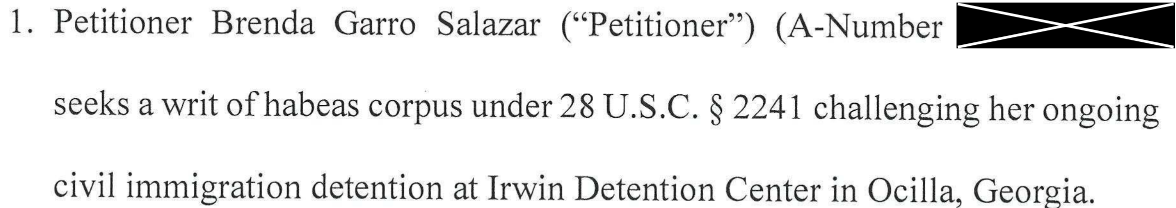
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

BRENDA GARRO SALAZAR,)
)
Petitioner,)
)
v.) Case No. ________
)
TODD LYONS, Acting Director of ICE;)
WARDEN, Irwin Detention Center;)
KRISTEN SULLIVAN, Acting ERO)
Director of Atlanta Field Office,)
U.S. Immigrationand Customs Enforcement)
("ICE"); **MARKWAYNE MULLIN,**)
Secretary of the U.S Department of)
Homeland Security; **TODD BLANCHE,**)
Attorney General of the United States; and)
WILLIAM KEYES, U.S. Attorney for the)
Middle District of Georgia,)
in their official capacities,)
)
Respondents.)
____)

PETITION FOR HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT

INTRODUCTION

1. Petitioner Brenda Garro Salazar ("Petitioner") (A-Number  seeks a writ of habeas corpus under 28 U.S.C. § 2241 challenging her ongoing civil immigration detention at Irwin Detention Center in Ocilla, Georgia.

2. Petitioner is a citizen of Peru, born [redacted] and entered the United States on or around November 23, 2022.

3. Petitioner has a pending I-589, Application for Asylum and Withholding of Removal.

4. Petitioner has been detained since April 28, 2026.

5. Petitioner respectfully requests that this Court order her immediate release, and/or order constitutionally adequate process, including a prompt custody hearing before a neutral decisionmaker where the government bears the burden to justify detention.

6. Petitioner does not have a final order of removal. Her removal proceedings are still proceeding.

7. The Due Process Clause applies to "all persons within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (quotation marks omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

8. Immigration detention is civil and thus is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. *Zadvydas*, 533 U.S. at 690. Here, Petitioner has

complied with all immigration requirements. Petitioner does not present a flight risk or a danger to the community. Under these circumstances, her detention is thus not justified under the Constitution. *See ibid.*

9. Additionally, generally "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis added).

10. Petitioner respectfully seeks a writ of habeas corpus ordering the government to immediately release her from this ongoing, unlawful detention, and prohibiting her re-arrest without a hearing to contest that re-arrest before a neutral decisionmaker. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this Court order the government not to transfer her outside of the jurisdiction of this Court or deport him for the duration of this proceeding.

JURISDICTION

11. Petitioner is in the physical custody of Respondents and is detained at Irwin Detention Center in Ocilla, GA.

12. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq. and the APA, 5 U.S.C. §§ 500–596, 701–706.

13. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question), the APA, 5 U.S.C. §§ 500–596, 701–706; and the United States Constitution.

14. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

VENUE

15. Venue is proper because Petitioner is detained at Irwin Detention Center in Ocilla, Georgia, which is within the jurisdiction of this District.

16. Venue is proper in this District and Division because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to her claims occurred in this District. 28 U.S.C. §§ 1391(b)(2), 1391(e), and 28 U.S.C. § 2241(a).

REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.

PARTIES

18. Petitioner Brenda Garro Salazar is detained at Irwin Detention Center in Ocilla, Georgia. Petitioner currently is in removal proceedings with an

Application for Asylum pending. She is in the custody, and under the direct control, of Respondents and their agents. After detaining her, ICE did not set bond. Respondents are being sued in their official capacity.

19. Respondent Warden of Irwin Detention Center has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Warden is a legal custodian of Petitioner. Respondent is sued in their official capacity.

20. Respondent Kristen Sullivan is the Acting ERO director for the Atlanta Field Office of the Immigration and Customs Enforcement Agency ("ICE"), a brand of the Department of Homeland Security ("DHS") and is sued in his official capacity. Respondent Sullivan is responsible for local custody decisions relating to aliens charged with being removable from the United States, including the custody status of Petitioner. Respondent Sullivan is a legal custodian of Petitioner and has authority to release him.

21. Respondent Todd M Lyons is the acting director of ICE and is sued in his official capacity. Respondent has authority over the actions of Kristen Sullivan and ICE in general. ICE's mission includes the enforcement of criminal and civil laws related to immigration. Among other things, ICE is

responsible for the stops, arrests, and custody of individuals believed to be in violation of civil immigration law.

22. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security and is being sued in his official capacity. Respondent has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS which is responsible for implementing and enforcing the nation's immigration laws pursuant to 8 U.S.C. § 1103(a). Respondent Mullin is a legal custodian of the Petitioner.

23. Respondent Todd Blanche is the Attorney General of the United States and is being sued in his official capacity. In this capacity, he has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103 and the most senior official of the U.S. Department of Justice (DOJ). In that capacity, he has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the Board of Immigration Appeals ("BIA"). Respondent Blanche is a legal custodian of Petitioner.

24. Respondent William Keyes is the U.S. Attorney for the Northern District of Georgia. Respondent Keyes is being sued in his capacity as a legal representative of the federal government.

EXHAUSTION

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

LEGAL FRAMEWORK

A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and Detention.

26. The Fifth Amendment guarantees that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. These due process rights are both substantive and procedural. *Benitez v. Wallis*, 337 F.3d 1289, 1300 (11th Cir. 2003) *vacated on other grounds, Benitez v. Wallis*, 402 F.3d 1133 (11th Cir. 2005).

27. First, "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification

in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

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

29. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 531 (2003).

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

31. Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon*, 494 U.S. at 127. This is

so even in cases where that freedom is lawfully revocable. *See Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

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

33. Due process requires not only "changed circumstances" but also "evidence of urgent concerns," if Respondents seek to re-detain a person without a hearing.

34. DHS has the authority to release certain noncitizens on conditional parole while their removal proceedings are pending before an immigration judge. 8 U.S.C. § 1226(a)(2); *Castillo-Padilla v. United States AG*, 417 Fed. Appx. 888, 891 (11th Cir. 2011) (citing *Ortega-Cervantes*, 501 F.3d 1111, 1115 (9th Cir. 2007)) ("An alien may be "paroled into the United States" by the Attorney General . . . which contrasts starkly with being released on conditional parole (quoting 8 U.S.C. § 1226(a)(2)).

35. DHS may only release a noncitizen on an Order of Recognizance if "such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceedings." 8 C.F.R. § 236.1(c)(8). As such, release on parole reflects a determination by the government that the noncitizen is not a danger to the community or a significant flight risk. *United States v. Chinchilla*, 987 F.3d 1303, 1310–11 (11th Cir. 2021).

36. After a determination has been made that an individual is not a flight risk or danger, DHS may not re-arrest them "absent a change of circumstance." *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981); *see also Chinchilla*, 987 F.3d at 1312. ("Separate and apart from the immigration statutes and regulations, an order [for release] is a document prescribed by certain federal entitlement regulations as evidence of legal permission to stay in the United States. The alien's stay in the United States is necessarily temporary, as an order [for release] does not change the alien's unlawful immigration status."); *Id.* at 1310 ("In order to remove an unlawful alien subject to an order of supervision, immigration officials must first revoke the order of supervision, see 8 C.F.R. § 241.4(l), and must notify the alien of "the reasons for revocation," *see id.* § 241.13(i)(3)").

37. In recent months, ICE has increasingly taken individuals into immigration custody through a variety of encounters, including arrests at routine ICE check ins, inside or near immigration court buildings, and following street stops or encounters with local law enforcement. Many of these individuals had submitted asylum applications and were patiently waiting without issue for their next immigration court date.

38. In other cases, Respondents have attempted to justify re-detention by pointing to circumstances unrelated to any individualized assessment of flight risk or danger, including arrests by local law enforcement that do not result in criminal charges. Courts have rejected such justifications where the government fails to explain how the underlying circumstances support continued civil detention. *See, e.g., Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 WL 3281422, at *7 (N.D. Cal. Nov. 2025) (rejecting re-detention where respondents failed to show how the asserted grounds established danger or flight risk). Here, as in this case, Respondents have not identified any conduct by Petitioner that would support a finding that he is a danger to the community or a flight risk.

39. Instead, Respondents argue that the individuals are properly re-detained under the government's new and implausible interpretation of 8 U.S.C. § 1225(b)(2). However, Respondents arguments "fail to contend with the liberty interests

created by the fact that [the noncitizens]...were released on recognizance prior to the manifestation of this interpretation. *See Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2675785, at *10 (E.D. Cal. Sept. 18, 2025) (*emphasis in original*). Moreover, Respondents' mandatory detention argument has failed in almost every court to hear it because it does not accord with basic tenets of statutory interpretation. *See Bernal*, 2025 WL 3281422, at *2 (*collecting cases*).

40. As courts evaluate Respondents' tenuous justifications for re-detaining noncitizens previously released on an Order of Recognizance, it has become clear that due process requires not only "changed circumstances" but also "evidence of urgent concerns," if Respondents seek to re-detain a person without a hearing. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ") (*emphasis added*). *Rodriguez v. Kaiser*, 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that, "given the absence of evidence of urgent concerns . . . a pre-deprivation hearing [was] required to satisfy due process") (collecting cases); *Y.M.M.*, No. 2:25-cv-02075, 2025 WL 3101782, at *2 ("Numerous courts in this district and throughout the Ninth Circuit have recognized this requirement" of a pre-

deprivation hearing, "absent evidence of urgent concerns") (quotation marks and citation omitted). A pre-deprivation hearing before the government can re-detain a noncitizen is a crucial safeguard against pretextual arrests, especially in the current political environment where ICE is under intense pressure to meet arrest quotas. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1322 (W.D. Wash. Aug. 19, 2025). The legal principle is clear: Once the government makes the release determination, the individual has a liberty interest that cannot be taken away without a hearing—unless an "urgent" "change of circumstances" makes such a pre-deprivation hearing infeasible.

C. The Constitution Protects Noncitizens from Cruel and Unusual Punishment.

41. The Constitution requires government actors to ensure the safety and general well-being of all persons taken into custody, including non-citizens and persons who are not legally admitted to the United States. Convicted prisoners are protected by the Eighth Amendment, which prohibits cruel and unusual punishment despite an adjudication of criminal guilt.

42. The Eighth Amendment prohibits "[d]eliberate indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). However, detainees in immigration detention—in civil, not criminal detention—need not demonstrate "deliberate indifference" to establish a constitutional violation.

See Jones v. Blanas, 393 F.3d 918, 933-34 (9th Cir. 2004). A serious medical need exists where the "failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." *Clement v. Gomez*, 298 F.3d 898, 904 (9th Cir. 2002) (internal quotations omitted). Other factors for consideration include whether (1) "a reasonable doctor or patient would perceive the medical need in question as important and worthy of comment or treatment; (2) whether the medical condition significantly affects daily activities, and (3) the existence of chronic and substantial pain." *Brock v. Wright*, 315 F.3d 158, 162 (2d Cir. 2003) (internal quotations omitted).

43. Deliberate indifference constitutes a reckless disregard for a substantial risk of serious harm to a prisoner. *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). Deliberate indifference constitutes a two-part test: 1) there must be a substantial risk of serious harm or a serious medical need; and 2) there must be a "sufficiently culpable state of mind." *Id.* at 834; *Estelle*, 429 U.S. at 105.

44. DHS has the authority to release certain noncitizens on an Order of Recognizance (formally called "conditional parole") while their removal proceedings are pending before an immigration judge. 8 U.S.C. § 1226(a)(2); *Castillo-Padilla v. United States AG*, 417 Fed. Appx. 888, 891 (11th Cir. 2011) (*citing Ortega-Cervantes*, 501 F.3d 1111, 1115 (9th Cir. 2007)) ("An alien may

be "paroled into the United States" by the Attorney General . . . which contrasts starkly with being released on conditional parole (quoting 8 U.S.C. § 1226(a)(2)).

FACTUAL ALLEGATIONS

A. Petitioner Is Unlawfully Arrested and Taken into ICE Custody Following an Erroneous Arrest by Local Law Enforcement

45. Petitioner entered the United States on November 23, 2022, and was released into the United States released into the community after DHS determined that she did not pose a flight risk or danger. Petitioner has remained in the United States while awaiting the resolution of her immigration proceedings.

46. Upon information and belief, Petitioner poses no danger to the community, and has consistently complied with all immigration requirements.

B. As a Result of His Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable Harm.

47. Petitioner is being deprived of her liberty without any permissible justification. The Petitioner was previously detained during her entry to the United States and then released by government because she did not pose any sufficient risk of flight or danger to the community to warrant detention.

CLAIMS FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Due Process
(Substantive Due Process Prolonged Detention)

48. The allegations in the above paragraphs are realleged and incorporated herein.

49. The Fifth Amendment provides that "[n]o person" shall be "be deprived of life, liberty, or property, without due process of law."

50. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

51. Moreover, "[t]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

52. Respondents' mandatory detention of Petitioner without consideration for release on bond or access to a bond hearing violates her due process rights.

53. Civil immigration detention may serve only legitimate regulatory purposes (appearance and safety). Detention that is arbitrary, punitive, or not reasonably related to those purposes violates due process. "[D]ue process places a heightened burden of proof on the State in civil proceedings in which the 'individual interests at stake . . . are both particularly important and more substantial than mere loss of money.'" *Cooper v. Oklahoma*, 517 U.S. 348,

363 (1996). "[I]mmigration detention is an extraordinary liberty deprivation that must be 'carefully limited.'" *J.G.* 501 F. Supp. 3d 1331, 1336 (quoting *United States v. Salerno*, 481 U.S. 739, 750 (1987)).

54. The First, Second, and Ninth Circuits have the Government must bear the burden of proof to justify a noncitizen's detention pending removal proceedings. *See Hernandez-Lara v. Immigr. & Customs Enf't, Acting Dir.*, No. 19-cv-394-LM, 2019 WL 3340697, at *3 (D.N.H. July 25, 2019); *Hernandez-Lara v. Lyons*, 10 F.4th 19, 39 (1st Cir. 2021); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020); *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

55. There is an imbalance of resources between a detainee and the Government, which has substantial resources yet isn't required to present a shred of evidence. *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020) (noting that "the Government had substantial resources to deploy" and "to the extent the Government did not have the necessary information at its fingertips, it had broad regulatory authority to obtain it.").

56. The risk of an erroneous deprivation under the current bond procedure is significant and is not lessened by available administrative review. *J.G.*, 501 F. Supp. 3d at 1337–38. "Where the risk of erroneous deprivation is high,

and the deprivation the individual faces is severe, then modest, additional procedural safeguards carry high value." *Id.* at 1338–39.

57. ICE detained Petitioner and she has remained detained since. She is neither a flight risk nor a danger to the community. Continued detention under these circumstances is not reasonably related to appearance or safety and violates the Fifth Amendment.

58. Petitioner was released into the United States by Respondents. This previous release constituted a determination by Respondents that she was neither dangerous to the community nor a flight risk.

59. Petitioner has not become a danger or flight risk since her release from custody. Her re-detention thus does not serve a legitimate goal. Accordingly, her re-detention violates the Due Process Clause.

COUNT TWO
Violation of Fifth Amendment Right to Due Process
(Procedural Due Process –Detention)

60. The allegations in the above paragraphs are realleged and incorporated herein.

61. The Fifth Amendment guarantees noncitizens present in the country with due process rights, including the right to not be deprived of a liberty or property interest without notice and a hearing before a neutral decision-maker.

62. Petitioner has already been determined not to pose a flight risk or danger to the community. She has a protected liberty interest in his continued freedom

from detention and is entitled to due process before the government can deprive her of her liberty by re-detaining him. The Due Process Clause prohibits Petitioner's re-detention without a pre-deprivation hearing before a neutral decision-maker in which the government bears the burden of demonstrating that he poses a flight risk or danger to the community.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

(3) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;

(4) Declare that Petitioner's arrest and detention violates the INA, implementing regulations, and Due Process Clause of the Fifth Amendment.

(5) Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;

(6) Enjoin Respondents from re-detaining Petitioner unless her re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community; and

(7) Grant any further relief this Court deems just and proper.

Respectfully submitted,

This May 4, 2026.

COCHRAN
IMMIGRATION

/s/ Johanna Cochran
by: Johanna Cochran
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Brenda Garro Salazar, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this May 4, 2026.

/s/ Johanna Cochran
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