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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

N.A. 1 and N.A. 2,

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.

Case No.: **3:25-cv-03057-BJC-MMP**

Lead File No. [redacted]

Rider File No. [redacted]

PETITIONER'S N.A. 2'S TRAVERSE IN SUPPORT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS

I. INTRODUCTION

Petitioner N.A. 1 "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:

Petitioner is an Armenian-Russian national detained at Otay Mesa Detention Center in San Diego, California. On or about February 7, 2025, Mr. N.A. 2 entered the United States seeking asylum with his deaf-mute children, wife, and mother-in-law. 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.

Since then, Petitioner has diligently attended every immigration court hearing. He filed an asylum application on or about August 22, 2025. 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 regular immigration-court proceedings do not apply.

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

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

The Constitution protects Mr. N.A. 2—and every other person present in this country—from arbitrary deprivations of his liberty, and guarantees him due process of law. The government's power over immigration is broad, but as the Supreme Court has declared, it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

Mr. N.A. 2 is seeking declaratory and injunctive relief to compel his immediate release from the immigration jail where he has been held by DHS since being unlawfully detained on February 7, 2025, without first being provided a due process hearing to determine whether his incarceration is justified.

Absent review in this Court, no other neutral adjudicator will examine Mr. N.A. 2's plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. § 1225(b)(1), INA § 235(b)(1), without due process.

For the reasons outlined below, Mr. N.A.'s arrest and inability to contest his arbitrary detention violate his statutory and constitutional rights, including Due Process protections under the U.S. Constitution. Mr. N.A. respectfully requests that this Court grant the instant petition for a writ of habeas corpus, without any bond requirement, and for declaratory and injunctive relief, to prevent such harms from recurring. Mr. N.A. also asks this Court to find that Respondents' attempts to detain, transfer, and deport him are arbitrary and capricious and in violation of the law, and to immediately issue an order preventing his transfer out of this district.

Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to release Petitioner from detention and an injunction to obtain medical records due to Petitioner's medical conditions.

Petitioner requests that this Court issue a writ of habeas corpus and order Petitioner's release due to medical concerns within 10 days unless Respondents schedule a hearing before an IJ where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; and (2) if the government cannot meet its burden, the IJ shall order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

II. FACTUAL BACKGROUND

Petitioner N.A. 2 is forty-nine (49) year-old citizen of Armenia and Russia, who came to the United States as an asylum seeker, fleeing from persecution by Russian authorities. In the late 1990s, Petitioner N.A. 2 owned the only deaf-business-run printing house in Armenia.

In the early 2000s, Petitioner N.A. fled Armenia to Russia, because of governmental and police corruption. An Armenian chief of police had forced Respondent N.A. to transfer his land, and when he refused, he was surveilled and policed. Fearing for his life, as he had knowledge of individuals in his position who were killed and arrested for non-compliance, he fled to Russia with his family. While in Russia, Petitioner N.A. 2 was subjected to the same policing and extortion, leading him to a series of opening and closing down his printing businesses and going into hiding.

Petitioner N.A. 2 came with his family to the United States on or about February 7, 2025. On or about August 22, 2025, Petitioner N.A. 2 filed his asylum application.

He has two children who are deaf-mute. His preferred language is Armenian, and within the Otay Mesa Detention Center, Petitioner served as translator for his two children. On or about August 22, 2025, Petitioner N.A. 2 filed his asylum application.

Petitioner N.A. 2 suffers from hypertension and diabetes, which he regulates through the use of daily medication. On account of his age, diabetes, and medical condition, he is considered immunocompromised. Respondent while at Otay Mesa Detention Center, contracted COVID-19, which was a significant health scare for Respondent N.A. 2, given his medical conditions.

At Otay Mesa Detention Center, Petitioner N.A. 2 has not been provided with an adequate translator for his medical appointments, and in some instances, the medical staff have even noted using Google Translate to receive and provide sensitive medical information from Petitioner N.A. 2. This practice points to a greater lack of meaningful access to the care Petitioner N.A. 2 requires.

On November 17, 2025, Petitioner N.A. 2's wife, deaf-mute mother-in-law, and deaf-mute daughter were released on Alternative to Detention (ATD), but Petitioner N.A. 2 and his deaf-mute son remain detained at Otay Mesa Detention Center. This has taken a toll on Petitioner N.A. 1, and Petitioner N.A. 2, whose difficult task it is to communicate to his son, Petitioner N.A. 1 why they have not also been released.

III. JURISDICTION & STATUTORY BACKGROUND

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

This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas

corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs Act). Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. See *Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., the All Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

IV. ARGUMENT

A. Petitioner's Should Not Be Subject to Mandatory Detention

1. Misapplication of §1225(b)(1)

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

2. Parole Release With ICE

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

3. Custody Persists Without a Valid Legal Framework

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

B. <u>Petitioner's claims should not be barred & Habeas Jurisdiction Is Proper Under §2241</u>

1. Petitioner Challenges Detention, Not Removal

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

2. §2241 Is the Correct Vehicle

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

C. Statutory Limitations §1252 Do Not Deprive This Court of Jurisdiction

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

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

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

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

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

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

D. Petitioner's Due Process Claims Are Meritorious

1. Due Process Ensures Statutory Procedures Are Followed

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

2. IJ Termination Without Prejudice Does Not Authorize Automatic §1225(b)(1) Detention

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

E. Relief From Confinement is Proper & APA Review Supports Relief

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

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

V. CONCLUSION AND PRAYER FOR RELIEF

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

Dated: 12/19/2025

Respectfully Submitted,

//s// Mario Portugal
Mario G. Portugal, Esq.
Attorney for Petitioner