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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'26CV3633 JO MSB

NURIA MARTINEZ ALVARADO,

Petitioner,

vs.

JEREMY CASEY, Warden, at the Imperial
Regional Detention Facility,

GREGORY J. ARCHAMBAULT, Field
Office Director, Immigration and customs
Enforcement and Removal Operations
("ICE/ERO"),

TOD M. LYONS, Acting Director of
Immigration and Customs Enforcement ("ICE")

MARKWAYNE MULLIN, Secretary of the
U.S. Department of Homeland Security; and,

TODD BLANCHE, Attorney General of the
United States (Acting),

In their official capacities

Respondents.

**PETITION FOR WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. Petitioner Ms. Nuria Martinez Alvarado (“Ms. Martinez” or “Petitioner”), by and through undersigned counsel, hereby files this petition for writ of habeas corpus to compel her immediate release from immigration custody where she has been held by the Department of Homeland Security ("DHS") since being unlawfully re-detained on or about May 21, 2026, without first being provided a due process hearing to determine whether her incarceration is justified. Ms. Martinez must be released from custody unless and until the DHS proves to a neutral adjudicator, by clear and convincing evidence that she presents a current danger and unmitigable flight risk. DHS will be unable to do so.

2. Following her March 27, 2009 entry into the US on a validly issued B1/B2 visa, Ms. Martinez was arrested on April 12, 2009 by law enforcement in the US and on June 14, 2012, she was convicted of conspiracy to kidnap and conspiracy to distribute marijuana and cocaine in violation of Title 18 USC §1201(a)(1) and Title 21 USC §846, 841(a)(1).

3. While in custody, Ms. Martinez assisted prosecutors and other federal agencies with the investigation into [REDACTED] Due to her extraordinary assistance, the Assistant US Attorney submitted a Substantial Assistance Motion to the sentencing Judge asking for leniency during Ms. Martinez’s sentencing hearing. She was sentenced to serve 50 months in custody of the Bureau of Prisons.

4. On November 2, 2012, Ms. Martinez was placed in removal proceedings with the San Francisco Immigration Court and issued a Notice of Intent to Issue a Final Administrative Removal Order charging her with removability as a deportable alien convicted of an aggravated

1 felony and on November 29, 2012, she was issued a Final Administrative Removal Order
2 (“FARO”).

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4 5. Ms. Martinez expressed a fear of returning to Mexico and on April 2, 2013, she was
5 referred to an asylum officer. On April 12, 2013, the asylum officer determined that she had a
6 reasonable fear of returning to home country of Mexico.

7 6. On May 2, 2013, the venue of her removal proceedings was changed from San Francisco
8 to San Diego and on June 18, 2013, Ms. Martinez filed her application for withholding of
9 removal under the Convention Against Torture (“CAT”) with the San Diego Immigration Court.
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11 7. Due to the threats and victimization Ms. Martinez received while in federal custody in
12 connection with her assistance with the prosecution of cartel members, the government certified
13 a U Visa application that was filed on her behalf on August 29, 2013, with the United States
14 Citizenship and Immigration Service (“USCIS”).

15 8. On December 2, 2013, the DHS jointly stipulated with Ms. Martinez’s counsel to set
16 bond for her in the amount of \$3,000. At the time, she had been detained by the DHS since
17 November 2, 2012, to wit, 13 months. The Immigration Judge (“IJ”) granted bond and Ms.
18 Martinez was released from DHS custody.
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20 9. On December 6, 2013, the IJ administratively closed Ms. Martinez’s removal
21 proceedings to allow the USCIS to adjudicate her U visa application. On February 11, 2014, the
22 USCIS denied her U visa application.
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24 10. Since her release on bond in 2013, Ms. Martinez has demonstrated comprehensive
25 rehabilitation. She has actively severed ties with negative past influences to build an honorable,
26 productive future. Notably, her professional milestones include securing a professional
27 beautician license and successfully launching her own business. Furthermore, Ms. Martinez is
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1 fully integrated into her community, supported by a stable marriage to her U.S. citizen husband,
2 active membership in her local church, and a positive social network.

3 11. At no time, following her release from immigration custody, did Ms. Martinez violate the
4 terms of her release or a change in circumstances occurred that would have warranted her re-
5 detention. The DHS did not require Ms. Martinez to regularly report to its office for check-ins
6 during her release on bond.
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8 12. On May 21, 2026, Ms. Martinez arrived at her mother's home where ICE re-detained her.
9 She was sent to the Otay Mesa Detention Center, in San Diego, California. On or about June 19,
10 2026, Ms. Martinez was transferred to the Imperial Regional Detention Facility located in
11 Calexico, California where she is currently detained.
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13 13. The DHS filed a motion to re-calendar Ms. Martinez's removal proceedings with the
14 Otay Mesa Immigration Court. A master calendar hearing is scheduled with the court for July 2,
15 2026, at 2:00 pm.¹
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17 14. It is well-established that individuals released from incarceration have a liberty
18 interest in their freedom. *See, e.g., Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Doe v.*
19 *Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025).
20 Due process requires notice and a hearing, *prior* to any re-detention, during which in this
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26 ¹ On June 19, 2026, Ms. Martinez was transferred to the Imperial Regional Detention Facility
27 located in Calexico, California. The venue of her removal proceedings may therefore be subject
28 to transfer to the Imperial Immigration Court, located at 2409 La Brucherie Rd, Imperial, CA
92251.

1 case, Ms. Martinez would be afforded the opportunity to advance her arguments as to why
2 her bond should not be revoked.

3 15. This basic principle - that individuals placed at liberty are entitled to process before the
4 government imprisons them - has particular force here, where Ms. Martinez's detention was
5 *already* found to be unnecessary to serve its purpose. In fact, the DHS itself stipulated to release
6 Ms. Martinez over 12 years ago after her criminal conviction on a very low bond of only
7 \$3,000 demonstrating that the government does not believe she needs to be incarcerated to
8 prevent flight or to protect the community. Moreover, ICE did not require Ms. Martinez to attend
9 regular check-in appointments following her release, did not seek to re-detain her for more than
10 12 years following her release on bond, and Ms. Martinez was always in compliance with the
11 conditions of her release. Her sudden detention more than 12 years after her release on bond
12 proves a lack of urgency on the part of the government and is indicative of the needlessness to
13 protect the public or prevent flight risk. It demonstrates that Ms. Martinez's detention has
14 everything to do with the execution of the current administration's policy goal of 3,000 daily ICE
15 arrests.² This suggests that her detention was more about meeting quotas than any concern about
16 Ms. Martinez herself.

17 16. Due process requires that any re-detention of Ms. Martinez happen only *after* a neutral
18 adjudicator has determined that she poses a present danger and unmitigable flight risk. Therefore,
19 the Court should order Ms. Martinez's immediate release or, alternatively, require a neutral
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26 ² See Brittany Gibson & StefW. Kight, "Scoop: Stephen Miller, Noem tell ICE to
27 supercharge immigrant arrests," Axios (May 28, 2025) at
<https://www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller>.

1 decisionmaker to determine if DHS has justified her incarceration by clear and convincing
2 evidence. During any custody redetermination hearing that occurs, the neutral adjudicator must
3 consider alternatives to detention and Ms. Martinez's ability to pay. Further, to comply with due
4 process, the Court should order that DHS must provide Ms. Martinez with details regarding the
5 date, time, place, and substance of any conduct being used by ICE to justify her re-detention.
6

7 CUSTODY

8 17. Ms. Martinez is currently in DHS custody at the Imperial Regional Detention Facility,
9 located at 1572 Gateway Rd, Calexico, CA 92231 following her transfer from the Otay Mesa
10 Detention Facility after her unlawful re-detention on May 21, 2026. Since her arrest, she has
11 not been provided with a constitutionally compliant hearing to determine whether her re-
12 detention is justified.
13

14 JURISDICTION & VENUE

15 18. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et
16 seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 500 et seq.
17

18 19. This Court has jurisdiction under 28 U.S.C. § 2241 to hear this petition for a writ of
19 habeas corpus because Petitioner is presently detained within this judicial district under color of
20 federal authority, and the petition challenges the legality of that custody.
21

22 20. Jurisdiction is also proper under 28 U.S.C. § 1331, which confers federal question
23 jurisdiction over claims arising under the Constitution, the Immigration and Nationality Act
24 ("INA"), and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.
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26 21. The APA authorizes this Court to hold unlawful and set aside agency action that is "not
27 in accordance with law" or "in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A), (C).
28 Petitioner's continued detention under § 1225(b)(2)(A) constitutes such unlawful agency action.

1 22. Venue lies properly in this District under 28 U.S.C. § 1391(e) and § 2241(d) because
2 Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California, within
3 this District, and Respondents are officers or employees of the United States acting in their
4 official capacities within this District.
5

6 **REQUIREMENTS OF 28 U.S.C. § 2243 and § 2241**

7 23. The habeas statute requires courts to act swiftly in reviewing unlawful detention. Under
8 28 U.S.C. § 2243, the court must “forthwith” grant the writ or issue an order to show cause
9 unless it appears from the petition that the petitioner is not entitled to relief.
10

11 24. If an order to show cause is issued, the statute directs that the respondent must file a
12 return “within three days unless for good cause additional time, not exceeding twenty days, is
13 allowed.” *Id.* This statutory framework underscores the urgency of habeas relief, reflecting the
14 historic role of the Great Writ as “perhaps the most important writ known to the constitutional
15 law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint
16 or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963).
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18 25. A district court may grant a writ of habeas corpus when a petitioner “is in custody in
19 violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c);
20 *Magana-Pizano v. I.N.S.*, 200 F.3d 603, 609 (9th Cir. 1999) (“28 U.S.C. § 2241 expressly
21 permits the federal courts to grant writs of habeas corpus to aliens when those aliens are ‘in
22 custody in violation of the Constitution or laws or treaties of the United States.’”). In federal
23 habeas proceedings, the petitioner bears the burden of proving his case by a preponderance of
24 evidence. *Lambert v. Blodgett*, 393 F.3d 943, 970 n.16 (9th Cir. 2004); *Bellew v. Gunn*, 532 F.2d
25 1288, 1290 (9th Cir. 1976).
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PARTIES

26. Petitioner NURIA MARTINEZ ALVARDO is a noncitizen who has resided in the United States for over 12 years. She is currently detained by ICE at the Imperial Regional Detention Facility, located at 1572 Gateway Rd, Calexico, CA 92231.

27. Respondent JEREMY CASEY is the acting Warden of the Imperial Regional Detention Facility located in Calexico, California. Jeremy Casey is the proper respondent because he is the warden of the facility at which Ms. Martinez is detained.

28. Respondent GREGORY JOHN ARCHAMBAULT is the Field Office Director of U.S. Immigration and Customs Enforcement's Enforcement and Removal Operations ("ERO"), San Diego Field Office, which exercises supervisory authority and jurisdiction over ICE detention facilities in San Diego and Imperial County, including the Imperial Regional Detention Facility and is thus Ms. Martinez's immediate custodian.

29. Respondent TOD M. LYONS is acting director of Immigration and Customs Enforcement.

30. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security, responsible for the administration and enforcement of federal immigration laws.

31. Respondent TODD BLANCHE is the Acting Attorney General of the United States and has ultimate supervisory authority over the Department of Justice and the immigration courts.

EXHAUSTION OF REMEDIES

32. There is no statutory exhaustion requirement applicable to this habeas petition. *McKart v. United States*, 395 U.S. 185, 193 (1969); *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Accordingly, any exhaustion requirement is prudential, not jurisdictional.

1 33. For habeas claims, exhaustion of administrative remedies is prudential, not
2 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive
3 the prudential exhaustion requirement if "administrative remedies are inadequate or not
4 efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury
5 will result, or the administrative proceedings would be void." *Id.* (quoting *Laing v.*
6 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).
7 Ms. Martinez asserts that exhaustion should be waived because administrative remedies are
8 (1) futile and (2) her continued detention results in irreparable harm.
9

10 34. No statutory exhaustion requirements apply to Ms. Martinez's claim of unlawful
11 custody in violation of her due process rights, and there are no administrative remedies
12 that she needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d
13 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the
14 agency does not have jurisdiction to review" constitutional claims); *In re Indefinite Det.*
15 *Cases*, 82 F. Supp. 2d 1098.
16

17 35. Administrative review of Ms. Martinez's custody redetermination would be futile in this
18 case. An IJ does not have regulatory or statutory jurisdiction to hold a bond hearing for a
19 noncitizen who is subject to a FARO. *Mau v. Chertoff*, 549 F. Supp. 2d 1247 (S.D. Cal. 2008);
20 *Sosa Lopez v. Warden*, No. 1:26-cv-01417 (E.D. Cal. 2026).
21

22 36. Requiring exhaustion would also cause irreparable harm. Ms. Martinez is at the initial
23 stage of her removal proceedings. Any appeal of an IJ's custody redetermination decision could
24 take many months leaving her to remain confined indefinitely without a meaningful opportunity
25 for release. As multiple courts have recognized, each additional day of detention without access
26 to bond constitutes irreparable harm that cannot later be remedied. *LG v. Choate*, No. 23-cv-
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00611 (D.N.M. 2024), slip op. at 14; *Salvador F.-G. v. Noem*, 2025 WL 1669356, at 4 (N.D. Okla. June 12, 2025).

37. Because this petition raises a pure question of law, administrative review would be futile, and continued detention causes ongoing irreparable harm and therefore exhaustion is not required. Habeas corpus under 28 U.S.C. § 2241 is therefore the only adequate and appropriate remedy.

FACTUAL BACKGROUND

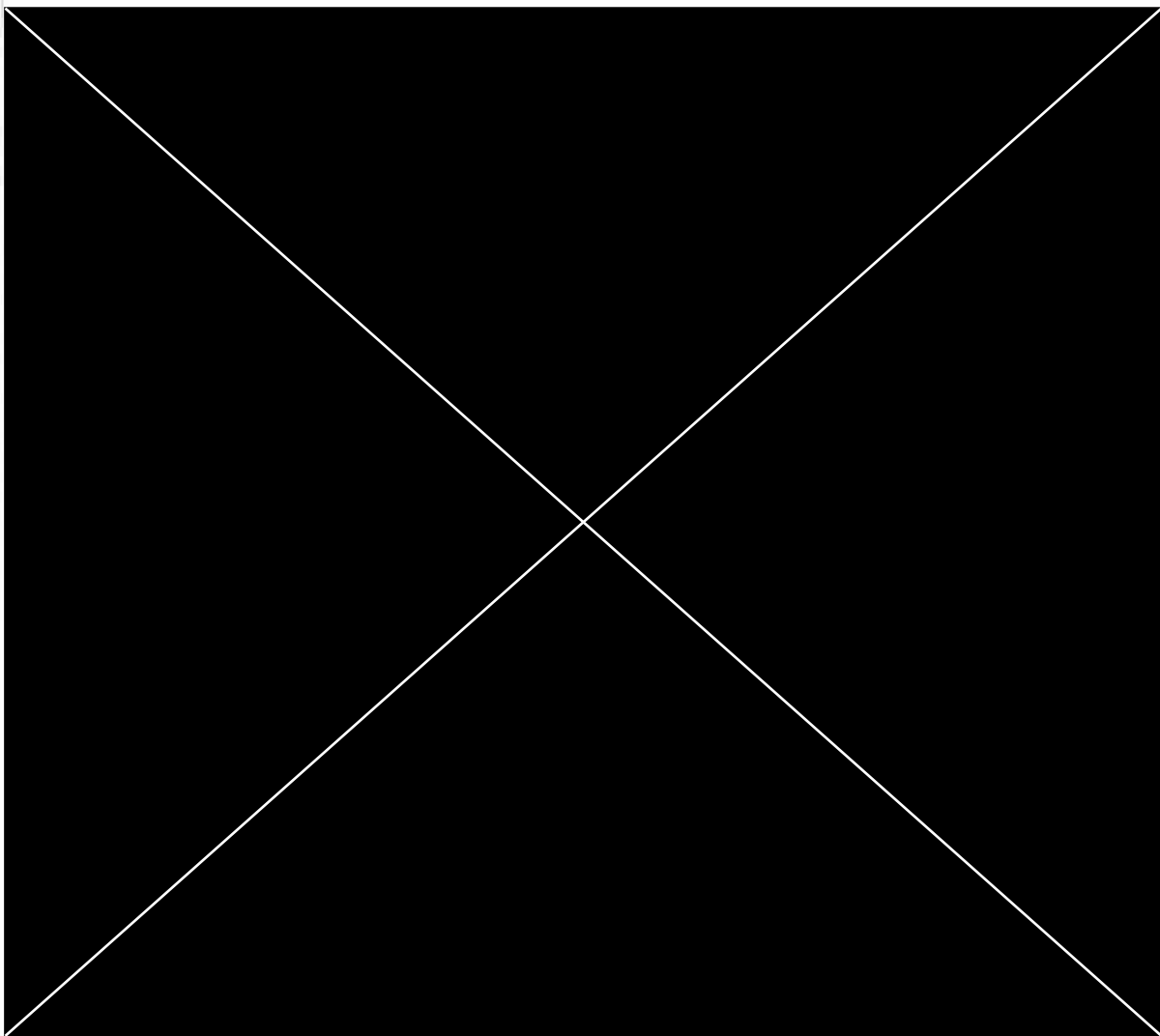
I. Introduction

38. Ms. Martinez is a 51-year-old citizen and national of Mexico from the city of Torreon in the state of Coahuila. She has one child, Katheryn Gonzalez Mattinez, who is currently 28 years old and currently lives with Ms. Martinez's United States Citizen ("USC") husband Mr. Jose Ramiez. Ms. Martinez's USC mother, Ester Luzanilla, and her USC father, Enrique Martinez Romero, and her two siblings reside lawfully in the US. *See* Daughter's Birth Certificate, Proof of Lawful Status for Family Members, and Marriage Certificate at Exhibit ("Exh.") A.

39. When she was a young teenager, her mother remarried and took Ms. Martinez with her to live in Tijuana, Baja California, Mexico where she remained. After Ms. Martinez moved to Tijuana with her mother, she met her first husband, David Lopez, when she was 18 years old and with whom she married. Mr. Lopez was physically abusive towards Ms. Martinez and the couple divorced. She then met Jesus Gonzalez, the father of her only child, Katheryn Gonzalez Martinez. This relationship ended when Mr. Gonzalez suddenly abandoned Ms. Martinez and their daughter. She remained single for a long time until 2007 when she met and fell in love with Mario Hernandez. On January 17, 2013, Mr. Hernandez died.

1 40. Throughout her teenage years in Tijuana and later during the turmoil of her personal
2 relationships with men, Ms. Martinez met various people, some of whom were involved in the
3 transportation of illegal substances into the US. She was called upon by these people on various
4 occasions to assist them in their criminal activities. She began by completing small jobs such as
5 picking up money in the United States and driving it back to Mexico using her visitor visa that
6 she acquired when she was 18 years old. *See* B1/B2 Visitor Visa at Exh. B.

8 **II. Personal History in Mexico and Involvement in Drug Trafficking**



II. Criminal Conviction, Providing Assistance to the US Attorney, Removal Proceedings and Release on Bond

45. On June 14, 2012, Ms. Martinez plead guilty to and was convicted of conspiracy to kidnap and conspiracy to distribute marijuana and cocaine in violation of Title 18 USC §1201(a)(1) and Title 21 USC §846, 841(a)(1) and she was sentenced to serve 50 months in custody of the Bureau of Prisons.

46. While in custody, Ms. Martinez took immediate responsibility for her conduct and assisted prosecutors with the investigation into [REDACTED] Her co-defendants also entered guilty pleas when they learned that Ms. Martinez agreed to testify against them. Ms. Martinez also agreed to assist the FBI in locating [REDACTED] who was a fugitive suspect in a murder investigation. Due to her extraordinary assistance, Assistant United States Attorney Joseph Smith ("AUSA Smith") submitted a Substantial Assistance Motion to the sentencing Judge asking for leniency during Ms. Martinez's sentencing hearing. *See* US Attorney's Substantial Assistance Motion at Exh. C.

47. On November 2, 2012, Ms. Martinez was placed in removal proceedings with the San Francisco Immigration Court and issued a FARO under INA §238(b), charging her with removability under INA §237(a)(2)(A)(iii) as a deportable alien convicted of an aggravated felony as defined in INA §101(a)(43)(H, B, and U) of the act and the FARO was issued ordering her removed under INA §238(b). *See* FARO at Exh. D.

48. Ms. Martinez expressed a fear of returning to Mexico. On November 29, 2012, she was transferred from criminal custody to immigration custody and subsequently referred to an asylum officer for purposes of determining whether she had a reasonable fear of returning to Mexico. At

1 that point, she was subject to a final order of removal as she did not respond to the order of
2 removal and did not seek review in any court of appeals. 8 C.F.R. §1238.1(f)(3).

3 49. On April 2, 2013, a reasonable fear interview was held and on April 12, 2013, Ms.
4 Martinez was found to have a reasonable fear of persecution and torture, and her case was
5 referred to the Immigration Court. *See* Positive Reasonable Fear Determination at Exh. E.

6 50. On May 2, 2013, the venue of Ms. Martinez's removal proceedings was changed from
7 San Francisco to San Diego.

8 51. On June 18, 2013, Ms. Martinez filed her application for relief under Article 3 of The
9 United Nations CAT and Other Cruel, Inhumane or Degrading Treatment or Punishment.
10 Further, due to Ms. Martinez's victimization while in federal custody assisting AUSA Smith and
11 other federal agencies, the government certified a U Visa that was filed on August 29, 2013, with
12 the United States Citizenship and Immigration Service ("USCIS"), covering both Ms. Martinez
13 and her daughter Katheryn. *See* Form I-918 Supplement B, U Visa Certification by US Attorney
14 at Exh. F.

15 52. On October 24, 2013, Ms. Martinez had a bond hearing with the San Diego Immigration
16 Court. At the time of her bond, Ms. Martinez had been detained by DHS since November 2,
17 2012, to wit, 11 months. On December 2, 2013, the DHS jointly stipulated with Ms. Martinez's
18 counsel to set bond for Ms. Martinez in the amount of \$3,000. The IJ granted the bond amount,
19 and Ms. Martinez was released from DHS custody. *See* Joint Bond Stipulation, IJ Bond Order,
20 and Notice of Release at Exh. G.

III. Ms. Martinez's Personal Rehabilitation Following Her Release on Bond and Sudden Re-Detention

53. On December 6, 2013, the DHS agreed to administratively close Ms. Martinez's removal proceedings to allow the USCIS to adjudicate her U visa. *See* IJ Order for Administrative Closure at Exh. H. On February 11, 2014, the USCIS denied Ms. Martinez's U visa application.

54. Since her release on bond in 2013, Ms. Martinez has successfully rehabilitated her life. She has left her past behind by completely distancing herself from past negative influences to build an honorable and productive future. She has achieved commendable personal and professional milestones, including earning her professional beautician license and successfully establishing her own business. *See* License from Board of Barbering and Cosmetology at Exh. I. Her integration into the community is anchored by a stable and supportive marriage to her financially stable U.S. citizen husband, active participation in her local church, and a robust network of friends who are a positive influence in her life. *See* Jointly Filed Taxes and Some of the Many Character Letters from Friends and Family at Exh. J.

55. On May 21, 2026, Ms. Martinez was re-detained by ICE and sent to the Otay Mesa Detention Center, in San Diego, California. The DHS filed a motion to re-calendar Ms. Martinez's removal proceedings with the Otay Mesa Immigration Court. Her next master calendar hearing is set for July 2, 2026, at 2:00 pm. On June 19, 2026, her custody was transferred to the Imperial Regional Detention Facility located in Calexico, California.

LEGAL FRAMEWORK

I. Right to a Hearing Prior to Re-Detention

56. In Ms. Martinez's particular circumstances, the Due Process Clause of the Constitution makes it unlawful for Respondents to re-arrest her without first providing a pre-deprivation

1 hearing before the IJ to determine whether circumstances have materially changed since her
2 release on bond on December 2, 2013, such that re-detention would now be warranted.

3 57. The statute and regulations grant ICE the ability to unilaterally revoke any noncitizen's
4 immigration bond and re-arrest the noncitizen at any time. 8 U.S.C. § 1226(b); 8 C.F.R. §
5 236.1(c)(9). Notwithstanding the breadth of the statutory language granting ICE the power to
6 revoke an immigration bond "at any time," 8 U.S.C. 1226(b), in *Matter of Sugay*, 17 I&N Dec.
7 637, 640 (BIA 1981), the Board of Immigration Appeals ("Board" or "BIA") recognized an
8 implicit limitation on ICE's authority to re-arrest noncitizens. There, the BIA held that "where a
9 previous bond determination has been made by an immigration judge, no change should be made
10 by [the DHS] absent a change of circumstance." *Id.* In practice, DHS "requires a showing of
11 changed circumstances both where the prior bond determination was made by an immigration
12 judge and where the previous release decision was made by a DHS officer." *Saravia v. Sessions*,
13 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017) (emphasis added). The Ninth Circuit has also
14 assumed that, under *Matter of Sugay*, ICE has no authority to re-detain an individual absent
15 changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus,
16 absent changed circumstances ... ICE cannot re-detain Panosyan."). ICE has further limited its
17 authority as described in *Sugay*, and "generally only re-arrests [noncitizens] pursuant to § 1
18 226(b) after a material change in circumstances." *Saravia for A.H. v. Sessions*, 905 F.3d 1137
19 (9th Cir. 2018) (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added). Thus,
20 under BIA case law and stated ICE practice, ICE may re-arrest a noncitizen who had been
21 previously released on bond only after a material change in circumstances. See *Saravia*, 280 F.
22 Supp. 3d at 1176; *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981).

1 58. The above authority clearly applies to Ms. Martinez, who was released pursuant to a bond
2 hearing where the DHS agreed to a bond amount of \$3,000. It must be recognized that ICE's
3 power to re-arrest a noncitizen who is at liberty following a release on bond is constrained by the
4 demands of due process. See *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he
5 government's discretion to incarcerate non-citizens is always constrained by the requirements of
6 due process"). In this case, the guidance provided by *Matter of Sugay*-that ICE should not re-
7 arrest a noncitizen absent changed circumstances, assuming applicability-is insufficient to
8 protect Ms. Martinez's weighty interest in her freedom from detention. Federal district courts in
9 California have repeatedly recognized that the demands of due process and the limitations on
10 DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and
11 *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Ms.
12 Martinez, before ICE may re-detain her. See, e.g., *Meza v. Bonnar*, 2018 WL 2554572 (N.D.
13 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*,
14 No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23 (2020); *Jorge M F. v.*
15 *Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Garcia v.*
16 *Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*,
17 No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, (2025); ECF No. 9, *Guillermo*
18 *v. Polly Kaiser*, No. 3:25-cv-05436-RFL (N.D. Cal. June 30, (2025)).

19 59. As for the process due to noncitizens following their re-detention by ICE, the Court's
20 decision in *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *8 (E.D. Cal.
21 Mar. 3, 2025), is illustrative. In this case, Mr. Doe, a noncitizen from India, had been re-detained
22 by ICE at a standard check-in more than five years after his release on a bond. *Id.* at *1. Notably,
23 Mr. Doe had been arrested following his release on bond with charges dismissed after he
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1 successfully completed a diversion program, and he was the subject of an INTERPOL Red
2 Notice. *Id.* at *5. Mr. Doe challenged his mandatory detention, arguing that his re-detention
3 without review by a neutral adjudicator violated his due process rights. *Id.* at *1. In granting a
4 preliminary injunction, the Court held that even with the new facts, Mr. Doe had established a
5 strong likelihood of success in showing that he had an interest in his continued liberty and that
6 mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii) would violate this due process
7 rights unless he was afforded adequate process. *Id.* at *5. The Court further held that, after
8 applying the three-factor test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Mr. Doe was
9 entitled to a hearing before to determine whether his detention is warranted. *Id.* at *6, *8. At this
10 hearing, the government bore the burden of establishing, by clear and convincing evidence,
11 whether Mr. Doe posed a danger or a flight risk.

14 **II. Ms. Martinez's Protected Liberty Interest in Her Conditional Release**

15 60. Ms. Martinez's liberty from immigration custody is protected by the Due Process Clause:
16 "Freedom from imprisonment-from government custody, detention, or other forms of physical
17 restraint-lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v.*
18 *Davis*, 533 U.S. 678, 690 (2001).

20 61. For over twelve years preceding her re-detention on May 21, 2026, Ms. Martinez
21 exercised that freedom under the IJ's 2013 order granting her release on a low \$3,000 bond and
22 release conditions that the DHS fully stipulated to. Although she was released on bond (and thus
23 under government custody), she retained a weighty liberty interest under the Due Process Clause
24 of the Fifth Amendment in avoiding re-incarceration. See *Young v. Harper*, 520 U.S. 143, 146-
25 47 (1997); *Gagnon Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
26 482-483 (1972) Importantly, it should be noted that during the period of Ms. Martinez's release
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1 on bond, she fully complied with the conditions of her release and ICE did not require Ms.
2 Martinez to present herself for regular check-in appointments, substantiating the fact that the
3 government does not perceive her as a danger or flight risk.

4
5 62. In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee had
6 in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of
7 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
8 form the other enduring attachments of normal life." *Id* at 482. The Court further noted that "the
9 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to
10 live up to the parole conditions." *Id* The Court explained that "the liberty of a parolee, although
11 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
12 a grievous loss on the parolee and often others." *Id*. In turn, "[b]y whatever name, the liberty is
13 valuable and must be seen as within the protection of the [Fifth] Amendment." *Morrissey*, 408
14 U.S. at 482

15
16 63. This basic principle-that individuals have a liberty interest in their conditional release has
17 been reinforced by both the Supreme Court and the circuit courts on numerous occasions See,
18 e.g., *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program
19 created to reduce prison overcrowding have a protected liberty interest requiring pre- deprivation
20 process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony
21 probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit
22 has explained, when analyzing the issue of whether a specific conditional release rises to the
23 level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific
24 conditional release in the case before them with the liberty interest in parole as characterized by
25 *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation
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1 marks and citation omitted). See also, e.g., *Hurd v. District of Columbia*, 864 F.3d 671, 683
2 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement-even if that freedom is
3 lawfully revocable-has a liberty interest that entitles him to constitutional due process before he
4 is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408
5 U.S. at 482).

7 64. In fact, it is well-established that an individual maintains a protectable liberty interest
8 even where the individual obtains liberty through a mistake of law or fact. See *id.*; *Gonzalez-*
9 *Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that
10 due process considerations support the notion that an inmate released on parole by mistake,
11 because he was serving a sentence that did not carry a possibility of parole, could not be re-
12 incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to
13 society, so it "would be inconsistent with fundamental principles of liberty and justice" to return
14 him to prison) (internal quotation marks and citation omitted).

16 65. Here, when this Court "'compar[es] the specific conditional release in [Petitioner's
17 case], with the liberty interest in parole as characterized by *Morrissey*,'" it is clear that they are
18 strikingly similar. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Ms. Martinez's
19 release "enables her to do a wide range of things open to persons" who have never been in
20 custody or convicted of any crime, including to live at home, work, and "be with family and
21 friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.
22 Noncitizens released on a bond have a similar liberty interest. See *Doe*, 2025 WL 691664, a*5
23 ("Petitioner, having been released at a bond hearing over five years ago, has a similar liberty
24 interest."); *Diaz*, 2025 WL 1676854, at *2 ("Courts have previously found that individual
25 released from immigration custody on bond have a protectable liberty interest in remaining out
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1 of custody on bond."); see also *Jorge MF. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL
2 783561, at *3 (N.D. Cal. March 1, 2021) (holding that a Mexican citizen with pending removal
3 proceedings who had been released on bond had "a substantial private interest in remaining on
4 bond"); see also *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

5
6 66. Ms. Martinez's liberty interest is strong. She has shown remarkable personal growth
7 since her 2013 bond release. She deliberately left behind past negative influences to focus on a
8 stable, productive future. Professionally, she earned her beautician license and successfully
9 opened her own business. Personally, she is fully integrated into her community, backed by a
10 strong marriage to her U.S. citizen husband, an active role in her church, and a supportive social
11 network.
12

13 **III. Ms. Martinez's Liberty Interest Mandated a Hearing Before any Re-Arrest and**
14 **Revocation of Bond**

15 67. Ms. Martinez asserts that, here, (1) where her detention is civil, (2) she has diligently
16 complied with the conditions of her release on bond to which the DHS stipulated, (3) has a right
17 to seek withholding of removal in her current removal proceedings with the immigration court,
18 (4) the government cannot point to any change in circumstances post her release on bond that
19 would justify her re-detention (5) ICE has not indicated that the bond has been breached or
20 provided any evidence that would support Ms. Martinez's re-detention, and (6) public records
21 demonstrate that ICE is arresting individuals to address quota requirements imposed by the new
22 administration, due process mandates that she was required to receive notice and a hearing
23 before a neutral adjudicator prior to any re-arrest or revocation of a bond.
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26 68. Adequate, or due, process depends upon the nature of the interest affected. The more
27 important the interest and the greater the effect of its impairment, the greater the procedural
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1 safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d
2 1350, 1355-56 (9th Cir. 1985) (en bane) (citing *Morrissey*, 408 U.S. at 481-82). This Court must
3 "balance [Ms. Martinez's] liberty interest against the [government's] interest in the efficient
4 administration of its immigration laws to determine what process she is owed as ICE has
5 unconstitutionally deprived her of her liberty. *Id.* at 1357.

7 **IV. The Mathews Factors**

8 69. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in
9 conducting its balancing test: "first, the private interest that will be affected by the official action;
10 second, the risk of an erroneous deprivation of such interest through the procedures used, and the
11 probative value, if any, of additional or substitute procedural safeguards; and finally the
12 government's interest, including the function involved and the fiscal and administrative burdens
13 that the additional or substitute procedural requirements would entail." *Haygood v. Younger*, 769
14 F.2d 1350, 1357 (9th Cir. 1985) (citing *Mathews v. Eldridge*, 424 U.S. 319,335 (1976). The
15 Supreme Court "usually has held that the Constitution requires some kind of a hearing before the
16 State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).
17 Only in a "special case" where post-deprivation remedies are "the only remedies the State could
18 be expected to provide" can post-deprivation process satisfy the requirements of due process.
19 *Zinerman*, 494 U.S. at 985. Moreover, only where "one of the variables in the Mathews
20 equation-the value of pre-deprivation safeguards-is negligible in preventing the kind of
21 deprivation at issue" such that "the State cannot be required constitutionally to do the impossible
22 by providing pre-deprivation process," can the government avoid providing pre-deprivation
23 process. *Id.* Because, in this case, the provision of a pre-deprivation hearing was both possible
24 and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Ms.
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1 Martinez with notice and a hearing prior to any re-incarceration. *See Morrissey*, 408 U.S. at 481-
2 82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; see also *Youngberg v. Romeo*,
3 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 {11th Cir. 1984} (holding that
4 individuals awaiting involuntary civil commitment proceedings may not constitutionally be held
5 in jail pending the determination as to whether they can ultimately be recommitted). Under
6 Mathews, "the balance weighs heavily in favor of [Ms. Martinez's] liberty" and required a pre-
7 deprivation hearing before a neutral adjudicator, which ICE failed to provide.
8

9
10 **(i) Ms. Martinez's Private Interest in Her Liberty is Profound**

11 70. Under *Morrissey* and its progeny, individuals conditionally released from serving a
12 criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In
13 addition, the principles espoused in *Hurd* and *Johnson* - that a person who is in fact free of
14 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
15 entitles him to constitutional due process before he is re-incarcerated-apply with even greater
16 force to individuals like Ms. Martinez, who have been released pending civil removal
17 proceedings, rather than parolees or probationers who are subject to incarceration as part of a
18 sentence for a criminal conviction. *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982); *Hurd*
19 *v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). Parolees and probationers have a
20 diminished liberty interest given their underlying convictions. *See, e.g., US. v. Knights*, 534 U.S.
21 112, 119 (2001); *Griffin v. Wisconsin*, 483 U.S. 868, 874 {1987}. Nonetheless, even in the
22 criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due
23 process hearing in which they can raise any claims they may have regarding why their re-
24 incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at
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1 683. Thus, Ms. Martinez retains a truly weighty liberty interest even though she was under
2 conditional release prior to her re-arrest.

3 71. What is at stake in this case for Ms. Martinez is one of the most profound individual
4 interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond
5 decision and be able to take away her physical freedom, i.e., her "constitutionally protected
6 interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
7 (internal quotation omitted). "Freedom from bodily restraint has always been at the core of the
8 liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See
9 also *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment-from government custody,
10 detention, or other forms of physical restraint-lies at the heart of the liberty that [the Due
11 Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); see also *Doe*, 2025 WL
12 691664, at *5 ("It cannot be gainsaid that Petitioner has a substantial private interest in
13 maintaining his out-of-custody status.").

14 72. Thus, it is clear there is a profound private interest at stake in this case, which must be
15 weighed heavily when determining what process Ms. Martinez is owed under the Constitution.
16 See *Mathews*, 424 U.S. at 334-35.

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20 **(ii) Without Release from Custody until the Government Provides a Due Process**
21 **Hearing, the Risk of an Erroneous Deprivation of Liberty is High, and Process in**
22 **the Form of Constitutionally Compliant Hearing Where ICE Carries the Burden**
23 **Would Decrease That Risk**

24 73. Releasing Ms. Martinez from custody or providing her with a bond hearing would
25 ameliorate the erroneous deprivation of her liberty. Before Ms. Martinez can be lawfully
26 detained, she must be provided with a hearing before a neutral adjudicator at which the
27 government is held to show that there has been sufficiently changed circumstances such that the
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1 bond determination should be altered or revoked because clear and convincing evidence exists to
2 establish that Ms. Martinez is a danger to the community or a flight risk. See e.g. *Diaz v. Kaiser*,
3 2025 WL 1676854 at *3 (N.D. Cal. 2025) (finding that "the three factors relevant to the due
4 process inquiry set out in Mathews ... support requiring a pre-detention hearing for [Mr. Diaz as
5 Mr. Diaz] has a substantial private interest in remaining out of custody on bond, which enables
6 him to do a wide range of things open to persons who are free from custody, such as working,
7 living at home, and being with family and friends ... to form the enduring attachments of normal
8 life"). Ms. Martinez has already been erroneously deprived of her liberty, and the risk that she
9 will continue to be deprived is high if ICE is permitted to keep her detained after making a
10 unilateral decision to re-detain her. See *Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018).
11 No statutory mechanism provides Ms. Martinez with any process before a neutral adjudicator
12 following his re-detention. As a result, under current procedures, the validity or necessity of Ms.
13 Martinez's re-detention would evade any review by the IJ or any other neutral arbiter.
14

15
16 74. By contrast, the procedure Ms. Martinez seeks – ideally, release from custody and
17 reinstatement of her prior bond until she is provided a hearing in front of a neutral adjudicator at
18 which the government proves by clear and convincing evidence that circumstances have changed
19 to justify her re-detention, see *Doe*, 2025 WL 691664, *8 - is much more likely to produce
20 accurate determinations regarding factual disputes, such as whether a certain circumstance
21 constitutes a "changed circumstance." See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th
22 Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of
23 conditions not subject to measurement" are at issue, the "risk of error is considerable when just
24 determinations are made after hearing only one side"); see also *Doe*, 2025 WL 691664, *1. "A
25 neutral judge is one of the most basic due process protections. *Castro-Cortez v. INS*, 239 F.3d
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1 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548
2 U.S. 30 (2006). The Ninth Circuit has noted that the risk of an erroneous deprivation of liberty
3 under *Mathews* can be decreased where a neutral decisionmaker, rather than ICE alone, makes
4 custody determinations. *Diouf v. Napolitano* ("Diouf I"), 634 F.3d 1081, 1091-92 (9th Cir. 2011).

6 75. Due process also requires consideration of alternatives to detention and ability to pay at
7 any custody redetermination hearing that may occur. *See e.g., Hernandez v. Sessions*, 872 F.3d
8 976, 997 (9th Cir. 2017) ("Plaintiffs are likely to succeed on their challenge under the Due
9 Process Clause to the government's policy of allowing ICE and Us to set immigration bond
10 amounts without considering the detainees' financial circumstances or alternative conditions of
11 release."); *Walter A.T v. FaciHty Administrator*, No. 1:24-CV-01513-EPG-HC, 2025 WL
12 1744133, at *10 (E.D. Cal. June 24, 2025). The primary purpose of immigration detention is to
13 ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697.

15 Detention is not reasonably related to this purpose if there are alternatives to detention that could
16 mitigate risk of flight. *See Bell*, 441 U.S. at 538. Accordingly, alternatives to detention and
17 ability to pay must be considered in determining whether Ms. Martinez's re-incarceration is
18 warranted.

20 76. Lastly, due process also requires that at any hearing ICE provide Ms. Martinez with
21 details regarding the date, time, place, and substance of any conduct being used by ICE justify
22 her re-detention. Foundational due process requires that Ms. Martinez receives notice and an
23 opportunity to review information concerning her re-detention. *See cf. Trump v. J. G. G.*, 145 S.
24 Ct. 1003, 1006 (2025) (Noncitizens are "entitled to notice and opportunity to be heard
25 appropriate to the nature of the case").
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(iii) The Government's Interest in Keeping Ms. Martinez in Detention Without a Hearing is Low, and the Burden on the Government to Release Her from Custody Unless and Until She is Provided a Hearing is Minimal

77. The government's interest in keeping Ms. Martinez in detention without a due process hearing is low, and when weighed against Ms. Martinez's significant private interest in her liberty, the scale tips sharply in favor of releasing her from custody unless and until the government demonstrates by clear and convincing evidence that she is a flight risk or danger to the community. It becomes abundantly clear that the Mathews test favors Ms. Martinez when the Court considers that the process she seeks - release from custody pending notice and a hearing regarding whether she should be detained or a new bond amount should be set-is a standard course of action for the government. In the alternative, providing Ms. Martinez with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Ms. Martinez is a flight risk or danger to the community would impose only a de minimis burden on the government, because the government routinely provides this sort of hearing to detained individuals like Ms. Martinez.

78. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvyda*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it had a sudden interest in detaining Ms. Martinez on May 21, 2026, when Ms. Martinez did not violate any of the conditions of her release.

79. There has not been anything that Ms. Martinez has done that would constitute a material change in circumstances that establishes she is a danger to the community or a flight risk here in the United States where she has otherwise lived a law-abiding life for the past 12 years, trying to

1 better herself, and has at all times fully complied with the conditions of her release. The DHS
2 determined that Ms. Martinez was not a flight risk or danger to the community when it stipulated
3 to her release in 2013 to a bond of only \$3,000 and the government cannot point to anything that
4 Ms. Martinez has done that would warrant her re-detention. Under ICE's own stated policies,
5 DHS "generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change in
6 circumstances." *Saravia v. Sessions* (then later *Saravia v. Barr*), 280 F. Supp. 3d 1168, 1197
7 (N.D. Cal. 2017).
8

9 80. As to flight risk, the DHS already determined that a bond of \$3,000 was sufficient to
10 guard against any possible flight risk, to "assur[e] [his] presence at the moment of removal."
11 *Zadvydas*, 533 U.S. at 699. Moreover, ICE did not require Ms. Martinez to attend regular check-
12 ins demonstrating further that the government does not perceive her as a flight risk. Ms. Martinez
13 's post-release conduct confirms that she is not a flight risk and that she will present herself at
14 any future hearings or ICE appearances. Further, the government has not proffered evidence of
15 any violations of the conditions of her release.
16
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18 81. As the California Eastern District Court has recognized in *Doe* for a noncitizen facing
19 similar circumstances of mandatory detention following a release on bond: Given that Petitioner
20 was previously found to not be a danger or risk of flight and the unresolved questions about the
21 timing and reliability of the new information, the risk of erroneous deprivation remains high.
22 Moreover, the value in granting Petitioner procedural safeguard is readily apparent. At a hearing,
23 a neutral decisionmaker can consider all the facts and evidence before him or her to determine
24 whether Petitioner in fact presents a risk of flight or dangerousness. *Doe*, 2025 WL 691664, at *5
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26 82. The government's current interest in detaining Ms. Martinez is therefore low. That ICE
27 has a new policy to make a minimum number of arrests each day under the new administration
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1 does not constitute a material change in circumstances in Ms. Martinez's case or increase the
2 government's interest in detaining her. Moreover, the "fiscal and administrative burdens" that
3 release from custody, unless and until a bond hearing is provided, would impose are nonexistent
4 in this case. *See Mathews*, 424 U.S. at 334-35.

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6 83. In addition, providing Ms. Martinez with an immediate hearing before this Court (or a
7 neutral decisionmaker) regarding bond is a routine procedure that the government provides for
8 those in immigration jails daily. *See Doe* at *6 ("The effort and cost required to provide
9 Petitioner with procedural safeguards is minimal and indeed was previously provided in his
10 case."). There was no justifiable reason to re-incarcerate Ms. Martinez. As the Supreme Court
11 noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a
12 parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has
13 failed to abide by the conditions of his parole ... the State has no interest in revoking parole
14 without some informal procedural guarantees." 408 U.S. at 483. 84.

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17 84. A bond re-determination hearing before an IJ where the government must demonstrate by
18 clear and convincing evidence that Ms. Martinez is a flight risk or danger to the community is far
19 less costly and burdensome for the government than keeping her detained. As the Ninth Circuit
20 noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are
21 'staggering': \$158 each day per detainee, amounting to a total daily cost of \$6.5 million."
22 *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

23
24 **CLAIMS FOR RELIEF**

25 **COUNT ONE**

26 ***(Unlawful Detention Under the Immigration and Nationality Act and***
27 ***the Administrative Procedure Act)***

1 1. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
2 the preceding paragraphs as if fully set forth herein.

3 2. The DHS has violated the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.,
4 by re-detaining Ms. Martinez who has been out on a stipulated bond since 2013 and is currently
5 in withholding-only proceedings. The agency's abrupt reversal of position constitutes arbitrary
6 and capricious agency action under 5 U.S.C. § 706(2)(A).

7 3. The DHS failed in "reasoned decision-making" where an agency must examine the
8 relevant data and articulate a satisfactory explanation for its action. *Motor Vehicle Mfrs. Ass'n v.*
9 *State Farm* 463 U.S. 29 (1983) (and applied to immigration enforcement in *DHS v. Regents of*
10 *the University of California* 591 U.S. 1 (2020). Re-detaining an individual after almost 13 years
11 of compliance without a documented, individualized material change in circumstances—such as
12 a new criminal offense or an explicit flight risk behavior—runs counter to the evidence before
13 the agency.

14 4. The DHS has disregarded serious "reliance interest" and a violation of the APA occurs
15 where an agency changes its course and is required to be cognizant of, and account for, the
16 serious reliance interests that its previous policy or decisions have engendered. By stipulating to
17 a bond in in 2013 for Ms. Martinez, the government created an "implicit promise" that her liberty
18 would only be revoked if she failed to adhere to the terms of release. *Chavez Barrios v. Ripa*, No.
19 1:25-cv-22644 (S.D. Fla.) (cited and adopted in recent U.S. District Court for the Northern
20 District of California litigation, specifically in the major class-action case *Pablo Sequen v.*
21 *Albarran*, No. 5:25-cv-06487 (N.D. Cal.)

22 5. Under the *Accardi* principle, an agency violates the APA and acts "not in accordance
23 with law" if it fails to follow its own binding regulations and procedural protocols. Under 8

1 C.F.R. § 241.4 and related detention review procedures, a revocation of release must be tethered
2 to a determination of a flight risk or a danger to the community. ICE's execution a blanket re-
3 detention order (e.g., as part of an enforcement surge) without providing a pre-deprivation
4 custody review or a detailed written notice of a material change in factual circumstances, it
5 violated its own regulatory constraints. *Alcaraz v. INS*, 384 F.3d 1150 (9th Cir. 2004); *Garro*
6 *Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).

8 **COUNT TWO**

9 ***(Violation of Fifth Amendment's Due Process Clause)***

10 6. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in
11 the preceding paragraphs as if fully set forth herein.

13 7. Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment,
14 which protects all persons within the United States from arbitrary or unjustified deprivations of
15 liberty. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Civil immigration detention, being
16 nonpunitive, may be justified only when it serves legitimate regulatory goals—such as ensuring
17 appearance or protecting the public—and only when accompanied by adequate procedural
18 safeguards. *Id.* at 690; *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

20 8. The DHS stipulated to Mr. Martinez's release on a low bond of only \$3,000 more than 12
21 years ago following her conviction for an aggravated felony. If the DHS believed that Ms.
22 Martinez posed a danger to the community or a flight risk, the agency would not have agreed to
23 her release on bond, much less a bond of only \$3,000.

25 9. The DHS is correct in its opinion that Ms. Martinez is neither a flight risk nor danger to
26 the community. Following her release on bond she complied with the conditions of her release
27

1 and there was not a change in circumstances that would warrant her re-detention, yet she was re-
2 detained by ICE on or about May 21, 2026.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully requests that this Court:

- 6 a. Issue a writ of habeas corpus directing Respondents to immediately release Ms. Martinez
7 from custody under 8 U.S.C. § 1225(b)(2)(A), as her detention is unlawful under the
8 Immigration and Nationality Act, the Administrative Procedure Act, and the Due Process
9 Clause of the Fifth Amendment;
10
11 b. In the alternative, order Respondents to provide Ms. Martinez with a prompt and
12 constitutionally adequate bond hearing before a neutral decisionmaker pursuant to 8
13 U.S.C. § 1226(a), at which the Government bears the burden to justify her continued
14 detention by clear and convincing evidence;
15
16 c. Declare that Ms. Martinez's detention under § 1225(b)(2)(A) is contrary to law and
17 exceeds statutory authority;
18
19 d. Expedite briefing and adjudication of this petition pursuant to 28 U.S.C. § 1657(a) and
20 the Court's inherent authority, in light of Ms. Martinez's ongoing deprivation of liberty
21 and the urgent need for prompt resolution.
22
23 e. Award attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. §
24 2412(d), and any other applicable authority; and
25
26 f. Grant such other and further relief as the Court deems just and proper.
27
28

1 DATED: June 22, 2026.

2
3 Respectfully Submitted,

4 Robert Ferretti

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