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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of:

File No.: '26CV0336 JES MMP

YULISSA KARELY CALLEJAS-GARCIA



Petitioner,

**Consolidated Petition for Writ of
Habeas Corpus and Order To Show
Cause Within Three Days**

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary,
U.S. Department of Homeland Security

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

PETITIONER'S PETITION FOR WRIT OF HABEAS
In the Matter of Yulissa Karely CALLEJAS-GARCIA

1
2 Petitioner respectfully petitions this Honorable Court for a writ of habeas
3 corpus to release Petitioner from detention.

4
5 **INTRODUCTION**

6 1. Petitioner was detained by Immigration and Customs Enforcement
7 (“ICE”) at the Otay Mesa Detention Center pending removal proceedings since
8 or about November 2, 2025.

10 2. However, Petitioner is twenty years old and is in the process of finalizing
11 Special Immigrant Juvenile (SIJ) filings for probate court.

13 3. Petitioner is a citizen of Mexico who entered the United States through the
14 Southern Border in 2014.

16 4. Petitioner has resided continuously in the U.S. for more than ten (10) years,
17 spending most of her life in the United States. She is the mother of an infant U.S.
18 citizen.

20 5. On or about November 2, 2025, Petitioner came to the attention of ICE
21 during a routine sobriety check at Pacific Beach while visiting San Diego. It was
22 determined that Ms. Callejas Garcia did not possess valid immigration documents.
23 She was charged removable under INA § 212(a)(6)(A)(i), Alien Present Without
24 Admission or Parole.
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1 6. Petitioner now challenges her continued detention, which has caused
2 significant hardship to her, her U.S. Citizen infant, and her family, and seeks relief
3 to avoid separation from her U.S. citizen child and the community she has called
4 home for over a decade.
5

6 JURISDICTION

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8 7. Petitioner was detained in the custody of Respondents at Otay Mesa
9 Detention Center.
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11 8. This action arises under the Due Process Clause of the Fifth Amendment of
12 the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal
13 question), 2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and
14 5 U.S.C. § 702 (*Administrative Procedure Act*). The Court may grant relief under
15 the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the *Declaratory Judgment*
16 *Act*, 28 U.S.C. § 2201 *et seq.*, and the *All Writs Act*, 28 U.S.C. § 1651.
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18 VENUE

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21 9. Venue is proper in this District because this is the district in which
22 Petitioner was confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir.
23 2024).
24

25 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

26 10. The Court must grant the petition for writ of habeas corpus or issue an order
27 to show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not
28

1 entitled to relief. 28 U.S.C. 2243. If an OSC is issued, the Court must require
2 Respondents to file return “within three days unless good cause additional time,
3 not exceeding twenty days, is allowed.” Id. Courts have long recognized the
4 significance of the habeas statute in protecting individuals from unlawful
5 detention. The Great Writ has been referred to as “perhaps the most important writ
6 known to the constitutional law of England, affording as it does a swift and
7 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
8 372 U.S. 391, 400 (1963).

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12 11. Petitioner is “in custody” for the purpose of 28 U.S.C. section 2241 because
13 she was arrested by Respondents and remains in their legal and physical custody
14 at Otay Mesa Detention Center in Otay Mesa, California. She is under the
15 Respondents’ and their agents’ direct control.
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18 STATEMENT OF FACTS

19 12. Petitioner is a noncitizen who was detained at Otay Mesa Detention Center
20 pending immigration removal proceedings. Petitioner remains detained at Otay
21 Mesa Detention Center.
22

23 13. Petitioner was detained in DHS custody since on or about November 2,
24 2025. Petitioner is still in DHS custody and requests release. Petitioner poses no
25 danger or flight risk.
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1 14. Petitioner is the parent of one year and eleven-month year old baby who is a
2 United States Citizen.

3
4 15. Petitioner has no known criminal history.

5 16. Petitioner acknowledged that she is not in possession of any valid
6 documents and stated that she last entered the United States on or about July 17,
7 2014.

8
9 17. Petitioner has significant ties to the United States, including her infant U.S.
10 Citizen child.

11
12 18. On December 29, 2025, Ms. Callejas Garcia requested a custody
13 redetermination hearing before the Otay Mesa Immigration Court, and the Court
14 determined that it did not have jurisdiction over the bond matter.
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16
17 **PARTIES**

18 19. Ms. Callejas Garcia (“Petitioner”) is a 20-year-old citizen and national of
19 Mexico. She first came to the United States in 2014. She is unmarried and has one
20 infant child. On information and belief, she has no known criminal convictions.
21 Since the arrest on or about November 2025, Ms. Callejas Garcia has remained in
22 Respondents’ custody.
23

24
25 20. Ms. Callejas Garcia is currently residing in Respondents’ custody at Otay
26 Mesa Detention Center in San Diego, California, as of the time of the filing of this
27 petition.
28

1 21. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay
2 Mesa Detention Center in San Diego, California, where Ms. Callejas Garcia is
3 detained. LaRose is responsible for the day-to-day operations and confinement of
4 non-citizens detained at that facility. He acts at the direction of Respondents
5 Divver, Lyons, and Noem. LaRose is a custodian of Ms. Callejas Garcia and is
6 named in her official capacity.
7

9 22. Respondent Patrick Divver (“Divver”) is the Field Office Director of ICE in
10 San Diego, California. He acts at the direction of Respondents Lyons and Noem.
11 ICE is responsible for local custody decisions relating to non-citizens charged
12 with being removable from the U.S., including the arrest, detention, custody
13 status, and removal of non-citizens. The San Diego Field Office’s area of
14 responsibility includes San Diego and Imperial Counties in California.
15

16 Respondent Divver is a custodian of Ms. Callejas Garcia and is named in her
17 official capacity.
18

19 23. Respondent Todd Lyons (“Lyons”) is the Acting Director of ICE, and he
20 has authority over the actions of Respondents LaRose and Divver. ICE is
21 responsible for local custody decisions relating to non-citizens charged with being
22 removable from the U.S., including the arrest, detention, custody status, and
23 removal of non-citizens. Respondent Lyons is a custodian of Ms. Callejas Garcia
24 and is named in her official capacity.
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1 24. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has
2 authority over the actions of all other DHS Respondents in this case, as well as all
3 operations and federal agencies of DHS, including ICE. In her capacity as
4 Secretary of DHS, Respondent Noem is charged with faithfully administering the
5 immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a).
6 Respondent Noem is a custodian of Ms. Callejas Garcia and is named in her
7 official capacity.
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11 25. Respondent ICE is responsible for local custody decisions relating to non-
12 citizens charged with being removable from the U.S., including the arrest,
13 detention, custody status, and removal of non-citizens.
14

15 26. Respondent DHS is the federal agency that has authority over the actions of
16 ICE and all other DHS Respondents.
17

18 27. The action is commenced against Respondents LaRose, Divver, Lyons, and
19 Noem (collectively, “Respondents”) all in their official capacities.
20

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 28. In 1996, Congress created “expedited removal” as a truncated method for
23 rapidly removing certain noncitizens from the United States with very few
24 procedural protections. Illegal Immigration Reform and Immigrant Responsibility
25 Act (IIRIRA) of 1996, Pub. L. No. 104--208, Div. C, §§ 302-03, 110 Stat. 3009-
26 546, 3009-582 to 3009-583, 3009-585; *see* 8 U.S.C. § 1225(b)(1). Because there
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1 are few procedural protections, expedited removal applies narrowly to only those
2 noncitizens who are inadmissible to the United States because they engaged in
3 fraud or misrepresentation to procure admission or other immigration benefits, 8
4 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without required
5 documentation, 8 U.S.C. § 1182(a)(7). No other person may be subjected to
6 expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).
7

8
9 29. Noncitizens subjected to expedited removal are ordered removed by an
10 immigration officer “without further hearing or review.” 8 U.S.C. §
11 1225(b)(1)(A)(i). That officer must determine whether the individual has been
12 continuously present in the United States for less than two years; is a noncitizen;
13 and is inadmissible because he or she has engaged in certain kinds of fraud or
14 lacks valid entry documents “at the time of . . . application for admission.” *See* 8
15 U.S.C. §1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).
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19 30. Otherwise, if the officer concludes that the individual is inadmissible under
20 an applicable ground, the officer “shall,” with simply the concurrence of a
21 supervisor, 8 C.F.R. § 235.3(b)(7), order the individual removed “without further
22 hearing or review unless the alien indicates either an intention to apply for
23 asylum . . . or a fear of persecution.” 8 U.S.C. § 1225(b)(1)(A)(i).
24
25

26 31. Thus, a low-level DHS officer can order the removal of an individual who
27 has been living in the United States with virtually no administrative process—just
28

1 the completion of cursory paperwork—based only on the officer’s own
2 conclusions that the individual has not been admitted or paroled, that the
3 individual has not adequately shown the requisite continuous physical presence,
4 and that the individual is inadmissible on one of the two specified grounds. *See* 8
5 U.S.C. §§ 1225(b)(1)-(b)(2).
6

7
8 32. Once a determination on inadmissibility is made, removal can occur
9 rapidly, within twenty-four hours.
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11 33. An expedited removal order comes with significant consequences beyond
12 removal itself. Noncitizens who are issued expedited removal orders are subject to
13 a five-year bar on admission to the United States unless they qualify for a
14 discretionary waiver. 8 U.S.C. § 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly,
15 noncitizens issued expedited removal orders after having been found inadmissible
16 based on misrepresentation are subject to a lifetime bar on admission to the United
17 States unless they are granted a discretionary exception or waiver. 8 U.S.C. §
18 1182(a)(6)(C).
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21
22 34. Expedited removal only applies to noncitizens who are inadmissible on one
23 of two specified grounds: 8 U.S.C. § 1182(a)(6)(C), which applies to those who
24 seek to procure immigration status or citizenship via fraud or false representations,
25 or § 1182(a)(7), which applies to noncitizens who, “at the time of application for
26 admission,” fail to satisfy certain documentation requirements. 8 U.S.C. §
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1 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other grounds,
2 they must afford the noncitizen a full hearing before an immigration judge. *See* 8
3 C.F.R. § 235.3(b)(1), (3).
4

5 35. The IIRIRA, EOIR drafted regulations explaining that, in general, non-
6 citizens who entered the country without inspection were not considered detained
7 under 8 U.S.C. § 1225 or automatically subject to expedited removal. *See*
8 Inspection and Expedited Removal of Aliens, Detention and Removal of Aliens,
9 Conduct of Removal Proceedings, Asylum Procedures, 62 Fed. Reg. 10312,
10 10323 (Mar. 6, 1997). Rather, such non-citizens were instead detained under §
11 1226(a). *See id.*
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15 36. Thus, in the decades that followed, most people who entered without
16 inspection—unless they were subject to some other detention authority—received
17 bond hearings. That practice was consistent with many more decades of prior
18 practice, in which noncitizens who were not deemed “arriving” were entitled to a
19 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
20 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)
21 simply “restates” the detention authority previously found at § 1252(a)).
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25 37. Immigration detention should not be used as a punishment and should only
26 be used when, under an individualized determination, a noncitizen is a flight risk
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1 because they are unlikely to appear for immigration court or a danger to the
2 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

3
4 38. On information and belief, Ms. Callejas Garcia alleges that Respondents
5 detained her for the purpose of divesting her of her due process rights.

6
7 39. Ms. Callejas Garcia has significant ties to the United States and has
8 demonstrated good moral character.

9
10 40. On December 29, 2025, the Petitioner requested a custody redetermination
11 hearing, and the Immigration Judge determined it did not have jurisdiction over
12 the matter, in which case Petitioner withdrew her request.

13
14 41. On information and belief, Respondents are using the immigration
15 detention system, including extra-territorial transfer and detention, as a means to
16 punish individuals for asserting rights.

17
18 **LEGAL ARGUMENT**

19 42. Courts have recognized the significance of the habeas statute in protecting
20 individuals from unlawful detention, which affords “a swift and imperative
21 remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
22 400 (1963); *see also Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (noting that
23 habeas statute requires expeditious determination of petitions).
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1 43. The Court must grant the petition for writ of habeas corpus or issue an order
2 to show cause to Respondents “forthwith,” unless Petitioner is not entitled to
3 relief. 28 U.S.C. § 2243.

5 44. ““It is well established that the Fifth Amendment entitles [noncitizens] to
6 due process of law in deportation proceedings.”” *Demore v. Kim*, 538 U.S. 510,
7 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

9 45. Due process requires “adequate procedural protections” to ensure that the
10 government’s asserted justification for physical confinement “outweighs the
11 individual’s constitutionally protected interest in avoiding physical restraint.”
12 *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).

14 46. In the immigration context, the Supreme Court has recognized two valid
15 purposes for civil detention—to mitigate the risks of danger to the community and
16 to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

18 47. The test for procedural due process claims, the *Mathews* test balances: (1)
19 the private interest threatened by governmental action; (2) the risk of erroneous
20 deprivation of such interest and the value of additional or substitute safeguards;
21 and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);
22 *see also Sho v. Current or Acting Field Off. Dir.*, No. 1:21CV-01812 TLN AC,
23 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and recommendation*
24 *adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,

1 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims
2 and collecting cases doing the same). Here, each factor weighs in Petitioner’s
3 favor, and Petitioner’s release is justified due to her interest in avoiding prolonged
4 or unjustified detention. Petitioner poses no danger to the community, nor is a
5 flight risk.
6
7

8 **FACTUAL BACKGROUND**

9 48. Petitioner is a 20-year-old citizen and national of Mexico.

10 49. Petitioner has resided in the United States for the more than ten (10) years,
11 where she has established deep ties to the community. She was baptized in Los
12 Angeles, went to elementary school, middle school, and graduated from high
13 school in Ventura and Los Angeles Counties. On information and belief, her sister
14 and mother are in the process of adjusting their status. Petitioner’s father died in
15 Mexico when she was young, and her only family is here in the United States. In
16 fact, she does not have any direct familial ties in Mexico.
17

18 50. Petitioner is the mother of a one- and eleven-month year old U.S. citizen
19 daughter, who depends on her for emotional and financial support. Since
20 Petitioner’s detention, her daughter has cried out for her, and she has difficulty
21 comprehending why her mother is gone.

22 51. Ms. Callejas Garcia first entered the United States on or about July 2014,
23 when she was about nine (9) years old. When she entered the United States, she
24 was asleep in the backseat vehicle, which had journeyed from Oaxaca, Mexico to
25 the United States. She has lived in the United States continuously since.

26 52. Petitioner is finalizing her Special Immigration Juvenile (SIJ) filings.

27 53. Ms. Callejas Garcia was issued a Notice to Appear and ordered removeable
28 from the United States.

1 54. Petitioner has been detained since or about November 2, 2025.

2 **CAUSES OF ACTION**

3 **COUNT ONE**

4 **Violation of Fifth Amendment Right to Due Process – Substantive and**
5 **Procedural Due Process, U.S. Const. Amend. V.**

6 55. Petitioner restates, realleges, and incorporates by reference each and every
7 allegation in the paragraphs above as if fully set forth herein.

8 56. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
9 prohibits the federal government from depriving any person of “life, liberty, or
10 property, without due process of law.” U.S. Const. Amend. V. Due process
11 protects “all ‘persons’ within the United States, including [non-citizens], whether
12 their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533
13 U.S. at 693.

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

16 58. Moreover, Ms. Callejas Garcia has a vital liberty interest in remaining free
17 from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
18 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-
19 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-
20 citizen that ICE released from custody after initial apprehension “has a substantial
21 private interest in remaining out of custody” which includes an interest in
22 “...obtaining necessary medical care, [and] maintaining her relationships in the
23 community...”). While on release from DHS custody, Ms. Callejas Garcia was
24 building her emotional support system and her family.

25 59. Even if the initial decision to release a non-citizen from DHS custody is
26 discretionary, “...after that individual is released from custody, he has a protected
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1 liberty interest in remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-
2 01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (quoting
3 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal.
4 July 24, 2025)).

5 60. Here, Ms. Callejas Garcia was detained on an ordinary car ride. She did not
6 expect to be taken into custody since he had been living in the United States
7 continuously for more than ten (10) years without an issue. *See generally*
8 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an
9 opportunity to be heard before deprivation of a legally protected interest). Nor has
10 the government identified any materially changed circumstances that would
11 warrant detaining Ms. Callejas Garcia.
12

13 **COUNT TWO**

14 **Violation of Fifth Amendment Right to Due Process -**

15 **Illegal Retroactive Application of Expedited Removal Designation, U.S.**

16 **Const. Amend. V.**

17 61. Petitioner restates, realleges, and incorporates by reference each and every
18 allegation in the paragraphs above as if fully set forth herein.

19 62. Administrative rules “will not be construed to have retroactive effect unless
20 their language requires this result.” *Landgraf v. USI Film Products*, 511 U.S. 244,
21 272 (1994). When a “new provision attaches new legal consequences to events
22 completed before its enactment” the new provision is not retroactive unless it is
23 unmistakably clear.

24 63. The January 2025 designation does not unmistakably apply to individuals
25 who entered the United States prior to its effective date and were already in
26 removal proceedings. The designation’s language thus does not “require that it be
27 applied retroactively.” *See INS v. St Cyr*, 533 U.S. 289, 291 (2001).
28

1 64. Nor does the statutory language that the designation purports to derive
2 from, 8 U.S.C. § 1225(b)(1)(A)(iii), include any language indicating
3 Congressional intent to allow retroactive effect. *See INS v. St. Cyr*, 533 U.S. 289,
4 316-17 (2001) (quoting *Lindh v. Murphy*, 521 U.S. 320, 328, n.4 (1997) (requiring
5 statutory language to be “so clear that it could sustain only one interpretation”).

6 65. Accordingly, Respondents unlawfully subjected Ms. Callejas Garcia to
7 indefinite detention.

8 **COUNT THREE**

9 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
10 **Accordance with Law and in Excess of Statutory Authority Violation of 8**
11 **C.F.R. § 239.2(c)**

12 66. Petitioner restates, realleges, and incorporates by reference each and every
13 allegation in the paragraphs above as if fully set forth herein.

14 67. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is
15 “not in accordance with law;” “contrary to constitutional right;” “in excess of
16 statutory jurisdiction authority, or limitations;” or “without observance of
17 procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

18 68. Once a removal proceeding has been initiated, regulations enumerate the
19 reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In
20 considering a motion to dismiss, the Immigration Judge must make “an informed
21 adjudication . . . based on an evaluation of the factors underlying the [DHS]
22 motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

23 69. It is a well-established administrative principle that “agency action taken
24 without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v.*
25 *Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*,
26 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs.*,
27
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1 *Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was
2 taken by unauthorized official).

3 70. Under the APA, an agency must provide “reasoned explanation for its
4 action” and “may not depart from a prior policy sub silentio or simply disregard
5 rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S.
6 502, 515 (2009). On information and belief, Respondents’ intent was to eliminate
7 the due process rights available to Petitioner in removal proceedings under section
8 240 of the INA, deprive her of her liberty interest despite no evidence of material
9 changed circumstances, or for some other purposes not supported by law. *See*
10 *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal.
11 July 24, 2025) (“Detention for its own sake, to meet an administrative quota, or
12 because the government has not yet established constitutionally required pre-
13 detention procedures is not a legitimate government interest.”).

14 71. In deciding to detain Ms. Callejas Garcia, Respondents further violated the
15 APA by “entirely fail[ing] to consider an important aspect of the problem” –
16 namely, the important procedural rights that Petitioner relied on in § 1229a
17 immigration court proceedings. *See Motor Vehicle Mfrs. Ass’n of U.S., Inc. v.*
18 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep’t of*
19 *Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020)
20 (holding that rescission of immigration policy without considering “particular
21 reliance interests” is arbitrary and capricious in violation of the APA).

22 72. The arbitrary and capricious detention of Ms. Callejas Garcia was not made
23 in furtherance of an enumerated reason set forth in the regulations and causes Ms.
24 Callejas Garcia irreparable harm. For these reasons, the Court should find that the
25 decision to detain Ms. Callejas Garcia is arbitrary, capricious, and unsupported by
26 substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

COUNT FOUR

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Detention

73. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

74. Under the APA, a court shall “hold unlawful and set aside agency action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

75. An action is an abuse of discretion if the agency “entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

76. 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*, 588 U.S. 752, 773 (2019) (citation omitted).

77. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained the process of discretionary release from custody in immigration cases and noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the APA, non-citizens are entitled to

1 determinations related to their release revocations that are not arbitrary, capricious
2 or an abuse of discretion. *See id.* at *10.

3 78. By detaining Ms. Callejas Garcia without notice or consideration of her
4 individualized facts and circumstances, Respondents have violated the INA,
5 implementing regulations, and the APA.

6 79. Respondents have made no finding that Petitioner is a danger to the
7 community.

8 80. Respondents have made no finding that Petitioner is a flight risk.

9 81. On information and belief, by detaining Ms. Callejas Garcia categorically
10 and without notice, Respondents have further abused their discretion because,
11 since the agency made its initial custody determination, on information and belief,
12 there have been no changes to Ms. Callejas Garcia's specific facts or
13 circumstances that support her detention.
14

15 **COUNT FIVE**

16 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
17 **Accordance with Law and in Excess of Statutory Authority, Violation of 8**
18 **U.S.C. § 1225(b)**

19 82. Petitioner restates, realleges, and incorporates by reference each and every
20 allegation in the paragraphs above as if fully set forth herein.

21 83. Under the APA, a court shall “hold unlawful and set aside agency action...”
22 that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in
23 accordance with law; (B) contrary to constitutional right, power, privilege, or
24 immunity...” 5 U.S.C. § 706(2)(A)-(B).

25 84. Congress has made it clear that the expedited removal statute does not
26 apply and may not be applied to individuals who were “paroled” into the United
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1 States. 8 U.S.C. § 1225(b). It further applies to the non-citizens seeking
2 admission. Id. § 1225(b)(2).

3 85. Because Ms. Callejas Garcia is not subject to the January 2025 Designation,
4 Respondents' use of the January 2025 designation to detain her while her INA
5 section 240 proceedings were ongoing is unlawful, arbitrary, capricious, and
6 unlawful.

7 COUNT SIX

8 **Violation of the Fourth Amendment of the Constitution**

9 86. Petitioner restates, realleges, and incorporates by reference each and every
10 allegation in the paragraphs above as if fully set forth herein.

11 87. The Fourth Amendment protects “[t]he right of the people to be secure in
12 their persons . . . against unreasonable searches and seizures.” U.S. Const. amend.
13 IV. The Supreme Court has recognized that immigration arrests and detentions are
14 “seizures” within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*,
15 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are
16 civil, but the Fourth Amendment still applies to the “seizure” of the person).

17 88. The Fourth Amendment requires that arrests entail a neutral, judicial
18 determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).
19 That neutral, judicial determination can occur either before the arrest, in the form
20 of a warrant, or promptly afterward, in the form of a prompt judicial probable
21 cause determination. *See id.* Arrest and detention of a person, including of a
22 noncitizen, absent a neutral judicial determination of probable cause violates the
23 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v.*
24 *McLaughlin*, 500 U.S. 44, 57 (1991). The determination must occur within 48
25 hours of detention, which includes weekends, unless there is a bona fide
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1 emergency or other extraordinary circumstances. *See Cnty. of Riverside v.*
2 *McLaughlin*, 500 U.S. 44, 57 (1991).

3 89. Congress enacted a strong preference that immigration arrests be based on
4 warrants. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The
5 Immigration and Nationality Act thus provides immigration officers with only
6 limited authority to conduct warrantless arrests. 8 U.S.C. § 1357(a)(2). Federal
7 regulations track the strict limitations on warrantless arrests. *See* 8 C.F.R. §
8 287.8(c)(2)(ii).

9 90. Ms. Callejas Garcia did not receive any judicial determination of probable
10 cause for her arrest or continued detention by the Respondents.

11 91. The Government cannot salvage this seizure by invoking generalized
12 immigration enforcement interests. The Fourth Amendment’s reasonableness
13 inquiry is fact-specific and demands individualized justification for both the arrest
14 and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873,
15 882–84 (1975); *Gerstein*, 420 U.S. at 114. Ms. Callejas Garcia was granted
16 voluntary departure in 1999 and did not pose any danger to any person in the
17 community at large.

18 92. Respondents’ arrest of Ms. Callejas Garcia constitutes an unreasonable and
19 unlawful seizure in violation of the Fourth Amendment.
20

21 **COUNT SEVEN**

22 **Violation of Fifth Amendment Right to Due Process – Procedural Due**
23 **Process, U.S. Const. Amend. V.**

24 93. Petitioner restates, realleges, and incorporates by reference each and every
25 allegation in the paragraphs above as if fully set forth herein.

26 94. The government may not deprive a person of life, liberty, or property
27 without due process of law. U.S. Const. amend. V. “Freedom from
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1 imprisonment—from government custody, detention, or other forms of physical
2 restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas v.*
3 *Davis*, 533 U.S. 678, 690 (2001).

4 95. Ms. Callejas-Garcia has a fundamental interest in liberty and being free
5 from official restraint.

6 96. The government’s detention of Petitioner without notice or an opportunity
7 to be heard before detention violates her right to due process.

8 97. The government’s detention of Petitioner without a meaningful bond and
9 custody redetermination hearing to determine whether she is a flight risk or danger
10 to others violates her right to due process.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioner respectfully requests this Court to grant the following:
13

- 14 (1) Assume jurisdiction over this matter;
- 15 (2) Issue an Order to Show Cause ordering Respondents to show cause
16 why this Petition should not be granted within three days;
- 17 (3) Declare that Petitioner’s detention without an individualized
18 determination violates the Due Process Clause of the Fifth Amendment;
- 19 (4) Declare that refusal to allow Petitioner a meaningful bond and
20 custody redetermination hearing violates the INA, APA, and Due Process;
- 21 (5) Issue a Writ of Habeas Corpus ordering Respondents to release
22 Petitioner from custody;
- 23 (6) Issue an Order prohibiting the Respondents from transferring
24 Petitioner from this district without the Court’s approval;
- 25 (7) Issue an Order requiring Respondents to provide a bond and custody
26 redetermination hearing within 14 days to meaningfully consider her
27 eligibility for release from DHS custody;
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1 (8) Award Petitioner’s counsel reasonable attorney’s fees and costs
2 under the Equal Access to Justice Act, and on any other basis justified
3 under law;

4 (9) Grant such further relief as the Court deems just, equitable, and
5 appropriate; and

6 (10) Grant any and all other further relief this Court deems just or proper.
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10 Respectfully Submitted,

11 //s// Mario Portugal
12 Mario Portugal, Esq.
13 Attorney for the Petitioner
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