
23 component of the DHS, 6 U.S.C. § 271, and an “agency” within the meaning of
24 the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency
25 responsible for enforcing immigration laws, and it is detaining Petitioner.
26 Respondent Lyons has custodial authority over Petitioner, who names him in his
27 official capacity.

1 18. Respondent Kristi Noem is the Secretary of the DHS. DHS is the
2 federal agency responsible for enforcing immigration laws and granting
3 immigration benefits. *See* 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem
4 has ultimate custodial authority over Petitioner, who names her in her official
5 capacity.

6 19. Respondent Pam Bondi is the Attorney General of the United States.
7 She is responsible for the Immigration and Nationality Act's implementation and
8 enforcement (*see* 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office
9 for Immigration Review. Petitioner names her in her official capacity.

10 STATEMENT OF FACTS

11 20. Petitioner Leander Frai Garcia is a 27-year-old national and citizen of
12 Venezuela and is currently detained at the Otay Mesa Detention Center ("OMDC")
13 in San Diego, California.

14 21. Petitioner is a gay man who came to the United States to seek safety
15 and freedom.

16 22. On or about March 4, 2024, Petitioner entered the United States at or
17 near El Paso, Texas without being admitted or paroled, and this was his first entry
18 to the United States.

19 23. Upon arrival, Petitioner informed immigration officers that he needed
20 to seek asylum, and officers began processing him.

21 24. While at the processing center, Petitioner underwent a credible fear
22 interview conducted by an Asylum Officer, passed the interview, and was found to
23 have a credible fear of persecution.

24 25. Following a positive credible fear determination, Respondents served
25 Petitioner with a Notice to Appear (NTA), dated March 5, 2024.

26 26. Approximately two or three days after Petitioner received a positive
27 fear determination, he was released from ICE custody.
28

1 27. On or about April 7, 2024, ICE officers took Petitioner to a bus stop
2 and he traveled to New York, by bus. Petitioner resided with a cousin before
3 relocating to San Diego, California.

4 28. Petitioner moved to San Diego, California because he is HIV-positive,
5 was not feeling well, and experienced significant weight loss such that he became
6 visibly underweight; he understood that San Diego offered more supportive access
7 to medical services.

8 29. While living in New York, Petitioner's removal proceedings remained
9 venued in El Paso, Texas, and he returned there for an immigration court hearing.

10 30. After a hearing in El Paso, Texas, Petitioner requested and was later
11 granted a change of venue to the San Diego Immigration Court in San Diego,
12 California.

13 31. While at liberty in San Diego, Petitioner consistently appeared for his
14 scheduled court dates.

15 32. Petitioner lived in San Diego with roommates, worked in gardening
16 and moving jobs, and attended English classes.

17 33. Petitioner reports he had no problems in the United States, committed
18 no crimes, and was not arrested.

19 34. In September 2025, Petitioner was at home when a group of men
20 threw a tear gas bomb into his house and forcefully attempted to break down his
21 door and enter the residence.

22 35. The group of men who entered the residence searched and ransacked
23 the house, including Petitioner's room, and handcuffed him and his other
24 roommates.

25 36. During this incident, the men questioned Petitioner, but he refused to
26 answer and asserted his rights, including questioning whether they had a valid
27 warrant.
28

1 37. Upon information and belief, at least one of the men involved in the
2 raid appeared to be wearing a uniform associated with the Drug Enforcement
3 Administration (DEA), while others were in civilian clothing.

4 38. Following the raid and his arrest at his home, Petitioner was
5 transferred to ICE custody and initially held in the federal building in downtown
6 San Diego for several days in poor conditions before being transferred to the Otay
7 Mesa Detention Center in San Diego, where he remains detained.

8 39. Petitioner obtained pro bono counsel and attended subsequent
9 hearings at the Otay Mesa Immigration Court.

10 40. Petitioner had been counseled that, based on recent cases,
11 immigration judges were finding no jurisdiction to grant bond to similarly
12 situated individuals.

13 41. Petitioner is working with counsel to prepare supplemental evidence
14 and has attended all hearings.

15 42. Detention has been particularly hard on Petitioner because, although
16 he is being provided HIV medication, he is not being provided the nutritious food
17 and regular exercise his doctor recommends.

18 43. Because Petitioner's immune system is weakened by HIV, he becomes
19 sick easily and has been experiencing frequent colds while in custody.

20 44. Since being detained, Petitioner has developed a persistent rash—an
21 ongoing skin condition he did not have prior to detention.

22 45. Petitioner asserts he is not a flight risk because he was diligent in
23 seeking asylum and fulfilled obligations.

24 46. Petitioner asserts he is not a danger to the community because he has
25 no criminal record anywhere in the world and followed U.S. laws while at liberty.

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28 //

LEGAL FRAMEWORK

I. Substantive Due Process Constraints on Immigration Detention

47. 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.

48. While the immigration laws afford ICE discretion over its decisions to arrest, detain, and revoke prior release decisions, those decisions are nonetheless constrained by the laws Congress has enacted and the requirements of the Constitution, including the Due Process Clause. *See generally Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

49. This is because “[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.

50. Immigration detention only comports with Due Process when it furthers the government’s goals of “ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community.” *Id.* (internal citations omitted). ICE detention violates substantive Due Process where it is not justified by flight risk or danger concerns. *See id.*

51. For that reason, ostensibly “nonpunitive” ICE detention pursuant to a blanket policy under which the agency claims authority to arrest and detain all noncitizens who it alleges are not lawfully present in the United States, without regard for whether they are a flight risk or danger, would violate the Due Process Clause. *See id.* So too would ICE detention for the purposes of meeting quotas, punishment, deterring immigration, or encouraging voluntary deportation. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that “[i]n discussing civil commitment more broadly, the [Supreme] Court has declared such ‘general deterrence’ justifications impermissible” and finding likely contrary

1 to Due Process a deterrence policy pursuant to which DHS detained “one
2 particular individual” for purposes of “sending a message of deterrence to other[s]
3] who may be considering immigration” (citing *Kansas v. Crane*, 534 U.S. 407,
4 412 (2002)).

5 52. All such detentions would be unlawful because they bear no
6 reasonable relation to a legitimate government purpose. *See id.*; *Demore v. Kim*,
7 538 U.S. 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S.
8 346, 361–62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

9 **II. Procedural Due Process Constraints on the Detention of an Individual
Who Was Previously Released**

10 53. Procedural Due Process ensures that no persons are deprived of their
11 liberty absent a fair process. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976),
12 courts evaluate procedural Due Process by balancing (1) the private interest
13 affected; (2) the risk of erroneous deprivation of such interest; and (3) the
14 government’s interest. *Id.* at 335.

15 54. “[T]he liberty [of a person released from government custody] is
16 valuable and must be seen as within the protection of the [Due Process Clause].”
17 *Morrisey v. Brewer*, 408 U.S. 471, 482 (1972).

18 55. “[E]ven when ICE has the initial discretion to detain or release a
19 noncitizen pending removal proceedings, after that individual is released from
20 custody she has a protected liberty interest in remaining out of custody.” *Pinchi v.*
21 *Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No.
22 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*
23 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);
24 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug.
25 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

26 56. Courts in this district have joined a growing chorus of district courts
27 that have recognized that noncitizens have a significant liberty interest in both
28

1 “continued freedom *after release on own recognizance*,” *Alegria Palma v. Larose*,
2 No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis
3 added), and in “freedom from imprisonment” after “the government grants a
4 [noncitizen] *parole* into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JES-
5 MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See*
6 *also Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov.
7 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.
8 Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC),
9 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-
10 01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen*
11 *v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025);
12 *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6,
13 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex.
14 Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-M JP-TLF, 2025 WL
15 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE,
16 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

17 57. “Where, as here, [the petitioner] has not received any bond or custody
18 . . . hearing, the risk of an erroneous deprivation [of liberty] is high because
19 neither the government nor [the petitioner] has had an opportunity to determine
20 whether there is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035
21 (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July
22 11, 2025)) (cleaned up). Indeed, where a petitioner “was previously released
23 following a determination that he posed no flight risk or danger to the
24 community, and absent any new evidence showing a material change in
25 circumstances, the risk of erroneous detention without a hearing is substantial.”
26 *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6 (ordering petitioner’s immediate
27 release where he was re-detained without pre-deprivation hearing).
28

1 58. The requirement of an individualized determination is even stronger
2 in cases of re-detention because the prior “[r]elease reflects a determination by
3 the government that the noncitizen is not a danger to the community or a flight
4 risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub*
5 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). “[T]o be lawful”
6 the re-detention “must be based on evidence that the circumstances relevant to
7 that original release decision have changed.” *Saravia*, 280 F. Supp. 3d at 1196.

8 59. “To satisfy due process, those changed circumstances must represent
9 individualized legal justification for detention.” *Sanchez v. LaRose*, No. 25-CV-
10 2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (internal
11 citations omitted)).

12 60. The government can claim no interest in re-detention where there are
13 no changed circumstances going to flight risk or danger sufficient to warrant re-
14 detention. *See Pinchi*, 792 F. Supp 3d at 1036 (“The government does not claim
15 that any material circumstances have changed that would warrant reassessment
16 of Ms. Garro Pinchi's risk of flight or dangerousness, and it has articulated no
17 other reason for her detention.”). Even if the government asserted the existence of
18 such changed circumstances, its interest in denying a pre-deprivation hearing to
19 prove that claim is negligible, particularly because custody hearings are a routine
20 practice for immigration courts. Compared to the “staggering” “costs to the public
21 of immigration detention,” *Hernandez*, 872 F.3d at 996, “[t]he effort and cost
22 required” of providing a hearing “is minimal.” *Doe v. Becerra*, 787 F. Supp. 3d
23 1083, 1094 (E.D. Cal. 2025).

24 61. Thus, detention absent a pre-deprivation hearing establishing that
25 changed circumstances justify re-detention violates procedural Due Process.

26 **III. The Statutory Framework Governing Petitioner’s Detention**

27 62. Petitioner is detained pursuant to 8 U.S.C. 1226(a), which provides,
28 in pertinent part, that

1 On a warrant issued by the Attorney General, a [noncitizen] may be
2 arrested and detained pending a decision on whether the [noncitizen]
3 is to be removed from the United States. Except as provided in
4 subsection (c) and pending such decision, the Attorney General--
5 (1) may continue to detain the arrested [noncitizen]; and
6 (2) may release the [noncitizen] on--
7 (A) bond of at least \$1,500 with security approved by, and containing
8 conditions prescribed by, the Attorney General; or
9 (B) conditional parole.

63. Section 1226(a) governs the detention of noncitizens “inside the
7 United States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281,
8 288–89 (2018).

9 64. Section 1225(b)(2), in contrast, authorizes the detention of applicants
10 for admission who are “seeking admission” but “not clearly and beyond a doubt
11 entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that
12 individuals who fall under its authority “shall be detained” during the pendency of
13 proceedings, though they too remain eligible for release through the parole
14 process. *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8
15 U.S.C. § 1182(d)(5)(A) remains available even for people held under otherwise-
16 mandatory detention pursuant to section 1225(b)).

17 65. Petitioner was unquestionably detained in the interior of the country
18 at his home, over a year after initially entering the United States; thus, he was not
19 “seeking admission” at the time of his re-detention, so his detention is governed
20 by section 1226(a). *See, e.g., Esquivel-Pina v. Larose*, No. 25-CV-2672 JLS (BLM),
21 2025 WL 2998361, at *5 (S.D. Cal. Oct. 24, 2025); *Garcia v. Noem*, No. 25-cv-
22 02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Mosqueda*
23 *v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025).

24 66. Immigration detention “has two regulatory goals: ensuring the
25 appearance of [noncitizens] at future immigration proceedings and preventing
26 danger to the community.” *Zadvydas*, 533 U.S. at 678 (internal citations omitted);
27 *see also* 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

1 67. Those previously released by DHS, like Petitioner, have necessarily
2 been deemed neither a flight risk nor a danger. 8 C.F.R. § 1236.1 (c)(8)
3 (authorizing release of noncitizens under section 1226(a) if they “would not pose
4 a danger to property or persons,” and are “likely to appear for any future
5 proceeding”); 8 C.F.R. § 212.5(b) (authorizing parole from custody of noncitizens
6 deemed “neither a security risk nor a risk of absconding”).

7 68. In cases of individuals previously released by DHS, re-detention under
8 section 1226(a) requires an individualized determination of a material change in
9 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968
10 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”
11 (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.
12 637, 640 (B.I.A. 1981) (“[W]here a previous bond determination has been made
13 by an immigration judge, no change should be made by [DHS] absent a change of
14 circumstance.”).

15 69. 117. Absent a material change in circumstances, the re-detention of
16 noncitizens previously released by DHS violates the INA because it does not serve
17 the purpose of the statute.

18 **IV. Administrative Procedure Act**

19 70. Under the APA, courts may set aside agency action that is contrary to
20 law or constitutional right. 5 U.S.C. § 706(2).

21 71. In order to be reviewable under the APA, the challenged action must
22 constitute final agency action, which includes “the whole or a part of an agency
23 rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure
24 to act.” 5 U.S.C. § 551(13).

25 72. Petitioner’s detention occurred pursuant to reviewable agency action.
26 Specifically, ICE’s San Diego Field Office has adopted a policy pursuant to which it
27 claims authority to arrest and detain all noncitizens who it alleges are not lawfully
28 present in the United States, without regard for whether they are a flight risk or

1 danger. Such a policy marks the “consummation” of the ICE’s decision-making
2 process and is an action “by which rights or obligations have been determined, or
3 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178
4 (1997) (internal citations omitted).

5 73. “[A]gency action . . . need not be in writing to be final and judicially
6 reviewable . . . [a]n unwritten policy can still satisfy the APA’s pragmatic final
7 agency action requirement.” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d
8 1168, 1206–07 (S.D. Cal. 2019) (internal citations omitted). “[A] contrary rule
9 would allow an agency to shield its decisions from judicial review simply by
10 refusing to put those decisions in writing.” *Id.* at 1207 (internal citations omitted).

11 74. Additionally, ICE’s decisions to re-detain Petitioner constitutes final
12 agency action because the re-detentions mark the “consummation” of the ICE’s
13 decision-making process on the question of Petitioner’s custody, and it is an action
14 “by which rights or obligations have been determined, or from which legal
15 consequences will flow.” *Bennett*, 520 U.S. at 178 (internal citations omitted).
16 Indeed, the “practical and legal effects of the agency action” are that Petitioner
17 has been deprived of his liberty for over two months and with no end in sight. *Or.*
18 *Natural Desert Ass’n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

19 75. Courts must “hold unlawful and set aside agency actions, findings and
20 conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise
21 not in accordance with the law; (b) contrary to constitutional right, power,
22 privilege or immunity; (c) in excess of statutory jurisdiction, authority, or
23 limitations, or short of statutory right; or (d) without observance of procedures
24 required by law. 5 U.S.C. § 706(2).

25 76. Final agency action is arbitrary and capricious if the agency fails to
26 “articulate a satisfactory explanation for its action, including a rational connection
27 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v.*
28 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations

1 omitted). Courts may not consider an agency’s “impermissible post hoc
2 rationalizations.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020)
3 (internal citations omitted).

4 77. Accordingly, ICE’s policy constitutes final agency action and, for the
5 reasons discussed above, violates APA § 706(2) as arbitrary and capricious and
6 contrary to Due Process and the INA.

7 78. Additionally, ICE’s decisions to re-detain Petitioners were arbitrary
8 and capricious in violation of the APA where the agency failed to
9 contemporaneously—or ever—articulate any flight-risk or danger-based
10 justifications for those decisions.

11 **CLAIMS FOR RELIEF**

12 **FIRST CAUSE OF ACTION**

13 **Violation of the Fifth Amendment Substantive Due Process**

14 79. Petitioner realleges and incorporates by reference each and every
15 allegation contained above.

16 80. The Due Process Clause of the Fifth Amendment forbids the
17 government from depriving any person of liberty without due process of law. U.S.
18 Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas*, 533
19 U.S. 678; *Demore v. Kim*, 538 U.S. 510 (2003).

20 81. “The Due Process Clause applies to all ‘persons’ within the United
21 States, including [noncitizens], whether their presence here is lawful, unlawful,
22 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

23 82. “Freedom from imprisonment—from government custody, detention,
24 or other forms of physical restraint—lies at the heart of the liberty that Clause
25 protects.” *Id.* at 690.

26 83. Immigration detention only comports with Due Process when it
27 furthers the government’s goals of “ensuring the appearance of [noncitizens] at
28

1 future immigration proceedings and preventing danger to the community.” *Id.*
2 (cleaned up).

3 84. Immigration detention that does not serve the legitimate government
4 purposes of preventing flight or mitigating danger violates substantive Due
5 Process. *Id.*

6 85. Immigration detention pursuant to a blanket policy under which ICE
7 claims authority to arrest and detain all noncitizens who it alleges are not lawfully
8 present in the United States, without regard for whether they are a flight risk or
9 danger—whether for deterrence, to satisfy a quota, or for other purposes that do
10 not bear a reasonable relation to preventing danger or flight risk—violates the
11 Due Process Clause. *Id.*; *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

12 86. Petitioner’s detention violates the Due Process Clause because it is not
13 rationally related to any legitimate government purpose.

14 **SECOND CAUSE OF ACTION**
15 **Violation of the Fifth Amendment Procedural Due Process**

16 87. Petitioner realleges and incorporates by reference each and every
17 allegation contained above.

18 88. “In the context of immigration detention, it is well-settled that due
19 process requires adequate procedural protections to ensure that the government’s
20 asserted justification for physical confinement outweighs the individual’s
21 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872
22 F.3d at 990 (cleaned up).

23 89. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate
24 procedural Due Process by balancing 1) the private interest affected; 2) the risk of
25 erroneous deprivation of such interest; and 3) the government’s interest. *Id.* at
26 335.

27 90. Immigration detention always implicates the liberty interest in
28 “freedom from imprisonment.” *Zadvydas*, 533 U.S. at 690. In addition, when the

1 government releases someone, they retain a liberty interest in their on-going
2 release from government custody. *Morrissey*, 408 U.S. at 482; *Alegria Palma*, No.
3 25-cv-1942-BJC-MMP at *6; *Sanchez*, 2025 WL 2770629 at *3.

4 91. Where a detained individual does not receive any pre-deprivation
5 hearing, “the risk of an erroneous deprivation of liberty is high because neither
6 the government nor [the petitioner] has had an opportunity to determine whether
7 there is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035
8 (cleaned up); *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6 (“Given that
9 Petitioner was previously released following a determination that he posed no
10 flight risk or danger to the community, and absent any new evidence showing a
11 material change in circumstances, the risk of erroneous detention without a
12 hearing is substantial.”).

13 92. The government can claim no interest in re-detention where there are
14 no changed circumstances going to flight risk or danger that warrant re-detention.
15 See *Pinchi*, 792 F. Supp 3d at 1035. Thus, a fair process for proving the existence
16 of such changed circumstances satisfies any government interest in re-detention.

17 93. Because the government has not afforded Petitioner a pre-deprivation
18 hearing to determine whether changed circumstances going to flight risk or
19 danger warrant his re-detention, his detention violates procedural Due Process.

20 **THIRD CAUSE OF ACTION**

21 **Violation of Immigration and Nationality Act – 8 U.S.C. § 1226(a)**

22 94. Petitioner realleges and incorporates by reference each and every
23 allegation contained above.

24 95. Petitioner was re-detained in the interior of the country at his ICE
25 check-in appointment and thus is currently detained under 8 U.S.C. § 1226(a).

26 96. Detention under 8 U.S.C. § 1226(a) must serve a legitimate
27 government purpose of mitigating danger or preventing flight. See *Zadvydas*, 533
28 U.S. at 690; 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

1 97. Petitioner’s prior release by DHS necessarily reflects a determination
2 he is neither a flight risk nor a danger to the community.
3 8 C.F.R. § 1236.1(c)(8) (outlining requirements for release on recognizance);
4 8 C.F.R. § 212.5(b) (outlining requirements for parole).

5 98. Thus, his re-detention pursuant to 8 U.S.C. § 1226(a) requires an
6 individualized determination of a material change in circumstances going to flight
7 risk or danger for his re-detention to serve a regulatory purpose.

8 99. Petitioner’s re-detention violates the INA, where he was not afforded
9 an individualized determination of a material change in circumstances related to
10 flight risk or danger justifying re-detention.

11 **FOURTH CAUSE OF ACTION**
12 **Violation of Administrative Procedure Act – 5 U.S.C. § 706(2)**
13 **(unlawful agency action)**

14 100. Petitioner realleges and incorporates by reference each and every
15 allegation contained above.

16 101. The APA provides that a “reviewing court shall . . . hold unlawful and
17 set aside agency action, findings, and conclusions found to be . . . not in
18 accordance with law,” “contrary to constitutional right, power, privilege, or
19 immunity,” and “in excess of statutory jurisdiction, authority, or limitation.” 5
20 U.S.C. §§ 706(2)(A)–(C).

21 102. ICE has re-detained Petitioner pursuant to a blanket policy under
22 which ICE’s San Diego Field Office claims authority to arrest and detain all
23 noncitizens who it alleges are not lawfully present in the United States, without
24 regard for whether they are a flight risk or danger. Under the *Accardi* doctrine,
25 agencies are bound to follow their own rules and policies that constrain otherwise
26 discretionary detention decisions, and agency action that disregards those binding
27 standards is unlawful. *Accardi*, 347 U.S. 260.
28

1 103. Because re-detentions pursuant to Respondents' policy violate
2 Petitioner's rights under the Due Process Clause of the Fifth Amendment and the
3 INA, the policy additionally violates the APA as it is not in accordance with law, is
4 contrary to constitutional right, and is in excess of statutory jurisdiction. *Id.*

5 **FIFTH CAUSE OF ACTION**
6 **Violation of Administrative Procedure Act – 5 U.S.C. § 706(2)**
7 **(arbitrary and capricious agency action)**

8 104. Petitioner realleges and incorporates by reference each and every
9 allegation contained above.

10 105. The APA provides that a “reviewing court shall . . . hold unlawful and
11 set aside agency action, findings, and conclusions found to be . . . arbitrary and
12 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5
13 U.S.C. §§ 706(2)(A)–(C).

14 106. ICE's decisions to re-detain Petitioner constitutes final agency action
15 where they mark the “consummation” of agency decision making and are actions
16 “by which rights or obligations have been determined, or from which legal
17 consequences will flow.” *Bennett*, 520 U.S. at 178.

18 107. Because ICE has failed to articulate contemporaneous rational
19 explanation for its decision to re-detain Petitioner at an ICE check-in without a
20 pre-detention hearing, and because it cannot provide a post-hoc rationalization
21 for this decision, it is arbitrary and capricious in violation of the APA. *Motor*
22 *Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43
23 (1983); *Regents*, 591 U.S. at 21.

24 108. Moreover, to the extent Respondents' written regulations, policies,
25 and guidance require individualized custody determinations and consideration of
26 flight risk and danger, ICE's failure to follow those binding standards in
27 implementing its blanket re-detention policy independently renders the policy
28

1 arbitrary, capricious, and “not in accordance with law” under the *Accardi*
2 doctrine. *Accardi*, 347 U.S. at 267–68.

3 109. Additionally, ICE’s policy pursuant to which ICE’s San Diego Field
4 Office claims authority to arrest and detain all noncitizens who it alleges are not
5 lawfully present in the United States, without regard for whether they are a flight
6 risk or danger, is arbitrary and capricious in violation of the APA because it fails to
7 “articulate a satisfactory explanation for its action including a rational connection
8 between the facts found and the choice made.” *State Farm*, 463 U.S. at 43.

9 **PRAYER FOR RELIEF**

10 Petitioner asks this Court to grant the following relief:

- 11 1. Assume jurisdiction over this matter;
- 12 2. Order Respondents to show cause why the writ should not be granted
13 as to Petitioner within three days, and set a hearing on this Petition within five
14 days of the return, as required by 28 U.S.C. 2243;
- 15 3. Enjoin Respondents from transferring Petitioner out of the jurisdiction
16 during the pendency of the habeas petition;
- 17 4. Issue a writ of habeas corpus requiring that Respondents release
18 Petitioner under the same conditions as his initial release;
- 19 5. Order Respondents to return all of Petitioner’s belongings, including
20 his identification documents;
- 21 6. Issue a temporary restraining order and preliminary injunction
22 ordering Petitioner’s release and enjoining Respondents from further detaining
23 him without providing notice to the Court and Petitioner’s counsel, and a hearing
24 at which Respondents prove changed circumstances regarding his dangerousness
25 or risk of flight warrant his detention;
- 26 7. Declare that Petitioner’s detention violates the Due Process Clause of
27 the Fifth Amendment, the INA, and the APA;

1 8. Set aside Respondents' unlawful practice pursuant to 5 U.S.C.
2 § 706(2) as contrary to law, contrary to constitutional right, and in excess of
3 statutory authority; and

4 9. Grant such further relief as this Court deems just and proper.
5

6 Dated: December 24, 2025

7 Respectfully submitted,
8

9 By: /s/ Arwa J.Z. Kakavand
10 Arwa J.Z. Kakavand

11 Pro Bono Attorney for Petitioner
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