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

N.A.,

Petitioners,

vs.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and KRISTI NOEM, Secretary, U.S.
Department of Homeland Security,
Respondents.

Related Case No.:

3:25-cv-03057-BJC-MMP

File No. 

3:25-cv-3058-BJC-MMP

File No. 

**PETITIONER'S TRAVERSE IN
SUPPORT OF HABEAS CORPUS
AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

Petitioner N.A. “Mr. N.A.” petitions this Court for a writ of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents’ detaining him unlawfully, and states as follows:

1. Petitioner is an Armenian-Russian national detained at Otay Mesa Detention Center in San Diego, California.

2. On or about February 7, 2025, Mr. N.A. entered the United States seeking asylum.

3. Respondents commenced removal proceedings against him in immigration court, entitling him to present his claim with the due process rights under 8 U.S.C. 1299a.

4. Since then, Petitioner has diligently attended every immigration court hearing. He filed an asylum application on or about August 22, 2025.

5. In immigration court, noncitizens have the right to pursue claims for relief from removal (including asylum), be represented by counsel, gather and present evidence, and pursue appeals. 8 U.S.C. § 1229(a). By dismissing an ongoing case, DHS—in its view—can transfer a noncitizen’s case from removal proceedings in immigration court, governed by 8 U.S.C. § 1229a, to cursory proceedings under 8 U.S.C. § 1225(b)(1) called “expedited removal,” where the procedural protections and opportunities to pursue relief from removal built into

1 regular immigration-court proceedings do not apply.

2 6. Respondents now seek to keep Mr. N.A. detained without a
3 meaningful opportunity to seek a bond hearing. *See* 8 U.S.C. § 1225. Respondents
4 do so based not on Mr. N.A.’s personal circumstances or individualized facts.
5

6 7. But Respondents cannot evade due process requirements so easily.
7 The U.S. Constitution requires the Respondents provide at least the rights available
8 to him when he filed his application.
9

10 8. The Constitution protects Mr. N.A.—and every other person present
11 in this country—from arbitrary deprivations of his liberty, and guarantees him due
12 process of law. The government’s power over immigration is broad, but as the
13 Supreme Court has declared, it “is subject to important constitutional limitations.”
14 *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). “Freedom from bodily restraint has
15 always been at the core of the liberty protected by the Due Process Clause from
16 arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
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19 9. Mr. N.A. seeks declaratory and injunctive relief to compel his
20 immediate release from the immigration jail where he has been held by DHS since
21 being unlawfully detained on February 7, 2025, without first being provided a due
22 process hearing to determine whether his incarceration is justified.
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25 10. Absent review in this Court, no other neutral adjudicator will examine
26 Mr. N.A.’s plight: Respondents will continue—unchecked—to detain him
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1 unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process.

2 Indeed, after passing a credible fear interview, Mr. N.A. appeared before the Otay
3 Mesa Immigration Court within Otay Mesa Detention Center in San Diego,
4 California
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6 11. For the reasons outlined below, Mr. N.A.'s arrest and inability to
7 contest his arbitrary detention violate his statutory and constitutional rights,
8 including Due Process protections under the U.S. Constitution. Mr. N.A.
9 respectfully requests that this Court should grant the instant petition for a writ of
10 habeas corpus, without any bond requirement, and for declaratory and injunctive
11 relief, to prevent such harms from recurring. Mr. N.A. also asks this Court to find
12 that Respondents' attempts to detain, transfer, and deport him are arbitrary and
13 capricious and in violation of the law, and to immediately issue an order preventing
14 his transfer out of this district.
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18 12. Petitioner respectfully petitions this Honorable Court for a writ of
19 habeas corpus to release Petitioner from detention and an injunction to obtain
20 medical records due to Petitioner's medical conditions.
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23 13. Petitioner suffers from headaches, dizziness, visual disturbances,
24 numbness, tingling, and weakness. Petitioner also suffers from the severe
25 disabilities of deafness and muteness, which have been exacerbated by the ongoing
26 threat of removal and the uncertainty of his detention. His condition places him at
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1 heightened medical risk.

2 14. Petitioner requests that this Court issue a writ of habeas corpus and
3 order Petitioner's release due to medical concerns within 10 days unless
4 Respondents schedule a hearing before an IJ where: (1) to continue detention, the
5 government must establish by clear and convincing evidence that Petitioner
6 presents a risk of flight or danger, even after consideration of alternatives to
7 detention that could mitigate any risk that Petitioner's release would present; and
8 (2) if the government cannot meet its burden, the IJ shall order Petitioner's release
9 on appropriate conditions of supervision, taking into account Petitioner's ability to
10 pay a bond.
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14 15. Additionally, Petitioner requests an injunction to obtain copies of the
15 relevant medical records from Otay Mesa Detention Center concerning his medical
16 complications.
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18 **II. FACTUAL BACKGROUND**

19
20 59. Lead Petitioner is 19-year-old citizen of Armenia and Russia.
21 Petitioner's father's case was consolidated.

22 60. Mr. N.A. and his family were persecuted in Russia and not provided
23 with a way to fend for himself or communicate and defend himself as a deaf-mute
24 individual.
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1 61. While living in Russia, Mr. N.A.’s father was arrested for
2 participating in the free press and political expression. Mr. N.A.’s father was
3 stopped while driving, without cause, and taken to the station, where they severely
4 beaten and punched. They demanded 40,000 Russian rubles for his release and
5 twenty-four (24) hours to produce the money. After fulfilling an order for anti-
6 Kremlin posters, Mr. N.A. was threatened to “be careful or [he will] disappear.”
7 Scared for his and his family’s lives, Petitioner decided to flee to the USA.

10 62. Mr. N.A. applied to enter the USA on or about February 7, 2025.

12 63. Mr. N.A. attended one or more master calendar hearings.

13 64. The DHS started this removal proceeding on or about May 28, 2025.

14 65. Respondents alleged he was inadmissible to the United States under 8
15 U.S.C. § 1182(a)(7)(A)(i)(I) and commanded him to appear for a hearing on June
16 9, 2025.

18 66. On or about August 22, 2025, Petitioner filed his Form I-589 asylum
19 application before the Otay Mesa Immigration Court, within the one-year deadline.

21 67. On or about May 2025, Petitioner’s case was initiated at Otay Mesa
22 Immigration Court, and he was detained at the Otay Mesa Detention Center.

23 68 Mr. N.A. remains in Respondents’ legal and physical custody at Otay
24 Mesa Detention Center, in San Diego, California.

1 **III. JURISDICTION & STATUTORY BACKGROUND**

2 1. This action arises under the Constitution of the United States and the
3 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, et seq.

4
5 2. This court has subject matter jurisdiction under 28 U.S.C. §
6 2241(habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9,
7 cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346
8 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act). Federal district courts
9 have jurisdiction to hear habeas claims brought by noncitizens challenging the
10 lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516-17 (2003)
11 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas*
12 *v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-
13 SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No.
14 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025)
15 (same).
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20 3. This Court may grant relief under the habeas corpus statutes, 28
21 U.S.C. § 2241, et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq.,
22 the All Writs Act, 28 U.S.C. § 1651, and the Court’s inherent equitable powers.
23

24 **A. Petitioner’s Should Not Be Subject For Mandatory Detention**

25 **1. Misapplication of §1225(b)(1)**

26 Respondent asserts that Petitioner is subject to mandatory detention under 8
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1 U.S.C. §1225(b)(1) but the Petition alleges, and the Court must accept, that
2 Petitioner was placed into §1225(b)(1) detention after his §1229a proceedings were
3 terminated without prejudice by the IJ. Because §1225(b)(1) detention requires
4 proper placement in expedited removal, the statutory predicate is not satisfied.

5
6 **2. Parole Release With ICE**

7 Petitioner and his family requested to be released under humanitarian parole.
8 The parole was granted by ICE and the Petitioner should be released.

9
10 **3. Custody Persists Without a Valid Legal Framework**

11 Even after three of the Petitioner's family members were released under
12 parole by ICE, Petitioner remains detained under §1225(b)(1). Detention applied
13 after termination without satisfying statutory prerequisites is unlawful and
14 precisely the type of custody defect habeas relief is designed to remedy.

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16 **IV. ARGUMENT**

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18 **A. Petitioner's claims should not be barred & Habeas Jurisdiction Is**
19 **Proper Under §2241**

20
21 **1. Petitioner Challenges Detention, Not Removal**

22 Petitioner does not seek review of any removal order or any merits
23 determination. Under *Pinson*, 69 F.4th at 1067, and *Nettles v. Grounds*, 830 F.3d
24 922 (9th Cir. 2016), habeas is proper where success would result in release. Unlike
25 the cases cited by Respondent, such as *Guselnikov* and *Giron Rodas*, Petitioner
26 directly challenges the legality of detention itself, not the underlying removal
27 process.

1 **2. §2241 Is the Correct Vehicle**

2
3 Section 2241 allows Courts to determine whether the government has lawful
4 authority to detain a person. None of the jurisdiction-stripping provisions in §1252
5 eliminate review of detention legality.

6 **B. Statutory Limitations §1252 Do Not Deprive This Court of**
7
8 **Jurisdiction**

9 **1. §1252(g) Does Not Bar Detention Challenges**

10 This provision concerns discretionary actions related to removal (commence,
11 adjudicate, execute). It does not bar challenges to detention authority.

12 **2. §1252(b)(9) Is a Challenging Provision, Not a Bar**

13
14 Section 1252(b)(9) channels review of removal orders to courts of appeals, but
15 does not eliminate district court jurisdiction over challenges to the legality of
16 detention under §2241.

17 **3. §1252(a)(2)(A) and (D) Does Not Foreclose All Challenges**

18 While §1252(a)(2)(A) limits judicial review over expedited removal
19 proceedings, Petitioner’s claims concern the legality of detention and procedural
20 compliance, both of which remain reviewable. Section §1252(a)(2)(D) expressly
21 preserves constitutional and legal questions.

22 **C. Petitioner’s Due Process Claims Are Meritorious**

23 **1. Due Process Ensures Statutory Procedures Are Followed**

24
25 Even as an arriving noncitizen, Petitioner retains the right not to be detained
26 through procedures that violate statutory or regulatory mandates.

1 **2. IJ Termination Without Prejudice Does Not Authorize**

2 **Automatic §1225(b)(1) Detention**

3
4 Placement into §1225(b)(1) detention following termination without
5 prejudice exceeds the statutory bounds set by Congress and is therefore subject to
6 challenge under §2241.

7 **D. Relief From Confinement is Proper & APA Review Supports Relief**

8
9 DHS’s placement of Petitioner into §1225(b)(1) detention after IJ termination
10 without prejudice is final in the only sense that matters here, it immediately and
11 definitively affected custody. Because this action directly governs detention and
12 cannot be remedied administratively, habeas relief remains appropriate under 5
13 U.S.C. §704.

14 Petitioner seeks a declaration that his detention under §1225(b)(1) is unlawful
15 and an order for release. Granting this relief would directly alter custody, satisfying
16 the requirement under *Nettles v. Grounds*, 830 F.3d 922 (9th Cir. 2016), and
17 *Pinson*, 69 F.4th at 1072, that habeas relief must affect custody.

18 **V. CONCLUSION AND PRAYER FOR RELIEF**

19
20 For the foregoing reasons, Petitioner respectfully requests that this Court
21 deny Respondent’s request to dismiss these actions, grant the Petition for Writ of
22 Habeas Corpus, declare that §1225(b)(1) detention following IJ termination without
23 prejudice is unlawful, and order Petitioner’s immediate release or such other relief
as the Court finds proper.

24 Dated: 11/24/2025

Respectfully Submitted,

25
26 /S/ Mario Portugal
27 Mario G. Portugal, Esq.
28 Attorney for Petitioner