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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 VINAYAK NAYYER,

11 Petitioner-Plaintiff,

12 v.

13 CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center, San
14 Diego, California;
15 JOSEPH FREDEN, Acting Field Office
Director, San Diego Office of Detention
16 and Removal, U.S. Immigrations and
Customs Enforcement; U.S. Department
of Homeland Security;
17 TODD M. LYONS, Acting Director,
Immigration and Customs Enforcement,
18 U.S. Department of Homeland Security;
19 SIRCE OWEN, Acting Director for
Executive Office for Immigration Review;
20 KRISTI NOEM, Secretary, U.S.
Department of Homeland Security;
21 PAM BONDI, Attorney General of the
United States;

22 Respondents-

23 Defendants.

Case No.: '25CV3111 AGS DDL

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

Agency File No



1 Petitioner VINAYAK NAYYER petitions this Court for a writ of habeas corpus
2 under 28 U.S.C. § 2241 to remedy Respondents’ detaining him unlawfully, and states as
3 follows:

4 **INTRODUCTION**

5
6 1. Petitioner, VINAYAK NAYYER (“Mr. Nayer” or “Petitioner”), by and through
7 his undersigned counsel, hereby files this petition for writ of habeas corpus and complaint
8 for declaratory and injunctive relief to compel his immediate release from immigration
9 detention where he has been held by the U.S. Department of Homeland Security (DHS)
10 since being unlawfully re-detained on May 26, 2025, without first being provided a due
11 process hearing to determine whether his incarceration is justified. Petitioner was
12 previously released on or about June 9, 2016 by DHS his release on parole conditioned
13 on a \$2,500.00 bond payment pursuant to INA section 236.

14
15 2. Petitioner further submits this habeas petition under 28 U.S.C. § 2241 for a judicial
16 check on Respondents’ administrative decisions to detain him under 8 U.S.C.
17 § 1225(b)(2), INA § 235(b)(2), despite the authority to do so in that Petitioner is not an
18 applicant for admission nor is he seeking admission. And because the government
19 purports to hold him under § 1225(b)(2), it has not provided him with an individualized
20 bond hearing to challenge his detention under 8 U.S.C. § 1226(a), INA § 236(a),
21 contravening his rights under the Immigration and Nationality Act and the Fifth
22 Amendment’s Due Process Clause.

23
24 3. Petitioner seeks declaratory and injunctive relief to compel his immediate release
from the immigration jail where he has been held by the U.S. Department of Homeland

1 Security (DHS) since being unlawfully re-detained on May 26, 2025, without first being
2 provided a due process hearing to determine whether his incarceration is justified.

3 4. Absent review in this Court, no other neutral adjudicator will examine Petitioner's
4 plight: Respondents will continue to detain him in violation of the law essentially
5 indefinitely. Petitioner thus urges this Court to review the lawfulness of his detention;
6 declare that his detention under 8 U.S.C. § 1225(b)(2) is unlawful; order either his
7 immediate release or that, at a minimum, Respondents provide him a bond hearing
8 complying with the procedural requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir.
9 2011).

10
11 5. Petitioner must be released from custody unless and until DHS proves to a neutral
12 adjudicator, by clear and convincing evidence, material changed circumstances
13 (including that he is a flight risk and/or a danger to the community) that would justify
14 cancelling Petitioner's release from ICE custody on or about June 9, 2016 his release on
15 parole conditioned on a \$2,500.00 bond payment after a determination that he was neither
16 a flight risk nor a danger to the community that he could not be released after payment of
17 a \$2,500.00 bond.

18 6. The Due Process clause of the Fifth Amendment, as well as statutory and
19 regulatory authorities, require the government to provide noncitizens with notice and a
20 hearing prior to re-detention. Here Petitioner's rights were violated and continue to be
21 each day he is detained.
22

23 **STATEMENT OF FACTS**

24 7. Mr. Vinayak Nayyer (Petitioner) is an Indian citizen born in New Delhi, India.

1 8. Petitioner's grandfather had served as sarpanch for two five-year terms. He also
2 led the village's [REDACTED], which covered about 20 to 25 of the surrounding
3 villages. His role was to travel around the area, listening to constituents' problems and
4 issues and helping them find solutions which included serving as a mediator between
5 disputing parties. Many people from other parties, such as the [REDACTED]
6 [REDACTED] opposed Petitioner's grandfather due to his popularity in the village
7 for representation of the [REDACTED] which they opposed.
8

9 9. On October 15, 1990, during the period when there was a lot of conflict in the
10 Punjab State between the [REDACTED] and the other political parties, Petitioner's grandfather
11 was shot and killed by [REDACTED] extremists. The police investigated his assassination, but they
12 were never able to find the perpetrators. There had been other attempts on his life before
13 this and he was targeted because of his influence and power in Petitioner's village and his
14 support of the [REDACTED]

15 10. Following his grandfather's footsteps, Petitioner also joined the [REDACTED] in
16 Punjab in about 2015. Petitioner was attacked twice by supporters of the opposition party
17 [REDACTED] one time when while he was standing on a ladder to place large banners in the park
18 trees in preparation for an upcoming political event. Petitioner was attacked because he
19 supported and worked for the [REDACTED] In addition [REDACTED] called and
20 visited Petitioner's mother and threatened to kill Petitioner. Petitioner attempted to file a
21 police report but the police refused to take a report and did not investigate the attack.
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1 11. Petitioner arrived in the United States on April 22, 2016 (he entered through the
2 U.S.-Mexico border near Calexico, California) where he was apprehended by Customs
3 and Border Patrol agents and requested asylum.

4 12. After an Asylum Officer conducted Petitioner's credible fear interview and found
5 him to be credible, on May 6, 2016, Petitioner was referred to an Immigration Judge
6 for consideration of his full asylum application in INA Section 240 proceedings. On June
7 9 2016, Petitioner was released from ICE custody on or about June 9, 2016 his release on
8 parole conditioned on a \$2,500.00 bond payment, after a determination that he was
9 neither a flight risk nor a danger to the community that he could not be released after
10 payment of a \$2,500.00 bond. The venue of Petitioner's proceedings was then changed to
11 Boston, Massachusetts as that is where Petitioner settled following his release. While in
12 removal proceedings, Petitioner timely filed his asylum application and in about June
13 2021, an Immigration Judge administratively closed his proceedings.

14 13. Since his in 2016 his release on parole conditioned on a \$2,500.00 bond payment,
15 Petitioner had been living in Boston and building community ties there. At the time of his
16 re-arrest on May 26, 2025, he was managing a liquor store. He had partially completed a
17 sommelier chef de vin (or wine steward) program and Boston University. Petitioner's
18 sudden disappearance and loss has been heavily felt by his community in the greater
19 Boston area, including the Shivalaya Temple of Greater Boston where he was a member
20 and worshiper, and where he assisted during temple services, organized events, and
21 simply lent a helping hand wherever needed such as helping the elderly and handicapper
22 devotees to access the premise and taking care of them throughout their visits. He was
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1 also heavily engaged in community service and volunteer work. He supported the
2 Clairmont Association Neighborhood by helping and feeding the elderly during
3 community events and parties in the neighborhood.

4 14. On May 25, 2025, Petitioner was arrested by the Massachusetts State Police for
5 suspicion of operating a motor vehicle while under the influence of alcohol. He was taken
6 to the Stoughton State Police Station. After a few hours of being detained there, he was
7 told that he was being released and was walked outside by one of the officers who was
8 carrying Petitioner's belongings. As they exited the building, Petitioner was handed over
9 to ICE officers and his belongings were also handed the ICE officers who were waiting to
10 receive the Petitioner. Petitioner was then taken to the ICE Enforcement and Removal
11 Operations (ERO) Field Office in Burlington, Massachusetts, where he was kept for
12 about three days then transferred to the ICE Detention facility at Plymouth County
13 Correctional Facility. Then after a few days, Petitioner was transferred to the Otay Mesa
14 Detention Center where he has been detained to date.
15

16 15. Petitioner's proceedings were then recalendered and venue was transfer to the Otay
17 Mesa Detention Center, where proceedings are continuing.

18 16. While detained at the Otay Mesa Detention Center, Petitioner requested a custody
19 redetermination hearing before the Immigration Judge and on June 13, 2025, the IJ
20 declined to accept jurisdiction and denied bond.
21

22 17. Petitioner has now lived for over nine years in the United States and has built
23 extensive community ties. He has had no encounters with the immigration system nor the
24

1 criminal justice system prior to his recent traffic arrest and to date, he has never been
2 convicted of any crime.

3
4 **CUSTODY**

5 18. Petitioner is currently in Respondents' legal and physical custody. They are
6 detaining him at the at the Otay Mesa Detention Center in San Diego, California.
7 CoreCivic, Inc., a Maryland corporation, operates that facility. He is under Respondents'
8 and their agents' direct control. Prior to his arrest and re-detention Petitioner was not
9 provided with a constitutionally and statutorily compliant bond hearing.

10 **JURISDICTION**

11 19. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
12 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'
13 custody under the United States' color of authority, and such custody violates the United
14 States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's
15 nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*,
16 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2;
17 U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act),
18 2241 (habeas corpus).

19
20 20. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
21 Petitioner's detention and his challenge to being subjected to mandatory detention under
22 Section 1225(b)(2). Federal district courts possess broad authority to issue writs of
23 habeas corpus when a person is held "in custody in violation of the Constitution or laws
24

1 or treaties of the United States” (28 U.S.C. § 2241(c)(3)), and this authority extends to
2 immigration detention challenges that survived the REAL ID Act's jurisdictional
3 restrictions. Because Petitioner seeks the traditional habeas remedy of release from
4 allegedly unlawful detention rather than additional administrative review of his
5 underlying claims, his petition presents precisely the type of threshold legality-of-
6 detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289,
7 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing
8 *Singh*, 638 F.3d at 1211-12)). And no court has ruled on the legality of Petitioner’s
9 detention.
10

11 **REQUIREMENTS OF 28 U.S.C. § 2243**

12 21. The Court must grant the petition for writ of habeas corpus or issue an order to
13 show cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to
14 relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a
15 return “within *three days* unless for good cause additional time, *not exceeding twenty*
16 *days*, is allowed.” *Id.* (emphasis added).
17

18 22. Courts have long recognized the significance of the habeas statute in protecting
19 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the
20 most important writ known to the constitutional law of England, affording as it does a
21 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
22 372 U.S. 391, 400 (1963) (emphasis added).
23
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1 23. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
2 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
3 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.
4 2000) (internal citations omitted). The Ninth Circuit warned against any action creating
5 the perception “that courts are more concerned with efficient trial management than with
6 the vindication of constitutional rights.” *Id.*

8 VENUE

9 24. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
10 Respondents are employees or officers of the United States, acting in their official
11 capacity; because a substantial part of the events or omissions giving rise to the claim
12 occur in San Diego County in the Southern District of California where Petitioner is
13 currently detained, and because there is no real property involved in this action.

15 INTRADISTRICT ASSIGNMENT

16 25. The decision to re-arrest and re-detain Petitioner was made by the Boston office of
17 ICE, and until he was unlawfully re-detained by ICE, his case was pending before the
18 Boston Immigration Court, in Boston, Massachusetts. He was then transferred to Otay
19 Mesa Detention Center in San Diego, California and after he was detained, his hearing
20 venue was changed to the Otay Mesa Immigration Court, which assumed jurisdiction
21 over his case.
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EXHAUSTION OF ADMINISTRATIVE REMEDIES

1
2 26. In habeas claims, exhaustion of administrative remedies is prudential, not
3 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may
4 waive the prudential exhaustion requirement if “administrative remedies are inadequate
5 or not efficacious, pursuit of administrative remedies would be a futile gesture,
6 irreparable injury will result, or the administrative proceedings would be void.” *Id.*
7 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation
8 marks omitted)). Petitioner asserts that exhaustion should be waived because
9 administrative remedies are (1) futile and (2) his continued detention results in irreparable
10 harm.
11

12 27. Pursuant to the Board’s recent precedential decisions in *Matter of Q. Li*, 29 I&N
13 Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an
14 immigration judge would not take jurisdiction over any custody redetermination hearing.
15 Per those decisions, contravening decades of law and practice by Respondents, Petitioner
16 is erroneously deemed an applicant for admission ineligible for a bond hearing before an
17 immigration judge (IJ).
18

19 28. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful
20 custody in violation of his due process rights, and there are no administrative remedies
21 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d
22 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because the agency
23
24

1 does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*,
2 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

3 29. Exhausting administrative remedies here is futile because Respondents contend
4 Petitioner is subject to mandatory detention. As such, no request to release Petitioner
5 from custody would be considered by ICE. Moreover, Immigration Judges in this district
6 claim to have no jurisdiction to conduct a custody redetermination hearing as to
7 individuals procedurally situated like Petitioner. Indeed, in contravention to the INA and
8 long-standing precedent and practice, the Board of Immigration Appeals and Attorney
9 General have deemed no noncitizen eligible for bond before an immigration judge (with
10 the exception of noncitizens who entered the U.S. on a visa). As such, any attempts to
11 exhaust administrative remedies would be entirely futile.
12


13 30. More importantly, every day that Petitioner remains detained causes him harm that
14 cannot be repaired. His continued detention puts his physical and mental health at greater
15 risk, further warranting a finding of irreparable harm and the waiver of the prudential
16 exhaustion requirement. The Court must consider this in its irreparable harm analysis of
17 the effects on Petitioner as her detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
18 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
19 petitioner “continues to suffer significant psychological effects from his detention,
20 including anxiety caused by the threats of other inmates and two suicide attempts,” in
21 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
22 requirement).
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1 31. Health concerns are one factor the Court should consider in its irreparable harm
2 analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*,
3 No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that
4 the petitioner “continues to suffer significant psychological effects from his detention,
5 including anxiety caused by the threats of other inmates and two suicide attempts,” in
6 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
7 requirement).

8
9 32. Petitioner has exhausted his administrative remedies. While detained at the Otay
10 Mesa Detention Center, Petitioner requested a custody redetermination hearing before the
11 Immigration Judge and on June 13, 2025, the IJ declined to accept jurisdiction and denied
12 bond.

13
14 **PARTIES**

15 33. Mr. Vinayak Nayyer (Petitioner) is an Indian citizen born in New Delhi, India. He
16 is an asylum seeker from India on account of his political opinion and membership in the

17 
18 34. Petitioner is currently in Respondents’ legal and physical custody at the Otay Mesa
19 Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation,
20 operates that facility.

21 35. Respondent JOSEPH FREDEN is the Acting Field Office Director of ICE in San
22 Diego, California and is named in his official capacity. ICE is the component of DHS that
23 is responsible for detaining and removing noncitizens according to immigration law and
24

1 oversees custody determinations. In his official capacity, he is the legal custodian of
2 Petitioner.

3 36. Respondent TODD M. LYONS is the Acting Director of ICE and is named in his
4 official capacity. Among other things, ICE is responsible for the administration and
5 enforcement of the immigration laws, including the removal of noncitizens. In his official
6 capacity as head of ICE, he is the legal custodian of Petitioner.

7
8 37. Respondent KRISTI NOEM is the Secretary of the DHS and is named in her
9 official capacity. DHS is the federal agency encompassing ICE, which is responsible for
10 the administration and enforcement of the INA and all other laws relating to the
11 immigration of noncitizens. In her capacity as Secretary, Respondent Noem has
12 responsibility for the administration and enforcement of the immigration and
13 naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107
14 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a).

15 Respondent Noem is the ultimate legal custodian of Petitioner.

16 38. Respondent PAM BONDI is the Attorney General of the United States and the
17 most senior official in the U.S. Department of Justice (DOJ) and is named in her official
18 capacity. She has the authority to interpret the immigration laws and adjudicate removal
19 cases. The Attorney General delegates this responsibility to the Executive Office for
20 Immigration Review (EOIR), which administers the immigration courts and the BIA.

21
22 39. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
23 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
24 to-day operations of the Otay Mesa Detention Center and acts at the Direction of

1 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of
2 Petitioner and is named in their official capacity.

3 **LEGAL FRAMEWORK AND ANALYSIS**

4 40. The Due Process clause of the Constitution, Congress’s statutes and implementing
5 regulations as well as precedential decisions narrow DHS’s authority to unilaterally
6 revoke any noncitizen’s immigration bond or conditional parole and re-arrest the
7 noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

9 41. ICE can release a noncitizen from custody after the noncitizen “demonstrate[s] to
10 the satisfaction of the officer that such release would not pose a danger to property or
11 persons” and that the noncitizen is “likely to appear for any future proceeding.” §
12 1236.1(c)(8).3 “Release [therefore] reflects a determination by the government that the
13 noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F.
14 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
15 F.3d 1137 (9th Cir. 2018).

17 42. Petitioner was released from ICE custody with an order of an Immigration Judge
18 on the payment of a \$15,00.00 bond in 2016 after determining he was neither a flight risk
19 nor a danger to the community.

20 43. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since May
21 26, 2025, despite lacking authority to hold him under § 1225(b)(2), and without giving
22 him an individualized bail hearing before a neutral adjudicator under § 1226(a). That
23

1 violates Petitioner’s rights under the INA, the APA and the Fifth Amendment’s Due
2 Process Clause.

3 44. Petitioner was arrested and is detained despite the fact that Respondents failing to
4 provide him notice and a pre-deprivation hearing before a neutral arbiter demonstrating
5 materially changed circumstances justifying his re-detention, and despite the fact that he
6 is not an applicant for admission seeking admission to the United States as required by
7 Section 1225(b)(2). Instead, Petitioner has been residing in the U.S. for over nine years
8 and as such is subject to Section 1226(a).
9

10 **Statutory Framework Regarding Detention – Section 1225 and Section 1226**

11 45. The INA prescribes three basic forms of detention for the vast majority of
12 noncitizens in removal proceedings conducted pursuant to 8 U.S.C. § 1229a.
13

14 46. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal
15 proceedings before an immigration judge (IJ). Individuals covered by § 1226(a) detention
16 are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§
17 1003.19(a), 1236.1(d), while certain noncitizens who have been arrested, charged with, or
18 convicted of certain crimes are subject to mandatory detention. See 8 U.S.C. § 1226(c).
19

20 47. Second, the INA provides for mandatory detention of noncitizens subject to an
21 Expedited Removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for other
22 noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be
23 admitted. See 8 U.S.C. § 1225(b)(2).
24

1 48. Last, the INA provides for detention of noncitizens who have been ordered
2 removed, including individuals in withholding-only proceedings. See 8 U.S.C. §
3 1231(a)–(b).

4 49. This case partly concerns the detention provisions at 8 U.S.C. §§ 1226(a) and
5 1225(b)(2).

6 50. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
7 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L.
8 No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–
9 585. Section 1226(a) was most recently amended in early 2025 by the Laken Riley Act,
10 Pub. L. No. 119-1, 139 Stat. 3 (2025).

11 51. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable
12 to proceedings before immigration judges explaining that, in general, people who entered
13 the country without inspection – also referred to as being “present without admission” –
14 were not considered detained under § 1225 and that they were instead detained under §
15 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of
16 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,
17 10323 (Mar. 6, 1997).

18 52. Thus, in the decades that followed, most people who entered without inspection
19 and were placed in standard § 1229a removal proceedings received bond hearings before
20 IJs, unless their criminal history rendered them ineligible. That practice was consistent
21 with many more decades of prior practice, in which noncitizens who were not deemed
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1 “arriving” were entitled to a custody hearing before an IJ or other hearing officer. See 8
2 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that
3 § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

4 53. This practice both pre- and post-enactment of IIRIRA is consistent with the fact
5 that noncitizens present within the United States – as opposed to noncitizens at the border
6 seeking admission – have constitutional rights. “[T]he Due Process Clause applies to all
7 ‘persons’ within the United States, including aliens, whether their presence here is lawful,
8 ‘unlawful, temporary, or permanent.’” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

9 10 54. This year the Board issued two decisions abruptly departing from not only the
11 plain language of Sections 1225 and 1226 but also contravening decades of practice as
12 well as Ninth Circuit and Supreme Court precedent.

13 14 55. On May 15, 2025, the Board issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025)
15 stating that an applicant for admission who is arrested and detained without a warrant
16 while arriving in the United States, whether or not at a port of entry, and subsequently
17 placed in removal proceedings is detained under 8 U.S.C. § 1225(b), and is ineligible for
18 any subsequent release on bond under 8 U.S.C. § 1226(a).

19 20 56. On September 5, 2025, the Board issued *Matter of Yajure Hurtado*, 29 I&N Dec.
21 216 (BIA 2025) stating that all noncitizens who entered without inspection are applicants
22 for admission and are subject to mandatory detention under Section 1225(b)(2).

23 24 57. The overwhelming majority of district courts across the country (including this
Court), however, have rejected the BIA’s decisions in *Matter of Q Li* and *Matter of*

1 *Yajure Hurtado*. Courts have instead held that Section 1225 governs detention of
2 noncitizens who are at the border “seeking admission” to the United States, while Section
3 1226 governs those within the United States.

4 58.Indeed, the Board’s decisions in *Matter of Q Li* and *Matter of Yajure Hurtado*
5 conflict with not only the plain reading of Sections 1225 and 1226 but are also contrary to
6 Ninth Circuit and Supreme Court precedent.

7 8 59.The Supreme Court has explained that Section 1226 is the "default rule" and
9 "applies to aliens already present in the United States." *Jennings v. Rodriguez*, 583 U.S.
10 281, 288, 301 (2018). Moreover, section 1225(b) “applies primarily to aliens seeking
11 entry into the United States” and authorizes DHS to “detain an alien without a warrant at
12 the border.” *Jennings*, 583 U.S. at 297, 302.

13 14 60.In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that
15 “the phrase ‘at the time of application for admission’ ...refers to the particular point in
16 time when a noncitizen submits an application to physically enter into the United States.”
17 976 F.3d at 924. The Ninth Circuit held that “inadmissibility must be measured at the
18 point in time that an immigrant actually submits an application for entry into the United
19 States.” *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only
20 makes an application for admission when they seek permission to physically enter the
21 United States. *Id.* at 924.

22 23 61.In short, *Torres* clarified there is a temporal limitation to a classification of
24 applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir.

1 2024) (stating that “Torres merely rejected the view that an alien remains in a perpetual
2 state of applying for admission”).

3 62. In sum, Petitioner is not detained under Section 1225 because he is not an applicant
4 for admission per Supreme Court and Ninth Circuit precedent, nor is he “seeking
5 admission” to the United States. As such, he is subject to Section 1226(a). This is
6 consistent with the conditional release provided to Petitioner after he entered without
7 inspection and was released into the U.S. over nine years ago.

9 **Materially Changed Circumstances – Right to a Hearing Prior to Re-**
10 **incarceration.**

11 63. The Board of Immigration Appeals has clearly identified limits to DHS’s authority
12 to re-detain noncitizens: “where a previous bond determination has been made by an
13 immigration judge, no change should be made by [the DHS] absent a change of
14 circumstance,” a position adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec.
15 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
16 2021)(“Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.”).

17 64. The government has further clarified in litigation that the showing of changed
18 circumstances applies “both where the prior bond determination was made by an
19 immigration judge *and* where the previous release decision was made by a DHS officer.”
20 *Saravia v. Barr*, 280 F. Supp. 3d at 1197 (emphasis added).

21 65. Further, DHS has in practice limited its authority and “generally only re-arrests
22 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances,” not just
23
24

1 any changed circumstances. *Id.* (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90)
2 (emphasis added).

3 66. Guidance from *Matter of Sugay* and DHS practice alone—that ICE should not re-
4 arrest a noncitizen absent changed circumstances—are insufficient to protect Petitioner’s
5 weighty interest in his freedom from detention. Federal district courts in California have
6 repeatedly recognized that the demands of due process and the limitations on DHS’s
7 authority to revoke a noncitizen’s bond or parole require a pre-deprivation hearing for a
8 noncitizen on bond, like Petitioner, before ICE re-detains him, to comport with the Due
9 Process clause of the Constitution. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D.
10 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*
11 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
12 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal.
13 Mar. 1, 2021)

14 67. Just in the last few months, several federal courts in California have agreed that
15 immigration re-detention after being released in the community warrants a hearing. *See*
16 *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Singh*
17 *v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025); *Pinchi v.*
18 *Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025 WL 2084921 (N.D.
19 Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F. Semaia et al.*, No. CV 25-6900
20 *JGB (JCX)*, 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).

1 68. It follows that prior to re-detaining Petitioner who had previously been released
2 pursuant to 8 U.S.C. § 1226(b), DHS should have provided him with a pre-detention
3 hearing and notice of such hearing at which DHS had the burden of proving that
4 Petitioner's conditional parole should be canceled.

5
6 69. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without
7 having an immigration judge or a neutral adjudicator assess whether circumstances have
8 materially changed since his release his release on parole conditioned on a \$2,500.00
9 bond payment, such that detention would now be warranted.

10 **Petitioner's due process rights**

11 70. The government cannot deprive any person of "life, liberty, or property, without
12 due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons'
13 within the United States, including [non-citizens], whether their presence here is lawful,
14 unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

15
16 **A. Petitioner's Liberty Interest is protected**

17 71. "Freedom from imprisonment—from government custody, detention, or other
18 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
19 protects." *Zadvydas*, 533 U.S. at 690.

20 72. A continued liberty interest also exists where an individual was detained and is
21 subsequently released, even if conditionally released and even when an initial decision to
22 detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-
23 82 (1972). "[S]ubject to the conditions of his parole, [a parolee] can be gainfully
24

1 employed and is free to be with family and friends and to form the other enduring
2 attachments of normal life.” *Id.* at 482. The parolee relies “on at least an implicit promise
3 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The
4 Court explained that “the liberty of a parolee, although indeterminate, includes many of
5 the core values of unqualified liberty and its termination inflicts a grievous loss on the
6 parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and
7 must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at
8 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed
9 in a pre-parole program created to reduce prison overcrowding have a protected liberty
10 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82
11 (1973) (holding that individuals released on felony probation have a protected liberty
12 interest requiring pre-deprivation process).
13
14

15 73. As the First Circuit has explained, when analyzing the issue of whether a specific
16 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved
17 the issue by comparing the specific conditional release in the case before them with the
18 liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*,
19 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*
20 *also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person
21 who is in fact free of physical confinement—even if that freedom is lawfully revocable—
22 has a liberty interest that entitles him to constitutional due process before he is re-
23
24

1 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
2 408 U.S. at 482).

3 74. The protectable liberty interest created by conditional parole also applies to
4 immigration detention. “[T]he government’s discretion to incarcerate non-citizens is
5 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d
6 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation status have a
7 liberty interest, so too does [a noncitizen released from immigration detention] have a
8 liberty interest in remaining out of custody on bond.” *Ortega v. Bonnar*, 415 F. Supp.
9 3d 963, 969 (N.D. Cal. 2019). Even where “a decision-making process involves
10 discretion does not prevent an individual from having a protectable liberty interest.” *Id.* at
11 970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
12 (N.D. Cal. May 6, 2022).

13
14
15 75. The protected liberty interest is even more substantial when balancing the
16 nonpunitive purpose of immigration detention against the “irreparable harms imposed on
17 anyone subject to immigration detention,” including “subpar medical and psychiatric care
18 in ICE detention facilities, the economic burdens imposed on detainees and their families
19 as a result of detention, and the collateral harms to children of detainees whose parents
20 are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

21
22 76. “[R]elease from ICE custody constitute[s] an ‘implied promise’ that [the
23 noncitizen’s] liberty would not be revoked unless she ‘fail[s] to live up to the conditions
24 of her release.’ The regulatory framework makes clear that those conditions [a]re that [the

1 noncitizen] remain[s] neither a danger to the community nor a flight risk. *Pinchi v. Noem*,
2 — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D.
3 Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).

4 77. A noncitizen released from custody pending removal proceedings therefore has a
5 protected liberty interest in remaining out of custody. See *Diaz v. Kaiser*, No. 3:25-CV-
6 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-
7 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); see also *Ramirez Clavijo v.*
8 *Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).

9
10 78. Petitioner has a substantial liberty interest in not being detained. He has been living
11 in the United States for over nine years, has been working and supporting himself and his
12 family, and has developed extensive community ties.

13
14 **B. Petitioner’s Liberty Interest Mandated a Hearing Before any Re-Arrest and
Revocation of Parole**

15 79. “Adequate, or due, process depends upon the nature of the interest affected. The
16 more important the interest and the greater the effect of its impairment, the greater the
17 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
18 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
19 481-82). This Court must “balance [Petitioner’s] liberty interest against the
20 [government’s] interest in the efficient administration of” its immigration laws in order to
21 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
22 him of his liberty. *Id.* at 1357.
23
24

1 80. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth
2 Circuit, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps
3 the Court assess adequate safeguards: “[F]irst, the private interest that will be affected by
4 the official action; second, the risk of an erroneous deprivation of such interest through
5 the procedures used, and the probative value, if any, of additional or substitute procedural
6 safeguards; and finally the government’s interest, including the function involved and the
7 fiscal and administrative burdens that the additional or substitute procedural requirements
8 would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

9
10 81. The Due Process Clause typically requires a hearing of some sort before the
11 government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127
12 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due
13 process always requires, at a minimum, notice and an opportunity to respond.”). Post-
14 deprivation remedies may satisfy the requirements of due process only in a “special case”
15 where they are “the only remedies the State could be expected to provide” and where
16 “one of the variables in the *Mathews* equation—the value of post deprivation
17 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the
18 State cannot be required constitutionally to do the impossible by providing post
19 deprivation process.” *Zinermon*, 494 U.S. at 985.

20
21
22 **1. Petitioner has a substantial liberty interest in staying out of detention**

23 82. An individual's interest in not being detained is “the most elemental of liberty
24 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578

1 (2004). “Freedom from bodily restraint has always been at the core of the liberty
2 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This
3 liberty interest also exists where ICE decides to unilaterally nullify its own prior parole
4 decision and take away his physical freedom, *i.e.*, his “constitutionally protected interest
5 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
6 (internal quotation omitted). Courts have routinely agreed that “a petitioner’s interest in
7 remaining out of custody as ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-
8 06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
9 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the
10 more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

11
12 **2. There is a risk of erroneous deprivation that the additional procedural**
13 **safeguard of a pre-detention hearing would help protect against.**

14 83. Even if the Government believes “it has a valid reason” to re-detain noncitizens, it
15 “does not eliminate its obligation to effectuate the detention in a manner that comports
16 with due process.” *Guillermo M.R. v. Kaiser*, — F. Supp. 3d —, —, No. 25-cv-
17 05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding “undeniably
18 stark” risk of erroneous deprivation where the Government contends that
19 “notwithstanding a neutral arbiter’s determination that Petitioner should be released, ICE
20 is entitled to unilaterally terminate the IJ’s order by re-detaining Petitioner without a
21 hearing for at least six months, based on ICE’s own determination in its sole discretion
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1 that additional conditions of release unilaterally set by ICE had been violated”); *see also*
2 *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

3 84. Where the petitioner “has not received any bond or custody ... hearing, the risk of
4 an erroneous deprivation [of liberty] is high because neither the government nor
5 [Petitioner] has had an opportunity to determine whether there is any valid basis for her
6 detention.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025
7 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing
8 significantly decreases that risk because the government has to prove to a neutral
9 adjudicator by clear and convincing evidence that circumstances have materially changed
10 to justify re-detention, and a hearing is likelier to produce accurate determinations
11 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
12 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989)
13 (when “delicate judgments depending on credibility of witnesses and assessment of
14 conditions not subject to measurement” are at issue, the “risk of error is considerable
15 when just determinations are made after hearing only one side”).

16 85. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be
17 decreased where a neutral decisionmaker, rather than ICE alone, makes custody
18 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.
19 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*
20 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (“A neutral judge
21 is one of the most basic due process protections.”)
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1 86. Any argument that noncitizens can request a custody determination hearing once
2 re-detained goes against the due process safeguards envisioned in the Constitution,
3 because such hearing happens after the fact and cannot prevent an erroneous deprivation
4 of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D.
5 Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-detention bond
6 hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already
7 suffered the harm that is the subject of his motion: that is, his potentially erroneous
8 detention.”). Further, custody determination hearings are routinely conducted in
9 immigration court and this is not a “special case” that warrants post-deprivation remedies
10 because other remedies are impractical the way it was in *Zinerman*.

11
12 87. Consequently ICE was required to provide Petitioner with notice and a hearing
13 prior to any re-incarceration and revocation of his conditional parole. *See Morrissey*, 408
14 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494
15 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
16 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
17 commitment proceedings may not constitutionally be held in jail pending the
18 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the
19 balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation
20 hearing before a neutral adjudicator, which ICE failed to provide.

21
22
23 88. Further, immigration detention is civil (as opposed to criminal), and its primary
24 purpose is to ensure a noncitizen’s appearance during removal proceedings and protect

1 against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678,
2 690, 697 (2001). Due process thus also requires consideration of alternatives to detention
3 at any custody redetermination hearing that may occur, and where alternatives to
4 detention that could mitigate risk of flight exist, detention is not warranted. *See Bell v.*
5 *Wolfish*, 441 U.S. 520, 538 (1979). In fact here Petitioner was released on a \$1,500.00
6 Immigration Judge bond and has since then complied with the conditions of his release.

8 **3. The government’s interest in detaining Petitioner is minimal, and in fact the**
9 **procedural requirements of a hearing would promote judicial and**
10 **administrative efficiency given the government’s limited resources**

11 89. The efficient allocation of the government’s limited fiscal resources further
12 supports holding a hearing prior to re-detaining noncitizens. The “fiscal and
13 administrative burdens” as a result of the due process safeguard are nonexistent. *See*
14 *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long
15 recognized that “[t]he costs to the public of immigration detention are ‘staggering,’”
16 *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz*, 2025 WL 1676854, at
17 *3. In 2017 – with inflation numbers are likely higher today – immigration detention cost
18 “\$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez*,
19 872 F.3d at 996. On the other hand, “[i]n immigration court, custody hearings are routine
20 and impose a minimal cost.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-
21 05632-PCP, 2025 WL 2084921, at *10 (N.D. Cal. July 24, 2025) (citing *Singh v.*
22 *Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)). The
23 cost of re-detaining an immigrant who was previously released “pending any bond
24

1 hearing would significantly exceed the cost of providing [the immigrant] with a pre-
2 detention hearing.” *Pinchi*, 2025 WL 2084921, at *10.

3 90. ICE’s new policy to make a minimum number of arrests each day under the new
4 administration¹ does not constitute a material change in circumstances and cannot stand
5 to replace regulations enacted by Congress that allow the release of noncitizens in the
6 first place. It is “arbitrary, capricious [and] an abuse of discretion” “in excess of statutory
7 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-
8 (C). Even if the government “ultimately demonstrates to a neutral decisionmaker by clear
9 and convincing evidence that her detention is necessary to prevent danger to the
10 community or flight,” then the only potential injury the government faces is a short delay
11 in detaining” Petitioner. *Pinchi*, 2025 WL 2084921, at *12. “Faced with ... a conflict
12 between minimally costly procedures and preventable human suffering, [the Court has]
13 little difficulty concluding that the balance of hardships tips decidedly in plaintiff[’s]
14 favor.” (internal citations omitted). *Id.*

15
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17 91. Consequently the government’s interest in keeping Petitioner in detention without
18 a due process hearing is outweighed by Petitioner’s significant private interest in his
19 liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and
20 until the government demonstrates by clear and convincing evidence that he is a flight
21 risk or danger to the community. It becomes abundantly clear that the *Mathews* test
22

23
24 ¹ See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (January 26, 2025),
available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 favors Petitioner when the Court considers that the process Petitioner seeks—release
2 from custody pending notice and a hearing regarding whether his bond should be revoked
3 and, if so, whether a new bond amount should be set—is a standard course of action for
4 the government. In the alternative, providing Petitioner with a hearing before this Court
5 (or a neutral decisionmaker) to determine whether there is clear and convincing evidence
6 that Petitioner is a flight risk or danger to the community would impose only a *de minimis*
7 burden on the government, because the government routinely provides this sort of
8 hearing to detained individuals like Petitioner.

10 **FIRST CAUSE OF ACTION**

11 **Statutory Violation - Petitioners' Detention is in Violation of 8 U.S.C. § 1226(a)-(b)**

12 92. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the
13 allegations in the paragraphs above.

14 93. Respondents lack statutory authority to detain Petitioner under 8 U.S.C.
15 § 1225(b)(2), because that statute requires that the individual be an applicant for
16 admission and seeking admission to the U.S.

17 94. As Petitioner does not meet these criteria, his detention must be governed by 8
18 U.S.C. § 1226(a) which provides discretionary detention authority and requires ICE to
19 make an individualized custody determination.

20 95. Under § 1226(a), individuals may be detained as a matter of discretion, released on
21 their own recognizance, or released on bond of at least \$1,500.

22 96. Respondents' failure to apply the correct statutory framework violates the INA and
23 exceeds the government's detention authority.
24

1 97. Thus, Petitioner respectfully requests that this Court order his release from
2 detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of his removal
3 proceedings under 8 U.S.C. § 1229a, INA § 240. Alternatively, he requests that this Court
4 order a constitutionally adequate bond hearing complying with the procedural
5 requirements in *Singh*.

7 **SECOND CLAIM FOR RELIEF**

8 **Due Process**

9 **U.S. Const. amend. V**

10 98. Petitioner incorporates by reference the allegations of fact set forth in the
11 preceding paragraphs.

12 99. Petitioner's continued detention without any bond hearing violates his right to due
13 process under the Fifth Amendment.

14 100. The Government may not deprive a person of life, liberty, or property
15 without due process of law. U.S. Const. amend. V. "Freedom from imprisonment— from
16 government custody, detention, or other forms of physical restraint—lies at the heart of
17 the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

18 101. Petitioner has a vested liberty interest in his conditional release. Due Process
19 does not permit the government to strip him of that liberty without a hearing before this
20 Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

21 102. Petitioner's re-arrest without a hearing violated the Constitution both
22 substantively, because Respondents have no valid interest in detaining him since
23

1 circumstances have not changed, and procedurally, because he was not provided with a
2 pre-detention hearing.

3 **THIRD CLAIM FOR RELIEF**

4 **Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)**

5 103. Petitioners incorporate by reference the allegations of fact set forth in the
6 preceding paragraphs.

7 104. Under the Administrative Procedures Act (“APA”), an agency must act in a
8 manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to
9 “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of*
10 *Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a
11 “satisfactory explanation” for its action, “including a rational connection between the
12 facts found and the choice made”).

13 105. A court must “hold unlawful and set aside agency action” that is “arbitrary,
14 capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is
15 “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction,
16 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).
17

18 106. Respondents’ detention of Petitioner pursuant to § 1225(b)(2) is arbitrary
19 and capricious. Respondents’ detention of Petitioner violates the INA and the Fifth
20 Amendments. Respondents do not have statutory authority under § 1225(b)(2) to detain
21 Petitioner. Respondents’ re-detention of Petitioner pursuant to ICE’s new policy and
22 quotas is in direct contradiction with Congress’s intent when enacting regulations and the
23
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1 INA, and long-established case law. 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9); *Matter*
2 *of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981).

3 107. Petitioner’s detention is arbitrary, capricious, an abuse of discretion,
4 violative of the Constitution, and without statutory authority in violation of 5 U.S.C. §
5 706(2).
6

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Petitioner prays that this Court grant the following relief:

- 9 (1) Assume jurisdiction over this matter;
- 10 (2) Issue the writ of habeas corpus and order Respondents to show cause,
11 within three days of Petitioner’s filing this petition, why the relief he
12 seeks should not be granted; and set a hearing on this matter within five
13 days of Respondents’ return on the order to show cause (*see* 28 U.S.C.
14 § 2243);
- 15 (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction
16 of the Southern District of California pending the resolution of this case;
- 17 (4) Issue a Writ of Habeas Corpus requiring Respondents to release
18 Petitioner on the conditions of his prior conditional parole;
- 19 (5) Alternatively conduct an immediate bond hearing before this Court
20 where DHS bears the burden of justifying Petitioner’s continued
21 detention by clear and convincing evidence and the Court takes into
22 consideration alternatives to detention and Petitioner’s ability to pay a
23 bond;
24

1 (6) Alternatively, order an immediate bond hearing before a neutral
2 decisionmaker where DHS bears the burden of justifying Petitioner’s
3 continued detention by clear and convincing evidence and where
4 alternatives to detention and Petitioner’s ability to pay a bond are
5 considered;

6 (7) Award reasonable costs and attorney fees under the Equal Access to
7 Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other
8 basis justified under law;

9 (8) Grant such further relief as the Court deems just and proper.
10

11 Dated: November 12, 2025

Respectfully submitted,

12 By: /s/ Bashir Ghazialam
13 Bashir Ghazialam
14 Attorneys for Petitioner
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