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5 **UNITED STATES DISTRICT COURT**
6 **SOUTHERN DISTRICT OF CALIFORNIA**
SAN DIEGO

7 Patricia CEDILLO CERVANTES,
8 Petitioner,

Case No. '26CV1446 RSH MSB

Agency No. 

9 v.

10 Pamela J. Bondi, Attorney General
of the United States, Department of
Justice;

11 Kristi Noem, Secretary of
Homeland Security;

12 Todd Lyons, Senior Official
Performing the Duties of the Director
13 of U.S. Immigration and Customs
Enforcement;

14 Daniel A. Brightman, Field Office
Director of the San Diego Immigration
15 and Customs Enforcement Office;

16 Jorge Velarde, Assistant Field Office
Director of the Immigration and
Customs Enforcement, Otay Mesa
17 Detention Center;

18 Christopher J. LaRose; Senior Warden,
Otay Mesa Detention Center;

19 Respondents.
20
21

**PETITION FOR WRIT OF
HABEAS CORPUS BY A
PERSON IN FEDERAL
CUSTODY UNDER
28 U.S.C. § 2241 AND ORDER TO
SHOW CAUSE WITHIN THREE
DAYS**

1
2 **INTRODUCTION**

3 1. Petitioner, Patricia Cedillo Cervantes  (hereinafter “Patricia” or
4 “Petitioner”), a 50-year-old Mexican national who is currently detained at the
5 Otay Mesa Detention Center in San Diego, California. She is represented by
6 counsel’s office in her immigration matters. Petitioner is in ongoing removal
7 proceedings which began in 2009 following an arrest for driving under the
8 influence of alcohol. On April 14, 2009, Immigration and Customs Enforcement
9 (“ICE”) released on her own recognizance. Exh. B, Forms I-220A, I-286. She was
10 at liberty until January 26, 2026, when ICE re-detained her following her
11 appearance pursuant to an ICE appointment letter for that day, though she had
12 regularly complied with all check-in requirements previously and ICE was fully
13 aware of her criminal record. Exh. A, Declaration of Attorney Tessa Cabrera
14 (“Cabrera Dec.”).

15 2. Petitioner asks this Court to find that her continued detention is unlawful; that she
16 may not be transferred during the pendency of this petition; make an order to show
17 cause; and order that she be released immediately in vindication of her
18 constitutional rights.

19 **JURISDICTION**

20 3. This action arises under the Constitution of the United States and the Immigration
21 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

1 4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
2 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
3 Constitution (Suspension Clause).

4 5. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*.
5 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs
6 Act, 28 U.S.C. § 1651.

7 **VENUE**

8 6. Venue is proper because Patricia is detained at the Otay Mesa Detention Center in
9 San Diego, California, which is within the jurisdiction of this District. Further, a
10 substantial part of the events or omissions giving rise to her claims occurred in this
11 District and no real property is involved in this action. 28 U.S.C. § 1391(e).
12 Notably, Patricia's residence with her U.S. citizen husband is in the County of San
13 Diego, California.

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

15 7. The Court must grant the petition for writ of habeas corpus or issue an order to
16 show cause (OSC) to the respondents "forthwith," unless the petitioner is not
17 entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court
18 must require respondents to file a return "within *three days* unless for good cause
19 additional time, not exceeding twenty days, is allowed." *Id.* (emphasis added).

20 8. Courts have long recognized the significance of the habeas statute in protecting
21 individuals from unlawful detention. The Great Writ has been referred to as

1 “perhaps the most important writ known to the constitutional law of England,
2 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
3 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

4 **PARTIES**

5 **Petitioner**

6 9. Petitioner is a Mexican national who is in custody at the Otay Mesa Detention
7 Center located at 7488 Calzada De La Fuente, San Diego, CA 92154. When at
8 liberty, she resides with her U.S. citizen husband in Vista, California. She is in the
9 custody, and under the direct control, of Respondents and their agents.

10 **Respondents**

11 10. Respondent Pamela Bondi is sued in her official capacity as the Attorney General
12 of the United States and the senior official of the U.S. Department of Justice
13 (“DOJ”). In that capacity, she has the authority to adjudicate removal cases and to
14 oversee the Executive Office for Immigration Review (“EOIR”), which
15 administers the immigration courts and the Board of Immigration Appeals.
16 Respondent Bondi is a legal custodian of Petitioner.

17 11. Respondent Kristi Noem is sued in her official capacity as the Secretary of the
18 U.S. Department of Homeland Security (“DHS”). In this capacity, Respondent
19 Noem is responsible for the implementation and enforcement of the Immigration
20 and Nationality Act, and oversees U.S. Immigration and Customs Enforcement,

1 the component agency responsible for Petitioner's detention and custody.
2 Respondent Noem is a legal custodian of Petitioner.

3 12. Respondent Todd Lyons, is sued in his official capacity as the Senior Official
4 Performing the Duties of the Director ICE. Respondent Lyons is the legal
5 custodian of Petitioner.

6 13. On information and belief, Respondent Daniel A Brightman is the current Field
7 Office Director responsible for the San Diego Field Office of ICE with
8 administrative jurisdiction over Petitioners' immigration cases. He is a legal
9 custodian of Petitioner and is named in his official capacity.

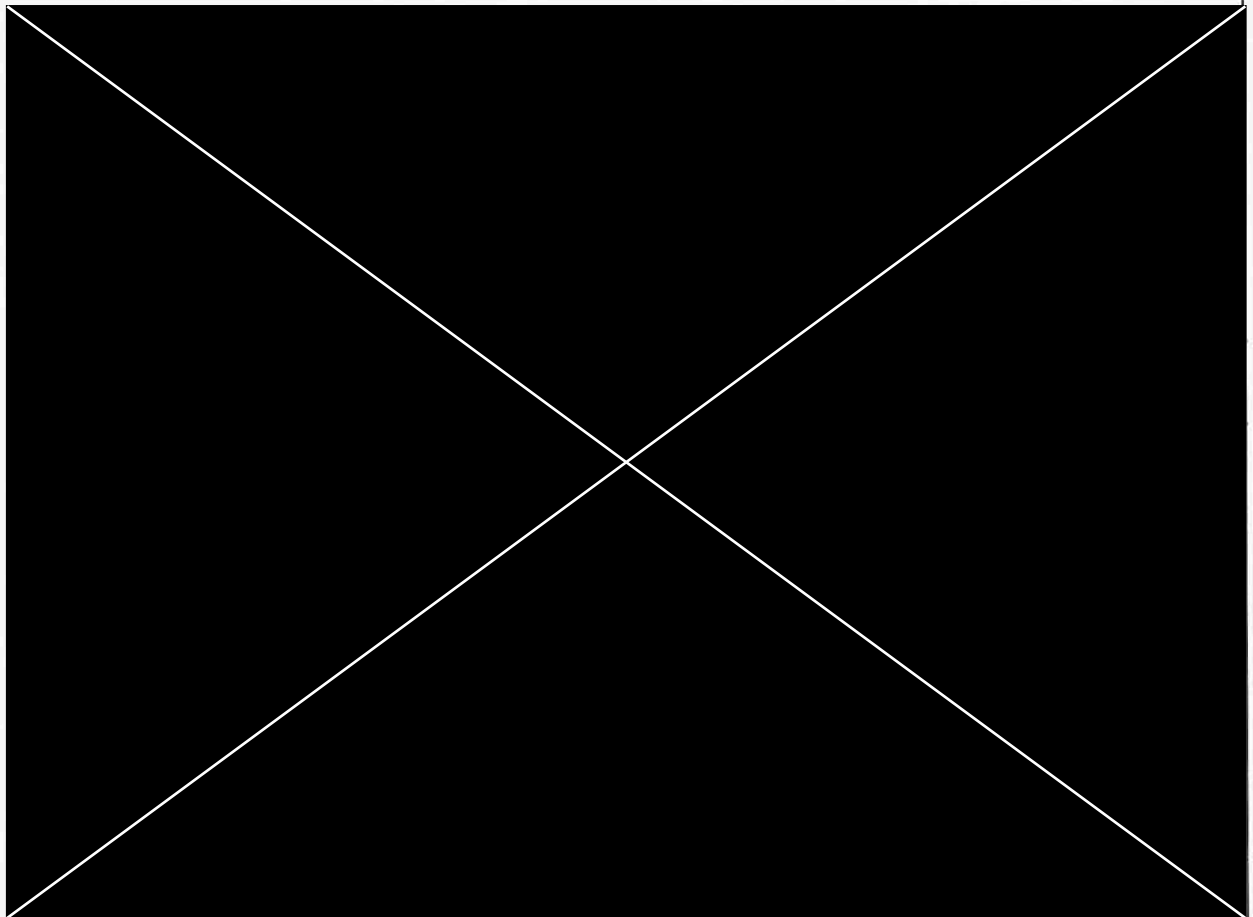
10 14. On information and belief, Respondent Jorge Velarde is the current Assistant
11 Field Office Director responsible for the San Diego Field Office of ICE with
12 administrative jurisdiction over Petitioners' immigration cases. He is a legal
13 custodian of Petitioners and is named in his official capacity.

14 15. Respondent Christopher J. LaRose is sued in his official capacity as the Senior
15 Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical
16 custodian of Petitioner and has direct authority to release him.

17 **STATEMENT OF FACTS**

18 16. Petitioner, Patricia, is a 50-year-old native of Mexico who has resided in the
19 United States since the age of 16, following her entry in March 1991 without
20 inspection and admission. Exh. A, Cabrera Dec.

1 17. Patricia's father is a U.S. citizen. On August 20, 2001, Patricia's father filed Form
2 I-130, *Petition for Alien Relative*, on behalf of his daughter, Patricia, an adult who
3 was living in the United States without any immigration status. On May 18, 2005,
4 U.S. Citizenship and Immigration Services approved Patricia's father's petition.
5 At that time, Patricia was an adult with unlawful presence and in unlawful status
6 and therefore could not receive the benefit of the petition because of the bars at 8
7 USC § 1255(c) [INA § 245(c)] that are applicable to beneficiaries who are not
8 immediate relatives pursuant to 8 USC 1151(b)(2) [INA § 201(b)(2)]. Exh. B,
9 Receipt Notice.



LEGAL FRAMEWORK

32. Immigration detention is a form of civil confinement that “constitute[s] a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 423 (1979).

33. The Immigration and Nationality Act (“INA”) prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a. The INA provides for mandatory detention of noncitizens subjected to an expedited removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for certain other noncitizen applicants for admission to the United States who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

34. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

35. Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993). The INA establishes various procedures through which individuals may be detained pending a decision on whether or not the noncitizen is to be removed. 8 U.S.C. § 1226(a).

36. Removal proceedings described in section 240 of the INA are used to determine whether individuals, such as Petitioner, should be removed from the United States. *See*, 8 U.S.C. § 1229a. Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guera*, 24 I&N Dec. 37 (BIA 2006). Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances. Once a determination to release an individual from custody is made, the release order may be revisited when the facts and circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release *only* when the facts and circumstances warrant it. Revocation and return to custody is authorized only based on the individualized facts and circumstances. 8 CFR § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized individuals. *Id.*

CLAIMS FOR RELIEF

COUNT ONE

**Violation of the Administrative Procedure Act—5 U.S.C. § 706(2)(A)
(Abuse of Discretion - Violation of 8 U.S.C. § 1226(b), 8 CFR § 1236.1(c)(9))**

37. Petitioner incorporates the allegations in the paragraphs above as though fully set forth here.

38. Under the APA, a court shall “hold unlawful and set aside agency action” that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

39. 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).

40. 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.” *Dept. of Com. v. New York*, 139 S.Ct. 2551, 2569 (2019)(citation omitted). By categorically revoking Patricia’s release on recognizance and re-detaining her without consideration of her individualized facts and circumstances, Respondents have violated the APA.

1 41. By detaining the Patricia categorically, Respondents have further abused their
2 discretion because there have been no changes to their facts or circumstances that
3 would warrant the revocation of Patricia's release from custody. Respondents
4 were fully aware of her criminal history. She was placed in the ISAP monitoring
5 program in October 2025 after her removal proceeding were re-calendared and
6 after she plead guilty to a violation of VC § 23153(A)/23578/23558. She timely
7 checked in with ISAP on October 21, 2025, October 29, 2025, November 18,
8 2025, November 26, 2025, December 16, 2025, December 24, 2025, January 13,
9 2026, and January 21, 2026, which were all after her 2025 conviction and
10 sentencing. At no time during these check ins did ICE follow the regulatory
11 requirement for revoking her release on recognizance in accordance with 8 CFR §
12 1236.1(c)(9).

13
14 **SECOND CLAIM FOR RELIEF**

15 **Violation of the Fifth Amendment to the United States Constitution**
16 **(Substantive Due Process – Detention)**

17 42. Petitioner incorporates by reference the allegations of fact set forth in the
18 preceding paragraphs.

19 43. The Due Process Clause of the Fifth Amendment protects all "person[s]" from
20 deprivation of liberty "without due process of law." U.S. Const. amend.
21 V. "Freedom from imprisonment—from government custody, detention, or other

1 forms of physical restraint—lies at the heart of the liberty that [the Due Process]
2 Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

6 45. Patricia is not a flight risk or danger to the community. Respondents’ detention of
7 Petitioner is therefore unjustified and unlawful. Petitioner has a history of
8 cooperating with law enforcement and DHS. There are no documented violations
9 of her cooperation with DHS following the re-calendar of her removal
10 proceedings. In fact, there were no allegations of violations of her duty to
11 cooperate and follow supervised release with the criminal system or immigration
12 system. Accordingly, Petitioner is being detained in violation of the Due Process
13 Clause of the Fifth Amendment.

14 **THIRD CLAIM FOR RELIEF**

15 **Violation of the Fifth Amendment to the United States Constitution** 16 **(Procedural Due Process – Detention)**

17 46. Petitioner incorporates by reference the allegations of fact set forth in the
18 preceding paragraphs.

19 47. As part of the liberty protected by the Due Process Clause, Petitioner has a
20 weighty liberty interest in avoiding re-detention after his release. *See Young v.*
21 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–

1 82 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at
2 969–70 (holding that a noncitizen has a protected liberty interest in remaining out
3 of custody following an IJ’s bond determination).

4 48. Accordingly, “[i]n the context of immigration detention, it is well-settled that
5 due process requires adequate procedural protections to ensure that the
6 government’s asserted justification for physical confinement outweighs the
7 individual’s constitutionally protected interest in avoiding physical
8 restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinerman*, 494 U.S. at 127
9 (Generally, “the Constitution requires some kind of a hearing *before* the State
10 deprives a person of liberty or property.”). In the immigration context, for such
11 hearings to comply with due process, the government must bear the burden to
12 demonstrate, by clear and convincing evidence, that the noncitizen poses a flight
13 risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th
14 Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

15 49. Patricia’s re-detention without a pre-deprivation hearing violated due
16 process. Almost 17 years after she was released on her own recognizance,
17 Respondents re-detained Patricia with no notice, no formal explanation of the
18 justification for her re-detention, and no opportunity to contest her re-detention in
19 front of a neutral adjudicator before being taken into custody.
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21

1 50. Patricia has a profound personal interest in her liberty. *See Alvarenga Matute v.*
2 *Wofford*, 2025 WL 2996577, * 4 (E.D. Ca. Oct. 24, 2025) (confirming that
3 noncitizen with an outstanding removal order had a protected liberty interest due
4 to his previous conditional release).

5 51. Because she received no procedural protections, the risk of erroneous deprivation
6 is high. When Respondents released Petitioner on recognizance after she was
7 arrested for driving under the influence in April 2009, they did so because they
8 determined she was not a danger to the community nor a flight risk. *See e.g.,*
9 *Marin v. Andrews*, 2025 WL 3171484, *4 (E.D. Ca. Nov. 13, 2025) (citing
10 *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) and quoting 8
11 C.F.R. § 236.1(c)(8)).

12 52. Prior to his re-detention in January of 2026, Petitioner had no notice of
13 Respondents' intention to re-detain her and no opportunity to contest that action.
14 Every action of DHS leading up to the date they re-detained her suggested she
15 would not be re-detained, especially because she was cooperating with all check-
16 in requirements by ISAP and with regard to her criminal sentencing. Because the
17 private interest in freedom from immigration detention is substantial, due process
18 requires the government to bear the burden of proving by clear and convincing
19 evidence that Petitioner is a flight risk or danger to the community before re-
20

1 detaining her. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852, *11 (N.D.
2 Ca. Sep. 16, 2025).

3 53.The government has no legitimate interest in detaining Petitioner without a
4 hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, *7 (E.D. Ca. Aug. 8,
5 2025) (finding that “the government’s asserted interest is hinged on mere
6 speculation about [the noncitizen’s] risk of flight or dangerousness” given that
7 noncitizen was complying with terms of his probation when detained); *Noori*,
8 2025 WL 2800149 at *11 (“Respondents did not provide Petitioner
9 individualized notice and reasoning prior to his arrest and detention on June 12,
10 2025 and have presented no legitimate reason for why those decisions were
11 made. Any governmental interest of efficient administration of immigration laws
12 ... does not outweigh these first two factors.”). Bond hearings are a routine part
13 of immigration court proceedings, imposing a minimal cost to the government.
14 *See Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, *6 (E.D. Ca. March 3,
15 2025). Nothing in Patricia’s record suggests that she would abscond or endanger
16 the community before a bond hearing could be carried out because she has every
17 interest in complying with all legal processes given her obligations to the
18 criminal and immigration court. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL
19 783561 *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, *3
20 (N.D. Cal. Aug. 23, 2020) (finding that “the government’s concern that delay in
21

1 scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in
2 light of petitioner's strong family ties and his continued employment during the
3 pandemic as an essential agricultural worker"). In fact, Patricia is represented by
4 counsel and has a demonstrated record of attendance at her immigration
5 proceedings and ICE/ISAP appointments. She is remorseful for her aberrant
6 actions that led to her arrest on December 11, 2024. Notably, the criminal court
7 entrusted her to be at liberty to serve her sentence for her conviction. Finally,
8 Patricia's ties to her community, the reliance on her by her U.S. citizen husband
9 and their cats, and her desire to regularize her status are all reasons she will
10 comply with all requirements placed upon her by any court. There is no reason
11 to think that her compliance will change if she is released pending a pre-
12 deprivation custody hearing.

13 **FOURTH CLAIM FOR RELIEF**

14 **Petitioner's Arrest Violates His Right To Be Free From Unreasonable Seizure** 15 **(U.S. Const. amend. IV)**

16 54. Petitioner incorporates by reference the allegations of fact set forth in the
17 preceding paragraphs.

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

20 56. As a corollary to that right, the Fourth Amendment prohibits government officials
21 from conducting repeated arrests on the same probable cause.

1 It is axiomatic that seizures have purposes. When
2 those purposes are spent, further seizure is
3 unreasonable[T]he primary purpose of an arrest
4 is to ensure the arrestee appears to answer charges . . .
5 . Once the 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.

6 *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020) (cleaned up).

7 57. In the immigration context, this prohibition means that a person whom
8 immigration authorities released from initial custody cannot be rearrested “solely
9 on the ground that he is subject to removal proceedings” and without some new,
10 intervening cause. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal.
11 2017), *aff’d sub nom., Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir.
12 2018). Courts have long recognized that permitting such rearrests could result in
13 “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261
14 (7th Cir. 1971).

15 58. DHS agents detained Patricia on April 14, 2009 following her driving under the
16 influence of alcohol offense and conviction and released her on her recognizance
17 that same day. Thereafter, she complied with her obligations to the immigration
18 court, filing her applications and attending her hearings.

19 59. DHS re-arrested Petitioner on January 23, 2026, without providing formal
20 justification. She appeared at all required check-ins following her criminal arrest

1 for driving under the influence in December 2024. She was not given any warning
2 or information as to her possible re-detention related to her conviction in 2025. In
3 fact, she had weekly interactions with ISAP via the monitoring required by ICE
4 that were implemented after her 2025 conviction. Patricia had not engaged in any
5 conduct that made her a flight risk and she clearly worked to mitigate any
6 concerns that she could be a danger to the community following her regrettable
7 actions in December 2024 that led to her conviction for a DUI in October 2025.
8 Given the timeline and Patricia's compliance, no material changes in
9 circumstances justified Petitioner's re-arrest.

10 60. Petitioner's re-arrest and detention by Respondents after she had complied with
11 conditions of his release on recognizance and absent any material change in
12 circumstances is thus an unreasonable seizure in violation of the Fourth
13 Amendment.

14 **PRAYER FOR RELIEF**

15 Wherefore, Petitioner respectfully requests this Court to grant the following:

- 16 (1) Assume jurisdiction over this matter;
- 17 (2) Issue an order directing Respondents to show cause why the writ should not
18 be granted;
- 19 (3) Order the government not to transfer Petitioner away from San Diego where
20 her family and counsel reside during the pendency of this petition;

- (4) Declare that Petitioner's arrest without probable cause, and petitioner's continued detention, violates applicable regulations, the APA, the INA, and the Fourth and Fifth Amendments to the Constitution of the United States.
- (5) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
- (6) Enjoin Respondents from re-detaining Petitioner unless and until they follow all applicable statutory and regulatory procedures;
- (7) Grant any other relief that is just and practicable; and
- (8) If Petitioner prevails, Petitioner requests reasonable attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412.

Dated: March 6, 2026

Respectfully submitted,

/s/ Leah L. Chavarria
Leah L. Chavarria
Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Patricia Cedillo Cervantes, and submit this verification on her behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 6th day of March, 2026.

/s/ Leah L. Chavarria
Leah L. Chavarria
Counsel for Petitioner