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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Kamaljeet SINGH,

Case No.: '25CV3239 JO AHG

12 Petitioner-Plaintiff,

13 v.


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

14 Christopher J. LAROSE, Senior Warden,
15 Otay Mesa Detention Center, San Diego,
16 California;

17 Joseph FREDEN, Acting Field Office
18 Director, San Diego Office of Detention
19 and Removal, U.S. Immigrations and
20 Customs Enforcement; U.S. Department
21 of Homeland Security;

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for
Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security;
Pam BONDI, Attorney General of the
United States;

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

Agency File No.: 

Respondents-
Defendants.

1 Petitioner KAMALJEET SINGH 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, KAMALJEET SINGH (“Mr. Singh” or “Petitioner”), is a Chinese man
7 detained at the Otay Mesa Detention Center in San Diego, California. Petitioner, by and
8 through his undersigned counsel, hereby files this petition for writ of habeas corpus and
9 complaint for declaratory and injunctive relief to compel his immediate release from
10 immigration detention where he has been held by the U.S. Department of Homeland
11 Security (DHS) since being unlawfully re-detained on November 16, 2025, without first
12 being provided a due process hearing to determine whether his incarceration is justified.
13 Petitioner was previously released on January 25, 2024, by DHS on conditional parole
14 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a
15 flight risk nor a danger to the community.

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

1 3. Petitioner seeks declaratory and injunctive relief to compel his immediate release
2 from the immigration jail where he has been held by the U.S. Department of Homeland
3 Security (DHS) since being unlawfully re-detained on November 16, 2025, without first
4 being provided a due process hearing to determine whether his incarceration is justified.


5 4. Absent review in this Court, no other neutral adjudicator will examine Petitioner's
6 plight: Respondents will continue to detain him in violation of the law essentially
7 indefinitely. Petitioner thus urges this Court to review the lawfulness of his detention;
8 declare that his detention under 8 U.S.C. § 1225(b)(2) is unlawful; order either his
9 immediate release or that, at a minimum, Respondents provide him a bond hearing
10 complying with the procedural requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir.
11 2011).

12 5. Petitioner must be released from custody unless and until DHS proves to a neutral
13 adjudicator, by clear and convincing evidence, material changed circumstances
14 (including that he is a flight risk and/or a danger to the community) that would justify
15 cancelling Petitioner's release from ICE custody on January 25, 2024 on conditional
16 parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was
17 neither a flight risk nor a danger to the community.
18

19 6. The Due Process clause of the Fifth Amendment, as well as statutory and
20 regulatory authorities, require the government to provide noncitizens with notice and a
21 hearing prior to re-detention. Here, Petitioner's rights were violated and continue to be
22 each day he is detained.
23
24

1 STATEMENT OF FACTS

2 7. Mr. Singh is an Indian man from Mahilpur Hoshiarpur, Punjab province. He fled
3 India due to being persecuted on account of his political opinion and activities.

4 8. Mr. Singh comes from a minority Sikh family. He is actively involved in a political
5 party called Shiromani Akali Dal Amristar (SADA), which fights for the rights of the
6 Sikh community and human rights. Bharatiya Janata Party (BJP), which is the ruling
7 party in India opposes Mr. Singh’s ideology and those of members of the SADA party.
8 BJP members tried to hinder Mr. Singh’s activities and political participation but he
9 remained committed to helping people in his area through his party. After attacks, threats
10 and harassment by  Mr. Singh fled India on December 6, 2023.

11
12 9. Mr. Singh arrived in the United States on January 25, 2024, and entered the at or
13 near San Ysidro, California, without inspection and without valid entry documents or a
14 visa. Upon arrival, he flagged down border officials and informed them he had a fear to
15 return to India.

16 10. After a brief detention of less than 24 hours, he was not referred to a credible fear
17 interview and issued a Notice to Appear (NTA). Since Mr. Singh was also determined to
18 present neither a flight risk nor a danger to the community, he was released on his own
19 recognizance with conditional parole.

20 11. The Order of Release on Own Recognizance states in pertinent part as follows: “In
21 accordance with Section 236 of the Immigration and Nationality Act.... you are being
22 released on your own recognizance provided you comply with the following
23 conditions....” (conditional parole pursuant to INA section 236 (8 U.S.C. § 1226)).
24

1 12. The NTA issued to Mr. Singh states that he is an “alien present in the United States
2 who has not been admitted or paroled” under Section 212(a)(6)(A)(i).

3 13. Mr. Singh not only complied with all conditions of his release on conditional
4 parole, but he also attended all his court hearings, timely filed his application for asylum,
5 attended his biometrics appointment, requested / received his work permit, and otherwise
6 obeyed all laws of the United States.

7
8 14. On November 16, 2025, Mr. Singh was working as a DoorDash driver and was
9 delivering and order to the Marine Corps Base Camp Pendleton military base in
10 Oceanside. At the entry gate, he was stopped by security officers. The officers inquired
11 about Mr. Singh’s immigration status, and when Mr. Singh informed them that he was an
12 asylum applicant and showed them his employment authorization card and driver’s
13 license, the officers contacted ICE and ordered Mr. Singh to wait. Upon arrival, ICE
14 officers arrested him. Mr. Singh was arrested despite following all traffic and other laws
15 and despite having a valid work permit and driver’s license.

16 15. Since his release on January 25, 2024, from ICE custody on his own recognizance
17 (conditional parole pursuant to INA section 236 (8 U.S.C. § 1226)), Mr. Singh has no
18 criminal record and there have been no other changed circumstances from the time that
19 he was initially apprehended and released justifying his apprehension. As stated above,
20 he attended all his ICE check-ins and court hearings.

21
22 16. Petitioner’s proceedings in immigration court are continuing.

1 17. Petitioner has now lived for almost two years in the United States and has built
2 extensive community ties. He has had no encounters with the criminal justice system
3 prior to his recent arrest and to date, he has never been convicted of any crime.

4 **CUSTODY**

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

11 **JURISDICTION**

12
13 19. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
14 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'
15 custody under the United States' color of authority, and such custody violates the United
16 States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's
17 nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*,
18 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2;
19 U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act),
20 2241 (habeas corpus).

21
22 20. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
23 Petitioner's re-detention without being provided an individualized bail hearing prior to
24 his re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioner's

1 challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal
2 district courts possess broad authority to issue writs of habeas corpus when a person is
3 held “in custody in violation of the Constitution or laws or treaties of the United States”
4 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges
5 that survived the REAL ID Act's jurisdictional restrictions.
6

7 21. Because Petitioner seeks the traditional habeas remedy of release from allegedly
8 unlawful detention rather than additional administrative review of his underlying claims,
9 his petition presents precisely the type of threshold legality-of-detention question that §
10 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also*
11 *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at
12 1211-12)). And no court has ruled on the legality of Petitioner’s detention.
13

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

15 22. The Court must grant the petition for writ of habeas corpus or issue an order to
16 show cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to
17 relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a
18 return “within *three days* unless for good cause additional time, *not exceeding twenty*
19 *days*, is allowed.” *Id.* (emphasis added).
20

21 23. Courts have long recognized the significance of the habeas statute in protecting
22 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the
23 most important writ known to the constitutional law of England, affording as it does a
24

1 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
2 372 U.S. 391, 400 (1963) (emphasis added).

3 24. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
4 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
5 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.
6 2000) (internal citations omitted). The Ninth Circuit warned against any action creating
7 the perception “that courts are more concerned with efficient trial management than with
8 the vindication of constitutional rights.” *Id.*

9
10 **VENUE**

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

16
17 **INTRADISTRICT ASSIGNMENT**

18 26. The decision to re-arrest and re-detain Petitioner was made by the San Diego field
19 office of ICE, and until he was unlawfully re-detained by ICE, his case was pending
20 before the Sacramento Immigration Court. He was then transferred to Otay Mesa
21 Detention Center in San Diego, California and the venue for his proceedings was then
22 changed to the Otay Mesa Immigration Court .
23
24

1 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

2 27. 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 28. 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 29. 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 30.Exhausting administrative remedies here is futile because Respondents contend
4 Petitioner is subject to mandatory detention. As such, no parole request to release
5 Petitioner from custody would be considered by ICE. Moreover, in contravention to the
6 INA and long-standing precedent and practice, the Board of Immigration Appeals and
7 Attorney General have deemed no noncitizen eligible for bond before an immigration
8 judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any
9 attempts to exhaust administrative remedies would be entirely futile.
10

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

23 32.Health concerns are one factor the Court should consider in its irreparable harm
24 analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*,

1 No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that
2 the petitioner “continues to suffer significant psychological effects from his detention,
3 including anxiety caused by the threats of other inmates and two suicide attempts,” in
4 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
5 requirement).

7 **PARTIES**

8 33. Petitioner KAMALJEET SINGH is an Indian Sikh man who came to the U.S. on
9 January 24, 2024. He entered the U.S. without inspection, was detained for a day and was
10 then released on conditional parole January 25, 2024. Despite satisfying the conditions of
11 his conditional parole, filing his asylum application, obtaining his work permit and
12 following all laws of the United States, Mr. Singh was re-detained on November 16,
13 2025, while working for DoorDash.

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

17 35. Respondent Joseph FREDEN is the Acting Field Office Director of ICE in San
18 Diego, California and is named in his official capacity. ICE is the component of DHS that
19 is responsible for detaining and removing noncitizens according to immigration law and
20 oversees custody determinations. In his official capacity, he is the legal custodian of
21 Petitioner.

22 36. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
23 official capacity. Among other things, ICE is responsible for the administration and
24

1 enforcement of the immigration laws, including the removal of noncitizens. In his official
2 capacity as head of ICE, he is the legal custodian of Petitioner.

3 37. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
4 responsibility for overseeing the operation of the immigration courts and the Board of
5 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
6 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
7 removal proceedings, including for custody redeterminations in bond hearings. She is
8 sued in her official capacity.

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

18 39. Respondent Pam BONDI is the Attorney General of the United States and the most
19 senior official in the U.S. Department of Justice (DOJ) and is named in her official
20 capacity. She has the authority to interpret the immigration laws and adjudicate removal
21 cases. The Attorney General delegates this responsibility to the Executive Office for
22 Immigration Review (EOIR), which administers the immigration courts and the BIA.
23
24

1 40. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
2 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
3 to-day operations of the Otay Mesa Detention Center and acts at the Direction of
4 Respondents Freden, Lyons and Noem. Respondent Christopher LaRose is a custodian of
5 Petitioner and is named in their official capacity.

6 LEGAL FRAMEWORK AND ANALYSIS

7 **Statutory Framework Regarding Re-Detention**

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

13 42. ICE can release a noncitizen from custody after the noncitizen "demonstrate[s] to
14 the satisfaction of the officer that such release would not pose a danger to property or
15 persons" and that the noncitizen is "likely to appear for any future proceeding." §
16 1236.1(c)(8).³ "Release [therefore] reflects a determination by the government that the
17 noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F.
18 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905
19 F.3d 1137 (9th Cir. 2018).

20
21 43. Petitioner was released from ICE custody on January 25, 2024, on conditional
22 parole pursuant to INA section 236 (8 U.S.C. § 1226) after determining he was neither a
23 flight risk nor a danger to the community.
24

1 44. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since
2 November 16, 2025, despite lacking authority to hold him under § 1225(b)(2), and
3 without giving him an individualized bail hearing before a neutral adjudicator under §
4 1226(a). That violates Petitioner’s rights under the INA, the APA and the Fifth
5 Amendment’s Due Process Clause.

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

13
14 **Materially Changed Circumstances – Right to a Hearing Prior to Re-
incarceration.**

15 46. The Board of Immigration Appeals has clearly identified limits to DHS’s authority
16 to re-detain noncitizens: “where a previous bond determination has been made by an
17 immigration judge, no change should be made by [the DHS] absent a change of
18 circumstance,” a position adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec.
19 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
20 2021)(“Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.”).

21
22 47. The government has further clarified in litigation that the showing of changed
23 circumstances applies “both where the prior bond determination was made by an
24

1 immigration judge *and* where the previous release decision was made by a DHS officer.”
2 *Saravia v. Barr*, 280 F. Supp. 3d at 1197 (emphasis added).

3 48. Further, DHS has in practice limited its authority and “generally only re-arrests
4 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances,” not just
5 any changed circumstances. *Id.* (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90)
6 (emphasis added).
7

8 49. Guidance from *Matter of Sugay* and DHS practice alone—that ICE should not re-
9 arrest a noncitizen absent changed circumstances—are insufficient to protect Petitioner’s
10 weighty interest in his freedom from detention. Federal district courts in California have
11 repeatedly recognized that the demands of due process and the limitations on DHS’s
12 authority to revoke a noncitizen’s bond or parole require a pre-deprivation hearing for a
13 noncitizen on bond, like Petitioner, before ICE re-detains him, to comport with the Due
14 Process clause of the Constitution. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D.
15 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*
16 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
17 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal.
18 Mar. 1, 2021)
19

20 50. Just in the last few months, several federal courts in California have agreed that
21 immigration re-detention after being released in the community warrants a pre-
22 deprivation hearing. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D.
23 Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D.
24

1 Cal. July 11, 2025); *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-
2 PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F.*
3 *Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).

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

8 52. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without
9 having an immigration judge or a neutral adjudicator assess whether circumstances have
10 materially changed since his release on January 25, 2024, by DHS on conditional parole
11 pursuant to INA section 236 (8 U.S.C. § 1226).

12 **Petitioner’s due process rights**

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

17 **A. Petitioner’s Liberty Interest is protected**

18 54. “Freedom from imprisonment—from government custody, detention, or other
19 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
20 protects.” *Zadvydas*, 533 U.S. at 690.
21
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1 55. A continued liberty interest also exists where an individual was detained and is
2 subsequently released, even if conditionally released and even when an initial decision to
3 detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-
4 82 (1972). “[S]ubject to the conditions of his parole, [a parolee] can be gainfully
5 employed and is free to be with family and friends and to form the other enduring
6 attachments of normal life.” *Id.* at 482. The parolee relies “on at least an implicit promise
7 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The
8 Court explained that “the liberty of a parolee, although indeterminate, includes many of
9 the core values of unqualified liberty and its termination inflicts a grievous loss on the
10 parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and
11 must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at
12 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed
13 in a pre-parole program created to reduce prison overcrowding have a protected liberty
14 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82
15 (1973) (holding that individuals released on felony probation have a protected liberty
16 interest requiring pre-deprivation process).
17
18

19 56. As the First Circuit has explained, when analyzing the issue of whether a specific
20 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved
21 the issue by comparing the specific conditional release in the case before them with the
22 liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*,
23 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*
24

1 also, e.g., *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person
2 who is in fact free of physical confinement—even if that freedom is lawfully revocable—
3 has a liberty interest that entitles him to constitutional due process before he is re-
4 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
5 408 U.S. at 482).

6
7 57. The protectable liberty interest created by conditional parole also applies to
8 immigration detention. “[T]he government’s discretion to incarcerate non-citizens is
9 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d
10 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation status have a
11 liberty interest, so too does [a noncitizen released from immigration detention] have a
12 liberty interest in remaining out of custody on bond.” *Ortega v. Bonnar*, 415 F. Supp.
13 3d 963, 969 (N.D. Cal. 2019). Even where “a decision-making process involves
14 discretion does not prevent an individual from having a protectable liberty interest.” *Id.* at
15 970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
16 (N.D. Cal. May 6, 2022).

17
18 58. The protected liberty interest is even more substantial when balancing the
19 nonpunitive purpose of immigration detention against the “irreparable harms imposed on
20 anyone subject to immigration detention,” including “subpar medical and psychiatric care
21 in ICE detention facilities, the economic burdens imposed on detainees and their families
22 as a result of detention, and the collateral harms to children of detainees whose parents
23 are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).
24

1 59. “[R]elease from ICE custody constitute[s] an ‘implied promise’ that [the
2 noncitizen’s] liberty would not be revoked unless she ‘fail[s] to live up to the conditions
3 of her release.’ The regulatory framework makes clear that those conditions [a]re that [the
4 noncitizen] remain[s] neither a danger to the community nor a flight risk. *Pinchi v. Noem*,
5 — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D.
6 Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).

8 60. A noncitizen released from custody pending removal proceedings therefore has a
9 protected liberty interest in remaining out of custody. *See Diaz v. Kaiser*, No. 3:25-CV-
10 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-
11 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *see also Ramirez Clavijo v.*
12 *Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).

14 61. Petitioner has a substantial liberty interest in not being detained. He has been living
15 in the United States for almost two years, has been working and supporting himself and
16 has developed extensive community ties.

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

19 62. “Adequate, or due, process depends upon the nature of the interest affected. The
20 more important the interest and the greater the effect of its impairment, the greater the
21 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
22 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
23 481-82). This Court must “balance [Petitioner’s] liberty interest against the
24

1 [government’s] interest in the efficient administration of” its immigration laws in order to
2 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
3 him of his liberty. *Id.* at 1357.

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

12
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14 64. The Due Process Clause typically requires a hearing of some sort before the
15 government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127
16 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due
17 process always requires, at a minimum, notice and an opportunity to respond.”). Post-
18 deprivation remedies may satisfy the requirements of due process only in a “special case”
19 where they are “the only remedies the State could be expected to provide” and where
20 “one of the variables in the *Mathews* equation—the value of post deprivation
21 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the
22 State cannot be required constitutionally to do the impossible by providing post
23 deprivation process.” *Zinermon*, 494 U.S. at 985.
24

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

2 65. An individual's interest in not being detained is “the most elemental of liberty
3 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578
4 (2004). “Freedom from bodily restraint has always been at the core of the liberty
5 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This
6 liberty interest also exists where ICE decides to unilaterally nullify its own prior parole
7 decision and take away his physical freedom, *i.e.*, his “constitutionally protected interest
8 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
9 (internal quotation omitted). Courts have routinely agreed that “a petitioner’s interest in
10 remaining out of custody as ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-
11 06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
12 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the
13 more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
14
15

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

18 66. Even if the Government believes “it has a valid reason” to re-detain noncitizens, it
19 “does not eliminate its obligation to effectuate the detention in a manner that comports
20 with due process.” *Guillermo M.R. v. Kaiser*, — F. Supp. 3d —, —, No. 25-cv-
21 05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding “undeniably
22 stark” risk of erroneous deprivation where the Government contends that
23 “notwithstanding a neutral arbiter's determination that Petitioner should be released, ICE
24

1 is entitled to unilaterally terminate the IJ's order by re-detaining Petitioner without a
2 hearing for at least six months, based on ICE's own determination in its sole discretion
3 that additional conditions of release unilaterally set by ICE had been violated”); *see also*
4 *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

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

19
20
21 68. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be
22 decreased where a neutral decisionmaker, rather than ICE alone, makes custody
23 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.
24 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*

1 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (“A neutral judge
2 is one of the most basic due process protections.”)

3 69. Any argument that noncitizens can request a custody determination hearing once
4 re-detained goes against the due process safeguards envisioned in the Constitution,
5 because such hearing happens after the fact and cannot prevent an erroneous deprivation
6 of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D.
7 Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-detention bond
8 hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already
9 suffered the harm that is the subject of his motion: that is, his potentially erroneous
10 detention.”). Further, custody determination hearings are routinely conducted in
11 immigration court and this is not a “special case” that warrants post-deprivation remedies
12 because other remedies are impractical the way it was in *Zinermon*.
13

14 70. Consequently ICE was required to provide Petitioner with notice and a hearing
15 *prior* to any re-incarceration and revocation of his conditional parole. *See Morrissey*, 408
16 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494
17 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
18 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
19 commitment proceedings may not constitutionally be held in jail pending the
20 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the
21 balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation
22 hearing before a neutral adjudicator, which ICE failed to provide.
23
24

1 71. Further, immigration detention is civil (as opposed to criminal), and its primary
2 purpose is to ensure a noncitizen's appearance during removal proceedings and protect
3 against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678,
4 690, 697 (2001). Due process thus also requires consideration of alternatives to detention
5 at any custody redetermination hearing that may occur, and where alternatives to
6 detention that could mitigate risk of flight exist, detention is not warranted. *See Bell v.*
7 *Wolfish*, 441 U.S. 520, 538 (1979).

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

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

1 cost of re-detaining an immigrant who was previously released “pending any bond
2 hearing would significantly exceed the cost of providing [the immigrant] with a pre-
3 detention hearing.” *Pinchi*, 2025 WL 2084921, at *10.

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

17
18 74.Consequently the government’s interest in keeping Petitioner in detention without
19 a due process hearing is outweighed by Petitioner’s significant private interest in his
20 liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and
21 until the government demonstrates by clear and convincing evidence that he is a flight
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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 risk or danger to the community. It becomes abundantly clear that the *Mathews* test
2 favors Petitioner when the Court considers that the process Petitioner seeks—release
3 from custody pending notice and a hearing regarding whether his conditional parole
4 should be revoked and, if so, whether a new bond amount should be set—is a standard
5 course of action for the government. In the alternative, providing Petitioner with a
6 hearing before this Court (or a neutral decisionmaker) to determine whether there is clear
7 and convincing evidence that Petitioner is a flight risk or danger to the community would
8 impose only a *de minimis* burden on the government, because the government routinely
9 provides this sort of hearing to detained individuals like Petitioner.
10

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

12 75. The Immigration and Nationality Act (INA) prescribes three basic forms of
13 detention for noncitizens in removal proceedings.
14

15 76. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-
16 expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a.
17 Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their
18 detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been
19 arrested, charged with, or convicted of certain crimes are subject to mandatory detention,
20 see 8 U.S.C. § 1226(c).
21

22 77. Second, the INA provides for mandatory detention of noncitizens subject to
23 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking
24 admission referred to under § 1225(b)(2).

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

4 79.This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

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

10 81.Following enactment of the IIRIRA, EOIR drafted new regulations explaining that,
11 in general, people who entered the country without inspection were not considered
12 detained under § 1225 and that they were instead detained under § 1226(a). See
13 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct
14 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

15 82.Thus, in the decades that followed, most people who entered without inspection—
16 unless they were subject to some other detention authority—received bond hearings. That
17 practice was consistent with many more decades of prior practice, in which noncitizens
18 who were not deemed “arriving” were entitled to a custody hearing before an IJ or other
19 hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at
20 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously
21 found at § 1252(a)).
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1 83. On May 15, 2025, the Board issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025)
2 stating that an applicant for admission who is arrested and detained without a warrant
3 while arriving in the United States, whether or not at a port of entry, and subsequently
4 placed in removal proceedings is detained under 8 U.S.C. § 1225(b), and is ineligible for
5 any subsequent release on bond under 8 U.S.C. § 1226(a).
6

7 84. On September 5, 2025, the Board of Immigration Appeals issued a precedent
8 decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that
9 noncitizens who entered the United States without inspection were ineligible for bond
10 redetermination hearings because they were seeking admission, and fell within 8 U.S.C. §
11 1225(b)(2)(A).
12

13 85. This legal theory espoused by the BIA's decisions in *Matter of Q Li* and *Matter of*
14 *Yajure Hurtado* that noncitizens who entered the United States without admission or
15 parole are ineligible for bond hearings has been universally rejected by the district courts.
16 *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash.
17 Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL
18 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-
19 SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*,
20 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-
21 02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-
22 ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-
23 01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No.
24

1 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No.
2 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v.*
3 *Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025);
4 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn.
5 Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D.
6 La. Aug. 27, 2025) *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

8 86. The Board’s interpretation defies the INA. The plain text of the statutory
9 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

10 87. Section 1226(a) applies by default to all persons “pending a decision on whether
11 the [noncitizen] is to be removed from the United States.” These removal hearings are
12 held under § 1229a, which “decid[e] the inadmissibility or deportability of a[]
13 [noncitizen].”

15 88. The text of § 1226 also explicitly applies to people charged as being inadmissible,
16 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).
17 Subparagraph (E)’s reference to such people makes clear that, by default, such people are
18 afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that
19 it applies to people who face charges of being inadmissible to the United States,
20 including those who are present without admission or parole.

22 89. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
23 recently entered the United States. The statute’s entire framework is premised on
24

1 inspections at the border of people who are “seeking admission” to the United States. 8
2 U.S.C. § 1225(b)(2)(A).

3 90. In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that
4 “the phrase ‘at the time of application for admission’ ... refers to the particular point in
5 time when a noncitizen submits an application to physically enter into the United States.”
6 976 F.3d at 924. The Ninth Circuit held that “inadmissibility must be measured at the
7 point in time that an immigrant actually submits an application for entry into the United
8 States.” *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only
9 makes an application for admission when they seek permission to physically enter the
10 United States. *Id.* at 924.

11 91. In short, *Torres* clarified there is a temporal limitation to a classification of
12 applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir.
13 2024) (stating that “*Torres* merely rejected the view that an alien remains in a perpetual
14 state of applying for admission”).

15 92. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
16 people like Petitioner who are alleged to have entered the United States without
17 admission or parole.

18
19
20 **FIRST CLAIM FOR RELIEF**

21 **Statutory Violation – Petitioner’s Detention is in Violation of 8 U.S.C. § 1226(a)-(b)**

22 93. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the
23 allegations in the paragraphs above.

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

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

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

9 97. Respondents' failure to apply the correct statutory framework violates the INA and
10 exceeds the government's detention authority.

11 98. Thus, Petitioner respectfully requests that this Court order his release from
12 detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of his removal
13 proceedings under 8 U.S.C. § 1229a, INA § 240. Alternatively, he requests that this Court
14 order a constitutionally adequate bond hearing complying with the procedural
15 requirements in *Singh*.
16
17

18 **SECOND CLAIM FOR RELIEF**

19 **Due Process**

20 **U.S. Const. amend. V**

21 99. Petitioner incorporates by reference the allegations of fact set forth in the
22 preceding paragraphs.

23 100. Petitioner's continued detention without any bond hearing violates his right
24 to due process under the Fifth Amendment.

1 101. The Government may not deprive a person of life, liberty, or property
2 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from
3 government custody, detention, or other forms of physical restraint—lies at the heart of
4 the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

5
6 102. Petitioner has a vested liberty interest in his conditional release. Due Process
7 does not permit the government to strip him of that liberty without a hearing before this
8 Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

9 103. Petitioner’s re-arrest without a hearing violated the Constitution both
10 substantively, because Respondents have no valid interest in detaining him since
11 circumstances have not changed, and procedurally, because he was not provided with a
12 pre-detention hearing.

13
14 **THIRD CLAIM FOR RELIEF**

15 **Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)
16 Unlawful Denial of Bond**

17 104. Petitioner repeats re-alleges and incorporate by reference each and every
18 allegation in the preceding paragraphs as if fully set forth herein.

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

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

5
6 107. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
7 to noncitizens residing in the United States who are subject to the grounds of
8 inadmissibility because they originally entered the United States without inspection or
9 parole. Such noncitizens are detained under § 1226(a), unless they are subject to another
10 detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

11 108. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
12 redetermination hearing before an immigration judge is arbitrary, capricious, and not in
13 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

14
15 **PRAYER FOR RELIEF**

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

17 (1) Assume jurisdiction over this matter;

18 (2) Issue the writ of habeas corpus and order Respondents to show cause,
19 within three days of Petitioner’s filing this petition, why the relief he
20 seeks should not be granted; and set a hearing on this matter within five
21 days of Respondents’ return on the order to show cause (*see* 28 U.S.C.
22 § 2243);

23 (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction
24

1 of the Southern District of California pending the resolution of this case;

2 (4) Issue a Writ of Habeas Corpus requiring Respondents to release
3 Petitioner on the conditions of his prior conditional parole;

4 (5) Alternatively conduct an immediate bond hearing before this Court
5 where DHS bears the burden of justifying Petitioner's continued
6 detention by clear and convincing evidence and the Court takes into
7 consideration alternatives to detention and Petitioner's ability to pay a
8 bond;

9
10 (6) Alternatively, order an immediate bond hearing before a neutral
11 decisionmaker where DHS bears the burden of justifying Petitioner's
12 continued detention by clear and convincing evidence and where
13 alternatives to detention and Petitioner's ability to pay a bond are
14 considered;

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

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

19 Dated: November 21, 2025,

Respectfully submitted,

20
21 By: /s/ Bashir Ghazialam
22 Bashir Ghazialam
23 Attorneys for Petitioner
24

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner’s attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner’s immigration file. Based on said review and those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this November 21, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner

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