Heliodoro Moreno, Jr. (SBN 275930)
heliodoro.moreno@pd.cccounty.us
OFFICE OF THE PUBLIC DEFENDER
Contra Costa County
800 Ferry Street
Martinez, CA 94553
Telephone: (925) 608-9600
Facsimile: (925) 608-9610

Attorney for Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSE OSCAR ORDAZ GOMEZ,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security, TODD BLANCHE, Acting Attorney General of the United States, acting in their official capacities,

Respondents.

CASE No.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jose Oscar Ordaz Gomez (Mr. Ordaz Gomez) was unlawfully re-detained at his Immigration and Customs Enforcement (ICE) check-in today in San Francisco.

2. Petitioner is an asylum seeker from Mexico. He entered the United States in 2005 and was apprehended by the Department of Homeland Security (DHS) in 2018. He was released from custody in June 2020 pursuant to the *Zepeda Rivas v. Jennings*, Case No. 3:20-cv-02731, settlement. Shortly afterward he was placed on an Order of Recognizance. Upon release, he continued to live in Pittsburg, California with his wife, and two U.S. citizen daughters while waiting for his immigration court date.

3. As part of the conditions of his release, Petitioner was required to wear an ankle monitor. The ankle monitor was subsequently removed months later. He was also required to attend any appointments ICE scheduled for him, commonly known as ICE check-ins. He was scheduled for an ICE check-in today. He went to his appointment today and, without notice, ICE detained him.

4. Petitioner has not been ordered removed. His asylum application is still pending. His next immigration court hearing is July 26, 2029. He has three arrests prior to being initially detain by ICE in 2018. First, in 2000, he was arrested and convicted for driving under the influence of alcohol. In 2006, he was arrested for alleged petty theft, but the charges were dismissed. Then, in 2016, he was arrested for driving without a license, but no charges were filed. Petitioner has no criminal history in the past 10 years. Petitioner is also the subject of an Interpol Red Notice, [redacted] which prompted his detention in 2018. That false accusation is the basis of his asylum claim.

5. Petitioner is a member of the certified class in *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 3691938, at *12 (N.D. Cal. Dec. 19, 2025), which challenges the Department of Homeland Security's (DHS) new policy of re-arresting and re-

detaining class members despite no change in their individual circumstances as to their dangerousness or flight (the "Re-Detention Policy").

6. On December 19, 2025, the district court made a factual finding that DHS adopted the Re-Detention Policy in May 2025 and held that the policy is likely unlawful under the Administrative Procedure Act (APA). *Garro Pinchi*, 2025 WL 3691938, at *25, *41.

7. Accordingly, the *Garro Pinchi* court granted "Plaintiffs' motion to stay DHS's re-detention policy pending final resolution of their APA claims," and "postpone[d] the effective date of the re-detention policy within ICE's San Francisco Area of Responsibility until the entry of a final judgment in this action." *Garro Pinchi*, 2025 WL 3691938, at *34.

8. ICE re-detained Petitioner on June 30, 2026, under the Re-Detention Policy, which now has no legal effect. Pursuant to the *Garro Pinchi* order, Petitioner's ongoing detention is unlawful. Petitioner is entitled to immediate release.

9. Moreover, the Constitution protects Petitioner—and every other person present in this country—from arbitrary deprivations of their liberty and guarantees them due process of law. The government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

10. Immigration detention is civil and thus is permissible for only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, Petitioner, who no criminal history since he was released from custody in 2018 and was arrested *while attending his ICE check-in*, is not a flight risk or danger. His detention is thus not justified under the Constitution. *See id.*

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

12. Consistent with these principles, a growing number of district courts have held that individuals who were previously released by DHS on an Order of Recognizance are entitled to pre-deprivation hearings before ICE can re-detain them.[1]

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

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension

[1] *See Jocop v. Albarran*, No. 25-cv-09059-JD, 2025 U.S. Dist. LEXIS 209368, at *5-6 (N.D. Cal. Oct. 23, 2025); *Rodriguez Diaz v. Kaiser*, No. 25-CV-05071-TLT, 2025 WL 3011852, at *43 (N.D. Cal. Sept. 16, 2025); *Leandro v. Albarran*, No. 3:25-cv-10042, 2025 U.S. Dist. LEXIS 228978, at *8-9 (N.D. Cal. Nov. 20, 2025); *Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122 at *21 (N.D. Cal. Nov. 25, 2025); *Andundia-Carillo v. Albarran*, No. 3:25-cv-10380, 2025 U.S. Dist. LEXIS 167975, at *8 (N.D. Cal. Dec. 3, 2025); *Paternina v. Albarran*, No. 4:25-cv-10378-YGR, 2025 U.S. Dist. LEXIS 167976, at *8 (N.D. Cal. Dec. 3, 2025); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 U.S. Dist. LEXIS 202706, at *15-16 (E.D. Cal., Oct. 14, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *12 (E.D. Cal., Oct. 17, 2025); *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC), 2025 WL 2996577, at *19 (E.D. Cal. Oct. 24, 2025); *F.M.V. v. Wofford*, No. 1:25-cv-01381-KES-SAB, 2025 U.S. Dist. LEXIS 217645, at *17-18 (E.D. Cal. Nov. 4, 2025); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *20 (E.D. Cal. Nov. 6, 2025); *J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK, 2025 U.S. Dist. LEXIS 211728, at *20-21 (E.D. Cal. Oct. 27, 2025); *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO, 2025 U.S. Dist. LEXIS 222923, at *29 (E.D. Cal. Nov. 12, 2025; *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK, 2025 U.S. Dist. LEXIS 224966, at *14 (E.D. Cal., Nov. 14, 2025).

Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

15. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district.

PARTIES

16. Petitioner Jose Oscar Ordaz Gomez is a 47-year-old man from Mexico. He has a pending application for withholding of removal, and protection under the Convention Against Torture. He is presently in civil immigration detention at 630 Sansome Street in San Francisco.

17. Respondent Sergio Albarran is the Field Office Director of the San Francisco Immigration and Customs Enforcement Office. He is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Petitioner. He maintains an office and regularly conducts business in this district. He is sued in his official capacity.

18. Respondent David J. Venturella is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Lyons is sued in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through his agents, Respondent Mullin has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Mullin is sued in his official capacity.

20. Respondent Todd Blanche is the Acting Attorney General of the United States

and the most senior official at the Department of Justice. In that capacity and through his agents, he is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Blanche is sued in his official capacity.

EXHAUSTION

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

LEGAL BACKGROUND

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

22. Petitioner's immediate release is warranted based on the *Garro Pinchi* order alone and this Court need not reach Petitioner's constitutional claim. Nevertheless, the Constitution provides an independent ground for Petitioner's immediate release.

23. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural.

24. *First*, "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the

exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

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

26. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

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

28. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

29. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained

incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

30. This reasoning applies with equal if not greater force to people released from civil immigration detention at the border, like Petitioner. After all, noncitizens living in the United States like Petitioner have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

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

31. DHS has the authority to release to release certain noncitizens on an Order of Recognizance (formally called "conditional parole") while their removal proceedings are pending before an immigration judge. 8 U.S.C. § 1226(a)(2); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) ("It is apparent that the INS used the phrase 'release on recognizance' as another name for 'conditional parole' under § 1226(a).").

32. DHS may only release a noncitizen on an Order of Recognizance if "such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceedings." 8 C.F.R. § 236.1(c)(8). As such, release on an Order of Recognizance "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

33. After a determination has been made that an individual is not a flight risk or danger, DHS may not re-arrest them "absent a change of circumstance." *See Matter of Sugay*, 17

I. & N. Dec. 637, 640 (BIA 1981); *see also Saravia v. Sessions*, 280 F. Supp. 3d at 1176 ("O]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings. Rather, the federal agents must be able to present evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of removal.").

34. In the past few months, ICE has started re-arresting individuals at routine ICE check-ins in San Francisco who were previously released on an Order of Recognizance. Many of these individuals had submitted asylum applications, appeared at ICE check-ins for years without issue, and were patiently waiting for their next immigration court date.

35. In some cases, Respondents make "half-hearted attempt[s]" to justify the re-arrest based on allegations of minor, technical violations of release conditions. *See Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *15 (N.D. Cal. Nov. 25, 2025). However, Respondents typically do not argue that the individuals are flight risks or dangers to the community based on the purported violations. *See Bernal v. Albarran*, No. 25-cv-09772-RS, 2025 U.S. Dist. LEXIS 232122, at *19 (N.D. Cal. Nov. 25, 2025) ("Though [Respondents] point to minor, technical violations, they have not explained how those violations make Bernal dangerous or a flight risk"); *J.C.L.A. v. Wofford*, No. 1:25-cv-01310-KES-EPG, 2025 U.S. Dist. LEXIS 205300, at *12 ("Respondents do not argue that petitioner's two late check-ins mean that he is a flight risk or danger to the community."); *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK, 2025 U.S. Dist. LEXIS 219172, at *12 (E.D. Cal. Nov. 6, 2025) ("While respondents assert that ICE arrested petitioner for those technical violations…they do not argue that a missed check-in or failure to seek advance approval to move means that petitioner is a flight risk or danger to the community.").

36. Instead, Respondents argue that the individuals are properly re-detained under the government's new and implausible interpretation of 8 U.S.C. § 1225(b)(2). However,

Respondents arguments "fail to contend with the liberty interests created by the fact that [the noncitizens]…were released on recognizance *prior to the manifestation of this interpretation.* *See Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 U.S. Dist. LEXIS 183811, at *28 (E.D. Cal. Sept. 18, 2025) (emphasis in original). Moreover, Respondents' mandatory detention argument has failed in almost every court to hear it because it does not accord with basic tenets of statutory interpretation. *See Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, at *20-32 (Sept. 12, 2025).

37. As courts evaluate Respondents' tenuous justifications for re-detaining noncitizens previously released on an Order of Recognizance, it has become clear that due process requires not only "changed circumstances" but also "evidence of urgent concerns," if Respondents seek to re-detain a person without a hearing. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ") (emphasis added); *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB, 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that, "given the absence of evidence of urgent concerns . . . a pre-deprivation hearing [was] required to satisfy due process," and collecting cases); *Y.M.M. v. Wamsley*, No. 2:25-cv-02075, 2025 U.S. Dist. LEXIS 219064, at *5 (W.D. Wash. Nov. 6, 2025) ("Numerous courts in this district and throughout the Ninth Circuit have recognized this requirement" of a pre-deprivation hearing, "absent evidence of urgent concerns"). A pre-deprivation hearing before the government can re-detain a noncitizen is a crucial safeguard against pretextual arrests, especially in the current political environment where ICE is under intense pressure to meet arrest quotas. *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE2025, U.S. Dist. LEXIS 160809, at *10 (Aug. 19, 2025). The legal principle is clear: Once the government makes the release determination, the individual has a liberty interest that cannot be taken away without a hearing—unless an "urgent" "change of circumstances" makes such a

pre-deprivation hearing infeasible.

C. *Garro Pinchi v. Noem Litigation and Order of Preliminary Relief*

38. In October 2025, three plaintiffs filed a complaint challenging the Re-Detention Policy under the Administrative Procedure Act (APA). *Garro Pinchi*, No. 5:25-cv-05632-PCP, Dkt. No. 38 (Class Action Complaint and Amended Petition for Writ of Habeas Corpus) (N.D. Cal. filed Oct. 10, 2025). The plaintiffs further filed a motion to "stay" the Re-Detention Policy pending final judgment on their claims and a motion for provisional class certification.

39. On December 19, 2025, the *Garro Pinchi* court issued an order granting the plaintiffs' motions to provisionally grant class certification and stay agency action. *Garro Pinchi*, 2025 WL 3691938, at *34.

40. *Garro Pinchi* certified the following class: "All noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered or will enter the United States without inspection; (2) have been or will be charged with inadmissibility under 8 U.S.C. § 1182 and have been or will be released from DHS custody; and who (3) are in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not administratively final; and (4) are not subject to detention under 8 U.S.C. § 1226(c)." *Garro Pinchi*, 2025 WL 3691938, at *12.

41. Relevant to the class definition, the jurisdiction of the San Francisco ICE Field Office covers California from the Oregon border to (and including) Kern County; Hawaii; Guam; and the Northern Mariana Islands. Within California, the Sacramento, Stockton, San Jose/Morgan Hill, Fresno, and Bakersfield sub-field ICE offices are all within the San Francisco Area of Responsibility.[2]

42. *Garro Pinchi* further certified the following subclass: "All members of the Class

[2] A map depicting the geographic the jurisdiction of the San Francisco ICE Field Office is available at https://www.ice.gov/doclib/about/offices/ero/pdf/eroFieldOffices.pdf.

whose release from DHS custody was or will be on bond, conditional parole, or their own recognizance under 8 U.S.C. § 1226(a) and/or 8 C.F.R. § 236.1(c)(8)." *Garro Pinchi*, 2025 WL 3691938, at *12.

43. On the merits, *Garro Pinchi* held that the Re-Detention Policy is likely arbitrary and capricious because, based on the preliminary record: Respondents failed to provide a reasoned explanation for their new policy at the time of its implementation; any post hoc rationalization Respondents provided for the Re-Detention Policy was based on legal error; Respondents failed to consider released noncitizens' serious reliance interests when implementing the new policy; and Respondents failed to adequately consider noncitizens' protected liberty interests when implementing the new policy. *Id.* at *25.

44. The *Garro Pinchi* court held that the DHS' new interpretation of 8 U.S.C. § 1225(b)(2) did not justify the agency's adoption of the Re-Detention Policy. *Id.* at *26–29. The court held that the Re-Detention Policy was likely unlawful regardless of whether the underlying statutory authority for re-detention was 8 U.S.C. § 1225(b)(2) or § 1226(a), and stayed the policy from applying to any class member detained under color of either statute. *Id.* at *44.

45. *Garro Pinchi* further concluded that class members would suffer irreparable harm without preliminary relief, and that the balance of equities and public interest favored such relief. *Id.* at *20.

46. Accordingly, *Garro Pinchi* granted preliminary relief and stayed Respondents' Re-Detention Policy, effective immediately. *Id.* at *31–32. The order has the effect of requiring Respondents to revert to their longstanding prior policy of refraining from re-arresting and re-detaining class members, unless they make an individualized determination that there are materially changed circumstances as to the class member's dangerousness or flight risk. *See Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005) ("The effect of invalidating an agency

rule is to reinstate the rule previously in force.").

D. Under the Garro Pinchi Order in Effect, Petitioner Must Be Immediatelt Released

47. Petitioner is a *Garro Pinchi* class member. Specifically, Petitioner (a) is in the jurisdiction of the San Francisco ICE Field Office, (b) entered the United States without inspection, (c) was charged with inadmissibility under 8 U.S.C. § 1182 and was released from DHS custody; (d) is in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not administratively final; and (e) is not subject to detention under 8 U.S.C. § 1226(c).

48. The December 19, 2025 *Garro Pinchi* order stayed the Re-Detention Policy and required Respondents to follow their prior policy within ICE's San Francisco Area of Responsibility is in effect. See Garro Pinchi, 2025 WL 3691938, at *34.

49. The *Garro Pinchi* order applies to Petitioner and renders their arrest and ongoing detention in Respondents' custody unlawful. "Agency action taken under a void rule has no legal effect." *W.C. v. Bowen*, 807 F.2d 1502, 1505 (9th Cir. 1987), as amended on denial of reh'g, 819 F.2d 237. Accordingly, "when a court with jurisdiction finds that the plaintiffs before it were harmed by an agency decision issued under an illegal rule, the court should vacate that wrongful decision as a remedy." *D.A.M. v. Barr*, 486 F. Supp. 3d 404, 416 (D.D.C. 2020) (applying *W.C. v. Bowen*). Because Petitioner remains re-detained under an unlawful policy that is no longer in effect, Petitioner's detention is unlawful. Petitioner is thus entitled to immediate release.

FACTUAL ALLEGATIONS

A. Petitioner is Unlawfully Arrested at His ICE Check-In

51. Petitioner fled Mexico and arrived in the United States in 2000. He was apprehended by immigration officials in June 2020. The district court judge in the *Zepeda Rivas* settlement determined he posed little if any flight risk or danger to the community and released

him into the community to wait for his immigration court date.

52. In August 2018, he applied for asylum, withholding of removal, and protection under the Convention Against Torture. On January 18, 2019, an immigration judge denied his applications for relief, and the Board of Immigration Appeals (BIA) affirmed the immigration judge's decision on July 2, 2019. On March 9, 2022, the Court of Appeals for the Ninth Circuit granted a joint motion to remand Petitioner's case to the immigration court to further consider his applications for withholding of removal and protection under the CAT. On September 3, 2024, the BIA remanded Petitioner's case to the immigration court. His next immigration court hearing is scheduled for July 26, 2029. He has not been ordered removed.

51. On June 30, 2026, he arrived at the ICE facility at 630 Sansome in San Francisco for a routine ICE check-in. ICE suddenly detained him at the check-in. He had no prior warning he would be detained.

52. Petitioner has made a good faith attempt to comply with all of his immigration and ICE obligations. Nothing has changed in his case that makes him a flight risk or danger. His detention does not further any legitimate government interest.

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

53. Petitioner is being deprived of his liberty without any permissible justification. The government previously released him on his own recognizance because a district court judge determined that he did not pose sufficient risk of flight or danger to the community to warrant detention.

54. None of that has changed. Upon information and belief, Petitioner has no criminal record for over 10 years, and there is no basis to believe that he poses any public-safety risk. Nor is Petitioner, who was arrested *while appearing for an ICE check-in,* a flight risk. To the contrary, Petitioner is actively seeking to comply with her ICE and immigration

obligations.

CLAIMS FOR RELIEF

FIRST CLAIMS FOR RELIEF

55. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

56. The order granting preliminary relief pending final adjudication of the claims in *Garro Pinchi v. Noem* held that Respondents' new Re-Detention Policy is likely unlawful as arbitrary and capricious. The order thereby stays the Re-Detention Policy, under which Respondents re-arrested and re-detained previously released noncitizens without an individualized determination that materially changed circumstances as to flight risk or dangerousness warrant re-detention.

57. Despite the *Garro Pinchi* order, Respondents re-arrested and re-detained Petitioner even though Petitioner had no materially changed circumstances as to flight risk or dangerousness to warrant re-detention.

58. As a member of the certified class in *Garro Pinchi*, Petitioner's ongoing detention is unlawful and Petitioner is entitled to immediate release.

59. Every moment Respondents continue to detain Petitioner and deprive them of their liberty, Respondents violate the Administrative Procedure Act and the court's order in *Garro Pinchi*.

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution (Substantive Due Process—Detention)

53. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

54. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation 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 Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

55. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*

56. Petitioner was previously released on his own recognizance ("conditional parole") by Respondents after a district court determined that he was neither dangerous to the community nor a flight risk.

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

THIRD CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process—Detention)

58. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

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

60. Petitioner has already been determined not to pose a flight risk or danger to the community. He has a protected liberty interest in her continued freedom from detention and is entitled to due process before the government can deprive him of his liberty by re-detaining him. The Due Process Clause prohibits Petitioner's re-detention without a pre-deprivation

hearing before a neutral decision-maker in which the government bears the burden of demonstrating that he poses a flight risk or danger to the community.

PRAYER FOR RELIEF

Petitioner respectfully request that this Court:

1. Assume jurisdiction over this matter;
2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
3. Declare that Petitioner's arrest and detention violates the INA, implementing regulations, and Due Process Clause of the Fifth Amendment.
4. Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
5. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
6. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
7. Grant such further relief as the Court deems just and proper.

Date: June 30, 2026

Respectfully Submitted,

/s/ Heliodoro Moreno, Jr.

Heliodoro Moreno, Jr. (SBN 275930)
heliodoro.moreno@pd.cccounty.us
OFFICE OF THE PUBLIC DEFENDER
Contra Costa County
800 Ferry Street
Martinez, CA 94553
Telephone: (925) 608-9600
Facsimile: (925) 608-9610

Attorney for Petitioner

Verification by Someone Acting on Petitioner's Behalf Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I and others working under my supervision have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus, including the statements regarding Petitioner's class membership in *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 3691938, at *12, are true and correct to the best of my knowledge.

Date: June 30, 2026

/s/ Heliodoro Moreno, Jr.
Heliodoro Moreno, Jr. (SBN 275930)