

1 SHIRA LEVINE (CA SBN #293080), Designated Counsel for Service  
Deputy Legal Director  
2 Immigration Institute of the Bay Area  
476 3<sup>rd</sup> St.,  
3 Oakland, CA 94607  
Telephone: 734-262-1930  
4 Facsimile: 415-712-0228  
Email: slevine@iibayarea.org

5 JONATHAN ABEL (CA SBN #293086)  
6 Professor of Law  
U.C. Law San Francisco, Immigrants' Rights Clinic  
7 200 McAllister Street, Rm. 342-200  
San Francisco, CA 94102  
8 Telephone: 617-548-6230  
Email: abeljonathan@uclawsf.edu

9  
10 *Pro Bono Attorneys for Petitioner*

11  
12 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

13  
14 BILAL ALPSEN,

15 Petitioner,

16 v.

17 MINGA WOFFORD, in official capacity,  
Facility Administrator of Mesa Verde Ice  
18 Processing Center; SERGIO ALBARRAN, in  
official capacity, Field Office Director of ICE's  
19 San Francisco Field Office; TODD M. LYONS,  
in official capacity, Acting Director of ICE,  
20 KRISTI NOEM, in official capacity, Secretary  
of the U.S. Department of Homeland Security;  
21 PAM BONDI, in official capacity, Attorney  
General of the United States,

22 Respondents.

Case No.

**PETITION FOR WRIT OF  
HABEAS CORPUS**

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6  
 7 **INTRODUCTION**

8 1. Petitioner Bilal Alpsen is a 31-year-old family man with no criminal history. Ex.  
 9 A.<sup>1</sup> He is married to a United States citizen. Exs. B, C, M. Together, they have a four-month-old  
 10 daughter who is also a U.S. citizen. Ex. N. Petitioner has a close-knit family, a strong work  
 11 history, and a strong claim for immigration relief. Exs. A, B, J.

12 2. On August 21, 2022, he entered the United States to seek asylum after being  
 13 tortured in his native Turkey. Exs. D, F, H.<sup>2</sup> Respondents detained him in Texas for nine days.  
 14 Ex. E. On August 30, 2022, Respondents released Petitioner on his own recognizance, thus  
 15 vesting him with a powerful liberty interest. Ex. E.

16 3. More than three years later, on October 10, 2025, Respondents abruptly snatched  
 17 away this liberty interest without holding a pre-deprivation hearing or providing grounds that  
 18 could justify deprivation without process. This abrupt and unconstitutional deprivation  
 19 occurred, of all times and places, while Petitioner was attending his regularly scheduled ICE  
 20 check-in—a strong indication that he was not a risk to flee.

21  
 22 \_\_\_\_\_  
 23 <sup>1</sup> This is a verified habeas petition, but citations are provided for clarity. Citations are made to the Declaration of  
 Counsel (“Levine Decl.”) and its component exhibits. In subsequent citations, counsel cites directly to the exhibits  
 themselves.

24 <sup>2</sup> On October 23, 2025, a USCIS asylum officer determined that Petitioner had a credible fear of persecution based  
 on the past persecution he had suffered as an ethnic Kurd in Turkey. Ex. D.

1           4.       The sole ground offered by Respondents for the re-detention—the claim that  
2 Petitioner did not have a pending court date, Ex. B—makes the re-detention even more  
3 constitutionally concerning. After all, Respondents, not Petitioner, are the ones responsible for  
4 scheduling court hearings. As Respondents well know, Petitioner filed a timely asylum  
5 application and has been doing everything in his power to address his immigration status. Ex. A,  
6 Ex. B.

7           5.       In still a further deviation from lawful process, Respondents told Petitioner, upon  
8 his re-detention, that he was being placed into expedited removal proceedings, even though the  
9 government’s own records demonstrate that Petitioner had present in the United States for more  
10 than two years and is, thus, ineligible for expedited removal. Ex. F.

11          6.       Petitioner’s unconstitutional detention continues to his day, all without a  
12 modicum of the process due to him. Indeed, his case is an illustration of the critical importance  
13 of *pre*-deprivation process. When there is no hearing before detention, there is no opportunity to  
14 address the unlawful and unjustifiable conclusions that lead to detention.

15          7.       This detention of Petitioner violates Due Process, the Immigration and  
16 Nationality Act (“INA”), and the Administrative Procedure Act.

17          8.       Petitioner respectfully asks this Court to protect his due process rights by  
18 ordering (1) his immediate release and (2) barring re-detention unless and until Respondents  
19 prove by clear and convincing evidence that he is either a danger or flight risk. In the  
20 alternative, Petitioner asks this Court to order his release unless he receives a bond hearing,  
21 under 8 U.S.C. § 1226(a), before a neutral arbiter at which the government bears the burden of  
22 proving danger or flight risk by clear and convincing evidence.

1 **JURISDICTION**

2 9. Petitioner is in the physical custody of Respondents. He is detained at the Mesa  
3 Verde ICE Processing Center in Kern County, California, which lies in the Eastern District of  
4 California.

5 10. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. §  
6 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the  
7 Suspension Clause).

8 11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory  
9 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

10 **VENUE**

11 12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484,  
12 493- 500 (1973), venue lies in the United States District Court for the Eastern District of  
13 California, the judicial district in which Petitioner currently is detained. He is detained in Kern  
14 County, California.

15 13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because  
16 Respondents are employees, officers, and agencies of the United States, and because a  
17 substantial part of the events or omissions giving rise to the claims occurred in the Eastern  
18 District of California.

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

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



1 Nationality Act, and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem  
2 has ultimate custodial authority over Petitioner and is sued in her official capacity.


3 21. Respondent Department of Homeland Security (DHS) is the federal agency  
4 responsible for implementing and enforcing the INA, including the detention and removal of  
5 noncitizens.

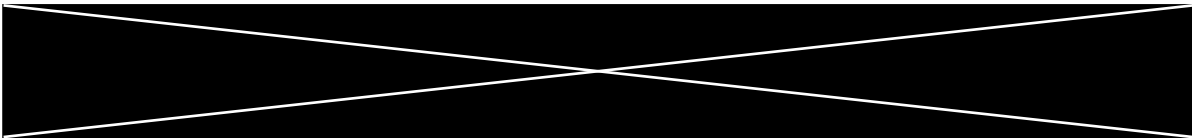
6 22. Respondent Pamela Bondi is the Attorney General of the United States. She is  
7 responsible for the Department of Justice, of which the Executive Office for Immigration  
8 Review and the immigration court system it operates is a component agency. She is sued in her  
9 official capacity.

10 23. Respondent Executive Office for Immigration Review (EOIR) is the federal  
11 agency responsible for implementing and enforcing the INA in removal proceedings, including  
12 for custody redeterminations in bond hearings.

### 13 **FACTS**

#### 14 ***Petitioner Arrives in the United States, Is Detained, and Is Released***

15 24. Petitioner was born in Turkey. 

16   
17  
18 25. On August 21, 2022, Petitioner entered the United States at the southern border.

19 Ex. D.

20 26. Respondents detained him in Texas for nine days. Exs. D, E.

21 27. On August 30, 2022, Respondents released Petitioner on his own recognizance.

22 Ex. D.

#### 23 ***In His State of Liberty, Petitioner Seeks "Affirmative" Asylum Protections***

1 28. After Petitioner was released from ICE custody, he obtained an attorney and  
2 filed for asylum. Ex. H. The asylum application sought legal protection based on his fear of  
3 persecution on account of his political beliefs and ethnicity.

4 29. Petitioner expected to receive a Notice to Appear informing him of a court  
5 hearing in immigration court. Yet Respondents chose not to open a removal case against him.  
6 Respondents did not file a Notice to Appear until November 13, 2025, a month and three days  
7 into his unlawful re-detention. Ex. F.

8 30. Even though there was no removal case against him, Petitioner worked diligently  
9 to settle his immigration status. On February 21, 2023, about six months into this period of  
10 protected liberty interest, Petitioner filed an “affirmative” asylum application and accompanying  
11 evidence with USCIS’s Asylum Office. Ex. H. As part of the asylum application, Petitioner was  
12 asked for—and duly provided—fingerprints to Respondents back on March 31, 2023. Petitioner  
13 asked for and received a work permit as part of the process. *Id.*

14 31. Since filing the asylum application in early 2023, Petitioner has been patiently  
15 waiting to have his application reviewed by an asylum officer or an immigration judge. This is  
16 the process that is required of those who affirmatively seek the legal protections afforded by this  
17 nation’s asylum laws.

18 32. And there was good reason for Petitioner to believe his legal rights would be  
19 protected. As recently as October 23, 2025—two weeks into his unlawful detention—Petitioner  
20 was interviewed by USCIS and found to have a credible fear of persecution based on the events  
21 he suffered in Turkey. Ex. G.

22 33. At the same time, his wife began the process of petitioning him for residency  
23 through applying for a spousal visa. Ex. K.

1 ***In His State of Liberty, Petitioner Meets His Wife, Starts His Family, and Contributes***  
2 ***to Society***

3 34. Petitioner met his wife, Gulistan Yuksel, in the United States. Ex. B.

4 35. Ms. Yuksley is a U.S. citizen. Ex. M.

5 36. The couple were married on December 5, 2023. Ex. C.

6 37. On [REDACTED] Petitioner and his wife welcomed their daughter, A [REDACTED]

7 [REDACTED] into the world. Ex. N.

8 38. Petitioner is a loving and devoted father and husband. His wife reports that she  
9 cannot care for their 4-month-old daughter on her own because she is suffering acute health  
10 problems. Ex. B.

11 39. Even before he was a father, Petitioner was a caregiver. He has been employed  
12 as a parking valet at Nexus Parking, Inc. Ex. J. At work, he has earned a reputation for being  
13 “peaceful, respectable and dependable.” Ex. B.

14 ***Respondents Deprive Petitioner of His Liberty Without A Hearing***

15 40. On October 10, 2025, Petitioner attended his annual, ICE check-in with his U.S.  
16 citizen wife and their 4-month-old daughter. The couple and their infant daughter waited for  
17 four hours, starting at 8 a.m. in the morning. Ex. A. Petitioner assumed that this “was a routine  
18 check-in.” Ex. A.

19 41. Petitioner was told to “go to the 5th floor, where I could sign the papers and  
20 leave.” Ex. A. The ICE officers then “took me into a room and locked the door.” Ex. A. “In that  
21 moment,” he recalls, “I realized something was wrong.” Ex. A. Petitioner “thought immediately  
22 of my wife and our 3-month-old daughter waiting alone outside. My heart sank with worry for  
23 their safety, and fear filled me.” Ex. A.

1 42. The officers refused to tell Petitioner why he was being detained, saying to him  
2 only that “it was the supervisor’s order.” Ex. A. They told him that “I could only communicate  
3 by phone, not meet my lawyer in person.” Ex. A. When Petitioner requested his asthma  
4 medications, “the officers told me, ‘That is not our problem,’ and refused to give them to me.”  
5 Ex. A.

6 43. Petitioner’s wife reports that she received a call from an ICE agent, who stated  
7 that her husband had been detained. Ex. B. She writes that the ICE agent “told me the reason  
8 was that Bilal did not have a court date.” Ex. B. Petitioner’s wife was allowed just five minutes  
9 to speak with him through a glass window. Ex. B. “When the brief visit ended, I was returned to  
10 the cell, feeling helpless and desperate,” Petitioner states. Ex. A.

11 44. Respondents further explained that Petitioner was being placed into expedited  
12 removal proceedings.

13 ***Detention, Irreparable Harm to Petitioner and His Family***

14 45. Petitioner suffers daily in detention. In the first day of detention, Petitioner’s  
15 neck became “severely swollen” after receiving two vaccines. Ex. A. He was taken to two  
16 different hospitals and then diagnosed with a blood infection, requiring 10 days of antibiotics.  
17 Ex. A. He has not been permitted the asthma medication that he regularly took before  
18 medication. Ex. A. He reports feeling “completely powerless and isolated, thinking constantly  
19 about my wife and infant daughter.” Ex. A.

20 46. Not only is there the loss of liberty, but there are also physical, mental, and  
21 financial afflictions.

22 47. Because of this detention, Petitioner has lost his job and been unable to  
23 financially support his wife or their child. Ex. B.

1 48. His wife and young daughter suffer, too. Petitioner was the family's breadwinner  
2 and his wife is now unable to work because of a gall bladder disease. Ex. B.

3 49. The situation is so dire that she received two months of emergency rent  
4 assistance from the YMCA but does not know what she will do at the end of this period and is  
5 at risk of being evicted along with her baby. *Id.* Petitioner's wife is having difficulty getting  
6 clothes and diapers for her baby and is constantly looking for donations. *Id.* Petitioner's  
7 emotional and financial support are essential to the family's survival. *Id.*

8 50. In Petitioner's absence, Petitioner's wife had to postpone a gallbladder surgery  
9 she was scheduled to undergo, Ex. B, Ex. I, and she describes the pain as the worst she has  
10 experienced. Ex. B.

11 51. Because of the gallbladder inflammation as well as two dislocated discs in her  
12 back, she is unable to work. Ex. B. She had to leave her previous job in a pharmacy in Foster  
13 City. *Id.*

14 52. Since her husband's detention, she has gone to the emergency room on three  
15 occasions because of the untreated gallbladder condition. Ex. I.

16 **LEGAL FRAMEWORK**

17 53. Respondents' actions violate Due Process, the Immigration and Nationality Act,  
18 and the Administrative Procedure Act.

19 **I. DUE PROCESS RIGHT TO A CUSTODY REDETERMINATION HEARING PRIOR TO RE-**  
20 **DETENTION**

21 54. The Constitution's Due Process Clause makes it unlawful deprive a person of  
22 their protected liberty interest without first providing a hearing. Yet Respondents took away  
23 Petitioner's freedom—the weightiest of liberty interests—without any such hearing. Nor could

1 Respondents point to any “urgent,” “changed circumstances,” that could justify re-detention  
2 without a hearing.

3 **A. Petitioner Has a Protected Liberty Interest in His Conditional Release**

4 55. Petitioner’s liberty from immigration custody is protected by the Due Process  
5 Clause: “Freedom from imprisonment—from government custody, detention, or other forms of  
6 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”  
7 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For three years preceding his re-detention,  
8 Petitioner enjoyed the liberty interest that ICE created when it released him on his own  
9 recognizance. Ex. E, F. Because he was released without even being placed in removal  
10 proceedings, Petitioner possessed a weighty liberty interest, under the Due Process Clause, in  
11 avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v.*  
12 *Scarpelli*, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-83.

13 56. In *Morrissey*, the Supreme Court examined the “nature of the interest” that a  
14 parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the  
15 conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and  
16 friends and to form the other enduring attachments of normal life.” *Id.* at 482. The Court further  
17 noted that “the parolee has relied on at least an implicit promise that parole will be revoked only  
18 if he fails to live up to the parole conditions.” *Id.* The Court explained that “the liberty of a  
19 parolee, although indeterminate, includes many of the core values of unqualified liberty and its  
20 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever  
21 name, the liberty is valuable and must be seen as within the protection of the [Fifth]  
22 Amendment.” *Morrissey*, 408 U.S. at 482.

1           57. This basic principle—that individuals have a liberty interest in their conditional  
2 release—has been reinforced by both the Supreme Court and the circuit courts on numerous  
3 occasions. *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole  
4 program created to reduce prison overcrowding have a protected liberty interest requiring pre-  
5 deprivation process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony  
6 probation have a protected liberty interest requiring pre-deprivation process).

7           58. As the First Circuit has explained, when analyzing the issue of whether a specific  
8 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the  
9 issue by comparing the specific conditional release in the case before them with the liberty  
10 interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864,  
11 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v.*  
12 *District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of  
13 physical confinement—even if that freedom is lawfully revocable—has a liberty interest that  
14 entitles him to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S.  
15 at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

16           59. Even where the individual obtains liberty through a mistake of law or fact, courts  
17 have clearly held that this is a protectable liberty interest. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at  
18 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process  
19 considerations support the notion that an inmate released on parole by mistake, because he was  
20 serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because  
21 the mistaken release was not his fault, and he had appropriately adjusted to society, so it “would  
22 be inconsistent with fundamental principles of liberty and justice” to return him to prison)  
23 (internal quotation marks and citation omitted).

1           60. Here, when this Court ““compar[es] the specific . . . release . . . in [Petitioner’s  
2 case], with the liberty interest in parole as characterized by *Morrissey*,” they are strikingly  
3 similar. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release  
4 “enables him to do a wide range of things open to persons” who have never been in custody or  
5 convicted of any crime, including to live at home, work, and “be with family and friends and to  
6 form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Noncitizens  
7 released on a bond have a similar liberty interest, which “grows over time.” *Guillermo M. R.*,  
8 2025 WL 1983677, at \*5; see also *Diaz*, 2025 WL 1676854, at \*2 (“Courts have previously  
9 found that individuals released from immigration custody on bond have a protectable liberty  
10 interest in remaining out of custody on bond.”); *Jorge M.F.*, 2021 WL 783561, at \*3 (holding  
11 that a Mexican citizen with pending removal proceedings who had been released on bond had “a  
12 substantial private interest in remaining on bond”); *Doe*, 2025 WL 691664, at \*5 (“Petitioner,  
13 having been released at a bond hearing over four years ago, has a similar liberty interest.”);  
14 *Ortega*, 415 F. Supp. at 970 (finding “a substantial private interest in remaining on bond, and  
15 that interest has only grown in the 18 months since[.]”). And this private interest in remaining  
16 free is even stronger in a case, like Petitioner’s, where the government released him from  
17 custody without even the need for a bond.

18           **B. The “Release on Own Recognizance” Necessarily Reflects a Determination that**  
19           **Petitioner Is Not a Danger or Flight Risk**

20           61. When Respondents release a person on their “own recognizance,” as they did  
21 with Petitioner in 2022, Ex. E, that decision “reflects a determination by the government that the  
22 noncitizen is not a danger to the community or a flight risk,” *Saravia v. Sessions*, 280 F. Supp.  
23 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th  
24 Cir. 2018). The relevant regulations state that “the alien must demonstrate to the satisfaction of

1 the officer that such release would not pose a danger to property or persons, and that the alien is  
2 likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

3 62. Once the release determination is made, Respondents cannot override that  
4 determination later without a hearing at which changed circumstances are shown by clear and  
5 convincing evidence. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (“[W]here a  
6 previous bond determination has been made by an immigration judge, no change should be  
7 made by [DHS] absent a change of circumstance.”);<sup>3</sup> *Saravia*, 280 F. Supp. 3d at 1197 (noting  
8 that, “[o]nce a noncitizen has been released, the law prohibits federal agents from rearresting  
9 him merely because he is subject to removal proceedings. Rather, the federal agents must be  
10 able to present evidence of materially changed circumstances — namely, evidence that the  
11 noncitizen is in fact dangerous or has become a flight risk, or is now subject to a final order of  
12 removal.”); *see Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent  
13 changed circumstances ... ICE cannot redetain Panosyan.”).

14 63. Courts have required Respondents to demonstrate not only “changed  
15 circumstances” but also “evidence of urgent concerns” if they seek to redetain a noncitizen  
16 without a hearing. *See Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025)  
17 (“absent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due  
18 process, particularly where an individual has been released on bond by an IJ”). This applies not  
19 only to those released on bond but also to those released on their own recognizance. *See*  
20 *Rodriguez v. Kaiser*, No. 1:25-CV-01111-KES-SAB (HC), 2025 WL 2855193, at \*7 (E.D. Cal.

21  
22  
23 <sup>3</sup> *Saravia*, a leading case from this district, notes that “DHS has incorporated this holding [from *Sugay*] into its  
24 practice, requiring a showing of changed circumstances both where the prior bond determination was made by an  
immigration judge *and* where the previous release decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d  
at 1197.

1 Oct. 8, 2025) (concluding that, “given the absence of evidence of urgent concerns . . . a pre-  
2 deprivation hearing [was] required to satisfy due process,” and collecting cases).<sup>4</sup>

3 64. As the court in *Guillermo M.R.* recently noted, the court could not “identify any  
4 other context in which government agents could permissibly take someone who has been  
5 released by a judge, lock up that person, and have no hearing either beforehand or promptly  
6 thereafter.” *Guillermo M. R. v. Kaiser*, 2025 WL 1983677, at \*7 (N.D. Cal. July 17, 2025). The  
7 courts have made clear that DHS does not get a free pass from the requirements of due process.  
8 *See e.g. Pinchi*, 2025 WL 2084921, at \*3 (“[T]he liberty [of a person released from government  
9 custody] is valuable and must be seen as within the protection of the [Due Process Clause].”)  
10 (*citing Morrissey*, 408 U.S. at 482)). DHS must ensure due process *before* re-detention:  
11 “Respondents may not re-detain petitioner unless the government proves by clear and  
12 convincing evidence at a bond hearing before a neutral decisionmaker that petitioner is a flight  
13 risk or danger to the community such that his physical custody is legally justified.” *Alvarenga*  
14 *Matute v. Wofford*, 2025 WL 2817795, at \*8 (E.D. Cal. Oct. 2, 2025).

15 65. As for the process due to noncitizen following their re-detention by ICE, the  
16 recent district court decision in *Domingo v. Kaiser*, 2025 WL 1940179 , is illustrative. In that  
17 case, Mr. Domingo, a noncitizen from Guatemala, had been re-detained by ICE twelve years  
18 after his release on a bond. *Id.* at \*1. He had been convicted of a crime in 2019 following his  
19 release on bond, but ICE required no supervision, no check-ins, and no additional monitoring  
20

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21 <sup>4</sup> Numerous decisions reach this conclusion. *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC),  
22 2025 WL 2996577, at \*2 (E.D. Cal. Oct. 24, 2025); *W.V.S.M. v. Wofford*, No. 1:25-cv-01489-KES-HBK (HC),  
2025 U.S. Dist. LEXIS 228189, at \*3 (E.D. Cal. Nov. 19, 2025); *Ramandi v. Field Office Dir., ICE Ero S.F.*, No.  
23 1:25-CV-01462-JLT-EPG, 2025 U.S. Dist. LEXIS 224698, at \*2 (E.D. Cal. Nov. 13, 2025); *F.M.V. v. Wofford*,  
No. 1:25-cv-01381-KES-SAB (HC), 2025 U.S. Dist. LEXIS 217645, at \*3 (E.D. Cal. Nov. 4, 2025); *Vilela v.*  
24 *Robbins*, No. 1:25-cv-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172, at \*3 (E.D. Cal. Nov. 6, 2025);  
*J.A.E.M. v. Wofford*, No. 1:25-cv-01380-KES-HBK (HC), 2025 U.S. Dist. LEXIS 211728, at \*2 (E.D. Cal. Oct. 27,  
2025).

1 since his conviction. *Id.* at \*3. Domingo challenged his mandatory detention, arguing that his re-  
2 detention without review by a neutral adjudicator violated his due process rights. *Id.* at \*1. In  
3 granting a preliminary injunction, the Court held that even with the new facts, Domingo had  
4 established a strong likelihood of success in showing that he had an interest in his continued  
5 liberty and that mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii), would  
6 violate this due process rights unless he was afforded adequate process. *Id.* at \*4. The Court  
7 further held that, after applying the three-factor test in *Mathews*, 424 U.S. at 335, Domingo was  
8 entitled to a hearing before a neutral decision maker to determine whether his detention was  
9 warranted. *Id.* At that hearing, the government bore the burden of establishing, by clear and  
10 convincing evidence, whether Domingo posed a danger or a flight risk.

11 66. No “changed circumstances” exist that could justify Respondents’ decision to re-  
12 detain Petitioner without a hearing. Petitioner has no criminal history. Petitioner has not  
13 engaged in any activities that would make him a flight risk. Indeed, in the three years during  
14 which Petitioner enjoyed his liberty interest, his actions only served to ameliorate any concerns  
15 about flight risk. He married a U.S. citizen and, together, they had a child. He retained an  
16 attorney, filed for asylum, attended every interview, check-in, and other appointment required  
17 of him, and even saw his wife file an immigration relief claim on his behalf. Indeed, it is notable  
18 that Petitioner was re-detained *while attending* an ICE check-in. This is strong proof that he is  
19 not a flight risk.

20 67. The only explanation for Petitioner’s detention is the claim by Respondents that  
21 he does not have a court date in immigration court. Exs. A, B. Plainly, this cannot justify re-  
22 detention without a hearing because, first, it has no bearing on whether Petitioner is a danger or  
23 a flight risk and, second, the lack of a hearing is entirely Respondents’ fault. On February 17,

1 2023, Petitioner filed his affirmative application and advanced steadily on this asylum relief.  
2 Ex. H. By contrast, Respondents did not initiate a removal case against him until after he was  
3 arrested. Ex. F. Initially, on October 10, 2025, Respondents placed him in expedited removal  
4 proceedings. Ex F. A month and three days later, Respondents filed a Notice to Appear,  
5 initiating standard removal proceedings. Ex. F. Quite simply, the reason Petitioner did not have  
6 a court hearing is that Respondents did not find any need to start removal proceedings until *after*  
7 they re-detained.

8 **C. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Detention**

9 68. Due process mandates that Petitioner receive notice and a hearing before a  
10 neutral adjudicator prior to any re-arrest or re-detention. "Adequate, or due, process depends  
11 upon the nature of the interest affected. The more important the interest and the greater the  
12 effect of its impairment, the greater the procedural safeguards the [government] must provide  
13 to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (*en banc*)  
14 (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest  
15 against the [government's] interest in the efficient administration of" immigration laws to  
16 determine what process he is owed to ensure ICE does not unconstitutionally deprive him of  
17 his liberty. *Id.* at 1357. Under the test set forth in *Mathews*, this Court must consider three  
18 factors in conducting its balancing test:

19 first, the private interest that will be affected by the official action; second, the risk of an  
20 erroneous deprivation of such interest through the procedures used, and the probative  
21 value, if any, of additional or substitute procedural safeguards; and finally the  
government's interest, including the function involved and the fiscal and administrative  
burdens that the additional or substitute procedural requirements would entail.

22 *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

1           69. The Supreme Court “usually has held that the Constitution requires some kind of  
2 a hearing *before* the State deprives a person of liberty or property.” *Zinermon v. Burch*, 494  
3 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation  
4 remedies are “the only remedies the State could be expected to provide” can post-deprivation  
5 process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only  
6 where “one of the variables in the *Mathews* equation—the value of pre-deprivation  
7 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the State  
8 cannot be required constitutionally to do the impossible by providing pre-deprivation process,”  
9 can the government avoid providing pre-deprivation process. *Id.*

10           70. Because, in this case, the provision of a pre-deprivation hearing was both  
11 possible and valuable in preventing an erroneous deprivation of liberty, ICE was required to  
12 provide Petitioner with notice and a hearing *prior* to any re-detention. *See Morrissey*, 408 U.S.  
13 at 481-82; *Haygood*, 769 F.2d at 1355-56; *Zinermon*, 494 U.S. at 985; *see also Youngberg v.*  
14 *Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984)  
15 (holding that individuals awaiting involuntary civil commitment proceedings may not  
16 constitutionally be held in jail pending the determination as to whether they can ultimately be  
17 recommitted). Under *Mathews*, “the balance weighs heavily in favor of [Petitioner’s] liberty”  
18 and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to  
19 provide.

20           **D. Petitioner’s Private Interest in His Liberty Is Profound**

21           71. Under *Morrissey* and its progeny, individuals conditionally released from serving  
22 a criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In  
23 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of  
24 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that

1 entitles him to constitutional due process before he is re-incarcerated—apply with even greater  
2 force to individuals like Petitioner, who have been released pending civil removal proceedings,  
3 rather than parolees or probationers who are subject to incarceration as part of a sentence for a  
4 criminal conviction. Parolees and probationers have a diminished liberty interest given their  
5 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*  
6 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the  
7 courts have held that the parolee cannot be re-detained without a due process hearing in which  
8 they can raise any claims they may have regarding why their re-detention would be unlawful.  
9 *See Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a  
10 truly weighty liberty interest.

11 72. At stake in this case is one of the most profound individual interests recognized  
12 by our legal system. The case tests whether ICE unilaterally nullify a prior decision of the  
13 government to release Petitioner, thus taking away his physical freedom, *i.e.*, his  
14 “constitutionally protected interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d  
15 1196, 1203 (9th Cir. 2011). “Freedom from bodily restraint has always been at the core of the  
16 liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992);  
17 *Zadvydas*, 533 U.S. at 690; *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *Doe*, 2025 WL 691664,  
18 at \*5 (“It cannot be gainsaid that Petitioner has a substantial private interest in maintaining his  
19 out-of-custody status.”). There is a profound private interest in this case, which must be  
20 weighed heavily when determining what process Petitioner is owed under the Constitution. *See*  
21 *Mathews*, 424 U.S. at 334-35.

22 **E. The Government’s Interest in Keeping Petitioner in Detention Without a Hearing**  
23 **is Low, and the Burden on the Government to Release Him from Custody Unless**  
24 **and Until He is Provided a Hearing is Minimal.**

1           73.     The government’s interest in keeping Petitioner in detention without a hearing is  
2 low; when weighed against Petitioner’s significant private interest in his liberty, the scale tips  
3 sharply in favor of releasing him from custody unless and until the government demonstrates  
4 by clear and convincing evidence that he is a flight risk or danger to the community. It  
5 becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that  
6 the process he seeks—release from custody pending notice and a hearing regarding whether he  
7 should be re-detained or a bond amount should be set—is a standard course of action for the  
8 government. In the alternative, providing Petitioner with a hearing before this Court (or a  
9 neutral decisionmaker) to determine whether there is clear and convincing evidence that he is a  
10 flight risk or danger to the community would impose only a *de minimis* burden on the  
11 government: the government routinely provides this sort of hearing to detained individuals like  
12 Petitioner.

13           74.     As immigration detention is civil, it can have no punitive purpose. The  
14 government’s only interest in holding an individual in immigration detention can be to prevent  
15 danger to the community or to ensure a noncitizen’s appearance at immigration proceedings.  
16 *See Zadvydas*, 533 U.S. at 690. Notably, ICE took years to serve Petitioner with a Notice to  
17 Appeal and schedule his first court appearance. Ex. F. This shows that there was no particular  
18 hurry to detain Petitioner and that he could have been given the appropriate process.

19           75.     To date, there is no legitimate justification for re-detaining (or continuing to  
20 detain) Petitioner. Respondents told him and his wife that they were detaining Petitioner  
21 because he did not have a scheduled court date. Ex. A, B. The government’s failure to serve the  
22 Notice to Appear and set a hearing cannot be blamed on Petitioner. Furthermore, Petitioner  
23 could have easily been served an Notice to Appear (thus creating a court date) while allowing  
24

1 Petitioner to remain out of detention. Nothing about Petitioner suggests that he is a danger to  
2 the community or a flight risk. He is an integral part of a loving family. He was gainfully  
3 employed and his family depended on these wages—until Respondents’ actions caused him to  
4 lose his job. Exs. A, B. There is no reason to believe that he would fail to appear at court, given  
5 his affirmative commitment pursuing his asylum claim and his family connections.

6 76. Nor can the government assert that it had a sudden interest in detaining Petitioner  
7 in October 2025, after releasing him back on August 30, 2022. Ex. E. Respondents have known  
8 for over three years that Petitioner is not a citizen. If DHS believed that there were some  
9 grounds for detention based on danger to the community, such as an arrest or conviction, ICE  
10 should have moved to re-detain him before the Immigration Court (subject to the demands of  
11 due process) and explained what those grounds could be. Instead, ICE chose to re-detain him  
12 without any explanation or process.

13 77. The government’s interest in detaining Petitioner at this time is therefore low.  
14 The “fiscal and administrative burdens” that release from custody, unless and until a pre-  
15 deprivation bond hearing is provided, would impose are nonexistent in this case. *See Mathews*,  
16 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather  
17 his release from custody until a routine hearing regarding whether his bond should be revoked  
18 and whether he should be re-incarcerated takes place.

19 **F. Without Release from Custody until the Government Provides a hearing, Risk of**  
20 **Erroneous Deprivation of Liberty is High; Process in the Form of a**  
21 **Constitutionally Compliant Hearing Where ICE Carries the Burden Would**  
22 **Decrease Risk**

23 78. Releasing Petitioner from custody until he is provided a pre-deprivation hearing  
24 would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can  
be lawfully detained, he must be provided with a hearing before a neutral adjudicator at which

1 the government is held to show that there has been sufficiently changed circumstances such  
2 that the 2016 release determination should be altered or revoked because clear and convincing  
3 evidence exists to establish that Petitioner is a danger to the community or a flight risk. *See e.g.*  
4 *Diaz*, 2025 WL 1676854, at \*3 (finding that “the three factors relevant to the due process  
5 inquiry set out in *Mathews*...support requiring a pre-detention hearing” for a petitioner  
6 released on an IJ bond).

7 79. Petitioner has already been erroneously deprived of his liberty, and the risk that  
8 he will continue to be deprived is high if ICE is permitted to keep him in detention after  
9 making a unilateral decision to re-detain him. Petitioner was previously granted release,  
10 however DHS’s recent (and unlawful) interpretation of 8 U.S.C. § 1225(b)(2) means that DHS  
11 will treat him as subject to mandatory detention, thus depriving him of even post-deprivation  
12 process. There is no longer any statutory mechanism that would provide Petitioner any process  
13 before a neutral adjudicator following his re-detention. As a result, under current procedures,  
14 the validity or necessity of Petitioner’s re-detention and continued imprisonment by ICE would  
15 evade any review by an immigration judge or any other neutral arbiter.

16 80. By contrast, the procedure Petitioner seeks—release from custody and  
17 reinstatement of his prior release order until he is provided a hearing in front of a neutral  
18 adjudicator at which the government proves by clear and convincing evidence that  
19 circumstances have changed to justify his re-detention—is much more likely to produce  
20 accurate determinations regarding factual disputes, such as whether a certain circumstance  
21 constitutes a “materially changed circumstance.” The Supreme Court has emphasized the  
22 importance of *pre-deprivation* hearings where available, as such an option is here. *See*  
23 *Zinermon*, 494 U.S. at 985 (only in a “special case” where post-deprivation remedies are “the

1 only remedies the State could be expected to provide” can post-deprivation process satisfy the  
2 requirements of due process).

3 81. Numerous court decisions have found due process violated when ICE skips over  
4 a pre-deprivation hearing and detains a person who was previously released on his own  
5 recognizance or on bond.<sup>5</sup> And in these cases, the required relief is an immediate release,  
6 coupled with an order not to re-detain the Petitioner without a pre-deprivation hearing.

7 **II. ALTERNATIVE GROUNDS FOR RELIEF: STATUTORY DETENTION AUTHORITY**

8 82. Petitioner’s detention without even the possibility of a bond hearing violates the  
9 Immigration and Nationality Act, thus providing an additional basis for habeas relief.

10 83. On July 8, 2025, ICE, announced a new policy “in coordination with” DOJ. This  
11 new policy rejected the well-established understanding of the statutory framework and reversed  
12 decades of practice. The new policy, entitled “Interim Guidance Regarding Detention  
13 Authority for Applicants for Admission,”<sup>6</sup> asserts that all persons who entered the United  
14 States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. §  
15 1225(a)(1), and therefore subject to mandatory detention provision under Section  
16

17 <sup>5</sup> See, e.g., *Alvarenga Matute v. Wofford*, 2025 WL 2996577, at \*2 (E.D. Cal. Oct. 24, 2025); *W.V.S.M. v. Wofford*,  
2025 U.S. Dist. LEXIS 228189, at \*3 (E.D. Cal. Nov. 19, 2025); *Ramandi v. Field Office Dir., ICE Ero S.F.*, No.  
18 2025 U.S. Dist. LEXIS 224698, at \*2 (E.D. Cal. Nov. 13, 2025); *F.M.V. v. Wofford*, 2025 U.S. Dist. LEXIS  
217645, at \*3 (E.D. Cal. Nov. 4, 2025); *M.V.I. v. Andrews*, 2025 U.S. Dist. LEXIS 222773, 2025 WL 3154403, at  
19 \*12 (E.D. Cal. Nov. 12, 2025); *Alva v. Noem*, No. 1:25-cv-01600-DJC-CSK, 2025 U.S. Dist. LEXIS 232065, at  
\*11 (E.D. Cal. Nov. 25, 2025); *Vilela v. Robbins*, 2025 U.S. Dist. LEXIS 219172, at \*3 (E.D. Cal. Nov. 6, 2025);  
20 *J.A.E.M. v. Wofford*, 2025 U.S. Dist. LEXIS 211728, at \*2 (E.D. Cal. Oct. 27, 2025); *Meza v. Bonnar*, 2018 WL  
2554572 (N.D. Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*,  
2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 2021 WL 783561, at \*2 (N.D. Cal.  
21 Mar. 1, 2021); *Garcia v. Bondi*, 2025 WL 1676855, at \*4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, 2025 WL  
1676854, at \*4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, 2025 WL 1983677, at \*7 (N.D. Cal.  
22 June 30, 2025); *Phan v. Becerra*, 2025 WL 1808702, at \*3 (E.D. Cal. June 30, 2025); *Domingo*, 2025 WL  
1940179, at \*10; *Quoc Chi Hoac v. Becerra*, 2025 WL 1993771, at 3 (E.D. Cal. July 16, 2025); *Soto Garcia v.*  
23 *Andrews*, 2025 WL 1927596, at \* 5 (E.D. Cal. July 14, 2025); *Pinchi v. Noem*, 2025 WL 2084921, at \*3 (N.D. Cal.  
July 24, 2025); *Zakzouk v. Becerra*, 2025 WL 2097470, at \*4 (N.D. Cal. July 26, 2025); *Salam v. Maklad*, 2025  
WL 2299376, at \*9 (E.D. Cal. Aug. 8, 2025).

24 <sup>6</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applicants-for-admission>.

1 1225(b)(2)(A). The policy applies regardless of when or where a person was apprehended, and  
2 it affects those who have resided in the United States for months, years, and even decades.

3 84. On September 5, 2025, a month before Petitioner's detention, the Board of  
4 Immigration Appeals (BIA) issued an opinion adopting this interpretation of the detention  
5 statutes. *Matter Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). This BIA decision holds  
6 that "aliens who are present in the United States without admission are applicants for  
7 admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and  
8 must be detained for the duration of their removal proceedings." *Id.*

9 85. Respondents have adopted this position even though federal courts have roundly  
10 rejected it.<sup>7</sup> The U.S. District Court in the Western District of Washington found that such a  
11 reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to  
12 noncitizens who are neither apprehended upon arrival to the United States nor within the first  
13 two years of presence. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025).  
14 In the Central District of California, detainees sought a nationwide class action challenging this  
15 policy. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Class Action

16  
17 <sup>7</sup> A partial list of such cases can be found here. *See, e.g., Guerrero Lepe v. Andrews*, --- F. Supp. 3d ---, 2025 WL  
18 2716910 (E.D. Cal. Sept. 23, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025)  
(granting habeas relief); *Salazar v. Dedos*, 2025 WL 2676729, at \*1 (D.N.M. Sept. 17, 2025); *Lopez-Campos v.*  
19 *Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting habeas relief); *Kostak v.*  
*Trump*, No. 3:25-cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (granting preliminary relief); *Benitez v. Noem*,  
20 No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Leal-Hernandez v. Noem*,  
2025 WL 2430025 (D. Md. Aug. 24, 2025) (granting habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL  
21 2403827 (D. Mass. Aug. 19, 2025) (granting habeas relief); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW,  
2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, 2025 WL  
22 2374411 (D. Minn. Aug. 15, 2025) (granting habeas relief); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.  
21 Aug. 14, 2025) (granting habeas relief); *Rocha Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025)  
(report and recommendation to grant habeas relief), adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (granting  
22 habeas relief); *Lopez Benitez v. Francis*, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (granting individual habeas  
relief); *Maldonado Bautista v. Santacruz*, \*13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Diaz*  
23 *Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at \*9 (D. Mass. July 24, 2025)  
(denying reconsideration of individual habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827 (D.  
24 Mass. July 19, 2025) (granting habeas relief); *Gomes v. Hyde*, 2025 WL 1869299, at \*8 (D. Mass. July 7, 2025)  
(granting individual habeas relief).

1 Compl. & Am. Pet. for Habeas Corpus, Dkt. 15 (C.D. Cal. July 28, 2025). The district court  
2 granted class certification and a motion for summary judgment. As this wall of federal court  
3 decisions explains, Respondents' interpretation of Section 1225(b)(2) defies the INA's text and  
4 is, thus, unsupportable.

5 86. First, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it  
6 requires courts to ignore numerous words in the text of that very subsection. Petitioner was  
7 apprehended by ICE on October 10, 2025, in San Francisco, not at the border. And he was  
8 apprehended nearly three years after entering. The text of the mandatory-detention statute just  
9 does not cover a person detained like this. As Justice Antonin Scalia and his co-author, Bryan  
10 A. Garner, explain: "If possible, every word and every provision is to be given effect." SCALIA  
11 AND GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* AT 174 (2012). A good  
12 interpretation of a statute will not result in "extra" words. Yet that is exactly what occurs if one  
13 tries to apply Section 1225(b)(2)(A) to Petitioner's case. Here is the full text of Section  
14 1225(b)(2)(A), the mandatory-detention provision:

15 [I]n the case of an alien who is an applicant for admission, if the [1] *examining*  
16 *immigration officer* determines that an alien [2] *seeking* admission is [3] *not clearly and*  
*beyond a doubt entitled to be admitted*, the alien shall be detained for a proceeding  
under section 240.

17 8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added). On October 10, 2025,  
18 when Petitioner was apprehended at an ICE check-in, he was never seen by an "examining  
19 immigration officer." There was never a "determin[ation] that . . ." he was "not clearly and  
20 beyond a doubt entitled to be admitted." Nor was Petitioner "seeking" anything at the time of  
21 his apprehension. He had been living free in the United States for over three years after the  
22 government had released him on his own recognizance. The reason the DHS-DOJ application  
23 of the statute has all of these "extra" words is that the statute applies only to those who are  
24

1 “arriving” at the border and are candidates for “expedited removal.” When Respondent was  
 2 arrested on October 10, 2025, he was not a candidate for expedited removal because he had  
 3 been in the United States for more than two years. Ex. E. In that “arriving” context, those  
 4 “extra” words make sense, as there will be an “examining immigration officer” and there will  
 5 be a determination of potential eligibility for immigration relief, and the noncitizen is  
 6 “seeking” something, namely, admission. This misreading has been demonstrated by numerous  
 7 district courts.<sup>8</sup>

8 87. Second, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA  
 9 because it renders a neighboring subsection superfluous. In Section 1226(c), the INA describes  
 10 people who would otherwise be eligible for bond under Section 1226(a), but are rendered  
 11 ineligible for bond because of their criminal histories. *See* 8 U.S.C. § 1226(c). Of particular  
 12 interest, subsections 1226(c)(1)(E)(i)-(ii) address people who are alleged to be inadmissible  
 13 under 8 § U.S.C. 1182(a)(6)(A) as aliens present without inspection. According to these  
 14 subsections, such people are ineligible for bond *only* if they are also “charged with, . . . arrested  
 15 for, . . . convicted of . . .” certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). In short, Section  
 16 1226(c) requires mandatory detention for people who have entered without inspection *and*  
 17 have criminal histories. But if the DHS-DOJ reading were correct, then all people who entered  
 18 without inspection would be mandatorily detained, regardless of whether they had criminal  
 19 histories or not. Subsections 1226(c)(1)(E)(i) and (ii) would be superfluous, if the DHS-DOJ  
 20 position were correct, because Section 1225(b)(2)(A) would govern all cases where someone  
 21

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22 <sup>8</sup> *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at \*2 (D. Mass. July  
 23 24, 2025); *see also Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at \*5; *Lepe v. Andrews*, No. 1:25-  
 24 CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*4 (E.D. Cal. Sept. 23, 2025); *Lopez-Campos v. Raycraft*, No.  
 2:25-CV-12486, — F.Supp.3d —, —, 2025 WL 2496379, at \*6 (E.D. Mich. Aug. 29, 2025).

1 was alleged to have entered without inspection. But we know that cannot be right, as these  
2 subsections of 1226(c)(1) were the most recent subsections added by Congress to the INA just  
3 this year in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. \_\_\_\_ (2025) (adding (E)(i) and  
4 (E)(ii) to Section 1226(c)(1)). Congress would not have added the subsections only to see these  
5 additions rendered completely superfluous. That is another sign that the government's reading  
6 of Section 1225(b)(2)(A) is wrong.<sup>9</sup> Numerous district courts have come to this same  
7 conclusion.<sup>10</sup>

8       88. Third, the DHS-DOJ reading of the statute is wrong because it is incompatible  
9 with the title of Section 1225, "Inspection by Immigration Officers; *Expedited Removal of*  
10 *Inadmissible Arriving Aliens*; Referral for Hearing." 8 U.S.C. § 1225 (emphasis added). As the  
11 Supreme Court has explained, "the title of a statute and the heading of a section are tools  
12 available for the resolution of a doubt" about the meaning of a statute. *Almendarez-Torres v.*  
13 *United States*, 523 U.S. 224, 234 (1998). Section 1225's title refers to "arriving" noncitizens  
14 who are put in "expedited removal proceedings." *Id.* These are the people to whom Section  
15 1225(a)(1)'s definition of "applicant for admission" and Section 1225(b)(2)(A)'s mandatory  
16 detention provisions apply. The government gravely errs by applying the definition of  
17 "applicant for admission" to people who are not "arriving" and not in "expedited removal  
18 proceedings." In this case, Petitioner was not "arriving" or "seeking admission" when he was  
19

20 \_\_\_\_\_  
21 <sup>9</sup> As the Supreme Court has explained, "It is our duty to give effect, if possible, to every clause and word of a  
22 statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001); see *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1259  
(W.D. Wash. 2025); see also SCALIA AND GARNER, *READING LAW*, AT 174 ("If possible, every word and every  
provision is to be given effect. . . . None should needlessly be given an interpretation that cause it to . . . have no  
consequence.").

23 <sup>10</sup> See *Gomes*, 2025 WL 1869299, at \*5; *Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at \*7; *Romero*  
*v. Hyde*, No. CV 25-11631-BEM, — F.Supp.3d at —, —, 2025 WL 2403827, at \*11 (D. Mass. Aug. 19,  
2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), — F.Supp.3d —, —, 2025 WL 2374411, at \*12  
24 (D. Minn. Aug. 15, 2025); *Lepe v. Andrews*, 2025 WL 2716910, at \*6 (E.D. Cal. Sept. 23, 2025).

1 detained in San Francisco, three years after he allegedly crossed the border. While ICE issued  
2 him a form notifying him that he was being put into expedited removal proceedings, he was not  
3 eligible for expedited removal because he had been in the United States over two years. Ex. E.  
4 Section 1225(b)(2)(A) cannot apply to him. *See Lepe v. Andrews*, 2025 WL 2716910, at \*6.

5 89. Fourth, and relatedly, the DHS-DOJ reading violates the INA because it ignores  
6 the subject-matter of Section 1225. Section 1225 describes the procedures for the inspection  
7 and expedited removal of people detained at the border who are “seeking admission” to the  
8 United States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court itself noted that the mandatory  
9 detention scheme in Section 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry,  
10 where the Government must determine whether a[] [noncitizen] seeking to enter the country is  
11 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Throughout, Section 1225’s text  
12 makes clear that it concerns apprehensions and “expedited” procedures carried out at the  
13 border—not actions taken far from the border, as in Petitioner’s case. That the DHS-DOJ  
14 reading of the statute ignores this context is a sure sign that it is wrong. “It is a fundamental  
15 canon of statutory construction,” the Supreme Court explained, “that the words of a statute  
16 must be read in their context and with a view to their place in the overall statutory scheme.”  
17 *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989). The context of Section 1225  
18 demonstrates that subsections 1225(a)(1) and 1225(b)(2)(A) apply to those apprehended at or  
19 near the border upon arrival or shortly thereafter. They do not apply to those who are arrested  
20 in the interior of the United States months or years or decades later. Quite simply, the DHS-  
21 DOJ reading of the statute is an act of cherry-picking a definitional phrase from one context  
22 and applying it to another context where it does not belong.

1 90. Nor is this Court bound by the BIA's recent decision in *Matter of Yajure*  
2 *Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), which endorsed this unlawful interpretation of  
3 sections 1225 and 1226. As the Supreme Court has recently held, "[C]ourts must exercise  
4 independent judgment in determining the meaning of statutory provisions." *Loper Bright*  
5 *Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). After *Loper Bright*, a federal court "may look  
6 to [the BIA's] interpretations [of the INA] for guidance, but [must not] defer to the agency."  
7 *Lopez v. Garland*, 116 F.4th 1032, 1036 (9th Cir. 2024).

8 91. For the distinct reasons outlined above, the mandatory detention provision of  
9 Section 1225(b)(2)(A) does not apply to people like Petitioner.

## 10 CLAIMS FOR RELIEF

### 11 COUNT I: VIOLATION OF DUE PROCESS

12 92. Petitioner incorporates by reference the factual allegations and legal arguments  
13 set forth in the preceding paragraphs.

14 93. The government may not deprive a person of life, liberty, or property without  
15 due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government  
16 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the  
17 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

18 94. Petitioner has a fundamental liberty interest in being free from official restraint.

19 95. The government's detention of Petitioner without a bond redetermination hearing  
20 to determine whether he is a flight risk or danger violates his right to due process.

### 21 COUNT II: VIOLATIONS OF THE INA

22 96. Petitioner incorporates by reference the factual allegations and legal arguments  
23 set forth in the preceding paragraphs.

1 97. For the reasons described above, the mandatory detention provision of 8 U.S.C. §  
2 1225(b)(2) cannot not apply to all noncitizens in the United States who are subject to the  
3 specified grounds of inadmissibility, entry without inspection. As relevant here, this mandatory  
4 detention statute cannot be read to apply to those who are accused of residing in the United  
5 States for decades prior to apprehension and removal proceedings. A person with long-term  
6 residence in the United States who is alleged to be removable should be deemed detained under  
7 Section 1226(a), unless they are subject to Section 1226(c) or Section 1231. Indeed, for the  
8 reasons described in all the paragraphs above, the mandatory detention statute cannot be read  
9 to apply to someone in Petitioner's circumstances.

10 98. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his  
11 continued detention and violates the INA.

12 **COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**

13 99. Petitioner incorporates by reference the factual allegations and legal arguments  
14 set forth in the preceding paragraphs.

15 100. Under the Administrative Procedure Act, a court must "hold unlawful and set  
16 aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in  
17 accordance with the law," that is "contrary to constitutional right [or] power," or that is "in  
18 excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. §  
19 706(2)(A)-(C).

20 101. Respondents' detention of Petitioner pursuant to Section 1225(b)(2) is arbitrary  
21 and capricious. Respondents' detention of Petitioner violates the INA and the Fifth  
22 Amendment. Respondents do not have statutory authority under Section 1225(b)(2) to detain  
23 Petitioner.

1 102. Petitioner's detention is arbitrary, capricious, an abuse of discretion, violative of  
2 the Constitution, and without statutory authority in violation of 5 U.S.C. § 706(2).

3 **PRAYER FOR RELIEF**

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

5 a. Assume jurisdiction over this matter;

6 b. Issue a writ of habeas corpus requiring Petitioner's immediate release and  
7 prohibiting his re-detention unless the government provides seven days' notice and a hearing  
8 before a neutral arbiter in which it proves by clear and convincing evidence that Petitioner is a  
9 danger or flight risk and order that Respondents may not subject Petitioner to any post-release  
10 monitoring or supervision, nor prohibit Petitioner from returning to San Francisco;

11 c. In the alternative, order that Respondents release Petitioner immediately or  
12 provide Petitioner with a bond hearing, within 7 days, before a neutral arbiter pursuant to 8  
13 U.S.C. § 1226, at which the government bears the burden of proving danger or flight risk by  
14 clear and convincing evidence;

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

17 e. Prohibit Respondents from relocating Petitioner outside of the Eastern District of  
18 California pending final resolution of this litigation;

19 f. Grant any other and further relief that this Court deems just and proper.

20 DATED this 2nd day of December, 2025.

21 */s/Shira Levine*

22 *Attorney for Petitioner*

23 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

24 PETITION FOR WRIT OF HABEAS CORPUS - 32

1 I, Shira Levine, am submitting this verification on behalf of the Petitioner because I am one of  
2 Petitioner's attorneys and Petitioner is in custody with limited ability to sign documents. I verify  
3 that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and  
4 correct to the best of my knowledge.

5 //

6 //

7

8 Executed on December 2nd, at Oakland, California.

9

*/s/Shira Levine*

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Shira Levine

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Attorney for Petitioner

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