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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

VICTOR (VICKY) ALFONSO
VELAZQUEZ VELAZQUEZ,

Petitioner,

vs.

CHRISTOPHER J. LAROSE, Warden,
Otay Mesa Detention Center; DANIEL
A. BRIGHTMAN, Field Office Director,
San Diego Field Office, United States
Immigration and Customs Enforcement;
TODD M. LYONS, Acting Director,
United States Immigration and Customs
Enforcement; MARKWAYNE
MCMULLIN, Secretary of Homeland
Security; TODD BLANCHE, Acting
Attorney General, in their official
capacities,

Respondents.

Case No.: '26CV3108 RFL SBC

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW CAUSE
WITHIN THREE DAYS AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

1 Petitioner Victor (Vicky) Alfonso Velazquez Velazquez petitions this Court for a
2 writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' unlawful detention
3 and states as follows:

4 **I. INTRODUCTION**

5 1. Petitioner Velazquez is a noncitizen who was previously released from
6 immigration custody but was abruptly re-detained and jailed for no legitimate reason. The
7 Department of Homeland Security necessarily determined that she was neither a flight
8 risk nor a danger to the community when it previously released her from its custody in
9 2022. But on May 6, 2026, U.S. Immigration and Customs Enforcement (ICE) officers
10 unlawfully detained Petitioner Velazquez while she lawfully visited a military base.

11 2. Petitioner Velazquez dutifully complied with all requirements during her
12 initial removal proceedings and her ongoing affirmative petition for relief, pending with
13 the U.S. Citizenship and Immigration Services (USCIS) since May 30, 2023. Petitioner
14 has no criminal history of any kind. Nor does she present risk of flight that justify re-
15 detention. Yet ICE continues to unlawfully detain her in prison-like conditions, keeping
16 her separated from her community in a facility that does not align with her gender identity
17 and expression.

18 3. ICE failed to provide Petitioner Velazquez with any pre-deprivation hearing
19 before her re-detention to determine whether material changes in her circumstances
20 warrant re-detention based on danger to the community or risk of flight, despite a growing
21 consensus among United States district courts that such a hearing is necessary in similar
22 circumstances.

23 4. Petitioner Velazquez's detention under these circumstances violates her right
24 to substantive and procedural due process, as it is not justified by a legitimate government
25 purpose. Additionally, under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), her
26 fundamental liberty interest far outweighs the government's interest in detaining her, and
27 the risk of error is great where, as here, there has been no pre-deprivation process to
28 ensure her loss of liberty is justified. For similar reasons, her detention also contravenes

1 the Immigration and Nationality Act (INA) and the Administrative Procedure Act (APA),
2 thereby violating the doctrine laid out in *United States ex rel. Accardi v. Shaughnessy*, 347
3 U.S. 260, 267–68 (1954).

4 5. After her arrest, ICE detained Petitioner Velazquez at a facility in downtown
5 overnight. After her detention in the federal building basement, ICE transferred Petitioner
6 Velazquez to the Otay Mesa Detention Center in San Diego, where she has languished in
7 detention in a male facility that does not align with her gender identity and expression,
8 with no recourse to seek release because Respondents claim that recent changes to
9 decades-old agency policies and practices render Petitioner ineligible to seek bond from
10 an immigration judge.

11 6. Accordingly, Petitioner Velazquez seeks her release and challenges her
12 detention as a violation of the Due Process Clause of the Fifth Amendment, the INA, and
13 the APA.

14 7. Petitioner Velazquez respectfully requests that this Court issue the writ of
15 habeas corpus commanding Respondents to release her from custody and enjoin
16 Respondents from re-detaining her without notice to her counsel and a pre-deprivation
17 hearing before a neutral decision-maker at which Respondents must prove material
18 changes in circumstances justify re-detention. Petitioner seeks that relief under the federal
19 habeas statute, 28 U.S.C. § 2241, which is the proper vehicle for challenging civil
20 immigration detention. *See Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024) (noting
21 that a noncitizen’s challenge to her present confinement falls within the “core of habeas”).

22 **II. CUSTODY**

23 8. Petitioner Velazquez is currently in Respondents’ legal and facility custody,
24 detained at the Otay Mesa Detention Center in San Diego, California. She is under the
25 direct control of Respondents and their agents.

26 **III. PARTIES**

27 9. Petitioner Victor (Vicky) Alfonso Velazquez Velazquez has been in ICE
28 custody since on or about May 6, 2026. (Ex. 1 at ¶¶ 6–10.) She was previously in removal

1 proceedings before the immigration court, but the Immigration Judge dismissed these
2 proceedings on April 7, 2023. (Ex. 2.) Petitioner Velazquez submitted her I-589
3 application for asylum and for withholding of removal and protection under the
4 Convention Against Torture on May 25, 2023, and USCIS indicated receipt of her petition
5 as of May 30, 2023. (Ex. 3.)

6 10. Respondent Christopher J. LaRose is the Senior Warden at the Otay Mesa
7 Detention Center, where Petitioner Velazquez is being held. Respondent Larose is
8 Petitioner Velazquez’s immediate custodian, and she sues him in his official capacity.

9 11. On information and belief, Respondent Daniel A. Brightman is the current
10 Field Office Director responsible for the San Diego Field Office of ICE with
11 administrative jurisdiction over Petitioner’s immigration case. He is a Petitioner
12 Velazquez’s legal custodian, and she sues him in his official capacity.

13 12. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is a
14 component of the U.S. Department of Homeland Security, 6 U.S.C. § 252, and an
15 “agency” within the meaning of the APA, 5 U.S.C. § 701(b)(1). It is the agency
16 responsible for enforcing immigration laws, and it is detaining Petitioner Velazquez.
17 Respondent Lyons has custodial authority over Petitioner, who names him in his official
18 capacity.

19 13. Respondent Markwayne McMullin is the Secretary of the DHS. DHS is the
20 federal agency responsible for enforcing immigration laws and granting immigration
21 benefits. *See* 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent McMullin has ultimate
22 custodial authority over Petitioner, who names him in his official capacity.

23 14. Respondent Todd Blanche is the Acting Attorney General of the United
24 States. He is responsible for the INA’s implementation and enforcement and oversees the
25 Executive Office for Immigration Review. *See* 8 U.S.C. § 1103(a)(1), (g). Petitioner
26 names him in his official capacity.

1 **IV. JURISDICTION AND VENUE**

2 15. This Court has jurisdiction to consider this habeas competition and complaint
3 under 28 U.S.C. § 1331; 28 U.S.C. § 2241(a); the Due Process Clause, U.S. Const.
4 amend. V; and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2.

5 16. Venue is proper in this District under 28 U.S.C. § 1391(b), (e) and 28 U.S.C.
6 § 2242 because: 1) on information and belief, at least one Respondent resides in this
7 District; 2) Petitioner Velazquez is detained in this District; 3) Petitioner Velazquez'
8 immediate physical custodian is located in this District; and 4) a substantial part of the
9 events giving rise to the claims in this action have taken place in this District.

10 **V. RELEVANT FACTUAL BACKGROUND**

11 17. Petitioner Velazquez is a 35-year-old national and citizen of Mexico. (Exs. 4,
12 5.)

13 18. Petitioner Velazquez entered the United States on or about May 30, 2022, at
14 or near San Ysidro, California to seek asylum and protection from persecution due to her
15 sexual orientation and gender identity. (Exs. 4, 5.) She has been living at liberty in San
16 Diego County since entering the United States. (Ex. 1 at ¶¶ 3–5.)

17 19. Petitioner Velazquez was placed in removal proceedings in the San Diego
18 Immigration Court. (Ex. 4.) She attended all required immigration hearings and complied
19 with all other immigration and legal obligations. On November 29, 2022, through
20 undersigned pro bono counsel, Petitioner Velazquez filed her initial I-589 application,
21 supporting evidence, pre-hearing statement, and statement of eligibility. She filed a pre-
22 hearing brief in support of that application on December 23, 2022.

23 20. On January 10, 2023, the parties appeared at a master calendar hearing. The
24 Immigration Judge set a deadline of February 13, 2023, for the DHS's filings and an
25 individual calendar hearing for April 7, 2023. DHS did not file any opposition or response
26 to Petitioner Velazquez's brief. After the individual hearing, the Immigration Judge
27 dismissed the proceedings without prejudice on April 10, 2023. (Ex. 1 at ¶ 1; Ex. 2.) DHS
28 did not appeal.

1 21. As discussed above, Petitioner Velazquez filed her application for affirmative
2 relief with USCIS in May of 2023. (Ex. 3 at ¶ 4; Ex. 3.) The application remains pending.

3 22. Petitioner Velazquez applied for and received employment authorization.
4 (Ex. 1 at ¶ 4.) While at liberty, Petitioner complied with all her immigration obligations.
5 She has no criminal history in the United States or any other country in the world. (Ex. 1
6 at ¶ 5.)

7 23. On May 6, 2026, Petitioner Velazquez and a group of friends lawfully visited
8 a military base in San Diego County. (Ex. 1 at ¶ 6.) While she and her friends were
9 sightseeing and enjoying the beautiful views, military base police approached their car.
10 (Ex. 1 at ¶ 7.) An officer instructed one of Petitioner Velazquez's friends to delete videos
11 from his phone and he complied. The officers checked their identification for the second
12 time and instructed them to wait. (*Id.*)

13 24. ICE officers arrived on the military base and detained Petitioner Velazquez.
14 (Ex. 1 at ¶ 8.) ICE officers took Petitioner Velazquez to a facility in downtown San Diego,
15 where she was kept in a cell overnight. (Ex. 1 at ¶ 9.) The next morning, ICE transferred
16 Petitioner Velazquez to the Otay Mesa Detention Center, where she remains detained in
17 the men's housing unit despite telling ICE officers that she is a transgender woman. (Ex. 1
18 at ¶ 10.)

19 VI. LEGAL FRAMEWORK

20 A. Substantive Due Process Constrains DHS's Ability to Detain Noncitizens

21 25. Under the Due Process Clause, “[n]o person shall . . . be deprived of life,
22 liberty, or property, without due process of law.” U.S. Const. amend. V.

23 26. While the immigration laws afford ICE discretion over its decisions to arrest,
24 detain, and revoke prior release decisions, those decisions are nonetheless constrained by
25 the laws Congress has enacted and the requirements of the Constitution, including the Due
26 Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom from
27 imprisonment—from government custody, detention, or other forms of physical
28 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”);

1 *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (noting that “the government’s
2 discretion to incarcerate non-citizens is always constrained by the requirements of due
3 process”).

4 27. Immigration detention only comports with the Due Process Clause when it
5 furthers the government’s goals of “ensuring the appearance of [noncitizens] at future
6 immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S.
7 at 690 (citation modified). ICE detention violates substantive due process where it is not
8 justified by flight risk or danger concerns. *See id.*

9 28. For that reason, ostensibly “nonpunitive” ICE detention under a blanket
10 policy where DHS claims authority to arrest and detain all noncitizens who it alleges are
11 not lawfully present in the United States, without regard for whether they are a flight risk
12 or danger, would violate the Due Process Clause. *See id.* So too would ICE detention for
13 the purposes of meeting quotas, punishment, deterring immigration, or encouraging
14 voluntary deportation. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015)
15 (observing that “[i]n discussing civil commitment more broadly, the [Supreme] Court has
16 declared such ‘general deterrence’ justifications impermissible” (citing *Kansas v. Crane*,
17 534 U.S. 407, 412 (2002) and finding a policy under which DHS detained “one particular
18 individual” for purposes of “sending a message of deterrence to other . . . individuals who
19 may be considering immigration” was likely contrary to due process).

20 29. All such detentions would be unlawful because they bear no reasonable
21 relation to a legitimate government purpose. *See id.*; accord *Demore v. Kim*, 538 U.S.
22 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S. 346, 361–62
23 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

24 **B. Procedural Due Process Also Limits DHS’s Ability to Detain Noncitizens**
25 **Who It Previously Released**

26 30. Procedural due process ensures that no persons are deprived of their liberty
27 absent a fair process. Under *Mathews*, courts evaluate procedural due process by
28

1 balancing (1) the private interest affected, (2) the risk of erroneous deprivation of such
2 interest, and (3) the government’s interest. 424 U.S. at 335.

3 31. “[T]he liberty [of a person released from government custody] is valuable
4 and must be seen as within the protection of the Fourteenth Amendment.” *Morrisey v.*
5 *Brewer*, 408 U.S. 471, 482 (1972) (citing the procedural Due Process Clause, U.S. Const.
6 amend. XIV, § 1).

7 32. “[E]ven when ICE has the initial discretion to detain or release a noncitizen
8 pending removal proceedings, after that individual is released from custody she has a
9 protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d
10 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 U.S.
11 Dist. LEXIS 82538, at *5 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, No. 21-cv-
12 01434-JST, 2021 U.S. Dist. LEXIS 40823, at *4–5 (N.D. Cal. Mar. 1, 2021); *Ortiz*
13 *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 U.S. Dist. LEXIS 153579, at *11 (N.D.
14 Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

15 33. Courts in this district have joined a growing chorus of district courts that
16 have recognized that noncitizens have a significant liberty interest in both “continued
17 freedom *after release on own recognizance*,” *Alegria Palma v. LaRose*, No. 25-cv-1942-
18 BJC-MMP, 2025 U.S. Dist. LEXIS 213718, at *8 (S.D. Cal. Aug. 11, 2025) (emphasis
19 added), and in “freedom from imprisonment” after “the government grants a [noncitizen]
20 *parole* into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 U.S. Dist.
21 LEXIS 190593, at *7 (S.D. Cal. Sept. 26, 2025) (emphasis added). *Accord Van Tran v.*
22 *LaRose*, No. 26-CV-2653 JLS (GC), 2026 U.S. Dist. LEXIS 1050046, at *6 (S.D. Cal.
23 May 12, 2026); *Garcia-Marroquin v. Mullin*, No. 26-CV-2131 JLS (BLM), 2026 U.S.
24 Dist. LEXIS 100748, at *4–5 (S.D. Cal. May 6, 2026); *Nicolas v. Mullin*, No. 26-CV-
25 2464 JLS (MMP), 2026 U.S. Dist. LEXIS 91241, at *4 (S.D. Cal. Apr. 24, 2026); *Wen*
26 *Xue Chang v. Mullin*, No. 26-CV-2218 JLS (SBC), 2026 U.S. Dist. LEXIS 85170, at *4
27 (S.D. Cal. Apr. 17, 2026); *Martinez v. Lyons*, No. 26-CV-2173 JLS (AHG), 2026 U.S.
28 Dist. LEXIS 85166, at *9 (S.D. Cal. Apr. 17, 2026); *Velasquez v. Noem*, No. 26-cv-0746-

1 BJC-MMP, 2026 U.S. Dist. LEXIS 81797, at *6 (S.D. Cal. Apr. 14, 2026); *Miguel v.*
2 *Bondi*, No. 26-CV-1636 JLS (SBC), 2026 U.S. Dist. LEXIS 66319, at *5 (S.D. Cal.
3 Mar. 27, 2026); *Sultonkulov v. Casey*, No. 26-CV-848 JLS (DEB), 2026 U.S. Dist. LEXIS
4 66265, at *4–5 (S.D. Cal. Mar. 27, 2026); *Nieves v. Noem*, No. 26-CV-1497 JLS (JLB),
5 2026 U.S. Dist. LEXIS 64991, at *4–5 (S.D. Cal. Mar. 26, 2026); *Alba v. Noem*, No.
6 26cv561-LL-DEB, 2026 U.S. Dist. LEXIS 58237, at *8–9 (S.D. Cal. Mar. 19, 2026);
7 *Abdias St. Fort v. LaRose*, No. 26cv519-LL-SBC, 2026 U.S. Dist. LEXIS 55749, at *7–8
8 (S.D. Cal. Mar. 17, 2026); *Teran v. Casey*, No. 26-CV-1205 JLS (DEB), 2026 U.S. Dist.
9 LEXIS 52693, at *6–7 (S.D. Cal. Mar. 13, 2026); *Quiroz v. LaRose*, No. 26-CV-866 JLS
10 (DEB), 2026 U.S. Dist. LEXIS 49482, at *6–7 (S.D. Cal. Mar. 10, 2026); *Jaspal Singh v.*
11 *Casey*, No. 26-CV-1092 JLS (SBC), 2026 U.S. Dist. LEXIS 49419, at *6 (S.D. Cal.
12 Mar. 10, 2026); *Zvorygina v. LaRose*, No. 26-CV-980 JLS (DEB), 2026 U.S. Dist. LEXIS
13 49423, at *7–8 (S.D. Cal. Mar. 10, 2026); *Singh v. Casey*, No. 26-CV-948 JLS (VET),
14 2026 U.S. Dist. LEXIS 49459, at *6 (S.D. Cal. Mar. 10, 2026); *Zhen Zhen Zhang v.*
15 *Lyons*, No. 26-CV-1073 JLS (SBC), 2026 U.S. Dist. LEXIS 48337, at *6 (S.D. Cal. Mar.
16 9, 2026); *Oriana v. LaRose*, No. 26-CV-1213 JLS (MMP), 2026 U.S. Dist. LEXIS 48352,
17 at *6–7 (S.D. Cal. Mar. 9, 2026); *Vicky v. Casey*, No. 26-CV-949 JLS (JLB), 2026 U.S.
18 Dist. LEXIS 44782, at *6–7 (S.D. Cal. Mar. 4, 2026); *Himanshu Himanshu v. Casey*, No.
19 26-CV-951 JLS (BLM), 2026 U.S. Dist. LEXIS 44798, at *7–8 (S.D. Cal. Mar. 4, 2026);
20 *Camacho Cabrera v. LaRose*, No. 26cv863-LL-MSB, 2026 U.S. Dist. LEXIS 36793, at
21 *9 (S.D. Cal. Feb. 23, 2026); *Rajinder Chauhan v. Casey*, No. 26-CV-778 JLS (BJW),
22 2026 U.S. Dist. LEXIS 36665, at *6 (S.D. Cal. Feb. 23, 2026); *Ozkarahan v. Divver*, No.
23 26-CV-653 JLS (MMP), 2026 U.S. Dist. LEXIS 36546, at *5–6 (S.D. Cal. Feb. 23, 2026);
24 *Rahman v. Casey*, No. 26-CV-646 JLS (MMP), 2026 U.S. Dist. LEXIS 36587, at *7–8
25 (S.D. Cal. Feb. 23, 2026); *Aguilera v. City of Holtville*, No. 26cv532-LL-MSB, 2026 U.S.
26 Dist. LEXIS 28581, at *7–8 (S.D. Cal. Feb. 11, 2026); *Darji v. LaRose*, No. 26-CV-549
27 JLS (DEB), 2026 U.S. Dist. LEXIS 25457, at *7–8 (S.D. Cal. Feb. 6, 2026); *Machado v.*
28 *Dir. of the Otay Mesa Det. Ctr.*, No. 25-cv-3277, 2026 U.S. Dist. LEXIS 9290, at *12–13

1 (S.D. Cal. Jan. 16, 2026); *Amit v. Casey*, No. 25-CV-3855 JLS (BLM), 2026 U.S. Dist.
2 LEXIS 6674, at *5 (S.D. Cal. Jan. 13, 2026); *Aguilar-Perez v. LaRose*, No. 25cv3409-LL-
3 DDL, 2026 U.S. Dist. LEXIS 6664, at *13 (S.D. Cal. Jan. 13, 2026); *Akilov v. LaRose*,
4 No. 25-CV-3831 JLS (BJW), 2026 U.S. Dist. LEXIS 4467, at *7–8 (S.D. Cal. Jan. 9,
5 2026); *Garcia v. LaRose*, No. 25-CV-3750 JLS (DEB), 2026 U.S. Dist. LEXIS 4472, at
6 *7–8 (S.D. Cal. Jan. 9, 2026); *De La Cruz v. LaRose*, No. 25-cv-3770-LL-MSB, 2026
7 U.S. Dist. LEXIS 4480, at *7–8 (S.D. Cal. Jan. 9, 2026); *Nasir Karokhel v. LaRose*, No.
8 25-CV-3751 JLS (KSC), 2026 U.S. Dist. LEXIS 1786, at *8–9 (S.D. Cal. Jan. 6, 2026);
9 *M.R. v. LaRose*, No. 25-CV-3710 JLS (BLM), 2026 U.S. Dist. LEXIS 1856, at *8–9 (S.D.
10 Cal. Jan. 6, 2026); *Vikas Kumar v. LaRose*, No. 25-CV-3796 JLS (DDL), 2026 U.S. Dist.
11 LEXIS 1825, at *7–8 (S.D. Cal. Jan. 6, 2026); *Naveen v. LaRose*, No. 25-CV-3689 JLS
12 (AHG), 2025 U.S. Dist. LEXIS 268483, at *7–8 (S.D. Cal. Dec. 31, 2025); *Ramos v.*
13 *LaRose*, No. 25-CV-3726 JLS (DEB), 2025 U.S. Dist. LEXIS 268488, at *7–8 (S.D. Cal.
14 Dec. 30, 2025); *Vats v. LaRose*, No. 25-CV-3684 JLS (KSC), 2025 U.S. Dist. LEXIS
15 266788, at *7–8 (S.D. Cal. Dec. 29, 2025); *Martinez v. LaRose*, No. 25-CV-3308 JLS
16 (MSB), 2025 U.S. Dist. LEXIS 262039, at *12–13 (S.D. Cal. Dec. 18, 2025); *Salazar-*
17 *Osorio v. Noem*, No. 25-cv-3296-JES-MMP, 2025 U.S. Dist. LEXIS 250683, at *4–5
18 (S.D. Cal. Dec. 4, 2025); *Sanchez v. LaRose*, No. 25-CV-3136 JLS (JLB), 2025 U.S. Dist.
19 LEXIS 253831, at *9–10 (S.D. Cal. Dec. 3, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-
20 2824-CAB-DDL, 2025 U.S. Dist. LEXIS 227941, at *4 (S.D. Cal. Nov. 19, 2025);
21 *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 U.S. Dist. LEXIS 225957, at *16–17
22 (S.D. Cal. Nov. 17, 2025); *Quoc Thanh Thai Nguyen v. Noem*, No. 6:26-cv-3134-MDH,
23 2026 U.S. Dist. LEXIS 55100, at *4 (W.D. Mo. Mar. 17, 2026); *Pesina v. Arnott*, No.
24 6:26-cv-3124-MDH, 2026 U.S. Dist. LEXIS 48827, at *6 (W.D. Mo. Mar. 10, 2026);
25 *Vasquez v. Arnott*, No. 6:26-cv-3101-MDH, 2026 U.S. Dist. LEXIS 36167, at *5 (W.D.
26 Mo. Feb. 23, 2026); *Utrera v. Arnott*, No. 6:26-cv-3051-MDH, 2026 U.S. Dist. LEXIS
27 26991, at *4 (W.D. Mo. Feb. 10, 2026); *Kudyrkulov v. Martin*, No. 6:26-cv-3035-MDH,
28 2026 U.S. Dist. LEXIS 24041, at *5 (W.D. Mo. Feb. 5, 2026); *Iza v. Arnott*, No. 6:25-cv-

1 3392-MDH, 2026 U.S. Dist. LEXIS 3159, at *6 (W.D. Mo. Jan. 8, 2026); *Dadfar v.*
2 *Arnott*, No. 6:25-cv-3329-MDH, 2025 U.S. Dist. LEXIS 233648, at *6–7 (W.D. Mo. Dec.
3 1, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC), 2025 U.S. Dist.
4 LEXIS 221796, at *14 (E.D. Cal. Nov. 10, 2025); *Gomes Vilela v. Robbins*, 813 F. Supp.
5 3d 1144, 1151 (E.D. Cal. 2025); *Pablo Sequen v. Albarran*, 806 F. Supp. 3d 1069, 1082
6 (N.D. Cal. 2025); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 491 (E.D.N.Y. 2025); *Lopez-*
7 *Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685–86 (W.D. Tex. 2025); *Ramirez Tesara v.*
8 *Wamsley*, 800 F. Supp. 3d 1130, 1136 (W.D. Wash. 2025); *E.A. T.-B. v. Wamsley*, 795 F.
9 Supp. 3d 1316, 1323 (W.D. Wash. Aug. 19, 2025).

10 34. “Where, as here, the petitioner has not received any bond or custody
11 hearing’, ‘the risk of an erroneous deprivation of liberty is high’ because neither the
12 government nor [the petitioner] has had an opportunity to determine whether there is any
13 valid basis for her detention.” *Pinchi*, 792 F. Supp. 3d at 1035 (quoting *Singh v. Andrews*,
14 803 F. Supp. 3d 1035, 1047 (E.D. Cal. 2025)) (citation modified). And where a petitioner
15 “was previously released following a determination that he posed no flight risk or danger
16 to the community, and absent any new evidence showing a material change in
17 circumstances, the risk of erroneous detention without a hearing is substantial.” *Alegria*
18 *Palma*, 2025 U.S. Dist. LEXIS 213718, at *8 (ordering petitioner’s immediate release
19 where he was re-detained without pre-deprivation hearing).

20 35. The requirement of an individualized determination is even stronger in cases
21 of re-detention because the prior “[r]elease reflects a determination by the government
22 that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*,
23 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d*, 905 F.3d 1137 (9th Cir. 2018). “[T]o
24 be lawful,” the re-detention “must be based on evidence that the circumstances relevant to
25 that original release decision have changed.” *Saravia*, 280 F. Supp. 3d at 1196.

26 36. “To satisfy due process, those changed circumstances must represent
27 individualized legal justification for detention.” *Sanchez*, 2025 U.S. Dist. LEXIS 190593,
28 at *8–9 (citation omitted).

1 37. The government cannot claim an interest in re-detention where there are no
2 changed circumstances going to flight risk or danger sufficient to warrant re-detention.
3 *See Pinchi*, 792 F. Supp. 3d at 1036 (“The government does not claim that any material
4 circumstances have changed that would warrant reassessment of Ms. Garro Pinchi’s risk
5 of flight or dangerousness, and it has articulated no other reason for her detention.”). Even
6 if the government asserted the existence of such changed circumstances, its interest in
7 denying a pre-deprivation hearing to prove that claim is negligible, particularly because
8 custody hearings are a routine practice for immigration courts. *Id.* “The costs to the public
9 of immigration detention are ‘staggering’,” *Hernandez*, 872 F.3d at 996, but the “effort
10 and cost required to provide Petitioner with procedural safeguards is minimal,” *Doe v.*
11 *Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025).

12 38. Thus, detention without a pre-deprivation hearing establishing that changed
13 circumstances exist to justify re-detention violates procedural due process.

14 **C. This Statutory Framework Governs Petitioner Velazquez’s Detention**

15 39. Respondents detained Petitioner Velazquez under 8 U.S.C. 1226(a), which
16 provides, in pertinent part, that:

17 On a warrant issued by the Attorney General, a [noncitizen] may be arrested
18 and detained pending a decision on whether the [noncitizen] is to be removed
19 from the United States. Except as provided in subsection (c) and pending such
20 decision, the Attorney General—

- 19 (1) may continue to detain the arrested [noncitizen]; and
20 (2) may release the [noncitizen] on—
21 (A) bond of at least \$1,500 with security approved by, and containing
22 conditions prescribed by, the Attorney General; or
23 (B) conditional parole.

22 40. Section 1226(a) governs the detention of noncitizens “inside the United
23 States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

24 41. Section 1225(b)(2), in contrast, authorizes the detention of applicants for
25 admission who are “seeking admission” but “not clearly and beyond a doubt entitled to be
26 admitted.” Unlike section 1226(a), section 1225(b)(2) provides that individuals who fall
27 under its authority “shall be detained” during the pendency of proceedings, though they
28 too remain eligible for release through the parole process. *Jennings*, 583 U.S. at 300

1 (holding that release on “parole” under 8 U.S.C. § 1182(d)(5)(A) remains available even
2 for people held under otherwise-mandatory detention under section 1225(b)).

3 42. Petitioner Velazquez was unquestionably detained in the interior of the
4 country where she was detained for a few days after initially entering the United States
5 (*see* Ex. 1 at ¶ 3); thus, she was not “seeking admission” at the time of her re-detention, so
6 her detention is governed by section 1226(a). *See, e.g., Esquivel-Ipina v. LaRose*, 812 F.
7 Supp. 3d 1073, 1081 (S.D. Cal. 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064, 1075–76
8 (S.D. Cal. 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304 CAS (BFM), 2025
9 U.S. Dist. LEXIS 174828, at *13 (C.D. Cal. Sept. 8, 2025).

10 43. Immigration detention “has two regulatory goals: ensuring the appearance of
11 [noncitizens] at future immigration proceedings and preventing danger to the
12 community.” *Zadvydas*, 533 U.S. at 690 (citation modified); *see also* 8 U.S.C. § 1226(a),
13 (b); 8 U.S.C. § 1231(a)(6); 8 C.F.R. § 1236.1(c)(8).

14 44. Those previously released by DHS, like Petitioner Velazquez, have
15 necessarily been deemed neither a flight risk nor a danger. 8 C.F.R. § 1236.1(c)(8)
16 (authorizing release of noncitizens under section 1226(a) if they “would not pose a danger
17 to property or persons” and are “likely to appear for any future proceeding”); 8 C.F.R. §
18 212.5(b) (authorizing parole from custody of noncitizens deemed “neither a security risk
19 nor a risk of absconding”).

20 45. In cases of individuals previously released by DHS, re-detention under
21 section 1226(a) requires an individualized determination of a material change in
22 circumstances relating to flight risk or danger. *See Ortega*, 415 F. Supp. 3d at 968 (“[T]he
23 DHS re-arrests individuals only after a ‘material’ change in circumstances.” (citing
24 *Saravia*, 280 F. Supp. 3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec. 637, 640
25 (B.I.A. 1981) (noting that “where a previous bond determination has been made by an
26 immigration judge, no change should be made by [DHS] absent a change of
27 circumstance”).

1 46. Absent a material change in circumstances, the re-detention of noncitizens
2 previously released by DHS violates the INA because it does not serve the purpose of the
3 statute.

4 **D. The APA Also Restrains to DHS's Detention Decisions**

5 47. Under the APA, courts may set aside agency action that is contrary to law or
6 constitutional right. 5 U.S.C. § 706(2).

7 48. To be reviewable under the APA, the challenged action must constitute final
8 agency action, which includes “the whole or a part of an agency rule, order, license,
9 sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13).

10 49. Petitioner Velazquez’s detention occurred under reviewable agency action.
11 Specifically, ICE’s San Diego Field Office has adopted a policy where it claims authority
12 to arrest and detain all noncitizens who it alleges are not lawfully present in the United
13 States, without regard for whether they are a flight risk or danger. Such a policy marks the
14 “consummation” of the ICE’s decision-making process and is an action “by which rights
15 or obligations have been determined, or from which legal consequences will flow.”
16 *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (citation modified).

17 50. “Agency action need not be in writing to be final and judicially reviewable”
18 under the APA, and an “unwritten policy can still satisfy the APA’s pragmatic final
19 agency action requirement.” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168,
20 1206–07 (S.D. Cal. 2019) (citation modified). “A contrary rule would allow an agency to
21 shield its decisions from judicial review simply by refusing to put those decisions in
22 writing.” *Id.* at 1207 (citation modified).

23 51. ICE’s decision to re-detain Petitioner Velazquez constitutes final agency
24 action because the re-detentions mark the “consummation” of the ICE’s decision-making
25 process on the question of Petitioner Velazquez’s custody, and it is an action “by which
26 rights or obligations have been determined, or from which legal consequences will flow.”
27 *Bennett*, 520 U.S. at 178 (citation modified). Indeed, the “practical and legal effects of the
28 agency action” are that Petitioner Velazquez has been deprived of her liberty since May 6,

1 2026, with no end in sight. *Or. Natural Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977,
2 982 (9th Cir. 2006).

3 52. Courts must “hold unlawful and set aside agency actions, findings and
4 conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise not in
5 accordance with the law; (b) contrary to constitutional right, power, privilege, or
6 immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short of
7 statutory right; or (d) without observance of procedures required by law. 5 U.S.C. §
8 706(2)(A)–(D).

9 53. Final agency action is arbitrary and capricious if the agency fails to
10 “articulate a satisfactory explanation for its action[,] including a rational connection
11 between the facts found and the choice made.” *See Motor Vehicle Mfrs. Ass'n v. State*
12 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation modified) (*State Farm*). Courts
13 may not consider an agency’s “impermissible post hoc rationalizations.” *DHS v. Regents*
14 *of the Univ. of Cal.*, 591 U.S. 1, 22 (2020).

15 54. Accordingly, ICE’s policy constitutes final agency action and, for the reasons
16 discussed above, violates the APA, 5 U.S.C. § 706(2), as arbitrary and capricious and
17 contrary to due process and the INA.

18 55. Additionally, ICE’s decision to re-detain Petitioner Velazquez was arbitrary
19 and capricious in violation of the APA where the agency failed to contemporaneously—or
20 ever—articulate any flight-risk or danger-based justifications for its decision.

21 VII. CLAIMS FOR RELIEF

22 FIRST CLAIM FOR RELIEF 23 Violation of the Substantive Due Process Clause 24 U.S. Const. amend. V

25 56. Petitioner Velazquez realleges and incorporates by reference paragraphs
26 1–55, above.

27 57. The Due Process Clause of the Fifth Amendment forbids the government
28 from depriving any person of liberty without due process of law. U.S. Const. amend. V;

1 *see generally Reno v. Flores*, 507 U.S. 292, 301–02 (1993); *Zadvydas*, 533 U.S. at 690;
2 *Demore*, 538 U.S. at 523.

3 58. “The Due Process Clause applies to all ‘persons’ within the United States,
4 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
5 permanent.” *Zadvydas*, 533 U.S. at 693 (citations omitted).

6 59. “Freedom from imprisonment—from government custody, detention, or
7 other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Id.*
8 at 690.

9 60. Immigration detention only comports with due process when it furthers the
10 government’s goals of ensuring the appearance of noncitizens at future immigration
11 proceedings and preventing danger to the community. *Id.* Immigration detention that does
12 not serve the legitimate government purposes of preventing flight or mitigating danger
13 violates substantive due process. *See id.*

14 61. Immigration detention under a blanket policy by which ICE claims authority
15 to arrest and detain all noncitizens who it alleges are not lawfully present in the United
16 States, without regard for whether they are a flight risk or danger—whether for
17 deterrence, to satisfy a quota, or for other purposes that do not bear a reasonable relation
18 to preventing danger or flight risk—violates the Due Process Clause. *Id.*; *Demore*, 538
19 U.S. at 532–33 (Kennedy, J., concurring).

20 62. Petitioner Velazquez’s detention violates the Due Process Clause because it
21 is not rationally related to any legitimate government purpose.

22 **SECOND CLAIM FOR RELIEF**
23 **Violation of the Procedural Due Process Clause**
24 **U.S. Const. amend. XIV, § 1**

25 63. Petitioner Velazquez realleges and incorporates by reference paragraphs
26 1–62, above.

27 64. “In the context of immigration detention, it is well-settled that due process
28 requires adequate procedural protections to ensure that the government’s asserted
justification for physical confinement outweighs the individual’s constitutionally

1 protected interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (citation
2 modified).

3 65. As noted above, courts evaluate procedural due process by balancing 1) the
4 private interest affected, 2) the risk of erroneous deprivation of such interest, and 3) the
5 government’s interest. *Mathews*, 424 U.S. at 335.

6 66. Immigration detention always implicates the liberty interest in “freedom
7 from imprisonment.” *Zadvydas*, 533 U.S. at 690. In addition, when the government
8 releases someone, they retain a liberty interest in their on-going release from government
9 custody. *E.g.*, *Morrisey*, 408 U.S. at 482; *Alegria Palma*, 2025 U.S. Dist. LEXIS 213718,
10 at *8; *Sanchez*, 2025 U.S. Dist. LEXIS 190593, at *7.

11 67. Where a detained individual does not receive any pre-deprivation hearing,
12 “the risk of an erroneous deprivation of liberty is high because neither the government nor
13 [the petitioner] has had an opportunity to determine whether there is any valid basis for
14 her detention.” *Pinchi*, 792 F. Supp. 3d at 1035 (citation modified); *Alegria Palma*, 2025
15 U.S. Dist. LEXIS 213718, at *8 (“Given that Petitioner was previously released following
16 a determination that he posed no flight risk or danger to the community, and absent any
17 new evidence showing a material change in circumstances, the risk of erroneous detention
18 without a hearing is substantial.”).

19 68. The government can claim no interest in re-detention where there are no
20 changed circumstances going to flight risk or danger that warrant re-detention. *See Pinchi*,
21 792 F. Supp. 3d at 1035. Thus, a fair process for proving the existence of such changed
22 circumstances satisfies any government interest in re-detention.

23 69. Because the government has not afforded Petitioner Velazquez a pre-
24 deprivation hearing to determine whether changed circumstances as to flight risk or
25 danger warrant her re-detention, her detention violates procedural due process.

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THIRD CLAIM FOR RELIEF

Violation of INA
8 U.S.C. § 1226(a)

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3 70. Petitioner Velazquez realleges and incorporates by reference paragraphs
4 1–69, above.

5 71. Petitioner Velazquez was re-detained in the interior of the country and thus is
6 currently detained under 8 U.S.C. § 1226(a).

7 72. Detention under 8 U.S.C. § 1226(a) must serve a legitimate government
8 purpose of mitigating danger or preventing flight. *See Zadvydas*, 533 U.S. at 690; *see also*
9 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

10 73. Petitioner Velazquez’s prior release by DHS necessarily reflects a
11 determination she is neither a flight risk nor a danger to the community. *See* 8 C.F.R. §
12 1236.1(c)(8) (outlining requirements for release on recognizance); 8 C.F.R. § 212.5(b)
13 (outlining requirements for parole).

14 74. As a result, her re-detention under 8 U.S.C. § 1226(a) requires an
15 individualized determination of a material change in circumstances as to flight risk or
16 danger for her re-detention to serve a regulatory purpose.

17 75. Petitioner Velazquez’s re-detention violates the INA because she was not
18 afforded an individualized determination of a material change in circumstances related to
19 flight risk or danger justifying re-detention.

FOURTH CLAIM FOR RELIEF

Violation of APA, 5 U.S.C. § 706(2)
(Unlawful Agency Action)

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22 76. Petitioner Velazquez realleges and incorporates by reference paragraphs
23 1–75, above.

24 77. Under the APA, a “reviewing court shall . . . hold unlawful and set aside
25 agency action, findings, and conclusions found to be . . . not in accordance with law,”
26 “contrary to constitutional right, power, privilege, or immunity,” or “in excess of statutory
27 jurisdiction, authority, or limitation.” 5 U.S.C. § 706(2)(A)–(C).

1 78. ICE has re-detained Petitioner Velazquez under a blanket policy by which
2 ICE’s San Diego Field Office claims authority to arrest and detain all noncitizens who it
3 alleges are not lawfully present in the United States, without regard for whether they are a
4 flight risk or danger. Under the *Accardi* doctrine, agencies are bound to follow their own
5 rules and policies that constrain otherwise discretionary detention decisions, and agency
6 action that disregards those binding standards is unlawful. 347 U.S. at 267–68.

7 79. Because re-detentions under Respondents’ policy violate Petitioner
8 Velazquez’s rights under the Due Process Clause of the Fifth Amendment and the INA,
9 the policy additionally violates the APA as it is not in accordance with law, is contrary to
10 constitutional right, and is in excess of statutory jurisdiction.

11 **FIFTH CLAIM FOR RELIEF**
12 Violation of APA, 5 U.S.C. § 706(2)
(Arbitrary and Capricious Agency Action)

13 80. Petitioner Velazquez realleges and incorporates by reference paragraphs
14 1–79, above.

15 81. The APA also provides that a “reviewing court shall . . . hold unlawful and
16 set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious,
17 an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §§ 706(2)(A)–
18 (C).

19 82. ICE’s decision to re-detain Petitioner Velazquez constitutes final agency
20 action where they mark the “consummation” of agency decision making and are actions
21 “by which rights or obligations have been determined, or from which legal consequences
22 will flow.” *Bennett*, 520 U.S. at 178 (citation modified).

23 83. Because ICE has failed to articulate contemporaneous rational explanation
24 for its decision to re-detain Petitioner at an ICE check-in without a pre-detention hearing,
25 and because it cannot provide a post-hoc rationalization for this decision, it is arbitrary
26 and capricious in violation of the APA. *See State Farm*, 463 U.S. at 42–43; *Regents*, 591
27 U.S. at 22.

1 84. To the extent Respondents’ written regulations, policies, and guidance
2 require individualized custody determinations and consideration of flight risk and danger,
3 ICE’s failure to follow those binding standards in implementing its blanket re-detention
4 policy independently renders the policy arbitrary, capricious, and “not in accordance with
5 law” under the *Accardi* doctrine. 347 U.S. at 267–68.

6 85. Additionally, ICE’s policy by which ICE’s San Diego Field Office claims
7 authority to arrest and detain all noncitizens who it alleges are not lawfully present in the
8 United States, without regard for whether they are a flight risk or danger, is arbitrary and
9 capricious in violation of the APA because it fails to “articulate a satisfactory explanation
10 for its action[,] including a rational connection between the facts found and the choice
11 made.” *State Farm*, 463 U.S. at 43.

12 **VIII. PRAYER FOR RELIEF**

13 For these reasons, Petitioner Velazquez asks this Court to grant the following relief:

- 14 1. Assume jurisdiction over this matter;
- 15 2. Order Respondents to show cause why the writ should not be granted
16 as to Petitioner Velazquez within three days, and set a hearing on this
17 Petition within five days of the return, as required by 28 U.S.C. 2243;
- 18 3. Enjoin Respondents from transferring Petitioner Velazquez out of the
19 jurisdiction during the pendency of the habeas petition;
- 20 4. Issue a writ of habeas corpus requiring that Respondents release
21 Petitioner Velazquez under the same conditions as her initial release;
- 22 5. Order Respondents to return all of Petitioner Velazquez’s belongings,
23 including her identification documents;
- 24 6. Issue a temporary restraining order and preliminary injunction
25 ordering Petitioner Velazquez’s release and enjoining Respondents
26 from further detaining her without providing notice to the Court and
27 Petitioner Velazquez’s counsel and a hearing at which Respondents
28

1 prove changed circumstances regarding her dangerousness or risk of
2 flight that warrant her detention;

3 7. Declare that Petitioner Velazquez's detention violates the Due Process
4 Clause of the Fifth Amendment, the INA, and the APA;

5 8. Set aside Respondents' unlawful practice under 5 U.S.C. § 706(2) as
6 arbitrary and capricious, contrary to law, contrary to constitutional
7 right, and in excess of statutory authority; and

8 9. Grant such further relief as this Court deems just and proper.

9 Dated: May 18, 2026

Respectfully submitted,

10 Bv: /s/ Jenn French
11 Pro Bono Attorney for Petitioner
12 Email: jenn@frenchlawapc.com
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