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DETAINED

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

LUQUIN DE GARZA, Maria de la Paz

CASE NO.: 26-cv-03607-JES-JLB

Petitioner-Plaintiff,

vs.

**PETITIONER'S TRAVERSE IN
SUPPORT OF HER PETITION FOR
WRIT OF HABEAS CORPUS**

**WARDEN/OFFICER IN CHARGE,
current ICE detention facility;
SAN DIEGO FIELD OFFICE DIRECTOR,
U.S. Immigration and Customs Enforcement;
SENIOR OFFICIAL PERFORMING THE
DUTIES OF DIRECTOR,
U.S. Immigration and Customs Enforcement;
SECRETARY, U.S. Department of Homeland
Security;
U.S. Immigration and Customs Enforcement
and U.S. Department of Homeland Security,**

Respondents-Defendants.

**PETITIONER'S TRAVERSE IN SUPPORT OF HER PETITION FOR WRIT
OF HABEAS CORPUS**

1 Petitioner Maria de la Paz Luquin de Garza ("Ms. Luquin") petitions this Court for a
2 writ of habeas corpus under 28 U.S.C. § 2241, declaratory and injunctive relief, and
3 emergency temporary restraining relief under Federal Rule of Civil Procedure 65 to
4 remedy Respondents' unlawful civil immigration detention following her completion
5 of a federal criminal sentence, release from criminal custody, and years of
6 demonstrated rehabilitation and reintegration into society.
7

8 INTRODUCTION

- 9
- 10 1. This case arises from Petitioner's ongoing immigration detention by the
11 Department of Homeland Security ("DHS") and U.S. Immigration and Customs
12 Enforcement ("ICE"), as well as her pending removal proceedings before the Otay
13 Mesa Immigration Court. Petitioner is currently detained and seeks habeas relief
14 under 28 U.S.C. § 2241 challenging the legality of her continued detention and
15 requesting either release or an individualized bond hearing.
16
 - 17 2. Respondents seek to justify Petitioner's detention under 8 U.S.C. § 1226(c),
18 alleging that her custody is mandatory based on prior federal convictions for
19 importation of controlled substances under 21 U.S.C. §§ 952 and 960.
20 Respondents further contend that this Court lacks jurisdiction under 8 U.S.C. §
21 1252(g) and that Petitioner is categorically ineligible for a bond hearing.
22
 - 23 3. Petitioner does not challenge the initiation of removal proceedings or the
24 underlying criminal convictions referenced by Respondents. Rather, Petitioner
25 challenges the constitutionality and legality of her continued civil immigration
26
27
28

1 detention without an individualized determination of flight risk or danger, as
2 required by the Fifth Amendment and governing due process principles.

3 4. The record reflects that Petitioner's convictions arise from conduct occurring in
4 2019, resulting in federal criminal proceedings in the Southern District of
5 California under Case No. [REDACTED] While Respondents rely on these
6 convictions as the basis for mandatory detention, they do not address whether
7 continued detention is supported by current, individualized findings, or whether
8 less restrictive alternatives to detention have been meaningfully considered.
9

10 11 5. Respondents further allege that Petitioner was apprehended after presenting
12 herself at a port of entry in 2026 following prior travel abroad, and that DHS
13 initiated new removal proceedings based on inadmissibility grounds under INA §
14 212(a)(2)(C)(i). However, Respondents do not explain how these procedural
15 developments automatically eliminate Petitioner's due process right to
16 individualized custody review.
17

18 19 6. At issue in this Petition is not the existence of prior convictions, but whether the
20 Government may continue to detain Petitioner indefinitely under a categorical
21 statutory label without providing an individualized bond hearing, meaningful
22 custody review, or consideration of alternatives to detention.
23

24 25 7. Accordingly, this Court is called upon to determine whether Respondents'
26 continued detention of Petitioner without a bond hearing violates the Fifth
27 Amendment, exceeds statutory authority under the Immigration and Nationality
28

1 Act, and fails to comply with controlling Supreme Court precedent governing
2 immigration detention and due process protections.

3 **CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, AND 2243**
4

5 8. Ms. Luquin is in custody for purposes of 28 U.S.C. § 2241 because Respondents,
6 through DHS and ICE, exercise physical and legal custody over her in connection
7 with ongoing removal proceedings.

8
9 9. Pursuant to 28 U.S.C. § 2242, this Petition identifies Petitioner, the officials
10 responsible for her custody, and the factual and legal grounds upon which she
11 challenges that detention.

12
13 10. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that this Court
14 promptly issue a writ or an Order to Show Cause directing Respondents to state
15 the legal and factual basis for her continued detention.

16
17 11. Emergency relief is necessary because Petitioner remains in custody and any
18 transfer or removal prior to judicial review could interfere with this Court's ability
19 to provide meaningful habeas relief.

20
21 **LEGAL FRAMEWORK**

22 12. Courts have recognized the significance of the habeas statute in protecting
23 individuals from unlawful detention, which affords “a swift and imperative
24 remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391,
25 400 (1963); see also *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (noting
26 that habeas statute requires expeditious determination of petitions).
27
28

1 13.27. The Court must grant the petition for writ of habeas corpus or issue an
2 order to show cause to Respondents “forthwith,” unless Petitioner is not entitled
3 to relief. 28 U.S.C. § 2243.
4

5 14.28. ““It is well established that the Fifth Amendment entitles [noncitizens] to
6 due process of law in deportation proceedings.”” *Demore v. Kim*, 538 U.S. 510,
7 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)).
8

9 15.29. Due process requires “adequate procedural protections” to ensure that the
10 government’s asserted justification for physical confinement “outweighs the
11 individual’s constitutionally protected interest in avoiding physical restraint.”
12 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (internal quotation marks omitted).
13

14 16.30. In the immigration context, the Supreme Court has recognized two valid
15 purposes for civil detention—to mitigate the risks of danger to the community and
16 to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.
17

18 17.31. The test for procedural due process claims, the Mathews test balances: (1)
19 the private interest threatened by governmental action; (2) the risk of erroneous
20 deprivation of such interest and the value of additional or substitute safeguards;
21 and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);
22 see also *Sho v. Current or Acting Field Off. Dir.*, No. 1:21CV-01812 TLN AC,
23 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), report and recommendation
24 adopted, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
25 2023) (using Mathews factors to assess a habeas petitioner’s due process claims
26
27
28

1 and collecting cases doing the same). Here, each factor weighs in Petitioner's
2 favor, and Petitioner's release is justified due to his interest in avoiding prolonged
3 or unjustified detention. Petitioner poses no danger to the community, nor is a
4 flight risk.
5

6 **FACTUAL BACKGROUND**

7 **A. Ms. Luquin became a lawful permanent resident and has lived in the United**
8 **States for decades.**
9

10 52. Ms. Luquin is a native and citizen of Mexico. She entered the United
11 States and was granted lawful permanent resident status in 1975.
12

13 53. She has lived in the United States for approximately fifty-two years. Her
14 adult life, family, community, and rehabilitation are centered in the United States.
15

16 54. She has adult United States citizen children. These ties weigh strongly in
17 favor of release and demonstrate an incentive to comply with supervision and court
18 requirements.
19

20 **B. The known adverse history is old, completed, and known to the Government.**

21 55. The San Diego County case-index material supplied to counsel identifies
22 one criminal case entry associated with the name Maria De La Paz LUQUIN DE
23 GARZA, birth year 1954. The Case No. [REDACTED], filed August 23, 2019,
24 in the U.S. District Court for the Southern District of California. Under PC 21:952,
25 960, importation of Methamphetamine (Felony); and 21:952,960, importation of heroin
26 (felony).
27
28

1 56. The information supplied to counsel further states that, in 2019, Ms.
2 Luquin was convicted of a methamphetamine-related offense involving
3 methamphetamine. As a result, she was sentenced to three and a half years and released
4 after serving her sentence. Further, she received three and a half years of probation.
5

6 57. Removal was not initiated after the 2019 sentence. That fact is critical:
7 DHS has long known of the criminal case and decided to exercise prosecutorial
8 discretion.
9

10 58. The 2019 criminal histories are serious. But they are not new. They are
11 complete criminal sentences, known to the Government, and predate her later release,
12 rehabilitation, apprenticeship, and community service.
13

14 60. If Respondents rely on these old convictions to justify present detention,
15 they must explain why the same known facts that did not result in successful removal
16 or continued custody for decades suddenly justify detention now. Absent a material
17 change, the old record cannot carry the Government's burden.
18

19 **C. The record shows release, rehabilitation, employment, training, and public**
20 **recognition.**
21

22 61. After incarceration, Ms. Luquin returned to the community. Public labor-
23 community records identify her as a housekeeper.
24

25 62. Ms. Luquin also has longstanding community ties. Those equities further
26 demonstrate that she is not a person who should be detained based on stale facts without
27 current individualized findings.
28

D. The current detention lacks a material change in circumstances justification.

67. Respondents currently restrain Ms. Luquin's liberty through ICE custody or DHS control. The current custody decision rests, on the available record, on the same adverse information already known to DHS: U.S. District Court for the Southern District case entry, the 2019 federal conviction.

68. The record supplied to counsel does not identify a new conviction, a new violent incident, a recent failure to appear, a violation of supervision, a refusal to cooperate with travel documents.

69. Respondents must produce evidence showing that removal is now significantly likely in the reasonably foreseeable future. A mere hope that removal may someday become possible is not enough under *Zadvydas*, *Clark*, and 8 C.F.R. § 241.13.

70. The absence of current danger evidence is also decisive. Respondents cannot ignore years of work, rehabilitation, family ties, and volunteering, while relying exclusively on old convictions with a criminal sentence served.

71. Reasonable alternatives to detention can address any legitimate governmental concern, including release on an order of supervision, reporting, check-ins, travel restrictions, electronic or telephonic monitoring if necessary, sponsor placement with family, and continued cooperation with travel-document requests.

ARGUMENT

A. §1252(g) Does Not Strip This Court of Jurisdiction Over Petitioner’s Habeas Challenge

72. Respondents’ principal jurisdictional argument is that this Court lacks jurisdiction under 8 U.S.C. § 1252(g). That argument is inaccurate as to both the statute and controlling Supreme Court precedent.

73. Section 1252(g) is a narrow jurisdiction-stripping provision that applies only to three discrete actions: the decision or action to commence proceedings, adjudicate cases, or execute removal orders. The Supreme Court has expressly held that § 1252(g) does not function as a broad jurisdictional bar over all immigration-related claims, but rather applies only to a limited subset of prosecutorial discretion decisions. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–87 (1999).

74. A habeas challenge to the legality and constitutionality of immigration detention is analytically distinct from a challenge to the initiation or execution of removal proceedings. Courts in this Circuit have consistently held that § 1252(g) does not bar federal habeas review of detention claims brought under 28 U.S.C. § 2241.

75. Respondents attempt to expand § 1252(g) beyond its statutory limits by arguing that detention “arises from” the commencement of proceedings. That interpretation has been expressly rejected by the Supreme Court, which cautioned

1 against reading § 1252(g) as a “general jurisdictional bar over immigration cases.”
2 *Reno*, 525 U.S. at 482.

3 76. Accepting Respondents’ interpretation would improperly insulate all
4 immigration detention from judicial review whenever removal proceedings are
5 pending, a result inconsistent with the long-established availability of habeas corpus to
6 challenge unlawful custody under 28 U.S.C. § 2241.
7

8 77. Because Petitioner’s claims challenge the legality of her detention, not the
9 initiation or execution of removal proceedings, § 1252(g) does not apply, and this Court
10 retains full jurisdiction to adjudicate the Petition.
11

12 **B. Even if 8 U.S.C. § 1226(c) Applies, Petitioner Is Entitled to an Individualized**
13 **Bond Hearing Under the Fifth Amendment.**
14

15 81. Even assuming arguendo that Petitioner falls within the scope of 8 U.S.C.
16 § 1226(c), her continued detention without an individualized bond hearing violates the
17 Due Process Clause of the Fifth Amendment.
18

19 **1. Petitioner should not be subject to mandatory detention under 8 U.S.C. §**
20 **1226(c).**
21

22 82. The Government incorrectly characterizes § 1226(c) as authorizing
23 categorical, indefinite detention without any individualized determination. While the
24 statute permits initial detention of certain noncitizens, it does not eliminate
25 constitutional requirements of due process or foreclose judicial review of whether
26 continued detention remains constitutionally permissible.
27
28

1 83. The Supreme Court in *Demore v. Kim* upheld § 1226(c) only in the context
2 of brief and finite detention during the course of removal proceedings, emphasizing
3 that such detention has a “definite termination point” and is typically short in duration.
4 538 U.S. 510, 527–28 (2003). Demore did not approve prolonged detention without
5 meaningful review or individualized assessment.
6

7 84. Likewise, in *Jennings v. Rodriguez*, the Supreme Court rejected a
8 statutory interpretation requiring automatic periodic bond hearings, but explicitly did
9 not resolve the constitutional question of whether prolonged mandatory detention
10 without a hearing violates due process. 583 U.S. 281 (2018). Accordingly, Jennings
11 preserves—rather than eliminates—constitutional challenges to immigration detention.
12

13 85. Under the Fifth Amendment, civil detention must remain reasonably
14 related to legitimate regulatory purposes, namely ensuring appearance at proceedings
15 and protecting the community. Where detention becomes prolonged or is not supported
16 by an individualized determination of danger or flight risk, due process requires a
17 meaningful opportunity to seek release.
18

19 86. The Government’s position would convert § 1226(c) into an irrebuttable
20 presumption of detention, eliminating any individualized assessment regardless of
21 circumstances. Such a reading is inconsistent with the constitutional requirement that
22 the Government justify continued physical restraint with case-specific evidence. Courts
23 in this Circuit routinely recognize that even individuals detained under § 1226(c) may
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1 be entitled to a bond hearing when detention becomes constitutionally significant in
2 duration or lacks adequate procedural safeguards

3 **2. Petitioner's Continued Detention Without Individualized Review Violates Due**
4 **Process Under the Fifth Amendment.**
5

6 87. The Fifth Amendment prohibits the Government from depriving any
7 person of liberty without due process of law. This protection applies fully in the
8 immigration context, including civil immigration detention. *Demore v. Kim*, 538 U.S.
9 510, 523 (2003).
10

11 88. Due process requires that civil detention remain reasonably related to its
12 regulatory purposes and supported by individualized justification. Where the
13 Government fails to provide meaningful procedural safeguards, the risk of erroneous
14 deprivation of liberty becomes constitutionally intolerable. *Zadvydas v. Davis*, 533
15 U.S. 678, 690 (2001).
16
17

18 89. Here, Petitioner's detention is not based on an individualized assessment
19 of current danger or flight risk, but rather on categorical reliance on decades-old
20 convictions and generalized statutory authority. Respondents have not provided any
21 contemporaneous custody determination evaluating Petitioner's present circumstances.
22
23

24 90. Critically, Respondents have not identified any current conduct
25 supporting detention, such as recent criminal activity, violation of conditions of
26 supervision, failure to appear, or obstruction of removal proceedings. Nor have they
27
28

1 articulated any individualized finding explaining why alternatives to detention are
2 insufficient in this case.

3 91. Instead, the Government relies exclusively on historical criminal
4 convictions that were fully adjudicated and are already part of the record. Due process
5 does not permit the Government to substitute stale facts for a present-day
6 individualized determination of necessity. Under the Mathews v. Eldridge balancing
7 test, Petitioner's private interest in freedom from physical confinement is at its highest
8 constitutional weight. 424 U.S. 319, 335 (1976). The risk of erroneous deprivation is
9 substantial where no individualized hearing has been provided, and where the
10 Government relies on categorical assumptions rather than current evidence

11 **C. Respondents' actions are arbitrary, capricious, contrary to law, and without**
12 **observance of required procedure.**

13 92. The APA requires courts to hold unlawful and set aside agency action that
14 is arbitrary, capricious, an abuse of discretion, not in accordance with law, contrary to
15 constitutional right, in excess of statutory authority, or without observance of procedure
16 required by law. 5 U.S.C. § 706(2)(A)-(D).

17 93. Respondents acted contrary to law by detaining Ms. Luquin beyond the
18 time reasonably necessary to effect removal without showing a material change of
19 circumstances for detention.

20 94. Respondents acted without observance of procedure required by law by
21 failing to provide the meaningful review required by 8 C.F.R. §§ 241.4 and 241.13,

1 including notice, an opportunity to respond, a written decision grounded in the record,
2 and a changed-circumstances showing.

3 95. Respondents acted arbitrarily by failing to consider key aspects of the
4 problem: the age of the adverse facts, the completion of criminal sentences,
5 rehabilitation, community service, family ties, and alternatives to detention.
6

7 96. A rational custody decision must connect current facts to present
8 detention. The current record contains no rational connection between decades-old and
9 completed events and a present need for civil detention.
10

11 **CONCLUSION**
12

13 WHEREFORE, Petitioner respectfully requests that this Court grant the following
14 relief:

15 (1) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6),
16 *Zadvydas v. Davis*, *Clark v. Martinez*, the *Fifth Amendment*, the APA, and 8 C.F.R. §§
17 241.4 and 241.13;
18

19 (2) Declare that Respondents may not detain or re-detain Petitioner based on facts
20 known before release, absent fair process and a material change in circumstances;
21

22 (3) Declare that Respondents must produce reliable evidence of material change of
23 circumstances before continuing detention under § 1231(a)(6);
24

25 (4) Issue a writ of habeas corpus ordering Respondents to immediately release
26 Petitioner from custody under reasonable conditions of supervision;
27
28

1 (5) In the alternative, order Respondents to provide a prompt constitutionally
2 adequate custody hearing or post-order custody review before a neutral decisionmaker,
3 with the Government bearing the burden to justify detention by clear and convincing
4 evidence;
5

6 (6) Order Respondents to produce the full custody file, removal file, travel-
7 document communications, post-order custody-review records, release or supervision
8 records, revocation records, and all evidence relied upon to justify detention;
9

10 (7) Require Respondents to preserve all custody, removal, travel-document,
11 supervision, criminal-history, release, transfer, and communications records
12 concerning Petitioner;
13

14 (8) Set no bond under Rule 65(c), or only a nominal bond, because the requested
15 relief protects constitutional rights and imposes no monetary harm on Respondents;
16

17 (9) Grant such other and further relief as the Court deems just, equitable, and proper.
18

19 Dated: June 25, 2026
20

Respectfully submitted,
21

22 //s// Mario Portugal
23

Mario Portugal,
24

Attorney for Petitioner
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26
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28