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 9

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

13 Jose Omar Bello Reyes,
 14 *Petitioner,*
 15 v.
 16 KEVIN MCALEENAN, Acting Secretary of
 Homeland Security; MARK MORGAN,
 17 Acting Director, United States Immigration
 and Customs Enforcement; ERIK BONNAR,
 18 Field Office Director, San Francisco Field
 Office, United States Immigration and
 19 Customs Enforcement; and WILLIAM BARR,
 Attorney General,
 20 *Respondents.*
 21

Case No.:
 PETITION FOR WRIT OF HABEAS
 CORPUS
 ORAL ARGUMENT REQUESTED

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1 1. Jose Omar Bello Reyes, a prominent Kern County-based activist and vocal critic of
2 federal immigration enforcement and detention practices, respectfully petitions this Court for his
3 release. Mr. Bello was arrested and put into removal proceedings in May 2018. Shortly afterward,
4 an Immigration Judge ordered his release on a bond of \$10,000, which was posted thanks to
5 community support. However, United States Immigration and Customs Enforcement (“ICE”)
6 suddenly re-arrested Mr. Bello on May 15, 2019, mere hours after he delivered an impassioned
7 poem criticizing the agency before a large audience at a public forum held by the Kern County
8 Board of Supervisors. The close succession of these two events strongly indicates that ICE acted
9 in retaliation against Mr. Bello for his speech expressing views against the agency’s actions. His
10 arrest and detention violate the First Amendment’s prohibition on government retaliation for
11 protected speech and its related prohibition on viewpoint discrimination. If left unaddressed, ICE’s
12 actions will chill immigrant speakers from sharing criticisms of the agency at the very same time
13 that its escalating aggression and increasing use of detention are at the center of public debate.

14 2. Mr. Bello’s detention fits a pattern of ICE conduct. ICE agents have specifically
15 targeted activists who publicly criticize its immigration enforcement practices. The Second Circuit
16 recently reversed the dismissal of a prominent New York activist’s case, finding colorable his
17 claim that ICE targeted him for deportation in retaliation for his activism. *Ragbir v. Homan*, 923
18 F.3d 53 (2d Cir. 2019). The complaints in several other cases document comparable ICE activity
19 in violation of the First Amendment.

20 3. ICE is imprisoning Mr. Bello at the Mesa Verde Detention Center on a \$50,000
21 bond unilaterally set by the agency itself. That bond is five times the amount set just months ago
22 by an immigration judge; it is not reasonably related to the government’s interest in ensuring his
23 appearance in court. Mr. Bello, a farmworker with no significant assets, plainly cannot afford it.

24 4. Mr. Bello respectfully seeks an order releasing him from ICE’s custody pending the
25 completion of his removal proceedings. In the alternative, Mr. Bello seeks an order directly
26 reducing his bond to an amount that reflects his extremely limited financial resources, or
27 alternatively an order requiring the respondents to reset his bond amount after considering his
28 limited resources.

JURISDICTION

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2 5. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. §§ 2241 *et seq.*, as
3 protected under Art. I § 9, cl. 2 of the United States Constitution (the “Suspension Clause”), and
4 federal question jurisdiction under 28 U.S.C. § 1331. This case arises under the United States
5 Constitution; the Immigration and Nationality Act (“INA”), 8 U.S.C. §§ 1101 *et seq.*; the
6 Administrative Procedure Act (“APA”), 5 U.S.C §§ 701 *et seq.*; the First Amendment; and the
7 Due Process Clause of the Fifth Amendment.

8 6. Pursuant to 28 U.S.C. 2241(c)(1), this Court has jurisdiction to entertain the habeas
9 petitions of all individuals imprisoned by the federal government. In addition, pursuant to 28
10 U.S.C. § 2241(c)(3), Mr. Bello’s “custody in violation of the Constitution or laws or treaties of the
11 United States” affords this Court power to grant a writ of habeas corpus.

12 7. Pursuant to its jurisdiction, this Court may grant various forms of relief pursuant to
13 its inherent authority, its authority under the habeas statutes, the Declaratory Judgment Act, 28
14 U.S.C. §§ 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651, and has the power to enjoin
15 federal officials pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). *See also Philadelphia Co. v.*
16 *Stimson*, 223 U.S. 605, 619-21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v.*
17 *Weeks*, 271 U.S. 536, 545 (1926) (same).

VENUE

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19 8. The Northern District of California is the proper venue to resolve Mr. Bello’s
20 petition for a writ of habeas corpus under 28 U.S.C. § 1391(b) and (e). At least one of the
21 respondents, Mr. Bonnar, who is the legal custodian of Mr. Bello, resides in this District, the
22 respondents are officers or employees of the United States acting in their official capacities, a
23 substantial part of the events giving rise to the claims in this action took place in this District,
24 ultimate decisions regarding Mr. Bello’s custody are the responsibility of ICE’s San Francisco
25 Field Office, and the federal government is prosecuting Mr. Bello’s removal at the San Francisco
26 immigration court.

PARTIES

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2 9. Petitioner Jose Omar Bello Reyes is a resident of Bakersfield, California. He is
3 currently detained under the custody of the respondents at the Mesa Verde Detention Center
4 (“MVDC”) in Bakersfield, California.

5 10. Respondent Kevin McAleenan is named in his official capacity as the Acting
6 Secretary of Homeland Security in the United States Department of Homeland Security. In this
7 capacity, he supervises the respondents and is a legal custodian of Mr. Bello.

8 11. Respondent Mark Morgan is named in his official capacity as the Acting Director
9 of ICE. As the head of ICE, an agency within the U.S. Department of Homeland Security (“DHS”)
10 that detains and removes noncitizens, Mr. Morgan is a legal custodian of Mr. Bello.

11 12. Respondent Erik Bonnar is named in his official capacity as the Field Office
12 Director of the San Francisco Field Office for ICE within DHS. In this capacity, he is also
13 responsible for the administration of immigration laws and the execution of detention and removal
14 determinations and is a legal custodian of Mr. Bello.

15 13. Respondent William Barr is named in his official capacity as the Attorney General
16 of the United States. In this capacity, he is responsible for the administration of the immigration
17 laws as exercised by the Executive Office for Immigration Review, pursuant to INA § 103(g), 8
18 U.S.C. § 1103(g), is legally responsible for administering Mr. Bello’s removal proceedings and
19 the standards used in those proceedings, and as such is a legal custodian of Mr. Bello.

20 **STATEMENT OF FACTS**

21 14. Mr. Bello is a twenty-two-year-old father with a promising future. He has lived in
22 California almost his entire life since entering the United States as a three-year-old child in 2000.
23 Prior to his initial detention by ICE, he was working as a farmworker, excelling as a student
24 popular with faculty members at Bakersfield College, and engaging extensively with his
25 community. *See* Application for Cancellation of Removal, dated July 25, 2018, attached as Exhibit
26 A. After his release on bond in August 2018, he resumed all those activities—taking four college
27 classes last fall and three this past spring semester—while also becoming a primary caretaker of a
28 one-year-old U.S.-citizen son whose custody he shares with the baby’s mother. Just as he was

1 returning to normalcy, his life was upended when ICE officers re-detained him on May 15, 2019,
2 less than two days after he spoke out against the agency at a widely publicized public forum.

3 **Mr. Bello's Immigration Proceedings**

4 15. Mr. Bello's immigration case began after he was arrested on May 22, 2018 by ICE.
5 In light of his longstanding presence in the country and the extreme hardship that his removal
6 would cause his U.S.-citizen son, Mr. Bello is eligible for, and through previous counsel applied
7 for, cancellation of his removal. *See id.*

8 16. Through previous counsel, Mr. Bello also pursued a process made available to
9 victims of crime to adjust their immigration status and obtain a "U visa." His U visa application is
10 based on his cooperation, as certified by the Delano Police Department, in the investigation of a
11 violent crime in which he was the victim.

12 17. The U visa reflects lawmakers' recognition that a crime victim's cooperation,
13 assistance, and safety are essential to the effective detection, investigation, and prosecution of
14 crimes. Pursuant to 8 U.S.C. § 1184(p)(2), only 10,000 U visas are issued to crime victims per
15 fiscal year. *See* 8 C.F.R. § 214.14(d)(1). Crime victims are placed on a waiting list if they are
16 found to be eligible for a U visa but are not immediately granted the status because of the cap. *See*
17 8 C.F.R. § 214.14(d)(2). Those on the waiting list are granted deferred action—thus staying their
18 deportation—while their petitions are pending. *Id.* United States Citizenship and Immigration
19 Services ("USCIS") may also grant these individuals work authorization. *Id.* While a U visa
20 applicant may still pursue the visa even if deported, deportation cuts off access to "deferred
21 action" and work authorization.

22 18. Mr. Bello is awaiting a response from the federal government on his U visa
23 application. However, because cases placed on the immigration court docket for detained
24 immigrants moves much more quickly than the "non-detained" docket, ICE's unlawful detention
25 of Mr. Bello may enable the agency to remove him before his U visa application can be
26 adjudicated, thus depriving him of access to "deferred action" and inflicting further cruel and
27 unnecessary harm on his already-traumatized family and community. If he is released, however,
28 and is granted "deferred action," Mr. Bello will be allowed to remain with his family in the United

1 States and can obtain work authorization while awaiting an available U visa. *See* 8 C.F.R. §
2 214.14(d)(2).

3 **Mr. Bello's August 2018 Release on Bond and Life Thereafter**

4 19. Through previous counsel, Mr. Bello made a motion in July 2018 for the
5 immigration judge to redetermine and supersede ICE's decision to detain him without bond. The
6 motion was supported by glowing letters of support from a wide swath of Mr. Bello's teachers as
7 well as the Dean of Bakersfield College. *See* Respondent's Motion for Custody Redetermination,
8 dated July 26, 2018, attached as Exhibit B.

9 20. On August 22, 2018, after a bond hearing attended by numerous allies and
10 supporters of Mr. Bello, the immigration judge found that Mr. Bello was not a danger to the
11 community and, over ICE's strenuous objection, set a bond amount of \$10,000. *See* Order of the
12 Immigration Court with Respect to Custody, dated August 22, 2018, attached as Exhibit C.

13 21. Although Mr. Bello could not have afforded the \$10,000 bond, community groups,
14 including Bakersfield College student groups "Latinos Unidos Por Educación" (LUPE) and the
15 "Movimiento Estudiantil Chicanx de Aztlán," (MEChA) rallied in support of him, raising money
16 for his legal fees and securing a private donation to cover his bond and obtain his release. His
17 struggle to be free galvanized fellow community members to become critical of ICE, and his case
18 captured the media spotlight for several days in Kern County.¹

19 22. Following his release from immigration detention, Mr. Bello returned home to his
20 mother, brothers, and infant son. While working full time, he excelled in evening classes at
21 Bakersfield College. Aside from one instance in January 2019 of driving under the influence of
22 alcohol—for which he was released on his recognizance and later sentenced to fines, probation,
23 DUI school, participation in a victim impact panel via MADD, and community service—he has
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25 ¹ *See, e.g., BC student detained by ICE allowed to post bond*, The Bakersfield Californian (Aug.
26 23, 2018), https://www.bakersfield.com/news/bc-student-detained-by-ice-allowed-to-post-bond/article_4997108c-a737-11e8-85e6-0f1139facc22.html; *Bakersfield College student released from ICE custody*, The Bakersfield Californian (Aug. 24, 2018),
27 https://www.bakersfield.com/news/bakersfield-college-student-released-from-ice-custody/article_4f1c55d0-a7f5-11e8-87ab-9b332abc6e0b.html.
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1 comported himself responsibly and thrived since his release from detention.

2 23. On February 14, Mr. Bello traveled to San Francisco and appeared *pro se* across
3 from an ICE attorney at a scheduled hearing on the “non-detained” immigration court docket. The
4 non-detained immigration court often grants repeat adjournments to individuals with applications
5 for visas pending in the backlogged administrative review processes of USCIS. The collection of
6 cases afforded this treatment are commonly referred to as the “status docket.”² At his February
7 hearing, based on his pending U visa application, Mr. Bello requested that he be placed on the
8 status docket. The immigration judge deferred a decision on the request, asking Mr. Bello to return
9 to court with evidence that his application is likely to be granted.

10 24. The immigration court set his next hearing for a date in March 2019 and later
11 issued a notice resetting his next immigration court date to June 25, 2019 in San Francisco. Mr.
12 Bello planned to attend court on that date, but ICE’s decision to re-detain him means that his case
13 has been taken off that court’s docket and transferred to the “detained” immigration court docket.

14 **Mr. Bello’s Anti-ICE Activism Following His Release on Bond**

15 25. Mr. Bello’s experiences in immigration detention led him to become involved in
16 political advocacy to expose the abuses and poor conditions he suffered and experienced while
17 inside MVDC and to call for an end to the current administration’s regime of mass detention and
18 deportation. Since his release from detention last summer until his recent arrest, he publicly spoke
19 out repeatedly on these issues and the injustice of his own arrest:

20 a. For example, on September 27, 2018, Mr. Bello addressed a public rally in
21 front of MVDC alongside immigrant youth activists.³

22 b. In fall 2018, at a public forum in Fresno, Mr. Bello denounced ICE’s

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24 ² See, e.g., Catholic Legal Immigration Network, Inc., *Seeking Continuances In Immigration*
25 *Court In The Wake Of The Attorney General’s Decision In Matter OF L-A-B-R-* at 39 (Dec. 6,
26 2018) (“Generally speaking, cases where a petition or application is pending with USCIS (or where
27 the respondent awaits a current priority date) may be eligible for placement on the status docket . . .”),
available at <https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-populations/L-A-B-R-practice-advisory-12.6.2018.pdf>.

28 ³ A video of part of his speech is available on the Facebook website, at
<https://www.facebook.com/ciyja/videos/897439937114130> (last visited June 21, 2019).

1 practices and highlighted his experience at MVDC, focusing on issues of overmedication and lack
2 of educational resources available to detainees at MVDC. Mr. Bello asked community members to
3 urge MVDC to provide educational resources and to discontinue their practice of overmedicating
4 detainees.

5 c. On December 11, 2018, before the Kern County Board of Supervisors, Mr.
6 Bello gave comments describing his 2018 arrest and coercive interrogation by ICE, mentioned his
7 inhumane treatment inside MVDC and the lack of access to telephones in the facility, and read a
8 poem.⁴

9 d. On April 5, 2019, he led a Bakersfield College Student Leadership
10 development workshop on how “DREAMers” can convey their stories to reshape the public
11 narrative around immigration.

12 e. On April 25, 2019, he facilitated a panel discussion on immigration
13 enforcement issues at the annual Jess Nieto Conference for Chicano Studies at Bakersfield
14 College.⁵

15 f. During Spring 2019, he also participated in the first annual Norma Levan
16 Center’s Hispanic and Native American scholarship competition, drafting a submission on the
17 morality of private immigration detention centers profiting off of harm to human life.

18 26. Most publicly of all, on May 13, 2019, in front of a packed audience gathered to
19 witness a widely publicized forum held by the Kern County Board of Supervisors⁶ pursuant to
20 California’s Transparent Review of Unjust Transfers and Holds (TRUTH) Act—a law that
21 requires local governments to hold forums annually to examine their local law enforcement
22

23 ⁴ Mr. Bello’s speech begins at the 01:32 mark of the video of the forum, available at
24 http://kern.granicus.com/MediaPlayer.php?view_id=52&clip_id=3912 (last visited June 21, 2019).

25 ⁵ See Jess Nieto Memorial Conference, Day 3 – Bakersfield College,
26 <https://www.bakersfieldcollege.edu/event/jess-nieto-memorial-conference-day-3> (last visited June
21, 2019).

27 ⁶ See, e.g., *Kern to hold second TRUTH Act Forum next week*, South Kern Sol (May 9,
28 2019), <https://southkernsol.org/2019/05/09/kern-to-hold-second-truth-act-forum-next-week>;
Couch's Corner: Join us for next week's TRUTH forums, The Delano Record (May 9,
2019), https://www.bakersfield.com/delano-record/couch-s-corner-join-us-for-next-week-s-truth/article_6654ce54-7035-11e9-b3cd-d70a563ead71.html.

1 agencies' involvement in providing access and cooperation to ICE, *see* Cal. Gov't Code §
2 7283.1(d)—Mr. Bello delivered an impassioned poem. Titled “Dear America,” it is inspired by his
3 first-hand experiences with ICE and his detention in Mesa Verde:

4 Dear America,
5 Our administration has failed.
6 They passed laws against our people—took away our rights and our freedom—
7 and still expect to be hailed?
8 Chales!

9 Dear America,
10 You and your administration cause fear—fear through separation.
11 Instead of building trust with our people, do you prefer this racial tension?
12 Oppressed.
13 I live my life in frustration: private prisons, political funding, mass incarceration, you
14 make the connection.
15 I speak for the victims that pay for this scam: Vietnamese, Jamaican, African, Cambodian,
16 Mexican, Salvadoran, on and on, together we stand.
17 We demand our respect. We want our dignity back.
18 Our roots run deep in this country, now that's a true fact.

19 Dear Americans,
20 You might be asking yourself, what's the whole point of repeating these facts?
21 Well I'm here to let you know, we want to feel safe—whether we're Brown, Asian, or
22 Black.
23 We don't want your jobs. We don't want your money.
24 We're here to work hard, pay taxes, and study.
25 The fight has begun.
26 “We will never be apart, chiquito,” is what I promised my son.
27 Y'all can try to justify your actions, try to make excuses.
28 The bottom line here is that, at the end, the people always triumph,
and the government loses.

Dear America,
Do not consider this a threat:
Our intentions are to keep making America Great.
It's time to begin standing up for what's right:
Criminalizing children, separating our families—our “national security,” does this make it
alright?
No. It doesn't, and it won't.

The youth have to stand up.
We have to unite with our peers.
Let's begin educating our children, speak wisdom into their ears.
Because at the end of the day, I am you, and you are me.
Together, we are.

1 Sincerely,
2 Those seeds you tried to bury.⁷

3 27. Less than 36 hours after delivering this poetic indictment of the current
4 administration's immigration enforcement practices and this call for youth to stand up and unite,
5 Mr. Bello was arrested by ICE.

6 **ICE's Retaliatory Arrest and Detention of Mr. Bello**

7 28. On May 15, hours after Mr. Bello publicly delivered his poem criticizing ICE and
8 the current administration, ICE officers came to his home to arrest him. At 6:30 a.m., as Mr. Bello
9 was leaving his home and approaching his car, a white unmarked vehicle parked behind him. An
10 officer wearing civilian clothes rapidly approached and got between Mr. Bello and the car while
11 pointing a taser at him.

12 29. As that officer asked Mr. Bello questions, a black, unmarked vehicle parked
13 diagonally in front of Mr. Bello's car. A second officer, wearing a black "ICE/POLICE" vest,
14 exited that vehicle.

15 30. The first officer placed Mr. Bello in handcuffs. He began to interrogate Mr. Bello,
16 among other things, as to the identity of others residing in his home. Mr. Bello chose to exercise
17 his right to remain silent.

18 31. The officer placed Mr. Bello in the white vehicle and began driving towards the
19 Bakersfield ICE processing center, with the black vehicle following. Before continuing to the ICE
20 processing center, the officer stopped the car in an alley. There, he resumed his questioning of Mr.
21 Bello, demanding that Mr. Bello identify others who reside at his home. The officer became
22 agitated when Mr. Bello refused to respond to questions. The officer threatened Mr. Bello by
23 stating that if anything bad were to happen to Mr. Bello's family, it would be Mr. Bello's fault
24 unless he started cooperating by answering the officer's questions.

25 32. The officer told Mr. Bello, "We know who you are and what you're all about."
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27 ⁷ The forum was streamed live online, and the video is available on Kern County's website. Mr.
28 Bello's speech begins at the 01:15 mark of the video of the forum, available at
http://kern.granicus.com/MediaPlayer.php?view_id=52&clip_id=4022.

1 33. The officer also repeatedly insisted, without any basis in fact, that Mr. Bello was in
2 possession of marijuana. Mr. Bello was not in possession of marijuana and denied the unsupported
3 accusation repeatedly and unequivocally.

4 34. Mr. Bello was placed in a holding cell at ICE’s processing center in Bakersfield
5 until approximately 3:00 p.m. He was forced to remain with handcuffs behind his back. The
6 handcuffs were extremely uncomfortable and began cutting into his wrists. Mr. Bello repeatedly
7 pleaded with the ICE officers to remove the handcuffs; not only were the handcuffs hurting his
8 wrists, but he also desperately needed to use the restroom. The ICE officers continuously ignored
9 Mr. Bello’s pleas. Eventually, he had no choice but to wet himself. Mr. Bello was then placed in a
10 different holding cell with individuals awaiting to be transferred to MVDC. Mr. Bello remained in
11 soiled clothing for hours—a dehumanizing experience obviously meant to humiliate him.

12 35. Prior to being transferred to MVDC, around 7:00 p.m., the ICE officer who had
13 arrested Mr. Bello told him that his bond had been set at \$50,000. *See* Notice of Custody
14 Determination, DHS Form I-286, dated May 15, 2019, attached as Exhibit D.

15 36. The arresting officer mocked him, stating “We’ll see if you can get your friends to
16 raise the bond money again.”

17 37. A bond amount this high is highly unusual and would be unaffordable for most
18 immigrant detainees; far more commonly, bonds are set at \$20,000 or less. *See* Declaration of
19 Valerie Zukin ¶¶ 5-6, dated June 21, 2019, attached as Exhibit E.

20 38. Shortly after Mr. Bello arrived at MVDC, a guard singled out Mr. Bello, asking
21 “You think you’re famous and you’re going to get special treatment?” Mr. Bello has been detained
22 at MVDC since May 15.

23 39. Mr. Bello has submitted multiple written requests seeking confidential telephone
24 access for legal calls since his detainment on May 15, to no avail. He has received contradicting
25 instructions ordering him to submit his written requests to ICE officers, who then instruct him to
26 submit his written requests to MVDC staff, and vice versa. During this same time, other detainees
27 at MVDC have been granted access to make confidential legal calls. Consequently, to seek
28 attorney advice Mr. Bello has been left with no choice but to use money provided to him by his

1 family or to call collect, and to use a non-confidential line.

2 40. Mr. Bello earns at most \$20,000 a year—less than half his bond amount—and has
3 no significant assets. *See* Application for Cancellation of Removal, Exh. A, at 3. He plainly cannot
4 afford such a high bond.

5 41. Ever mindful that he must comply with court commands and dates, Mr. Bello
6 personally wrote a hand-written letter to the Kern County Superior Court to explain that his
7 absence from community service was a product of his having been arrested by ICE. *See* Letter
8 from Jose Bello, attached as Exhibit F.

9 ICE's Pattern and Practice of Targeting Immigrant Rights Activists

10 42. Mr. Bello's detention comes at a time when ICE has increasingly targeted
11 immigrant activists for detention and deportation following high-profile advocacy.⁸
12 Whistleblowers and journalists have uncovered reports of ICE and other immigration agencies
13 keeping tabs and files on immigrant activists and peaceful gatherings.⁹ Instances of ICE
14 surveillance and targeting of immigrant activists are mounting.

15 43. Since January 2017, federal immigration authorities across the country have
16 engaged in a pattern and practice of targeting outspoken immigrant rights activists who publicly
17 criticize U.S. immigration law, policy, and enforcement. Federal immigration authorities have
18 investigated, surveilled, harassed, raided, arrested, detained, and even deported these activists in
19 order to silence them. They have arrested activists immediately following press appearances and
20 news conferences. They have detained spokespeople and directors of immigration advocacy
21 organizations. They have surveilled the organizations' headquarters and targeted their members.

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23

24 ⁸ *See* John Burnett, *Meet the 20+ Immigration Activists Arrested Under Trump*, NPR (Mar. 16,
2018), <https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump>.

25 ⁹ *See, e.g.*, Tom Jones et al., *Leaked Documents Show the U.S. Government Tracking Journalists*
26 *and Advocates Through a Secret Database*, NBC San Diego (Mar. 6, 2019),
27 <https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html>;
28 Jimmy Tobias, *Exclusive: ICE Has Kept Tabs on Anti-Trump Protesters in New York*, *The Nation*
(Mar. 6, 2019), <https://www.thenation.com/article/ice-immigration-protest-spreadsheet-tracking/>.
(footnote continued)

1 They have identified prominent immigrants as enforcement priorities even before a final order of
2 removal is in place. They have instructed activists that their immigrant rights organizations may be
3 detrimental to them. And they have targeted communities identified by the federal government as
4 “sanctuary cities” to punish those communities for taking legislative, municipal, and political
5 action to limit official cooperation with federal immigration enforcement.¹⁰

6 44. This sharp spike in immigration enforcement specifically targeting the most vocal
7 immigration activists is intended to stifle dissent. According to U.S. Representative Jerry Nadler:
8 “These are well-known activists who’ve been here for decades, and [ICE is] saying to them: Don’t
9 raise your head.”¹¹ Similarly, in 2018 U.S. Representative Luis Gutierrez stated: “I have long
10 suspected that very vocal advocates were harshly targeted after they spoke out. . . . I would go to .
11 . . an immigration hearing, and the person who made the biggest impression? I’d find out that
12 they’d been detained. And that started last year.”¹²

13 45. Since 2017, media organizations have reported on many immigrants whom ICE has
14 detained or taken other adverse action against based on their speech or other protected activities,
15 including but not limited to individuals and organizations described herein. There are at least two
16 pending federal lawsuits alleging a pattern-and-practice of ICE targeting immigrants and
17 immigrant rights organizations in violation of the First Amendment. *See Ragbir v. Homan*, No.

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20 ¹⁰ *See, e.g.*, Tom Jones et al., *Leaked Documents Show the U.S. Government Tracking Journalists*
21 *and Advocates Through a Secret Database*, NBC San Diego (Mar. 6, 2019),
22 [https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-](https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html)
23 [Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html](https://www.nbcsandiego.com/investigations/Source-Leaked-Documents-Show-the-US-Government-Tracking-Journalists-and-Advocates-Through-a-Secret-Database-506783231.html);
24 Jimmy Tobias, *Exclusive: ICE Has Kept Tabs on Anti-Trump Protesters in New York City*, The
25 *Nation* (Mar. 6, 2019), [https://www.thenation.com/article/ice-immigration-protest-spreadsheet-](https://www.thenation.com/article/ice-immigration-protest-spreadsheet-tracking/)
26 [tracking/](https://www.thenation.com/article/ice-immigration-protest-spreadsheet-tracking/); John Burnett, *Meet the 20+ Immigration Activists Arrested Under Trump*, NPR (Mar.
27 16, 2018), [https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-](https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump)
28 [under-trump](https://www.npr.org/2018/03/16/591879718/see-the-20-immigration-activists-arrested-under-trump); Nick Pinto, *No Sanctuary: As ICE Targets Immigrant Rights Activists for*
Deportation, Suspicious Vehicles Outside Church Stoke Surveillance Fears, The Intercept (Jan.
19, 2018), [https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-](https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/)
[deportation/](https://theintercept.com/2018/01/19/ice-new-sanctuary-movement-ravi-ragbir-deportation/).

¹¹ Maria Sacchetti and David Weigel, *ICE has Detained or Deported Prominent Immigrant Rights*
Activists, Washington Post (Jan. 19, 2018), [https://www.washingtonpost.com/powerpost/ice-has-](https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.5be0c8e2393b)
[detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-](https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.5be0c8e2393b)
[11e7-a46b-a3614530bd87_story.html?utm_term=.5be0c8e2393b](https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.5be0c8e2393b).

¹² *Id.*

(footnote continued)

1 18-cv-1597 (S.D.N.Y.); *NWDC Resistance v. ICE*, No. 18-cv-01558 (W.D. Wash.). Some of the
 2 stories profiled in these and other lawsuits and news articles are listed in the following paragraphs.

3 ***Ravi Ragbir, Jean Montrevil, and the New Sanctuary Coalition***

4 46. In January 2018, ICE conducted a coordinated operation to detain and deport Ravi
 5 Ragbir, Executive Director of the New Sanctuary Coalition (“NSC”) and Jean Montrevil, one of
 6 NSC’s co-founders. NSC had led members of the public, clergy, and elected officials in peaceful
 7 public protests of ICE and immigration law and policies broadly. ICE took action against Mr.
 8 Ragbir and Mr. Montrevil following several events and media reports of NSC’s work and their
 9 remarks criticizing ICE during public rallies and on media outlets.¹³

10 47. In January 2018, ICE detained and deported Mr. Montrevil to Haiti.¹⁴ ICE detained
 11 Mr. Ragbir on January 11, 2018, but due to federal court intervention, his deportation was stayed
 12 and he was released. In ordering Mr. Ragbir’s release, the federal court noted concerns regarding
 13 interference with Mr. Ragbir’s rights under the First Amendment and described ICE’s actions in
 14 abruptly detaining him as “treatment we associate with ‘regimes we revile.’” *Ragbir v. Sessions*,
 15 2018 WL 623557, at *1 (S.D.N.Y. Jan. 29, 2018).

16 48. Mr. Ragbir, NSC, and several immigrant rights organizations subsequently filed a
 17 lawsuit challenging ICE’s nationwide practice and pattern of targeting immigrant rights activists.
 18 On April 25, 2019, the Second Circuit found that Mr. Ragbir had plausibly alleged “that the
 19 Government singled him out for deportation based not only on the viewpoint of his political
 20 speech, but on the public attention it received.” *Ragbir v. Homan*, 923 F.3d at 70. The court held
 21 that, despite his “undisputedly valid final order of removal,” Mr. Ragbir’s removal must be stayed
 22 until the district court can assess when the “taint” of ICE’s alleged unconstitutional retaliation for
 23 Mr. Ragbir’s speech has dissipated. *Id.* at 67, 79.

24
 25
 26 ¹³ See Nick Pinto, *ICE Is Targeting Political Opponents for Deportation, Ravi Ragbir and*
 27 *Immigrant Rights Groups Say in Court*, The Intercept (Feb. 9, 2018),
<https://theintercept.com/2018/02/09/ravi-ragbir-ice-immigration-deportation/>.

28 ¹⁴ Lydia McMullen-Laird, *Life After Deportation: Their Father was Returned to Haiti. Now What?*,
 The Independent (Feb. 2, 2018), <https://independent.org/2018/02/life-after-deportation/>.
 (footnote continued)

1 *Daniela Vargas*

2 49. On or about March 1, 2017, in Jackson, Mississippi, ICE agents detained Daniela
3 Vargas, a 22-year-old activist and Deferred Action for Childhood Arrival (“DACA”) recipient as
4 she left a news conference where she had spoken alongside other immigration advocacy groups.¹⁵
5 Vargas had witnessed ICE’s arrest of her family the previous month, and was not detained at that
6 time because she explained to the officers that she had DACA status. That status had expired, but
7 Vargas was in the process of applying for renewal. At the conference, she asked President Trump
8 to protect her.

9 50. ICE agents arrested Vargas mere minutes after she spoke to reporters outside
10 Jackson City Hall. A person present at the arrest reported that ICE agents opened the car door,
11 saying “you know who we are and you know why we’re here.” Although she had a pending
12 DACA case, ICE agents claimed that she was listed as a “visa overstay” and would have to be
13 detained.¹⁶ When asked to comment about Ms. Vargas’ arrest, ICE provided a statement indicating
14 that it was a “targeted” enforcement operation. On March 9, 2017, days after ICE arrested Ms.
15 Vargas, a Dreamer with an active DACA application, it tweeted that “active DACA recipients are
16 typically a lower level of enforcement priority.”¹⁷ ICE has not provided an explanation for its
17 failure to follow its own policy in the case of Ms. Vargas.¹⁸

18 *Migrant Justice*

19 51. ICE has targeted multiple members of Migrant Justice, a community based non-
20 profit organization of Vermont dairy farmworkers and their families. A majority of Vermont dairy
21 workers are immigrants, and Migrant Justice has engaged in campaigns to defend the rights of
22

23
24 ¹⁵ Phil Helsel, ‘Dreamer’ Applicant Arrested After Calling for Immigrant Protection, NBC News
(Mar. 2, 2017), <https://www.nbcnews.com/news/us-news/dreamer-applicant-arrested-after-calling-immigrant-protections-n727961>.

25 ¹⁶ ICE Intimidates Latino Community With Arrest of DACA Recipient Practicing Free Speech,
26 HuffPost (Mar. 3, 2017), https://www.huffingtonpost.com/entry/ice-intimidates-latino-community-with-arrest-of-daca_us_58b9dd6de4b02b8b584dfb6d.

27 ¹⁷ ICE on Twitter, twitter.com/icegov/status/839907967692648449.

28 ¹⁸ Ray Sanchez, “DREAMer Daniela Vargas released, immigration group says,” CNN (Mar. 10, 2017) <https://www.cnn.com/2017/03/10/us/dreamer-daniela-vargas-ordered-released/index.html>.
(footnote continued)

1 their members as workers and as immigrants. In particular, Migrant Justice has sought to hold
 2 immigration enforcement agencies including ICE accountable for rights violations.¹⁹

3 52. On April 21, 2016, ICE arrested Jose Victor Garcia Diaz outside a Mexican cultural
 4 event in Stowe, Vermont.²⁰ Mr. Garcia Diaz is a public spokesperson for Migrant Justice's Milk
 5 with Dignity campaign. The day before his arrest, he had returned from a gathering of the Food
 6 Chain Workers Alliance in Los Angeles, California. Mr. Garcia Diaz represented Vermont
 7 farmworkers at the meeting in an effort to build a unified movement for respect for human rights
 8 in food supply chains. His immigration removal proceedings are ongoing.²¹

9 53. On March 17, 2017, the day after Migrant Justice announced an escalation of its
 10 Milk with Dignity campaign with respect to Ben & Jerry's, ICE arrested Jose Enrique Balcazar
 11 Sanchez shortly after he left a meeting at Migrant Justice's office. ICE had previously identified
 12 Mr. Balcazar Sanchez as a target for enforcement.²² He has been a very visible representative of
 13 Migrant Justice and publicly promoted policies to limit ICE's entanglement with local law
 14 enforcement. Over the past few years, Mr. Balcazar Sanchez has served as one of Migrant
 15 Justice's primary spokespeople in its campaigns for driver's licenses and for a fair and impartial
 16 policing policy. He served on a task force established to advise the Vermont Attorney General on
 17 immigration issues, which resulted in guidance for Vermont cities and towns to limit their role in
 18 immigration law enforcement.²³

19 54. On March 17, 2017, ICE also arrested Zully Victoria Palacios Rodriguez, who was
 20 a passenger in Mr. Balcazar Sanchez's car. Ms. Palacios Rodriguez is a key Migrant Justice

21 _____
 22 ¹⁹ Neliana Ferraro, *Migrant Justice sues Vt. DMV, ICE over detainment of member leaders*,
 23 WCAX (Nov. 14, 2018) <https://www.wcax.com/content/news/Migrant-Justice-sues-ICE-over-detainment-of-member-leaders-500510341.html>.

24 ²⁰ Compl. ¶ 16, *Migrant Justice v. U.S. Dep't of Homeland Sec.*, No. 17-cv-197 (D. Vt. Oct. 11,
 2017).

25 ²¹ *Id.* at ¶ 17.

26 ²² On September 22, 2016, ICE arrested Miguel Alfredo Alcudia Gamas, another Migrant Justice
 27 member. Mr. Alcudia Gamas is also a public spokesperson for Migrant Justice's Milk with Dignity
 28 campaign. When ICE arrested Mr. Alcudia Gamas, ICE officers made statements implying that they
 were targeting a fellow Migrant Justice leader, Jose Enrique Balcazar Sanchez. *Id.* ¶ 18.

²³ Compl. ¶ 20, *Migrant Justice* (D. Vt. Oct. 11, 2017).

(footnote continued)

1 organizer. Just prior to her arrest, she had also just left Migrant Justice’s office. Notably, Palacios
 2 was arrested on the grounds that she had overstayed her visa.²⁴ She was held without bail, which is
 3 extremely atypical treatment for an immigrant who has merely overstayed a visa.²⁵

4 55. On June 17, 2017, two more Migrant Justice activists were arrested for immigration
 5 violations as they returned home from a march for better work conditions. Esau Peche and Yesenia
 6 Hernandez participated in the march with approximately 200 others walking from Montpelier
 7 Vermont, to a Ben & Jerry’s factory in Waterbury. After the March, they drove home to East
 8 Franklin, which is north of Waterbury. They were stopped by Border Patrol, arrested and turned
 9 over to ICE. A Border Patrol spokesperson stated that the two Mexican nationals “appeared to the
 10 agent to have come across the border” and were stopped as part of routine operations.²⁶

11 56. Migrant Justice is currently engaged in First Amendment litigation and Freedom of
 12 Information Act (“FOIA”) litigation on behalf of migrant workers. Compl., *Migrant Justice v.*
 13 *Nielsen*, No. 5:18-cv-192 (D. Vt. Nov. 14, 2018); Compl., *Migrant Justice, et. al v. United States*
 14 *Dep’t of Homeland Security, et. al*, No. 17-cv-197 (D. Vt. Oct. 11, 2017).

15 ***Emilio Gutiérrez Soto and Oscar Gutiérrez Soto***

16 57. Emilio Gutiérrez Soto is an award-winning Mexican journalist who fled Mexico in
 17 2008 as a persecuted journalist, only to find that in the United States, he would also be targeted by
 18 authorities as a result of his public statements on immigration policy.²⁷

19 58. Mr. Gutiérrez Soto and his son, Oscar, presented themselves at the United States
 20

21 ²⁴ Elizabeth Murray & Dan D’Ambrosio, *Released Migrant Justice Organizers Speak Out at BTV*
 22 *Rally*, Burlington Free Press (March 28, 2017),
 23 [https://www.burlingtonfreepress.com/story/news/local/2017/03/28/aclu-ice-arrests-jeff-sessions-
 defunding-threats-migrant-justice-rally-burlington/99704610](https://www.burlingtonfreepress.com/story/news/local/2017/03/28/aclu-ice-arrests-jeff-sessions-defunding-threats-migrant-justice-rally-burlington/99704610).

24 ²⁵ Milton J. Valencia, *Hundreds in Boston Will Protest Vermont ICE Arrests*, The Boston Globe
 (Mar. 26, 2017), [https://www.bostonglobe.com/metro/2017/03/26/hundreds-protest-vermont-ice-
 arrests-boston-monday/MdxOtwc9TP6sVHsgEjEAY/story.html](https://www.bostonglobe.com/metro/2017/03/26/hundreds-protest-vermont-ice-arrests-boston-monday/MdxOtwc9TP6sVHsgEjEAY/story.html)

25 ²⁶ Compl. ¶ 22, *Migrant Justice*; see also Elizabeth Murray, *Protesters decry farmworkers’ arrest*
 26 *after Ben & Jerry’s march* (June 19, 2017), [http://www.burlingtonfreepress.com/story/news/local/
 vermont/2017/06/19/border-patrol-arrests-2-immigrants-east-franklin/408333001](http://www.burlingtonfreepress.com/story/news/local/vermont/2017/06/19/border-patrol-arrests-2-immigrants-east-franklin/408333001).

27 ²⁷ Kate Linthicum, *U.S. frees asylum-seeking Mexican journalist detained since last year*, L.A.
 Times (July 27, 2018), [https://www.latimes.com/world/mexico-americas/la-fg-mexico-journalist-
 freed-20180727-story.html](https://www.latimes.com/world/mexico-americas/la-fg-mexico-journalist-freed-20180727-story.html).

28 (footnote continued)

1 border and applied for admission on June 16, 2008.²⁸ They were interviewed by an asylum officer
2 who found that they had a credible fear of persecution. From 2008 through 2017, they were
3 paroled into the United States as arriving aliens with a credible fear of persecution.²⁹

4 59. In February 2017, internal ICE emails show that Mr. Gutiérrez Soto was placed on
5 a list as a “candidate for arrest” in an email string titled “Non-Detained Target List,” despite the
6 fact that Mr. Gutiérrez Soto and his son had been paroled into the United States legally and were
7 awaiting a decision from the immigration judge regarding his asylum claim. ICE has not stated
8 whether it maintains other “Non-Detained Target” lists, and how it determines whether an
9 immigrant will be targeted (whether or not a final order of removal is in place).³⁰

10 60. In July 2017, an immigration judge denied Mr. Gutiérrez Soto’s and his son’s
11 asylum claims. The decision became final in August 2017.³¹

12 61. In the following months, Mr. Gutiérrez Soto was publicly critical of the United
13 States government and its immigration policy. For example, on October 4, 2017 the National Press
14 Club awarded Mr. Gutiérrez Soto the John Aubuchon Award for Press Freedom on behalf of
15 Mexican journalists. During his acceptance speech, Mr. Gutiérrez Soto criticized the United
16 States’ policy on asylum and, among other things, stated that United States immigration
17 authorities were “bartering away international law” with regard to asylum seekers.³²

18 62. On November 20, 2017, Mr. Gutiérrez Soto and his son filed motions to reopen
19

20 ²⁸ Nomaan Merchant, *Mexican journalist Emilio Gutierrez Soto, son again ordered deported*
21 *despite asylum plea*, El Paso Times (March 7, 2019),
<https://www.elpasotimes.com/story/news/immigration/2019/03/07/mexican-journalist-emilio-gutierrez-soto-son-again-ordered-deported/3094306002/>.

22 ²⁹ Kate Linthicum, *U.S. frees asylum-seeking Mexican journalist detained since last year*, L.A.
23 Times (July 27, 2018), <https://www.latimes.com/world/mexico-americas/la-fg-mexico-journalist-freed-20180727-story.html>.

24 ³⁰ Sally Stapleton, *Mexican journalist Emilio Gutiérrez Soto released from ICE detention; asylum*
25 *appeal pending*, Post Gazette (July 27, 2019) <https://www.post-gazette.com/news/nation/2018/07/27/Mexican-journalist-Emilio-Gutierrez-Soto-ICE-detention-US-asylum-appeal/stories/201807270140>.

26 ³¹ *Id.*

27 ³² Except where otherwise indicated, the remaining details of Mr. Gutiérrez Soto’s case are drawn
28 from paragraphs 56 to 61 of the complaint in *Rojas v Moore*, No. 19-cv-20855 (S. D. Fla. Mar. 5, 2019).

1 their cases with the Board of Immigration Appeals (“BIA”).

2 63. On December 7, 2017, Mr. Gutiérrez Soto and his son appeared for a previously
3 scheduled check-in with ICE and were immediately arrested and detained. ICE tried to deport both
4 of them that very day. However, before they could be deported, the BIA granted them a stay of
5 removal pending consideration of their motion to reopen. In light of this stay, Mr. Gutiérrez Soto
6 and his son were not deported, but sent to a detention center 90 miles away from El Paso, far from
7 their communities and attorneys.

8 64. On December 22, the BIA granted Mr. Gutiérrez Soto’s and his son’s motion to
9 reopen and reinstated their appeal. But Mr. Gutiérrez Soto and his son remained in detention.

10 65. In the meantime, activists continued to protest publicly for the release of Mr.
11 Gutiérrez Soto and his son. ICE officials complained of this negative publicity to William
12 McCarren, the Executive Director of the National Press Club, who stated under oath that an ICE
13 official told him to “tone it down” during a meeting regarding Mr. Gutiérrez Soto. Mr. McCarren
14 interpreted the comment in the context of the conversation to mean that the media should stop
15 attracting attention to petitioners’ cause.

16 66. On March 6, 2018, Mr. Gutiérrez Soto and his son filed a habeas petition in the
17 Western District of Texas. They asserted, among other things, that ICE violated their First
18 Amendment rights by arresting and detaining them unnecessarily on the basis of Mr. Gutiérrez
19 Soto’s public criticism of immigration enforcement officials. Noting the “temporal proximity
20 between Mr. Gutierrez-Soto's criticism of the country's immigration policy and [his re-detention],”
21 the district court found that “Petitioners have offered enough evidence to create a genuine issue of
22 material fact regarding whether Respondents [ICE] violated their First Amendment rights.”
23 *Gutierrez-Soto v. Sessions*, 317 F.Supp.3d, 917, 933 (W.D. Tex. July 10, 2018).

24 *Maru Mora-Villalpando*³³

25 67. Maru Mora-Villalpando is a longtime member and leader of Detention Watch
26 _____

27 ³³ Except where otherwise indicated, the details of Ms. Mora-Villalpando’s case are drawn from
28 paragraphs beginning at 62 of the complaint in *Rojas v Moore*, No. 19-cv-20855 (S.D. Fla. Mar. 5,
2019).

1 Network (“DWN”), specifically through her leadership of the Northwest Detention Center
2 Resistance (“NWDC Resistance”). For years, she has educated other DWN members on some of
3 the innovative practices used by NWDC Resistance, and has regularly spoken at other DWN
4 conferences and conventions. She has lived in the United States for 22 years.

5 68. In 2017, she organized and carried out several Resistance Workshops across the
6 state of Washington to educate the immigrant community on ICE and DHS’s February 2017
7 memos on enforcement implementation.

8 69. In December 2017, ICE served Ms. Mora-Villalpando with a Notice to Appear
9 (“NTA”) for removal proceedings.³⁴ ICE noted on its December 2017 I-213 Form—an official
10 ICE document that sets forth the basis to support a person’s alleged alienage and removability—
11 that Ms. Mora-Villalpando has “extensive involvement with anti-ICE protest and Latino advocacy
12 programs” and that she “has become a public figure.” The only purported evidence of Ms. Mora-
13 Villalpando’s immigration status or removability was an interview she gave to “Whatcom Watch”
14 six months earlier, in June 2017.

15 70. Ms. Mora-Villalpando has resided in the United States for over 25 years. She raised
16 a daughter in the United States: Josefina Alanis Mora, who is now a university student. She has no
17 criminal history.

18 71. Ms. Mora-Villalpando was well-known to federal officials for many years before
19 she was issued an NTA. She met with federal officials during the Obama administration, when she
20 helped publicize detainees’ hunger strikes and other protests in Washington State. She acted as a
21 spokeswoman for immigrants held at the Northwest Detention Center in Tacoma, Washington.
22 There is no explanation for ICE’s sudden issuance of a NTA other than as a retaliatory response to
23 Ms. Mora-Villalpando’s “extensive involvement with anti-ICE protest and Latino advocacy
24 programs.” The I-213 associated with her case—the official internal ICE enforcement record that
25

26 ³⁴ Maria Sacchetti & David Weigel, *ICE Has Detained or Deported Prominent Immigration*
27 *Activists*, Washington Post (Jan. 19, 2018), https://www.washingtonpost.com/powerpost/ice-has-detained-or-deported-foreigners-who-are-also-immigration-activists/2018/01/19/377af23a-fc95-11e7-a46b-a3614530bd87_story.html?utm_term=.64d28708d652.
28 (footnote continued)

1 lays out the basis for initiating proceedings against her—expressly describes her as having
2 “extensive involvement with anti-ICE protest and Latino advocacy programs.”³⁵

3 72. She explained to the *Washington Post* that “[t]here’s no way for them to know
4 about me except for the work that I do.”³⁶

5 73. In February 2018, Ms. Mora-Villalpando requested documents from ICE and other
6 agencies under FOIA. Among other items, she sought documents reflecting ICE guidance
7 regarding enforcement actions against individuals who make public statements to the media or are
8 involved in “anti-ICE” and/or “immigrant rights” activism. ICE has not substantively responded to
9 this request, forcing Ms. Mora-Villalpando to file a complaint in the United States District Court
10 of the Western District of Washington to seek the release of these documents. ICE is required to
11 release these documents under the Freedom of Information Act. Ms. Mora-Villalpando’s
12 organization, the Northwest Detention Center Resistance, is also the plaintiff in a First
13 Amendment lawsuit against ICE. *NWDC Resistance v. ICE*, No. 2:18-cv-01558 (W.D. Wash. Oct.
14 23, 2018).

15 *Claudio Rojas*

16 74. Claudio Marcelo Rojas is a high-profile activist and critic of the federal
17 government’s immigration policies. On the brink of the Miami Film Festival’s showing of “The
18 Infiltrators,” a film featuring Mr. Rojas’ political views about U.S. immigration policy and
19 activism while in immigration detention, ICE arrested and detained Mr. Rojas and rapidly moved
20 to carry out a removal order issued long ago; Mr. Rojas had been released from immigration
21 detention on an order of supervision in 2012 and had fully complied with its terms.³⁷ Following
22 his abrupt arrest, Mr. Rojas filed suit to enjoin his removal temporarily, but the district court found
23 that it did not have jurisdiction to provide such relief. *Rojas v. Moore*, Dkt # 20, No. 19-20855
24

25 _____
26 ³⁵ *ICE Targetes Undocumented Immigrants Who Share their Story in the Media*, Mijente (Feb. 26,
2018), <https://bit.ly/2Lh4Owq>.

27 ³⁶ *Id.*

28 ³⁷ *Rojas v Moore*, No. 19-cv-20855 (S.D. Fla. Mar. 5, 2019).

(footnote continued)

1 (S.D. Fla. Mar. 26, 2019).

2 ***Baltazar Aburto Gutierrez***³⁸

3 75. In early December 2017, Baltazar “Rosas” Aburto Gutierrez was detained by an
 4 ICE agent who explicitly referenced the fact that he had spoken to a newspaper in November
 5 2017.³⁹ Though his comments were made anonymously in a *Seattle Times* article, a second article
 6 in the *Chinook Observer* referenced his nick-name (“Rosas”).⁴⁰ In addition, his partner’s full
 7 name and details of the ICE action to arrest and deport her were reported in both articles. Neither
 8 article detailed Mr. Gutierrez’s immigration status.

9 76. Mr. Gutierrez had commented to the press about the wrenching circumstances of
 10 his partner’s arrest by ICE and her deportation to Mexico in November 2017. ICE at that time
 11 declined to arrest Mr. Gutierrez.

12 77. The next month, however, the arresting agent approached Mr. Gutierrez again,
 13 stating, “You are Rosas,” and “You are the one from the newspaper.”⁴¹ Mr. Gutierrez also stated
 14 that the agent told him “My supervisor asked me to come find you because of what appeared in the
 15 newspaper.”⁴² As in Mr. Bello’s case, ICE failed to explain why the rationale for permitting Mr.
 16 Gutierrez to remain free a month earlier suddenly had changed.

17 ***Amer Othman Adi***⁴³

18 78. Amer Othman Adi, a 57-year-old businessman, husband and father, arrived in the
 19 United States at 19 years old. He was placed into removal proceedings decades ago. Mr. Adi was
 20 told that he would be deported in 2016 and prepared himself and his United States citizen wife for
 21

22 ³⁸ Except where otherwise indicated, the details of Mr. Gutierrez’ case are drawn from the
 23 complaint in *Rojas v Moore*, No. 19-cv-20855 (S.D. Fla. Mar. 5, 2019).

24 ³⁹ Nina Shapiro, *ICE Tracks Down Immigrants Who Spoke to Media in SW Washington: “You Are*
 25 *the One from the Newspaper,”* *Seattle Times* (Dec. 3, 2017), <https://www.seattletimes.com/seattle-news/ice-tracks-down-immigrant-who-spoke-to-media-in-sw-washington-you-are-the-one-from-the-newspaper>.

26 ⁴⁰ *Id.*

27 ⁴¹ *Id.*

28 ⁴² *Id.*

⁴³ The details of Mr. Adi’s case are drawn from the complaint in *Rojas v Moore*, No. 19-cv-20855
 (S.D. Fla. Mar. 5, 2019).

1 a scheduled departure on January 7. Then, ICE granted a temporary stay that prevented his
2 January 7 deportation.

3 79. On January 16, 2018, ICE arrested Mr. Adi and placed him in detention. To protest
4 his deportation, Mr. Adi began a hunger strike. Ohio Democratic congressman Tim Ryan
5 introduced a private bill to grant Mr. Adi lawful permanent resident status, which would allow him
6 to remain in the United States. The House Judiciary Subcommittee on Immigration and Border
7 Security approved the private bill, asking ICE to grant Adi a six-month stay of deportation. In an
8 extraordinary move, described as “highly irregular” by Representative Tim Ryan of Ohio, ICE
9 reversed its prior stay and rejected the congressional request to stay Adi’s deportation. Mr. Adi
10 was deported to Jordan on January 29, 2018.

11 *Jesus Chavez Flores*

12 80. In February 2018, ICE placed Jesus Chavez Flores into solitary confinement as
13 punishment for leading a hunger strike. The hunger strike, which began to protest conditions at the
14 detention facility, began on February 7, 2018 and involved approximately 120 immigrants housed
15 in the detention center.

16 81. Mr. Chavez remained in solitary confinement for 20 days, while attorneys filed a
17 lawsuit to enjoin the detention center and ICE from continuing to retaliate against Mr. Chavez.
18 Mr. Chavez was subsequently released from solitary confinement, only to be transferred to a
19 higher security detention facility, without reason. He has stated that he continues to fear further
20 retaliation for his protest.⁴⁴

21 *Alejandra Pablos*⁴⁵

22 82. On March 7, 2018, ICE detained Alejandra Pablos. Ms. Pablos is a member of
23

24 ⁴⁴ See ACLU-WA, “ACLU-WA Lawsuit Seeks to Uphold Free Speech Rights of Hunger Striker at
25 Northwest Detention Center” (Feb. 23, 2018), <https://www.aclu-wa.org/news/aclu-wa-lawsuit-seeks-uphold-free-speech-rights-hunger-striker-northwest-detention-center>; Pl.’s Mot. for Leave to
26 File Second Am. Compl., *Chavez Flores v. United States Immigration and Customs Enforcement*,
No. 18-cv-05139 (W.D. Wash. May 21, 2018) (Dkt. No. 45).

27 ⁴⁵ Except where otherwise indicated, the details of Ms. Pablos’ case are drawn from the complaint
in *Rojas v Moore*, No. 19-cv-20855 (S.D. Fla. Mar. 5, 2019).

28 (footnote continued)

1 DWN, and an activist well known for her anti-ICE protests. Ms. Pablos is a legal permanent
2 resident who came to the United States as an infant. Her detention appears to be related to a
3 January 2018 incident in which she was arrested by ICE officers during a protest, while speaking
4 in front of an ICE building. No other person was arrested, and observers later stated that Ms.
5 Pablos was singled out by the ICE officer without justification.⁴⁶

6 83. When Ms. Pablos arrived at the check-in at which she was detained, an officer
7 informed her that after the January 2018 arrest, ICE officials in Virginia notified their Arizona
8 counterparts to make sure they knew she'd been arrested again. Ms. Pablos was detained for 43
9 days.

10 *Manuel Duran Ortega*⁴⁷

11 84. In April 2018, ICE unnecessarily detained Manuel Duran Ortega. Mr. Duran
12 Ortega is a 42-year-old journalist from El Salvador who fled to the United States in 2006 after his
13 life was threatened. Mr. Ortega has lived in Memphis Tennessee since 2006 and is a well-known
14 member of the local press.

15 85. In 2018, Mr. Duran Ortega published numerous articles criticizing DHS, including
16 publishing an article in *Memphis Noticias* regarding unjust conditions at DHS detention facilities
17 and an article on the devastating impact of family separation caused by immigration enforcement.
18 He also published several stories regarding the Memphis Police Department's collaboration with
19 ICE, which the Memphis Police Department had publicly denied.

20 86. On April 3, 2018, reporter Mr. Duran Ortega was arrested by local police at a
21 protest against the Memphis Police Department's entanglements with ICE. At the time, Mr. Duran
22 Ortega wore his press credentials, a bright yellow badge labeled "Press," around his neck, spoke
23 into the camera he carried, observed and described the activities, and did not join the protestors in
24 their chants. When instructed by police to move aside, he attempted to do so, but was nonetheless

25 _____
26 ⁴⁶ Ray Stern, "Latina Activist Alejandra Pablos Jailed by ICE; 'Retaliation' for Protest, Group
27 Claims," *Phoenix New Times* (Mar. 7, 2018), <http://www.phoenixnewtimes.com/news/latina-activist-alejandra-pablos-jailed-in-tucson-by-ice-10210545>.

28 ⁴⁷ The details of Mr. Ortega's case are drawn from the complaint in *Rojas v Moore*, No. 19-cv-20855 (S.D. Fla. Mar. 5, 2019).

1 arrested by officers. He was the only member of the press arrested on that day. Despite attempts
2 by Mr. Duran Ortega's partner to pay a bond for his release, and the subsequent dismissal of
3 charges against him, Mr. Duran Ortega remained detained, until he was transferred to ICE
4 custody.

5 87. Ordinarily, detainees at the Shelby County jail where Mr. Duran Ortega was held
6 are transferred into DHS custody through a processing facility in Memphis. Those detainees then
7 typically spend several days at a small short-term detention center in Mason, Tennessee, before
8 they are transferred to a longer-term ICE detention facility such as LaSalle Detention Center in
9 Louisiana.

10 88. ICE departed from this usual practice in the case of Mr. Duran Ortega. On April 5,
11 2018, ICE shackled Mr. Duran Ortega's wrists, ankles, and waist and forced to him to endure an
12 eight-hour ride directly to LaSalle Detention Center in Jena, Louisiana without access to a
13 bathroom.

14 *Immigrant Sanctuary Jurisdictions*

15 89. Especially relevant to the circumstances of Mr. Bello's arrest following his speech
16 at a public forum on the Kern County Sheriff's Office's cooperation with ICE held pursuant to the
17 TRUTH Act, ICE has targeted so-called "sanctuary" jurisdictions to punish communities that limit
18 entanglements with federal immigration enforcement.⁴⁸ These are communities where activists
19 have successfully lobbied to prevent local government from assisting the federal government in
20 immigration enforcement actions against immigrant residents.

21 _____
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23 ⁴⁸ These activities align with broader efforts of the current administration. On January 25, 2017, the
24 President issued an Executive Order entitled, "Enhancing Public Safety in the Interior of the United
25 States." Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017). The Executive Order announces
26 that it is the Executive Branch's policy to withhold federal funds from "sanctuary jurisdictions,"
27 directs the Attorney General and Secretary of Homeland Security to ensure that sanctuary
28 jurisdictions do not receive federal grants, and directs the Attorney General to take enforcement
action against any local entity that "hinders the enforcement of Federal law." *Id.* at 8801. In July
2017, the Department of Justice increased pressure on sanctuary cities by imposing additional
requirements for federal grants. Pete Williams, *Attorney General Sessions Raises Stakes for
Sanctuary Cities*, NBC News (July 25, 2017), [https://www.nbcnews.com/politics/politics-
news/attorney-general-sessions-raises-stakes-sanctuary-cities-n786546](https://www.nbcnews.com/politics/politics-news/attorney-general-sessions-raises-stakes-sanctuary-cities-n786546).

(footnote continued)

1 90. California, in particular, has been a consistent focus of ICE as it seeks to target
 2 “sanctuary” jurisdictions and invalidate and undermine sanctuary policies that limit local law
 3 enforcement agencies’ involvement in immigration enforcement. Kern County is ground zero for
 4 this controversial public debate, as the Kern County Sheriff has worked hand-in-glove with ICE
 5 and is a frequent and vocal opponent of California’s sanctuary laws.⁴⁹

6 91. In September 2017, ICE announced that it would undertake a series of raids
 7 designed to target sanctuary cities, and publicly designated the action, “Operation Safe City.”
 8 According to ICE, Operation Safe City would target cities and regions “where ICE deportation
 9 officers are denied access to jails and prisons to interview suspected immigration violators or
 10 jurisdictions where ICE detainers are not honored.”⁵⁰ Operation Safe City resulted in hundreds of
 11 arrests in communities that had taken actions to limit local government’s cooperation with federal
 12 immigration enforcement. These communities included New York, Philadelphia, Los Angeles,
 13 Boston, Denver, and Portland, Oregon.⁵¹

14 92. Following the Operation Safe City raids, on October 5, 2017, California Governor
 15 Jerry Brown signed Senate Bill 54 into law, a statute forbidding most state and local cooperation
 16 with federal deportation officers. The statute was the result of intense lobbying by immigrant
 17 activists. The next day, Former Acting Director Thomas Homan, in direct response to the
 18 California legislation, made the following threats in an official statement:

19 SB54 will negatively impact ICE operations in California by nearly eliminating all
 20 cooperation and communication with our law enforcement partners in the state,
 21 voiding the delegated authority that the Orange County Sheriff’s Office has under
 the 287g program, and prohibiting local law enforcement from contracting with the
 federal government to house detainees.

22 *ICE will have no choice but to conduct at-large arrests in local neighborhoods and*
 23 *at worksites, which will inevitably result in additional collateral arrests, instead of*

24 ⁴⁹ See, e.g., Kristen Powers, *Why Kern County's sheriff hopes feds win 'sanctuary state' lawsuit*,
 25 Bakersfield Now (Mar. 8, 2018), <https://bakersfieldnow.com/news/local/why-kcso-sheriff-hopes-federal-government-wins-sanctuary-state-lawsuit>.

26 ⁵⁰ ICE, *ICE Arrests over 450 on federal immigration charges during Operation 'Safe City,'* (Sept.
 27 28, 2017), <https://www.ice.gov/news/releases/ice-arrests-over-450-federal-immigration-charges-during-operation-safe-city>.

28 ⁵¹ Miriam Jordan, *Immigration Agents Arrest Hundreds in Sweep of Sanctuary Cities*, N.Y. Times
 (Sept. 28, 2017), <https://www.nytimes.com/2017/09/28/us/ice-arrests-sanctuary-cities.html>.
 (footnote continued)

1 *focusing on arrests at jails and prisons where transfers are safer for ICE officers*
 2 *and the community. ICE will also likely have to detain individuals arrested in*
 3 *California in detention facilities outside of the state, far from any family they may*
 4 *have in California.*⁵²

5 93. In addition, ICE has increased its presence in sanctuary communities⁵³ and has
 6 warned communities that choose to cease participation in the “287(g)” program that they will be
 7 subject to increased immigration enforcement.⁵⁴

8 94. These are just some of the examples of ICE’s targeted retaliation under the current
 9 administration, of which Mr. Bello’s unlawful detention is the latest example.

10 **LEGAL FRAMEWORK**

11 **Mr. Bello’s First Amendment Right to Freedom of Speech Without Government** 12 **Retaliation or Discrimination**

13 95. The right to criticize the government and its officials lies at the heart of the First
 14 Amendment. *See N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 274-75 (1964). “The freedom of
 15 individuals verbally to oppose or challenge police action without thereby risking arrest is one of
 16 the principal characteristics by which we distinguish a free nation from a police state.” *City of*
 17 *Houston v. Hill*, 482 U.S. 451, 462-63 (1987). Simply put, “the Government may not retaliate for
 18 exercising First Amendment speech rights.” *Wilkie v. Robbins*, 551 U.S. 537, 555 (2007); *see also*
 19 *Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010) (holding that First Amendment
 20 “forbids government officials from retaliating against individuals for speaking out”).

21 96. Like Mr. Ragbir’s speech, Mr. Bello’s speech criticizing ICE’s immigration

22 ⁵² ICE, Statement from ICE Acting Director Tom Homan on California Sanctuary Law (Oct. 6,
 23 2017), [https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-](https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law)
 24 [sanctuary-law](https://www.ice.gov/news/releases/statement-ice-acting-director-tom-homan-california-sanctuary-law) (emphasis added).

25 ⁵³ An administration official stated that ICE has sent more officers to California to compensate for
 26 the “lack of cooperation from local police in turning over undocumented immigrants.” Marisa
 27 Schultz, White House Slams California’s Sanctuary City Policy Ahead of Trump Visit, New York
 28 Post (Mar. 12, 2018), [https://nypost.com/2018/03/12/white-house-slams-californias-sanctuary-city-](https://nypost.com/2018/03/12/white-house-slams-californias-sanctuary-city-policy-ahead-of-trump-visit/)
 policy-ahead-of-trump-visit/ (last visited May 22, 2018).

⁵⁴ ICE warned that if a local Sheriff’s Office followed through on a campaign promise to end the
 county’s participation in the 287(g) program, there could be ramped up activity on the part of ICE.
 Alex Olgin & Nick de la Canal, ICE Warns if 287(g) Ends, it will Ramp Up Enforcement, WFAE
 (May 9, 2018), <http://wfae.org/post/ice-warns-if-287g-ends-it-will-ramp-up-enforcement#stream/0>.
 ICE then carried out its threat. *See Tina Vasquez, No End In Sight for Retaliatory ICE Raids*, Rewire
 (Feb. 14, 2019), [https://rewire.news/article/2019/02/14/no-end-in-sight-for-retaliatory-](https://rewire.news/article/2019/02/14/no-end-in-sight-for-retaliatory-immigration-raids-in-north-carolina/)
 immigration-raids-in-north-carolina/.

1 enforcement and detention practices “implicates the apex of protection under the First
2 Amendment,” and because it “concerns ‘political change,’ it is also ‘core political speech’ and
3 thus ‘trenches upon an area in which the importance of First Amendment protections is at its
4 zenith.” *Ragbir*, 923 F.3d at 69-70 (citations omitted) (collecting authorities).

5 97. The Government may not take action against an individual “because of his
6 constitutionally protected speech or associations,” even if it otherwise could take such action
7 based on lawful reasons. *See, e.g., Mt. Healthy City. Sch. Dist. v. Doyle*, 429 U.S. 274, 283-84
8 (1977) (holding teacher who lacked tenure and “could have been discharged for no reason
9 whatever” could still bring retaliation action when discharge was retaliatory); *Perry v.*

10 *Sindermann*, 408 U.S. 593, 597 (1972) (holding that professor’s lack of tenure and lack of
11 contractual right to employment did not foreclose his First Amendment retaliation claim).

12 Allowing the government to retaliate against speakers it disfavors would enable it to silence its
13 critics and violate the First Amendment’s fundamental protection against censorship. *See Perry*,
14 408 U.S. at 597-98.

15 98. Pursuant to this doctrine, if Mr. Bello’s speech was a factor motivating his arrest,
16 then the arrest violated the First Amendment notwithstanding any claim respondents may make
17 that Mr. Bello’s January DUI incident would have served as a sufficient basis to re-detain him.

18 99. Mr. Bello’s claim of retaliation is strong given the close temporal proximity of his
19 arrest to when he delivered a poem criticizing ICE. Just hours before his arrest, Mr. Bello had
20 engaged in political speech poignantly critical of ICE. Moreover, the threatening manner in which
21 the officer conducted the arrest and interrogation of Mr. Bello, coupled with his refusal to permit
22 Mr. Bello to use the restroom for hours, further indicate an illicit motive to harm, scare, and
23 silence Mr. Bello.

24 100. ICE’s conduct indicates that the January DUI incident did not prompt the arrest:
25 First, ICE would have been aware of the arrest upon Mr. Bello being fingerprinted, as it receives
26 all fingerprints that local jurisdictions such as Kern County send to the FBI database upon

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1 processing an arrest and automatically compares them against DHS' fingerprint repository.⁵⁵ If the
2 respondents genuinely believed that the DUI incident meant that Mr. Bello had become a danger
3 to the community, they could have arrested him immediately—or any time in the more than three
4 months that followed.

5 101. Second, ICE had a clear opportunity at Mr. Bello's February 14, 2019 immigration
6 hearing in San Francisco to seek to detain him and did not do so.

7 102. Third, the ICE administrative warrant for Mr. Bello's arrest was only issued on
8 May 15, the morning of the arrest, so it does not appear the agency had plans to arrest him until
9 after he read his poem at the public forum. *See* Warrant for Arrest of Alien, attached as Exhibit G,
10 dated May 15, 2019. The timing of the warrant's issuance makes clear that ICE officers made the
11 decision to arrest at some point in the hours after the May 13, 2019 TRUTH Act Forum.

12 103. Finally, the very fact that ICE set an administrative bond of \$50,000 vitiates any
13 claim that Mr. Bello is a danger to the community. Where a person presents a danger to the
14 community, no bond can be set. *See Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009)
15 (“Dangerous aliens are properly detained without bond,” so a bond should be set only after “first
16 determin[ing] that the alien does not present a danger to the community.”).

17 104. ICE's decision to set an extremely high bond apparently was meant to punish Mr.
18 Bello in retaliation for his criticism of the agency. By setting bond, ICE necessarily admitted that
19 Mr. Bello is not a danger to the community. And since there is nothing to suggest Mr. Bello had
20 become a flight risk—to the contrary, he showed up *pro se* to immigration court in February and
21 has every intention to follow through on his defenses to removal—ICE had no genuine, legitimate
22 basis to re-arrest him at all, let alone to set his bond at \$50,000.

23 105. Given all of the foregoing and the pattern described in this petition of ICE targeting
24 other activists, *see also Gutierrez-Soto v. Sessions*, 317 F. Supp. 3d 917, 933-35 (W.D. Tex. 2018)
25 (collecting cases of individuals and organizations targeted by ICE for protected political speech), it
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27 ⁵⁵ *See* ICE, *Secure Communities*, <https://www.ice.gov/secure-communities> (last visited June 21,
28 2019).

1 is evident that ICE’s arrest of Mr. Bello and decision to set an exorbitantly high bond amount
2 violated the First Amendment’s proscription on Government retaliation against people for
3 exercising their speech rights.

4 ICE’s Obligation to Consider Ability to Pay in Setting Bond

5 106. All people in the United States, including immigrants, have rights under the Due
6 Process Clause of the Fifth Amendment. *See, e.g., Mathews v. Diaz*, 426 U.S. 67, 77-78 (1976).
7 Due process “imposes constraints on government decisions which deprive individuals of ‘liberty’
8 or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth
9 amendment.” *Mathews v. Elridge*, 424 U.S. 319, 332 (1976).

10 107. To comport with due process, detention must bear a reasonable relationship to its
11 regulatory purposes—ensuring the appearance of noncitizens at future hearings and preventing
12 danger to the community pending the completion of removal. *See Hernandez v. Sessions*, 872 F.3d
13 976, 990-91 (9th Cir. 2017) (citing *Zadvydus v. Davis*, 533 U.S. 678, 690-91 (2001)).

14 108. If Mr. Bello’s arrest had been lawful, then ICE would have had to consider whether
15 to set bond and at what amount. The Ninth Circuit has addressed this issue and concluded that
16 ICE’s failure to consider a detainee’s financial resources in setting bond violates Due Process:

17 Given that the detainees have been determined to be neither dangerous nor so great a
18 flight risk as to require detention without bond, the question before us is: Is
19 consideration of the detainees’ financial circumstances, as well as of possible
20 alternative release conditions, necessary to ensure that the conditions of their release
will be reasonably related to the governmental interest in ensuring their appearance at
future hearings? We conclude that the answer is yes.

21 *Hernandez*, 872 F.3d at 990-91; *see also id.* at 994 (“[T]he government has no legitimate interest
22 in detaining individuals who have been determined not to be a danger to the community and
23 whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond
24 or alternative conditions.”).

25 109. Here, despite finding that Mr. Bello did not present a danger to the community, ICE
26 plainly failed to consider his very meager financial resources in determining the bond amount. To
27 the extent that ICE considered the issue at all, the arresting officer’s statement implicitly
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1 acknowledged that Mr. Bello would not be able to afford the \$50,000 bond, when he stated,
 2 “We’ll see if you can get your friends to raise the bond money again.” Mr. Bello was making less
 3 than \$20,000 a year as a farmworker before he was detained, and he has no significant assets. *See*
 4 Application for Cancellation of Removal, Exh. A at 3. He was not able to afford even a \$10,000
 5 bond last summer, so plainly he cannot afford one today that is five times the amount. The ICE
 6 officers’ failure to apprehend this or their conscious choice to disregard it means that, even if Mr.
 7 Bello’s arrest had been proper, his detention nonetheless would violate Due Process.

8 CLAIMS FOR RELIEF

9 COUNT I

10 **MR. BELLO’S ARREST, DETENTION, AND EXCESSIVELY HIGH BOND AMOUNT** 11 **CONSTITUTE RETALIATION IN VIOLATION OF THE FIRST AMENDMENT**

12 110. Mr. Bello incorporates the preceding paragraphs as if fully set forth herein.

13 111. To sustain a First Amendment retaliation claim, a person must demonstrate that he
 14 “(1) engaged in constitutionally protected activity; (2) as a result, he was subjected to adverse
 15 action by the defendant that would chill a person of ordinary firmness from continuing to engage
 16 in the protected activity; and (3) there was a substantial causal relationship between the
 17 constitutionally protected activity and the adverse action.” *Mulligan v. Nichols*, 835 F.3d 983, 988
 18 (9th Cir. 2016).

19 112. Mr. Bello has engaged in speech protected by the First Amendment. He has
 20 criticized U.S. immigration law and policy, exposed the inner workings of the U.S. immigration
 21 detention system, and urged community members and government officials to change it. Mr.
 22 Bello’s speech about U.S. immigration law and policy pertains to matters of public concern and
 23 seeks political change. It is therefore entitled to the highest level of protection under the First
 24 Amendment. *See, e.g., Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion) (explaining
 25 that political speech is “at the core of what the First Amendment is designed to protect”); *cf.*
 26 *Burson v. Freeman*, 504 U.S. 191, 196 (1992) (“[S]peech concerning public affairs is more than
 27 self-expression; it is the essence of self-government.”).

28 113. The respondents have detained Mr. Bello, locking him away in the very system that

1 he has publicly criticized, thereby adversely affecting his ability to engage in protected speech.

2 114. There is a direct causal connection between Mr. Bello’s protected speech and the
3 respondents’ actions. The respondents have targeted and detained Mr. Bello because of his speech.
4 *See* ¶¶ 99-105, *supra*.

5 115. Left undisturbed, ICE’s action in this case would have a devastating *in terrorem*
6 effect on vital political speech, chilling other would-be immigrant critics of the agency. Indeed, to
7 permit Mr. Bello’s retaliatory arrest and detention to stand “would be a particularly effective
8 deterrent to other aliens who would also challenge the agency and its immigration policies.”
9 *Ragbir v. Homan*, 923 F.3d at 71.

10 **COUNT II**

11 **MR. BELLO’S DETENTION CONSTITUTES VIEWPOINT-, CONTENT-, AND**
12 **SPEAKER-BASED DISCRIMINATION IN VIOLATION OF THE FIRST AMENDMENT**

13 116. Mr. Bello incorporates the preceding paragraphs as if fully set forth herein.

14 117. Government action that targets private speech based on the viewpoint taken by the
15 speaker is unconstitutional. *Matal v. Tam*, 137 S. Ct. 1744 (2017); *Sorrell v. IMS Health Inc.*, 564
16 U.S. 552 (2011). Government action that targets speech based on its content is presumptively
17 unconstitutional and is justified only if the Government demonstrates that it is narrowly tailored to
18 serve a compelling state interest. *Reed v. Town of Gilbert*, 135 S. Ct. 2218 (2015). Government
19 action that targets speech based on the identity of the speaker is presumptively unconstitutional
20 and is justified only if the Government demonstrates that it is narrowly tailored to serve a
21 compelling state interest. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

22 118. The respondents’ detention of Mr. Bello on the basis of his protected speech
23 criticizing the U.S. immigration enforcement and detention system targets speech based on its
24 viewpoint, content, and the activist identity of the speaker, and does not serve a compelling state
25 interest, and is not narrowly tailored to any legitimate government interest.

26 119. The respondents’ detention of him has in practical effect silenced him by thwarting
27 his ability to communicate his views and insights with the public, as he had been doing prior to his
28 arrest and as he planned to do at upcoming public events. The respondents have made physically

1 impossible Mr. Bello’s participation in upcoming events surrounding public discourse over
2 conditions in Mesa Verde. Specifically, ICE has made Mr. Bello unavailable to speak at a public
3 event June 22 for which he previously had accepted an invitation to be the featured speaker and
4 discuss conditions inside the Mesa Verde facility.⁵⁶

5 **COUNT III**

6 **THE RESPONDENTS’ FAILURE TO CONSIDER MR. BELLO’S FINANCIAL**
7 **CIRCUMSTANCES IN SETTING BOND VIOLATES DUE PROCESS**

8 120. Mr. Bello realleges and incorporates by reference each and every allegation
9 contained in the preceding paragraphs as if set forth fully herein.

10 121. To comport with the Due Process Clause of the Fifth Amendment, detention must
11 bear a reasonable relationship to its two regulatory purposes—to ensure the appearance of
12 noncitizens at future hearings and to prevent danger to the community pending the completion of
13 removal. *Zadvydas*, 533 U.S. at 690-91; *see also Hernandez*, 872 F.3d at 990 (quoting *Zadvydas*).

14 122. Mr. Bello is neither a danger nor a flight risk. The detention of Mr. Bello is
15 unreasonable on its face. But apart from the fact that his detention by ICE is unnecessary, ICE
16 violated Due Process by failing to consider Mr. Bello’s financial circumstances in setting his
17 bond. *See Hernandez*, 872 F.3d at 991. The bond that ICE set is unusually high, Zukin Dec. ¶ 5,
18 Exh. E, well beyond Mr. Bello’s financial means, Application for Cancellation of Removal, Exh.
19 A at 3, and well beyond that which is necessary to secure his appearance at future immigration
20 proceedings.

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⁵⁶ The webpage for the event is available on the Facebook website,
<https://www.facebook.com/events/427368691436256/> (last visited June 21, 2019).

PRAYER FOR RELIEF

WHEREFORE, Petitioner Jose Bello requests that this Court:

- a. Exercise jurisdiction over this matter;
- b. Temporarily stay Mr. Bello’s transfer outside the jurisdiction of this Court pending its adjudication of this petition;
- c. Declare that the respondents’ arrest of Mr. Bello in response to his political speech about United States immigration enforcement and detention practices violates the First Amendment protection against government retaliation against protected speech;
- d. Declare that the respondents’ discrimination against Mr. Bello based on the content and viewpoint of his speech and his identity violates the First Amendment;
- e. Order the respondents to release Mr. Bello immediately and refrain from taking any further action against him in retaliation for his protected speech;
 - i. In the alternative, order the respondents to reduce Mr. Bello’s bond to an amount set by this Court that takes into consideration his extremely limited financial resources, or, in the alternative, order the respondents to redetermine his bond amount reflecting consideration of his extremely limited financial resources;
- f. Award the petitioner costs and reasonable attorneys’ fees; and
- g. Order such other relief as this Court may deem just and proper.

Dated: June 21, 2019

Respectfully submitted,

By: /s/ Ahilan Arulanantham

Ahilan Arulanantham
Jordan Wells*
Stephanie Padilla**
Counsel for Petitioner

* *Application for admission to California bar pending;
application for admission to this Court forthcoming*
** *Application for admission to this Court pending*

1 **Verification by the petitioner pursuant to 28 U.S.C. § 2242**

2 I am Jose Bello Reyes, the petitioner in this matter. I hereby verify that the statements
3 made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.
4 Regarding all statements for which I have personal knowledge, I declare under penalty of perjury
5 that they are true and correct.

6
7 Dated: June 20, 2019

8 Bakersfield, CA



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Jose Bello Reyes