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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 ROBERT GEORGE HOGARTH,  
17

18 Petitioner,  
19

20 v.  
21

22 ERNESTO M. SANTACRUZ, JR.,  
Acting Field Office Director of the Los  
23 Angeles Immigration and Customs  
Enforcement Office; TODD M.  
24 LYONS, Acting Director of United  
States Immigration and Customs  
Enforcement; KRISTI L. NOEM,  
25 Secretary of the United States  
Department of Homeland Security,  
PAMELA J. BONDI, Attorney General  
of the United States, acting in their  
official capacities,

26 Respondents.  
27  
28

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS AND  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

Date Filed: October 3, 2025

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**I. INTRODUCTION**

1. Plaintiff-Petitioner (“Plaintiff”) Robert George Hogarth is a bisexual man who is married to a U.S. citizen and has six U.S. citizen children. He fled homophobic abuse in Jamaica as a teenager, became a lawful permanent resident of the United States, and has lived in Los Angeles for more than three decades.

2. Mr. Hogarth was detained by immigration authorities in September 2020 and held at the Adelanto Immigration and Customs Enforcement (“ICE”) Processing Center for two and a half years. In January 2023, this Court found that Mr. Hogarth’s prolonged detention without a bond hearing was unreasonable and violated the Due Process Clause. In February 2023, the Court issued a judgment that ordered the government to provide Mr. Hogarth with a bond hearing before an Immigration Judge (“IJ”).

3. In April 2023, as authorized by this Court, the IJ held a hearing and ordered Mr. Hogarth released on bond. Since his release, Mr. Hogarth has resided in Los Angeles, maintained a part-time job, and provided critical financial, medical, and emotional support to his several immediate family members who suffer from severe medical issues.

4. On September 16, 2025—over two years after the government filed its appeal of the bond decision—the Board of Immigration Appeals (“BIA”) unjustifiably vacated Mr. Hogarth’s bond in a cursory, five-sentence order. Without citing any legal authority, the BIA claimed that its jurisdiction over the bond proceedings derived from the IJ’s authority to set conditions of detention and that the IJ’s authority to set bond had somehow expired because the BIA had entered a final order of removal. The BIA made this determination without briefing on this issue from either party. As a consequence, the BIA vacated the IJ’s bond decision

5. The BIA’s baseless vacatur of the IJ’s bond decision was “not in accordance with law” under the Administrative Procedure Act (“APA”). 5 U.S.C.



1 § 706(2)(A). Mr. Hogarth respectfully requests that this Court issue (1) declaratory  
2 relief holding BIA’s order “unlawful” and (2) an injunction to “set aside” the  
3 vacatur and reinstate the IJ’s bond decision. *Id.* § 706(2).

4 6. The BIA’s unlawful vacatur of the IJ’s bond decision ostensibly gives  
5 Defendant-Respondent ICE permission to re-detain Mr. Hogarth pending the  
6 resolution of his petition for review before the Ninth Circuit. Absent the order of  
7 release, he is subject to 8 U.S.C. § 1226(c), which mandates his detention. *See*  
8 *Avilez v. Garland*, 69 F.4th 525, 536 (9th Cir. 2023) (holding that Section 1226(c)  
9 “applies throughout the administrative and judicial phase of removal proceedings”).

10 7. Consequently, Mr. Hogarth respectfully requests that this Court grant  
11 all relief requested in this Petition and Complaint, including a permanent  
12 injunction: (1) setting aside the BIA’s order; (2) restoring the Immigration Judge’s  
13 bond determination; and (3) enjoining Respondents from redetaining him without a  
14 hearing before a neutral adjudicator at which the government must prove by clear  
15 and convincing evidence that his current conditions of release necessitate  
16 modification.

## 17 **II. JURISDICTION**

18 8. This action arises under the Constitution and laws of the United States.

19 9. The Court has subject matter jurisdiction and may grant relief pursuant  
20 to 28 U.S.C. § 1331 (federal question); 28 U.S.C. §§ 2201-02 (declaratory relief);  
21 28 U.S.C. § 2241 (habeas corpus); and Article I, Section 9, clause 2 of the United  
22 States Constitution (the Suspension Clause).

23 10. Federal courts have habeas jurisdiction to review orders arising from  
24 bond proceedings for constitutional claims and legal errors. *See Singh v. Holder*,  
25 638 F.3d 1196, 1200-01 (9th Cir. 2011). The APA provides independent  
26 jurisdiction and “reinforces this presumption of judicial reviewability,” because it  
27 confers a cause of action upon anyone who is “adversely affected or aggrieved by  
28

1 agency action within the meaning of a relevant statute.” *Perez Perez v. Wolf*, 943  
2 F.3d 853, 860 (9th Cir. 2019) (quoting 5 U.S.C. § 702).

3 11. An individual can be “in custody” within the meaning of 28 U.S.C.  
4 § 2241(c)(3), even if he is not currently physically detained. The Supreme Court  
5 has applied this jurisdictional prerequisite liberally: physical imprisonment is  
6 unnecessary when “the individual is subject to ‘restraints not shared by the public

7 generally.’” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019) (quoting  
8 *Jones v. Cunningham*, 371 U.S. 236, 240 (1963)); *see also Maleng v. Cook*, 490  
9 U.S. 488, 492 (1989) (noting the custody requirement is “very liberally construed”).

### 10 **III. VENUE**

11 12. Venue is proper in the Central District of California under 28 U.S.C.  
12 § 1391(b) because a substantial part of the events or omissions giving rise to Mr.  
13 Hogarth’s claims occurred in this district. Mr. Hogarth’s bond proceedings took  
14 place in the Adelanto Immigration Court. Pursuant to his bond conditions, he is  
15 electronically monitored by and regularly reports to the Los Angeles Field Office of  
16 ICE Enforcement and Removal Operations. Given that Mr. Hogarth resides in Los  
17 Angeles, and ICE regularly comes to his home, there is an imminent risk that he  
18 will be re-detained at the Adelanto ICE Processing Center.

19 13. Venue is also proper in this district under 28 U.S.C. § 1391(e) because  
20 Defendant-Respondents are employees or officers of the United States acting in  
21 their official capacity, and Defendant Ernesto M. Santacruz Jr. resides in this  
22 district.

### 23 **IV. PARTIES**

24 14. Plaintiff Robert G. Hogarth is a longtime resident of the United States  
25 who currently resides in Los Angeles, California.

26 15. Defendant Ernesto M. Santacruz Jr. is the Field Office Director  
27 responsible for the Los Angeles Field Office of ICE Enforcement and Removal  
28



1 Operations, which has administrative jurisdiction over Mr. Hogarth's case. He is a  
2 legal custodian of Mr. Hogarth and is named in his official capacity.

3 16. Defendant Todd M. Lyons is the Acting Director of ICE. As the head  
4 of ICE, an agency within the U.S. Department of Homeland Security that detains  
5 and removes certain noncitizens, Defendant Lyon is a legal custodian of Mr.  
6 Hogarth. He is named in his official capacity.

7 17. Defendant Kristi L. Noem is the Secretary of the U.S. Department of  
8 Homeland Security ("DHS"), an agency of the United States. She is responsible for  
9 the administration of the immigration laws. 8 U.S.C. § 1103(a). Secretary Noem is  
10 a legal custodian of Mr. Hogarth and is named in her official capacity.

11 18. Defendant Pamela J. Bondi is the Attorney General of the United  
12 States and the most senior official in the U.S. Department of Justice ("DOJ"). She  
13 has the authority to interpret the immigration laws and adjudicate removal cases.  
14 The Attorney General delegates this responsibility to the Executive Office of  
15 Immigration Review ("EOIR"), which administers the immigration courts and the  
16 BIA. She is named in her official capacity.

## 17 **V. LEGAL FRAMEWORK**

### 18 **A. The DHS's Statutory Detention Authority During and After** 19 **Removal Proceedings**

20 19. "The statutory scheme governing the detention of [noncitizens] in  
21 removal proceedings is not static; rather, the [government's] authority over a  
22 [noncitizen's] detention shifts as the [noncitizen] moves through different phases of  
23 administrative and judicial review." *Casas-Castrillon v. Dep't of Homeland Sec.*,  
24 535 F.3d 942, 945 (9th Cir. 2008); *overruled on other grounds by Avilez*, 69 F.4th  
25 at 529.

26 20. 8 U.S.C. § 1226 sets out a framework for the detention and release of  
27 noncitizens during their administrative removal proceedings.  
28

21. Section 1226(a) “sets out the default rule.” *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (“*Rodriguez IV*”). The government may arrest and detain a noncitizen “pending a decision on whether the [noncitizen] is to be removed from the United States” and, “[e]xcept as provided in subsection (c) [of Section 1226] . . . may continue to detain” or “may release” the noncitizen pending removal proceedings. 8 U.S.C. § 1226(a). Regulations provide that noncitizens detained under Section 1226(a) “receive bond hearings at the outset of detention.” *Rodriguez IV*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

22. Section 1226(c) creates a narrow exception to the default rule of bond eligibility. Paragraph (1) of Section 1226(c) provides that the government “shall take into custody any [noncitizen] who” is removable on certain criminal and national security grounds, “when the [noncitizen] is released” from criminal custody. 8 U.S.C. § 1226(c)(1). Section 1226(c) subjects certain noncitizens to mandatory detention without the individualized bond hearing contemplated by Section 1226(a).

23. A noncitizen placed in Section 240 removal proceedings remains subject to detention under Section 1226 while their removal proceedings are pending before the IJ and the BIA. Section 1226 also governs while such individuals seek judicial review of their removal order, including judicial review of an IJ’s denial of an application for protection under the CAT. *See Avilez*, 69 F.4th at 537-38.

24. 8 U.S.C. § 1231 authorizes the detention of noncitizens who have been issued a final order of removal. “Section 1231(a) does not apply to detention during the pendency of administrative or judicial removal proceedings.” *Avilez*, 69 F.4th at 530-31. “Section 1231 instead governs detention during a ninety-day ‘removal period’ after the conclusion of removal proceedings. 8 U.S.C. § 1231(a)(1)–(2).” *Id.* For noncitizens who are not removed during the ninety-day “removal period,” their detention is governed by Section 1231(a)(6). Such individuals may not be

1 detained beyond “a period reasonably necessary to secure removal.” *Zadvydas v.*  
2 *Davis*, 533 U.S. 678, 699 (2001). “Thus, if removal is not reasonably foreseeable . .  
3 . continued detention [is] unreasonable and no longer authorized by statute.” *Id.* at  
4 699-700.

## 5 **VI. FACTUAL ALLEGATIONS**

### 6 **A. Mr. Hogarth’s Background**

7 25. Mr. Hogarth is openly gay/bisexual. As a child in Jamaica, he endured  
8 severe homophobic abuse. He was sexually and physically abused on multiple  
9 occasions, but he felt it was unsafe to report the abuse because he feared that he  
10 would be arrested or further brutalized by the police for being gay/bisexual.

11 26. After immigrating from Jamaica in 1989, Mr. Hogarth lived as a  
12 lawful permanent resident in the Los Angeles area for over three decades. He is  
13 married to a U.S. citizen and has six children, all of whom are U.S. citizens.

14 27. In 2014, Mr. Hogarth pleaded guilty to second-degree robbery under  
15 California Penal Code § 211 for stealing a backpack that, unbeknownst to him,  
16 contained a firearm. Mr. Hogarth deeply regrets this mistake and takes full  
17 responsibility for it.

18 28. Upon his release from prison in September 2020, ICE immediately  
19 took Mr. Hogarth into custody and detained him at the Adelanto ICE Processing  
20 Center.

### 21 **B. First Petition for Review Before the Ninth Circuit**

22 29. DHS initiated removal proceedings against Mr. Hogarth in September  
23 2020, alleging that he was deportable as a noncitizen convicted of an aggravated  
24 theft felony.

25 30. Mr. Hogarth applied for asylum, withholding of removal, and  
26 protection under the Convention Against Torture, arguing that he would be tortured  
27 as a bisexual man were he forced to return to Jamaica.



1           31. On March 4, 2021, despite finding Mr. Hogarth to be candid and  
2 responsive in his testimony, the IJ denied all applications for relief and ordered Mr.  
3 Hogarth's removal to Jamaica.

4           32. On March 30, 2021, Mr. Hogarth filed a timely notice of appeal of the  
5 IJ's order of removal with the BIA.

6           33. On August 9, 2021, the BIA affirmed the IJ's decision and dismissed  
7 Mr. Hogarth's appeal.

8           34. On August 24, 2021, Mr. Hogarth filed a timely petition for review of  
9 the BIA's decision to the Ninth Circuit, as well as motions for a stay of removal to  
10 proceed in forma pauperis, and for appointment of counsel. That same day, the  
11 Ninth Circuit stayed Mr. Hogarth's removal pending further order.

12           35. On November 10, 2021, Mr. Hogarth was granted appointment of pro  
13 bono counsel. On October 17, 2022, pro bono counsel filed an opening brief on  
14 Mr. Hogarth's behalf.

15           36. On December 2, 2022, after receiving pro bono counsel's opening  
16 brief, rather than defend the BIA's decision, the government filed an unopposed  
17 motion to remand the case to the agency. The government's motion was five pages  
18 and articulated numerous reasons that remand was warranted, including, *inter alia*  
19 that it would allow "the agency to revisit its past torture analysis" in light of Ninth  
20 Circuit opinions that pre-dated the BIA's decision, it would permit the agency to  
21 determine whether it "applied the correct facts to the correct law" as to government  
22 acquiescence. *Hogarth v. Garland*, No. 21-621, ECF No. 21.1 (9th Cir., Dec. 2,  
23 2022).

24           37. On December 19, 2022, the Ninth Circuit granted the unopposed  
25 motion and remanded the case to the BIA. *Hogarth v. Garland*, No. 21-621, ECF  
26 No. 22.1 (9th Cir. Dec. 19, 2022).

**C. Court-Ordered Bond Proceedings**

38. On October 13, 2022, Mr. Hogarth filed a Complaint and a Petition for Writ of Habeas Corpus in this Court. He argued that his prolonged detention under 8 U.S.C. § 1226(c) without a bond hearing violated his rights under the Due Process Clause.

39. On January 11, 2023, United States Magistrate Judge Margo A. Rocconi issued a report and recommendation finding that Mr. Hogarth's two-year detention without a bond hearing was unreasonable and violated Due Process. *Hogarth v. Giles*, No. 5:22-cv-01809-DSF (MAR), ECF No. 20 (C.D. Cal. Jan. 11, 2023).

40. On February 23, 2023, the Honorable Dale S. Fischer issued an order accepting the findings and recommendations of Magistrate Judge Rocconi. *Hogarth v. Giles*, No. 5:22-cv-01809-DSF (MAR), ECF No. 24 (C.D. Cal. Feb. 23, 2023). The same day, the Court issued a judgment mandating that Mr. Hogarth be provided "with an individualized bond hearing before an immigration judge with the required procedural protections." *Hogarth v. Giles*, No. 5:22-cv-01809-DSF (MAR), ECF No. 25 (C.D. Cal. Feb. 23, 2023)

41. On April 5, 2023, the IJ held a bond hearing and ordered Mr. Hogarth released from detention on bond. The IJ acknowledged that Mr. Hogarth's bond hearing was conducted "pursuant to an order issued by the [district court.]" Declaration of Katie Lynn Joice in Support of Ex Parte Application for Temporary Restraining Order ("Joyce Decl."), Ex. A (April 7, 2023, decision and order of the IJ setting bond) at 2. The IJ determined that the government had not met its burden to demonstrate that Mr. Hogarth was dangerous, especially given that Mr. Hogarth was "exceptionally forthcoming in his testimony" and took responsibility for his criminal history, and that he had engaged in "significant rehabilitative efforts." *Id.* at 5. The IJ also found that the government had failed to show that Mr. Hogarth's release would present a flight risk because of his significant family ties to the

1 United States and a lack of any evidence that he had ever evaded law enforcement  
2 or failed to appear as required. *Id.* at 6.

3 42. According to the IJ's Order, Mr. Hogarth's release requires regular in-  
4 person reporting to ICE, electronic monitoring, and random drug testing. *Id.* at 3.  
5 He must also refrain from using or possessing alcohol and illicit drugs, attend  
6 Alcoholics Anonymous meetings, maintain steady employment, and avoid any  
7 contact with law enforcement. *Id.*

8 43. DHS appealed the bond decision on July 14, 2023, and its briefing  
9 acknowledged that the IJ had jurisdiction to hear the bond proceeding pursuant to  
10 the District Court's order.

11 **D. Mr. Hogarth's Commitment to His Family Following Release**  
12 **From Detention**

13 44. Since his release from detention, Mr. Hogarth has demonstrated  
14 unwavering dedication to his family members who depend on him for crucial  
15 financial, medical, and emotional support.

16 45. Mr. Hogarth works part-time as a contractor on construction, home  
17 repair, and demolition jobs. He dedicates roughly 65% of his income to supporting  
18 his family members.

19 46. Mr. Hogarth also provides essential medical care to several members  
20 of his immediate family who suffer from serious health issues. He is the primary  
21 caregiver and medical advocate for his wife, who has required round-the-clock care  
22 since she was struck by a van in 2021 and sustained severe and permanent  
23 injuries.

24 47. Mr. Hogarth also cares for his brother who suffered a debilitating  
25 stroke in 2014, and for his sister who was recently diagnosed with cancer.

26 48. Mr. Hogarth also provides critical emotional stability to his immediate  
27 family, especially for his youngest and eldest sons who struggled with behavioral  
28 and health issues while he was detained.



1           49. Mr. Hogarth's compliance with bond conditions has been exemplary.  
2 He successfully completed a 30-day residential rehabilitation program at the Los  
3 Angeles Mission, regularly attends Alcoholics Anonymous meetings, has  
4 completely abstained from alcohol and illicit drugs, maintained continuous  
5 employment as a contractor, and has had no negative contact with law enforcement.  
6 He also submits to random drug testing administered by DHS, and meets with ICE  
7 officers at his home 2-4 times monthly.

8           50. In April 2023, upon his release from detention, ICE placed an  
9 electronic ankle monitor on Mr. Hogarth. ICE removed the monitor in May 2023,  
10 after Mr. Hogarth provided a doctor's note.

11           51. In August 2025, ICE placed an electronic ankle monitor on  
12 Mr. Hogarth for a second time, with which Mr. Hogarth has fully complied, though  
13 he challenges the imposition of the electronic ankle monitor as described below.

14           **E. Second Petition for Review Before the Ninth Circuit**

15           52. On January 24, 2025, on remand from the Ninth Circuit, the BIA  
16 denied Mr. Hogarth's application for CAT relief and ordered him removed.

17           53. Mr. Hogarth timely filed a petition for review with the Ninth Circuit  
18 on February 22, 2025, with the assistance of pro bono counsel (undersigned).

19           54. On May 5, 2025, Mr. Hogarth filed a motion to stay removal.

20           55. On June 18, 2025, the Ninth Circuit granted the motion to stay  
21 removal after contested briefing.

22           56. On July 31, 2025, Mr. Hogarth filed his opening brief. The petition for  
23 review remains pending. On September 24, 2025, the government was granted its  
24 second request for an extension of time to file its answering brief. The answering  
25 brief is currently due on November 17, 2025.

**F. The BIA Order Vacating the IJ's Bond Decision**

57. On September 16, 2025, the BIA abruptly terminated Mr. Hogarth's bond proceedings as moot and vacated the bond decision of the IJ. Joyce Decl., Ex. B (Sept. 16, 2025, decision and order of the BIA), at 3.

58. Without citing any legal authority, the BIA claimed that its own "authority to set bond conditions on appeal from an Immigration Judge's order derives from the Immigration Judge's underlying authority to redetermine conditions of custody" and "[a]t this time, neither an Immigration Judge, nor this Board, has regulatory authority to set bond conditions because a final administrative order has been entered in the respondent's removal case." *Id.*

59. The BIA proceeded to enter orders dismissing the DHS's bond appeal as moot and vacating the IJ's bond decision. *Id.*

**VII. LEGAL ARGUMENT**

**A. The BIA's Decision is Not in Accordance with Law Because the IJ Retains Authority to Set Bond Conditions While Judicial Review is Pending**

60. The APA requires reviewing courts to "hold unlawful and set aside agency action, findings, and conclusions" that are "not in accordance with law." *Singh v. Clinton*, 618 F.3d 1085, 1088 (9th Cir. 2010) (quoting 5 U.S.C. § 706(2)(A)).

61. The BIA's decision to vacate the IJ's bond is plainly not in accordance with law because its reasoning rests on fundamental legal errors.

62. The BIA wrongly concluded that neither it nor the IJ has "regulatory authority to set bond conditions" because a final administrative order of removal was entered against Mr. Hogarth in January 24, 2025. Joyce Decl., Ex. B at 3. Based on that flawed reasoning, the BIA vacated the IJ's bond decision.



63. The BIA's reasoning was plainly wrong. The IJ's authority to grant bond derived from the district court order, and the entry of a final administrative order of removal almost two years after the fact does not affect that authority.

64. First, the BIA erred in reasoning that the bond should be vacated because neither it, nor the IJ, has "regulatory authority to set bond conditions" when a final administrative order has issued. Joyce Decl., Ex. C at 3. But the IJ's authority to set bond for Mr. Hogarth derived entirely from the district court judgment that ordered the IJ to hold a bond hearing to comply with the Due Process Clause—in other words, the IJ's authority was never dependent on regulations or statutes.<sup>1</sup>

65. To the contrary, the IJ had no statutory or independent regulatory authority to set Mr. Hogarth's bond conditions because he was detained under 8 U.S.C. § 1226(c), which expressly prohibits bond hearings.<sup>2</sup> See *Avilez*, 69 F.4th at 527 (holding that a noncitizen detained under Section 1226(c) "is not statutorily entitled to a bond hearing"); see also *Castaneda v. Garland*, 562 F. Supp. 3d 545, 560 (C.D. Cal. 2021) (explaining that an "immigration judge lacks jurisdiction to conduct a bond hearing for a noncitizen," who, like Mr. Hogarth, is "detained under 8 U.S.C. § 1226(c)").

66. Second, the entry of a final order of removal by the agency has *no effect* on the authority conferred by the district court. That is especially true here, given that the January 2025 order of removal entered against Mr. Hogarth has been *stayed* by the Ninth Circuit. The district court's holding was grounded in the Due Process Clause and so the particular statute that authorizes Mr. Hogarth's detention largely irrelevant. See *Doe v. Becerra*, 697 F. Supp. 3d 937, 943 (N.D. Cal. 2023)

<sup>1</sup> In fact, Mr. Hogarth brought his October 2022 petition, and corresponding Due Process claim, when he was in the same situation that he is in right now—at the Ninth Circuit with a stay of removal.

<sup>2</sup> The IJ and the government expressly acknowledged that, but for the district court order, the IJ would lack jurisdiction to set Mr. Hogarth's bond. Joyce Decl., Ex. A at 2.



1 (finding that “the shift in the statutory basis governing Doe’s detention does not  
2 negate his constitutional rights nor substantively change the applicable due process  
3 analysis”). Indeed, IJs often hold bond proceedings after a final administrative  
4 order of removal is entered and while judicial review is pending. *See, e.g., Prieto-*  
5 *Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008) (describing bond  
6 proceedings that were held after the administrative removal phase had concluded  
7 and while a petition for judicial review was pending).

8 67. Moreover, the entry of the final order of removal changes nothing  
9 about Mr. Hogarth’s legal status under 8 U.S.C. § 1226(c). As the Ninth Circuit  
10 has explained, where an individual has a stay of removal, the government’s  
11 authority to detain a noncitizen under Section 1226(c) “applies throughout the  
12 administrative *and judicial phase* of removal proceedings.” *Avilez*, 69 F.4th at 535  
13 (emphasis added). Mr. Hogarth was detained under Section 1226(c) for nearly two  
14 years after the BIA ordered him removed in August 2021, and he was detained for  
15 the entire pendency of his first petition for review before the Ninth Circuit. And,  
16 but for the district court ordering a constitutionally mandated hearing, and the IJ  
17 granting him bond at that hearing, he would remain detained pursuant to Section  
18 1226(c) today because his second petition for review before the Ninth Circuit is  
19 pending with a stay of removal in place. *See* 8 U.S.C. § 1231(a)(1)(B) (providing  
20 that, if a court reviews the removal order and stays the removal, the removal period  
21 does not begin until “the date of the court’s final order”).

22 68. Lastly, the fact that the BIA completely failed to mention that the IJ’s  
23 bond hearing granting him release was pursuant to a federal court order is another  
24 example of the order not being in accordance with law. Not only did the BIA  
25 ignore the existence of the district court order; the BIA failed to acknowledge that,  
26 by vacating the IJ’s bond decision, it was functionally nullifying the Due Process  
27  
28

1 protections ordered by the district court.<sup>3</sup> The BIA is not free to “disregard” the  
2 mandate of a federal court. *Baez-Sanchez v. Barr*, 947 F.3d 1033, 1036 (7th Cir.  
3 2020); *see also Castillo v. Barr*, 980 F.3d 1278, 1283 (9th Cir. 2020) (“Once we  
4 reached [our] conclusion, both the Constitution and the statute required the Board to  
5 implement it.”).

6 69. Here the BIA cited nothing—not a case, a statute, or a regulation—to  
7 support its flawed reasoning that the administrative order of removal entered  
8 against Hogarth somehow retroactively unauthorized the bond conditions that the IJ  
9 set pursuant to a district court order that granted the hearing on due process  
10 grounds. The BIA’s order vacating the IJ’s bond decision was plainly “not in  
11 accordance with law” under the APA. 5 U.S.C. § 706(2)(A). Consequently, this  
12 Court must set aside the order and reinstate the bond conditions ordered by the IJ.

13 **B. Mr. Hogarth is Entitled to Habeas Relief Because His Imminent**  
14 **Detention Without Due Process Violates the Fifth Amendment.**

15 70. Mr. Hogarth, who has been released on bond since April 2023,  
16 possesses a protected liberty interest in his continued freedom from confinement.

17 71. The Due Process Clause protects “all ‘persons’ within the United  
18 States, including [noncitizens], whether their presence here is lawful, unlawful,  
19 temporary, or permanent.” *Zadvydas*, 533 U.S. at 679; *see also Hernandez v.*  
20 *Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).  
21 “Freedom from imprisonment—from government custody, detention, or other  
22 forms of physical restraint—lies at the heart of the liberty that the [due process  
23 clause] protects.” *Zadvydas*, 533 U.S. at 690.

24  
25 <sup>3</sup> Although the district court’s order only mandated a procedural protection in the  
26 form of a bond hearing—and not the IJ’s decision to release Mr. Hogarth on bond  
27 after the hearing—the BIA’s erroneous vacatur of the IJ order based on a purported  
28 lack of jurisdiction functionally nullifies the district court’s order because it  
eliminates the protection that the order provided and the outcome that stemmed  
from the protections the order provided.



1           72. The Supreme Court has recognized that individuals conditionally  
2 released from detention have a protected interest in their “continued  
3 liberty.” *See Young v. Harper*, 520 U.S. 143, 147 (1997). This liberty interest  
4 persists even when release is subject to extensive conditions, such as reporting  
5 requirements, travel restrictions, and electronic monitoring. *Id.* at 148; *see*  
6 *also Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (“[T]he liberty of a parolee,  
7 although indeterminate, includes many of the core values of unqualified liberty and  
8 its termination inflicts a ‘grievous loss’ on the parolee and often on  
9 others.”); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

10           73. This principle applies with equal if not greater force in the civil  
11 immigration context. Noncitizens living in the United States who have been  
12 released from immigration detention, like Mr. Hogarth, possess a protected liberty  
13 interest in their ongoing freedom. *See Zadvydas*, 533 U.S. at 690. And, “[g]iven  
14 the civil context [of immigration detention], [the] liberty interest [of noncitizens  
15 released from custody] is arguably greater than the interest of parolees.” *Ortega*,  
16 415 F. Supp. 3d at 970.

17           74. And importantly, the Supreme Court has consistently held that “the  
18 Constitution requires some kind of a hearing *before* the State deprives a person of  
19 liberty or property,” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in  
20 original), absent exceptional circumstances. This procedural protection applies  
21 regardless of whether the government’s ultimate decision to detain proves legally  
22 valid. *See Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017);  
23 *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v.*  
24 *Williford*, 682 F.2d 868 (9th Cir. 1982).

25           75. The procedural protection of Due Process is also independent of the  
26 merits: “[T]he right to procedural due process is ‘absolute’ in the sense that it does  
27 not depend upon the merits of a claimant’s substantive assertions, and because of  
28 the importance to organized society that procedural due process be observed.”



1 *Carey v. Piphus*, 435 U.S. 247, 266 (1978). Thus, Mr. Hogarth entitlement to a  
2 pre-detention hearing exists regardless of whether the BIA's order vacating the IJ's  
3 bond determination was valid.

4 76. When confronted with constitutional challenges  
5 to immigration detention, courts in the Ninth Circuit apply the three-part test  
6 outlined in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *Diaz v. Garland*,  
7 53 F.4th 1189, 1206 (9th Cir. 2022) (assuming without deciding that the *Mathews*  
8 test applies). Under *Mathews*, courts weigh three factors to determine what process  
9 is due: (1) the private interest affected; (2) the risk of erroneous deprivation and the  
10 probable value of additional procedural safeguards; and (3) the government's  
11 interest, including the administrative burden of additional procedures. 424 U.S. at  
12 335.

13 77. First, Mr. Hogarth, a noncitizen present in the United States, is entitled  
14 to the protections of the Due Process Clause. *Zadvydas*, 533 U.S. at 690. That  
15 includes protection of his liberty interest in freedom from detention. *Id.* This  
16 interest in physical liberty is among the most fundamental rights the Constitution  
17 protects.

18 78. Second, where an individual is redetained without a hearing, "the risk  
19 of an erroneous deprivation [of liberty] is high." *Singh v. Andrews*, No. 1:25-CV-  
20 00801, 2025 WL 1918679, at \*7 (E.D. Cal. July 11, 2025). A hearing in front of a  
21 neutral arbiter at which the government bears the burden of proving by clear and  
22 convincing evidence would provide Mr. Hogarth with essential procedural  
23 safeguards by allowing him to present evidence and challenge the basis for  
24 detention.

25 79. Third, the government's countervailing interest against providing a  
26 pre-detention hearing is minimal. "In immigration court, custody hearings are  
27 routine and impose a 'minimal' cost." *Id.* at \*8 (citing *Doe v. Becerra*, No. 2:25-  
28 cv-00647-DJC-DMC, 2025 WL 691664, at \*2 (E.D. Cal. Mar. 3, 2025). And

1 “[d]etention for its own sake, to meet an administrative quota, or because the  
2 government has not yet established constitutionally required pre-detention  
3 procedures is not a legitimate government interest.” *Pinchi v. Noem*, No. 5:25-CV-  
4 05632-PCP, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025).

5 80. In the immigration context, for such hearings to comply with due  
6 process, the government must bear the burden to demonstrate, by clear and  
7 convincing evidence, that the noncitizen poses a flight risk or danger to the  
8 community. *See Singh*, 638 F.3d at 1203; *see also Martinez v. Clark*, 124 F.4th 775,  
9 785, 786 (9th Cir. 2024).

10 81. On January 21, 2025, the BIA vacated the IJ’s bond determination  
11 without affording Mr. Hogarth any opportunity to be heard. The BIA vacated the  
12 bond determination on mootness grounds—an issue that neither party had briefed.

13 82. The BIA’s order authorized Mr. Hogarth’s redetention without  
14 requiring the government to prove by clear and convincing evidence that he poses a  
15 flight risk or danger to the community.

16 83. Mr. Hogarth has not received a hearing before a neutral adjudicator  
17 regarding his potential redetention.

18 84. Mr. Hogarth is scheduled for a check-in with ICE on October 9, 2025.

19 85. Upon information and belief, ICE routinely detains individuals at  
20 check-in appointments, particularly those with final orders of removal or adverse  
21 bond rulings.

22 86. Given the BIA’s order and the absence of any intervening hearing, Mr.  
23 Hogarth faces imminent detention at his October 9, 2025 check-in absent judicial  
24 intervention.

25 87. Mr. Hogarth has complied with all conditions of his bond release since  
26 April 2023, including: (a) completing a 30-day residential rehabilitation program at  
27 the Los Angeles Mission; (b) regularly attending Alcoholics Anonymous meetings;  
28 (c) abstaining completely from alcohol and illicit drugs; (d) maintaining continuous



1 employment as a contractor; (e) wearing an electronic monitoring device; (f)  
2 submitting to random drug testing administered by DHS; (g) meeting with ICE  
3 officers at his home; and (h) avoiding any negative contact with law enforcement.  
4 Joyce Decl., Ex. B at 3.

5 88. Mr. Hogarth has also had to pay \$25,000 to secure his release. *Id.*  
6 This substantial sum provides strong financial incentive for him to comply with all  
7 conditions and appear for all proceedings, as he would forfeit the entire amount if  
8 he absconded.

9 89. Redetaining Mr. Hogarth without reassessing the individualized  
10 findings that led to his release, without allowing him to present evidence of his  
11 continued compliance, and without permitting him to challenge the basis for  
12 detention, creates a substantial probability of wrongful confinement.

13 90. An Immigration Judge previously determined that Mr. Hogarth did not  
14 pose a flight risk or danger to the community and ordered his release on bond.

15 91. Mr. Hogarth, who relied on the implicit promise that his bond would  
16 only possibly be revoked for violating its conditions and adjusted to life in the Los  
17 Angeles community and demonstrated consistent compliance with strict supervision  
18 requirements, has a constitutionally protected interest in remaining on conditional  
19 release absent a material change in circumstances. *See Ortega*, 415 F. Supp. 3d at  
20 968 (“[W]here a previous bond determination has been made by an immigration  
21 judge, no change should be made by [the DHS] absent a change of circumstance.”)  
22 (quoting *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981)); *see also Saravia*  
23 *v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N.D. Cal. 2017) (noting that DHS  
24 represented that there must be a “material change in circumstances” to warrant re-  
25 arrest after a prior bond determination).

26 92. Mr. Hogarth’s interest in remaining free to care for his disabled wife  
27 and family is constitutionally protected. *See Pham v. Becerra*, 717 F. Supp. 3d 877,  
28



1 886 (N.D. Cal. 2024) (recognizing an “independent liberty interest in being free  
2 from physical restraint”).

3 93. As such, Mr. Hogarth is entitled to a pre-deprivation process to protect  
4 this constitutionally protected interest.

5 94. Mr. Hogarth has not yet received any pre-deprivation process or  
6 hearing regarding his redetention.

7 95. In Mr. Hogarth’s case, due process requires a hearing before a neutral  
8 arbiter at which the government bears the burden of demonstrating, by clear and  
9 convincing evidence, that the noncitizen poses a flight risk or danger to the  
10 community such that his current conditions of release need to be modified.

11 96. Additionally, a hearing before a neutral adjudicator at which the  
12 government bears the burden of proof by clear and convincing evidence would  
13 significantly reduce the risk of erroneous deprivation.

14 97. Denial of this pre-deprivation hearing violates Mr. Hogarth’s clearly  
15 established constitutional rights and interest in his conditional release.

16 98. The government has no legitimate interest in detaining Mr. Hogarth  
17 unjustifiably. Immigration custody hearings are routine proceedings that impose  
18 minimal administrative burdens. *Singh*, No. 1:25-CV-00801, 2025 WL 1918679, at  
19 \*8.

20 99. Providing a custody hearing would not obstruct or delay the removal  
21 process; to the contrary, detention without procedural protections serves no  
22 legitimate government interest.

23 100. Mr. Hogarth has lived in the community without incident for two years  
24 while diligently pursuing available legal remedies, including a pending appeal of  
25 his removal order to the Ninth Circuit. He has posted a \$25,000 bond that he would  
26 forfeit if he fled. Mr. Hogarth presents no danger to the community and no flight  
27 risk.  
28

101. Respondents' redetention of Mr. Hogarth without a hearing before a neutral adjudicator at which the government proves by clear and convincing evidence that detention is warranted violates his Fifth Amendment right to procedural due process.

**C. Mr. Hogarth is Entitled to an Order Removing his Ankle Monitor Because It Violates His Right to Due Process.**

102. Despite Mr. Hogarth's complete compliance with his conditions of bond release, and his demonstrated low risk of flight or danger to the community, and ICE's own decision to remove his initial electronic ankle monitor in May 2023, Respondents have nevertheless forced him to begin wearing an electronic ankle monitor again without justification, subjecting him to an ongoing and unwarranted deprivation of liberty.

103. The ankle monitor serves no legitimate governmental purpose, particularly where less burdensome alternatives are available, ICE decided to remove his initial ankle monitor more than two years ago, and Mr. Hogarth has consistently complied with all supervision requirements ordered by the IJ.

104. The ankle monitor causes Mr. Hogarth unnecessary physical harm. It aggravates a serious, pre-existing knee injury and interferes with his ability to receive medical imaging and treatment.

105. Respondents' continued imposition of the ankle monitor, without any justification or consideration of Mr. Hogarth's medical needs, is arbitrary and punitive. It imposes an excessive and unreasonable restraint on his liberty in violation of his due process rights under the Fifth Amendment.

**VIII. CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**Violation of the Administrative Procedure Act**

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

2. The APA requires reviewing courts to “hold unlawful and set aside agency action, findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A).

3. The BIA’s September 16, 2025, decision and order setting aside the IJ’s bond decision was “not in accordance with law,” *id.* § 706(2)(A), because the IJ’s authority set bond conditions derived from this Court’s order, and the entry of a final administrative order of removal has no effect on that authority.

## **SECOND CLAIM FOR RELIEF**

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

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

5. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. Amend. V.

6. Mr. Hogarth has been released on bond since April 2023 and possesses a protected liberty interest in his continued freedom from confinement.

7. On September 16, 2025, the BIA issued a decision and order setting aside the Immigration Judge’s bond determination, revoking Mr. Hogarth’s conditional release. As such, without the order of release he is subject to mandatory detention under Section 1226(c).

8. ICE has scheduled a check-in with Mr. Hogarth at his home on October 9, 2025. As this Court recently found, recent cases demonstrate that ICE has a practice of detaining individuals at check-ins. *See Sun v. Santacruz*, 2025 WL 2730235, at \*2 (C.D. Cal. Aug. 26, 2025) (recognizing ICE’s routine practice of detaining individuals at check-in appointments without prior hearing). As a result, Mr. Hogarth’s redetention is imminent.



1           9. ICE's imminent detention of Mr. Hogarth violates his due process  
2 rights by depriving him of a pre-deprivation hearing before revoking his liberty  
3 interest in release on bond.

4           10. Due process requires a pre-deprivation hearing before a neutral  
5 adjudicator at which the government bears the burden of proving by clear and  
6 convincing evidence that detention is warranted.

7           11. Mr. Hogarth has not received, and will not receive before his October  
8 9, 2025 check-in, a hearing before a neutral adjudicator regarding his conditions of  
9 release.

10           12. Redetaining Mr. Hogarth without a pre-deprivation hearing before a  
11 neutral adjudicator at which the government meets its evidentiary burden violates  
12 the Due Process Clause of the Fifth Amendment.

13                           **THIRD CLAIM FOR RELIEF**

14                   **Violation of the Fifth Amendment to the United States Constitution**  
15                   **(Substantive Due Process—Ankle Monitor)**

16           13. Mr. Hogarth repeats and re-alleges the allegations contained in the  
17 preceding paragraphs of this Petition as if fully set forth herein.

18           14. The Due Process Clause of the Fifth Amendment prohibits the  
19 government from engaging in conduct that unjustifiably infringes upon a person's  
20 fundamental liberty interests. U.S. Const. Amend. V.

21           15. Substantive due process "forbids the government to infringe certain  
22 'fundamental' liberty interests *at all*, no matter what process is provided, unless the  
23 infringement is narrowly tailored to serve a compelling state interest." *Reno v.*  
24 *Flores*, 507 U.S. 292, 302 (1993) (emphasis in original). Substantive due process  
25 prohibits civil detention that is punitive in purpose or in effect, including detention  
26 that is unreasonably prolonged. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972)  
27 (nature and duration of confinement must "bear some reasonable relation" to its  
28

1 purpose); *United States v. Salerno*, 481 U.S. 739, 747 n.4 (1987) (detention may  
2 become “excessively prolonged, and therefore punitive”).

3 16. Substantive due process prohibits civil detention that is punitive. Civil  
4 detention that has a non-punitive purpose may nevertheless be unconstitutionally  
5 punitive if it is “‘excessive in relation to [its non-punitive] purpose,’ or is  
6 ‘employed to achieve objectives that could be accomplished in so many alternative  
7 and less harsh methods[.]’” *Jones v. Blanas*, 393 F.3d 918, 934 (9th Cir. 2004)  
8 (internal citations omitted). These principles apply to immigration detention;  
9 indeed, in proceedings elsewhere “the government has conceded ‘that mandatory  
10 detention under [section] 1226(c) without a bond hearing violates the Due Process  
11 Clause when it becomes unreasonably prolonged in relation to its purpose[.]’” *Reid*  
12 *v. Donelan*, 17 F.4th 1, 8 (1st Cir. 2021).

13 17. Mr. Hogarth has been released on bond since April 2023 and possesses  
14 a protected liberty interest in his continued freedom from confinement.

15 18. Mr. Hogarth began wearing an ankle monitor upon release from  
16 detention in April 2023. In May 2023, ICE decided to remove Mr. Hogarth’s ankle  
17 monitor.

18 19. On August 4, 2025, without any justification, ICE forced Mr. Hogarth  
19 to resume wearing an ankle monitor on his right leg.

20 20. As a result, Mr. Hogarth’s liberty is unreasonably restrained and he  
21 cannot obtain necessary medical imaging and treatment for a serious right knee  
22 injury.

23 21. ICE’s imposition of an ankle monitor, without any individualized  
24 justification or consideration of Mr. Hogarth’s medical condition or less  
25 burdensome alternatives, violates Mr. Hogarth’s rights under the Due Process  
26 Clause of the Fifth Amendment.

**IX. PRAYER FOR RELIEF**

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Set aside and declare unlawful the BIA's decision vacating the IJ's bond decision
3. Issue a writ of habeas corpus ordering Respondents to refrain from detaining Petitioner unless he is afforded a hearing before a neutral arbiter in which the government proves by clear and convincing evidence that the conditions of his release should be modified based on flight risk or danger to the community;
4. Declare that Petitioner's arrest and detention would violate the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act;
5. Declare that forcing Petitioner to wear an electronic ankle monitor without justification violates the Due Process Clause of the Fifth Amendment;
6. Enjoin Respondents from re-detaining Petitioner unless his redetention is ordered at a custody hearing before a neutral arbiter in which the government proves, by clear and convincing evidence, that the conditions of his release should be modified based on flight risk or danger to the community;
7. Order Respondents to remove Petitioner's ankle monitor;
8. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
9. Grant such further relief as the Court deems just and proper.



Respectfully Submitted,

Dated: October 3, 2025

KEKER, VAN NEST & PETERS  
LLP

By  
:

/s/ Katie Lynn Joyce

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