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

Chancely FANFAN, María
MALDONADO CRUZ, and Elesban
ANGEL MENDEZ,

Petitioners,

v.

Kristi NOEM, Secretary of Homeland
Security; Christopher J. LAROSE,
Warden, Otay Mesa Detention Center;
Daniel A BRIGHTMAN, Field Office
Director, San Diego Field Office, United
States Immigration and Customs
Enforcement; Todd M. LYONS, Acting
Director, United States Immigration and
Customs Enforcement; Pamela Jo BONDI,
Attorney General *in their official
capacities,*

Respondents.

Case No.:

**CLASS COMPLAINT AND
PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioners Chancely Fanfan, Maria Maldonado Cruz, and Elesban Angel Mendez are noncitizens who were previously released from immigration custody, but then were abruptly re-detained and jailed for no legitimate reason. The Department of Homeland Security (DHS) necessarily determined that they were neither a flight risk nor a danger to the community when it previously released them from its custody. However, U.S. Immigration and Customs Enforcement (ICE) officials re-detained them even though Petitioners were doing exactly what the federal government asked them to do when it released them: appear for a “check in” appointment at ICE offices in downtown San Diego.

2. Petitioners have had no criminal contact since their prior releases from DHS custody, and two Petitioners have no criminal history of any kind. Nor do Petitioners, who have dutifully attended their hearings in their ongoing removal proceedings, present risks of flight that justify re-detention. Yet ICE continues to unlawfully detain them in prison-like conditions, keeping them separated from their families and communities.

3. ICE provided Petitioners with no pre-deprivation hearing prior to their re-detention at the ICE check-in to determine whether material changes in their circumstances warrant their re-detention based on danger to the community or risk of flight, despite a growing consensus among United States district courts that such a hearing is necessary in similar circumstances.

4. Petitioners’ detention under these circumstances violates their right to substantive and procedural Due Process, as it is not justified by a legitimate government purpose. Additionally, under *Mathews v. Eldridge*, 424 U.S. 319 (1976), their fundamental liberty interest far outweighs the government’s interest in detaining them, and the risk of error is great where, as here, there has been no pre-deprivation process to ensure their loss of liberty is justified. For similar reasons,

1 their detention also contravenes the Immigration and Nationality Act (INA) and the
2 Administrative Procedure Act (APA).

3 5. Petitioners' arrests occurred earlier this fall as part of a wave of ICE
4 enforcement at the federal building at 880 Front Street in downtown San Diego
5 targeting individuals appearing for immigration court and ICE check-in
6 appointments.

7 6. After their arrests, ICE detained Petitioners at the basement of 880 Front
8 Street for days, during which time they were forced to endure deplorable conditions.
9 ICE deprived them of consistent access to private bathrooms, nutritious food,
10 phones, or medical care, forced them to spend the night on the floor or in chairs in
11 crowded rooms with extremely cold temperatures and fluorescent lights on at all
12 hours, and denied them communication with the outside world, including their
13 counsel.

14 7. After their detention in the federal building basement, ICE transferred
15 Petitioners to the Otay Mesa Detention Center in south San Diego where they have
16 languished in detention for weeks, with no recourse to seek release because
17 Respondents claim that recent changes to decades-old agency policies and practices
18 render Petitioners ineligible to seek bond from an immigration judge.

19 8. Accordingly, Petitioners seek their release and challenge their detention as a
20 violation of the Due Process Clause of the Fifth Amendment, the INA and the APA.

21 9. Petitioners additionally seek to represent a class of similarly situated
22 individuals who have been or will be subjected to ICE's unlawful practice in this
23 District of arresting and re-detaining at check-ins individuals with ongoing removal
24 proceedings, whom the federal government previously released, without conducting
25 a pre-deprivation hearing to determine whether material changes in circumstances
26 justify the re-detention.

27 10. Petitioners respectfully request that this Court issue the Writ of Habeas
28 Corpus commanding Respondents to release them from custody, and enjoin

1 Respondents from re-detaining them without a pre-deprivation hearing before a
2 neutral decision-maker at which Respondents must prove material changes in
3 circumstances justify re-detention. Petitioners seek that relief under the federal
4 habeas statute, 28 U.S.C. 2241, which is the proper vehicle for challenging civil
5 immigration detention. *See Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024)
6 (noting that a noncitizen’s challenge to his present confinement falls within the “core
7 of habeas”).

8 11. Petitioners further request this Court certify a class of similarly situated
9 individuals; appoint undersigned counsel as class counsel; grant classwide
10 declaratory relief that declares detention under these circumstances unlawful as
11 contrary to the Due Process Clause of the Constitution, the INA, and the APA; and
12 set aside Respondents’ unlawful practice under the APA.

13 CUSTODY

14 12. Petitioners are in the physical custody of Respondents while
15 imprisoned at Otay Mesa Detention Center, an immigration detention facility in San
16 Diego, California. Petitioners are under the direct control of Respondents and their
17 agents.

18 JURISDICTION

19 13. This Court has jurisdiction to consider this habeas petition and class
20 complaint under 28 U.S.C. 1331; 28 U.S.C. 2241; the Due Process Clause of the
21 Fifth Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const.
22 art. I, 2.

23 VENUE

24 14. Venue is proper in this District under 28 U.S.C. 1391 and 28 U.S.C.
25 2242 because at least one Respondent is in this District, Petitioners are detained in
26 this District, Petitioners’ immediate physical custodian is located in this District, and
27 a substantial part of the events giving rise to the claims in this action have taken
28 place in this District.

PARTIES

15. Petitioner Chancely Fanfan is currently detained by Respondents at the Otay Mesa Detention Center, an immigration detention facility in San Diego, California. He has been in ICE custody since on or about October 20, 2025.

16. Petitioner Maria Maldonado Cruz is currently detained by Respondents at the Otay Mesa Detention Center, an immigration detention facility in San Diego, California. She has been in ICE custody since on or about October 15, 2025.

17. Petitioner Elesban Angel Mendez is currently detained by Respondents at the Otay Mesa Detention Center, an immigration detention facility in San Diego, California. He has been in ICE custody since on or about October 14, 2025.

18. Respondent Christopher J. LaRose is the Warden of the Otay Mesa Detention Center facility, where Petitioners are currently detained. He is a legal custodian of Petitioners and is named in his official capacity.

19. On information and belief, Respondent Daniel A Brightman is the current Field Office Director responsible for the San Diego Field Office of ICE with administrative jurisdiction over Petitioners' immigration cases. He is a legal custodian of Petitioners and is named in his official capacity.

20. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of Petitioners and is named in his official capacity.

21. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (DHS). She is a legal custodian of Petitioners and is named in her official capacity.

22. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of Petitioners and is named in her official capacity.

STATEMENT OF FACTS

I. RECENT ENFORCEMENT PATTERNS AT 880 FRONT STREET

23. ICE has dramatically increased enforcement actions in the California border region this year. ICE arrests in San Diego and Imperial counties increased by 400 percent in the first half of 2025, compared with the same time period in 2024.

24. During the early summer months of 2025, ICE focused enforcement on individuals who appeared as required for their immigration court hearings at the fourth floor of 880 Front Street in downtown San Diego. ICE arrested individuals leaving their court hearings pursuant to a practice of seeking to have certain individuals' court cases dismissed and to place them in expedited removal proceedings, under which ICE asserts immigration detention is mandatory.

25. After lawsuits limited ICE's ability to pursue this practice, and after it received substantial negative media attention, ICE shifted its tactics at 880 Front Street.

26. Rather than arrest people in court hallways with high visibility, ICE began laying an arrest trap by summoning people to ICE offices on the second floor of 880 Front Street and arresting them there, regardless of the posture of their ongoing immigration court cases.

27. Since about October 2025, ICE has been issuing individuals letters instructing them to appear for "check-ins" or "interviews" at ICE offices on the second floor of the same building where individuals appear for immigration court.

28. Some individuals receive letters at their immigration court hearings on the fourth floor, instructing them to appear for a check-in on the second floor immediately after their hearing ends that day. Others receive letters in the mail instructing them to appear on the day of their upcoming court hearing. And some receive letters in the mail instructing them to appear for check-ins at dates and times that are unrelated to any court hearings.

29. At those check-ins, ICE agents then routinely arrest individuals who

1 have been previously deemed fit for release from DHS custody without affording
2 them a pre-deprivation hearing to determine whether changed circumstances related
3 to flight risk or danger justify their re-detention.

4 30. Family members and others who have accompanied the individuals to
5 the check-ins only learn their loved ones are going to immigration jail after ICE has
6 made the decision to arrest their loved ones, and are left to confront the devastating
7 and traumatic consequences.

8 31. After the arrests, ICE agents escort the individuals to the basement of
9 the federal building where they may remain detained for up to several days at a time
10 under substandard conditions—without consistent access to private bathrooms,
11 nutritious food, phones to contact their family or attorneys, a suitable place to sleep,
12 or medical care, and in extremely cold temperatures with fluorescent lights on at all
13 hours.

14 32. Individuals report having to relieve themselves in toilets in front of
15 numerous other detained individuals; only receiving raw or frozen burritos to eat;
16 and not being able to use phones to call their lawyers. Individuals are given a thin
17 mat to share with several others to sleep and only an aluminum sheet to attempt to
18 keep warm under extremely cold temperatures. Due to insufficient floor space, some
19 are forced to try to sleep overnight in chairs.

20 33. Individuals are not provided changes of clothes in the basement; they
21 have no choice but to remain dressed in the clothing they wore to their check-in for
22 the hours or days they are detained in the basement. One woman began menstruating
23 during the check-in at which ICE arrested her, and she was forced to wear the same
24 soiled underwear for the days that she remained in the basement.

25 34. Individuals also face overcrowding; one man shared a small room
26 estimated to measure about eight by sixteen feet with about ten other men. One
27 woman reportedly shared a small room with about a dozen others.

28 35. ICE has turned away numerous Members of Congress who have tried

1 to inspect the basement of 880 Front Street after reports of overcrowding and
2 substandard conditions.

3 36. ICE transfers individuals from the basement of 880 Front Street to other
4 long-term ICE detention facilities, including the Otay Mesa Detention Center and
5 the Imperial Regional Detention Facility in Imperial County, California.

6 37. Under Respondents' recently-adopted view of the law, most individuals
7 arrested at such check-ins, including Petitioners, cannot seek release from detention
8 from an immigration judge. Their new view, which reverses decades-old practices
9 and policies, is that all people who entered the United States without inspection, no
10 matter how long ago, are ineligible for release on bond, and must be detained for the
11 duration of their immigration cases.

12 38. Coupled with other policies, these changes render the vast majority of
13 noncitizens subject to ICE's current enforcement practices at 880 Front Street unable
14 to seek bond from an immigration judge. Thus, these individuals are now subject to
15 indefinite detention as a result of simply complying with ICE's request that they
16 appear for a check-in.

17 39. During their detention in ICE custody, the individuals face myriad
18 harms including prolonged separation from their family members, including small
19 children and babies; inability to work to provide for their families; inability to
20 properly pursue their asylum cases or other forms of immigration relief; and lack of
21 access to adequate medical care. Conditions in ICE custody are prison-like:
22 Respondents force individuals in their custody to wear color-coded jumpsuits,
23 dictate the availability of medical treatment, decree when meals are given and what
24 meals are provided, mandate when lights go on and off, forbid access to the internet,
25 charge for phone calls and any "extra" amenities, and guard them at all times with
26 armed guards.

27 40. The individuals' family members also suffer. Spouses are left alone to
28 care for children, find a way to make ends meet, and process the trauma of being

1 separated from their loved ones. Children cannot understand why their parent is gone
2 and have no assurance when, or if, they will ever return.

3 41. Below are photographs published by the New York Times of people
4 being arrested by ICE in the San Diego federal building pursuant to ICE's re-
5 detention policy, as well as of their loved ones responding to the shock of the news.¹



¹ Jesus Jimenez, *Emotional Glimpses of an Immigration Crackdown in a San Diego Courthouse*, New York Times (Nov. 8, 2025), <https://www.nytimes.com/card/2025/11/08/us/immigration-ice-san-diego-courthouse> (Photographer: Mark Abramson)

1 42. The number of individuals with ongoing removal proceedings whom
2 ICE has arrested at check-ins and detained in San Diego despite having previously
3 deemed them fit for release is certainly in the dozens, and likely exceeds 100. The
4 number will only grow as it continues to implement the policy unchecked.

5 43. The New York Times reported that in a two-week period in October
6 2025 alone, more than 120 people were seen being detained after attending check-
7 ins on the second floor of 880 Front Street in downtown San Diego. Other outlets
8 reported that as of October 22, about 200 people were arrested after showing up for
9 ICE check-ins at 880 Front Street.

10 **II. PETITIONER CHANCELY FANFAN WAS UNLAWFULLY**
11 **ARRESTED AND REMAINS DETAINED DESPITE HIS PRIOR**
12 **RELEASE FROM DHS CUSTODY.**

13 44. Petitioner Chancelly Fanfan is a 31-year-old Haitian minister who is
14 seeking asylum from Haiti based on severe harm he suffered as a result of his
15 Christian faith.

16 45. He is married and is a father to an eleven-month-old baby boy, a U.S.
17 citizen, whom he has not seen or held since he was abruptly detained on October
18 20 of this year.

19 46. Mr. Fanfan arrived to the United States with his now-wife on October
20 21, 2024. They waited in Mexico to receive an appointment to present themselves at
21 a port of entry via CBP One, a software application that allowed people to schedule
22 processing at a port of entry, as an alternative to crossing the border without
23 permission, because it was “very important to [him] to wait for an appointment so
24 that [they] could do things the right way.”

25 47. When he presented at the port of entry for his CBP One appointment,
26 Mr. Fanfan was taken into custody and processed for several hours, during which
27 time DHS officials questioned him about whether he has any tattoos, gang
28 affiliation, or prior arrests. After inspection, DHS released him on parole with a

1 Notice to Appear in immigration court.

2 48. Once in the United States, Mr. Fanfan devoted himself to providing for
3 his family, being a good father to his infant son, and continuing his ministry work,
4 now at a Baptist church in San Diego. As part of his church participation, he attends
5 Sunday service with his family, participates in “life groups” where he dives deeper
6 into his religious studies, and volunteers with service organizations in San Diego,
7 including one for victims of human trafficking.

8 49. He has “followed every rule” in the United States; he has had no prior
9 criminal contact, including even driving infractions, and he has never missed a court
10 date or appointment with ICE.

11 50. About one week before a scheduled October 20, 2025 court date, Mr.
12 Fanfan received a letter from DHS in the mail. The letter instructed him to attend a
13 check-in with ICE immediately following his October 20 court hearing.

14 51. On October 20, Mr. Fanfan appeared for his Master Calendar Hearing
15 in the San Diego Immigration Court at 880 Front Street. He was accompanied by his
16 wife and his baby boy. The immigration judge gave him a continuance to find an
17 attorney, setting his next hearing for January 2026.

18 52. As requested, after the hearing, Mr. Fanfan reported to the second floor
19 of the same building where his hearing occurred for what he thought was going to
20 be a routine check-in with ICE.

21 53. There was nothing routine about the check-in. After basic questioning,
22 ICE told Mr. Fanfan that he was being placed under arrest. They provided no reason
23 for the arrest other than that “the government” required it. He pleaded with the ICE
24 agent not to detain him, insisting he had no criminal history and needed to care for
25 his baby boy, but the agent arrested him anyway.

26 54. Three ICE agents handcuffed and took Mr. Fanfan on an elevator to the
27 basement of the federal building where he was kept overnight in horrific
28 conditions—confined in small quarters with about ten other men and only able to

1 use a toilet in the same small room in front of the other detained individuals.

2 55. When he arrived at the basement, Mr. Fanfan observed one ICE agent
3 congratulate the agent who arrested him, exclaiming “you’re on fire!” “It broke [his]
4 heart to see the way they treated [them] and were so happy about it.”

5 56. While detained in the basement, Mr. Fanfan experienced pain in his
6 chest and eventually was taken to a hospital, while shackled from his hands and feet.
7 He was given some medication at the hospital and told that his discharge paperwork
8 had important information about follow-up care. He never received that document,
9 which the hospital provided to ICE, and to this day does not know what the medical
10 professionals recommended for his pain.

11 57. In the basement Mr. Fanfan tried to sleep on a thin mat that he shared
12 with several others like a pillow because not enough mats were provided for each
13 person to have one, with only an aluminum sheet to protect him from the extremely
14 cold temperature. The lights remained on overnight.

15 58. After being detained in the basement of the federal building overnight,
16 Mr. Fanfan was transferred to the Otay Mesa Detention Center, where he has
17 languished in detention for over a month without being able to see his wife and baby
18 boy, access appropriate medical care for the chest pain he continues to suffer, or
19 communicate with his lawyer about his ongoing immigration proceedings.

20 59. Mr. Fanfan has not had the opportunity to seek release on bond, and he
21 understands that it is Respondents’ position that he is not eligible to seek such release
22 from an immigration judge.

23 60. Mr. Fanfan spent his 31st birthday in detention at the Otay Mesa
24 Detention Center. He hopes to be out of custody in time to celebrate his son’s first
25 birthday on December 14.
26
27
28

1 **III. PETITIONER MARIA MALDONADO CRUZ WAS UNLAWFULLY**
2 **ARRESTED AND REMAINS DETAINED DESPITE HER PRIOR**
3 **RELEASE FROM DHS CUSTODY.**

4 61. Petitioner Maria Maldonado Cruz is a 42-year-old wife and mother who
5 came to the United States seeking safety from political persecution in Honduras.

6 62. Ms. Maldonado Cruz entered the United States on August 16, 2019,
7 when she presented herself to Border Patrol immediately upon crossing in order to
8 seek asylum.

9 63. Border Patrol questioned Ms. Maldonado Cruz about her fear of return
10 to Honduras, and if she had any criminal history prior to her arrival in the United
11 States. After several hours of questioning and processing, they released her with a
12 Notice to Appear in immigration court and informed her she would need to check-
13 in with ICE periodically.

14 64. Ms. Maldonado Cruz then traveled to San Diego, California, where her
15 U.S. citizen brother resides. She has lived in the San Diego area for the past six years.

16 65. In this time, Ms. Maldonado Cruz established her life in San Diego. She
17 supported her daughter through high school, became a regular attendee at her local
18 church, and maintained steady employment to provide for herself and her daughter.
19 Her work has also enabled her to send money monthly to support her parents in
20 Honduras.

21 66. In 2023, Ms. Maldonado Cruz began working at a food distribution
22 company where she met her now-husband Fernando Piña, a U.S. citizen.

23 67. Ms. Maldonado Cruz applied for asylum within one year of arriving to
24 the United States.

25 68. Around January 2020, Ms. Maldonado Cruz was scheduled for and
26 attended her first immigration court hearing and ICE check-in.

27 69. She attended each immigration court hearing and ICE check-in in the
28 years after, except the ones her attorney notified her were cancelled by the
government, including during the pandemic.

1 70. In 2023, Ms. Maldonado Cruz’s immigration lawyer informed her that
2 her removal proceedings had been administratively closed, and she would no longer
3 need to attend immigration court. She continued checking in with ICE when
4 scheduled, typically on an annual basis.

5 71. In 2025, Ms. Maldonado Cruz received notice that her removal
6 proceedings had been reopened by the government.

7 72. In September 2025, Ms. Maldonado Cruz was scheduled for an
8 immigration court hearing, but her prior lawyer informed her that the hearing was
9 cancelled, so she did not go to immigration court that day.

10 73. On October 7, 2025, Ms. Maldonado Cruz’s father, who she remained
11 close with and still lived in Honduras, passed away. She went to her brother’s house
12 to mourn together.

13 74. When she arrived, her brother told her she received mail to his address.
14 He told her he did not call her about it because he thought it was just the immigration
15 court cancellation notice. When she opened the notice she saw it was actually a letter
16 instructing her to appear for an ICE check-in on October 2, 2025.

17 75. Ms. Maldonado Cruz immediately contacted an immigration lawyer to
18 resolve the missed check-in because, in her words, “[i]t was the first time I had ever
19 missed any appointment with the government, so I wanted to fix it as quickly as I
20 could and not jeopardize my case.” Her immigration lawyer suggested they go in
21 together and explain why she had missed the check-in.

22 76. On October 15, 2025, Ms. Maldonado Cruz arrived at the federal
23 building at 880 Front Street and noticed a large media presence outside. A reporter
24 attempted to interview her before warning her that “people going into the building
25 were not coming out.” Ms. Maldonado Cruz did not think she faced a risk of
26 detention because she “was trying to follow instructions and [she] was there with her
27 lawyer.”

28 77. She went to the second floor of the federal building with her

1 immigration lawyer to check-in with ICE. ICE agents took them to a back room.
2 After a discussion between her lawyer and the agents, her lawyer informed her that
3 she would be detained by ICE. Ms. Maldonado Cruz “did not understand why this
4 was happening” given her long compliance with their requirements. She was not
5 provided any reason why they were detaining her.

6 78. Ms. Maldonado Cruz’s lawyer explained to the ICE agent that Ms.
7 Maldonado Cruz was eligible to seek relief from removal, that she had complied
8 with all prior check-ins, and that she had no criminal history, but none of those
9 individualized factors altered the ICE agent’s pre-determined actions. The ICE agent
10 told Ms. Maldonado Cruz’s lawyer that ICE had instructions to arrest everyone who
11 appeared for check-ins that day.

12 79. The ICE agents handcuffed Ms. Maldonado Cruz and took her to the
13 basement of the federal building where there were about a dozen other women, some
14 chairs, and thin mats on the floor. She spent two sleepless nights in that room. Due
15 to the crowded conditions, some women spent the night in chairs.

16 80. After two nights in the basement of the federal building in downtown
17 San Diego, ICE transferred Ms. Maldonado Cruz to Otay Mesa Detention Center on
18 or about October 17, 2025. She has been detained there ever since.

19 81. Since her detention on October 15, 2025, Ms. Maldonado Cruz has not
20 slept a full night. At Otay Mesa, she has trouble sleeping over the sounds of other
21 detained individuals struggling at night, whether it be individuals who are sick and
22 up all night coughing, or individuals screaming out of desperation.

23 82. Ms. Maldonado Cruz’s lawyers have informed her that under current
24 practices, she is not eligible to seek release on bond from an immigration judge.

25 83. The hardest part of detention for Ms. Maldonado Cruz has been being
26 away from her family, including her daughter and U.S. citizen husband who she
27 lived with before her detention.

28 84. She also struggles with not being able to communicate regularly with

1 her mother in Honduras so close to her father's death, due to the extremely limited
2 and costly phone access that Respondents offer to the people they imprison at Otay
3 Mesa. As a result of Ms. Maldonado Cruz's detention, her mother has lost the crucial
4 emotional and financial support that her daughter provides. Ms. Maldonado Cruz
5 fears for her mother's wellbeing.

6 **IV. PETITIONER ELESBAN ANGEL MENDEZ WAS UNLAWFULLY**
7 **ARRESTED AND REMAINS DETAINED DESPITE HIS PRIOR**
8 **RELEASE FROM DHS CUSTODY.**

8 85. Petitioner Elesban Angel Mendez has lived in the United States for
9 nearly two decades, since 2006. He, his wife, and his two teenaged U.S. citizen
10 daughters all live on the egg farm in North County San Diego where he has worked
11 for several years.

12 86. On September 21, 2014, Mr. Angel Mendez was arrested for driving
13 under the influence. Soon after his arrest, immigration agents took him into ICE
14 custody at the Otay Mesa Detention Center. The next day, on September 22, ICE
15 released Mr. Angel Mendez on an order of release on his own recognizance and
16 pursuant to periodic ICE check-ins.

17 87. After he was released from ICE custody, Mr. Angel Mendez pled guilty
18 to driving under the influence. He was sentenced to two days of custody, probation,
19 a fine, and to attend classes and a first-time conviction program. He complied with
20 all conditions of his plea and has never had a criminal arrest or convictions since
21 then.

22 88. For the next few years, Mr. Angel Mendez appeared for non-detained
23 immigration court hearings and periodic ICE check-ins as they were scheduled. He
24 never missed a hearing or a check-in. He applied for non-Lawful Permanent
25 Resident cancellation of removal in 2016. He also was granted a work permit.

26 89. In 2017, his immigration court proceedings were administratively
27 closed. After that, he stopped having regular ICE check-ins.

28 90. In 2025, Mr. Angel Mendez's immigration court proceedings were re-

1 calendared. He was scheduled for a court hearing in August 2025. That hearing was
2 later rescheduled to December 10. Before that court hearing date came around, Mr.
3 Angel Mendez received a letter in the mail instructing him to appear for an ICE
4 check-in on October 14.

5 91. Mr. Angel Mendez thought the check-in would be uneventful like his
6 many prior check-ins with ICE, but it was not. After arriving to his check-in at the
7 second floor of the federal building, an ICE agent told him they would be re-
8 detaining him because “under President Trump every person who is here illegally
9 had to be arrested.” They did not let him say goodbye to his U.S. citizen or sister,
10 both of whom had accompanied him to the check-in and were waiting for him.

11 92. As ICE agents took him to the elevator to take him to the basement of,
12 his U.S. citizen daughter saw him and cried out “no, Dad, no!” Mr. Angel Mendez
13 felt “deep sadness and helplessness.”

14 93. Mr. Angel Mendez spent a night in detention at the basement of 880
15 Front Street before being transferred to the Otay Mesa Detention Center, where he
16 has remained detained since October 15.

17 94. Mr. Angel Mendez is suffering in detention without his daughters and
18 wife, and without being able to provide for his family, including by paying for rent,
19 bills, and food, and helping to pay for his eldest daughter’s medical assistant
20 program. He is saddened at the prospect of missing his youngest daughter’s 15th
21 birthday—an important milestone in his culture—on December 11. He also is
22 extremely worried because the owners of the egg farm where he worked prior to his
23 detention have told Mr. Angel Mendez’s wife that she and her two teenaged
24 daughters cannot continue living there if Mr. Angel Mendez does not return to work.
25 They have given his family until January 2026 to find a new place to live if Mr.
26 Angel Mendez does not return by then.

28 LEGAL FRAMEWORK

1 ***Substantive Due Process Constraints on Immigration Detention***

2 95. The Due Process Clause of the Fifth Amendment protects all
3 “person[s]” from deprivation of liberty “without due process of law.” U.S. Const.
4 amend. V.

5 96. While the immigration laws afford ICE discretion over its decisions to
6 arrest, detain, and revoke prior release decisions, those decisions are nonetheless
7 constrained by the laws Congress has enacted and the requirements of the
8 Constitution, including the Due Process Clause. *See generally Zadvydas v. Davis*,
9 533 U.S. 678, 690 (2001); *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

10 97. This is because “[f]reedom from imprisonment—from government
11 custody, detention, or other forms of physical restraint—lies at the heart of the liberty
12 that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

13 98. Immigration detention only comports with Due Process when it furthers
14 the government’s goals of “ensuring the appearance of [noncitizens] at future
15 immigration proceedings and preventing danger to the community.” *Id.* (internal
16 citations omitted). ICE detention violates substantive Due Process where it is not
17 justified by flight risk or danger concerns. *See id.*

18 99. For that reason, ostensibly “nonpunitive” ICE detention pursuant to a
19 blanket policy under which the agency claims authority to arrest and detain all
20 noncitizens who it alleges are not lawfully present in the United States, without
21 regard for whether they are a flight risk or danger, would violate the Due Process
22 Clause. *See id.* So too would ICE detention for the purposes of meeting quotas,
23 punishment, deterring immigration, or encouraging voluntary deportation. *R.I.L.-R v.*
24 *Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that “[i]n discussing
25 civil commitment more broadly, the [Supreme] Court has declared such ‘general
26 deterrence’ justifications impermissible” and finding likely contrary to Due Process
27 a deterrence policy pursuant to which DHS detained “one particular individual” for
28 purposes of “sending a message of deterrence to other[s] who may be considering

immigration” (citing *Kansas v. Crane*, 534 U.S. 407, 412 (2002)).

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

Procedural Due Process Constraints on the Detention of Individuals Who Were Previously Released

101. Procedural Due Process ensures that no persons are deprived of their liberty absent a fair process. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate procedural Due Process by balancing (1) the private interest affected; (2) the risk of erroneous deprivation of such interest; and (3) the government’s interest. *Id.* at 335.

102. “[T]he liberty [of a person released from government custody] is valuable and must be seen as within the protection of the [Due Process Clause].” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

103. “[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

104. Courts in this district have joined a growing chorus of district courts that have recognized that noncitizens have a significant liberty interest in both “continued freedom after *release on own recognizance*,” *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in “freedom from imprisonment” after “the government grants a

1 [noncitizen] *parole* into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JES-
2 MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See*
3 *also Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal.
4 Nov. 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844
5 (S.D. Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO
6 (HC), 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No.
7 25-cv-01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo*
8 *Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15,
9 2025); *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y.
10 Oct. 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828
11 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-MJP-
12 TLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No.
13 C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

14 105. “Where, as here, [the petitioner] has not received any bond or custody
15 ... hearing, the risk of an erroneous deprivation [of liberty] is high because neither
16 the government nor [the petitioner] has had an opportunity to determine whether
17 there is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035 (citing
18 *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11,
19 2025)) (cleaned up). Indeed, where a petitioner “was previously released following
20 a determination that he posed no flight risk or danger to the community, and absent
21 any new evidence showing a material change in circumstances, the risk of erroneous
22 detention without a hearing is substantial.” *Alegria Palma*, No. 25-cv-1942-BJC-
23 MMP at *6 (ordering petitioner’s immediate release where he was re-detained
24 without pre-deprivation hearing).

25 106. The requirement of an individualized determination is even stronger in
26 cases of re-detention because the prior “[r]elease reflects a determination by the
27 government that the noncitizen is not a danger to the community or a flight risk.”
28 *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom.*

1 *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). “[T]o be lawful” the re-
2 detention “must be based on evidence that the circumstances relevant to that original
3 release decision have changed.” *Saravia*, 280 F.Supp. 3d at 1196.

4 107. “To satisfy due process, those changed circumstances must represent
5 individualized legal justification for detention.” *Sanchez v. LaRose*, No. 25-CV-
6 2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (internal
7 citations omitted)).

8 108. The government can claim no interest in re-detention where there are
9 no changed circumstances going to flight risk or danger sufficient to warrant re-
10 detention. *See Pinchi*, 792 F. Supp 3d at 1036 (“The government does not claim that
11 any material circumstances have changed that would warrant reassessment of Ms.
12 Garro Pinchi's risk of flight or dangerousness, and it has articulated no other reason
13 for her detention.”). Even if the government asserted the existence of such changed
14 circumstances, its interest in denying a pre-deprivation hearing to prove that claim
15 is negligible, particularly because custody hearings are a routine practice for
16 immigration courts. Compared to the “staggering” “costs to the public of
17 immigration detention,” *Hernandez*, 872 F.3d at 996, “[t]he effort and cost required”
18 of providing a hearing “is minimal.” *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094
19 (E.D. Cal. 2025).

20 109. Thus, detention absent a pre-deprivation hearing establishing that
21 changed circumstances justify re-detention violates procedural Due Process.

22 ***The Statutory Framework Governing Petitioners’ Detention***

23 110. Petitioners are detained pursuant to 8 U.S.C. 1226(a), which provides,
24 in pertinent part, that

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

- 28 (1) may continue to detain the arrested [noncitizen]; and
(2) may release the [noncitizen] on--

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
(B) conditional parole

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

112. Section 1225(b)(2), in contrast, authorizes the detention of applicants for admission who are “seeking admission” but “not clearly and beyond a doubt entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that individuals who fall under its authority “shall be detained” during the pendency of proceedings, though they too remain eligible for release through the parole process. *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8 U.S.C. 1182(d)(5)(A) remains available even for people held under otherwise-mandatory detention pursuant to section 1225(b)).

113. Petitioners were unquestionably detained in the interior of the country at their ICE check-in appointments, months and years after initially entering the United States; thus, they were not “seeking admission” at the time of their re-detention, so their detention is governed by section 1226(a). *See, e.g., Esquivel-Pina v. Larose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361, at *5 (S.D. Cal. Oct. 24, 2025); *Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025).

114. Immigration detention “has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community.” *Zadvydas*, 533 U.S. at 678 (internal citations omitted); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

115. Those previously released by DHS, like Petitioners, have necessarily been deemed neither a flight risk nor a danger. 8 C.F.R. 1236.1(c)(8) (authorizing release of noncitizens under 1226(a) if they “would not pose a danger to property

1 or persons,” and are “likely to appear for any future proceeding”); 8 C.F.R. 212.5(b)
2 (authorizing parole from custody of noncitizens deemed “neither a security risk nor
3 a risk of absconding”).

4 116. In cases of individuals previously released by DHS, re-detention under
5 section 1226(a) requires an individualized determination of a material change in
6 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968
7 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.” (citing
8 *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec. 637, 640
9 (B.I.A. 1981) (“[W]here a previous bond determination has been made by an
10 immigration judge, no change should be made by [DHS] absent a change of
11 circumstance.”).

12 117. Absent a material change in circumstances, the re-detention of
13 noncitizens previously released by DHS violates the INA because it does not serve
14 the purpose of the statute.

15 ***Administrative Procedure Act***

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

18 119. In order to be reviewable under the APA, the challenged action must
19 constitute final agency action, which includes “the whole or a part of an agency rule,
20 order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.”
21 5 U.S.C. 551(13).

22 120. Petitioners’ and class members’ detention occurred pursuant to
23 reviewable agency action. Specifically, ICE’s San Diego Field Office has adopted a
24 policy pursuant to which it claims authority to arrest and detain all noncitizens who
25 it alleges are not lawfully present in the United States, without regard for whether
26 they are a flight risk or danger. Such a policy marks the “consummation” of the
27 ICE’s decision-making process and is an action “by which rights or obligations have
28 been determined, or from which legal consequences will flow.” *Bennett v. Spear*,

1 520 U.S. 154, 178 (1997) (internal citations omitted).

2 121. “[A]gency action ... need not be in writing to be final and judicially
3 reviewable . . . [a]n unwritten policy can still satisfy the APA’s pragmatic final
4 agency action requirement.” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d 1168,
5 1206–07 (S.D. Cal. 2019) (internal citations omitted). “[A] contrary rule would
6 allow an agency to shield its decisions from judicial review simply by refusing to
7 put those decisions in writing.” *Id.* at 1207 (internal citations omitted).

8 122. Additionally, ICE’s decisions to re-detain Petitioners constitute final
9 agency action because the re-detentions mark the “consummation” of the ICE’s
10 decision-making process on the question of Petitioners’ custody, and it is an action
11 “by which rights or obligations have been determined, or from which legal
12 consequences will flow.” *Bennett*, 520 U.S. at 178 (internal citations omitted).
13 Indeed, the “practical and legal effects of the agency action” are that Petitioners have
14 been deprived of their liberty for over a month and with no end in sight. *Or. Natural*
15 *Desert Ass’n v. U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

16 123. Courts must “hold unlawful and set aside agency actions, findings and
17 conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise
18 not in accordance with the law; (b) contrary to constitutional right, power, privilege
19 or immunity; (c) in excess of statutory jurisdiction, authority, or limitations, or short
20 of statutory right; or (d) without observance of procedures required by law. 5 U.S.C.
21 706(2).

22 124. Final agency action is arbitrary and capricious if the agency fails to
23 “articulate a satisfactory explanation for its action including a rational connection
24 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v.*
25 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted).
26 Courts may not consider an agency’s “impermissible post hoc rationalizations.”
27 *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations
28 omitted).

125. Accordingly, ICE’s policy constitutes final agency action and for the reasons discussed above, violates APA 706(2) as arbitrary and capricious and contrary to Due Process and the INA.

126. Additionally, ICE’s decisions to re-detain Petitioners were arbitrary and capricious in violation of the APA where the agency failed to contemporaneously—or ever—articulate any flight-risk or danger-based justifications for those decisions.

CLASS ACTION ALLEGATIONS

127. Petitioners bring this action on behalf of themselves and all other persons who are similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this action involves questions of law and fact common to the class; the class is so numerous that joinder of all members is impractical; the claims of Petitioners are typical of the claims of the class; Petitioners will fairly and adequately protect the interests of the class; and Respondents have acted on grounds that apply generally to the class, so that final declaratory relief is appropriate with respect to the class as a whole.

128. Petitioners seek to represent the following class:

Noncitizens with pending INA 240 removal proceedings who have been or will be re-detained in the Southern District of California while appearing at an ICE “check-in” or appointment; who DHS previously released from custody; and for whom ICE has not conducted a pre-deprivation hearing to determine whether material changes in circumstances justify re-detention.

129. The class is so numerous and transitory that joinder of all members is impracticable. Petitioners are not aware of the exact number of putative class members at any given moment, as Respondents are uniquely positioned to identify such persons. Upon information and belief, there are at least dozens of noncitizens who were arrested at ICE check-ins between October 2025 and the time of filing who were in ongoing removal proceedings at the time. The class is also comprised

1 of many future members, as ICE continues to arrest people who appear at the federal
2 building for check-ins, many of whom would be members of the proposed class.

3 130. The proposed class meets the commonality requirement. All class
4 members present at least one common core question: whether their detention without
5 a hearing is constitutional in light of their previous release.

6 131. The proposed class satisfies typicality. Petitioners' claims are typical of
7 the class, as they face the same injury as the class and assert the same claims as
8 would all class members.

9 132. The proposed class satisfies the adequacy requirement. Petitioners seek
10 class-wide declaratory and APA relief, are represented by competent class counsel,
11 and will fairly and adequately protect the class's interest.

12 **CLAIMS FOR RELIEF**

13 **COUNT ONE**

14 **VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE**

15 **Substantive Due Process**

16 **(By Petitioners and the Class Against All Defendants)**

17 133. Petitioners reallege and incorporate by reference each and every
18 allegation contained above.

19 134. The Due Process Clause of the Fifth Amendment forbids the
20 government from depriving any person of liberty without due process of law. U.S.
21 Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas*, 533
22 U.S. 678; *Demore v. Kim*, 538 U.S. 510 (2003).

23 135. "The Due Process Clause applies to all 'persons' within the United
24 States, including [noncitizens], whether their presence here is lawful, unlawful,
25 temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

26 136. "Freedom from imprisonment—from government custody, detention,
27 or other forms of physical restraint—lies at the heart of the liberty that Clause
28 protects." *Id.* at 690.

1 137. Immigration detention only comports with Due Process when it furthers
2 the government’s goals of “ensuring the appearance of [noncitizens] at future
3 immigration proceedings and preventing danger to the community.” *Id.* (cleaned up).

4 138. Immigration detention that does not serve the legitimate government
5 purposes of preventing flight or mitigating danger violates substantive Due Process.
6 *Id.*

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

13 140. Petitioners’ and class members’ detention violates the Due Process
14 Clause because it is not rationally related to any legitimate government purpose.

15 **COUNT TWO**

16 **VIOLATION OF THE FIFTH AMENDMENT DUE PROCESS CLAUSE**

17 **Procedural Due Process**

18 **(By Petitioners and the Class Against All Defendants)**

19 141. Petitioners reallege and incorporate by reference each and every
20 allegation contained above.

21 142. “In the context of immigration detention, it is well-settled that due
22 process requires adequate procedural protections to ensure that the government’s
23 asserted justification for physical confinement outweighs the individual’s
24 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872
25 F.3d at 990 (cleaned up).

26 143. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate
27 procedural Due Process by balancing 1) the private interest affected; 2) the risk of
28 erroneous deprivation of such interest; and 3) the government’s interest. *Id.* at 335.

1 144. Immigration detention always implicates the liberty interest in
2 “freedom from imprisonment.” *Zadvydas*, 533 U.S. at 690. In addition, when the
3 government releases someone, they retain a liberty interest in their on-going release
4 from government custody. *Morrisey*, 408 U.S. at 482; *Alegria Palma*, No. 25-cv-
5 1942-BJC-MMP at *6; *Sanchez*, 2025 WL 2770629 at *3.

6 145. Where a detained individual does not receive any pre-deprivation
7 hearing, “the risk of an erroneous deprivation of liberty is high because neither the
8 government nor [the petitioner] has had an opportunity to determine whether there
9 is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035 (cleaned up);
10 *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6 (“Given that Petitioner was
11 previously released following a determination that he posed no flight risk or danger
12 to the community, and absent any new evidence showing a material change in
13 circumstances, the risk of erroneous detention without a hearing is substantial.”).

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

18 147. Because the government has not afforded Petitioners or class members
19 pre-deprivation hearings to determine whether changed circumstances going to
20 flight risk or danger warrant their re-detention, their detention violates procedural
21 Due Process.

22 **COUNT THREE**

23 **VIOLATION OF IMMIGRATION AND NATIONALITY ACT**

24 **8 U.S.C. 1226(a)**

25 **(By Petitioners and the Class Against All Defendants)**

26 148. Petitioners reallege and incorporate by reference each and every
27 allegation contained above.

28 149. Petitioners and class members were re-detained in the interior of the

1 country at their ICE check-in appointments and thus are currently detained under 8
2 U.S.C. 1226(a).

3 150. Detention under 8 U.S.C. 1226(a) must serve a legitimate government
4 purpose of mitigating danger or preventing flight. *See Zadvydas*, 533 U.S. at 690; 8
5 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

6 151. Petitioners' and class members' prior release by DHS necessarily
7 reflects a determination that the noncitizen is neither a flight risk nor a danger to the
8 community. 8 C.F.R. 1236.1(c)(8) (outlining requirements for release on
9 recognizance); 8 C.F.R. 212.5(b) (outlining requirements for parole).

10 152. Thus, their re-detention pursuant to 8 U.S.C. 1226(a) requires an
11 individualized determination of a material change in circumstances going to flight
12 risk or danger in order for their re-detention to serve a regulatory purpose.

13 153. Petitioners' and class members' re-detention violates the INA where
14 they were not afforded an individualized determination of a material change in
15 circumstances related to flight risk or danger justify re-detention.

16 **COUNT FOUR**

17 **VIOLATION OF ADMINISTRATIVE PROCEDURE ACT**

18 **5 U.S.C. 706(2) (unlawful agency action)**

19 **(By Petitioners and the Class Against Federal Defendants)**

20 154. Petitioners reallege and incorporate by reference each and every
21 allegation contained above.

22 155. The APA provides that a "reviewing court shall . . . hold unlawful and
23 set aside agency action, findings, and conclusions found to be . . . not in accordance
24 with law," "contrary to constitutional right, power, privilege, or immunity," and "in
25 excess of statutory jurisdiction, authority, or limitation." 5 U.S.C. 706(2)(A)–(C).

26 156. ICE has re-detained Petitioners and class members pursuant to a blanket
27 policy under which ICE's San Diego Field Office claims authority to arrest and
28 detain all noncitizens who it alleges are not lawfully present in the United States,

1 without regard for whether they are a flight risk or danger.

2 157. Because re-detentions pursuant to Respondents' policy violate
3 Petitioners' and class members' rights under the Due Process Clause of the Fifth
4 Amendment and the INA, the policy additionally violates the APA as it is not in
5 accordance with law, is contrary to constitutional right, and is in excess of statutory
6 jurisdiction. *Id.*

7 **COUNT FIVE**

8 **VIOLATION OF ADMINISTRATIVE PROCEDURE ACT**

9 **5 U.S.C. 706(2) (arbitrary and capricious agency action)**

10 **(By Petitioners and the Class Against Federal Defendants)**

11 158. Petitioners reallege and incorporate by reference each and every
12 allegation contained above.

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

17 160. ICE's decisions to re-detain Petitioners and class members constitute
18 final agency action where they mark the "consummation" of agency decision making
19 and are actions "by which rights or obligations have been determined, or from which
20 legal consequences will flow." *Bennett*, 520 U.S. at 178.

21 161. Because ICE has failed to articulate contemporaneous rational
22 explanation for its decisions to re-detain Petitioners and class members at ICE check-
23 ins without a pre-detention hearing, and because it cannot provide a post-hoc
24 rationalization for those decisions, they are arbitrary and capricious in violation of
25 the APA. *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463
26 U.S. 29, 42–43 (1983); *Regents*, 591 U.S. at 21 .

27 162. Additionally, ICE's policy pursuant to which ICE's San Diego Field
28 Office claims authority to arrest and detain all noncitizens who it alleges are not

1 lawfully present in the United States, without regard for whether they are a flight
2 risk or danger, is arbitrary and capricious in violation of the APA because it fails to
3 “articulate a satisfactory explanation for its action including a rational connection
4 between the facts found and the choice made.” *State Farm*, 463 U.S. at 43.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioners pray that this Court grant the following relief:

- 7 1. Assume jurisdiction over this matter;
- 8 2. Order Respondents to show cause why the writ should not be granted as to the
9 named Petitioners within three days, and set a hearing on this Petition within
10 five days of the return, as required by 28 U.S.C. 2243;
- 11 3. Issue a writ of habeas corpus requiring that Respondents release the named
12 Petitioners;
- 13 4. Issue a temporary restraining order and preliminary injunction ordering the
14 named Petitioners’ release and enjoining Respondents from further detaining
15 them without a hearing at which Respondents prove changed circumstances
16 regarding their dangerousness or risk of flight warrant their detention;
- 17 5. Certify this case as a class action and certify the class;
- 18 6. Appoint named Petitioners as representatives of the class;
- 19 7. Appoint undersigned counsel as class counsel pursuant to Federal Rule of
20 Civil Procedure 23(g);
- 21 8. Declare that Petitioners’ and class members’ detention violates the Due
22 Process Clause of the Fifth Amendment, the INA, and the APA;
- 23 9. Set aside Respondents’ unlawful practice pursuant to 5 U.S.C. 706(2) as
24 contrary to law, contrary to constitutional right, and in excess of statutory
25 authority.
- 26 10. Award reasonable attorney’s fees and costs pursuant to the Equal Access to
27 Justice Act, 5 U.S.C. 504 and 28 U.S.C. 2412; and
- 28 11. Grant such further relief as this Court deems just and proper.

1
2 Dated: November 25, 2025

3 Respectfully submitted,

4 /s/ Monika Y. Langarica

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