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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Mara Astrid Jaimes-Martinez,

Petitioner

Case No.:

vs.

Ronnie Woodall, Warden, Baker County Correctional Institution;

Garrett J. Ripa, Director of the Miami Field Office, U.S. Customs And Immigration Enforcement; (or current Director in title);

Pamela Jo Bondi, Attorney General of the United States;

Kristi Noem, Secretary of Homeland Security; and

Scotty Rhoden, Sheriff Baker County Florida

PETITION FOR WRIT OF HABEAS CORPUS
SEEKING IMMEDIATE RELEASE AND OTHER INJUNCTIVE RELIEF

I. INTRODUCTION AND EMERGENCY POSTURE

Petitioner is a domestic violence survivor, a child sexual abuse survivor, a mother of three, and has no criminal convictions. She was born in Venezuela. She entered the United States lawfully, with a valid visa and was subject to inspection.

She married a U.S. citizen, who abused her severely for many years, brutalizing her mentally and physically. After escaping the domestic violence, she planned to pursue adjustment of status through her daughter, Angelina Morillo, when she turned 21 years of age. She did. A lawful I-130 was filed and approved. See **Exhibit A**.

Nevertheless, petitioner has been continuously detained for more than **eight** months, notwithstanding the indisputable fact that she is statutorily eligible to adjust status under the Immigration and Nationality Act ("INA") § 245, 8 U.S.C. § 1255, based on an approved I-130 immigrant visa petition. Her sole ground of removability—overstay of a nonimmigrant visa—is, by statute, automatically forgiven upon adjustment, without necessity for an additional waiver. Congress has already spoken as to her eligibility in this regard, and the forgiveness of the overstay in favor of family unity.

Yet, she remains imprisoned, without bond, as a result of the Government's wholly unsubstantiated claim that she is a "danger" to society. Their sole basis offered to the court is a criminal conviction from 15 years ago, which was vacated specifically due to constitutional deprivations in the underlying proceeding. Not one item of evidence was produced by the Government at the bond hearing (or to date), to substantiate their dangerousness argument or any change of circumstance from a prior custody determination and release order.

Importantly, Morillo, who had been the subject of a prior removal order relating to the criminal conviction, underwent a custody determination years ago and was RELEASED after a DHS determination that she was NOT a danger and custody was not needed in order for her to appear at her check-ins. Ms. Morillo appeared at every check in without issue. In fact, she was taken into custody on or about June 1, 2025 while attending an ordinary check-in appointment.

The government has not complied with any single regulation concerning re-detention. Morillo was not given a notice of revocation of release. The government has made no allegations of change in circumstances since their first custody determination that she was NOT dangerous and would appear for her check-ins (corroborated by the fact that she did, in fact, comply).

This detention violates the Constitution, ICE's own regulations regarding re-arrest, the Administrative Procedures Act, and serves no permissible regulatory function. A writ must be granted Ordering her immediate release and other injunctive relief aimed at restoring her whole and preventing further unlawful actions.

II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241, which authorizes federal courts to grant habeas relief to individuals held "in custody in violation of the Constitution or laws or treaties of the United States." Petitioner is detained within the Middle District of Florida, and her immediate custodian is subject to this Court's jurisdiction. Note, the Real ID Act does not bar this Court's review. While challenges to final orders of removal must be brought in the courts of appeals, challenges to the fact, length, or constitutionality of immigration detention remain squarely within district court habeas jurisdiction.[2] Petitioner does not seek review of a removal order as such; she challenges the lawfulness of her continued detention and the *ultra vires* continuation of removal proceedings in the face of statutory adjustment eligibility. Finally, venue is proper in this District because Petitioner is detained here and her custodian resides here.

III. FACTUAL BACKGROUND

1. Petitioner, married to a U.S. citizen, is a mother of three U.S. citizen children. She is a citizen of Venezuela.

2. She has an approved I-130 as an immediate relative of Angelina Morillo, her 21 year-old daughter and is eligible for adjustment of status without necessity of any waivers. See **Exhibit A.**

3. She has no bars to adjustment of status to that of permanent residency.

4. Petitioner entered the United States legally and with inspection, on a B-2 visa in 1996. See **Exhibit B**.

5. Petitioner married a man by the name of Frank Morillo, a U.S. citizen.

6. [redacted] A witness statement and police reports corroborate a history of severe domestic violence and a prior restraining order are attached for reference. **Exhibit C** **and** **Exhibit D**.

7. In addition to an **approved I-130**, she also has a pending VAWA application which is substantiated by these documents, which she filed prior to the time her daughter turned 21.

8. Petitioner has no criminal history. Petitioner previously had a conviction for purportedly "conspiring with (her abusive husband) to sell CDS." However, that conviction was fully vacated on September 26, 2025 by way of Order of the District Court of New Hampshire due to proven constitutional deficiencies in the underlying proceeding. **Exhibit E**.

9. Petitioner was the subject of a removal action based solely upon the conviction that was invalidated by the vacatur.

10. After an initial arrest on that case, a prior custody determination was made by DHS. **Exhibit F**.

11. Morillo was found NOT to be a danger and was **released on her own recognizance on condition of appearing at check-ins.**

12. Petitioner appeared at every check-in without issue.

13. In fact, Petitioner was taken into custody in May 2025 at a routine check-in appointment.

14. She has been in continuous custody for over **eight months** since that time.

15. On September 30, 2025, after it came to light that her conviction had been fully and constitutionally vacated and the original order of removal thus invalidated, the Department of Homeland security issued a new NTA charging her with the sole charge of remaining in the United States beyond her visa expiration. **Exhibit G**.

16. **Petitioner's I-130 was approved on November 17, 2025. Exhibit H.**

17. Petitioner is entitled to automatic forgiveness of overstay time without the need for a waiver pursuant to I.N.A. section 245(c).

18. Petitioner has no bars to adjustment.

19. **Petitioner has been in continuous ICE custody for over 8 months**, separated from her two daughters, one the tender age of eleven (11) and one twenty-one (21). They are parentless with no father or father-figure in their life. The children are suffering without their mother emotionally, financially, and frankly in every way.

20. A bond hearing was held via Webex in or about November 2025 during which time Immigration Judge Pedro Espinal denied bond, finding Morillo to be a "danger to the

community" based solely upon the 15 year old criminal charge with the vacated conviction, and nothing more. The Government produced no evidence of any kind.

21. To date, not a scintilla of evidence has been filed or presented to the immigration court to support this allegation of "danger."

22. Similarly, the government did not issue a notice of revocation of her parole.

23. The government did not hold an interview or hearing to determine if there has been a change of circumstance since the initial custody determination made regarding Morillo.

24. The government did not offer one item of evidence or even proffer an argument suggesting that there was a change in circumstance to warrant the revocation of parole or any change in circumstances at all.

25. Petitioner and her family are suffering and she continues to suffer irreparable harm as a result of her unlawful incarceration.

JURISDICTION AND VENUE

26. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act). Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district. Petitioner is presently in physical custody of Immigration and Customs Enforcement (ICE) at The

Baker County Correctional Facility located at 3380 S. Jacksonville Road, Macclenny, FL 32063.

III. PARTIES

27. Respondent Ronnie Woodall is the Warden of the ICE facility with custody of the Petitioner.

25. Respondent **Garrett J. Ripa** is the Acting Field Office Director of the Miami ICE Field Office. In this capacity, he is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within this area of Responsibility, including the specific area holding detention of this Petitioner. Respondent Ripa maintains an office and regularly conducts business in this district. Respondent is sued in his official capacity.

26. Respondent **Todd M. Lyons** is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Lyons is sued in his official capacity.

27. Respondent **Kristi Noem** is the Secretary of Homeland Security and has ultimate

authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Noem is sued in her official capacity.

28. Respondent **Pamela Bondi** is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through her agents, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The

Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her official capacity.

29. **Scotty Rhoden** is the Sheriff of Baker County whose office is responsible for operations and security within the Baker County Detention Center and through that function also has actual physical custody of the Petitioner.

IV. EXHAUSTION

30. There is no exhaustion requirement for challenging the constitutionality of an arrest or detention, or challenging a policy under the Administrative Procedure Act. Prudential exhaustion is not required here because it would be futile, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further exhaustion requirements would be unreasonable.

V. LEGAL STANDARDS

The Constitution guarantees the availability of the writ of habeas corpus "to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3). Historically, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a district court's habeas jurisdiction includes challenges to immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

A. The arrest of Petitioner Violates ICE's Own Regulations.

The regulations that authorize ICE to release a noncitizen who has been ordered removed provide:

> Before making any . . . decision to release a detainee, a majority of the Review Panel members, or the Director of the HQPDU in the case of a record review, must conclude that:
>
> 1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest;
>
> 2) The detainee is presently a non-violent person;
>
> 3) The detainee is likely to remain nonviolent if released;
>
> 4) The detainee is not likely to pose a threat to the community following release;
>
> 5) The detainee is not likely to violate the conditions of release; and
>
> 6) The detainee does not pose a significant flight risk if released.

8 C.F.R. § 241.4(e); ***see also*** **8 C.F.R. §§ 241.4(h)(3), (i)(6)** (noting that the Executive Associate Commissioner and district director "must [also] be able to reach the conclusions set forth in paragraph (e) of this section" "[b]efore making any decision to release a detainee"). Id.

Current regulations at **8 C.F.R. §§ 241.13(i)** govern how and when ICE may revoke the release of a noncitizen. Section **241.13(i)** permits revocation of release ***"if, on account of changed circumstances, [ICE] determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future."*** (Emphasis added). 8 C.F.R. § 241.13(i)(2).

Numerous courts have found that when ICE revokes the release of a noncitizen who has been ordered removed to effectuate that noncitizen's removal, "it is [ICE's] burden to show a significant likelihood that the alien may be removed." E.g., Escalante v. Noem, No. 9:25-CV-00182-MJT, 2025 WL 2206113, at *3 (E.D. Tex. Aug. 2, 2025); see Nguyen v. Hyde, 788 F. Supp.

3d 144, 150 (D. Mass. 2025). Nguyen v. Hyde, for example, dealt with a noncitizen who had been ordered removed to Vietnam, released after ICE was unable to remove him, and then had his release revoked on the grounds that there were, according to ICE, changed circumstances such that he could now be removed to Vietnam. Nguyen, 788 F. Supp. 3d at 146–149. The Nguyen court is particularly noteworthy because it first explained the framework set out in the seminal case Zadvydas v. Davis, 533 U.S. 678 (2001), which dealt with a noncitizen who had been detained and never released following a final order of removal. Zadvydas, 533 U.S. at 701. In that context, the Supreme Court held that once an alien has been detained for six months and "provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." Id.

In this Petitioners' case, ICE did not follow their regulatory duties under **8 C.F.R. §§ 241.13(i),** nor make any showing at all regarding dangerousness, nor was any argument even advanced to substantiate a change in circumstances.

B. **ICE likewise did not follow regulatory requirements for Due Process.**

The regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) set out the procedures to be followed in revoking release, procedures that protect important due process rights. *See e.g. Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025) (noting that 8 C.F.R. § 241.13(i) was "promulgated to protect a fundamental right derived from the Constitution"). Those procedures include:

> **"Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he [will] be removed in the reasonably foreseeable future, or that [she] has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.**

8 C.F.R. § 241.13(i)(3); *see e.g. Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025).

Not one of these procedures were followed here. Petitioner never received notice of revocation. No initial informal interview was conducted. The lack of notice of revocation denied the stated opportunity to respond to reasons that should have been set forth in such a notice. Likewise no opportunity to submit evidence or information was afforded regarding the likelihood of removal or that Petitioner did not violate any order of supervision. No determination was ever made nor facts received to determine whether revocation was warranted. Not one single part of 8 C.F.R. § 241.13(i)(3) was followed.

"ICE, like any agency, 'has the duty to follow its own federal regulations.'" *Rombot v Souza,* 296 F. Supp. 3d 383, 388 (D. Mass. 2017) (quoting *Haoud v. Ashcroft*, 350 F.3d 201, 205 (1st Cir. 2003)); *see Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020) ("[U]nder deeply rooted principles of administrative law, not to mention common sense, government agencies are generally required to follow their own regulations.").

In a Supreme Court case standing for this proposition, *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), the court considered a challenged BIA decision under circumstances that considered whether the BIA followed their own regulations (as alleged as to ICE here). The Supreme Court held that, if the petitioner could prove the allegations in the petition, "he should receive a new hearing" and be "afforded the due process required by the regulations." *Id.* at 265–68. Recognizing this principle, other courts have held that **"where an immigration 'regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute,' like the opportunity to be heard, 'and [ICE] fails to adhere to it, the challenged [action] is invalid.'"** *Rombot*, 296 F. Supp. 3d at 388 (quoting

Waldron v. I.N.S., 17 F.3d 511, 518 (2d Cir. 1993)); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025) ("Because there is no indication that an informal interview was provided . . ., [petitioner's] re-detainment was unlawful.").

Another similar situation where a noncitizen's release was revoked pursuant to 8 C.F.R. 241.4(l), was seen in *Perez-Escobar v. Moniz No. 25-CV-11781-PBS, 2025 WL 2084102, at *2 (D. Mass. July 24, 2025).* In that case, the court *explained:*

> **"[T]he essential requirements of procedural due process include adequate notice and an opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Aponte-Rosario v. Acevedo-Vila, 617 F.3d 1, 9 (1st Cir. 2010) (quoting Amsden v. Moran, 904 F.2d 748, 753 (1st Cir. 1990)); see Jimenez v. Cronen, 317 F. Supp. 3d 626, 634 (D. Mass. 2018) (explaining that the "[f]undamental features of procedural due process are fair notice of the reasons for the possible loss of liberty and a meaningful opportunity to address them"). Likewise, under DHS's regulation, "in order to revoke conditional release, the Government must provide adequate notice" and give the noncitizen "an opportunity to respond to the reasons" offered for the revocation. Noem v. Abrego Garcia, 145 S. Ct. 1017, 1019 (2025) (statement of Sotomayor, J.) (quoting 8 C.F.R. § 241.4(l)(1))." (Emphasis added).**

Here, no part of the regulation was followed regarding notice or the opportunity to be heard. None of the procedures were followed. Therefore, it is not a difficult case in which to see that Due Process and the regulations have been violated and the re-detention is unlawful.

C. *Supreme Court case law describes how the Constitution protects against arbitrary arrest and detention, as here*

The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. These due process rights are both substantive and procedural. *First*, "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). These protections extend to noncitizens facing detention, as "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690– 92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

Second, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, **"[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions."** *Id.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

The liberty interest of this petitioner is great. She has U.S. citizen children here, has an approved I-130, a perfectly ordinary and viable pathway to permanent residency and citizenship and who has filed all the paperwork to pursue same.

Detention of this individual, especially detention without an opportunity for a bond and due process, is downright unconstitutional and inconsistent with *Zadvydas*, which requires custody to be supported by *evidence* … of something… and requires the Government to show that evidence by clear and convincing evidence.

No evidence, at all, nor any change of circumstance argument has been presented against this Petitioner to warrant the revocation of her prior order of release. The custody of this Petitioner is unlawful and is causing constitutional deprivation every day.

The case law above highlights due process concerns, but we note here that this Petitioner's Unlawful incarceration also violates the First, Fifth, and Fourth Amendement of the Constitution as will be discussed supra.

D. If this is an attempt to now place petitioner into an expedited removal that would unlawfully and dramatically expand authority without legislative action.

For decades, DHS applied expedited removal exclusively in the border enforcement context, with only narrow exceptions to that general rule. From 1997 until 2002, expedited removal applied only to inadmissible noncitizens arriving at ports of entry. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997). In 2002, the government for the first time invoked its authority to apply expedited removal to persons already inside the country, but only for a narrow group of people who arrived by sea, were not admitted or paroled, and were apprehended within two years of entry. *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002). In 2004, the government authorized the application of expedited removal to individuals who entered by means other than sea, but only if they were apprehended within 100 miles of a land border and were unable to demonstrate that they had been continuously physically present in the United States for 14 days. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004). In 2019, at the direction of President Trump, DHS published a Federal Register Notice authorizing the application of expedited removal to certain noncitizens arrested anywhere in the country who could not affirmatively show that they had been continuously present for two years. *See* Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019). The District Court for the District of Columbia entered a preliminary injunction preventing the rule from taking effect, which the D.C. Circuit later vacated. *Make the Rd. New York v. McAleenan*, 405 F. Supp. 3d 1, 11 (D.D.C. 2019), *vacated sub nom. Make the Rd. New York v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020).

In 2021, President Biden directed the DHS Secretary to review the rule expanding expedited removal and consider whether it comported with legal and constitutional requirements, including due process. In 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

While the 2019 expansion was in effect, the government applied expedited removal to persons inside the country in an exceedingly small number of cases. Thus, from 1997 to 2025, with limited exceptions, immigration authorities generally did not apply expedited removal to noncitizens apprehended far from the border, or individuals anywhere in the United States (including near the border) who had been residing in the country for more than fourteen days.

This state of affairs changed drastically on January 20, 2025, the day that President Trump took office for his second term. That day, President Trump signed Executive Order 14159, titled "Protecting the American People Against Invasion," the stated purpose of which was "to faithfully execute the immigration laws against all **inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people**." Exec. Order No. 14,159, 90 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take various actions "to ensure the efficient and expedited removal of aliens from the United States." *Id.*

Petitioner does not fit the scope of that stated mission. Petitioner, who can establish presence for nearly 30 years, **is not inadmissible, she has an approved I-130**, and no barriers to her pending application for permanent residence. The allegation in her NTA regarding overstay will automatically be statutorily forgiven by operation of standing law.

To arrest and keep this petitioner in custody would be an unlawful expansion of any rule or context that currently applies in law, even under the expanded scope delineated above, because this petitioner clearly does not fit the mission or the criteria stated in the Executive Order.

For Respondents to otherwise enforce an action purportedly under this expanded authority would be an unlawful expansion of the scope of applicable law without legislation. We do not know this to be the case, however, because petitioner was never served with notice of revocation of any kind, nor any notice of reopening the removal matter dismissed in 2022, nor any new NTA for that matter; nor any interview as referenced above. A complete lack of due process has left this petitioner completely in the dark, without notice of any circumstances, and detained all the while without any change of circumstances whatsoever.

E. The arrest of petitioner violates the Administrative Procedures Act.

The Administrative Procedure Act prohibits federal action that is "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* § 706(2)(A). As shown above, this Petitioner was arrested with absolutely no notice of revocation of a prior release after a lawful custody determination was made. Without any notice of revocation, and without compliance with any of the relevant regulations, Petitioner was unlawfully detained. Without a change in circumstances, notice, or some new probable cause or warrant, none of which are present here, the arrest of plaintiff was beyond the scope of any law, was arbitrary, and therefore a Violation of the Administrative Procedures Act.

Importantly, this petitioner's current NTA charges her only with an overstay of a visa, which, by function of statute 245(c) will automatically be forgiven during the adjudication of her application for permanent residency. Again, her I 130 is already approved and the adjudication underway.

It is contrary to Due Process to seek to Deport an individual who is actually in the process of being forgiven pursuant to a current applicable statute, for the only item on her NTA. **Further, and most importantly perhaps, by attempting to deport her contrary to the current I.N.A. statute regarding overstay forgiveness applicable to this Petitioner, D.H.S. is *ipso facto* acting outside of its authority and abrogating section 245 of the I.N.A. without authorization. Emphasis Added.** Therefore, the current NTA, which rests solely on this unauthorized ipso facto abrogation and the arrest and detention are all unlawful and against the Administrative Procedures Act.

F. **Petitioner is Suffering Ongoing and Irreparable Harm.**

"[I]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Petitioner is being deprived of liberty without any lawful justification. She has an approved I 130 and no bars to becoming a permanent resident and citizen.

She has always attended every immigration check-in and never violated any part of a prior release order. She has no admissibility issues and has no criminal convictions. She is a mother to United States Citizen children who need her, including one who is only 11 years old.

She has been incarcerated unlawfully for over **eight months**. She and her children, who are parentless without her and who have been displaced from their home, are all suffering greatly.

Immediate release is required in this circumstances.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process—Detention)

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

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

35. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the due process clause protects. " Zadvydas, at 690.

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

37. Petitioner was the subject of a prior removal action, from which she was released after a custody determination pursuant to regulation. She was determined not to be a danger and that custody was not necessary to ensure her appearance in court.

38. She received no notice of revocation of that custody determination.

39. She received no opportunity to be heard as to that decision and no informal interview as required by regulations outlined above.

40. Petitioner is being held in custody for over eight months without due process or regulatory protections.

41. Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect")

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process—Detention)

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

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

44. Accordingly, "[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez*, 872 F.3d at 990; *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property.").

45. In the immigration context, where a prior finding was made to release an individual subject to a removal matter, in order to comply with due process, procedures must be followed as outlined in the statute above to give notice and an opportunity to be heard and present evidence. An

informal interview must be had and some change of circumstance to warrant the revocation of release. 8 C.F.R. § 241.13(i)(3).

46. Per a plain reading of the statute, the Government has the burden of proof pursuant to 8 C.F.R. § 241.13(i)(3) to make requisite showings of a change in circumstance in order to detain a previously released person.

47. Petitioner's re-detention without any a pre-deprivation hearing or compliance with 8 C.F.R. § 241.13(i)(3); violated procedural due process.

THIRD CLAIM FOR RELIEF

Violation of the Fourth Amendment to the United States Constitution

(Unlawful Arrest)

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

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

50. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause, as does the Administrative Procedures Act – preventing re-arrest.

51. A lawful seizure is one with probable cause; a reasonable articulable suspicion that some unlawful activity is afoot and that the arrestee is a party to it.

52. Once an arrestee appears before the court, the purpose of the initial seizure has been accomplished. Further seizure requires a court order or new cause; the original probable cause determination is no justification. *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020), *United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988)

("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.").

53. In the immigration context, this prohibition generally means that a person who immigration authorities released from custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings" and without some new, intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

54. Here, petitioner was initially arrested on a removal order, that subsequently became invalidated by an intervening vacatur of a prior criminal conviction rendered unconstitutional.

55. She was retained in custody.

56. A new NTA was filed, charging her with an overstay that will statutorily be forgiven as part of her pending and partly approved application for permanent residency. She has no bars to admissibility.

57. The new NTA charges her only with an accusation of overstay which will be statutorily forgiven by INA 245 without need for any additional waiver.

58. Her I 130 is already approved.

59. Under these circumstances the government cannot say her custody is reasonably related to foreseeable removal.

60. She has nevertheless been held in custody for **8 months**.

61. Bond was denied without any evidence being proffered of change in circumstance from the prior release order or any evidence at all being offered by the government regarding alleged dangerousness.

62. Courts have long cautioned that permitting such rearrests could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).

63. Absolutely no probable cause or other justifiable reason for the arrest of this petitioner.

64. This arrest and prolonged custody is unreasonable and a violation of the 4th Amendment.

FOURTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act

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

66. The Administrative Procedure Act prohibits federal action that is "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.* § 706(2)(A).

85. The arrest of this petitioner is wholly violative of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C) for three reasons.

86. First the arrest is arbitrary and capricious, in violation of 5 U.S.C. § 706(2)(A).

87. The government has provided no evidence at all of a change of circumstance since a prior release order or any one piece of evidence to support their claim that she is now dangerous, despite their prior finding to the contrary. [Note: The Eleventh Circuit Court of Appeals has held that a vacated criminal conviction, offered in combination with the underlying police reports, does not substantiate a reason to believe that a party trafficked in controlled dangerous substances, even where the reports allege the individual sold drugs to an undercover officer. Garces v. U.S. Atty General, 611 F.3d 1337 (2010).] Here, no evidence at all was offered to substantiate the allegation of dangerousness of this 4 foot 10 inch tall mother of three; a survivor of severe domestic abuse.

88. Second, the arrest did not follow any of the procedures described herein required by regulation, that require notice of revocation of release/parole, an informal hearing, an opportunity to be heard before detention, etc.

89. Third, the current detention seeks to ipso facto abrogate I.N.A. 245(c) which will automatically forgive the overstay that is the one and only charge in the current NTA against petitioner, who has an approved I 130 and no bars to obtaining her permanent residency. Under I.N.A. 245(c) her overstay time is automatically deemed forgiven without the need for the filing of any additional waiver. This is the state of the law and to attempt to deport her whilst she is subject to this automatic statutory forgiveness for the one-and-only allegation on the NTA is to ipso facto abrogate 245(c), which exceeds the authority of DHS contrary to the Administrative Procedures Act.

90. Petitioner's arrest and detention pursuant to the government's policy is a final agency action that violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

FIFTH CLAIM FOR RELIEF

Violation of the First and Fifth Amendments to the United States Constitution

(Right to Access Courts and Petition for Redress)

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

92. The First and Fifth Amendments to the United States Constitution guarantee the rights to access the courts and to petition for redress of grievances, which includes the right to participate as a party or witness in judicial and administrative proceedings.

93. The Constitution as a corollary prohibits systemic official action that bans or obstructs meaningful access to the courts, including the filing or presenting of legal claims. *See Christopher v. Harbury*, 536 U.S. 403 (2002).

94. Petitioner's arrest and detention without any of the pre-detention regulatory notice or informal opportunity to be heard, deprived petitioner directly of a right to access courts prior to detention.

95. Additionally, the unreasonable continued custody of **eight months**, continues to cause obstruction to meeting with counsel and pursuing court action.

96. The government's arrest of Petitioner therefore deprived her of her First and Fifth Amendment rights to meaningfully access court and to petition for redress of grievances in this matter.

SIXTH CLAIM FOR RELIEF

THIS REMOVAL MATTER MUST BE TERMINATED BECAUSE OF THE PREDICATE VIOLATIONS OF THE ADMINISTRATIVE PROCEDURES ACT, AND IN THE INTEREST JUSTICE AND OF JUDICIAL ECONOMY IN THESE UNIQUE TIMES WHEN RESOURCES ARE TAXED

97. Petitioner has an approved I 130. She has no bars to admission. She entered lawfully and was properly inspected.

98. Her overstay is automatically forgiven statutorily, without a waiver, pursuant to I.N.A. 245(c).

99. This current NTA is an attempt to invalidate I.N.A. 245(c), which exceeds the authority of D.H.S.

100. Her detention for 8 months cannot be said to be reasonably linked to likely removal.

101. She received not one single part of compliance with required regulatory notice or opportunity to be heard before being re-arrested.

102. Not one piece of evidence has been offered against her to show any change of circumstance since her first order of release.

103. Not one piece of evidence has been offered to show she is dangerous.

104. The *Matter of Coronado Acevedo*, 28 I&N Dec. 648, 651-652 (A.G. 2022) provides that

"judges and the Board should be permitted to consider and, where appropriate, grant termination... where ... termination is necessary for the respondent to be eligible to seek immigration relief before USCIS."

105. This petitioner should be given that opportunity.

106. To keep this Petitioner, a severe domestic abuse survivor, and mother, standing at 4 foot 10 inches tall, poses no threat to anyone in any way nor has any evidence been provided to the contrary.

107. Her continued incarceration, and her removal action based only on overstay time which will be statutorily forgiven during the adjudication of her permanent residency application (already partly approved), is a waste of judicial resources and detention beds, both of which are sparce in comparison to the 3,000 per day unprecedented ICE arrests overwhelming the courts and detention centers.

108. This court has jurisdiction to review the arrest and circumstances of this Petitioner under the Administrative Procedure Act as noted above. Therefore, jurisdiction extends to remedy violations of that act.

109. This court should exercise this authority to terminate the removal proceeding that violates the Act, in the alternative, issue a stay of any such proceeding, begun in violation of the regulations, until such time as Petitioner's permanent residency application is adjudicated.

SEVENTH CLAIM FOR RELIEF

CONGRESS EXPRESSLY FORGAVE VISA OVERSTAYS FOR IMMEDIATE RELATIVES, (THE ONLY CLAIM ASSERTED ON THE NTA AGAINST THIS PETITIONER)

110. Congress enacted INA § 245, 8 U.S.C. § 1255, to permit eligible noncitizens physically

present in the United States to adjust status to lawful permanent resident. For immediate relatives of United States citizens, Congress explicitly forgave unlawful presence arising from visa overstays. See 8 U.S.C. § 1255(c)(2). No waiver is required.

111. The statutory structure reflects a deliberate congressional choice: overstays by immediate relatives are not to be treated as disqualifying conduct. Congress thereby eliminated the very harm the Government now claims justifies continued detention.

112. An approved Form I-130 establishes, as a matter of law, the existence of a qualifying family relationship and eligibility to seek adjustment of status. Matter of Tawfik, 20 I. & N. Dec. 166 (BIA 1990). Once approved, the petition removes any discretionary doubt as to the bona fides of the relationship.

113. Detention pending removal proceedings that ignore this statutory reality undermines the INA's family-unification purpose.

114. Detention is then *ultra vires* where Congress has abrogated the basis for removal against the individual. Further, eligibility for adjustment weighs heavily against continued detention. Alim v. Gonzales, 446 F.3d 1239, 1249 (11th Cir. 2006).

115. Civil detention must be tethered to a legitimate regulatory purpose. Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Here, detention is untethered because Petitioner's sole ground of

removability—overstay—has been forgiven by Congress.

116. Continued detention therefore exceeds DHS's statutory authority and violates separation-of-powers principles.

117. Agencies may not nullify congressional enactments through detention. Clark v. Martinez, 543 U.S. 371, 380–81 (2005).

118. Where statutory interpretations raise serious constitutional doubts, courts must adopt the interpretation that avoids those doubts. Id. Detaining an adjustment-eligible immediate relative for 8 months without meaningful process raises grave due process concerns and must be rejected.

119. Release is required as is termination of the *ultra vires* proceeding in toto.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Enjoin the United States from transferring petitioner out of this court's jurisdiction and issuing a writ of habeas corpus **ordering Respondents to immediately release Petitioner from custody;**

2. Enjoin Respondents from re-detaining Petitioner unless re-detention is ordered at a pre-custody hearing before a neutral arbiter, having the benefit of reasonable notice and the right to be represented by an attorney, and a right to present evidence and be heard, in which the government bears the burden of proving, by clear and convincing evidence, that a change of circumstance has occurred from the prior

custody determination and that custody is necessary to ensure petitioner's appearance in court; and

3. Exercise Discretion and issue an Order terminating the removal matter that violates the APA or alternatively, issue a Stay of such proceedings until such time as Petitioner's pending application for permanent residency is adjudicated.

4. In the alternative, if this court is unwilling to terminate the removal matter or issue a stay of the matter as requested in number three, to refer this part of the petition only to a Court of Appeals with jurisdiction over the issue of a stay; and

5. Issue an Order granting Petitioner attorney's fees and costs associated with this application and with defending against this unlawful arrest in order to help return the family to status quo (to the extent possible); and

6. Any other relief this court deems just and proper.

Respectfully Submitted,
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