

CHAIDEZ LAW FIRM, PLLC

Jose L. Chaidez (SBN 024347)

3003 N. Central Ave. Ste. 690

Phoenix, AZ 85012

Phone: (602) 266-0225f

Fax: (602) 266-0227

jose@quelepasso.com

Attorney for Petitioner-Plaintiff

Marlon Pastor-Cabrera

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

PHOENIX DIVISION

Marlon Pastor-Cabrera

Petitioner-Plaintiff,

v.

Todd M. LYONS, interim Director of Phoenix Office
of Detention and Removal, U.S. Immigrations and
Customs Enforcement: U.S. Department of Homeland
Security;

Todd M. LYONS, Acting Director, Immigration and
Customs Enforcement, U.S. Department of Homeland
Security;

Markwayne Mullin, in his Official Capacity,
Secretary, U.S. Department of Homeland Security;
and

Todd Blanch, in his Official Capacity, Attorney
General of the United States;

Timothy COURCHAINE, in his Official Capacity,
United States Attorney, District of Arizona.

Respondents-Defendants.

Case No. _____

**PETITION FOR WRIT OF
HABEAS CORPUS**

INTRODUCTION

1. On August 26, 2025, Petitioner was encountered at Phoenix Police Department after ICE hold was placed. Upon his release for subsequently dismissed charged, ICE detained Petitioner without notice or cause. Respondents did so based not on Petitioner's personal circumstances or individualized facts, but because of Respondents' interpretation of President Trump's order that they "to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."¹ But Respondents' power to detain remains checked by law, as this country remains "a government of laws and not of men." *Cooper v. Aaron*, 358 U.S. 1, 23 (1958) (Frankfurter, J. Concurring) (cleaned up).

2. Mr. Marlon Pastor Cabrera is a 38 – year-old married man from Guatemala, with two children ages 13-year-old child, and 5 year old (US Citizen). He entered the Unites state on or about March 22, 2019, through San Luis, Arizona and has lived in the Unites States continually ever since and has no criminal history.

3. "At its historical core, 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." *INS v. St. Cyr*, 533 U.S. 289, 301 (2001), *superseded on other grounds by statute as stated in Patel v. U.S. Att'y Gen.*, 971 F.3d 1258, 1270 (11th Cir. 2020). The writ is meant to provide exactly the relief Petitioner seeks here: to prevent the Respondents—a whole set of immigration agencies with vast resources, who have at their disposal a punitive detention system and agents roving the streets to arrest immigrants—from setting themselves above the law in order to detain Petitioner.

4. In their lawless pursuit of detention bed quotas,² Respondents cast aside Petitioner's due process rights—a bedrock of American freedom—to stop Petitioner without

¹ Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.").

² Jennie Taer, *Trump admin's 3,000 ICE arrests per day quota is taking focus off criminals and*

1 reasonable suspicion and arrest Petitioner without probable cause, ignoring the laws governing
2 warrantless arrests.

3 5. Moreover, warrantless arrest without probable cause violates both 8 U.S.C. § 1357,
4 which requires reason to believe the person “is likely to escape” before a warrant could be
5 obtained, and ICE’s own nationwide policy, to which it is bound pursuant to a settlement
6 agreement in *Castañon Nava et al. v. Dep’t of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), which
7 requires consideration of specific factors to determine if someone is likely to escape and
8 documentation of these “specific particularized facts” in the I-213.³

9 6. Immigration detention is civil and thus is permissible for only two reasons: to ensure a
10 noncitizen’s appearance at immigration hearings and to prevent danger to the community. But
11 DHS did not arrest and detain Petitioner—who demonstrably poses no risk of absconding from
12 immigration proceedings or danger to the community—for either of these reasons. Instead, as
13 part of its broader enforcement campaign, DHS detained Petitioner to strip them of their
14 procedural rights, force them to forfeit his applications for relief, and pressure them into fast-
15 track removal.

16 7. In immigration court, noncitizens have the right to pursue claims for relief from removal
17 (including asylum), be represented by counsel, gather and present evidence, and pursue appeals.
18 8 U.S.C. § 1229(a).

19 -----
20 news/trump-admins-3000-ice-arrests-per-day-quota-is-taking-focus-off-criminals-and-
21 killingmorale-insiders/. <https://perma.cc/DB9R-MJUC> (last visited Sept. 18, 2025) (“The
22 Trump administration’s mandate to arrest 3,000 illegal migrants per day is forcing ICE agents
23 to deprioritize going after dangerous criminals and targets with deportation orders, insiders
24 warn. Instead, federal immigration officers are spending more time rounding up people off
the streets, sources said. ‘All that matters is numbers, pure numbers. Quantity over quality,’
one Immigrations and Customs Enforcement insider told The Post.”).

25 3 Form I-213, known as a “Record of Deportable/Inadmissible [Noncitizen]” . . . is an
26 ‘official record’ prepared by immigration officials when initially processing a person
27 suspected of being in the United States without legal permission.” *Punin v. Garland*, 108
28 F.4th 114, 119 (2d Cir. 2024) (cleaned up).

1 8. The Constitution protects Petitioner—and every other person present in this country—
2 from arbitrary deprivations of their liberty, and guarantees them due process of law. The
3 government’s power over immigration is broad, but as the Supreme Court has declared, it “is
4 subject to important constitutional limitations.”

5 9. Petitioner respectfully seeks a writ of habeas corpus ordering the government to
6 immediately release them from their ongoing, unlawful detention, and prohibiting their re-arrest
7 without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve
8 this Court’s jurisdiction, Petitioner also requests that this Court order the government not to
9 transfer them outside of the District or deport them for the duration of this proceeding.

10 **CUSTODY**

11 10. Mr. Marlon Pastor Cabrera is currently being held in custody by ICE at the Florence
12 Correctional Center in Florence, Arizona.

13 **JURISDICTION**

14 11. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
15 federal question jurisdiction; 5 U.S.C. § 701, *et seq.*, All Writs Act; 28 U.S.C. § 2241, *et seq.*,
16 habeas corpus; 28 U.S.C. § 2201, the Declaratory Judgment Act; Art. 1, § 9, Cl. 2 of the United
17 States Constitution (Suspension Clause); Art. 3 of the United States Constitution, and the
18 common law.

19 12. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act,
20 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651 to protect Petitioner’s rights
21 under the Due Process Clause of the Fifth Amendment to the United States Constitution, the
22 Excessive Bail Clause of the Eighth Amendment, and under applicable Federal law, and to issue
23 a writ of habeas corpus for his immediate release. *See generally INS v. St. Cyr*, 533 U.S. 289
24 (2001); *Zadvydas*, 533 U.S. 678.

25
26 **VENUE**

27 13. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
28 Respondents are employees or officers of the United States, acting in their official capacity;

1 because a substantial part of the events or omissions giving rise to the claim occurred in the
2 District of Arizona; where Petitioner is now in Respondents' custody. Because Petitioner is
3 under the jurisdiction of the Phoenix ICE Field Office, which is in the jurisdiction of the District
4 of Arizona.

5 REQUIREMENTS OF 28 U.S.C. § 2243

6 14. The Court must grant the petition for writ of habeas corpus or issue an order to show
7 cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C.
8 § 2243. If an OSC is issued, the Court must require Respondents to file a return "within *three*
9 *days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis
10 added).

11 15. Courts have long recognized the significance of the habeas statute in protecting
12 individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most
13 important writ known to the constitutional law of England, affording as it does a *swift* and
14 imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391,
15 400 (1963) (emphasis added).

16 16. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts
17 to give petitions for habeas corpus 'special, preferential consideration to insure expeditious
18 hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations
19 omitted). The Ninth Circuit warned against any action creating the perception "that courts are
20 more concerned with efficient trial management than with the vindication of constitutional
21 rights." *Id.*

22 EXHAUSTION OF ADMINISTRATIVE REMEDIES

23 17. For habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional.
24 *Hernandez*, 872 F.3d at 988. A court may waive the prudential exhaustion requirement if
25 "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
26 would be a futile gesture, irreparable injury will result, or the administrative proceedings would
27 be void." *Id.* (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and
28 quotation marks omitted)). Petitioner asserts that exhaustion should be waived because

1 administrative remedies are (1) futile and (2) his continued detention results in irreparable harm.

2 18. No statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in
3 violation of his due process rights, and there are no administrative remedies that he needs to
4 exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995)
5 (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to
6 review" constitutional claims); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal.
7 2000) (same).

8 PARTIES

9 19. Petitioner is a 38-year-old, married man, native of Guatemala. They have a
10 pending asylum application before the Florence Immigration court and no criminal history.
11 Petitioner is married and has two children (1 U.S. citizen). He entered the United States on or
12 about March 22, 2019, and has lived in the United States continually ever since. Petitioner is
13 presently in removal proceedings in Florence Immigration Court and is held at the Florence
14 Correction Center, in Florence, Arizona.

15 20. Respondent Todd M. Lyons is the Interim Field Office Director of ICE, in
16 Phoenix, Arizona, and is named in his official capacity. ICE is the component of the DHS that
17 is responsible for detaining and removing noncitizens according to immigration law and oversees
18 custody determinations. In his official capacity, he is the legal custodian of Petitioner.

19 21. Respondent Todd M. Lyons is the Acting Director of ICE and is named in his official
20 capacity. Among other things, ICE is responsible for the administration and enforcement of the
21 immigration laws, including the removal of noncitizens. In his official capacity as head of ICE,
22 he is the legal custodian of Petitioner.

23 22. Respondent Markwayne Mullin is the Secretary of DHS and is named in their official
24 capacity. DHS is the federal agency encompassing ICE, which is responsible for the
25 administration and enforcement of the INA and all other laws relating to the immigration of
26 noncitizens. In their capacity as Secretary, Respondent Mullin has responsibility for the
27 administration and enforcement of the immigration and naturalization laws pursuant to section
28 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002);

1 *see also* 8 U.S.C. § 1103(a). Respondent Mullin is the ultimate legal custodian of Petitioner.

2 23. Respondent Todd Blanch is the Attorney General of the United States and the most senior
3 official in the U.S. Department of Justice (DOJ) and is named in their official capacity. They
4 have the authority to interpret the immigration laws and adjudicate removal cases. The Attorney
5 General delegates this responsibility to the Executive Office for Immigration Review (EOIR),
6 which administers the immigration courts and the BIA.

7 **STATEMENT OF FACTS**

8 24. Mr. Perez-Lopez, is a 41-year-old, married man, native of Guatemala. He currently lives
9 in the Phoenix, Arizona area. He has three U.S. citizen children ages 15, 16 and 18. He entered
10 the Unites state on or about July 2002 when he was 18-year-old and has lived in the Unites States
11 continually ever since.

12 25. Petitioner is presently in removal proceedings in Eloy Immigration Court and is held at
13 the Eloy Detention Center in Eloy, Arizona. Petitioner is law abiding and has no criminal
14 history. He is not at all the type of person for whom incarceration is required.

15 26. On information and belief, on January 25, 2025, officials in the new Trump
16 administration directed senior ICE officials to increase arrests to meet daily quotas. Specifically,
17 each field office was instructed to make seventy-five arrests per day.⁴

18 27. In recent months, ICE has engaged in highly publicized arrests of individuals who
19 presented no flight risk or danger, often with no prior notice that anything regarding their status
20 was amiss or problematic, whisking them away to faraway detention centers without warning.⁵

21 ²

22
23 ⁴ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (Jan. 26, 2025), available
at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

24 ⁵ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil’s Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15,
25 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html>
(Mahmoud Khalil, arrested in New York and transferred to Louisiana); “What we know about the Tufts University
26 PhD student detained by federal agents,” CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html> (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle
27 Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*,
Politico (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportationgeorgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

28. Decisions issued by other courts in California District Courts further corroborate that ICE is re-arresting and re-incarcerating individuals who are not flight risks or dangers to the community, including when their removals from the United States are not reasonably foreseeable. *See, e.g., Zakzouk*, No. 25-CV-06254 (RFL), 2025 WL 2097470, at *2 (“Although Petitioner-Plaintiff informed the ICE officer that he has no right to return to either country because he is stateless, the officer told Petitioner-Plaintiff that ‘things are different now.’”); *Hoac*, No. 2:25-CV-01740-DC-IDP, 2025 WL 1993771, at *7; *Phan*, No. 2:25-CV-01757-DC-IDP, 2025 WL 1993735, at *7; *Guillermo M. R.*, --- F.Supp.3d ----, 2025 WL 1983677, at *10; *Pinchi*, --- F.Supp.3d ----, 2025 WL 2084921, at *7; *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *1 (N.D. Cal. June 14, 2025); *Doe v. Becerra*, -- F. Supp. 3d --, 2025 WL 691664, *8 (E.D. Cal. Mar. 3, 2025); *Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 1771438 (N.D. Cal. June 26, 2025); *Singh v. Andrews*, No. 1:25-cv-801-KES-SKO, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596, at *6 (E.D. Cal. July 14, 2025).

29. Intervention from this Court is therefore required to ensure that Petitioner is not (1) held in unjustified, prolonged, and indefinite custody, (2) removed to a third country, and (3) subjected to irreparable harm as a result.

LEGAL BACKGROUND

The constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and Detention.

30. 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.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural.

31. 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

1 of power without any reasonable justification in the service of a legitimate government
2 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

3 32. These protections extend to noncitizens facing detention, as “[i]n our society liberty is
4 the norm, and detention prior to trial or without trial is the carefully limited exception.” *United*
5 *States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from imprisonment—from
6 government custody, detention, or other forms of physical restraint—lies at the heart of the
7 liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

8 33. Substantive due process thus requires that all forms of civil detention—including
9 immigration detention—bear a “reasonable relation” to a non-punitive purpose. See *Jackson v.*
10 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible
11 non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at
12 immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-
13 92; see also *Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28, 31 (2003).

14 34. Second, the procedural component of the Due Process Clause prohibits the government
15 from imposing even permissible physical restraints without adequate procedural safeguards.

16 35. Generally, “the Constitution requires some kind of a hearing before the State deprives a
17 person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in
18 cases where that freedom is lawfully revocable. See *Hurd v. D.C., Gov’t*, 864 F.3d at 683 (citing
19 *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision
20 requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in
21 probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

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

28 37. Noncitizens living in the United States like Petitioner have a protected liberty interest in

1 their ongoing freedom from confinement. See *Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil
 2 context [of immigration detention], [the] liberty interest [of noncitizens released from custody]
 3 is arguably greater than the interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970
 4 (N.D. Cal. 2019).

5 **Fourth Amendment Right- Protects Against Unreasonable Searches and Seizures; The**
 6 **Fifth Amendment Right to Remain Silent.**

7 38. The Fourth Amendment protects “[t]he right of the people to be secure in their persons
 8 . . . against unreasonable searches and seizures.” U.S. Const. amend. IV.

9 39. Immigration detention is a form of civil confinement that “constitutes a significant
 10 deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418,
 11 4253 (1979).

12 40. “Except at the border and its functional equivalents,” immigration agents may stop
 13 individuals in public only after identifying “specific articulable facts, together with rational
 14 inferences from those facts, that reasonably warrant suspicion” of a violation of immigration
 15 law. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975); *Benitez-Mendez v. I.N.S.*, 752
 16 F.2d 1309, 1311 (9th Cir. 1983), amended, 760 F.2d 907 (9th Cir. 1983); see also 8 C.F.R. §
 17 287.8(b)(2) (allowing officer to “briefly detain” a noncitizen for questioning if the officer “has
 18 a reasonable suspicion, based on specific articulable facts” that the noncitizen is engaged in an
 19 offense or is unlawfully in the United States).

20 41. Reasonable suspicion for an immigration stop cannot be based “on broad profiles which
 21 cast suspicion on entire categories of people without any individualized suspicion of the
 22 particular person to be stopped.” *United States v. Rodriguez Sanchez*, 23 F.3d 1488, 1492 (9th
 23 Cir. 1994). Rather, reasonable suspicion must be “particularized and objective.” *United States v.*
 24 *Arvizu*, 534 U.S. 266, 273 (2002). meaning the officer has reasonable suspicion as to “the
 25 particular person being stopped.” *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th
 26 Cir. 2000) (en banc). Information obtained from an officer’s lawful questioning “may provide
 27 the basis for a subsequent arrest.” 8 C.F.R. § 287.8(b)(3).

28 42. Immigration officers may arrest an individual without a warrant in limited circumstances.

1 See *Arizona v. United States*, 567 U.S. 387, 407–08 (2012) (noting strong Congressional
2 preference, as expressed in INA, for immigration arrests to be based on warrants).

3 43. The INA permits warrantless arrest if an immigration officer has reason to believe that a
4 noncitizen (1) is in the United States in violation of the immigration laws and (2) “is likely to
5 escape before a warrant can be obtained for his arrest”. 8 U.S.C. § 1357(a)(2); accord. 8 C.F.R.
6 § 287.8(c)(2)(i)-(ii). An officer “has reason to believe” when they have the equivalent of “the
7 constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir.
8 1980).

9 44. The Fifth Amendment right to remain silent may be properly invoked during a civil
10 immigration arrest. See U.S. Const., amend. V. See *Kastigar v. United States*, 406 U.S. 441, 444-
11 45 (1972) (The privilege against self-incrimination “can be asserted in any proceeding, civil or
12 criminal, administrative or judicial, investigatory or adjudicatory . . . This Court has been zealous
13 to safeguard the values which underlie the privilege.”). An immigration officer may not establish
14 probable cause on the basis of a noncitizen’s silence pursuant to his Fifth Amendment rights.
15 See *Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming “the fundamental principle
16 that a suspect’s silence in the face of questioning cannot be used as evidence against him at
17 trial”).

18 45. If an immigration officer makes a warrantless arrest, at the time of an arrest and “as soon
19 as it is practical and safe to do so,” immigration officers must identify themselves as immigration
20 officers authorized to make arrests, inform the person arrested that they are under arrest, and
21 state the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). The noncitizen must then “be taken
22 without unnecessary delay for examination before an officer of the Service having authority to
23 examine [noncitizens] as to their right to enter or remain in the United States.” 8 U.S.C. §
24 1357(a)(2).

25 46. ICE is bound not only by statute and due process, but also by its national policy adopted
26 pursuant to settlement agreement in *Castañon Nava et al. v. Dep’t of Homeland Sec.*, No. 18-cv-
27 3757 (N.D. Ill.). Under this policy, ICE must consider a delineated list of factors before making
28 an arrest, including (a) the officer’s ability to determine the individual’s identity; (b) knowledge

of the individual's prior escapes or evasions of immigration authorities; (c) the individual's attempts to flee to avoid being discovered by immigration; and (d) the individual's ties to the community, such as a family, home, or employment. Settlement Agreement, *Castañón Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.), available at https://immigrantjustice.org/sites/default/files/content-type/page/documents/2025-01/Nava_Settlement_ICE_Warrantless_Arrest-Vehicle_Stop_Policy_2021.pdf.

FACTUAL BACKGROUND

Respondents' Detention and Deportation Policies

47. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an executive order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, CBP, and USCIS to prioritize civil immigration enforcement procedures including through the use of mass detention.

48. In late May, Respondent Secretary (former Secretary Noem) and White House Deputy Chief of Staff Stephen Miller met with ICE leadership, setting a new arrest quota of 3,000 arrests per day and reportedly threatening job consequences if officials failed to meet arrest quotas.⁵

49. On May 28, Miller confirmed that "[u]nder President Trump's leadership, we are looking to set a goal of a minimum of 3,000 arrests for ICE every day, and President Trump is going to keep pushing to get that number up higher each and every single day."⁶

5. Elizabeth Findell, et al., The White House Marching Orders That Sparked the L.A. Migrant Crackdown, *The Wall Street Journal* (June 9, 2025), <https://www.wsj.com/us-news/protests-losangeles-immigrants-trump-f5089877>; Julia Ainsley, et al., A sweeping new ICE operation shows how Trump's focus on immigration is reshaping federal law enforcement, *NBC News* (June 4, 2025), <https://www.nbcnews.com/politics/justicedepartment/ice-operation-trump-focusimmigration-reshape-federal-lawenforcement-rcna193494>; Brittany Gibson & Stef W. Kight, Scoop: Stephen Miller, Noem tell ICE to supercharge immigration arrests, *Axios* (May 28, 2025), available at <https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

6 Hannity, Stephen Miller says the admin wants to create the strongest immigration system in

50. Following the directive from Noem and Miller, ICE agents were instructed in an e-mail to “turn the creativity knob up to 11” and aggressively “push the envelope” in arrests, including by pursuing “collaterals”—individuals who by definition would not have warrants.⁷ As another e-mail put it: “If it involves handcuffs on wrists, it’s probably worth pursuing.”⁸

51. The overriding message, communicated by and to Respondents, is that agents and officers carrying out immigration operations on the ground must prioritize arrest numbers, regardless of the law. As one ICE official put it earlier this year, all that matters is “numbers, pure numbers, [q]uantity over quality.”⁹

Petitioner’s Background and Arrest

52. Mr. Marlon Pastor Cabrera is a 38-year-old, married man, native of Guatemala. He entered the United States without inspection on or about March 22, 2019, when he was 30 year-old and has lived in the United States continually ever since. He currently lives in the Phoenix, Arizona area. He has two children (1 U.S. citizen). He is the main financial provider for his family.

53. Petitioner has no prior criminal history.

54. Petitioner came into ICE custody as a result of an ICE hold.

55. On information and belief, Petitioner was arrested and detained by immigration agents on or about August 25, 2025, at the Phoenix Police Department.

56. On information and belief, at no point during the detention of Petitioner did any agent produce a warrant, explain why Petitioner had been detained initially, or provide any documents of any kind.

57. On information and belief, at no point during the stop did any agent provide their name or badge number to Petitioner.

58. On information and belief, no point during the detention did any agent ask Petitioner any questions about their family, employment, or community ties.

59. On information and belief, at no time during the detention did any officer conduct an assessment of whether Petitioner was a flight risk.

60. On information and belief, at no time during the detention did any officer conduct

1 an individualized assessment of whether Petitioner was a danger to the community.

2 61. On information and belief, the agents who detained Petitioner had no
3 reasonable suspicion that Petitioner was either a flight risk or unlawfully present in the United
4 States.

5 CLAIMS FOR RELIEF

6 COUNT ONE

7 Violation of the Fourth Amendment of the United States Constitution 8 Unreasonable Seizure

9 62. Petitioner realleges and incorporates by reference each allegation contained in
10 the preceding paragraphs as if set forth fully herein.

11 63. Except at the border and its functional equivalents, the Fourth Amendment to the
12 U.S. Constitution prohibits Respondents from conducting a detention stop to question a person
13 without reasonable suspicion that a person is a noncitizen unlawfully in the United States.
14 Likewise, the Fourth Amendment prohibits Respondents from making an arrest without probable
15 cause to believe that a person is a noncitizen unlawfully in the United States.

16 64. "A person's mere propinquity to others independently suspected of [unlawful]
17 activity does not, without more, give rise to probable cause to search [or seize] that person."
18 *Perez Cruz v. Barr*, 926 F.3d 1128, 1138 (9th Cir. 2019) (quotation omitted). "Reasonable
19 suspicion" is no different." *Id.*

20 65. Race or apparent ethnicity, standing alone, cannot form the basis for reasonable
21 suspicion. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). Because probable
22 cause is a more demanding standard than reasonable suspicion, race or apparent ethnicity,
23 standing alone, is also necessarily insufficient to form the basis for probable cause.

24 66. Respondents had no basis to detain Petitioner and inquire about her immigration
25 status other than her race and apparent ethnicity. Likewise, Respondents had no basis to arrest
26 Petitioner other than their race and apparent ethnicity. No other salient factors existed to suggest
27 that Petitioner might not be a citizen of the United States. Because Respondents only detained
28 Petitioner because of her race, they did not have reasonable suspicion, and the detention violated
the Fourth Amendment.

1 67. Petitioner was detained by Respondents for questioning despite officers' lack of
2 any reasonable suspicion that Petitioner was unlawfully in the United States. Petitioner was
3 also ultimately arrested despite officers' lack of probable cause to believe that Petitioner was
4 either a flight risk or present unlawfully in the United States.

5 68. Respondents' detention of Petitioner without reasonable suspicion and arrest of
6 Petitioner without probable cause violate the Fourth Amendment to the U.S. Constitution.

7 **COUNT TWO**

8 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Violation of**
9 **8 C.F.R. § 287.8(b)(2) Detentive Stop Without Reasonable Suspicion**

10 69. Petitioner realleges and incorporates by reference each allegation contained in the
11 preceding paragraphs as if set forth fully herein.

12 70. Under the APA, a court shall "hold unlawful and set aside agency action" that is
13 not in accordance with law or an abuse of discretion. 5 U.S.C. § 706(2)(A).

14 71. An action is an abuse of discretion if the agency "entirely failed to consider an
15 important aspect of the problem, offered an explanation for its decision that runs counter to the
16 evidence before the agency, or is so implausible that it could not be ascribed to a difference in
17 view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551
18 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)).

19 72. 8 C.F.R. § 287.8(b)(2) requires that before detaining an individual for
20 questioning, an immigration officer must have "a reasonable suspicion, based on specific
21 articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense
22 against the United States or is an alien illegally in the United States."

23 73. Respondents' detention stop of Petitioner, without any reasonable suspicion of a
24 qualifying offense, violates the APA and Respondents' authority under 8 C.F.R. § 287.8(b)(2).

25 74. Separate from the APA, Respondents' detention of Petitioner without any
26 reasonable suspicion is *ultra vires*.

27 **COUNT THREE**

28 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Violation of**
8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(i) Warrantless Arrest Without

Probable Cause of Immigration Violation

75. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

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

77. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest only if that officer has “reason to believe” that an individual is in the United States in violation of the immigration laws. A “reason to believe” is equivalent to “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

78. 8 C.F.R. § 287.8(c)(2)(i) requires that before making a warrantless arrest, an immigration officer must have probable cause “to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.”

79. Because criminal penalties may attach to some immigration offenses, the Fifth Amendment right to remain silent may be properly invoked during a civil immigration arrest. See U.S. Const., amend. V. An immigration officer may not establish probable cause on the basis of a noncitizen’s silence pursuant to his Fifth Amendment rights. See *Hurd v. Terhune*, 619 F.3d 1080, 1088 (9th Cir. 2010) (affirming “the fundamental principle that a suspect’s silence in the face of questioning cannot be used as evidence against him at trial”).

80. Respondents questioned Petitioner as part of an unlawful detention stop. Petitioner invoked his Fifth Amendment right to silence.

81. Respondents’ warrantless arrest of Petitioner, based on no information beyond his race and his lawful invocation of his constitutional right to silence, is “final agency action” that is “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

82. Separate from the APA, Respondents’ warrantless arrest of Petitioner without probable cause that Petitioner had committed an immigration violation is ultra vires.

COUNT FOUR**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Violation of
8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2)(ii) Warrantless Arrest Without
Probable Cause of Likelihood of Escape**

83. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein. 74. 8 U.S.C. § 1357(a)(2) permits an immigration officer to conduct a warrantless arrest only if that officer has “reason to believe” that an individual is “likely to escape before a warrant can be obtained for [their] arrest.” To meet this requirement, officers must have “grounds for a reasonable belief that they were particularly likely to escape.” *Mountain High Knitting, Inc. v Reno*, 51 F.3d 216, 218 (9th Cir. 1995). A “reason to believe” is equivalent to “the constitutional requirement of probable cause.” *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

84. 8 C.F.R. § 287.8(c)(2)(ii) requires that before making a warrantless arrest, an immigration officer must make an individualized determination that an individual is “likely to escape before a warrant can be obtained.”

85. Respondents’ warrantless arrest of Petitioner without an individualized determination that Petitioner was “likely to escape” before a warrant is issued is “final agency action” that is “in excess of statutory jurisdiction, authority, or limitations” under 8 U.S.C. § 1357(a)(2) and federal regulations. 5 U.S.C. §§ 704, 706(2)(C).

86. Separate from the APA, Respondents’ warrantless arrest of Petitioner without probable cause that Petitioner was likely to escape before a warrant could be obtained is *ultra vires*.

COUNT FIVE**Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Violation of
Castañon Nava Settlement Agreement / Nationwide Policy on Warrantless ICE
Arrests and Vehicle Stops**

87. Petitioner realleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

88. Respondent ICE is bound by the *Castañon Nava* settlement agreement to consider a delineated set of factors before effectuating a warrantless arrest. In particular, before

1 concluding whether or not the person is at risk of fleeing before a warrant is obtained. ICE must
 2 consider “the totality of circumstances,” including the following factors: “the ICE Officer’s
 3 ability to determine the individual’s identity, knowledge of that individual’s prior escapes or
 4 evasions of immigration authorities, attempted flight from an ICE Officer, ties to the community
 5 (such as a family, home, or employment) or lack thereof, or other specific circumstances that
 6 weigh in favor or against a reasonable belief that the subject is likely to abscond.” Settlement
 7 Agreement, *Castañon Nava et al. v. Dep’t of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.),
 8 available at [https://immigrantjustice.org/sites/default/files/content-type/page/documents/2025-](https://immigrantjustice.org/sites/default/files/content-type/page/documents/2025-01/Nava_Settlement_ICE_Warrantless_Arrest-vehicle_Stop_Policy_2021.pdf)
 9 [01/Nava_Settlement_ICE_Warrantless_Arrest-vehicle_Stop_Policy_2021.pdf](https://immigrantjustice.org/sites/default/files/content-type/page/documents/2025-01/Nava_Settlement_ICE_Warrantless_Arrest-vehicle_Stop_Policy_2021.pdf).

10 89. Moreover, ICE Officers “may stop a vehicle to enforce civil immigration laws
 11 only if they are aware of specific, articulable facts that reasonably warrant suspicion that the
 12 vehicle contains an [noncitizen] who may be illegally in the country.” *Id.*

13 90. On information and belief, Respondent ICE conducted a warrantless arrest of
 14 Petitioner without considering the totality of circumstances or the required factors delineated in
 15 its nationwide policy, pursuant to the *Castañon Nava* settlement. Respondent ICE also stopped
 16 Petitioner’s vehicle without any “specific, articulable facts that reasonably warrant suspicion”,
 17 as required by the settlement. Respondents’ traffic stop and warrantless arrest of Petitioner
 18 violate the Administrative Procedure Act.

20 COUNT SIX

21 Violation of Fifth Amendment Right to Due Process Procedural Due Process

22 91. Petitioner realleges and incorporates by reference each allegation contained in the
 23 preceding paragraphs as if set forth fully herein.

24 92. 83. The Due Process Clause of the Fifth Amendment to the U.S. Constitution
 25 prohibits the federal government from depriving any person of “life, liberty, or property, without
 26 due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United
 27 States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or
 28 permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); accord *Flores*, 507 U.S. at 306.

1 93. Due process requires that government action be rational and non-arbitrary. See
2 *U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Due process also requires notice and “the
3 opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v.*
4 *Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

5 94. Here, Petitioner has been stopped, arrested, and detained in an arbitrary manner,
6 without any notice of the basis for Petitioner’s arrest and continued detention and not based on
7 a rational and individualized determination of whether Petitioner should be detained based on
8 the individual facts and circumstances pertaining to whether Petitioner was a flight risk or
9 unlawfully present in the United States.

10 95. Respondents’ stop, arrest, and continued detention of Petitioner are violations of
11 his due process rights under the Fifth Amendment to the U.S. Constitution.

12 PRAYER FOR RELIEF

13 WHEREFORE, Petitioner respectfully request this Court to grant the following:
14

15 96. Assume jurisdiction over this matter;

16 97. Issue an immediate Order prohibiting the Respondents from transferring
17 Petitioner from the district of Arizona without notice to and approval by the Court;

18 98. Issue an Order to Show Cause ordering Respondents to show cause why this
19 Petition should not be granted within three days;

20 99. Enjoin Respondents from re-detaining Petitioner unless his re-detention is
21 ordered at a custody hearing before a neutral arbiter in which the government bears the burden
22 of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the
23 community.

24 100. Issue a writ of habeas corpus ordering Respondents to immediately release
25 Petitioner from custody;

26 101. Declare that Petitioner’s detentive stop without reasonable suspicion violates the
27 APA, the INA, and the Fourth Amendment;

28 102. Declare that Petitioner’s warrantless arrest without probable cause violates the

1 Fourth Amendment, the APA, the INA, and implementing regulations;

2 103. Declare that Petitioner's warrantless arrest and traffic stop without reasonable
3 suspicion violate Respondents' nationwide policy pursuant to the Castañon Nava settlement;

4 104. Declare that Petitioner's deprivation of liberty through his unlawful stop and
5 arrest violates the Due Process Clause of the Fifth Amendment;

6 105. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act,
7 and on any other basis justified under law; and

8 106. Grant any further relief this Court deems just and proper.

9 Dated: April 22, 2026

Respectfully submitted,

10 /s/ Jose L. Chaidez

11 Jose L. Chaidez

12 Attorney for Petitioner
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of Mr. Marlo Pastor Cabrera because I am his attorney. I have discussed with Petitioner the events described in the Petition and Complaint. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge.

Executed on April 22, 2026, in Phoenix, Arizona

/s/ Jose L Chaidez
Jose L. Chaidez
Attorney for Petitioner
Mr. Marlo Pastor Cabrera