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GRIGOR OGANESIAN

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

|                               |   |                              |
|-------------------------------|---|------------------------------|
| GRIGOR OGANESIAN,             | ) | Case No. 1:25-cv-01667       |
| Petitioner,                   | ) | <b>PETITIONER'S TRAVERSE</b> |
| vs.                           | ) |                              |
| CHRISTOPHER CHESTNUT, ET AL., | ) |                              |
| Respondent.                   | ) |                              |

**I. Introduction**

Per the Court's Order at ECF 21, and contrary to Respondent's arguments, Petitioner's custody is governed by 8 U.S.C. § 1226, not 8 U.S.C. § 1225. Respondent is violating Petitioner's statutory rights by detaining him without having held a bond hearing. In addition, because Mr. Oganessian was previously released on parole into the United States, he acquired a constitutionally protected liberty interest in his continued freedom from physical restraint that could not be withdrawn absent pre-deprivation process. As set forth below, this Court should grant Mr. Oganessian's petition and order his release.

**II. Background**

Petitioner reincorporates and asserts below the facts as detailed in Petitioner's Opposition to the Motion to Dismiss at ECF 19, as well as Petitioner's Motion for Administrative Relief at ECF 20. Petitioner is a citizen of Russia and Armenia who has been held in ICE custody for more than 18 months without a bond hearing, a final order of removal, or any individualized determination of

1 flight risk or danger.

2 At the time of his initial arrival, Mr. Oganessian presented himself at the United States border  
3 on or around August 26, 2022 and was released into the United States pending removal and asylum  
4 proceedings. ECF 1 at 10; ECF 11. On August 28, 2022, Department of Homeland Security (DHS)  
5 issued a Notice to Appear and placed Petitioner in removal proceedings. *Id.*  
6

7 On or around September 18, 2024, ICE re-detained Petitioner. ECF 1 at 10. On or around  
8 November 7, 2025, an Immigration Judge (IJ) ordered Petitioner removed to Russia or Armenia.  
9 ECF 1 at 10. The IJ deferred removal to both countries. ECF 1 at 10. Petitioner appealed the IJ's  
10 decision on or around December 4, 2025. That appeal remains pending. ECF 11 at 6.

### 11 **III. Jurisdiction and Legal Standards**

#### 12 **A. Jurisdiction**

13 The Constitution guarantees the availability of the writ of habeas corpus "to every  
14 individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)  
15 (citing U.S. Const., Art I, § 9, cl. 2). "The essence of habeas corpus is an attack by a person in  
16 custody upon the legality of that custody, and . . . the traditional function of the writ is to secure  
17 release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of habeas  
18 corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the  
19 Constitution or federal law. 28 U.S.C. § 2241(c)(3). Historically, "the writ of habeas corpus has  
20 served as a means of reviewing the legality of Executive detention, and it is in that context that its  
21 protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a  
22 district court's habeas jurisdiction includes challenges to immigration detention. *See Zadvydas v.*  
23 *Davis*, 533 U.S. 678, 687 (2001).

#### 24 **B. Legal Standard**

25 As a threshold matter, although 8 U.S.C § 1252(g) precludes this Court from exercising  
26 jurisdiction over the executive's decision to "commence proceedings, adjudicate cases, or execute  
27 removal orders against any [noncitizen]," there are no final removal orders at issue in Mr.  
28

Oganesian's case. The Court has jurisdiction to review the authority under which Respondents claim to detain Petitioner as well as whether that detention comports with constitutional and statutory requirements. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (holding that 8 U.S.C. § 1252(g) precludes judicial review only as to the three areas specifically outlined in the subsection).

#### IV. Argument

Because Petitioner appealed his removal order to the Board of Immigration Appeals, and that appeal is still pending, he is pre-final order. Accordingly, Petitioner concedes that his detention is not governed by 8 U.S.C. Section 1231. However, for the reasons set forth in Judge Brennan's order, Mr. Oganesian is detained under 8 U.S.C. §1226, not 8 U.S.C. §1225, "petitioner has established that his eligibility for bond should be evaluated under section 1226 . . .". ECF 21 at 6.

##### A. Contrary to Respondent's Argument, Mr. Oganesian is Not Subject to Mandatory Detention.

As numerous courts have held, once the government elects to proceed with full removal proceedings under 8 U.S.C. § 1226, a noncitizen is subject to the discretionary detention scheme provided under that statutory section; the government cannot reverse course and subject the noncitizen to expedited removal and mandatory detention under 8 U.S.C. § 1225. *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at \*4 (N.D. Cal. Aug. 21, 2025); 2026 WL 309563 (same); *Altin v. Chestnut*, No. 1:26-CV-00792-DC-CSK, 2026 WL 309563, at \*5 (E.D. Cal. Feb. 5, 2026) (same); *N.A.L.C. v. Wofford*, No. 1:25-CV-01917-KES-CDB (HC), 2026 WL 130830, at \*5 (E.D. Cal. Jan. 18, 2026) (same).<sup>1</sup> By treating Mr. Oganesian as a person subject to

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<sup>1</sup> Courts nationwide, including this one, have overwhelmingly rejected Respondents' [position that persons in 8 U.S.C. § 1226 proceedings are subject to mandatory detention under 8 U.S.C. § 1225] . . . and found the DHS policy unlawful. *See, e.g., Ortiz Donis v. Chestnut*, 1:25-CV-01228-JLT, 2025 WL 2879514 at \*3–6 (E.D. Cal. Oct. 9, 2025); *see also, M.R.R. v. Chestnut*, No. 1:25-CV-01517-JLT, 2025 WL 3265446 (E.D. Cal. Nov. 24, 2025); *Hortua v. Chestnut, et al.*, No. 1:25-cv-01670-TLN-JDP, 2025 WL 3525916 (E.D. Cal. Dec. 9, 2025); *Mirley Adriana Bautista Pico, et al. v. Kristi Noem, et al.*, No. 25-CV-08002-JST, 2025 WL 3295382, at \*2 (N.D. Cal. Nov. 26, 2025) (collecting cases); *Armando Modesto Estrada-Samayoa v. Orestes Cruz, et al.*, No. 1:25-CV-01565-EFB (HC), 2025 WL 3268280, at \*4 (E.D. Cal. Nov. 24, 2025) (collecting cases). *Singh v. Chestnut*, No. 1:26-CV-00617-JLT-SKO (HC), 2026 WL 305253, at \*2 (E.D. Cal. Feb. 5, 2026).

mandatory detention under 8 U.S.C. § 1225(b), Respondents have violated the Immigration and Nationality Act.

**B. Mr. Oganessian's Detention Violates the Due Process Clause of the Fifth Amendment to the United States Constitution.**

In August of 2022, DHS issued a Notice to Appear allowing for Mr. Oganessian's release under 8 U.S.C. § 1226 (ECF 22 at 9). Even if this Court construed Mr. Oganessian's August 2022 release from detention to be authorized under 8 U.S.C. § 1182(d)(5)(A) rather than 8 U.S.C. § 1226, Mr. Oganessian has obtained a liberty interest recognized by the Fifth Amendment's Due Process Clause. "Once released, a parolee acquires an interest in his or her continued liberty." *Chavarria v. Chestnut*, No. 25-cv-01755-DAD-AC, 2025 WL 3533606, at \*3 (E.D. Cal. Dec. 9, 2025). As put by one court,

Although in some circumstances the initial decision to detain or release an individual may be within the government's discretion, the government's decision to release an individual from custody creates "an implicit promise," upon which that individual may rely, that their liberty "will be revoked only if [they] fail[ ] to live up to the ... conditions [of release]." *Morrissey [v. Brewer]*, 408 U.S. at 482[ , 472 U.S. 482 (1972)] . . . , "[T]he liberty [of a person released from government custody] is valuable and must be seen as within the protection of the [Due Process Clause]." *Id.*

*Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). "A substantial number of district courts in the Ninth Circuit have found that noncitizens paroled into the United States under § 1182(d)(5) have a liberty interest in their continued release and are entitled to certain due process protections." *D. L.C. v. Wofford*, No. 1:25-CV-01996-DC-JDP (HC), 2026 WL 25511, at \*4 (E.D. Cal. Jan. 5, 2026).

In these circumstances, this Court has consistently found that the Due Process Clause requires that, in order for the government to re-detain a noncitizen who has been previously released on bond or conditional parole under 8 U.S.C. § 1226(a), or humanitarian parole under 8 U.S.C. § 1182(d)(5), the government must provide a pre-deprivation bond hearing before a neutral arbiter at which the noncitizen's eligibility for bond must be considered. *Luis v. Warden*, No. 1:26-CV-01823-DC-SCR (HC), 2026 WL 700713, at \*1 (E.D. Cal. Mar. 12, 2026) (collecting cases). There is nothing that makes the current case distinguishable from the many cases in which this Court has so ruled.

1 Mr. Oganessian's liberty interest was strengthened when Respondents permitted him to  
 2 remain in the community for 25 months from August 2022 to September 2024. Governmental  
 3 actions may create a liberty interest entitled to the protections of the Due Process Clause. *See Bd.*  
 4 *of Pardons v. Allen*, 482 U.S. 369, 371 (1987). The Supreme Court has repeatedly recognized that  
 5 individuals who have been released from custody, even where such release is conditional, have an  
 6 interest in their continued liberty. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (finding a  
 7 parolee had an interest in his continued liberty); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)  
 8 (finding probationers have a liberty interest). Mr. Oganessian, having been previously released on  
 9 parole, has a similar liberty interest. *See Jorge M.F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL  
 10 783561, at \*3 (N.D. Cal. March 1, 2021) (holding that a Mexican citizen with pending removal  
 11 proceedings who had been released on bond had "a substantial private interest in remaining on  
 12 bond." (internal citation and quotation removed)).

13 Since Mr. Oganessian has a protected liberty interest, this court must determine the  
 14 procedures necessary to ensure any deprivation of that protected liberty interest accords with the  
 15 Constitution. Courts have consistently applied the three-part test established in *Mathews v.*  
 16 *Eldridge*, 424 U.S. 319 (1976), in assessing whether re-detention in the immigration context  
 17 without a pre-deprivation hearing violates Fifth Amendment Due Process. *See, e.g., Ahmadi v.*  
 18 *Becerra*, No. 1:25-CV-01044-CDB (HC), 2026 WL 309561, at \*12 (E.D. Cal. Feb. 5, 2026)  
 19 (Findings and Recommendations); *Altin*, No. 1:26-CV-00792-DC-CSK (HC), 2026 WL 309563,  
 20 at \*6 (E.D. Cal. Feb. 5, 2026); *Robles-Rodriguez v. Lyons*, No. 1:25-CV-02001-KES-SAB (HC),  
 21 2026 WL 303482, at \*6 (E.D. Cal. Feb. 4, 2026); *Pineda v. Chestnut*, No. 1:25-CV-01970-DC-  
 22 JDP (HC), 2026 WL 25510, at \*5 (E.D. Cal. Jan. 5, 2026); *Omer G. G. v. Kaiser*, No. 1:25-CV-  
 23 01471-KES-SAB (HC), 2025 WL 3254999, at \*6 (E.D. Cal. Nov. 22, 2025). "*Mathews* remains  
 24 a flexible test that can and must account for the [putative] heightened governmental interest in the  
 25 immigration detention context." *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022)  
 26 (citing *Landon v. Plasencia*, 459 U.S. (1982) (applying *Mathews*)).

27 *Mathews* "requires consideration of three distinct factors: [(1)] the private interest that will  
 28 be affected by the official action; [(2)] the risk of an erroneous deprivation of such interest through

the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and [(3)] the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.

**1. Mr. Oganessian Has a Substantial Private Interest in His Liberty.**

First, Mr. Oganessian has a substantial interest in freedom from physical confinement and in a hearing prior to any revocation of his liberty. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause...”); *Zadvydas v. Davis*, 533 U.S. at 690 (“Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects.”). Thus, “[d]etention, including that of a non-citizen, violates due process if there are not ‘adequate procedural protections’ or ‘special justification[s]’ sufficient to outweigh one’s ‘constitutionally protected interest in avoiding physical restraint.’” *Perera v. Jennings*, 598 F. Supp. 3d 736, 742 (N.D. Cal. 2022) (citations omitted). Similarly, the Ninth Circuit has held that “[i]n the context of immigration detention... ‘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.’” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)).

This principle governs here given Mr. Oganessian’s initial release from detention on parole in August, 2022. “The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.” *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). This includes cases of “pre-parole conditional supervision,” *Id.* (citing *Young v. Harger*, 520 U.S. 143, 152 (1997); “probation,” *id.* (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)), and “parole,” *id.* (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). Numerous district courts have recognized this liberty interest in the context of persons released from ICE detention while their immigration case



proceeds. *See, e.g., Arshdeep v. Wofford*, No. 1:26-CV-00402-TLN-CKD, 2026 WL 320339, at \*3 (E.D. Cal. Feb. 6, 2026); *Ahmadi v. Becerra*, No. 1:25-CV-01044-CDB (HC), 2026 WL 309561, at \*12 (E.D. Cal. Feb. 5, 2026) (Findings and Recommendations); *Altin v. Chestnut*, No. 1:26-CV-00792-DC-CSK (HC), 2026 WL 309563, at \*6 (E.D. Cal. Feb. 5, 2026); *S.L. v. Wofford*, No. 1:26-CV-00522-TLN-EFB, 2026 WL 310091, at \*3 (E.D. Cal. Feb. 5, 2026).

## 2. The Risk of Erroneous Deprivation Is Considerable.

The risk of erroneous deprivation of liberty to Mr. Oganessian also weighs in Mr. Oganessian's favor. *See A.E. v. Andrews*, No. 25-cv-00107-KES-SKO, 2025 WL 1424382, at \*5 (E.D. Cal. May 16, 2025) ("The risk of an erroneous deprivation [of liberty] is high" when "[the petitioner] has not received any bond or custody redetermination hearing."). Mr. Oganessian has been detained for over 18 months without being provided with a bond hearing before an immigration judge to evaluate his dangerousness or flight risk.

Since he arrived in the United States nearly four years ago in August 2022, Mr. Oganessian has not been accused of any crime, let alone arrested. "[N]o neutral arbiter under § 1226 has determined whether any facts show that Petitioner is a flight risk or danger to the community" and thus the risk of an erroneous deprivation of Mr. Oganessian's liberty remains.

"[T]he government's interest in detaining Petitioner without any procedural protections is substantially 'low.'" *Altin*, 2026 WL 309563, at \*6. By contrast

the value in granting Petitioner procedural safeguard is readily apparent. At a hearing, a neutral decisionmaker can consider all of the facts and evidence before him to determine whether Petitioner in fact presents a risk of flight or dangerousness. The reliability and significance of the alleged changes in circumstance that Respondents identify can be weighed and Petitioner's liberty interests can be protected.

*Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025).

## 3. To Hold in Abeyance Adds Insult to Injury

The Ninth Circuit has recognized "the irreparable harms imposed on anyone subject to immigration detention." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253 (W.D. Wash. 2025) (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)) ("For example ... subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and

1 their families as a result of detention, and the collateral harms to children of detainees whose  
2 parents are detained.”). “In the absence of an injunction, harms such as these will continue to occur  
3 needlessly on a daily basis.” *Hernandez*, 872 F.3d at 995.

4 For the reasons set forth *supra*, every day of unjust deprivation of liberty is an assault on  
5 the constitution and increases the injury to Mr. Oganessian. To hold this matter in abeyance would  
6 prolong his suffering in detention, which has already exceeded 18 months. The Court should  
7 decline to hold this matter in abeyance and instead, should rule forthwith.

8  
9 **V. Conclusion**

10 For the foregoing reasons, Mr. Oganessian respectfully requests the Court grant his Petition  
11 for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and order that:

- 12 1. Respondent must IMMEDIATELY release petitioner Grigor Oganessian (  , and provide petitioner with a copy of the release order at or near the time of  
13 release. If respondent has custody of petitioner's documents (e.g., identification,  
14 passport, work permit, Social Security card, etc.), respondents shall return those to  
15 petitioner at the time of release.
- 16 2. DHS SHALL NOT impose conditions stricter than those to which he was subject to  
17 prior to his September 18, 2025 detention;
- 18 3. Respondent is enjoined and restrained from re-arresting or re-detaining Petitioner  
19 absent compliance with constitutional protections, including seven-days' notice and a  
20 pre-deprivation hearing.
- 21 4. This order does not address the circumstances in which Respondents may detain  
22 Petitioner in the event Petitioner becomes subject to an executable final order of  
23 removal and Petitioner receives notice of that final order of removal.

24  
25 Respectfully submitted,

26 Date: March 27, 2026

27 /s/ Danica Mazenko  
28 DANICA MAZENKO  
Attorney for Petitioner  
GRIGOR OGANESIAN