

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

TEMUR PUKHAEV :

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, :

MARIO GARCIA, WARDEN, WEBB COUNTY :
DETENTION CENTER, IN HIS OFFICIAL CAPACITY, :

Respondents. :
-----X

**PETITION FOR
WRIT OF HABEAS CORPUS**
Expedited Hearing Requested

Case No. 5:25-cv-240

INTRODUCTION

1. This case concerns the unlawful re-arrest and the unlawful subsequent re-detention of Petitioner, Temur Pukhaev (“Mr. Pukhaev”), a fifty-year-old father, and asylum seeker, who fled Russia with his wife and three children. Mr. Pukhaev entered the United States

on June 30, 2022. He was apprehended shortly after his entry, but DHS issued him and his family a parole for the purpose of continuing their removal proceedings.

2. In the years since his release, Mr. Pukhaev has done everything the government asked him to do: he followed the process in the United States for people seeking asylum inside immigration court, timely filed his asylum application, received his work authorization, and began working as a truck driver to support his wife and children.
3. Yet, on September 26, 2025, Mr. Pukhaev was detained while driving in Texas from San Antonio to Laredo when he stopped at an immigration checkpoint with Border Patrol.
4. Mr. Pukhaev's re-arrest and re-detention are wholly unjustified and unrelated to any individualized consideration of Mr. Pukhaev's circumstances. When he presented himself at the border with his wife and his three minor children on June 30, 2022, the Department of Homeland Security ("DHS") allowed him to enter. When issuing him and his family parole for the purpose of seeking asylum DHS made the determination that he was neither a flight risk nor a danger and placed him into 8 U.S.C. §1229(a) proceedings through the issuance of a Notice to Appear under 8 U.S.C. §1226(a). At the time of his re-arrest, he had already been living in the country for over (3) years with DHS's knowledge and approval. He had been reporting to his check-ins and to immigration court as required. DHS did not re-arrest him at the expiration of his parole on July 1, 2023. But on September 26, 2025, DHS reversed course and arrested him anyway.
5. Before re-detaining him on September 26, 2025, Respondents did not provide Mr. Pukhaev with any written notice explaining the basis for the revocation of his release. Nor did they provide a hearing before a neutral decisionmaker where ICE was required to

justify the basis for re-detention or explain why now, (3) years later, Mr. Pukhaev is a flight risk or danger to the community.

6. In fact, DHS used parole as a humanitarian tool to facilitate Petitioner's asylum case and invited him to build his life and legal strategy around that status. By re-arresting him under a new policy that weaponizes his parole to justify mandatory detention, Respondents act arbitrarily and capriciously, upset Petitioner's reliance interests without adequate process, and violate the Due Process Clause.
7. In addition, as this Court has recently held in multiple cases, due process demands a hearing prior to the government's decision to terminate a person's liberty. *See E.A. T.-B. v. Wamsley*, --- F. Supp. 3d --- No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025); *Ramirez Tesara v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-CV-01723-MJP-TLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *Kumar v. Wamsley*, No. 2:25-CV-01772-JHC-BAT, 2025 WL 2677089 (W.D. Wash. Sept. 17, 2025).
8. By failing to provide such a hearing, Respondents have violated Mr. Pukhaev's constitutional right to due process.
9. Accordingly, this Court should grant the instant petition for a writ of habeas corpus and order his immediate release. *See E.A. T.-B.* 2025 WL 2402130, at *6 (ordering immediate release because "a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty"); *Ramirez Tesara*, at *4 (similar); *Kumar*, 2025 WL 2677089, at *3-4 (similar).

JURISDICTION & VENUE

10. 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.*


11. Venue is proper because Petitioner was detained in Texas and now remains detained at the Webb County Detention Center. *See* ICE Detainee Locator; *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, “[w]henver 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). *See also* 28 U.S.C. §1391(e).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. “Under the INA, exhaustion of administrative remedies is only required by Congress for appeals on final orders of removal.” *Garcia-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 alien has exhausted all administrative remedies.”).
13. 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). In cases like this, where the exhaustion requirement is not mandated by statute, exhaustion can be forgiven by the Court.
14. It would also be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge (“IJ”) because of the Board of Immigration Appeals (“BIA”) and 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).

15. Nonetheless, Petitioner did request a bond hearing, and the Immigration Judge found that it did not have jurisdiction. As such, Petitioner decided to withdraw the bond.

PARTIES

1. Petitioner Mr. Temur Pukhaev is a fifty-year-old citizen and national of Russia. He resides with his wife and (3) minor daughters at . He is currently in ICE custody and detained at the Webb County Detention Center, 9998 S Highway, 83, Laredo, TX 78041.
2. 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.
3. 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.
4. Respondent MARIO GARCIA is the warden at the WEBB COUNTY DETENTION FACILITY, where the petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

5. 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, Laredo Division. Pursuant to Respondent Vergara's orders, Petitioner remains behind bars.

LEGAL BACKGROUND

Due Process Principles

6. Due process requires that if DHS seeks to re-arrest a person like Mr. Pukhaev—who has lived in the United States for years without incident after DHS first released him, and has attended his removal proceedings and complied with the terms of his release—the government must afford a hearing before a neutral decisionmaker to determine whether any re-detention is justified, and whether the person is a flight risk or danger to the community.
7. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty protected by the Due Process Clause.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Courts have recently recognized, this is the “the most elemental of liberty interests.” *E.A. T.-B.*, 2025 WL 2402130, at *3 (citation modified); *see also Ramirez Tesara*, 2025 WL 2637663, at *3 (stating that the petitioner had “an exceptionally strong interest in freedom from physical confinement”).
8. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their “continued liberty.” *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).
9. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires “adequate procedural protections” that test whether the government's asserted

justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." Zadvydas, 533 U.S. at 690 (citation modified).

10. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. Goldberg v. Kelly, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g., Morrissey*, 408 U.S. at 485 (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).
11. Several courts have recognized that these principles apply with respect to the re-detention of the many noncitizens that DHS has recently begun taking back into custody, often after such persons have been released for months and years.
12. For example, in E.A. T.-B., the Court applied the Mathews v. Eldridge, 424 U.S. 319 (1976), framework to hold that even in a case where the government asserted that mandatory detention applied, a person's re-detention could not occur absent a hearing. The Court did the same in Ramirez Tesara and Kumar. *See Ramirez Tesara*, 2025 WL 2637663, at *2-3; Kumar, 2025 WL 2677089, at *2-3.
13. In applying the three Mathews factors, the E.A. T.B. court held that the petitioner had "undoubtedly [been] deprive[d] . . . of an established interest in his liberty," 2025 WL 2402130, at *3, which, as noted, "is the most elemental of liberty interests," *id.* (citation

modified). The Court further explained that even if detention was mandatory, the risk of erroneous deprivation of liberty without a hearing was high because a hearing serves to ensure that the purposes of detention—the prevention of danger and flight risk—are properly served. *Id.* at *4–5. Finally, the Court explained that “the Government’s interest in re-detaining non-citizens previously released without a hearing is low: although it would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [ISAP] violations before arresting and re-detaining him, those costs are far outweighed by the risk of erroneous deprivation of the liberty interest at issue.” *Id.* at *5. As a result, this Court ordered the petitioner’s immediate release. *Id.* at *6.

14. Courts in this District have applied a similar analysis in *Carlos v. Bondi*.

9:25-CV-00249-MJT-ZJH (E.D. Tex. Nov 21, 2025). There, the Court reasoned that the petitioner had a “weighty” interest in his liberty and was entitled to the “full protections of the due process clause.” *Id.* Further, the fact that the government may believe “it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate “the detention in a manner that comports with due process.” See *Ramirez Tesara*, 2025 WL 2637663 at *4(quotiing *E.A.T.B.*, 2025 WL 2402130, at *4). Accordingly, there too, the Court ordered Petitioner’s immediate release. *Id.* at *5.

15. Many other district court decisions address similar situations. See, e.g., *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (ordering immediate release due to lack of pre-deprivation hearing); *Pinchi v. Noem*, --- F. Supp. 3d ---, No. 5:25-CV05632-PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8,

2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar).

16. The same framework and principles apply here and compel Mr. Pukhaev’s release.

17. “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.

Detention Authority

18. Under 8 U.S.C. § 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).

19. 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.* *See also Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

20. 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.
21. Circuit 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).
22. 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 at 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).
23. 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).

24. 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.
25. 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).

26. “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).
27. 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).
28. 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.
29. 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).

30. 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).
31. 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.

STATEMENT OF THE FACTS

32. Mr. Pukhaev left Russia with his wife, Irina Kabisova, and (3) daughters: D [REDACTED], [REDACTED], A [REDACTED] and I [REDACTED]. The family entered the United States on or about June 30, 2022, at Otay Mesa Port of Entry, as a unit, after fleeing Russia because

[REDACTED]

[REDACTED]

33. On July 1, 2022, CBP processed the family together as a unit and issued a humanitarian parole to Mr. Pukhaev, his wife, and three children, for the purposes of applying for asylum in removal proceedings under 8 U.S.C. §1229a . The family traveled to Brooklyn, New York, where they remain while the Petitioner is detained.

34. In addition to issuing humanitarian parole, On July 1, 2022, DHS issued a Notice to Appear under 8 U.S.C. §1229a ordering the Petitioner and his family to appear at 26 Federal Plaza, 12th Floor, Room 1237, New York, NY, on October 13, 2022, at 8:30 AM.
35. On August 22, 2022, Petitioner timely filed his Form I-589, Application for Asylum, with the immigration court and filed a copy with U.S. Citizenship and Immigration Service (“USCIS”). The immigration court received his Form I-589 on September 7, 2023, while USCIS received his Form I-589 on September 06, 2022. USCIS issued a receipt notice for Petitioner’s asylum case.
36. Petitioner, and his family, appeared for their first Master Calendar Hearing on October 13, 2022. The immigration judge reset it for an Individual Merits Hearing scheduled for December 22, 2027.
37. On March 22, 2023, Petitioner was granted his initial work authorization in connection with his pending asylum application. The initial work authorization expired in March 2025. Petitioner renewed his work authorization, and DHS extended it until May 26, 2030.
38. On September 26, 2025, Mr. Pukhaev was driving in Texas from San Antonio to Laredo to pick up cars to deliver to PA, and stopped at an immigration checkpoint. Border Patrol asked him if he was a U.S. citizen or lawful permanent resident. Petitioner provided his valid driver's license and valid Employment Authorization Document. Nonetheless, Border Patrol unlawfully detained him on or about about 11:30 PM and transferred him to the Webb County Detention Center in Texas on October 15, 2025, where he remains unlawfully detained.

39. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Certain DHS officials may terminate humanitarian parole upon written notice when they determine that the purpose for parole has been “accomplish[ed]” or when “neither humanitarian reasons nor public benefit warrants the [noncitizen’s] continued presence . . . in the United States[.]” 8 C.F.R. § 212.5(e)(2)(i). 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.
40. In the immigration context, this limitation means that a person who immigration authorities release 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.
41. Through his pending asylum application, Mr. Pukhaev will have the opportunity to become a lawful permanent resident, and his removal is not reasonably foreseeable due to a pending application for relief.

42. Mr. Pukhaev has no criminal history, and there has been no material change since his release, except that Mr. Pukhaev had timely filed his asylum application, which under 8 U.S.C. 1182 (a)(9)(B)(iii)(II). And, that the government issued him a valid work authorization and Social Security card.
43. Mr. Pukhaev is detained at the Webb County Detention Center away from his wife, (3) daughters, and removal proceedings counsel located in New York.
44. Mr. Pukhaev requested a custody redetermination from an immigration judge. However, the immigration judge found it did not have jurisdiction to review his custody redetermination, and Petitioner withdrew his request.
45. Petitioner's detention violates the plain language of the INA and its implementing regulations and his due process.
46. Through this petition, Mr. Pukhaev asks this Court to find that Respondents have unlawfully detained him and immediately release Mr. Pukhaev from custody in accordance with the initial custody determination made in July 2022. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution (Substantive Due Process); 5 U.S.C. §§ 702, 706

47. Petitioner restates and realleges all paragraphs as if fully set forth here.
48. Due process does not permit the government to re-detain Mr. Pukhaev and strip him of his liberty without written notice and a pre-deprivation hearing before a neutral decisionmaker to determine whether re-detention is warranted based on danger or flight

risk. See *Morrissey*, 408 U.S. at 487–88. Such written notice and a hearing must occur prior to any re-detention.

49. Petitioner had been continuously living in the United States for three years when he was unlawfully arrested and unlawfully. Respondents revoked his release and deprived him of liberty without providing him written notice and a meaningful opportunity to be heard by a neutral decisionmaker prior to his re-detention.
50. Accordingly, Petitioner re-detention violates the Due Process under the Fifth Amendment.

SECOND CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2) *The Re-Detention Policy Violates the INA*

51. Petitioner incorporates all factual allegations as though restated here.
52. The Re-Detention Policy violates 8 U.S.C. § 1182(d)(5)(A) and §1226(b) because, after DHS exercised its parole authority to admit Petitioner into the United States for urgent humanitarian reasons and to allow him to pursue his asylum application, and further determined under 8 U.S.C. § 1226(a) that he was neither a flight risk nor a danger to the community, the statute does not authorize re-detention in the absence of a material change in those individualized circumstances. Further, Respondents’ attempt to re-interpret 8 U.S.C. § 8 U.S.C. §§ 1182(d)(5)(A), 1225(b)(2), to allow for arrest for no reason at all, is not a valid legal basis for re-detention.
53. Detaining Mr. Pukhaev was arbitrary because he had been initially processed for detention under § 1226, released from custody pending his removal proceedings, has authorization to work in the United States, and has no criminal arrests or convictions.

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

54. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.
55. 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).
56. 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.
57. 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).
58. Defendants provide no reasoned or adequate explanation for re-detaining Petitioner, who, since his release from ICE custody in 2022, had filed his asylum application, received work authorization, and was compliant with the terms of his release. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).
59. 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 27, 2025

Respectfully Submitted,

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