UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

MOHAMADEN DEYINE KEHMESS :

Petitioner, :

-against- :

MIGUEL VERGARA, FIELD OFFICE DIRECTOR, IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE), ENFORCEMENT AND REMOVAL OPERATIONS, IN HIS OFFICIAL CAPACITY, :

TODD M. LYONS, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; :

KRISTI NOEM, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; :

PAMELA BONDI, IN HER OFFICIAL CAPACITY AS U.S. ATTORNEY GENERAL, :

NORBAL VASQUEZ, IN HIS OFFICIAL CAPACITY AS WARDEN OF RIO GRANDE PROCESSING CENTER, :

Respondents. :

----------X

PETITION FOR WRIT OF HABEAS CORPUS

Case No. 5:25-cv-238

INTRODUCTION

1. This case concerns the unlawful arrest and unlawful detention of Petitioner, Mohameden Deyine Kehmess ("Mr. Kehmess"), thirty-seven-year-old citizen and national of Mauritania. Mr. Kehmess entered the United States on December 16, 2022. He was issued a warrant of arrest, arrested, issued a Notice to Appear dated December 21, 2022, placed into proceedings. After making a flight risk and danger determination, the

Department of Homeland Security ("DHS") issued an Order of Release on Recognizance. Since his entry, Mr. Kehmess has done everything the government has asked him to do. He followed the asylum process in the United States for those placed into immigration proceedings. He timely filed his asylum application, applied for and received his work authorization, and began working in this country.

2. Mr. Kehmess's traffic stop arrest while working and subsequent mandatory detention are wholly unjustified and unrelated to any individualized consideration of Mr. Kehmess's circumstances. When he initially entered the United States in December 2022, DHS allowed him to enter, and made a danger and flight risk assessment in releasing him on an order of recognizance. Petitioner did not violate the terms of his release, and yet on October 22, 2025, he was arrested and remains detained at the Rio Grande Processing Center, Laredo, Texas.

2. On October 22, 2025, Mr. Kehmess's was issued a second Notice to Appear pursuant to 8 U.S.C. § 1229a, and placed him into what is commonly referred to as Section 240 proceedings. Under INA §240 proceedings, non-citizens like Mr. Kehmess, are afforded procedural rights, including the ability to request a custody redetermination from an immigration judge. DHS has stripped Mr. Kehmess of that protection by treating him as someone who *is* arriving pursuant to 8 C.F.R. § 1225(b). In recent weeks, courts across the country have held that this new, expansive interpretation of mandatory detention under the Immigration and Nationality Act ("INA") is incorrect. Petitioner submits an appendix referencing all the cases, including courts in the Fifth Circuit.

3. Mr. Kehmess's arrest and ongoing detention are causing him immense harm. Prior to his arrest in October 2025, he had never been criminally arrested. Since arriving at the Rio

Grande Processing Center, he has not been able to sleep. He is also separated from his family members.

4. Everyday Mr. Kehmess spends in detention, he is subjected to further irreparable harm. Immediate relief is necessary to ensure that he is no longer subjected to continued violations of his substantive and procedural rights.

JURISDICTION & VENUE

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et. seq*.

7. Venue is proper because Petitioner was detained in Texas, and now remains detained at the Rio Grande Processing Center. *See* ICE Detainee Locator; *See also generally* *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States," he must file the petition in the district of confinement and name his immediate custodian as the respondent).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

8. Under the INA exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal." *Garza-Garcia v. Moore,* 539 F. Supp.2d 899, 904 (S.D. Tex. 2007); *see* 8 U.S.C. § 1252(d)(1)("A court may review a final order of removal only if…the [noncitizen] has exhausted all administrative remedies."). In cases like this, where the exhaustion requirement is not mandated by statute, exhaustion can be forgiven by the Court.

9. In fact, administrative exhaustion is unnecessary as it would be futile. *See, e.g.,* *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).

10. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge ("IJ") because of the Board of Immigration Appeals ("BIA") recent decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under 8 USC 1225(b)(2)(A). *See* *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also* *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile).

11. Additionally, the agency does not have jurisdiction to review Petitioner's claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

12. Petitioner Mr. Mohameden Deyine Kehmess is a citizen and national of Mauritania. He resides with his brother at [redacted]. He is currently in ICE custody and detained at the Rio Grande Processing Center, 1001 San Rio Boulevard, Laredo, Texas 78046. .

13. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the

INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of Texas; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

14. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of Texas, Laredo Division, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

15. Respondent NORBAL VASQUEZ is the warden at the RIO GRANDE PROCESSING CENTER, where the petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

16. Respondent, MIGUEL VERGARA, is ICE Field Officer Director of Detention and Removal. Respondent Vergara is a custodial official acting within the boundaries of the judicial district of the United States Court for the Southern District of Texas, Brownsville Division. Pursuant to Respondent Vergara's orders, Petitioner remains behind bars.

LEGAL BACKGROUND

17. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the

United States." 28 U.S.C. § 2241(a), (c)(3); *see also* I.N.S. v. St. Cyr, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

18. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

19. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." Boumediene v. Bush, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting*, St. Cyr, 533 U.S. at 302.

20. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. Const. amend. V.

21. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" Trump v. J. G. G., 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting* Reno v. Flores, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

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

23. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post–final order detention.

24. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585.

Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

25. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formed referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

26. Thus, in the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

27. For decades, residents of the U.S. who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226

and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

28. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole**. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-foapplications-for-admission (emphasis original).

29. As a result, according to DHS all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability

under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id*.

30. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a). Further, the Petitioner in this case was initially arrested and released pursuant to 8 U.S.C. § 1226(a), and is demonstrated by DHS's own forms.

31. Under § 1226(a) the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id*. § 1003.19(e).

Re-detention

32. Under § 1226(a), the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee "demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding." 8 C.F.R. § 36.1(c)(8). "[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond." Id. § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee

may request a custody redetermination hearing before an IJ. That request will "be considered only upon a showing that the alien's circumstances have changed materially." *Id*. § 1003.19(e)

33. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

34. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

35. Courts have stated that conditional parole "provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a 'danger to persons or property' and 'is likely to appear for any further proceeding.'" *Delgado-Sobalvarro v. Attorney Gen. of U.S.*, 625 F.3d 782, 787 (3d Cir. 2010); *See also Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010).

36. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the "discretion of the

district, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9).

37. Additionally, despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the federal government's authority is subject to "an important implicit limitation": It cannot lawfully re-arrest or re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

38. In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings," without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

39. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of

the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

40. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

41. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore v. Kim*, 538 U.S. 510, 519-20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

42. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked

only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

43. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

44. These principles apply with at least equal force to people released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

45. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and re-detain noncitizens for no reason at all, it would raise serious constitutional questions under both the Fourth Amendment and the Due Process Clause.

CONSTITUTIONALLY ADEQUATE BOND HEARING

46. The Due Process Clause requires constitutionally adequate bond hearing. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention must "bear [a] reasonable relation to the purpose for

which the individual [was] committed." Id. At 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972))

47. At a minimum, due process requires "adequate procedural protections" to ensure that the Government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (internal quotation marks omitted).

48. In civil detention cases, the Supreme Court "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty." *Singh*, 638 F.3d 1196, 1204-05 (9th Cir. 2011) (quoting *Addington v. Texas*, 441 U.S. 418, 425 (1979)) (emphasis in original).

49. Civil detention is impermissible without an individualized hearing before a neutral decision maker that tests the Government's justification for imprisonment. *See United States v. Salerno*, 481 U.S. 739, 750-51 (1987) (upholding civil pretrial detention of individuals charged with crimes only upon individualized findings of dangerousness or flight risk at custody hearings); *Foucha v. Lousiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized finding of mental illness and dangerousness for civil commitment); *Kansas v. Hendricks*, 521, U.S. 346, 357 (1997) (upholding civil commitment of sex offenders after jury trial on lack of volitional control and dangerousness).

50. The Ninth Circuit and other district courts have held that immigration detainees are entitled to bond hearings at which the Government bears the burden to prove by clear and convincing evidence that detainees would be a flight risk or danger to the community. *See*, *e.g.*, *Singh*, 638 F.3d at 1204-05; *Pensamiento v. McDonald*, 315 F. Supp. 3d 684, 692 (D. Mass. 2018) (holding that due process requires the burden of proof be placed on

the government in custody redetermination hearings for non-criminal aliens) (Saris, C.J.); *Alvarez Figueroa v. Mc Donald*, Civil Action No. 18-10097-PBS, 2018 U.S. Dist. LEXIS 80781, at *15-16 (D. Mass. May 14, 2018) ("The Zadvydas Court then cited to criminal pretrial detention and civil commitment cases, making it clear that one important procedural protection for preventive detention is the placement of the burden of proof of the government.") (Saris, C.J.); *Doe v. Tompkin*s, Case No. 18-cv-12266-PBS, 2019 U.S. Dist. LEXIS 22616, at *4 (D. Mass. Feb 12, 2019) holding that due process requires that the burden of proving that the respondent is dangerous and is a flight risk be placed on the government in § 1226(a) custody redetermination hearings) (Saris, C.J.); *Diaz-Ortiz v. Tompkins*, Case No. 18-cv-12600-PBS, 2019 U.S. Dist. LEXIS 14155, at *3-4 (D. Mass. Jan. 29. 2019) (same) (Saris, C.J.); *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 U.S. Dist. LEXIS 178577, at *13 (S.D.N.Y.Oct. 17, 2018) (concluded that "due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under Section 1226(a)."); *Darko v. Sessions*, 342 F. Supp. 3d 429, 436 (S.D.N.Y.2018)(same; further, "the Court concludes that the government must bear the burden by clear and convincing evidence."); *Haughton v. Crawford*, 221 F. Supp. 3d 712, 713-17 (E.D. Va. 2016) ("the significant deprivation of liberty warrants the robust procedural protections afforded by requiring the government to demonstrate by clear and convincing evidence that petitioner's ongoing detention is appropriate to protect the community and ensure petitioner's appearance at future proceedings.") *Portillo v. Hott*, 322 F. Supp. 3d 698, 2018 WL 3237898, at *8 *n.9 (E.D. Va. 2018) (reaffirming Haughton as "good authority").

STATEMENT OF THE FACTS

51. Mr. Kehmess is a native and citizen of Mauritania. He entered into the United States on or about December 16, 2022.

52. The DHS issued Mr. Kehmess a warrant for his arrest. After his initial arrest he was processed and issued a Notice to Appear ("NTA") dated December 21, 2022, pursuant to 8 U.S.C. 1229a. The NTA charged him as not being admitted or paroled, and removable under section 212(a)(6)(A)(i) of the INA, 8 U.S.C. 1182(a)(6)(A)(i), a noncitizen who is present without being admitted or paroled.

53. On December 21, 2022, DHS also issued Mr. Kehmess, a Notice of Custody Determination, Form I-286, making a custody determination that Mr. Kehmess was not a danger or flight risk, and releasing him on his own recognizance.

54. On December 21, 2022, Mr. Kehmess was issued a Form I-220A, Order of Release on Recognizance. The Order states that Mr. Kehmess is "being released on [his]own recognizance provided you comply with the following conditions." His conditions go on to list several requirements, including surrendering from removal if ordered, reporting to a Duty Officer at 26 Federal Plaza in New York, and not violating local, state, or federal laws.

55. DHS and Mr. Kehmess signed the Form I-220A, acknowledging that failure to comply with the order imposed may result in the revocation of his release and arrest and detention by DHS.

56. Despite DHS re-arresting Mr. Kehmess, the cancellation of order is blank. Further, Petitioner alleges that there were no material changes or violations of the release order that would justify his re-arrest.

57. Due to DHS error, Mr. Kehmess' first NTA was dismissed.

58. In 2023, Petitioner timely filed his Form I-589, Application for Asylum, with the U.S. Citizenship and Immigration Service ("USCIS"), as they had jurisdiction because the Department of Homeland Security did not file a subsequent NTA with the immigration court.

59. On January 22, 2025, Petitioner was granted a work authorization in connection with his pending asylum application. On September 19, 2023, Mr. Kehmess was printed in connection with that application.

60. On February 22, 2024, USCIS approved Mr. Kehmess's work authorization. His work authorization expires on February 26, 2029.

61. On or about October 22, 2025, Mr. Kehmess was stopped at a CBP checkpoint. Despite showing a valid license and his work authorization, he was unlawfully arrested and detained.

62. DHS issued a second NTA dated October 22, 2025 pursuant to 8 USC 1229a. This NTA charges Petitioner with not being admitted or paroled, and removable pursuant to the initial charge under 8 USC 1182(a)(6)(i), present without being admitted or paroled, and adds a new charge under 8 USC 1182(a)(7)(A)(i)(I), no valid documentation at the time of entry.

4. Mr. Kehmess has no criminal history.

5. Mr. Kehmess is being detained without the possibility of bond.

6. On July 8, 2025, DHS issued a new policy memorandum to all , On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement (Hereinafter "ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter "DOJ"), has revisited its legal position on detention

and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

63. Through his pending asylum application, Mr.Kehmess will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.

64. Mr. Kehmess is detained at the Rio Grande Processing Center, 1001 San Rio Boulevard, Laredo, Texas, 78046.

65. Mr. Kehmessi requested a custody re-determination from an immigration judge. However, it was denied as the immigration judge found it did not have jurisdiction to review his custody redetermination due to a new policy memo and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) holding that everyone present in the United States who did not enter with a valid visa is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A).

66. Petitioner's detention pursuant to 8 USC 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking

admission." Rather, he should continue to be detained pursuant to 8 U.S.C. §1226(a), which was DHS's initial determination for Mr. Kehmess and allows for release on conditional parole or bond.

67. Petitioner's re-detention pursuant to 8 USC §1225(b)(2)(A), is unlawful because revocations of release must comply with 8 U.S.C. §1226(b).

68. Through this petition, Mr. Kehmess asks this Court to find that Respondents have unlawfully detained him under 8 USC§1225(b)(2)(A), that his detention is appropriate under 8 USC §1226(a), which DHS initially processed him under, and immediately release Mr. Kehmess from custody in accordance with the initial custody determination made in December 2022, which DHS never properly revoked. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATION OF 8 U.S.C. § 1226(a)
UNLAWFUL DENIAL OF RELEASE ON BOND

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

70. In October 2025, Mr. Kehmess was re-arrested even though he did not violate the terms of his release on recognizance. DHS also did not properly revoke his prior release on recognizance. Instead, DHS re-arrested and re-detained him under 8 USC §1225, stating that he is now subject to mandatory detention.

71. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. §1226(a).

72. DHS has already made a custody determination under 8 U.S.C. §1226(a), and ordered his release from detention.

73. Petitioner's continuing detention is therefore unlawful.

SECOND CLAIM FOR RELIEF

CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE PROCESS

74. Petitioner incorporates all factual allegations as though restated here.

75. DHS detained Mr. Kehmess without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.

76. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

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

78. Mr. Kehmess's re-detention violates his Fifth Amendment rights for at least three related reasons.

79. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (*citing Zadvydas*, 533 U.S. at 690).

80. Whereas here, the government has ordered release on recognizance, detention is not reasonably related to its purpose.

81. Second, the Due Process Clause requires that any deprivation of Mr. Kehmess's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the

infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

82. Petitioner's on-going imprisonment does not satisfy that rigorous standard as he did not commit any crime, was released from custody, and has a pending asylum case joined by his wife.

83. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

84. Detaining Mr. Kehmess was arbitrary because he had been initially processed for detention under 8 USC §1226, released on recognizance, has authorization to work in the United States, and has no criminal arrests or convictions.

85. Mr. Kehmess was initially detained under 8 USC §1226(a), but for a new policy memorandum now subjecting everyone present in the United States who entered without a valid visa to mandatory detention, deprives the Petitioner of an individualized bond determination.

THIRD CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
The Petitioner's Re-Detention is Arbitrary and Capricious

1. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.
2. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary [and] capricious, . . . or otherwise not in accordance with law[.]" 5 U.S.C. § 706(2)(A).

3. Petitioner's re-detention is reviewable as final agency action because it is neither tentative nor interlocutory, and legal consequences flow from Petitioner's re-detention.
4. By statute and regulation as interpreted by the BIA, ICE has the authority to rearrest a noncitizen and revoke their release pending the outcome of removal proceedings only when there has been a change in circumstances since the individual's initial release. *See* *Panosyan v. Mayorkas*, 854 F.App'x 787, 788 (9th Cir. 2021); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). Additionally, changed circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd su nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).
5. Respondents provide no reasoned or adequate explanation for re-detaining Petitioner, who, since his release from ICE custody in 2023, had filed his asylum application, received work authorization, and compliant with the terms of his released. *See* *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).
6. In re-detaining Petitioner, now without the ability for bond, Respondents failed to adequately consider important aspects of relevant factors, including the constitutional limitations on the government's authority to re-arrest and re-detain, and the reliance interests of the Petitioner in understanding that with his release, he could not be re-arrested absent some violation of the bond conditions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

A. Assume jurisdiction over this matter;

B. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;

C. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;

D. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

E. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

F. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

G. Grant any further relief this Court deems just and proper.

Dated: November 26, 2025

Respectfully Submitted,

/S/

DAVID H. SQUARE, ESQ.
LAW OFFICE OF DAVID H. SQUARE,PLLC
225 PALM BLVD.
BROWNSVILLE, TX 78520
T: (956) 421-1010
F: (956) 421-4015
E: DAVID@LAWOFFICEOFDHS.COM
ATTORNEY FOR PETITIONER