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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARPREET SINGH
GURPATAP BHATTI
ARMAN SINGH DHILLON
ROHIT ROHIT
PRINCEPAL SINGH
LOVEJEET SINGH
JASKANPREET SINGH

Plaintiff,

v.

PAM BONDI, UNITED STATES ATTORNEY GENERAL; CITIZENSHIP AND IMMIGRATION SERVICES (USCIS); KRISTI NOEM SECRETARY OF DEPARTMENT OF HOMELAND SECURITY; CONNIE NOLAN, ASSOCIATE DIRECTOR, SERVICE CENTER OPERATIONS DIRECTORATE (USCIS); UR MENDOZA JADDOU, DIRECTOR (USCIS);

CV 25-08462 YGR

Civil Action No. _____
Jury Trial Demanded

INTRODUCTION

1. Petitioners, HARPREET SINGH et al, all asylum applicants detained by Immigration and Customs enforcement, by and through undersigned counsel, hereby files this petition

for writ of habeas corpus to compel his immediate release from the immigration detention where they are currently being held without bond by the Department of Homeland Security ("DHS") without first being provided individual due process hearings to determine whether his incarceration is justified.

2. Petitioners are all asylum applicants currently being held without bond by Respondents. On September 5, 2025, the Board of Immigration Appeals issued a decision,

3. Moreover, without the intervention of this Court, they all face continued unlawful detention without any review by a neutral arbiter because DHS and the Executive Office of Immigration Review ("EOIR") — namely immigration prosecutors and Immigration Judges — have in coordination with each other, newly "revisited" their "legal position" regarding DHS's detention authority and concluded Petitioner is subject to mandatory detention.

2. All Respondents entered the country without inspection and were all previously released on bond, or on their own recognizance. All Respondents similarly have applied for asylum, withholding of removal, and for relief under the United Nations Convention Against Torture (CAT).

3. All seven were similarly arrested from their homes, or while they reported to ICE for their periodic check-in.

CUSTODY

4. Petitioner is in the physical custody of Respondents. Petitioner is currently detained by DHS at the San Luis Detention Center and the Florence Detention Center, where he was transferred after being arrested by ICE officers outside of his home in Manteca and Turlock, California.

5. Since being arrested by ICE, Petitioner has not been provided with a constitutionally compliant hearing to determine whether his redetention is justified.

JURISDICTION

6. 10. This action arises under the Constitution of the United States, the INA, 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 500 et seq. 11. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241, Article I, Section 9, Clause 2 of the United States Constitution (habeas corpus), 28 U.S.C. § 2201-2202 (Declaratory Judgement Act), and the Suspension Clause of Article 1 of the U.S. Constitution. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702. 12. This Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. § 2241, 1651, 2201-02, and 5 U.S.C. § 702.

7. This Court also has broad equitable powers to grant relief to remedy a constitutional violation. See *Roman v. Wolf*, 977 F.3d 935, 941 (9th Cir. 2020).

VENUE

8. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of California.

REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." id.

10. 16. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

11. Petitioners **HARPREET SINGH, GURPATAP BHATTI, ARMAN SINGH DHILLON, ROHIT ROHIT, PRINCEPAL SINGH, LOVEJEET SINGH,** and **JASKANPREET SINGH** are all asylum applicants with pending applications in immigration court. They were all previously bonded out with court dates in the future in immigration court. For no clear reason, Respondent Immigration and Customs Enforcement vacated their hearing dates wihout notice, rearrested them at their homes, and informed them that they are all subject to mandatory detention under INA Section 235(b), even though their proceedings are under INA Section 236(a), and they were previously bonded out under that provision.

12. David R. Rivas, CCE Warden is the Warden at San Luis Regional Detention and Support Centers, San Luis, AZ, LaSalle Corrections West, LLC

13. Pursuant to the Ninth Circuit's recent decision in *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024), David Rivas is the proper respondent because he is the de facto warden of the facility at which Petitioner is detained.

14. The mandate has yet to issue in that case, however, so the other respondents are named herein to ensure effective relief and continued jurisdiction in this case.

15. Respondent ORESTES CRUZ is the Field Office Director of ICE for San Francisco. In his official capacity, he is the federal official most directly responsible for overseeing the apprehension of Respondents who were all apprehended in the jurusdiction of, and at the behest of the San Francisco ICE Field Office. Accordingly, he has legal custody over Petitioner.

16. Respondent TODD M. LYONS ('Acting Director Lyons") is the current Acting Director of ICE. As the head of ICE, an agency within the DHS that detains and removes certain noncitizens, Acting Director Lyons is a legal custodian of Petitioner, and is named in his official capacity.

17. Respondent, KRISTI NOEM ("Secretary Noem"), is the Secretary of the Department of Homeland Security. She has authority over the detention and departure of noncitizens, like Petitioner, because she administers and enforces immigration laws pursuant to section 402 of the Homeland Security Act of 2002. 107 Pub L. 296 (November 25, 2003).

18. Given this authority, Secretary Noem is the legal custodian over Petitioner and is empowered to carry out any administrative order issued against him.

19. Respondent, PAMELA BONDI ("'Attomey General Bondi"), is the Attorney General of the United States, and as such, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. She has the authority to interpret immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the EOIR, which administers the immigration courts and the Board of Immigration Appeals ("BIA"). In her official capacity, Attorney General Bondi is the ultimate legal custodian of Petitioner.

BACKGROUND AND SUMMARY OF ARGUMENT

20. On September 5, 2025 , the Board of Immigration Appeals(BIA) issued a precedent decision, *Matter of Jonathan Javier YAJURE HURTADO*, Respondent, 29 I&N Dec. 216 (BIA 2025) Interim Decision #4125. In that decision, the BIA held that it was overturning decades of jurisprudence, and indeed the Immigration and Customs Enforcement's own Policy Manual, Regulations, Practice Advisory, its own settled law, the decisions of *all* the Federal judicial circuits by deeming that anybody who was present in the country without inspection—without exception—was subject to mandatory detention.

21. The Board in that decision, broke from almost a century of settled law by adopted the Department of Homeland Security's position articulated in a memo in July, 2025 that all immigrants who entered the United States without inspection are subject to mandatory detention in removal proceedings. Without prior notice or hearing, ICE took Petitioners into custody near or at their homes. Petitioners have been denied a constitutionally compliant hearing before a neutral adjudicator as to whether their redetention is necessary or proper.

22. In breaking from decades of statutory construction and settled law on the subject, the BIA engaged in a subtle conflation of two different uses of the term of art "admission". "Admission in the immigration concept has two very distinct meanings. There is "admission as defined in

8 U.S.C. § 1101(a)(4) - U.S. Code - Title 8. Aliens and Nationality § 1101. Definitions.

23. There, "admission' is defined as follows: "(4) The term "application for admission" has ***reference to the application for admission into the United States*** and not to the application for the issuance of an immigrant or nonimmigrant visa." [Emphasis added]

24. The BIA decision, in trying to dismiss decades of litigation, misapplied and misconstrued two precedents that were totally inapposite, and sometimes contradictory, to the broad sweep of its holding. The first case was *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). *Jennings* dealt with aliens apprehended at the border, or applying for admission at the border and the long precedent of the 9th circuit holding that they had a statutory right to peiodic bond review. In striking down that argument, the Supreme Court held that there was no statutory right to bond present in the statute, even though an alien could still make an "as applied" argument in court. The Supreme Court did state in nondispository dicta that Section 235(b) appeared to have a "catchall" provision that applied to every alien in the United States, whether they were at the border applying for admission, or had evaded admission. This dicta opened the door for the BIA to hold that Section 235 controls all aliens, even though decades of practice and settled law treated aliens already in the country as falling under Section 236.

25. The BIA, however, admitted the following: "We acknowledge that for years Immigration Judges have conducted bond hearings for aliens who entered the United States without inspection. However, we do not recall either DHS or its predecessor, the Immigration and Naturalization Service, previously raising the current issue that is before us. In fact, the supplemental information for the 1997 Interim Rule titled "Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures," 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the position at that time that "[d]espite being applicants for admission, aliens who are present without having been admitted or

paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." Id. Footnote 6.

26. Petitioner is currently detained at the San Luis Regional Detention Center.

27. . DHS issued a Notice to Appear ("NTA") initiating removal proceedings. Exh. B, Notice to Appear. The NTA alleged that Petitioner was not a citizen of the United States and had not been admitted or paroled into the United States and charged him as removable on this basis under 8 U.S.C. § 1182(a)(6)(A)(i) 25. The same day, DHS issued a Notice of Custody Determination stating that pursuant to INA § 236 (8 U.S.C. § 1226) and 8 CFR. § 236,

28. Petitioner should be released on a $10,000 bond pending a final determination by the IJ in his case. Exh. E, Form 1-286, DHS Notice of Custody Determination.

29. In so determining, DHS concluded that Petitioner was not a flight risk or danger to the community.

30. Facts asserted in this motion are drawn from the attached declaration of Lydia Sinkus and exhibits to that declaration. Further citations will be directly to the individual exhibits attached to the declaration, or to the declaration itself.

31. The authority of an Immigration Judge to consider a bond request is impacted by legal authorities which generally define that authority in the negative. For example, the Immigration Judge is without authority to conduct a custody redetermination hearing for aliens in exclusion proceedings. See 8 C.F.R. § 1003.19(h)(2)(i)(A) (2025).

32. An Immigration Judge is also without authority to conduct a custody redetermination hearing for an arriving alien, including an alien paroled after arrival pursuant to section

212(d)(5) of the INA, 8 U.S.C. § 1182(d)(5). See 8 C.F.R. § 1003.19(h)(2)(i)(B); see also Matter of Oseiwusu, 22 I&N Dec. 19, 20 (BIA 1998).

33. Various other sections of the INA and the regulations further prohibit the Immigration Judge from considering custody redetermination under certain circumstances. See INA § 235(b)(1)(B)(iii)(IV), (b)(2)(A), 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), (b)(2)(A); INA § 236(c), 8 U.S.C.A. § 1226(c) (West 2025); 8 C.F.R. §§ 235.3(b)(1), 1003.19(h)(1)(i)(A)–(E) (2025).

34. In 8 U.S.C. § 1225, an applicant for admission is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." INA § 235(a)(1), 8 U.S.C. § 1225(a)(1).

35. (II), 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II); see also 8 C.F.R. § 235.3(b)(1) (2025). The INA states that aliens who fall into either of these two categories are subject to mandatory detention for the duration of their immigration proceedings. See INA § 235(b)(1)(B)(ii), (iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); see also 8 C.F.R. § 235.3(b)(2)(iii). Generally, an Immigration Judge lacks jurisdiction to hear a bond request filed by an applicant for admission in either of these two categories. See generally *Matter of M-S-*, 27 I&N Dec. 509, 515–19 (A.G. 2019).

36. The third category of aliens subject to the inspection, detention, and removal procedures set forth in section 235 of the INA, 8 U.S.C. § 1225, are those aliens who are seeking admission and who an immigration officer has determined are "not clearly and beyond a doubt entitled to be admitted." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A).

37. This category is a "catchall provision that applies to all applicants for admission not covered by [section 235(b)(1)]." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Like with the first two categories of applicants for admission, the INA explicitly requires that this third "catchall" category of applicants for admission be mandatorily detained for the duration of their § 1225(b)(2)(A); see also *Jennings v Rodriguez*, 583 U.S. at 299 (interpreting the "plain meaning" of sections 235(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings); 8 C.F.R. § 235.3(b)(1)(ii).

38. Section 236 of the INA, 8 U.S.C.A. § 1226 (West 2025), provides additional direction for the apprehension and detention of aliens "pending a decision on whether the alien is to be removed from the United States." INA § 236(a), 8 U.S.C.A. § 1226(a). Section 236 "generally governs the process of arresting and detaining" aliens who are deportable under section 237(a), 8 U.S.C. § 1227(a) (2018), including "aliens who were inadmissible at the time of entry or who have been convicted of certain criminal offenses since admission." Jennings, 583 U.S. at 288 (citing INA § 237(a)(1), (2), 8 U.S.C. § 1227(a)(1), (2)).

39. The detention provisions of section 236, distinguish between two groups of aliens. The first group consists of aliens arrested on a warrant issued by DHS, who, subject to certain restrictions, may be detained or released on bond or conditional parole. INA § 236(a), 8 U.S.C.A. § 1226(a). The regulatory provision at 8 C.F.R. § 1236.1(d) (2025) authorizes Immigration Judges to "exercise the authority in section 236 of the [INA] . . . to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released, as provided in § 1003.19 of this chapter."

40. The second group of aliens identified in section 236 are certain defined categories of "criminal aliens" subject to mandatory detention under section 236(c) of the INA, 8 U.S.C.A. § 1226(c). An Immigration Judge is without authority to consider a bond request filed by an alien falling into this category.

41. Section 236 does not purport to overrule the mandatory detention requirements for arriving aliens and applicants for admission explicitly set forth in section 235(b)(1) and (2) of the INA, 8 U.S.C. § 1225(b)(1), (2). Thus, while an inadmissible alien who establishes that he or she has been present in the United States for over 2 years is not subject to the expedited removal process, the alien nevertheless "shall be detained for a proceeding under section 240." INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A).

42.

43. The BIA struggled to justify this total break from its legal past by asking the following question: because that interpretation swam against the strong current of rock solid settled law. Rather than address that reality, the BIA attempted to side step it by posing a question as follows: "The respondent's argument is not supported by the plain language of the INA, and actually creates a legal conundrum. If he is not admitted to the United States (as he admits) but he is not "seeking admission" (as he contends), then what is his legal status? The respondent provides no legal authority for the proposition that after some undefined period of time residing in the interior of the United States without lawful status, the INA provides that an applicant for admission is no longer "seeking admission," and has somehow converted to a status that renders him or her eligible for a bond hearing under section 236(a) of the INA, 8 U.S.C.A. § 1226(a). See *Matter of Lemus*, 25 I&N Dec. 734, 743 & n.6 (BIA 2012) (noting that "many people who are not

actually requesting permission to enter the United States in the ordinary sense [including aliens present in the United States who have not been admitted] are nevertheless deemed to be 'seeking admission' under the immigration laws"). The respondent's argument also leaves unanswered which applicants for admission would be covered by section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), if, as he argues, applicants for admission who have been living for years in the United States without admission and without lawful status are somehow exempt from section 235(b)(2)(A) and instead fall under section 236."

44. Perhaps, all aliens present in the United States might struggle to define their legal status, but *clearly*, applicants for asylum do not fall under Section 235(b)(2)(A) as asylum applicants are not "applicants for admission" by the plain reading of the statutes that govern their status.

45. According the the Department of Homeland Security, there is a significant difference between a refugee and asylee. The Agency, tasked with definning these two related statuses, defines them as follows: "A refugee is a person outside his or her country of nationality who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. ***An asylee is a person who meets the definition of refugee and is already present in the United States or is seeking admission at a port of entry. Refugees are required to apply for Lawful Permanent Resident ("green card") status one year after being admitted, and asylees may apply for green card status one year after their grant of asylum.*** Asylees | OHSS Id. Emphasis Added.

46. The same Agency also defines "asylum" as follows: "**Asylum:** Form of protection provided to aliens physically present in the United States who meet the definition of refugee under Immigration and Nationality (INA) section 101(a)(42) and are not otherwise barred from applying for or receiving asylum. Glossary | OHSS . As can be seen from the horse's mouth, "asylum" is not an "admission", but merely a ***protection*** from being sent to a country where he will be tortured. The agency goes on to say that *only* after one year of residing in the United States may an asylee acquire the right to apply for admission as a refugee. This definition appears to leave no room for argument that when he is applying for permanebt residence, the asylee is applying for asmission, but while he is appying for asylum, he is only applying for "protection". That seems quite clear on its face.

47. *Matter of Lemus,* #3745 25 I&N Dec. 734 (BIA 2012), cited by the BIA, is easily distinguishable. In *Lemus,* rhe BIA wrote in the opening paragraph as follows: "In a decision dated December 16, 2005, an Immigration Judge ordered the respondent removed from the United States after finding him ***ineligible for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i) (2000).*** *According to the Immigration Judge, section 245(i) adjustment is unavailable to aliens, like the respondent, who are inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II) (2000), and ineligible for a waiver under section 212(a)(9)(B)(v).*

48. The *Lemus* court further down observed as follows: "Applicants for section 245(i) adjustment have always been required to prove that they are "admissible to the United States for permanent residence," see section 245(i)(2)(A) of the Act, meaning that they

must prove either that they are not inadmissible under any of the various paragraphs of section 212(a) of the Act or that they are eligible for a waiver of any applicable ground of inadmissibility. 8 C.F.R. § 1245.10(b)(3) (2011). For the first few years after section 245(i) was enacted, this admissibility requirement was no impediment to adjustment for aliens who had "entered without inspection" because entry without inspection was then a ground of deportability rather than of inadmissibility. See *Matter of Briones,* 24 I&N Dec. at 362-63." As argued, supra, Section 245 *is* an application for admission. Whether or not such a person is subject to mandatory detention is outside the scope of this petition, but there is no doubt that applicants for admission are an insular group that, while sharing some similarities with refugees, nevertheless differ from them in very significant ways.

49. This is because applicants for adjustment of status an as plain an applicant for admission as is possible. They seek to be admitted as legal permanent residents. Asylum applicants, on the other hand, are refugees. A refugee is not seeking admission, but a *prohibition* from being sent to a particular country. This is a very important distinction because his right—no matter how much is has been whittled down recently—derives not from the laws of the United States, but from the Unuted States' obligations under the treaties of the United Nations, or which the United States still remains an active and very vocal member.

50. This important distinction has been amplified of late with the spate of removals to third countries of applicants who have demonstrated an undisputed and legally cognizable fear of return to their home countries. According to the Council on Foreign Relations, "So far, the Trump administration has reportedly approached at least fifty-eight governments about accepting deportees.

51. "Whether it is tariff concessions—or in the case of African countries, many of them are under the threat of being placed under a travel ban or their diplomats will be prevented from coming from the United States—these are the stakes that are all being used to get these agreements," Muzaffar Chishti, a senior fellow at the Migration Policy Institute, told *Politico*.

52. Because refugee status never confers the alien present in the United States any rights to remain here, but merely *temporarily houses him here* until such time it is either safe to return him to his home country or ship him kicking and screaming to a third country, he cannot by definition or logic, except by agency fiat be construed to be an applicant for admission. Authority for this conclusion can be drawn from the statutes themselves

53. Article 3 of the United Nations Convention Against Torture reads as follows: "Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights."

54. That statute does not require the state to take in that asylee. It merely prevents that signatory from returning him to the country where he will be tortured. In addition, the asylum statute itself,

55. The Department of Homeland Security, pointedly states as follows: "A refugee is a person outside his or her country of nationality who is unable or unwilling to return to his or her country of nationality because of persecution or a well-founded fear of persecution

on account of race, religion, nationality, membership in a particular social group, or political opinion. ***An asylee is a person who meets the definition of refugee and is already present in the United States or is seeking admission at a port of entry. Refugees are required to apply for Lawful Permanent Resident ("green card") status 1 year after being admitted, and asylees may apply for green card status 1 year after their grant of asylum.***

56. As is readily apparent from the foregoing argument, asylees like all the Respondents in this petition, and others similarly situated are not "applicants for admission" but only seem "protection from being returned to countries where they will be tortured.". For that reason, they are not subject to mandatory detention.

MANDATORY DETENTION VIOLATES THE SPIRIT OF THE UN REFUGEE STATUTE

57. Mandatory detention while the case snakes through several years of appeals would hardly have been what the ratifiers of the refugee statute intended. In fact, the ratifiers were very suspicious of the detention of asylum seekers like the Petitioners here merely because they entered the country illegally in their escape from persecution.

58. Article 13 United Nations Convention Against Torture reads as follows: . Article 13 Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR.

59. Of the prospect of the detention of asylum seekers, the United Nations Committee on Human Rights (UNHCR) had the following to say: "UNCHR has a longstanding interest in the situation of detained asylum seekers and the legality of detention of this population under international law. UNHCR takes the position that, consistent with international refugee and human rights law and standards, detention of asylum seekers should be avoided and considered only as a measure of last resort. Because seeking asylum is not a crime, an individual's status as an asylum seeker is not alone a valid basis for detention. Instead, detention is an exceptional measure that can be justified only by a legitimate purpose and when its necessity, reasonableness, and proportionality are based on an individualized assessment for each person. Any decision to restrict an asylum seeker's liberty must respect the right to seek asylum." Detention | UNHCR US

60. The decision to expand mandatory detention to asylum seekers would also violate the spirit of the Convention Against Torture.

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DUE PROCESS

61. In *LaFarga v INS*, 170 F.3d 1213 | 9th Cir.1999), the United States Court of Appeals for the Ninth Circuit addressed the issue of two different construction of the so-called "petty offense exception". In adopting the more lenient approach, the 9th Circuit cautioned as follows: "This reading of the statute is consistent with the Supreme Court's instruction that "since the stakes [of deportation] are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by

the narrowest of several possible meanings of the words used." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10, 68 S.Ct. 374, 92 L.Ed. 433 (1948)."

62. That basic principle—that individuals placed at liberty are entitled to process before the government imprisons them—has particular force here, where an IJ previously found Petitioner does not need to be incarcerated to prevent flight or to protect the community. ih Second, Petitioner has been unlawfully denied the opportunity to seek a new bond hearing and request release from custody from a neutral arbiter while his immigration case proceeds.

63. The IJ's holding that Petitioners are all subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the INA. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond.

64. This statutory provision expressly applies to people, like Petitioners, who are charged as inadmissible for being present without admission or parole. Respondents' new legal theory set forth in the policy is plainly contrary to the statutory framework and decades of agency practice applying § 1226(a) to people like Petitioner, and even to Petitioner himself in both his 2011 and 2025 detentions.

65. Due process requires that any redetention of Petitioners happen only after a neutral adjudicator has determined that he poses a present danger and unmitigable flight risk. Moreover, even if Petitioners had been lawfully redetained, he had a statutory right to a bond hearing before an IJ. As such, this Court should order Petitioner's immediate release until a neutral decisionmaker determines that DHS has met its burden of

justifying his renewed incarceration by clear and convincing evidence, or in the alternative should order Petitioner released if not granted a bond hearing within seven days of an order from this Court.

66. The Supreme Court "usually has held that the Constitution requires some kind of hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the Mathews equation—the value of pre-deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing pre-deprivation process," can the government avoid providing pre-deprivation process. Id. 55.

67. Because, in this case, the provision of a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to provide Petitioner with notice and a hearing prior to any re-incarceration. See *Morrissey*, 408 US. at 481-82; Haygood, 769 F.2d at 1355-56; Zinermon, 494 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); Lynch v. Baxley, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted).

68. Under Mathews, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre- deprivation hearing before a neutral adjudicator, which ICE failed to provide. c. 56. a Petitioner's Private Interest in His Liberty is Profound Under *Morrissey*

and its progeny, individuals conditionally released from serving criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the principles espoused in Hurd and Johnson—that a person who is in fact free of physical confinement, even if that freedom is lawfully revocable, has a liberty interest that entitles him to constitutional due process before he is re-incarcerated—apply with even greater force to individuals like Petitioner, who have been released pending civil removal proceedings, rather than parolees or probationers who are subject to incarceration as part of a sentence for a criminal conviction.

69. Whatis at stake in this case for Petitioner is one of the most profound individual interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and be able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation omitted).

70. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). See also *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."); *Cooper v. Oklahoma*, 517 U.S. 348 (1996); see also Doe, 2025 WL 691664, at *5 ("It cannot be gainsaid that Petitioner has a substantial private interest in maintaining his out-of-custody status.").

71. Thus, it is clear there is a profound private interest at stake in this case, which must be weighed heavily when determining what process Petitioner is owed under the Constitution. *See Mathews,* 424 U.S. at 334-35. ad. 59. The Government's Interest in

Keeping Petitioner in Detention Without a Hearing is Low, and the Burden on the Government to Release Him from Custody Unless and Until He is Provided a Hearing is Minimal.

72. The government's interest in keeping Petitioners in detention without a hearing is low; when weighed against Petitioners's significant private interest in his liberty, the scale tips sharply in favor of releasing him from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community. It becomes abundantly clear that the Mathews test favors Petitioner when the Court considers that the process he seeks—release from custody pending notice and a hearing regarding whether he should be re-detained or a new bond amount should be set —is a standard course of action for the government.

73. In the alternative, providing Petitioners with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a flight tisk or danger to the community would impose only a de minimis burden on the government: the government routinely provides this sort of hearing to detained individuals like Petitioner.

74. As immigration detention is civil, it can have no punitive purpose. The governments only interest in holding an individual in immi,gration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. See *Zadvydas*, 533 U.S. at 690. ICE provided Petitioner with minimal information about why he was re-detained without bond.

75. Given that Petitioner s were all previously found to not be a danger or risk of flight, the risk of erroneous deprivation remains high. Moreover, the value in granting Petitioner

procedural safeguard is readily apparent. At a hearing, a neutral decision maker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness. The government's interest in detaining Petitioners at this time, then is therefore low.

76. The "fiscal and administrative burdens" that release from custody, unless and until a pre-deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 US. at 334-35, Petitioners do not seek a unique or expensive form of process, but rather his release from custody until a routine hearing regarding whether his bond should be revoked and whether he should be re-incarcerated takes place.

77. In the alternative, providing Petitioners with an immediate hearing before this Court (or a neutral decisionmaker) regarding bond is a similarly routine procedure that the government provides to those in immigration jails on a daily basis. See Doe, 2025 WL 691664, at *6 ("The effort and cost required to provide Petitioners with procedural safeguards is minimal and indeed was previously provided in his case.").

78. At that hearing, the Court would have the opportunity to determine whether there have been material changes here that shift the dangerousness and flight risk analysis sufficiently to require a different amount of bond—or if bond should be revoked. But there was no justifiable reason to re-incarcerate Petitioner and ship him to GSA while his case, including two distinct applications for relief from removal, is pending. As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of anew adversary criminal trial if in fact he has failed to abide by the conditions of his parole ... [it] has no interest in revoking parole without some informal procedural guarantees." 408 US. at

483. 67. Release from custody until ICE (1) moves for a bond re-determination before an Immigration Judge and (2) demonstrates by clear and convincing evidence that Petitioners are flight risks or dangers to the community is far /ess costly and burdensome for the government than keeping him detained.

For the foregoing reasons, Petitioners move the Court to grant the writ of habeas corpus.

WHEREFORE, Petitioner moves the Court to grant their motions.

Respectfully submitted,

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s/Emmanuel Enyinwa,Esq

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