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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 Monica Liliana ROBLES RODRIGUEZ,

11 Petitioner,

12 v.

13 Todd M. LYONS, Acting Director,
14 Immigration and Customs Enforcement; Brian
15 ACUNA, Acting Field Office Director of
16 Enforcement and Removal Operations, New
17 Orleans; Sergio ALBARRAN, Field Office
18 Director of Enforcement and Removal
19 Operations, San Francisco Field Office, U.S.
20 Immigration and Customs Enforcement; Kristi
21 NOEM, Secretary, U.S. Department of
22 Homeland Security; U.S. DEPARTMENT OF
23 HOMELAND SECURITY; Pamela BONDI,
24 Attorney General of the United States;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW; Christopher CHESTNUT, Warden,
California City Detention Facility,

Respondents.

Civil Case No.

**PETITION FOR WRIT OF HABEAS
CORPUS UNDER 28 U.S.C. § 2241
AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

PETITIONER'S DHS NUMBER:



INTRODUCTION

1
2 1. This case challenges the unlawful detention of Monica Liliana Robles-Rodriguez
3 (“Petitioner” or “Ms. Robles-Rodriguez”), who is currently in the custody of Immigration and
4 Customs Enforcement (“ICE”) at the California City Detention Facility.

5 2. The U.S. Customs and Border Protection (“CBP”) at Laredo Texas issued the
6 expedited removal order on September 22, 2022. The order is defective. It was never properly
7 served on Petitioner, contains no officer signatures, lacks supervisory concurrence, as required
8 by 8 C.F.R. § 235.3(b)(2)(i) and 8 U.S.C. § 1225(b)(1)(A)(ii).

9 3. ICE released Petitioner on September 24, 2022 by issuing her an Interim Notice
10 Authorizing Parole. Since then, Petitioner has attended regularly scheduled check-ins with ICE.

11 4. On October 30, 2025, ICE detained her without notice or an opportunity to be heard,
12 based on the decision of an individual without authority to do so, without findings required by
13 law, and in violation of agency rules.

14 5. Petitioner’s continued detention is unconstitutional and unlawful. It is based on an
15 expedited removal order that was never lawfully issued and that remains legally void.

16 6. Respondents’ actions violated the Due Process Clause of the Fifth Amendment to the
17 U.S. Constitution, the Immigration and Nationality Act and its implementing regulations, and the
18 Administrative Procedure Act, which obligates administrative agencies to follow their own rules,
19 procedures, and instructions. Petitioner brings this action for injunctive, habeas, and declaratory
20 relief ordering Respondents to release her.

JURISDICTION

21
22 7. Petitioner is in the physical custody of Respondents. Petitioner is detained at
23 California City Detention Facility in California City, California.
24

1 8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 and the Suspension
2 Clause of the Constitution because this action is a habeas corpus petition and under 28 U.S.C. §
3 1331 because this action arises under federal law, including the Immigration and Nationality Act,
4 8 U.S.C. § 1101, et seq., the Administrative Procedure Act, 5 U.S.C. § 551, et seq., and the Fifth
5 Amendment of the U.S. Constitution.

6 9. Venue is proper in this district because Respondent Christopher Chestnut of the
7 California City Detention Facility is Petitioner's immediate custodian and under 28 U.S.C. §
8 1391(e)(1), because Respondents are officers of the United States and agencies.

9 **VENUE**

10 10. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-
11 500 (1973), venue lies in the Eastern District of California, the judicial district in which
12 Petitioner currently is detained.

13 11. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(e) because
14 Respondents are employees, officers, and agencies of the United States, and because a
15 substantial part of the events or omissions giving rise to the claims occurred in California.

16 12. Furthermore, Petitioner is detained at the California City Detention Facility in
17 California City, California, which is within the jurisdiction of this District.

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

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

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

15. Petitioner is “in custody” for the purpose of § 2241 because she is arrested and detained by Respondents.

PARTIES

16. Petitioner Monica Liliana Robles Rodriguez is a citizen of Colombia who has been in immigration detention since October 30, 2025. She is in the custody, and under the direct control, of Respondents and their agents.

17. Respondent Todd M. Lyons is the Acting Director of Immigration and Customs Enforcement. He is named in his official capacity.

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

19. Respondent Brian Acuna is the Acting Director of the New Orleans Field Office of ICE's Enforcement and Removal Operations division. As such, Respondent Brian Acuna is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

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

5 21. Respondent Department of Homeland Security (DHS) is the federal agency
6 responsible for implementing and enforcing the INA, including the detention and removal of
7 noncitizens.

8 22. Respondent Pamela Bondi is the Attorney General of the United States. She is
9 responsible for the Department of Justice, of which the Executive Office for Immigration Review
10 ("EOIR") and the immigration court system it operates are component agencies. She is sued in
11 her official capacity.

12 23. Respondent Executive Office for Immigration Review (EOIR) is the federal
13 agency responsible for implementing and enforcing the INA in removal proceedings, including
14 for custody redeterminations in bond hearings.

15 24. Respondent Christopher Chestnut, warden of the California City Detention
16 Facility, where Petitioner is detained. He has immediate physical custody of Petitioner and is
17 sued in his official capacity.

18 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

19 25. Petitioner is a native and citizen of Colombia who entered the United States on or
20 about September 21, 2022 in Texas. She was detained at the border by CBP.

21 26. CBP took Petitioner into custody and issued an I-860 Notice and Order of
22 Expedited Removal on September 22, 2022. However, the I-860 was never served on Petitioner.

23 27. Indeed, the I-860 provides no indication that CBP ever properly served Petitioner
24

1 with the Form I-860, as explicitly required by 8 C.F.R. § 235.3(b)(2)(i). Specifically, the
2 Certificate of Service on Form I-860 remains entirely blank, lacking the signatures or
3 acknowledgements of the examining immigration officer. Furthermore, no portion of the Form
4 I-860 contains any signature from a CBP officer, neither by the examining immigration officer,
5 nor by any supervisory authority, thus directly violating regulatory requirements.

6 28. On September 28, 2022, Petitioner was issued an Interim Notice Authorizing
7 Parole.

8 29. After her release from custody, Petitioner was instructed to check in using her
9 mobile phone and subsequently received home visits from ICE. She complied fully with all
10 imposed conditions.

11 30. Petitioner appeared for a Credible Fear Interview (“CFI”) with ICE on November
12 10, 2022. An asylum officer denied her CFI. On November 23, 2022, an Immigration Judge
13 conducted a negative credible fear review in absentia because Petitioner never received the
14 hearing notice. The Immigration Judge affirmed the negative credible fear finding.

15 31. On October 30, 2025, Petitioner appeared for a scheduled ICE check-in at the San
16 Jose ICE Office. ICE arrested and detained her at the check-in, then transferred her to Richwood
17 Correctional Center. On or about December 17, 2025, Petitioner was transferred to California
18 City Detention Facility, where she remains in custody.

19 32. Petitioner is married to a United States citizen, Orlando Vergara. Mr. Vergara filed
20 an I-130 immigrant petition for her on July 24, 2025, and USCIS continues to process that
21 petition. The immigration consultant who handled the case failed to submit an adjustment of
22 status application. Because DHS paroled Petitioner into the United States under 8 U.S.C. §
23 1182(d)(5)(A), she qualifies to seek adjustment of status under 8 U.S.C. § 1255(a).

LEGAL FRAMEWORK

Expedited Removal Process

33. When a CBP officer determines that a noncitizen arriving at a port of entry is inadmissible for misrepresenting a material fact or lacking necessary documentation, the officer must place the noncitizen in “expedited removal” proceedings. 8 U.S.C. § 1225(b)(1)(A)(i).

34. By regulation, the Department of Homeland Security, of which CBP is a constituent agency, also applies expedited removal to inadmissible noncitizens arrested within 100 miles of the border and unable to prove that they have been in the United States for more than the prior two weeks. Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879-80 (Aug. 11, 2004); see also 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

35. Congress gave the Attorney General the authority to extend expedited removal to some or all inadmissible noncitizens who cannot prove that they have been in the United States for more than two years prior; thus, the current regime does not represent the full exercise of executive authority permitted by statute. 8 U.S.C. § 1225(b)(1)(A)(iii). DHS also applies expedited removal to noncitizens who entered the United States by sea and who have not been in the United States for two years. See Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68,924, 68,925-25 (Nov. 13, 2002).

36. DHS removes noncitizens eligible for expedited removal “without further hearing or review,” subject to only one exception. 8 U.S.C. § 1225(b)(1)(A)(i). If, in an interview with a CBP officer, the noncitizen indicates an intent to apply for asylum or a fear of persecution, DHS must refer the noncitizen for an interview with an asylum officer. *Id.* § 1225(b)(1)(A)(ii); 8 C.F.R. § 208.30. If that asylum officer determines that the noncitizen’s fear of persecution is

1 credible, the noncitizen is referred to non-expedited removal proceedings, in which the
2 noncitizen may apply for asylum or other forms of relief from removal. *See* 8 U.S.C. §
3 1225(b)(1)(B)(ii); 8 C.F.R. § 208.30(f); 8 C.F.R. § 1003.42(f).

4 37. If an asylum officer finds no credible fear of persecution, the noncitizen will be
5 removed. 8 U.S.C. § 1225(b)(1)(B)(iii). A supervisor reviews the asylum officer's credible fear
6 determination, 8 C.F.R. §§ 208.30(e)(7), 235.3(b)(2), (b)(7), and a noncitizen may also request
7 *de novo* review by an Immigration Judge ("IJ"). 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §
8 1003.42. All individuals placed in expedited removal proceedings are subject to mandatory
9 detention pending a final determination of credible fear of persecution or until they are removed.
10 8 U.S.C. § 1225(b)(1)(B)(iii)(IV).

11 38. In 1996, Congress created "expedited removal: "as a truncated method for rapidly
12 removing certain noncitizens from the United States with very few procedural protections. 8
13 U.S.C. § 1225(b)(1). Congress sharply circumscribed judicial review of the expedited removal
14 process. "[N]o court shall have jurisdiction to review...any individual determination [or]...the
15 application of [§ 1225(b)(1)] to individual aliens" outside of the review permitted by the habeas
16 review provision, § 1252(e). 8 U.S.C. § 1252(a)(2)(A)(iii). Under § 1252(e)(2), a person in
17 expedited removal proceedings may file a habeas petition in federal district court to contest three
18 DHS determinations: whether the person is a noncitizen, whether she "was ordered removed"
19 via expedited removal, and whether she is a lawful permanent resident or has another status
20 exempting her from expedited removal. *Id.* § 1252(e)(2)(A)-(C).

21 39. Review of whether a Petitioner "was ordered removed" is limited to whether such
22 an order in fact was issued and whether it relates to the Petitioner. *Id.* § 1252(e)(5). "There shall
23 be no review of whether the alien is actually inadmissible or entitled to any relief from removal."
24

1 *Id.*; see also 8 C.F.R. § 1003.42(f) (“No appeal shall lie from a review of an adverse credible fear
2 determination made by an immigration judge.”).

3 40. Pursuant to 8 C.F.R. § 235.3(b)(2)(i), an expedited removal order issued on Form
4 I-860 requires strict compliance with regulatory safeguards. Specifically, the examining
5 immigration officer is mandated to advise the alien of the charges contained in Form I-860
6 permit the alien an opportunity to respond to those charges, obtain supervisory concurrence, and
7 serve the alien with Form I-860, ensuring the alien acknowledges receipt by signature. These
8 procedural safeguards are critical to ensuring due process, notwithstanding the summary nature
9 of expedited removal proceedings.

10 41. Furthermore, Petitioner is not subject to expedited removal because she was paroled
11 into the United States. Her parole has since expired. “However, termination of parole does not
12 generally require treating noncitizens as if they had never been paroled in the first place.”
13 *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215, at *4 (N.D. Cal. September 5,
14 2025). “[U]nder the plain meaning of section 1225(b)(1), [petitioner] no longer qualifies for
15 expedited removal because [she] was “paroled” into the United States and has been living and
16 working in the United States for three years.” *Id.*

17 **Due Process Governs Decisions to Re-detain Individuals**

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

43. Under substantive due process doctrine, a restraint on liberty like re-detention of a non-citizen is only permissible if it serves a “legitimate nonpunitive objective.” *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). The Supreme Court has only recognized two legitimate objectives of immigration detention: preventing danger to the community or preventing flight prior to removal. *See Zadvydas v. Davis*, 533 U.S. 678, 690-92 (2001) (discussing constitutional limitations on civil detention).

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

Right to a Hearing Prior to Re-detention

45. In Petitioner’s particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest her without first providing a pre-deprivation hearing to determine whether detention would be warranted.

46. The Due Process Clause of the Fifth Amendment makes it unlawful for Respondents to detain Petitioner without first providing a hearing before a neutral decision maker to determine whether detention is justified by a risk of flight or danger to the community

47. Civil immigration detention must be justified by a permissible purpose, and must be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two permissible regulatory goals are “ensuring the appearance of [noncitizens] at future immigration proceedings” and “preventing danger to the community.” *Id.*; *see also Matter of Patel*, 17 I&N Dec. 597, 666 (BIA 1976) (“[A noncitizen] generally is not and should not be detained or

1 required to post bond except on a finding that he is a threat to the national security, or that he is a
2 poor bail risk.”) (internal citations omitted).

3 48. ICE’s power to arrest a noncitizen who is at liberty is also constrained by the
4 demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the
5 government’s discretion to incarcerate non-citizens is always constrained by the requirements of
6 due process”). “It is well established that the Fifth Amendment entitles [noncitizens] to due
7 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
8 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government
9 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the
10 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718
11 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
12 unlawful or arbitrary personal restraint or detention.”).

13 49. Federal district courts in California have repeatedly recognized that the demands
14 of due process and the limitations on DHS’s authority to revoke a noncitizen’s bond or parole
15 both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, before ICE re-
16 detains her. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v.*
17 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020
18 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
19 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

20 **Petitioner’s Protected Liberty Interest in Her Release**

21 50. Petitioner’s liberty from immigration custody and her weighty interest in
22 avoiding incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690
23 (“Freedom from imprisonment...lies at the heart of the liberty” that the Due Process Clause
24

1 protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a
2 protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47
3 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

4 51. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a
5 parolee has in “[her] continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the
6 conditions of [her] parole, [a parolee] can be gainfully employed and is free to be with family
7 and friends and to form the other enduring attachments of normal life.” *Id.* at 482. “[T]he liberty
8 of a parolee, although indeterminate, includes many of the core values of unqualified liberty and
9 its termination inflicts a grievous loss on the parolee and often others.” *Id.* Therefore, “[b]y
10 whatever name, the liberty is valuable and must be seen within the protection of the [Fifth]
11 Amendment.” *Id.*

12 52. This basic principle—that individuals have a liberty interest in their conditional
13 release—has been reinforced by both the Supreme Court and the circuit courts on numerous
14 occasions since *Morrissey*. See, e.g., *Young*, 520 U.S. at 152. Petitioner was in fact released after
15 she was paroled under 8 U.S.C. 1182(d)(5). See also, *Hurd v. District of Columbia*, 864 F.3d
16 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that
17 freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due
18 process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782,
19 and *Morrissey*, 408 U.S. at 482).

20 53. Procedural due process constrains governmental decision that deprive individuals
21 of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment.
22 See *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) see also *Perry v. Sindermann*, 408 U.S. 593,
23 601-603 (1972) (reliance on informal policies and practices may establish a legitimate claim of
24

entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

54. Civil detention with no foreseeable end infringes upon a protected liberty interest and thus violates her constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct. 2491, 2493. 150 L. Ed. 2d 653 (2001) (“Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual’s liberty interest. The instant proceedings are civil and assumed to be nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil detention under this statute.”).

55. In fact, an individual maintains a protected liberty interest in her freedom even where she obtained liberty through a mistake of law or fact. *See Hurd*, 864 F.3d at 683; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because she was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not her fault, and she had appropriately adjusted to society, so it “would be inconsistent with fundamental principles of liberty and justice” to return her to prison) (internal quotation marks and citation omitted).

56. Here, Petitioner’s release is in relevant ways similar to the liberty interest in parole protected in *Morrissey*. Just as in *Morrissey*, Petitioner’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 live at home, work, care for her spouse, and “be with family and friends and

1 to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Petitioner
2 currently has a pending I-130 immigrant petition pending with USCIS and plans to file her I-485
3 adjustment of status application. Petitioner is married to a United States citizen.

4 57. Furthermore, Petitioner is not subject to expedited removal because she was paroled
5 into the United States. Her parole has since expired. “However, termination of parole does not
6 generally require treating noncitizens as if they had never been paroled in the first place.”
7 *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215, at *4 (N.D. Cal. September 5,
8 2025). “[U]nder the plain meaning of section 1225(b)(1), [petitioner] no longer qualifies for
9 expedited removal because [she] was “paroled” into the United States and has been living and
10 working in the United States for three years.” *Id.*

11 58. Petitioner’s three years at liberty provides her a “a liberty interest that entitles
12 [her] to constitutional due process before [she] is incarcerated.” *Hurd*, 864 F.3d at 683; *see also*
13 *Gonzalez-Fuentes*, 607 F.3d at 887 (holding that inmates released to electronic monitoring
14 program had liberty interest protected by the Due Process Clause because the program “allowed
15 the appellees to live with their loved ones, form relationships with neighbors, lay down roots in
16 their community, and reside in a dwelling of their own choosing (albeit subject to certain
17 limitations) rather than in a cell designated by the government.”); *see also Jorge M.F.*, 534 F.
18 Supp. 3d at 1054 (holding that released noncitizen made a substantial showing that he had liberty
19 interest requiring pre-deprivation hearing before re-arrest, even after original bond order was
20 reversed on appeal); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG (HC), 2025 U.S. Dist.
21 LEXIS 158839, at *4 (E.D. Cal., Aug. 15, 2025).

22 **Petitioner’s Strong Interest in Her Liberty Required a Hearing Before She Was**
23 **Incarcerated by ICE**

24 59. If a Petitioner identifies a protected liberty interest, the Court must then determine

1 what process is due. “Adequate, or due, process depends upon the nature of the interest affected.
 2 The more important the interest and the greater the effect of its impairment, the greater the
 3 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
 4 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-
 5 82). To determine the process due in this context, courts use the flexible balancing test set forth
 6 in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g., Ortega*, 415 F. Supp. 3d at 970;
 7 *Jorge M. F.*, 534 F. Supp. 3d at 1055.

8 60. Under the *Mathews* test, the Court balances three factors: “first, the private interest
 9 that will be affected by the official action; second, the risk of an erroneous deprivation of such
 10 interest through the procedures used, and the probative value, if any, of additional or substitute
 11 procedural safeguards; and finally the government’s interest, including the function involved and
 12 the fiscal and administrative burdens that the additional or substitute procedural requirements
 13 would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335
 14 (1976)).

15 61. Importantly, the Supreme Court “usually has held that the Constitution requires
 16 some kind of a hearing before the State deprives a person of liberty or property.” *Zinermon v.*
 17 *Burch*, 494 U.S. 113, 127-28 (1990) (emphasis in original).

18 62. Here, the *Mathews* factors all favor Petitioner and establish that the government was
 19 required to provide Petitioner notice and a hearing prior to any detention.

20 63. First, Petitioner’s private interest in her liberty is substantial. *See Foucha v.*
 21 *Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core
 22 of the liberty protected by the Due Process Clause.”). The Supreme Court has recognized that
 23 individuals released from serving a criminal sentence have a “valuable” liberty interest—even if
 24

1 that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. The
2 interest for an individual awaiting civil immigration proceedings is even weightier. See, e.g.,
3 *Ortega*, 415 F. Supp. 3d at 969 (“[G]iven the civil context” of immigration detention, a
4 noncitizen’s interest in release on bond is “arguably greater than the interest of parolees in
5 *Morrissey*.”).

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

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

20 66. By contrast, the value of a deprivation hearing before a neutral decision-maker is
21 high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*,
22 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v.*
23 *Gonzales*, 548 U.S. 30 (2006). Indeed, the Ninth Circuit has noted that the risk of an erroneous
24

1 deprivation of liberty under *Mathews* can be decreased where a neutral decisionmaker, rather
 2 than ICE alone, makes custody determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081,
 3 1091-92 (9th Cir. 2011).

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

14 68. Because the government failed to give Petitioner the notice and hearing she was
 15 due under the *Mathews* factors prior to re-detaining her, the Court should order her released until
 16 the government provides her with a constitutionally-compliant hearing.

17 69. At a pre-deprivation hearing, due process requires that the government justify re-
 18 detention of Petitioner by clear and convincing evidence that she poses a flight risk or danger. *See*
 19 *Singh v. Holder*, 638 F.3d at 1204 (“[D]ue process places a heightened burden of proof on the State
 20 in civil proceedings in which the individual interests at stake . . . are both particularly important
 21 and more substantial than mere loss of money.”) (internal quotation marks omitted); *Ixchop Perez*
 22 *v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view” among
 23 District Courts concluding that, “where . . . the government seeks to detain [a noncitizen] pending
 24

1 removal proceedings, it bears the burden of proving that such detention is justified); *Jorge M.F.*,
2 534 F. Supp. 3d at 1057 (where noncitizen was due a pre-deprivation hearing before being returned
3 to custody, ordering that the government bear the burden at the hearing by clear and convincing
4 evidence); *Doe*, 2025 U.S. Dist. LEXIS 37929, at *21 (same).

5 **Detention Bears No Reasonable Relationship to Any Legitimate Purpose as Petitioner's**
6 **Removal Is Not Reasonably Foreseeable**

7 70. At her ICE check-in, Respondents arrested Petitioner without giving her the
8 opportunity to fully exercise her due process rights.

9 71. To comport with due process, detention must bear a reasonable relationship to its
10 two regulatory purposes-to ensure the appearance of noncitizens at future hearings and to prevent
11 danger to the community pending the completion of removal. *Zadvydas v. Davis*, 533 U.S. at
12 690-91 (2001); *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011); *Gordon v. Shanahan*, No.15-
13 CIV-261, 2015 WL 1176706 at*10 (S.D.N.Y. Mar. 13, 2015). Such a justification for detention
14 is required to be particularly strong once detention is presumptively unconstitutional.

15 72. Petitioner's detention is facially arbitrary. ICE failed to produce an arrest warrant
16 and took Petitioner into custody without making any assessment as to whether she posed a
17 danger to the community or a risk of flight Without any explanation or new basis why she is
18 subject to detention-especially in light of the fact that she has a pending I-130 immigrant
19 petition, her continued detention is arbitrary and violates due process.

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

21 73. Petitioner asserts that she is not subject to expedited removal because she was
22 paroled into the United States.

23 74. Even assuming arguendo that the Court finds that Petitioner is subject to a final
24

1 administrative order, her re-detention and revocation of her release are subject to due process
2 violation.

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

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

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

15 77. Regulations purport to give additional reasons, beyond those listed at § 1231(a)(6),
16 that an order of supervision may be revoked and a non-citizen may be re-detained past the
17 removal period: "(1) the purposes of release have been served; (2) the alien violates any
18 condition of release; (3) it is appropriate to enforce a removal order . . . ; or (4) the conduct of the
19 alien, or any other circumstance, indicates that release would no longer be appropriate." 8 C.F.R.
20 § 241.4(l)(2); *see also id.* § 241.13(i) (permitting revocation of an order of supervision only if a
21 non-citizen "violates any of the conditions of release"). Because "[r]egulations cannot
22 circumvent the plain text of the statute[.]" courts question whether these regulations are ultra
23 vires of statutory authority. *See, e.g., You v. Nielsen*, 321 F. Supp. 3d. 451, 463 (S.D.N.Y. 2018)

(comparing regulations to 8 U.S.C. § 1231(a)(6), which authorizes detention past the removal period only if person is a risk to the community, unlikely to comply with the order of removal, or was ordered removed on specified grounds).

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

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

The APA Sets Minimum Standards for Final Agency Action

80. The Administrative Procedure Act authorizes judicial review of final agency action. 5 U.S.C. § 704.

81. Final agency actions are those (1) that “mark the consummation of the agency’s decision making process” and (2) “by which rights or obligations have been determined, or from

1 which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997) (citation
2 modified).

3 82. ICE’s revocation of an order of supervision is a final agency action subject to this
4 Court’s review.

5 83. The revocation here marked the consummation of ICE’s decision-making process
6 regarding Petitioner’s custody.

7 84. The revocation was also an action by which rights or obligations have been
8 determined or from which legal consequences flowed because it led ICE to detain Petitioner in
9 violation of her rights under the Constitution, statute, and regulation.

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

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

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

1 87. Where a release notification issued alongside an order of supervision instructs that
2 a non-citizen with a final order of removal will be given an opportunity to prepare for an
3 “orderly departure,” ICE’s failure to follow that instruction is an *Accardi* violation. *See Ceesay v.*
4 *Kurzdorfer*, 781 F. Supp. 3d 137, 169; *Ragbir v. Sessions*, 2018 WL 623557 (S.D.N.Y. Jan. 29,
5 2018), vacated and remanded on other grounds sub nom. *Ragbir v. Barr*, 2019 WL 6826008 (2d
6 Cir. July 30, 2019); *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017) (ordering release of
7 petitioners to give an opportunity to prepare for orderly departure).

8 **CLAIMS FOR RELIEF**

9 **COUNT I**

10 **Violation of the Fifth Amendment of the U.S. Constitution**
11 **Substantive Due Process**

12 88. Petitioner incorporates by reference the allegations of fact set forth in the
13 preceding paragraphs.

14 89. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
15 prohibits the federal government from depriving any person of “life, liberty, or property, without
16 due process of law.” U.S. Const. Amend. V. Due Process protects “all ‘persons’ within the
17 United States, including [non-citizens], whether their presence here is lawful, unlawful,
18 temporary, or permanent.” *Zadvydas*, 533 U.S. at 693. The allegations in the above paragraphs
19 are realleged and incorporated herein.

20 90. Due process requires that the government action be rational and non-arbitrary.
21 *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

22 91. When Respondents retained Petitioner, she had complied with the condition of
23 the order. No change in circumstances warranted Respondents’ re-detention of Petitioner.

24 92. Petitioner’s detention therefore does not bear a reasonable relationship to the two
regulatory purposes of immigration detention: preventing danger to the community or flight prior

1 to removal.

2 93. Because Respondents had no legitimate, non-punitive objective in re-detaining
3 Petitioner, her detention violates substantive due process under the Fifth Amendment to the U.S.
4 Constitution.

5 94. Second, Respondents issued Petitioner an expedited removal order that was
6 never validly issued: she was never served with the Form I-860; the order lacks required
7 signatures; she was never advised of the charges. The procedural deficiencies violate the
8 regulatory framework governing expedited removal order under 8 C.F.R. § 235.3(b)(2)(i) and
9 result in arbitrary detention.

10 95. Furthermore, Petitioner is not subject to expedited removal because she was
11 paroled into the United States. Her parole has since expired. “However, termination of parole
12 does not generally require treating noncitizens as if they had never been paroled in the first
13 place.” *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215, at *4 (N.D. Cal.
14 September 5, 2025). “[U]nder the plain meaning of section 1225(b)(1), [petitioner] no longer
15 qualifies for expedited removal because [she] was “paroled” into the United States and has been
16 living and working in the United States for three years.” *Id.*

17 96. Petitioner’s prolonged detention, now exceeding one month, under color of an
18 invalid and improperly executed expedited removal order is arbitrary, capricious, and
19 constitutionally intolerable, and lacks the basic safeguards required by the Due Process Clause.
20 The failure of Respondents to follow its own mandatory procedures in issuing and executing the
21 expedited removal order, and its refusal to reopen the defective order despite clear regulatory
22 violations, constitutes a due process violation.

23 97. Even assuming arguendo that the Court finds that Petitioner is subject to a final
24

1 administrative order, when Respondents revoked the order of supervision, Petitioner had
2 complied with every condition of the order. No change in circumstances warranted the order's
3 revocation.

4 98. Petitioner's detention therefore does not bear a reasonable relationship to the two
5 regulatory purposes of immigration detention: preventing danger to the community or flight prior
6 to removal.

7 99. Because Respondents had no legitimate, non-punitive objective in revoking
8 Petitioner's order of supervision, Petitioner's detention violates substantive due process under
9 the Fifth Amendment to the U.S. Constitution.

10 **COUNT II**
11 **Violation of the Fifth Amendment of the U.S. Constitution**
12 **Procedural Due Process**

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

14 101. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance
15 three factors to determine whether procedural due process is satisfied: (1) the private interest at
16 issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the
17 probable value, if any, of additional procedural safeguards; and, (3) the government's interest,
18 including fiscal and administrative burdens that additional or substitute procedural requirements
19 entail.

20 102. The first factor, the private interest at issue, favors Petitioner. "Freedom from
21 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
22 the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects."
23 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

24 103. The second factor, the risk of erroneous deprivation of liberty and the probable

1 value of procedural safeguards, favors Petitioner. To safeguard against erroneous deprivations of
2 liberty, the statute specifies the limited number of reasons to re-detain an individual. Regulations
3 specify who may lawfully re-detain and the procedures that must be followed when doing so,
4 including giving notice and an opportunity to be heard. Respondents violated those laws here,
5 leaving the risk of erroneous deprivation of liberty not just high, but certain. Requiring
6 Respondents to give notice and an opportunity to respond prior to re-detention is of great value
7 because it reduces the probability of needless detention of a person, like Petitioner, who is
8 neither dangerous nor a flight risk.

9 104. The third factor, the government's interest, also favors Petitioner. When the
10 government ignores law that ensures notice and an opportunity to respond to a person at risk of
11 re-detention, it is more likely to waste limited financial and administrative resources on
12 unnecessary detention of people who are neither flight risks nor dangerous. This waste drags
13 down the efficiency of the entire immigration system. Because the government must also spend
14 resources defending against a habeas corpus petition in federal court to compel Respondents to
15 comply with the law, requiring Respondents to instead provide notice and a meaningful
16 opportunity to respond prior to re-detention reduces fiscal and administrative burdens on the
17 government.

18 105. For these reasons, re-detaining Petitioner without providing notice and a
19 meaningful opportunity to respond violated procedural due process under the Fifth Amendment
20 to the U.S. Constitution.

21 106. Furthermore, revoking Petitioner's order of supervision without providing
22 notice and a meaningful opportunity to respond is a violation of her procedural due process
23 rights.
24

COUNT III

**Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B)
Contrary to Law and Constitutional Right**

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

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

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

110. Respondents’ decision to re-detain Petitioner was contrary to the agency’s constitutional authority under the Due Process Clause of the Fifth Amendment, as previously explained.

111. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for its action, “including a rational connection between the facts found and the choice made.” *Dep’t of Com. v. New York*, 139 S.Ct. 2551, 2569 (2019) (citation omitted).

112. CBP’s issuance of the Form I-860 expedited removal order against Petitioner was not in accordance with the law, it violated mandatory regulations, and was in excess of its statutory authority. Specifically, the agency failed to comply with 8 C.F.R. § 235.3(b)(2)(i), which requires that the noncitizen be advised of the charges, given an opportunity to respond, and served with the order, all under supervisory review. None of these steps occurred here, as evidenced by the unsigned, incomplete Form I-860 and lack of any Certificate of Service.

113. Furthermore, Petitioner is not subject to expedited removal because she was

1 paroled into the United States. Her parole has since expired. “However, termination of parole
2 does not generally require treating noncitizens as if they had never been paroled in the first
3 place.” *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215, at *4 (N.D. Cal.
4 September 5, 2025). “[U]nder the plain meaning of section 1225(b)(1), [petitioner] no longer
5 qualifies for expedited removal because [she] was “paroled” into the United States and has been
6 living and working in the United States for three years.” *Id.*

7 114. Even assuming that Petitioner does have a final administrative order,
8 Respondents re-detained Petitioner without first revoking her order of supervision as required by
9 statute and regulation, and without making the statutorily required findings that she posed a
10 danger to the community or was unlikely to comply with a removal order. Respondents further
11 failed to provide Petitioner with notice of the grounds for her re-detention or an opportunity to be
12 heard.

13 115. Petitioner’s re-detention should be declared unlawful and set aside because it
14 exceeded the agency’s constitutional authority and was not in accordance with the INA or its
15 implementing regulations.

16 **COUNT IV**
17 **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)**
Arbitrary and Capricious

18 116. Petitioner realleges all paragraphs above as if fully set forth here.

19 117. Under the APA, a court shall “hold unlawful and set aside agency action . . .
20 found to be arbitrary [or] capricious.” 5 U.S.C. § 706(2)(A).

21 118. Respondents’ detention of Petitioner was arbitrary and capricious because it
22 violated statutes, regulations, and the Constitution, as described above.

23 119. An agency decision that “runs counter to the evidence before the agency” is
24

1 Also arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S.
2 29, 43 (1983).

3 120. Respondents' decision to re-detain Petitioner ran counter to the evidence
4 before the agency that Petitioner would comply with a demand to appear for removal without
5 detention. Petitioner has complied with the condition of her release and no new facts or changed
6 circumstances suggest she would.

7 121. The re-detention also "failed to consider important aspects of the problem"
8 before Respondents, making it arbitrary and capricious for multiple other reasons. *Dep't of*
9 *Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1910 (2020).

10 122. First, Respondents failed to consider the serious constitutional concerns raised
11 by re-detaining Petitioner without notice and opportunity to respond.

12 123. Second, Respondents failed to consider the increased administrative burden to
13 The agency caused by re-detaining Petitioner, who is neither a flight risk nor a danger to the
14 community, including financial and administrative costs incurred by the agency due to
15 unnecessary detention.

16 124. Third, Respondents failed to consider reasonable alternatives to re-detaining
17 that were before the agency, like simply continuing release on an order of supervision and
18 scheduling a future time and date to appear for removal. This alternative would vindicate the
19 government's interests in effectuating a removal order and save it the expense of detention not
20 needed to guarantee Petitioner's appearance.

21 125. Fourth, Respondents failed to consider Petitioner's substantial reliance interest,
22 created by the agency's own release notification indicating that she would be given an
23 opportunity to arrange an orderly departure once travel documents were obtained.
24

1 126. Furthermore, Petitioner is not subject to expedited removal because she was
 2 paroled into the United States. Her parole has since expired. “However, termination of parole
 3 does not generally require treating noncitizens as if they had never been paroled in the first
 4 place.” *Aviles-Mena v. Kaiser*, No. 25-cv-06783-RFL, 2025 WL 2578215, at *4 (N.D. Cal.
 5 September 5, 2025). “[U]nder the plain meaning of section 1225(b)(1), [petitioner] no longer
 6 qualifies for expedited removal because [she] was “paroled” into the United States and has been
 7 living and working in the United States for three years.” *Id.*

8 127. Finally, Respondents’ revocation of Petitioner’s order of supervision was
 9 arbitrary and capricious and should be held unlawful and set aside.

10 128. For these and other reasons, Respondents’ re-detention of Petitioner was
 11 arbitrary and capricious and should be held unlawful and set aside.

12 COUNT V

13 Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C) 14 In Excess of Statutory Authority

15 129. Petitioner realleges all paragraphs above as if fully set forth here.

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

19 131. “An agency . . . literally has no power to act—including under its
 20 regulations—unless and until Congress authorizes it to do so by statute.” *FEC v. Cruz*, 596 U.S.
 21 289, 301 (2022) (internal quotation marks and citation omitted).

22 132. Regulations that purport to give Respondents’ authority to revoke an order of
 23 supervision on grounds other than those listed § 1231(a)(6) are ultra vires and in excess of
 24 statutory authority because “[r]egulations cannot circumvent the plain text of the statute.” *You v.*

1 *Nielsen*, 321 F. Supp. 3d 451, 463 (S.D.N.Y. 2018).

2 133. Respondents' revocation of Petitioner's order of supervision was based on ultra
3 vires regulations. It was in excess of statutory authority and should be held unlawful and set
4 aside.

5 **COUNT VI**

6 **Violation of the *Accardi* Doctrine**

7 134. Petitioner realleges all paragraphs above as if fully set forth here.

8 135. Under the *Accardi* doctrine, Petitioner has a right to set aside agency action that
9 violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v.*
10 *Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow
11 its rules in a hearing] he should receive a new hearing").

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

18 137. Respondents also violated agency instructions in Petitioner's release notification
19 to give an opportunity to prepare for an orderly departure when they revoked Petitioner's order
20 without advance notice.

21 138. Under *Accardi*, Respondents' revocation of the order of supervision and
22 decision to ignore instructions in the release notification should be set aside for violating agency
23 procedures, rules, or instructions.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- c. Enjoin Petitioner's removal or transfer outside the jurisdiction of this Court and the United States while this petition is being adjudicated;
- d. Declare that Petitioner's re-detention violates the Due Process Clause of the Fifth Amendment, the INA its implementing regulations, the APA, and the *Accardi* Doctrine;
- e. Order Petitioner's immediate release from custody;
- f. Enjoin Respondents from imposing any additional restrictions or conditions on Petitioner, including but not limited to electronic monitoring or home visits;
- g. Enjoin and restrain Respondents from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decisionmaker to evaluate whether Petitioner's re-detention is warranted based on flight risk or a danger to the community;
- h. Award Petitioner costs and reasonable attorneys' fees; and
- i. Order such other relief as this Court may deem just and proper.

Respectfully submitted,

Date: December 24, 2025

By: /s/Connie Chan
Connie Chan
Attorney for Petitioner

PROOF OF SERVICE

I, the undersigned, declare that my office is in San Francisco, California. I am over the age of eighteen (18) years and not a party to the action within. My business address is 405 Sansome Street, 2nd Floor, San Francisco, CA 94111. On December 24, 2025, I served the following documents: PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF by placing a true and correct copy in a sealed envelope, each addressed as follows:

Sergio Albarran
San Francisco Field Office
U.S. Immigration and Customs Enforcement
630 Sansome Street
Rm 590
San Francisco, CA 94111

Todd M. Lyons
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

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

Pamela Jo Bondi
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Christopher Chestnut,
California City Detention Facility
22844 Virginia Boulevard
California City, CA 93505

Civil Process Clerk
U.S. Attorney's Office
501 I Street, Suite 10-100
Sacramento, CA 95814

