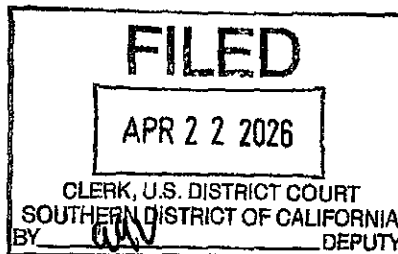


1 Yuxing Gao

2   
3 Imperial Regional Detention Center

4 1572 Gateway Road

5 Calexico, CA 92231



6  
7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9  
10 YUXING GAO,

11 )  
12 )  
13 ) *-Petitioner, Pro Se,*

14 ) v.

15 ) Kristi NOEM, in her Official Capacity,  
16 ) Secretary of the Department of Homeland Security,<sup>1</sup>

17 )  
18 ) Pamela J. BONDI, in her Official Capacity,  
19 ) Attorney General, Department of Justice,

20 )  
21 ) Daniel A. BRIGHTMAN, in his Official Capacity,  
22 ) Field Office Director, San Diego Field Office,  
23 ) U.S. Immigration and Customs Enforcement,  
24 ) Enforcement and Removal Operations

25 )  
26 ) Todd LYONS, in his Official Capacity,  
27 ) Acting Director, Immigration & Customs Enforcement,

28 )  
29 ) Acting WARDEN, in their Official Capacity,  
30 ) Warden of Immigration Detention Facility,  
31 ) Imperial Regional Detention Center;

32 )  
33 ) *-Respondents.*  
34 )

Case No.:

'26CV2671 JLS DEB

INS 

Custody Status: DETAINED

**Petition for Writ of Habeas  
Corpus Pursuant to  
28 U.S.C. 2241**

<sup>1</sup> Although Former Secretary Noem has ceased to hold office, the Court will wait to order substitution until her successor has been appointed. See FED. R. CIV. P. 25(d) (“An action does not abate when a public officer who is a party in an official capacity . . . resigns[] or otherwise ceases to hold office while the action is pending. The officer’s successor is automatically substituted as a party. Later proceedings should be in the substituted party’s name . . . The court may order substitution at any time . . .”).



1 9. On January 8, 2025, Petitioner appeared to her routine check-in at the ICE office, where  
2 federal ICE agents confiscated her passport and the release documents that were in her  
3 possession.

4 10. On January 23, 2026, during her routine check-in at the ICE office, the ICE agents  
5 placed a GPS monitor device on her.

6 11. On July 26, 2025, federal ICE agents arrived at her residence where, for some  
7 capricious reason, they decided to arrested and re-detained her without a "notice of  
8 revocation", without a pre-deprivation hearing and without a change in circumstances.

9 12. Again, ICE agents failed to produce a "notice of revocation", have not identified any  
10 material changed circumstances and failed to conduct a pre-deprivation hearing.

11 13. Petitioner did not violate ICE' terms or conditions of her supervision nor did she violate  
12 the terms or conditions of release. Petitioner was not afforded a pre-deprivation hearing  
13 and ICE agents failed to produce a "notice of revocation".

14 14. As such, Petitioner has not been afforded a fair bond hearing wherein the government  
15 must establish by a constitutional, due process, standard of *clear and convincing*  
16 evidence that Petitioner presents a risk of flight or danger to the community.

17 15. Petitioner therefore respectfully requests that this Court issue a Writ of Habeas Corpus,  
18 and determine that Petitioner's re-detention is not justified because the government has  
19 not established by *clear and convincing* evidence that Petitioner presents a risk of flight  
20 or danger in light of reasonable available alternatives to detention, and order  
21 Petitioner's release, with appropriate conditions of supervision if necessary.

22 16. Petitioner respectfully requests that this Court issue a Writ of Habeas Corpus and order  
23 Petitioner's release within twenty ("20") days unless Respondents schedule a hearing  
24 before immigration judge where it holds proper jurisdiction, comports with due process

1 of law and where: (1) to continue detention, the government must establish by *clear*  
2 *and convincing* evidence that Petitioner present a risk of flight or current public danger,  
3 even after consideration of alternatives to detention that could mitigate any risk that  
4 Petitioner's release would present; and (2) if the government cannot meet its heavy  
5 burden, the immigration judge orders Petitioner's release on appropriate conditions of  
6 supervision and, should bond be considered, Petitioner respectfully asks to take into  
7 account her ability to pay a reasonable bond.

8 17. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243  
9 to order the Respondents to file a return within three days, unless they can show good  
10 cause for additional time. *See* 28 U.S.C. § 2243 (stating that an order to show cause  
11 why a petition for a writ of habeas corpus should be denied is returnable "within three  
12 days unless for good cause additional time, not exceeding twenty days, is allowed").

13 18. In order to permit full judicial review of the claims herein and requested relief,  
14 Petitioner respectfully requests that the Court order Respondents not to transfer  
15 Petitioner outside the jurisdiction of this Court pending consideration of this Petition.

16 **PARTIES**

17 19. Petitioner, Yuxing Gao is a native of China, who is detained under the custody of the  
18 Respondents at Imperial Regional Detention Center without due process.

19 20. Respondent, Kristi NOEM is sued in her official capacity as the Secretary of the  
20 Department of Homeland Security (herein after referred to as "DHS"). In her capacity  
21 she has the responsibility for administration and enforcement of the immigration laws  
22 pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. 296, 116  
23 Stat. 2135 (Nov. 25, 2002). *See Armentero v. INS*, 340 F.3d 1058 (9th Cir. 2003).

1           **21.** Respondent Pamela J. BONDI is sued in her official capacity as the Attorney General  
2           of the United States. She has responsibility for the administration and enforcement of  
3           the immigration laws pursuant to 8 U.S.C. § 1103, and Immigration and Nationality  
4           Act § 103. As the “INA” has not been amended to reflect the designation of the  
5           Secretary of the DHS as the administrator and enforcer of the immigration laws. In this  
6           case, Respondent Pamela J. BONDI is sued in her official capacity to the extent that 8  
7           U.S.C. § 1102 gives her the authority to detain Petitioner. *See Armentero v. INS, supra.*  
8           Thus, Pamela J. BONDI is considered a legal custodian of Yuxing Gao.

9           **22.** Respondent, Patrick DIVVER, is the Field Office Director responsible for the San  
10          Diego Field Office of ICE Enforcement and Removal Operations, which has  
11          administrative jurisdiction over Petitioner’s case. He is a legal custodian of Petitioner  
12          Yuxing Gao and is named in his official capacity.

13          **23.** Respondent, Todd LYONS is Acting Director of ICE. As the head of ICE, an agency  
14          within the U.S. Department of Homeland Security that detains and removes certain  
15          noncitizens, Respondent Todd LYONS is a legal custodian of Yuxing Gao and he is  
16          named in his official capacity.

17          **24.** Respondent, Acting WARDEN of Imperial Regional Detention Center, where  
18          Petitioner is currently detained under the authority of ICE, alternatively may be  
19          considered to be Petitioner’s immediate custodian.

20          **25.** The Respondents in this action are the legal custodian of Petitioner and are named in  
21          their official capacity

22                            **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

23          **26.** Because Petitioner is considered as an arriving alien, as defined in 8 C.F.R. § 1001.1(g),  
24          in removal proceedings, the immigration court does not have jurisdiction. *See*

1 Immigration Court Practice Manual (“ICPM”) Section 9.3(b)(1). For this very reason,  
2 the Immigration Judge will deny bond for lack of jurisdiction. See ICPM § 9.3(b)(1).

3 27. Even if Petitioner moves for an appeal before the Board of Immigration Appeals  
4 (“BIA/Board”) it will most likely adopt the IJ’s decision and affirm the denial of bond  
5 based on lack of jurisdiction.

6 28. Also, Respondents may argue that Petitioner is under mandatory detention under  
7 section 1231 of the Immigration and Nationality Act (“Act”).

8 29. Consequently, Petitioner need not exhaust her administrative remedies because the  
9 statute in question, 8 U.S.C. § 1231(a)(6), has no exhaustion requirement.

10 30. Exhaustion is required only when Congress specifically mandates it. *McCarthy v.*  
11 *Madigan*, 503 U.S. 140, 144 (1992). In all other instances, “sound judicial discretion  
12 governs.” *Id.* This Court should not require Petitioner to exhaust her administrative  
13 remedies.

14 31. Petitioner is being held under mandatory detention without a pre-deprivation hearing  
15 and without a “notice of revocation”. Even if Petitioner would move for such a bond  
16 hearing, it would be futile as the Immigration Court does not hold proper jurisdiction.

17 32. As such, Petitioner is challenging the constitutionality of the procedures by which ICE  
18 reviews the custody status of aliens who cannot be removed within six months, and  
19 whose removal is not significantly likely to occur in the reasonably foreseeable future  
20 and where the Immigration Court lacks jurisdiction.

21 33. Petitioner is also challenging the constitutionality of her re-detention where there are  
22 no violations of the terms or condition of release, no pre-deprivation hearing, no “notice  
23 of revocation”, and no justification for her re-detention. As a result, the administrative  
24 remedy is inadequate to address these constitutional grounds for recovery.

1 **JURISDICTION**

2 34. This action arises under the United States Constitution, the Immigration & Nationality  
3 Act of 1952, as amended (herein after referred to as "INA") 8 U.S.C. § 1101 et. seq.,  
4 and the Administrative Procedures Act (herein after referred to as "APA"), 5 U.S.C. §§  
5 701 et. seq. This Court has Habeas Corpus jurisdiction pursuant to 28 U.S.C. §§ 2241  
6 et. seq.; Article 1, Clause 2 of the United States Constitution (hereinafter referred to as  
7 "Suspension Clause"); and the Common Law. As Petitioner is presently in custody  
8 under color of the authority of the United States, and such custody is in violation of the  
9 Constitution, laws, and/or treaties of the United States. This Court may also exercise  
10 jurisdiction pursuant to 28 U.S.C. § 1331 and may grant relief pursuant to the  
11 Declaratory Judgement Act, 28 U.S.C. § 2201 et. seq., and the All Writs Act, 28 U.S.C.  
12 § 1651.

13 **VENUE**

14 35. Venue is proper with this Court pursuant to 28 U.S.C. § 1391(c) because the  
15 Respondents are employees or officers of the United States, acting in their official  
16 capacity, and an agency of the United States.

17 36. Venue is additionally proper in this Court because the Petitioner is detained in this  
18 District, and pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.  
19 484, 493-500(1973).

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

22 **STATEMENT OF THE FACTS**

23 38. Petitioner Yuxing Gao is a citizen of China. She was apprehended at the Tecate Port of  
24 Entry on December 22, 2023, and then she was released on her own recognizance

1 pending her immigration hearing. On July 26, 2025, ICE re-arrested and re-detained  
2 her at the home address she provided to them.

3 **39. Yet, Respondents have failed conduct a pre-deprivation hearing, failed to identified any**  
4 **change in circumstances and have failed to produce a "notice of revocation of release"**  
5 **prior to her detention. Even more, Petitioner has not been afforded due process.**

6 **40. Again, Petitioner entered the United States, turned herself in to immigration authorities**  
7 **and was granted release from custody. Respondents have failed to identify any violation**  
8 **of the terms or conditions of her release from immigration authorities.**

9 **41. Petitioner applied for asylum. On October 17, 2025, an Immigration Judge found her**  
10 **asylum claim had been abandoned, and she has since been ordered removed from the**  
11 **United States to China with a pending appeal before the Board of Immigration Appeals.**

12 **42. Even with the IJ's final order of removal on October 17, 2025, her detention raises**  
13 **constitutional concerns as she remains in custody up to the present day, reaching the**  
14 **six-month benchmark.**

15 **43. Petitioner seeks to remain in the United States in a lawful manner. Yet, for some**  
16 **capricious reason, ICE re-arrested and re-detained her without following its own**  
17 **regulations or the law, which puts into question the fundamental fairness.**

18 **CRIMINAL HISTORY**

19 **44. In this case, Petitioner lacks criminal convictions. Petitioner has not been arrested for**  
20 **drugs or anything close to relevant here in the United States and has taken steps to live**  
21 **a law-abiding lifestyle. Petitioner lacks violent criminal convictions in the US and has**  
22 **not been afforded a bond hearing where it comports with due process.**

23 **45. Petitioner is not a threat to national security, has no history of such activity and presents**  
24 **no danger to public safety.**

**LEGAL ARGUMENT**

1.  
2 46. Petitioner has resided in the United States since December 2023. She entered the US  
3 and DHS granted her release on recognizance. Since then, she has continuously resided  
4 in this country's interior, and has established community ties within the United States.

5 47. On July 26, 2025, Petitioner was detained by Immigration and Customs Enforcement  
6 ("ICE") during a routing check-in at the ICE office. During her check-in, Petitioner  
7 was re-detained and has remained in DHS custody to this day.

8 48. This Court should grant habeas relief and order Respondents to release Petitioner on  
9 the grounds that this case is not substantively distinguishable from the situation  
10 addressed by the Eastern District Court of California's prior order in *Ayala Cajina v.*  
11 *Wofford*, No. 1:25-cv-01566-DAD-AC (HC), 2025 WL 3251083 (E.D. Cal. Nov. 21,  
12 2025).

13 49. Here, Respondents may maintain that she is subject to mandatory detention under 8  
14 U.S.C. § 1231. This argument is weak and unpersuasive. Even under Section 1231, due  
15 process is required when detention exceeds six-month and where Petitioner will not be  
16 removed in the foreseeable future.

17 50. Even if Respondents argue that Petitioner is under mandatory detention under 8 U.S.C.  
18 § 1231, this argument cannot stand on its own.

19 51. On October 17, 2025, the IJ entered an order of removal, which Petitioner timely  
20 appealed before the Board of Immigration Appeals ("BIA"). Yet, from October 17,  
21 2025 to the present day, Petitioner's detention reaches the six-month benchmark.

22 52. Again, on July 26, 2025, ICE agents decided to re-detain Petitioner during a routine  
23 check-in at the ICE office without a pre-deprivation hearing, without a "notice of  
24 revocation" and without making any findings as to dangerousness and/or flight risk.

1       **53.** Respondents may argue that detention during the pendency of removal proceedings is  
2       unreviewable as an extension of DHS’s decision to “commence removal proceedings”  
3       has explicitly been rejected by the Supreme Court as “uncritical literalism leading to  
4       results that no sensible person could have intended.” *Jennings*, 583 U.S. at 293–  
5       94 (citation modified). Because the government’s broad reading of § 1231 would lead  
6       to a result that is not contemplated in the statute and that has been disavowed by the  
7       Supreme Court,” this Court should conclude that Petitioner’s claims here do not  
8       concern discretionary actions barred from review by § 1231.

9       **54.** As such, because Petitioner’s claims regarding the lawfulness her detention during the  
10       pendency of removal proceedings before the BIA are “independent of or collateral to  
11       the removal process,” § 1231 does not bar them. *See Ibarra-Perez*, 154 F.4th at 996–  
12       97.

13       **55.** “It is well established that the Fifth Amendment entitles aliens to due process of law in  
14       deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*  
15       *Flores*, 507 U.S. 292, 306 (1993)).

16       **56.** “Freedom from imprisonment—from government custody, detention, or other forms of  
17       physical restraint—lies at the heart of liberty” that the Due Process Clause protects.  
18       *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J.,  
19       dissenting) (“Liberty under the Due Process Clause included protection against  
20       unlawful or arbitrary personal restraint or detention.”). This fundamental due process  
21       protection applies to all noncitizens, including both removable and inadmissible  
22       noncitizens. *See id.* at 721 (Kennedy, J., dissenting) (“both removable and inadmissible  
23       aliens are entitled to be free from detention that is arbitrary or capricious”).

1 57. Due process therefore requires “adequate procedural protections” to ensure that the  
2 government’s asserted justification for physical confinement “outweighs the  
3 individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* at  
4 690. Civil commitment for *any* purpose constitutes a significant deprivation of liberty.  
5 *Addington v. Texas*, 441 U.S. 418, 425 99 S. Ct. 1804, 60 L. Ed. 2d 323 (1979). In the  
6 immigration context, the Supreme Court has recognized only two valid purposes for  
7 civil detention—to mitigate the risks of danger to the community and to prevent flight.  
8 *Id.*; *Demore*, 538 U.S. at 528.

9 58. Following *Zadvydas* and *Demore*, every circuit court of appeals to confront the issue  
10 had found either the immigration statutes or due process require a hearing for  
11 noncitizens subject to unreasonably prolonged detention pending removal proceedings.  
12 *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020) (8 U.S.C. § 1226(a)); *Reid*  
13 *v. Donelan*, 819 F.3d 486 (1st Cir. 2016) (8 U.S.C. § 1226(c)); *Sopo v. U.S. Attorney*  
14 *Gen.*, 825 F.3d 1199 (11th Cir. 2016) (detention under 8 U.S.C. § 1226(c)); *Lora v.*  
15 *Shanahan*, 804 F.3d 601 (2d Cir. 2015) (8 U.S.C. § 1226(c)); *Rodriguez v. Robbins*  
16 *(Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015) (8 U.S.C. § 1226(c) and 8 U.S.C. §  
17 1225(b)); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221 (3d Cir. 2011) (8 U.S.C. §  
18 1226(c)); *Diouf v. Holder (Diouf II)*, 634 F.3d 1081 (8 U.S.C. § 1231(a)); *Ly v. Hanse*,  
19 351 F.3d 263 (6th Cir. 2003) (8 U.S.C. § 1226(c)) (requiring release when mandatory  
20 detention exceeds a reasonable period of time).

21 59. While the Supreme Court upheld the mandatory detention of a noncitizen under Section  
22 1226(c) in *Demore*, it did so based upon the petitioner’s concession of deportability  
23 and the Court’s understanding that detentions under Section 1226(c) are typically  
24 “brief”. *Demore*, 538 U.S. at 522 n.6, 528.

1       **60.** Where a noncitizen has been detained for a prolonged period or is pursuing a substantial  
2       defense to removal or claim to relief, due process requires an individualized  
3       determination that such a significant deprivation of liberty is warranted. *Id.* at 532  
4       (Kennedy, J., concurring) (“individualized determination as to his risk of flight and  
5       dangerousness” may be warranted “if the continued detention became unreasonable or  
6       unjustified”). *See also, Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond  
7       the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent*  
8       *Inst.*, 407 U.S. 245, 249-50 (1972) (“lesser safeguards may be appropriate” for “short  
9       term confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (in Eighth  
10       Amendment context, “the length of confinement cannot be ignored in deciding whether  
11       [a] confinement meets constitutional standards”).

12       **61.** Even if a bond hearing is not required after six-months in every case, at a minimum,  
13       due process requires a bond hearing after detention has become unreasonably  
14       prolonged. *See Diop*, 656 F.3d at 234. Courts that apply a reasonableness test have  
15       considered three main factors in determining whether detention is reasonable.

16       **62.** First, courts have evaluated whether the noncitizen has raised a “good faith” challenge  
17       to removal—that is, the challenge is “legitimately raised” and presents “real issues”.  
18       *Chavez-Alvarez v. Wardern York Cty. Prison*, 783 F.3d 469, 476 (3d Cir. 2015). In this  
19       case, Petitioner’s re-detention violates the fundamental Due Process of Law.

20       **63.** Second, reasonableness is a “function of the length of the detention,” with detention  
21       presumptively unreasonable if it lasts six-months to a year. *Id.* at 477-78; *accord Sopo*,  
22       825 F.3d at 1217-18.

23       **64.** Third, courts have considered the likelihood that detention will continue pending future  
24       proceedings. *Chavez-Alvarez*, 783 F.3d at 478 (finding detention unreasonable after

1 nine months of detention, when the parties could “have reasonably predicted that  
2 *Chavez-Alvarez’s* appeal would take a substantial amount of time, making his already  
3 lengthy detention considerably longer”); *Sopo*, 825 F.3d at 128; *Reid*, 819 F.3d at 500.

4 65. To justify immigration detention, the government must bear the burden of proof by  
5 *clear and convincing* evidence that the noncitizen is a danger or flight risk. *See Singh*  
6 *v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011). Where the Supreme Court has  
7 permitted civil detention in other contexts, it has relied on the fact that the Government  
8 bore the burden of proof at least by *clear and convincing evidence*. *See United States*  
9 *v. Salerno*, 481 U.S. 739, 750, 752 (1987) (upholding pre-trial detention where “full-  
10 blown adversary hearing,” requiring “clear and convincing evidence” and “neutral  
11 decisionmaker”) *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (striking down civil  
12 detention scheme that placed burden on the detainee); *Zadvydas*, 533 U.S. at 692  
13 (finding post-final-order custody review procedures deficient because, inter alia, they  
14 placed burden on detainee).

15 66. The Ninth Circuit Court of Appeals confirmed that *Jennings v. Rodriguez*, 138 S. Ct.  
16 830 (2018) did not invalidate the holding in *Singh and Rodriguez v. Robbins* (Rodriguez  
17 III), 804 F.3d 1060 (9th Cir. 2015), which required that the Government justify a non-  
18 citizen’s detention by *clear and convincing* evidence. *Aleman Gonzalez v. Barr*, ---  
19 F.3d ---, 2020 WL 1684034 (9th Cir. Apr. 7, 2020).

20 67. Since *Jennings*, numerous district courts in this circuit and others have concluded that  
21 due process requires the government to prove by *clear and convincing* evidence that a  
22 non-citizen is a flight risk or a danger to the community to justify denial of bond. E.g.,  
23 *Ixchop Perez v. McAleenan*, --- F. Supp. 3d ---, 2020 WL 1181492, at \*4 (N.D. Cal. Jan.  
24 23, 2020) (rejecting the government’s “attempt to cabin *Singh* to only apply to *Casas*

1 hearings” as “illogical” since such interpretation would “create a system in which a  
2 detained noncitizen bears the burden at their initial bond hearing, but the burden then  
3 shifts at a *Casas* hearing”); *Singh v. Barr* (“*Singh v. Barr*”), 400 F. Supp. 3d 1005,  
4 1017-18 (S.D. Cal. 2019) (“Because *Jennings* expressly addressed itself to the  
5 mandates of the INA, and not the Constitution, the procedural due process holding [ ]  
6 in *Singh* . . . still stand[s].”); *Lopez Reyes v. Bonnar*, 362 F. Supp. 3d 762, 775 (N.D.  
7 Cal. 2019); *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1033 n.8 (W.D. Was.  
8 2019); *Cortez v. Sessions*, 318 F. Supp. 3d 1134 (N.D. Cal. 2018), appeal dismissed,  
9 2018 WL 4173027 (9th Cir. July 25, 2018); *Ramos v. Sessions*, 293 F. Supp. 3d 1021,  
10 1029-30 (N.D. Cal. 2018).; *Diaz-Ceja v. McAleenan*, No. 19-CV-00824-NYW, 2019  
11 WL 2774211, at \*11 (D. Colo. July 2, 2019); *Darko v. Sessions*, 342 F. Supp. 3d 429  
12 (S.D. N.Y. 2018); *Linares Martinez v. Decker*, 2018 WL 5023946, at \*4 (S.D. N.Y.  
13 Oct. 17, 2018); *Sajous v. Decker*, No. 28 Civ. 2447 (AJN), 208 WL 2357266, at \*12  
14 (S.D. N.Y. May 23, 2018); *Hernandez v. Decker*, No. 18 Civ. 5026 (ALC), 2018 WL  
15 3579108, at \*10 (S.D. N.Y. July 25, 2018); *Frederic v. Edwards*, No. 18 Civ. 5540  
16 (AT), Docket No. 13 (S.D. N.Y. July 19, 2018); *Figueroa v. McDonald*, No. 18-CV-  
17 10097 (PBS), --- F. Supp. 3d ---, --- 2018 WL 2209217, at \*5 (D. Mass. May 17, 2018);  
18 *Pensamiento*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018); *Portillo v. Hott*, 322 F. Supp.  
19 3d 698, 709 n.9 (E.D. Va. 2018).

20 **68.** The Fifth Amendment requires that, before depriving a person of their liberty, the  
21 government allow that person to be heard at a meaningful time and in a meaningful  
22 manner. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

23 **69.** The determination of whether particular government conduct violates this procedural  
24 due process balances (1) the private interest affected by the official action; (2) the risk

1 of erroneous deprivation of the interest and value (if any) of additional or substitute  
2 procedural safeguards; and (3) the government's interest, including the burden that  
3 additional or substitute procedural requirements would impose. *Id.* at 335.

4 70. To conform to the requirements of due process, such a hearing must take place before  
5 an independent and impartial adjudicator. *Id.* at 334-35. The requirement that the  
6 government bear the burden of proof by *clear and convincing* evidence is also  
7 supported by application of the three-factor balancing test from *Mathews v. Eldridge*,  
8 424 U.S. 319, 335 (1976).

9 71. First, prolonged incarceration deprives noncitizens of a "profound" liberty interest. *See*  
10 *Diouf II*, 634 F.3d at 1091-92 (9th Cir. 2011). Second, the risk of error is heavily great  
11 where the government is represented by trained and qualified attorneys and detained  
12 noncitizens, as it is in this present case, are often unrepresented and frequently lack  
13 English proficiency. *See Santosky v. Kramer*, 455 U.S. 745, 763 (1982) (requiring clear  
14 and convincing evidence at parental termination proceedings because "numerous  
15 factors combine to magnify the risk of erroneous factfinding" including that "parents  
16 subject to termination proceedings are often poor, uneducated, or members of minority  
17 groups" and "[t]he State's attorney usually will be expert on the issues contested").  
18 Moreover, detainees are incarcerated in prison-like conditions that severely hamper  
19 their ability to obtain legal assistance, gather evidence, and prepare for a bond hearing.  
20 *See infra*. Third, placing the burden on the government imposes minimal cost or  
21 inconvenience, as the government has access to the noncitizen's immigration records  
22 and other information that it can use to make its case for continued detention.

23 72. Due process also requires consideration of non-punitive alternatives to detention. The  
24 primary purpose of immigration detention is to ensure a noncitizen's appearance during

1 removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related  
2 to this purpose if there are alternative conditions of release that could mitigate risk of  
3 flight. See *Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

4 73. While detention pending removal proceedings is constitutionally permissible, it must  
5 comport with due process. Among other requirements, the government must justify  
6 prolonged detention with *clear and convincing evidence* that the noncitizen presents a  
7 current flight risk or danger to the community.

8 74. Finally, although the Court cannot review the IJ's discretionary judgement, it may  
9 review the record for constitutional claims and legal error and to ensure that the *clear*  
10 *and convincing evidence* standard is met as a matter of law. *Calderon-Rodriguez v.*  
11 *Wilcox*, 374 F. Supp. 3d 1024, 2033 n.8 (W.D. Wash. 2019).

12 **i. Respondents Arbitrary Re-Detention Decisions Are Unlawful**  
13 **and Deprive Petitioner of Due Process.**

14 75. Respondents, including DHS and ICE, have acted in an arbitrary and capricious manner  
15 by cherry-picking arrests and selectively detaining noncitizens like Petitioner without  
16 a reasoned basis or individualized assessment. Administrative detention must be  
17 rationally related to its purpose—to secure attendance at proceedings or protect the  
18 public—and cannot be punitive or arbitrary. *Zadvydas v. Davis*, 533 U.S. 678, 690  
19 (2001) (civil detention must bear a reasonable relation to its purpose); *Judulang v.*  
20 *Holder*, 565 U.S. 42, 53 (2011) (agency action must be based on a reasoned explanation  
21 and not arbitrary decision-making).

22 76. The Ninth Circuit has consistently held that the government must provide  
23 individualized determinations and consider less restrictive alternatives to detention.  
24

25 77. Respondents' failure to provide a fair custody review or viable appeal rights leaves

1 Petitioner in prolonged detention without meaningful process, warranting this Court's  
2 intervention and immediate release through the Great Writ of habeas corpus.

3 **ii. Respondents' Cherry-Picking Re-Detention Is Arbitrary,**  
4 **Capricious, and Violate Petitioner's Due Process.**  
5

6 **78. Targeting Petitioner for arrest and re-detention under these circumstances amounts to**  
7 **impermissible "cherry-picking" enforcement—a practice in which the agency**  
8 **selectively targets compliant, law-abiding individuals while ignoring others similarly**  
9 **situated, without articulating any rational or lawful basis for the disparate treatment.**  
10 **Such arbitrary and inconsistent enforcement contravenes the constitutional guarantee**  
11 **of due process and equal protection under the Fifth Amendment.**

12 **79. The Supreme Court and Ninth Circuit have long condemned arbitrary exercises of**  
13 **executive power that lack rational justification or are applied in a discriminatory or**  
14 **inconsistent manner. Similarly, this Court has recognized that selective and capricious**  
15 **detention practices violate fundamental fairness where the agency fails to justify why**  
16 **one compliant individual is detained while others in comparable circumstances are**  
17 **released. See *Mendoza v. Barr*, No. 2:19-cv-00364-JAD-BNW, 2019 WL 6310259, at**  
18 **3 (D. Nev. Nov. 25, 2019) (holding that continued detention without reasonable**  
19 **justification violated due process).**

20 **80. Petitioner's re-detention is arbitrary and selective enforcement of re-detention**  
21 **undermines the integrity of the immigration system, offends basic principles of justice,**  
22 **and violates the constitutional prohibition against arbitrary governmental action**  
23 **recognized in *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998). See**  
24 ***Judulang v. Holder*, 565 U.S. 42, 53 (2011) (agency action must not be arbitrary or**  
25 **capricious but must rest on a reasoned explanation).**

1 81. ICE's conduct to re-detain Petitioner indefinitely constitutes an abuse of discretion and  
2 a violation of substantive due process. Petitioner's re-detention should therefore be  
3 declared unlawful, and her immediate release ordered, as continued confinement under  
4 such capricious enforcement serves no legitimate governmental purpose and directly  
5 contravenes the Constitution to the United States.

6 82. Such selective enforcement is constitutionally suspect and undermines the integrity of  
7 the immigration system. The Supreme Court has emphasized that agency actions must  
8 be guided by intelligible principles and consistent application of law. *Encino*  
9 *Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (agency decisions must reflect  
10 reasoned analysis and avoid arbitrary departures from settled policy). Respondents'  
11 decision here to indefinitely detain Petitioner reflects no individualized assessment of  
12 danger or flight risk, as required by due process.

13 83. Judicial intervention is necessary to prevent further constitutional injury and to ensure  
14 that agency discretion is exercised within lawful bounds. Agency action that disregards  
15 binding legal obligations is arbitrary and capricious under the APA, 5 U.S.C. §  
16 706(2)(A). This Court should conclude that DHS/ICE's decision to re-detain Petitioner  
17 was arbitrary, capricious, and unconstitutional, particularly where the undisputed  
18 record establishes that Petitioner has no material changed circumstances and has not  
19 been afforded a pre-deprivation hearing.

20 84. ICE identified no new facts, no material changed circumstances, no pre-deprivation  
21 hearing, no notice of revocation of her release, or individualized justification warranting  
22 re-detention. Such unexplained re-arrest and re-detention, after a period of successful  
23 compliance and community integration, violates fundamental principles of due process.

24 85. District courts have likewise granted habeas relief where ICE re-detains or continues to

1 detain individuals without a material change in circumstances or without procedural  
2 safeguards. *See, e.g., Aleman Gonzalez v. Barr*, 325 F. Supp. 3d 1177, 1185–86 (E.D. Cal.  
3 2018) (holding that detention without adequate justification or procedural protections  
4 violates due process); *Gonzalez v. Bonnar*, No. 1:20-cv-00464, 2020 WL 7338497, at 4–  
5 5 (E.D. Cal. Dec. 14, 2020) (granting habeas relief where petitioner demonstrated  
6 compliance, community ties, and lack of danger).

7 **86.** Again, ICE re-detained Petitioner without a pre-deprivation hearing, any arrest warrant or  
8 due process. This Court should conclude that these actions “entirely fail to consider an  
9 important aspect of the problem” and are unlawful. *See Motor Vehicle Mfrs. Ass’n v. State*  
10 *Farm*, 463 U.S. 29, 43 (1983).

11 **87.** Petitioner respectfully requests that this Court order Respondents to show cause why the  
12 writ should not be granted “within three days unless for good cause additional time, not  
13 exceeding twenty days, is allowed,” and set a hearing on this Petition within five days of  
14 the return, pursuant to 28 U.S.C. § 2243 and grant the Writ of Habeas Corpus ordering  
15 Respondents to immediately release Petitioner.

16 **IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION RELIEF IS**  
17 **WARRANTED TO PREVENT IRREPARABLE HARM**

18 **88.** Petitioner respectfully requests that this Court issue a preliminary injunction ordering her  
19 release from ICE custody. Petitioner respectfully requests that this Honorable Court issue  
20 a preliminary injunction ordering her immediate release from ICE custody.

21 **89.** Respondents have not provided a pre-deprivation hearing, have failed to produce a “notice  
22 of revocation” and lacks any evidence of justifying Petitioner’s re-detention. Again, DHS  
23 released Petitioner on December 24, 2023.

24 **90.** Federal courts have consistently recognized that immigration detention becomes arbitrary

1 and punitive where ICE re-detains an individual without a criminal record, without  
2 changed circumstances, and without an individualized justification following a prior  
3 release. Where a petitioner has demonstrated compliance with supervision, and posed no  
4 danger to the community, courts have held that re-detention violates due process because  
5 it no longer serves a legitimate civil purpose. *See Singh v. Holder*, 638 F.3d 1196, 1203–  
6 05 (9th Cir. 2011) (detention without meaningful procedural safeguards violates due  
7 process).

8 **91.** District courts have granted habeas relief where ICE failed to articulate a lawful basis for  
9 continued or renewed detention of noncitizens. *See Aleman Gonzalez v. Barr*, 325 F. Supp.  
10 3d 1177, 1185–86 (E.D. Cal. 2018) (holding detention unconstitutional where ICE failed  
11 to provide adequate justification and procedural protections); *Gonzalez v. Bonnar*, No.  
12 1:20-cv-00464, 2020 WL 7338497, at 4–5 (E.D. Cal. Dec. 14, 2020) (granting habeas  
13 relief where petitioner was compliant, posed no danger, and detention had indicated  
14 punitive character). Here, ICE’s sudden re-detention—without notice of revocation,  
15 explanation, or evidence of changed circumstances—renders the detention punitive rather  
16 than civil, in violation of due process.

17 **92.** Injunctive relief is appropriate where the petitioner demonstrates: (1) a likelihood of  
18 success on the merits, (2) irreparable harm absent relief, (3) that the balance of equities tips  
19 in her favor, and (4) that the public interest supports relief. *Winter v. Nat. Res. Def. Council*,  
20 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th  
21 Cir. 2011) (a serious question going to the merits plus a balance of hardships that tips  
22 sharply toward the petitioner also supports injunctive relief).

23 **A. Likelihood of Success on the Merits**

24 **93.** Petitioner’s re-detention without a constitutionally adequate bond hearing violates the

1 Fifth Amendment's Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)  
2 (civil detention must bear a reasonable relation to its purpose and cannot be indefinite).  
3 Because Respondents has badly failed to properly justify Petitioner's re-detention under  
4 the appropriate legal standard, success on the merits is likely.

5 **B. Irreparable Harm**

6 **94.** Petitioner suffers irreparable harm every day that her liberty is restrained in violation of  
7 due process. Her re-detention imposes significant psychological hardship and impedes her  
8 ability to meaningfully participate in her defense. The deprivation of liberty is the  
9 quintessential form of irreparable harm. Her re-detention inflicts ongoing and irreparable.

10 **95.** Federal courts have consistently recognized that habeas corpus relief is appropriate when  
11 the deprivation of liberty causes significant humanitarian consequences. *See Sivaraman v.*  
12 *U.S. Dep't of Homeland Sec.*, 486 F. Supp. 3d 1077, 1085 (N.D. Cal. 2020) (granting  
13 habeas relief where petitioner's prolonged detention had devastating effects on his health  
14 and family).

15 **96.** Here, the government's re-detention of Petitioner serves no legitimate purpose and inflicts  
16 profound harm on her—harm that cannot be undone by later judicial relief. Because these  
17 facts demonstrate both a constitutional violation and the existence of irreparable injury,  
18 the Court should exercise its equitable authority under 28 U.S.C. § 2241 to grant habeas  
19 relief and order her immediate release.

20 **C. Balance of Equities**

21 **97.** The government's interest in ensuring attendance at removal proceedings can be met  
22 through less restrictive means, such as bond or supervision, particularly where there is no  
23 history of absconding. *See Valdez-Jimenez v. Eighth Judicial Dist. Ct.*, 460 P.3d 976, 992  
24 (Nev. 2020) (holding that due process requires individualized findings before continued

1 pretrial detention).

2 **98.** Petitioner's re-detention imposes significant hardship on Petitioner, while release under  
3 reasonable conditions poses no harm to the government.

4 **D. Public Interest**

5 **99.** The public interest is always served by upholding constitutional rights and preventing  
6 unlawful detention. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (recognizing  
7 that enforcement of constitutional rights is in the public interest). Prompt judicial  
8 intervention will preserve the integrity of removal proceedings and reinforce the rule of  
9 law. Public interests favor Petitioner's release.

10 **100.** Petitioner's detention goes against United States Supreme Court precedent which  
11 recognizes that individuals who have been granted released from custody, even where  
12 such release is conditional, have a liberty interest in their continued release. *Morrissey*,  
13 408 U.S. 471 at 482. Given this, Petitioner has established a strong likelihood of success  
14 in showing that she has a liberty interest as her private interest has been impacted by her  
15 detention. *See Manzanarez v. Bondi*, No. 1:25-CV-01536-DC-CKD (HC), 2025 WL  
16 3247258, at \*4 (E.D. Cal. Nov. 20, 2025) (finding similarly).

17 **101.** In similar cases, federal courts regularly hold that detaining noncitizens without pre-  
18 deprivation hearing in which the government bears the burden of proof violates due  
19 process, and grants the preliminary relief Petitioner seeks here. *See Garro Pinchi v. Noem*,  
20 \_\_ F. Supp. 3d \_\_, 2025 WL 2084921, at \*7 (converting TRO requiring release of asylum  
21 seeker arrested at her immigration court hearing into preliminary injunction prohibiting  
22 the government from re-detaining her without a hearing); *Singh v. Andrews*, 2025 WL  
23 1918679, \*8-10 (E.D. Cal. July 11, 2025) (granting PI under similar circumstances); *Doe*,  
24 2025 WL 691664, at \*8 (granting TRO over one month after petitioner's initial detention);

1        *see also, e.g., Diaz*, 2025 WL 1676854, at \*3- \*4; *Garcia v. Bondi*, No. 3:25-CV-05070,  
2        2025 WL 1676855, at \*3 (N.D. Cal. June 14, 2025); *Jorge M. F.*, 2021 WL 783561, at  
3        \*4; *Romero v. Kaiser*, No. 22-CV-02508-TSH, 2022 WL 1443250, at \*4 (N.D. Cal. May  
4        6, 2022); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*4 (N.D. Cal.  
5        Aug. 23, 2020).

6        **102.** Several federal courts have ordered release for petitioners whose immigration case are  
7        still pending.<sup>2</sup> *See, e.g., Hinestroza v. Kaiser*, No. 25-CV-07559-JD, 2025 WL 2606983,  
8        at \*2 (N.D. Cal. Sept. 9, 2028); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL  
9        2607924, at \*12 (D. Mass Sept. 9, 2025); *R.D.T.M. v. Wofford*, No. 1:25-CV-01141-KES-  
10        SKO (HC), 2025 WL 2617255, at \*6 (E.D. Cal. Sept. 9, 2025).

11        **103.** The courts in those cases have determined that, for these long-term releases, liberty is the  
12        status quo, and only return to that status quo can vert irreparable harm.

13        **104.** Granting this relief would not even be breaking new ground. Indeed, other federal courts  
14        have granted habeas relief. *See Cavieres Gomez v. Mattos*, No. 2:25-CV-00975-GMN-  
15        BNW, 2025 WL 3101994, at \*6-7 (D. Nev. Nov. 6, 2025). *See also, Shadalo v. Mattos et*  
16        *al*, No. 2:25-CV-02076-RFB-BNW (D. Nev. Dec. 14, 2025) and relevant cases. Petitioner  
17        therefore respectfully requests that this Court grant this preliminary injunction and moves  
18        for immediate release. This Court should find that “petitioner is entitled to h[er] release”  
19        on an order of supervision. *Liu*, 2025 WL 1696526, at \*3.

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<sup>2</sup> Because immigration detainees whose cases have not been adjudicated are entitled only to a bond hearing-not to outright release-some of these TROs and preliminary injunctions require release unless ICE provides that hearing. But because *Zadvydas* requires outright release on supervision, a TRO or preliminary injunction is fitted to Petitioner’s claims should order that relief.

1 **105.** For these reasons, this Court should grant immediate release or, in the alternative, order  
2 Respondents to afford Petitioner a bond hearing under 8 U.S.C. § 1226(a) where DHS  
3 bears the heavy burden of proof, under the correct legal standard and analysis of *clear and*  
4 *convincing evidence* establishing danger or flight risk.

5 **106.** Regardless whether Gao was released under ISAP, ISUP, OSUP or under and Order of  
6 Recognizance, the revocation of her release is governed by 8 C.F.R. § 241.13(i).  
7 Importantly, this regulation required notice and an opportunity to be heard and only allows  
8 for re-detention when, “if, on account of changed circumstances,” it is determined that  
9 “there is a significant likelihood that the [noncitizen may be removed in the reasonably  
10 foreseeable future.”

11 **107.** This regulation concerning re-detention while under ICE supervision was created to  
12 provide due process protection to non-citizens. *Ghafouri v. Naem*, No. 3:25-cv-02675-  
13 RBM-BLM, 2025 WL 3085726 at \*4 (S.D. Cal. Nov. 4, 2025). The re-detention here  
14 violated both the regulation and due process. Respondents do not even engage with this  
15 claim. They do not claim § 241.13 at all. They do not directly respond to any of the  
16 regulation arguments made in the Habeas Petition or regulation arguments made in the  
17 request for preliminary injunction relief. The arguments they claim are completely  
18 irrelevant to the claim.

19 **108.** Respondents do not, nor could they, dispute Gao’s allegations that she was not given  
20 proper notice of the reason for the re-detention or an opportunity to be heard on those  
21 purported reasons. Respondents make no real attempt to contest this claim. They do not  
22 discuss or even cite the relevant regulations. Rather, they may simply contend that her  
23 detention is authorized. But that contention is irrelevant in this claim. This claim concerns  
24 the process guaranteed to Gao related to her *re-detention*. See *Fajardo v. Raycraft*, No.

1 1:25-CV-1529, 2025 WL 3649522, at \*4 (W.D. Mich. Dec. 17, 2025) (“However,  
2 Respondents arguments confuse their ability to hold Petitioner once properly detained  
3 with Petitioner’s “right not to be detained without adequate—in fact, without any—  
4 process.”). As shown above, those regulations govern this situation. Respondents’ failure  
5 to discuss any of this must be viewed as a concession.

6 **109.** Government agencies are required to follow their own regulations. *United States ex rel.*  
7 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The failure to follow the regulations  
8 prejudiced Gao because it deprived her of her due process protections. Because there is  
9 no indication that any of the required process was provided to Petitioner—notice of  
10 revocation, opportunity to be heard, and a valid reason for the re-detention—this Court  
11 should grant relief, just as in the large number of cases that have granted relief on this  
12 claim. *See, e.g., Moskovyan v. Noem*, No. 3:25-cv-03537-RBM-AHG, 2026 WL 63472  
13 at \*2 (S.D. Cal. Jan. 8, 2026) (granting petition based on ICE’s failure to follow its own  
14 regulations on re-detention); *Briones v. LaRose*, No. 3:25-cv-03421-RBM-AHG, 2026  
15 WL 18787 at \*2-3 (S.D. Cal. Jan. 2, 2026) (same); *Fajardo*, 2025 WL 2649522 at \*5-6;  
16 *Touch v. Noem*, No.: 3:25-cv-03118-RBM-AHG, 2025 WL 3278019 at \*3, \*6 (S.D. Cal.  
17 Nov. 25, 2025), *adopted*, No.: 3:25-cv-03118-RBM-AHG, 2025 WL 3296280 (S.D. Cal.  
18 No. 26, 2025); *Rasakhamdee v. Noem*, No.: 3:25-cv-02816-RBM-DEB, 2025 WL  
19 3102037 at \*4-5 (S.D. Cal. Nov. 6, 2025) (same); *J.R. v. Bostock*, 25-cv-01161-JNW,  
20 2025 WL 1810210 (W.D. Wash. Jun. 30, 2025); *Vaskanyan v. Janecka*, 25-cv-01475-  
21 MRA-AS, 2025 WL 2014208 (C.D. Cal. Jun. 25, 2025); *Ortega v. Kaiser*, 25-cv-05259-  
22 JST, 2025 WL 1771438 (N.D. Cal. Jun. 26, 2025); *Hoac v. Becerra*, No. 2:25-CV-01740-  
23 DC-JDP, 2025 WL 1993771, at \*7 (E.D. Cal. July 16, 2025); *Phan v. Becerra*, No. 2:25-  
24 CV-01757-DC-JDP, 2025 WL 1993735, at \*7 (E.D. Cal. July 16, 2025). Courts in this

1 district have granted a temporary restraining order, preliminary injunction or habeas relief  
2 on this claim.

3  
4 **110.** Specifically, a noncitizen's release may be revoked "if, on account of changed  
5 circumstances," it is determined that "there is a significant likelihood that the [noncitizen]  
6 may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2). Upon such  
7 determination:

8 [T]he [noncitizen] will be notified of the reasons for  
9 revocation of his or her release. The Service will conduct an  
10 initial informal interview promptly after his or her return to  
11 Service custody to afford the [noncitizen] an opportunity to  
12 respond to the reasons for revocation stated in the notification.  
13 The [noncitizen] may submit any evidence or information that  
14 he or she believes shows there is no significant likelihood he or  
15 she be removed in the reasonably foreseeable future, or that he  
16 or she has not violated the order of supervision. The revocation  
17 custody review will include an evaluation of any contested facts  
18 relevant to the revocation and a determination whether the facts  
19 as determined warrant revocation and further denial of release.  
20

21 **111.** *Id.* 241.13(i)(3). This regulation concerning re-detention while on OSUP, OREC, ISAP  
22 or ISUP was created to provide due process protection to non-citizens. *Ghafouri*, 2025  
23 WL 3085726 at \*4. In this particular case, ICE has badly failed to comply with *every*  
24 *single* requirement in this regulation.

25 **112.** It is clear from the record that ICE violated the regulations in every way. Respondents  
26 did not present any evidence to show that Petitioner was given any notice of why she was  
27 being re-detained prior to ICE re-arresting her. Although regulation requires notice "upon  
28 revocation", there is no evidence that ICE has ever provided Petitioner with a "Notice of  
29 Revocation of Release" form. Petitioner was never told why she was being re-detained.

1 Yet, having no violations, no change in circumstances and without any “Notice of  
2 Revocation of Release”, she was re-detained for some capricious reason.

3 **113.** In this case, ICE badly failed to provide Petitioner with “reasons for revocation,” they  
4 failed to allow Yuxing Gao an “opportunity to respond to the reasons for revocation,”.

5 **114.** Even more, Petitioner was not allowed to “submit any evidence or information” relevant  
6 to re-detention and evaluating “any contested facts.” 8 C.F.R. §§ 241.4(l)(1), 241.13(i)(3).  
7 “[B]ecause officials did not properly revoke petitioner’s release pursuant to the applicable  
8 regulations,” this Court should find that “petitioner is entitled to h[er] release” on an order  
9 of supervision. *Liu*, 2025 WL 1696526, at \*3. Petitioner re-alleges and incorporates by  
10 reference the paragraphs above and the paragraphs below.

11 **115.** “Just as the public has an interest in the orderly and efficient administration of this  
12 country’s immigration laws, [ ] the public has a strong interest in upholding procedural  
13 protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020  
14 WL 5074312, at \*4 (N.D. Cal. Aug. 23, 2020) (internal quotation omitted); *see also*  
15 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest  
16 concerns are implicated when a constitutional right has been violated, because all citizens  
17 have a stake in upholding the Constitution.”). Petitioner has demonstrated that she is likely  
18 unlawfully detained in violation of her due process rights and is suffering irreparable harm  
19 as a result.

20 **116.** On the other hand, the burden on Respondents in releasing Petitioner from detention is  
21 minimal. “[T]he only potential injury that the government faces is a ‘short delay’ in  
22 detaining Petitioner [ ] if it ‘ultimately demonstrates to a neutral decisionmaker’ that their  
23 detention is necessary to prevent flight or danger to the community.” *Valencia Zapata*,  
24 2025 WL 2741654, at \*13 (quoting *Salcedo Aceros*, 2025 WL 2637503, at \*14).

1 Respondents cannot reasonably assert that the public and government will be harmed in  
2 any legally cognizable sense by being enjoined from violating Petitioner's due process  
3 rights, which is the case here. *See Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727  
4 (9th Cir. 1983) (finding "the INS cannot reasonably assert that it is harmed in any legally  
5 cognizable sense by being enjoined from constitutional violations.").

6 117. "[E]ven when an initial decision to detain or release an individual is discretionary, the  
7 government's subsequent release of the individual from custody creates 'an implicit  
8 promise' that the individual's liberty will be revoked only if they fail to abide by the  
9 conditions of their release." *Calderon v. Kaiser*, No. 25-cv-06695-AMO, 2025 WL  
10 2430609, at \*2 (N.D. Cal. Aug. 22, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471,  
11 482 (1971)); *see also Valencia Zapata v. Kaiser*, — F. Supp. 3d —, No. 25-cv-07492-  
12 RFL, 2025 WL 2741654, at \*6 (N.D. Cal. Sept. 26, 2025). "Accordingly, a noncitizen  
13 released from custody pending removal proceedings has a protected liberty interest in  
14 remaining out of custody[]" where an immigration official "elected to release" a petitioner  
15 on their own recognizance. *Salcedo Aceros v. Kaiser*, No. 25-cv-06924 EMC, 2025 WL  
16 2637503, at \*6–7 (N.D. Cal. Sept. 12, 2025); *see also Polo v. Chestnut*, No. 1:25-cv-  
17 01342-JLT-HBK, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025) (collecting cases holding  
18 that an individual released from immigration detention has a protected liberty interest in  
19 continued release).

20 118. In this case, as in many others to have recently come before a federal court, Petitioner  
21 acquired a liberty interest in her continued freedom when DHS elected to release her in  
22 December 24, 2023. *See Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL  
23 2822876, at \*7 (N.D. Cal. Oct. 3, 2025) (finding that the petitioners' release "implied a  
24 promise that they would not be re-detained so long as they abided by the terms of their

1 release”); *F.M.V. v. Wofford*, No. 1:25-cv-01381 KES-SAB (HC), 2025 WL 3083934, at  
2 \*4 (E.D. Cal. Nov. 4, 2025) (“[R]eliance on governmental representations may establish  
3 a legitimate claim of entitlement to a constitutionally protected interest.”); *Valencia*  
4 *Zapata*, 2025 WL 2741654 at \*6 (“[A] noncitizen released from custody pending removal  
5 proceedings has a protected liberty interest in remaining out of custody.”).

6 **119.** This Court therefore need not determine whether § 1226 or § 1231 applies in this case  
7 because Petitioner has a liberty interest in her continued release regardless of the  
8 applicable detention scheme. *See Polo*, 2025 WL 2959346 at \*11 (explaining that “even  
9 assuming Respondents are correct that § 1225(b) is the applicable detention authority,”  
10 the respondents failed to contend with the “liberty interest created by the fact that the  
11 Petitioner . . . was released on recognizance”); *Espinoza v. Kaiser*, No. 1:25-cv-01101-  
12 JLT-SKO, 2025 WL 2581185, at \*10 (E.D. Cal. Sept. 5, 2025) (same); *Pablo Sequen v.*  
13 *Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630, at \*5 (N.D. Cal. Oct. 15, 2025)  
14 (same); *Doe v. Becerra*, 787 F. Supp. 3d 1083 (E.D. Cal. 2025) (finding the petitioner had  
15 a liberty interest in his continued liberty even though petitioner had conceded that he was  
16 subject to mandatory detention under § 1225(b)(1)(B)(ii)). Accordingly, the Court should  
17 find that Petitioner Yuxing Gao is likely to be successful as to her claim that she has a  
18 liberty interest in her continued release.

19 **120.** Petitioner asserts that the risk of erroneous deprivation is high without a pre-detention  
20 bond or custody redetermination hearing in front of a neutral adjudicator because  
21 immigration officials have already deprived her of her liberty absent a showing of changed  
22 circumstances. Several courts have already found that such a risk is high in cases similar  
23 to Petitioner’s. *See, e.g., Salcedo Aceros*, 2025 WL 2637503, at \*12 (finding that the  
24 petitioner’s risk of erroneous deprivation was high because a bond hearing would likely

1 reveal that the petitioner still presented no public safety or flight risk); *see also Calderon*,  
2 2025 WL 2430609, at \*3 (“Where an individual has not received a bond or  
3 redetermination hearing, the risk of an erroneous deprivation of liberty is high.”); *Pinchi*  
4 *v. Noem*, No. 25-cv 05632-RMI-RFL, 2025 WL 1853763, at \*2 (N.D. Cal. July 4, 2025)  
5 (finding a risk of erroneous deprivation without a bond hearing pre-detention where the  
6 petitioner was re-detained after having been released on her own recognizance at the  
7 border by immigration officials).

8 121. Petitioner further asserts that the government has only negligible interest in re-detaining  
9 her without providing a pre-detention custody hearing in front of a neutral adjudicator. “In  
10 immigration court, custody hearings are routine and impose a minimal cost.” *Salcedo*  
11 *Aceros*, 2025 WL 2637503, at \*12 (internal quotation marks omitted) (quoting *Singh*,  
12 2025 WL 1918679, at \*7); *see Espinoza*, 2025 WL 2581185 at \*11 (“[T]he Court  
13 concludes that Respondents’ interest in detaining Petitioners or re-detaining them without  
14 a hearing, is slight.”). Respondents have made no argument that its interest in detaining  
15 Petitioner outweighs the cost of providing the additional process to which Petitioner is  
16 due.

17 122. Accordingly, this Court should find that the balance of equities and public interest weigh  
18 in favor of injunctive relief and consequently, all four *Winter* factors weigh in favor of  
19 Petitioner.

#### 20 STATUS QUO

21 123. “The status quo ante litem is the last uncontested status which preceded the pending  
22 controversy.” *Hoac*, 2025 WL 1993771, at \*7 (internal quotation marks and brackets  
23 omitted) (quoting *GoTo.com, Inc. v. Walt Disney, Co.*, 202 F.3d 1199, 1210 (9th Cir.  
24 2000)). “A TRO immediately releasing Petitioner is appropriate to return him to the status

1 quo. . . . That is the moment prior to Petitioner’s likely illegal detention.” *Larios v.*  
2 *Albarran*, No. 25-cv-08799 AMO, 2025 WL 2939223, at \*3 (N.D. Cal. Oct. 16, 2025).  
3 Accordingly, this Court should conclude that the immediate release of petitioner on the  
4 same conditions she was subject to prior to her detention on July 26, 2025, is necessary to  
5 restore the status quo.

6 **BOND**

7 **124.** With respect to Bond, this Court should decline a bond. “Federal Rule of Civil Procedure  
8 65(c) permits a court to grant preliminary injunctive relief ‘only if the movant gives  
9 security in an amount that the court considers proper to pay the costs and damages  
10 sustained by any party found to have been wrongfully enjoined or restrained.’” *Johnson*  
11 *v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting Fed. R. Civ. P. 65(c)). “Despite  
12 the seemingly mandatory language, ‘Rule 65(c) invests the district court with discretion  
13 as to the amount of security required, if any.’” *Id.* (quoting *Jorgensen v. Cassidy*, 320  
14 F.3d 906, 919 (9th Cir. 2003)). “In particular, ‘[t]he district court may dispense with the  
15 filing of a bond when it concludes there is no realistic likelihood of harm to the defendant  
16 from enjoining his or her conduct.’” *Johnson*, 572 F.3d at 1086 (quoting *Jorgensen*, 320  
17 F.3d at 919). Here, Petitioner asks that no bond be required and for this Court to find that  
18 no security is required here.

19 **125.** Courts regularly waive security in cases like this one. *Diaz v. Brewer*, 656 F.3d 1008,  
20 1015 (9th Cir. 2011); *Lepe v. Andrews*, No. 25-cv-01163-KES-SKO, 2025 WL 2716910,  
21 at \*10 (E.D. Cal. Sep. 23, 2025); *Pinchi v. Noem*, No. 25-cv-05632-RMI-RFL, 2025 WL  
22 1853763, at \*4 (N.D. Cal. Jul. 4, 2025).

23 **126.** Based on the laws and facts, Petitioner’s re-detention and ongoing detention violates due  
24 process and her primary requested relief is release from custody because immediate

1 release is the appropriate remedy here because Petitioner is likely to succeed on the merits  
2 of her claim that her detention was unlawful because Respondents have not shown that  
3 there was a change in circumstances between the immigration official's custody  
4 determination on December 24, 2023, and Petitioner's re-detention, on July 26, 2025.

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF IN VIOLATION OF DUE PROCESS CLAUSE OF THE**  
7 **FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

8 127. This Court should order Petitioner's immediate release because Respondents arbitrary  
9 and capricious re-detention decisions violate the Fifth Amendment's guarantee of due  
10 process. All persons, including aliens, residing in the United States are protected by the  
11 Due Process Clause of the Fifth Amendment to the United States Constitution. See  
12 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

13 128. Re-detention by the Respondents puts at risk Petitioner's protected liberty interest. The  
14 Due Process Clause of the Fifth Amendment forbids the government from depriving any  
15 "person" of liberty "without due process of law." See *U.S. Const. amen. V.*

16 **COUNT TWO: STATUTORY VIOLATIONS**

17 129. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. §  
18 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. The Supreme Court held in  
19 *Zadvydas* and *Martinez* that ICE's continued detention of someone like Petitioner under  
20 such circumstances is unlawful.

21 **COUNT THREE: SUBSTANTIVE DUE PROCESS VIOLATION**

22 130. Petitioner's continued detention violates her right to substantive due process through a  
23 deprivation of the core liberty interest in freedom from bodily restraint.

24 131. The Due Process Clause of the Fifth Amendment requires that the deprivation of

1 Petitioner's liberty be narrowly tailored to serve a compelling government interest.

2 **132.** While Respondents would have an interest in detaining her in order to effectuate removal,  
3 that interest does not justify her indefinite detention where she is not likely to be deported  
4 in the reasonably foreseeable future. *Zadvydas* recognized that ICE may continue to detain  
5 aliens only for a period reasonably necessary to secure the alien's removal.

6 **COUNT FOUR: PROCEDURAL DUE PROCESS VIOLATIONS**

7 **133.** Under the Due Process Clause of the Fifth Amendment, Petitioner is entitled to a timely  
8 and meaningful opportunity to demonstrate that she should not be re-detained. Petitioner  
9 in this case has been denied that opportunity. Petitioner respectfully notes that ICE does  
10 not make decisions concerning aliens' custody status in a neutral and impartial manner.

11 **134.** Even if Petitioner's re-detention is authorized under Section 1231, 1225 or 1226, her  
12 continued detention must comport with due process and asserts that her re-detention  
13 violates her due process rights; she requests immediate release from Respondents custody.

14 **135.** Petitioner warrants immediate release based on the underlying fact that re-detention no  
15 longer serves any legitimate governmental purpose and instead constitutes an arbitrary  
16 deprivation of liberty contrary to the principles articulated in *Zadvydas* and its Ninth  
17 Circuit progeny.

18 **136.** The Supreme Court has held that a noncitizen cannot be detained indefinitely in a removable but-not-removable  
19 status; the most common situation occurs when no country can be found to accept the noncitizen. *Zadvydas*, 533 U.S.  
20 678

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Petitioner respectfully requests and prays for this Court:

23 **137.** Assume jurisdiction over this matter;

24 **138.** Issue a declaration that Petitioner's re-detention violates the Due Process Clause of the

1 Fifth Amendment and the Eighth Amendment;

2 **139.** Grant Petitioner a Writ of Habeas Corpus directing the Respondents to immediately  
3 release Petitioner from custody with the same conditions she was subject to immediately  
4 prior to her detention on July 26, 2025;

5 **140.** Enter preliminary and permanent injunctive relief enjoining Respondents from further  
6 unlawful detention;

7 **141.** Enjoin and Restrain Respondents from re-detaining Petitioner for any purpose, absent  
8 exigent circumstances, without providing petitioner notice and a pre-detention hearing  
9 before an immigration judge where respondents will have the burden to demonstrate that  
10 petitioner is a danger to the community or a flight risk;

11 **142.** Issue a Writ of Habeas Corpus and order Petitioner's release within twenty ("20") days,  
12 unless the Respondents schedule a hearing before an immigration judge where it holds  
13 proper jurisdiction and where: (1) to continue detention, the government must establish  
14 by clear and convincing evidence that Petitioner presents a risk of flight or danger, even  
15 after consideration of alternatives to detention that could mitigate any risk that Petitioner's  
16 release would present; and (2) if the government cannot meet its burden, the immigration  
17 judge order Petitioner's release on appropriate conditions of supervision, taking into  
18 consideration Petitioner's ability to pay a bond;

19 **143.** Issue an Order that Respondents shall not transfer Petitioner to another detention center  
20 outside of this judicial district, pending further order of the court. *See* 28 U.S.C. § 1651(a)  
21 (establishing the All Writs Act which empowers the federal courts to "issue all writs  
22 necessary or appropriate in aid of their respective jurisdictions...."); *see also F.T.C. v. Dean*  
23 *Foods Co.*, 384 U.S. 597, 604 (1966) (emphasizing that federal courts have the power to  
24 "to preserve the court's jurisdiction or maintain the status quo by injunction pending

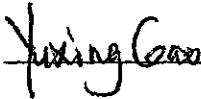
1 review of an agency's action").

2 **144. Issue a declaration that Petitioner's re-detention violates the Due Process Clause of the**  
3 **Fifth Amendment and the Eighth Amendment;**

4 **145. Award Petitioner her costs in this action as provided for by the Equal Access to Justice**  
5 **Act ("EAJA"), as amended, 5 U.S.C. § 504 and, 28 U.S.C. § 2412, and on any other basis**  
6 **justified under law; and**

7 **146. Grant such further relief as this Court deems just and proper.**

8  
9 **Respectfully submitted on this 20th day of April, 2026.**

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12 

13 Yuxing Gao

14 Alien No. 

15 Imperial Regional Detention Center

16 1572 Gateway Road


17 Calexico, CA 92231

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7 **ACKNOWLEDGEMENT AND VERIFICATION**

8 Under penalty of perjury, the undersigned declares that she is the named Petitioner in the  
9 foregoing petition. I have read the foregoing petition and its contents. The statements in the  
10 petition are true and correct to the best of my knowledge, except as to any statements alleged  
11 on information and belief, and as to those statements, I believe them to be true.

12  
13 **DATED this 20th day of April, 2026.**

14  
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17 Yuxing Gao

18 Alien No. 245 -- 660 -- 979

19 Imperial Regional Detention Center

20 1572 Gateway Road

21 Calexico, CA 92231

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

**YUXING GAO  
ALIEN No. [REDACTED]  
PETITIONER, PRO SE  
CUSTODY STATUS: DETAINED**