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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Zuleinyth ACOSTA ONTIVEROS,

12 Petitioner,

13 v.

14 Patrick, DIVVER, Field Office Director  
15 of Enforcement and Removal Operations,  
16 San Diego Field Office, Immigration and  
17 Customs Enforcement; Todd M.  
18 LYONS, Acting Director, U.S.  
19 Immigration and Customs Enforcement;  
20 Markwayne MULLIN, Secretary, U.S.  
21 Department of Homeland Security; U.S.  
22 DEPARTMENT OF HOMELAND  
23 SECURITY; Todd BLANCHE, U.S.  
24 Attorney General; EXECUTIVE  
25 OFFICE FOR IMMIGRATION  
26 REVIEW; Christopher J. LAROSE,  
27 Warden of Otay Mesa Detention Facility,

28 Respondents.

Case No. **'26CV3795 GPC SBC**

**Petition for Writ of Habeas Corpus**

## I. Introduction

On December 1, 2023, ICE detained Petitioner almost immediately upon her entry into the United States. 1 day later, on December 2, 2023, ICE released Petitioner on her own recognizance pending removal proceedings. A Notice to Appear was issued on December 2, 2023, while Petitioner was at liberty. Thereafter, on May 3, 2026, Petitioner was arrested by ICE officers after her vehicle was pulled over for expired license plates. She was not provided a reason for her detention.

This civil immigration habeas petition explains that her detention violates Due Process Clause of the Fifth Amendment. This Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

## II. Statement of Facts

Zuleinyth Acosta Ontiveros is a twenty-seven-year-old -old Venezuelan national who entered the United States on December 1, 2023, when she was twenty five years old to seek asylum. She was detained for 2 days and then released on her own recognizance. She was issued a Notice to Appear on December 2, 2023. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection. On May 3, 2026, her vehicle was pulled over by ICE officials because the license plates were expired. Officials detained her without cause or explanation.

## III. Legal Argument

### **I. Ms. Acosta Ontiveros detention is a violation of the Due Process Clause.**

The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due

1 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing  
2 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

3 An individual released from immigration custody has a constitutionally  
4 protected liberty interest in remaining free from detention. *Morrissey v. Brewer*,  
5 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972); *see also*  
6 *Sanchez v. LaRose*, 25-cv-2396; 2025 WL 2770629, at \* 3 (S.D. Cal.). Thus,  
7 Petitioner has a fundamental interest in liberty and being free from official  
8 restraint. “Even when ICE has the initial discretion to detain or release a  
9 noncitizen pending removal proceedings, after that individual is released from  
10 custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi*  
11 *v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). (internal citation omitted).  
12 That liberty interest applies to individuals who are paroled into the United States  
13 and released to attend removal proceedings. *Garcia v. Andrews*, No. 1:25-CV-  
14 01006 JLT SAB, 2025 WL 2420068, at \*11 (E.D. Cal. Aug. 21, 2025); *Valencia*  
15 *Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207, at \*3 (N.D. Cal.  
16 Sept. 5, 2025); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at  
17 \*13 (D. Or. July 9, 2025).

18 To determine which procedures are constitutionally sufficient to satisfy the  
19 Due Process Clause, the Court must apply the *Matthews* factors. *See Matthews v.*  
20 *Eldridge*, 424 U.S. 319, 335 (1976). Courts must consider: (1) “the private  
21 interest that will be affected by the official action”; (2) “the risk of an erroneous  
22 deprivation of such interest through the procedures used, and the probable value,  
23 if any, of additional or substitute procedural safeguards”; and (3) “the  
24 Government's interest, including the function involved and the fiscal and  
25 administrative burdens that the additional or substitute procedural requirement  
26 would entail.” *Id.*

27 All three factors support a finding that the Ms. Acosta Ontiveros re-  
28 detention without reasoning or an opportunity to be heard denied her of her due

1 process rights. First, Ms. Acosta Ontiveros has a significant liberty interest in  
2 remaining out of custody. For two and half years, she was living and working in  
3 California. She had established a community and network in California.  
4 “Freedom from imprisonment—from government custody, detention, or other  
5 forms of physical restraint—lies at the heart of the liberty [the Due Process  
6 Clause] protects.” *Zadvydas*, 533 U.S. at 690. She also has an interest in  
7 remaining with the community. See *Morrissey v. Brewer*, 408 U.S. 471, 482  
8 (1972) (“Subject to the conditions of his parole, he can be gainfully employed and  
9 is free to be with family and friends and to form the other enduring attachments of  
10 normal life.”). Petitioner was living in the community pursuant to DHS’s own  
11 exercise of discretion to release Petitioner on her own recognizance and was then  
12 re-detained.

13 Second, the risk of an erroneous deprivation of such interest is high as Ms.  
14 Acosta Ontiveros was re-detained without providing her a reason for such re-  
15 detention or giving her an opportunity to be heard. Petitioner was released on her  
16 own recognizance for the specific purpose of pursuing removal proceedings  
17 outside detention. When she was released, the government made a finding that she  
18 did not pose a danger to the community and was not a flight risk. See *Saravia v.*  
19 *Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017) (“Release reflects a  
20 determination by the government that the noncitizen is not a danger to the  
21 community or a flight risk.”). “Once a noncitizen has been released, the law  
22 prohibits federal agents from rearresting her merely because she is subject to  
23 removal proceedings.” *Id.* “Rather, the federal agents must be able to present  
24 evidence of materially changed circumstances—namely, evidence that the  
25 noncitizen is in fact dangerous or has become a flight risk.” *Id.*

26 Petitioner’s release from custody was tied to an identified governmental  
27 purpose. There has been no indication that any changed circumstances justify re-  
28 detention. Here, the central factual question, whether the Petitioner’s

1 circumstances have changed to justify re-detention, was readily ascertainable, yet  
2 Respondents allegedly deprived Petitioner of liberty without any meaningful pre-  
3 deprivation procedure and without any prompt opportunity to challenge that  
4 determination. Here, ‘the petitioner has not received any bond or custody  
5 hearing,’ ‘the risk of an erroneous deprivation of liberty is high’ because neither  
6 the government nor [Petitioner] has had an opportunity to determine whether there  
7 is any valid basis for [his] detention.” *Pinchi*, 2025 WL 2084921 at \*5 (cleaned  
8 up).

9 Third, the Government’s interest in detaining Ms. Acosta Ontiveros without  
10 proper notice and reasoning or a hearing is “low.” *Id*; *see also Alvarenga Matute*  
11 *v. Wofford*, No. 1:25-cv-01206-KES-SKO (HC), 2025 WL 2817795, at \*6 (E.D.  
12 Cal. Oct. 3, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov.  
13 22, 2019) (“If the government wishes to re-arrest [Petitioner] at any point, it has  
14 the power to take steps toward doing so; but its interest in doing so without a  
15 hearing is low.”). Respondents do have legitimate interests in enforcing the  
16 immigration laws and efficiently administering custody determinations. But  
17 requiring basic process before re-detaining an individual that was previously  
18 released on her own recognizance, would impose only modest administrative  
19 burdens.

20 Thus, Ms. Acosta Ontiveros’ detention is unlawful. *See, e.g., Alegria*  
21 *Palma v. Larose et al.*, No. 25-cv-1942 BJC (MMP), slip op. at 14 (S.D. Cal.  
22 Aug. 11, 2025) (granting a TRO based on a procedural due process challenge to a  
23 revocation of parole without a pre-deprivation hearing); *Navarro Sanchez*, 2025  
24 WL 2770629, at \*5 (granting a writ of habeas corpus releasing petitioner from  
25 custody to the conditions of her preexisting parole on due process grounds).

26 **II. This Court has jurisdiction to consider Ms. Velloz’s claim.**

27 In cases raising similar claims, the government has argued that this Court  
28 lacks jurisdiction to consider or grant relief under 8 U.S.C. §§ 1252(g) and

1 1252(b)(9). This argument fails here.

2 Courts have jurisdiction to “decide a purely legal question that does not  
3 challenge the Attorney General’s discretionary authority.” *Ibarra-Perez v. United*  
4 *States*, 154 F.4th 989, 996 (9th Cir. 2025) (quotations omitted). In *Ibarra-Perez*,  
5 the Ninth Circuit squarely held that “§ 1252(g) does not prohibit challenges to  
6 unlawful practices merely because they are in some fashion connected to removal  
7 orders.” *Id.* at 997. Accordingly, the question is whether Petitioner’s claim  
8 “challenge[s] the Attorney General’s discretionary authority.” *Id.* at 996.

9 They do not. First, Petitioner claim relates to the government’s authority to  
10 detain her, and courts have widely held that review of issues related to detention is  
11 not barred by § 1252(g) or (b)(9). See, e.g., *Flores–Torres v. Mukasey*, 548 F.3d  
12 708, 711 (9th Cir. 2008) (holding that habeas jurisdiction exists to review a  
13 challenge to immigration detention based on a citizenship claim); *Kong v. United*  
14 *States*, 62 F.4th 608, 617 (1st Cir. 2023) (holding that “assertions of illegal  
15 detention [were] plainly collateral to ICE’s prosecutorial decision to execute [a  
16 detainee’s removal” and thus not subject to § 1252’s jurisdictional bars); *Cardoso*  
17 *v. Reno*, 216 F.3d 512, 516 (5th Cir. 2000) (“[S]ection 1252(g) does not bar courts  
18 from reviewing an alien detention order[.]”); *Parra v. Perryman*, 172 F.3d 954,  
19 957 (7th Cir. 1999) (§ 1252(g) did not apply to a “claim concern[ing] detention”).

20 As a result, in *Noori v. Larose*, 2025 WL 2800149 at \*1, Judge Curiel  
21 explained that he had jurisdiction over a similar claim. He explained, “Petitioner  
22 challenges the legality of the revocation of humanitarian parole in violation of the  
23 law and dismissal of ongoing removal proceedings without due process.” *Id.* So  
24 even assuming the agency’s re-detention “constitutes a decision or action to  
25 adjudicate cases,” that action is not “in the discretion” of the agency under §  
26 1252(g) where it was not carried out in accordance with due process of law.

27

28

#### CLAIM AND PRAYER FOR RELIEF

1 For the reasons just given, the Fifth Amendment Due Process Clause  
2 prohibits the government from continuing to detain Petitioner.

3 Accordingly, Petitioner respectfully requests that this Court:

- 4 1. Order Respondents to immediately release Petitioner from custody under  
5 the same previous conditions;
- 6 2. Alternatively, issue a writ of habeas corpus requiring Respondents to  
7 release Petitioner unless they provide a bond hearing within seven days  
8 where the Government bears the burden of establish risk of flight and  
9 dangerousness;
- 10 3. Order that Petitioner shall not be transferred outside the Southern District  
11 of California.
- 12 4. Order that Respondents shall not re-detain or continue to detain Petitioner  
13 absent a material change in circumstances;
- 14 5. Order that Respondents shall provide Petitioner's counsel with advance  
15 written notice of their position in advance of any bond hearing; and
- 16 6. Order all other relief that the Court deems just and proper.
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- 20

21 Respectfully submitted,

22  
23 Dated: June 29, 2026

s/ Tina Malek

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