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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 J.A.A.M.,  
12 Petitioner-Plaintiff,

13 v.

14 John E. CANTÚ, Field Office Director U.S.  
15 Immigration and Customs Enforcement and  
16 Enforcement and Removal Operations for the  
17 Phoenix Field Office

18 Fred FIGUEROA, Warden, Eloy Detention  
19 Center;

20 Todd M. LYONS, Acting Director,  
21 Immigration and Customs Enforcement, U.S.  
22 Department of Homeland Security;

23 Kristi NOEM, in her Official Capacity,  
24 Secretary, U.S. Department of Homeland  
25 Security; and

26 Pamela BONDI, in her Official Capacity,  
27 Attorney General of the United States;

28 Respondents-Defendants.

Case No.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

Case No.

1 **INTRODUCTION**

2 1. The Petitioner, J.A.A.M. ("Mr. "A.M."),<sup>1</sup> is a noncitizen asylum seeker who was re-  
3 detained without a warrant at a day laborer site even though he has an affirmative asylum  
4 application pending and he is lawfully authorized to work. Based on information and belief, Mr.  
5 A.M. is now in the physical custody of the Department of Homeland Security ("DHS") at the Eloy  
6 Arizona ICE Detention Center in violation of his right to due process under the Fifth Amendment  
7 of the United States Constitution and the Administrative Procedures Act ("APA").

8 2. Mr. A.M. is being held at this processing center, being arbitrarily detained without  
9 any process, including any notice or pre-deprivation hearing, in violation of his right to due  
10 process and the APA. Mr. A.M. remains detained in DHS custody without bond and separated  
11 from his family.

12 3. The Petitioner therefore respectfully requests that this Court issue a writ of habeas  
13 corpus, determine that Petitioner's re-detention violates his constitutional rights to due process,  
14 and order Petitioner's release.

15 **JURISDICTION**

16 4. The Petitioner is in the physical custody of Respondents. Based on information and  
17 belief, the Petitioner is detained at Eloy Arizona ICE Detention Center.

18 5. This action arises under the Due Process Clause of the Fifth Amendment of the  
19 U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241  
20 (habeas corpus); U.S. Const. Art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702  
21 (Administrative Procedure Act). This Court may grant relief under the habeas corpus statutes, 28  
22 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs  
23 Act, 28 U.S.C. § 1651.

24 6. Congress has preserved judicial review of challenges to unlawful immigration  
25 detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839-841 (2018) (holding that 8 U.S.C. §§

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<sup>1</sup> The Petitioner is proceeding under a pseudonym and will file a motion to proceed under a  
28 pseudonym with the Court. The Petitioner will also prove his identity, including his full name  
and alien number, to the Respondents' counsel.

1 1226(e), 1252(b)(9) do not bar review of challenges to prolonged immigration detention); *see also*  
2 *id.* at 876 (Breyer, J., dissenting) (“8 U.S.C. § 1252(b)(9) . . . by its terms applies only with respect  
3 to review of an order of removal”) (internal quotation marks and brackets omitted).

#### 4 VENUE

5 7. Venue is proper in this District because this is the district in which Petitioner is  
6 confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

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

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

12 9. The Court shall grant the petition for writ of habeas corpus or order Respondents to  
13 show cause “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order  
14 to show cause is issued, Respondents must file a return “within three days unless for good cause  
15 additional time, not exceeding twenty days, is allowed.” *Id.*

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

#### 22 PARTIES

23 11. The Petitioner, J.A.A.M., is a noncitizen currently detained by Respondents pending  
24 ongoing removal proceedings.

25 12. Respondent John E. Cantú is the Director of Field Operations for the Phoenix Field  
26 Office of ICE’s Enforcement and Removal Operations Division. As such, Mr. Cantú is  
27  
28

1 Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is  
2 named in his official capacity.

3 13. Respondent Fred Figueroa is the Warden of Eloy Arizona Detention Center.

4 14. Respondent Todd M. Lyons is the Acting Director of ICE and is responsible for  
5 ICE's policies, practices, and procedures, including those relating to the detention of immigrants.  
6 ICE is a legal custodian of the Petitioner, and Mr. Lyons is named in his official capacity.

7 15. Respondent Kristi Noem is the Secretary of the Department of Homeland Security.  
8 She is responsible for the implementation and enforcement of the Immigration and Nationality  
9 Act ("INA"), and oversees ICE, which is responsible for the Petitioner's detention. Ms. Noem has  
10 ultimate custodial authority over the Petitioner and is named in her official capacity.

11 16. Respondent Pamela Bondi is the Attorney General of the United States. She is  
12 responsible for the Department of Justice, of which the Executive Office for Immigration Review  
13 and the immigration court system it operates is a component agency. She is named in her official  
14 capacity.

### 15 FACTS

16 17. The Petitioner, Mr. A.M., is a 45-year old citizen of Guatemala who entered the  
17 U.S. without inspection on May 29, 2019 near El Paso, Texas, seeking asylum from Guatemala  
18 with his now wife and three children.

19 18. The Petitioner has an undiagnosed medical condition due to long term effects of  
20 having COVID-19. Since Mr. A.M. had COVID-19 in 2020, he has had complications with his  
21 lungs. When Mr. A.M. get cold and is unable to stay warm, he develops a serious bronchitis-like  
22 cough. Mr. A.M. has been unable to receive a formal diagnosis or treatment since the required  
23 exams and medical visits would not be covered by his insurance. When Mr. A.M. has developed  
24 these serious coughs, he has had to stay home and treat his symptoms immediately at home by  
25 staying warm and drinking tea so as not to further worsen his condition.

26 19. Upon entry, Mr. A.M. was briefly detained by the Department of Homeland  
27 Security ("DHS") along with his wife and children.

1           20. On June 19, 2019, Mr. A.M. was released on his own recognizance in accordance  
2 with Section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal  
3 Regulations. Thereafter, Mr. A.M. travelled to California with his wife and children.

4           21. Mr. A.M. was instructed to report to a U.S. Immigration and Customs Enforcement  
5 (“ICE”) office on July 17, 2019. He timely reported to the ICE office in Los Angeles, California  
6 and was ordered to report in person on January 30, 2020.

7           22. Mr. A.M. and his wife and children were scheduled to appear for a Master Calendar  
8 Hearing in 2019, but they did not receive notice of the hearing, so they were ordered removed in  
9 absentia. Mr. A.M. and his wife and children learned that they were removed in absentia at their  
10 ICE check-in on January 30, 2020. They filed for a Motion to Reopen, which was granted on  
11 February 18, 2020.

12           23. Mr. A.M. and his family contracted and paid an attorney by the name of Mr.  
13 Salvador Ortiz to represent them in their Immigration proceedings. An attorney by the name of  
14 Mr. Hector Becerra appeared for Mr. A.M. at their first Immigration Court hearing, which  
15 surprised Mr. A.M. and his family. Mr. Ortiz had apparently asked his colleague, Mr. Becerra, to  
16 appear on his behalf. Mr. Becerra filed a defensive asylum application for the family on May 29,  
17 2020. Mr. A.M. and his family learned that Mr. Ortiz had been disbarred and was not allowed to  
18 practice law any longer.

19           24. In 2023, Seyfarth Shaw LLP began their representation of Mr. A.M. and his family.  
20 On January 6, 2025, DHS – in its prosecutorial discretion so as to allow Mr. A.M. to refile his  
21 application outside of removal proceedings with USCIS – moved to dismiss Mr. A.M. and his  
22 family’s proceedings, and the immigration judge granted the motion.

23           25. On January 17, 2025, Seyfarth Shaw LLP filed the affirmative asylum application  
24 for Mr. A.M., which remains pending before United States Citizenship and Immigration Services  
25 (“USCIS”).

26           26. On November 5, 2025, Mr. A.M. was detained by Immigration and Customs  
27 Enforcement officers without a warrant at a day laborer site even though he has an affirmative  
28 asylum application pending with USCIS, holds an Employment Authorization Document, and has

1 a Social Security number. This follows the trend of ICE officers confronting day laborers and  
2 detaining them without a warrant.<sup>2</sup> He showed these documents to the ICE officer who told him  
3 these documents “were not enough.” He was taken to the Downtown Los Angeles Processing  
4 Center.

5 27. Mr. A.M. was held at this processing center, which is not suitable as a long term  
6 facility, for over three nights. He has been isolated from his community and family, including his  
7 wife, three children, and extended family who live in Los Angeles.

8 28. Mr. A.M. told his family he has been cold and unable to get warm while at the  
9 Processing Center. He had developed a cough due to the cold.

10 29. On November 8, 2025, his daughter received a call from him while he was at the  
11 Processing Center around 6:00 am and Mr. A.M. notified her that he was being moved to Florence,  
12 AZ.

13 30. Because Mr. A.M.’s location had not been updated in ICE’s Online Detainee  
14 Locator System, his counsel filed a habeas corpus petition in the Central District of California.

15 31. After filing the habeas petition, Mr. A.M.’s counsel learned from Mr. A.M.’s  
16 daughter that he had been moved to Tucson, Arizona, and he arrived at the Florence Detention  
17 Center around 2:00 p.m., which was before the habeas petition was filed. Mr. A.M.’s counsel will  
18 file a motion to dismiss the habeas corpus petition pending before the Central District of  
19 California.

20 32. By November 12, 2025, Mr. A.M. was moved once again to a detention center in  
21 Eloy, Arizona.

22 33. Although he has been detained, Mr. A.M has not applied for bond before the  
23 Immigration Court, as doing so would be futile based on the BIA’s decision in *Matter of Yajure*  
24 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), which holds that noncitizens who, like Mr. A.M, entered  
25 the United States without inspection, are subject to mandatory detention and not eligible for bond.

26  
27 <sup>2</sup> See *US: ICE Abuses in Los Angeles Set Stage for Other Cities*, Human Rights Watch (Nov. 4,  
28 2025), available at <https://www.hrw.org/news/2025/11/04/us-ice-abuses-in-los-angeles-set-stage-for-other-cities>.

1 34. Mr. A.M. is neither a flight risk nor a danger to the community. He has a  
2 demonstrated history of complying with ICE check-ins and has appeared for Immigration Court  
3 on all the occasions he was aware of, even moving to reopen his proceedings. He also has a  
4 pending application for asylum and he has employment authorization. Mr. A.M. has no criminal  
5 record in the U.S. or in his country of origin. It is also a medical risk for Mr. A.M. to remain  
6 detained as he suffers from the long term effects of COVID-19, developing bouts of a serious  
7 bronchitis-like cough when he is not able to care for his health.

### 8 LEGAL FRAMEWORK

9 35. “It is well established that the Fifth Amendment entitles [noncitizens] to due  
10 process of law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting  
11 *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government  
12 custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the  
13 Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718  
14 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against  
15 unlawful or arbitrary personal restraint or detention.”). This fundamental due process protection  
16 applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721  
17 (Kennedy, J., dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free  
18 from detention that is arbitrary or capricious”). “[T]he government’s discretion to incarcerate non-  
19 citizens is always constrained by the requirements of due process[.]” *Hernandez v. Sessions*, 872  
20 F.3d 976, 981 (9th Cir. 2017).

21 36. Due process requires “adequate procedural protections” to ensure that the  
22 government’s asserted justification for physical confinement “outweighs the individual’s  
23 constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690  
24 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized  
25 only two valid purposes for civil detention—to mitigate the risks of danger to the community and  
26 to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

27 37. Even when the government has discretion to detain an individual, its subsequent  
28 decision to release the individual creates “an implicit promise” that he will be re-detained only if

1 he violates the conditions of his release. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).  
2 Conditional release “is valuable and must be seen as within the protection of the [Due Process  
3 Clause].” *Id.* at 482. The Due Process Clause generally “requires some kind of a hearing before  
4 the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

5 38. Courts across this district and others within the jurisdiction of the Ninth Circuit  
6 have consistently held that if DHS has released a noncitizen pending civil removal proceedings,  
7 the noncitizen has a protected liberty interest in remaining out of immigration custody. *See*,  
8 *e.g.*, *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Az.  
9 Oct. 7, 2025), report and recommendation adopted in part, rejected in part by 2025 WL 2899092  
10 (Oct 10, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CBD), 2025 U.S. Dist.  
11 LEXIS 156344 (D. Ariz. Aug. 11, 2025); *Rodriguez Flores v. Semaia*, No. CV 25-6900 JGB  
12 (JCx), 2025 WL 2684181, at \*3 (C.D. Cal Aug. 14, 2025); *Roa v. Albarran*, No. 25-cv-07802-  
13 RS, 2025 WL 2732923, at \*5 (N.D. Cal. Sept. 25, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-  
14 cv-06248-BLF, 2025 WL 2419263, at \*6 (N.D. Cal. Aug. 21, 2025); *Guillermo M. R. v. Kaiser*,  
15 No. 25-cv-05436-RFL, 2025 WL 1983677, at \*4 (N.D. Cal. July 17, 2025); *Rodriguez v.*  
16 *Kaiser*, No. 1:25-cv-01111-KES-SAB (HC), 2025 WL 2855193, \*5 (E.D. Cal Oct. 8, 2025);  
17 *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927596, at \*5 (E.D. Cal July 14,  
18 2025).

19 39. In determining what procedures are appropriate to protect the petitioner’s liberty  
20 interest, courts across this district and others have applied the three-factor test from *Mathews v.*  
21 *Eldridge*, 424 U.S. 319, 335 (1976). *See, e.g.*, *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX  
22 GMS (CDB), 2025 WL 2898389 (D. Az. Oct. 7, 2025), report and recommendation adopted in  
23 part, rejected in part by 2025 WL 2899092 (Oct 10, 2025); *Rosado v. Figueroa*, No. CV 25-  
24 02157 PHX DLR (CBD), 2025 U.S. Dist. LEXIS 156344, \*37 (D. Ariz. Aug. 11, 2025); *Sun v.*  
25 *Santacruz*, No. 5:25-cv-02198-JLS-JC, 2025 WL 2730235, at \* 5 (C.D. Cal Aug. 26, 2025);  
26 *Rodriguez Flores*, 2025 WL 2684181, at \*3; *Rodriguez*, 2025 WL 2855193, \*7; *Pinchi v. Noem*,  
27 No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*3 (N.D. Cal. July 24, 2025). Under the *Mathews*  
28 *v. Eldridge* framework, courts analyzing a procedural due process claim consider (1) “the private

1 interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of  
2 such interest through the procedures used, and the probable value, if any, of additional or  
3 substitute procedural safeguards;” and (3) “the Government’s interest, including the function  
4 involved and the fiscal and administrative burdens that the additional or substitute procedural  
5 requirement would entail.” 424 U.S. at 335.

6 40. As multiple district courts across this district and the Ninth Circuit have held, where  
7 the government has released a noncitizen from immigration custody, “due process requires notice  
8 and a hearing, prior to any re-arrest.” *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CBD),  
9 2025 U.S. Dist. LEXIS 156344, \*35 (D. Ariz. Aug. 11, 2025); (citing *Ortega v. Bonnar*, 415 F.  
10 Supp. 3d 963, 968-70 (N.D. Cal. 2019) (granting habeas relief on due process claim, permanently  
11 enjoining the government from “re-arresting [the petitioner] unless and until a hearing, with  
12 adequate notice, is held in Immigration Court to determine whether his bond should be revoked or  
13 altered”); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D.  
14 Az. Oct. 7, 2025), report and recommendation adopted in part, rejected in part by 2025 WL  
15 2899092 (Oct 10, 2025); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at \*3;  
16 (N.D. Cal. Aug. 23, 2020) (“In light of the persuasive reasoning of *Ortega*, and the ongoing  
17 litigation over the procedural due process claim granted by the court there, the court finds that  
18 petitioner has raised serious questions on the merits of his claim that he is entitled to a pre-  
19 deprivation hearing before an immigration judge if he is re-arrested.”); *Jorge M. F. v. Wilkinson*,  
20 No. 21-CV-01434-JST, 2021 WL 783561, at \*3 (N.D. Cal. Mar. 1, 2021) (granting ex parte  
21 application for TRO, finding petitioner “has raised serious questions on the merits of his claim  
22 that he is entitled to a pre-deprivation hearing before an immigration judge if he is re-arrested”);  
23 *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at \*3 (N.D. Cal. May 12, 2025)  
24 (issuing temporary injunction preventing the re-arrest of noncitizen at his ICE interview when he  
25 had been on bond for more than five years); *see also Rodriguez Flores*, 2025 WL 2684181, at \*3  
26 (determining that the petitioner’s re-detention following release on bond violated his right to due  
27 process and holding that “the petitioner is entitled to a pre-detention hearing where the  
28 government bears the burden of proving, by clear and convincing evidence, that he is a danger to

1 the community or a flight risk, and that no conditions other than his detention would be sufficient  
2 to prevent those harms”); *Rodriguez*, 2025 WL 2855193, \*7 (“On balance, the *Mathews* factors  
3 show that petitioner is entitled to a bond hearing, which should have been provided before  
4 petitioner was detained.”); *Garcia*, 2025 WL 1927596, at \*5 (“Having found Petitioner has a  
5 liberty interest and determined that due process requires Petitioner receive a hearing to determine  
6 whether detention is warranted, the Court finds that Petitioner has established a likelihood of  
7 success on the merits.); *cf. Hernandez v. Lyons*, No.: 2:25-cv-05376-FWS-AGR (C.D. Cal June  
8 18, 2025)(slip op. at 9-12) (finding that the petitioner, who was re-arrested following release on  
9 bond, was likely to succeed on his claim that he was re-detained without sufficient process under  
10 the *Mathews v. Eldridge* factors).

11 41. Where courts in this district and others have found that a petitioner was re-detained  
12 without adequate process in violation of the petitioner’s right to due process, such courts have  
13 ordered the petitioner to be released from custody. *See Rosado v. Figueroa*, No. CV 25-02157  
14 PHX DLR (CBD), 2025 U.S. Dist. LEXIS 156344 (D. Ariz. Aug. 11, 2025) (enjoining ICE  
15 from re-detaining petitioner without notice and a hearing); *Cardin Alvarez v. Rivas*, No. CV  
16 25-02943 PHX GMS (CDB), 2025 WL 2898389 (D. Az. Oct. 7, 2025), report and  
17 recommendation adopted in part, rejected in part by 2025 WL 2899092 (Oct 10, 2025);  
18 *Rodriguez Flores*, 2025 WL 2684181, at \*5; *Villata Salazar*, 2025 WL 2633128, at \*6; *Garcia*,  
19 2025 WL 1927596, at \*5; *cf. N.A. v. Larose*, No.: 25-cv-2384-RSH-BLM, 2025 WL 2841989, at  
20 \*6 (S.D. Cal Oct. 7, 2025) (finding that petitioner who was released at the border and subsequently  
21 detained at an Immigration Court hearing was not lawfully detained under 8 U.S.C. §  
22 1225(b)(1)(B)(ii) and ordering for the petitioner’s release). Furthermore, under such  
23 circumstances, courts in this district and others have enjoined the government from re-detaining  
24 the petitioner without notice and a pre-detention hearing where the government bears the burden  
25 of proving, by clear and convincing evidence, that the circumstances have changed as to his danger  
26 to the community or a flight risk, and that no conditions other than his detention would be  
27 sufficient to prevent those harms.” *Pinchi*, 2025 WL 2084921, at \*7; *Rodriguez*, 2025 WL  
28 2855193, \*7; *Garcia*, 2025 WL 1927596, at \*6.

1           42. In addition to due process concerns, arbitrary detention also raises concerns under  
2 the Administrative Procedures Act (APA). Under the APA, a court shall “hold unlawful and set  
3 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in  
4 accordance with the law.” 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency  
5 “entirely failed to consider an important aspect of the problem, offered an explanation for its  
6 decision that runs counter to the evidence before the agency, or is so implausible that it could not  
7 be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home*  
8 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S.,*  
9 *Inc. v. State Farm Mut Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). To survive an APA challenge, the  
10 agency must articulate “a satisfactory explanation for its action, “including a rational connection  
11 between the facts found and the choice made.” *Dep’t of Com. V. New York*, 139 S. Ct. 2551, 2569  
12 (2019) (citations omitted).

13           43. Furthermore, in the alternative to release, courts have found that an individual’s  
14 continued detention by ICE without a bond hearing is a violation of that individual’s statutory  
15 right to a bond hearing under 8 U.S.C. § 1226(a), which applies to noncitizens already present in  
16 the United States pending removal proceedings and authorizes release on bond, and their Fifth  
17 Amendment right to due process. *See e.g., Alejandro Garcia-Rosales v. Kristi Noem*, No. CV-25-  
18 03391-PhX-ShD (DMF) (D. Ariz. Oct. 22, 2025) (finding that individuals like the petitioner, who  
19 had been present in the United States since 2006, are not “arriving aliens” subject to mandatory  
20 detention but, rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)); *Flores v.*  
21 *Noem*, No. 5:25-cv-02490-AB-AJR, 2025 U.S. Dist. LEXIS 194312 (C.D. Cal. Sept. 29, 2025)  
22 (finding that petitioner, who had been living in the United States since June 1997, belongs to the  
23 class of individuals covered under Section 1226 and ordering an individualized bond hearing  
24 before an immigration judge pursuant to that statute); *Echevarria v. Bondi*, No. 2:25-cv-03252-  
25 DWL-ESW, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025). Release under Section 1226(a) confers  
26 an “initial bond hearing before a neutral decisionmaker, the opportunity to be represented by  
27 counsel and to present evidence, the right to appeal, and the right to seek a new hearing when  
28 circumstances materially change.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir.

1 2022). Courts have consistently held that denying bond hearings imposes irreparable harm. *See*  
2 *e.g., Flores*, 2025 U.S. Dist. LEXIS 194312.

3 **CLAIMS FOR RELIEF**

4 **COUNT ONE**

5 **Violation of Fifth Amendment Right to Procedural Due Process**

6 45. The Petitioner re-alleges and incorporates herein by reference, as is set forth fully  
7 herein, the allegations in all the preceding paragraphs.

8 46. The Due Process Clause of the Fifth Amendment forbids the government from  
9 depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V. Due  
10 process protects “all ‘persons’ within the United States, including [non-citizens], whether their  
11 presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678,  
12 693 (2001).

13 47. Due process requires that government action be rational and non-arbitrary. *See U.S.*  
14 *v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). While the government has discretion to detain  
15 individuals under 8 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b),  
16 this discretion is not “unlimited” and must comport with constitutional due process. *See*  
17 *Zadvydas*, 533 U.S. at 698.

18 48. In this case, the Petitioner has a vested liberty interest in his conditional release.  
19 Due Process does not permit the government to strip him of that liberty without a hearing. *See*  
20 *Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972). Indeed, “[a]lthough ICE has the initial  
21 discretion to detain or release a noncitizen pending removal proceedings, after than individual is  
22 released from custody they have a protected liberty interest in remaining out of custody.” *Rosado*  
23 *v. Figueroa*, No. CV 25-02157 PHX DLR (CBD), 2025 U.S. Dist. LEXIS 156344, \*35-36 (D.  
24 Ariz. Aug. 11, 2025) (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just  
25 as people on preparole, parole, and probation status have a liberty interest, so too does [a  
26 noncitizen released from immigration detention] have a liberty interest in remaining out of  
27 custody on bond.”) (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 U.S. Dist. LEXIS 82538,  
28 \*5 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing similar to the

1 present case and finds Petitioner raised serious questions going to the merits of his claim that due  
2 process requires a hearing before an IJ prior to re-detention.”)).

3 49. Here, the Petitioner was initially apprehended by DHS when he entered the U.S. in  
4 May 2019 and, thereafter, was released on his own recognizance. His release from custody,  
5 therefore, created a protected liberty interest in remaining out of immigration custody.

6 50. On November 5, 2025, the Respondents re-detained the Petitioner release in an  
7 arbitrary manner and not based on a rational and individualized determination of whether he is a  
8 safety or flight risk, in violation of due process. Nor was the Petitioner provided with notice or  
9 an opportunity to contest the revocation of his release from custody, such as a pre-deprivation  
10 hearing before a neutral adjudicator.

11 51. Because no individualized custody revocation determination has been made, no  
12 pre-deprivation hearing was provided, and no circumstances have changed to make Petitioner a  
13 flight risk or a danger to the community, Respondents’ re-detention of the Petitioner violates his  
14 right to procedural due process under the Fifth Amendment. Indeed, such process is required  
15 under *Matthews* because the Petitioner’s “private liberty interest is substantial, as is the risk of  
16 erroneous deprivation, and the government’s interest—including any burden additional  
17 procedures might impose—is minimal.” *Sun*, 2025 WL 2730235, at \*6.

18 52. The Court must therefore order the Petitioner to be released and order that, prior to  
19 any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At  
20 the hearing, the neutral adjudicator must evaluate whether clear and convincing evidence  
21 demonstrates, taking into consideration alternatives to detention and the Petitioner’s ability to  
22 pay a bond, that the Petitioner is a danger to the community or a flight risk, such that his re-  
23 incarceration is warranted.

24 **COUNT TWO**

25 **Violation of Fifth Amendment Right to Substantive Due Process**

26 53. The Petitioner re-alleges and incorporates herein by reference, as is set forth fully  
27 herein, the allegations in all the preceding paragraphs.

1 54. The Due Process Clause of the Fifth Amendment forbids the government from  
2 depriving individuals of their right to be free from unjustified deprivations of liberty. U.S. Const.  
3 amend. V.

4 55. The Petitioner has a vested liberty interest in his conditional release. Due Process  
5 does not permit the government to strip him of that liberty without it being tethered to one of the  
6 two constitutional bases for civil detention: to mitigate against the risk of flight or to protect the  
7 community from danger. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.

8 56. Since his release in June 2019, the Petitioner has fully complied with the conditions  
9 of release imposed on him by DHS, and after an Immigration Judge dismissed his removal case,  
10 he affirmatively applied for asylum. He also has no criminal history. Under these circumstances,  
11 his re-detention is punitive and violates his constitutional right to be free from the unjustified  
12 deprivation of his liberty.

13 57. For these reasons, the Petitioner's re-detention without first being provided a hearing  
14 violates the Constitution.

15 58. The Court must therefore order the Petitioner to be released and order that, prior to  
16 any re-arrest, the government must provide him with a hearing before a neutral adjudicator. At  
17 the hearing, the neutral adjudicator must evaluate whether clear and convincing evidence  
18 demonstrates, taking into consideration alternatives to detention and the Petitioner's ability to  
19 pay a bond, that the Petitioner is a danger to the community or a flight risk, such that his re-  
20 incarceration is warranted.

### 21 **COUNT THREE**

#### 22 **Violation of the Administrative Procedures Act**

23 59. Petitioner restates and realleges all paragraphs as if fully set forth here.

24 60. Under the APA, a court shall "hold unlawful and set aside agency action" that is  
25 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5  
26 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider  
27 an important aspect of the problem, offered an explanation for its decision that runs counter to the  
28 evidence before the agency, or is so implausible that it could not be ascribed to a difference in

1 view or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551  
2 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto.*  
3 *Ins. Co.*, 463 U.S. 29, 43 (1983)).

4 61. By arbitrarily and capriciously re-detaining the Petitioner without consideration of his  
5 individualized facts and circumstances, Respondents have violated the APA. Furthermore, by re-  
6 detaining the Petitioner, Respondents have abused their discretion because there have been no  
7 changes to his facts or circumstances since the agency made its initial custody determination that  
8 support the revocation of his release from custody. To the contrary, since his release, the Petitioner  
9 has demonstrated that he is not a flight risk, as he has consistently complied with all conditions of  
10 his release, and has appeared at check-ins with DHS. He has no criminal record, and there is no  
11 indication that he poses a danger of any kind to the community.

12 62. The Respondents have already considered the Petitioner’s facts and circumstances and  
13 determined that he was not a flight risk or danger to the community when they initially released him  
14 from custody. There have been no changes to the facts that justify his re-detention. The fact that  
15 Petitioner has already been granted release by DHS under less favorable facts and circumstances  
16 shows that Respondents do not consider him, on an individualized basis, to be a danger to the  
17 community or a flight risk. His re-detention, therefore, is arbitrary, capricious, and an abuse of  
18 discretion within the meaning of the APA.

19 63. Thus, the Respondents’ re-detention of the Petitioner violates the APA.

20 **COUNT THREE**

21 **Violation of 8 U.S.C. § 1226(a)**

22 64. Under 8 U.S.C. § 1226(a), noncitizens already present in the United States pending  
23 removal proceedings are entitled to consideration for release on bond. This provision authorizes  
24 the Attorney General to release such individuals on bond or conditional parole and guarantees  
25 procedural safeguards, including: (a) an initial bond hearing before a neutral decisionmaker; (b)  
26 the opportunity to be represented by counsel and present evidence; (c) the right to appeal; and (d)  
27 the right to seek a new hearing when circumstances materially change. *See Rodriguez Diaz v.*  
28 *Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022).

1 65. Mr. A.M. has resided in the United States since 2019 and was placed in removal  
2 proceedings, not as a “arriving alien.” Courts have consistently held that individuals in this posture  
3 fall under Section 1226(a). *See Alejandro Garcia-Rosales v. Kristi Noem.*

4 **PRAYER FOR RELIEF**

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

- 6 a. Assume jurisdiction over this matter;
- 7 b. Issue a Writ of Habeas Corpus; determine that Petitioner’s detention is in violation of  
8 his right to procedural due process, his right to substantive due process, and the  
9 Administrative Procedures Act; and order for the Petitioner to be immediately released;
- 10 c. Issue an order enjoining the Respondents from re-detaining the Petitioner unless, prior  
11 to any re-arrest, the government provides him with a hearing before a neutral  
12 adjudicator. At any such hearing, the neutral adjudicator must evaluate whether clear  
13 and convincing evidence demonstrates, taking into consideration alternatives to  
14 detention and the Petitioner’s ability to pay a bond, that the Petitioner is a danger to the  
15 community or a flight risk, such that his re-incarceration is warranted.
- 16 d. In the alternative to Petitioner’s immediate release, provide Petitioner with a bond  
17 hearing under Section 1226(a) before a neutral decisionmaker within seven (7) days;
- 18 e. Issue a declaration that Petitioner’s detention violates the Due Process Clause of the  
19 Fifth Amendment and the Administrative Procedures Act;
- 20 f. Issue a temporary order enjoining the Respondent’s from removing the Petitioner from  
21 the United States or transferring him from the District of Arizona while this matter is  
22 pending;
- 23 g. Award Petitioner his costs and reasonable attorneys’ fees in this action as provided for  
24 by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

25 ///

26 ///

27 ///

28 ///

1 h. Grant such further relief as the Court deems just and proper.

2 DATED this 17<sup>th</sup> day of November 2025.

3  
4 *s/ Brenda K. Radmacher*

5 Brenda K. Radmacher (SBN 024955)  
6 BRadmacher@seyfarth.com  
7 601 South Figueroa Street, Suite 3300  
8 Los Angeles, CA 90017-5793  
9 Telephone: (213) 270-9681  
10 Facsimile: (310) 551-8391  
11 *Attorneys for Petitioner-Plaintiff*

1                   **VERIFICATION FOR SOMEONE ACTING ON PETITIONER'S BEHALF**  
2                   **PURSUANT TO 28 U.S.C. § 2242**

3                   I am submitting this verification on behalf of the Petitioner because our firm is  
4                   Petitioner's counsel in his removal proceedings. My firm has been representing  
5                   Petitioner since February 5, 2025 and we have discussed with him the events described  
6                   in this Petition. On those bases, I hereby verify that the statements made in the attached  
7                   Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

8                   DATED this 17th day of November, 2025

9                     
10                  s/ Brenda K. Radmacher

11                  SEYFARTH SHAW LLP  
12                  Brenda K. Radmacher (SBN 024955)  
13                  [BRadmacher@seyfarth.com](mailto:BRadmacher@seyfarth.com)  
14                  601 South Figueroa Street, Suite 3300  
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**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

Plaintiff(s): **J.A.A.M. , ;**

**Fred FIGUEROA , Warden, Eloy Detention Center;  
Todd M. LYONS , Acting Director, Immigration and  
Defendant(s): Customs Enforcement, U.S. Department of  
Homeland Security; Kristi NOEM , Secretary, U.S.  
Department of Homeland Security; , ;**

County of Residence: Pinal

County of Residence: Pinal

County Where Claim For Relief Arose: Pinal

Plaintiff's Atty(s):

Defendant's Atty(s):

**Brenda K. Radmacher , Attorney for Petitioner-Plaintiff  
Seyfarth Shaw LLP  
601 S Figueroa Street, Suite 3300  
Los Angeles, California 90017  
2132709756**

**Pamela BONDI , Official Capacity, Attorney General of the United  
States**

District of Columbia, Washington

**IFP REQUESTED**

**REMOVAL FROM COUNTY, CASE #**

II. Basis of Jurisdiction:

**1. U.S. Government Plaintiff**

III. Citizenship of Principal Parties(Diversity Cases Only)

Plaintiff:-

**3 Citizen of Foreign Country**

Defendant:-

**2 Citizen of Another State**

IV. Origin :

**1. Original Proceeding**

V. Nature of Suit:

**463 Alien Detainee**

VI. Cause of Action:

**Petition for writ of habeas corpus under 28 USC 2241**

VII. Requested in Complaint

Class Action:

**No**

Dollar Demand:

Jury Demand:

**No**

VIII. This case is not related to another case.

**Signature: Brenda K. Radmacher**

**Date:** 11/12/2025

Case 2:25-cv-04278-JJT--CDB Document 1-1 Filed 11/17/25 Page 2 of 2

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014