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**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF CALIFORNIA**

ARMAN NERSISYAN,

Petitioner,

vs.

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, MARCOS CHARLES, Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, U.S. Attorney General; and CHRISTOPHER CHESTNUT, Warden of California City Detention Center

Respondents.

Case No. 1:25-cv-001728

**AMENDED PETITION FOR A WRIT OF HABEAS CORPUS AND ADDITIONAL RELIEF**

## INTRODUCTION

Petitioner, presently detained in the California City Detention Center, is a citizen of Armenia. Conditions led him to flee to America in 2016, where he was initially arrested by immigration authorities on September 27, 2016. Authorities made a determination that he was not a flight risk on that date and he was paroled into this country. He was provided the necessary parole document

attached hereto. Respondents admit throughout [DE 8] that Petitioner's pre-arrest status was that of one previously released and paroled. That matter is not in dispute.

Petitioner has no criminal history whatsoever. He has an approved I-130, filed by his U.S. citizen wife. A Form 485 was filed to lawfully adjust his status and a marriage interview was scheduled for October 30, 2025. Petitioner attended the interview with his wife in pursuit of lawful adjustment.

Petitioner was taken into custody on October 30, 2025 while at his marriage interview. He has been in custody continuously since that date. No Notice of intent to revoke his parole was given, nor any of the re-detention processes required by applicable regulations. His liberty was taken without and in violation of due process, and he is suffering irreparable harm as defined by the Supreme Court of the United States.

An Order Staying Removal was issued by the Court of Appeals on January 6, 2026.

## JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).

2. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district at the California City Detention Center, 22844 Virginia Boulevard, California City California 93505.

## PARTIES

3. Petitioner, who has lived in America on parole for approximately ten years, is a husband to a U.S. citizen. He has no criminal history and has a previously approved I-130. He is

presently in physical custody of Immigration and Customs Enforcement (ICE) at 22844 Virginia Blvd, California City California.

4. Respondent CHRISTOPHER CHESTNUT is the warden of the ICE detention facility with physical custody of the Petitioner.

5. Respondent MARCOS CHARLES, Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; is responsible for the administration of immigration laws and the execution of immigration enforcement and detention policy within this district, including the detention of Petitioner. Respondent Charles maintains an office and regularly conducts business in this district. Respondent Charles is sued in his official capacity.

6. Respondent TODD M. LYONS is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Lyons is sued in his official capacity.

7. Respondent KRISTI NOEM is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through her agents, Respondent Noem has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Noem is sued in her official capacity.

8. Respondent PAMELA BONDI is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through her agents, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Bondi is sued in her official capacity.

## EXHAUSTION

9. There is no statutory exhaustion requirement prior to challenging the constitutionality of an arrest or detention, or challenging a policy under the Administrative Procedure Act. Prudential exhaustion is not required here because it would be futile, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [their] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

## STATEMENT OF BACKGROUND FACTS AND LAW

***A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and Detention.***

10. The Constitution establishes due process rights for "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). These due process rights are both substantive and procedural.

11. First, "[t]he 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).

12. These protections extend to noncitizens facing detention, as "[i]n our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom 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.

13. First, Substantive due process thus 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). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

14. Second, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards.

15. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *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).

16. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." *Id.*

17. This reasoning applies with equal if not greater force to people an approved I 130 and lawful pathway to citizenship and a pending viable adjustment of status.

18. In *Zadvydas*, 533 U.S. at 690 the court said, "[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). How great then, is the liberty interest of this individual who has an approved I 130, a perfectly ordinary and viable pathway to citizenship and who has filed all the paperwork to pursue it, and whose liberty was taken from him at the very marriage interview that would have secured the final step in his lawful adjustment to Permanent Residency.

19. Detention of this individual, especially detention without an opportunity for a bond and due process is downright unconstitutional and inconsistent with *Zadvydas*, which requires custody to be supported by *evidence* of some change in circumstances and to show that evidence by clear and convincing evidence that detention is required. No notice, interview, or evidence was presented against this petitioner to show any change in circumstance. His release is required by law.

***B. Due Process and the Immigration and Nationality Act Protect Noncitizens like Petitioner from Summary Removal Without a Hearing.***

20. Deportation, like detention, constitutes a deprivation of liberty protected by the Due Process Clause. As the Supreme Court has held, a noncitizen's interest in deportation proceedings "is, without question, a weighty one" because "[s]he stands to lose the right 'to stay and live and work in this land of freedom.'" *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (citing *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)).

21. Modern-day removal proceedings developed in response to a series of Supreme Court decisions recognizing that the deportation of noncitizens already in the United States without a hearing before a neutral arbiter would violate due process. *See Yamataya v. Fisher*, 189 U.S. 86, 101 (1903) (construing immigration statutes to require hearing before deportation to "bring them into harmony with the constitution"); *Wong Yang Sung v. McGrath*, 339 U.S. 33, 49, *modified*, 339 U.S. 908 (1950) (same, reasoning that "the difficulty with any argument premised on the proposition that the deportation statute does not require a hearing is that, without such hearing, there would be no constitutional authority or deportation").

***C. If this is an effort to place petitioner into to some type of summary proceeding, that would Dramatically Expand the Scope of Expedited Removal without legislative action***

22. For decades, DHS applied expedited removal exclusively in the border enforcement context, with only narrow exceptions to that general rule. From 1997 until 2002, expedited removal applied only to inadmissible noncitizens arriving at ports of entry. *See* Inspection and Expedited

Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

23. In 2002, the government for the first time invoked its authority to apply expedited removal to persons already inside the country, but only for a narrow group of people who arrived by sea, were not admitted or paroled, and were apprehended within two years of entry. *See* Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13, 2002).

24. In 2004, the government authorized the application of expedited removal to individuals who entered by means other than sea, but only if they were apprehended within 100 miles of a land border and were unable to demonstrate that they had been continuously physically present in the United States for 14 days. *See* Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004).

25. In 2019, at the direction of President Trump, DHS published a Federal Register Notice authorizing the application of expedited removal to certain noncitizens arrested anywhere in the country who could not affirmatively show that they had been continuously present for two years. *See* Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019). The District Court for the District of Columbia entered a preliminary injunction preventing the rule from taking effect, which the D.C. Circuit later vacated. *Make the Rd. New York v. McAleenan*, 405 F. Supp. 3d 1, 11 (D.D.C. 2019), *vacated sub nom. Make the Rd. New York v. Wolf*, 962 F.3d 612, 618 (D.C. Cir. 2020).

26. In 2021, President Biden directed the DHS Secretary to review the rule expanding expedited removal and consider whether it comported with legal and constitutional requirements, including due process. In 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

27. While the 2019 expansion was in effect, the government applied expedited removal to persons inside the country in an exceedingly small number of cases. Thus, from 1997 to 2025, with limited exceptions, immigration authorities generally did not apply expedited removal to

noncitizens apprehended far from the border, or individuals anywhere in the United States (including near the border) who had been residing in the country for more than fourteen days.

28. This state of affairs changed drastically on January 20, 2025, the day that President Trump took office for his second term. That day, President Trump signed Executive Order 14159, titled "Protecting the American People Against Invasion," the stated purpose of which was "to faithfully execute the immigration laws against all **inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people**." Exec. Order No. 14,159, 90 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to take various actions "to ensure the efficient and expedited removal of aliens from the United States." *Id.*

29. **Petitioner does not fit the scope of this mission. Petitioner has no inadmissibility issue; has an approved I 130, was at his biometrics appointment when he was arrested in furtherance of his lawful pending adjustment of status, which includes a run-of-the-mill I 601A waiver which lawfully and automatically forgive any day of presence during a time he was out of status. This is still the law of the United States pursuant to the code that bears the name of the waiver – and until that law changes – individuals pursuing legal immigration "the right way" in the United States are entitled to use the law made to maintain family unity.**

30. To implement this Executive Order, DHS issued a notice immediately authorizing application of expedited removal to certain noncitizens arrested anywhere in the country who cannot show "to the satisfaction of an immigration officer" that they have been continuously present in the United States for at least two years. 90 Fed. Reg. 8139 (published Jan. 24, 2025).

31. On January 23, 2025, the Acting Secretary of Homeland Security issued a memorandum "provid[ing] guidance regarding how to exercise enforcement discretion in implementing" the new expedited-removal rule. The guidance directed federal immigration officers to "consider . . . whether to apply expedited removal" to "any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied." As part of that process, the guidance

encourages officers to "take steps to terminate any ongoing removal proceeding and/or any active parole status."[1]

32. To arrest and keep this petitioner in custody would be an unlawful expansion of any rule or context that currently applies in law, even under the expanded scope delineated above. Furthermore, this petitioner clearly does not fit the mission or targeted individuals in accordance with the stated mission of the Executive Order that began the expansion as noted above.

33. Petitioner does not fit the scope of even the most expanded mission of removal. To hold otherwise would be an unlawful expansion of the scope of applicable law without legislation; that everyone with a pending application for a lawful and viable visa or permanent residency card can be arrested and deported without due process, without an opportunity to be heard in any court, and would permit the unlawful incarceration of, I dare say, millions of people with lawful immigration applications pending in USCIS. It takes no legal scholar to parse through those facts and circumstances and know that would be unlawful.

***D. To Place More People in Expedited Removal, DHS Undertook a New Campaign of Courthouse Arrests and Detention of Individuals in Removal Proceedings – in anticipation of imminent removal – actions based on policy missions inapplicable to this Petitioner who has a Stay of Removal***

34. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court. This coordinated operation is "aimed at dramatically accelerating deportations" by arresting people at the courthouse and placing them into expedited removal.[2]

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[1] Benjamine C. Huffman, *Guidance Regarding How to Exercise Enforcement Discretion*, Dep't of Homeland Sec. (Jan. 23, 2025), https://www.dhs.gov/sites/default/files/2025-01/25_0123_erand-parole-guidance.pdf.

[2] Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump's Deportation Push*, Wash. Post, May 23, 2025, https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/; *see also* Hamed Aleaziz, Luis Ferré-Sadurní, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html.

35. The first step of this enforcement operation typically takes place inside the immigration court. When people arrive in court for their master calendar hearings, DHS attorneys orally file a motion to dismiss the proceedings—without any notice to the affected individual. Although DHS regulations do not permit such motions to dismiss absent a showing that the "[c]ircumstances of the case have changed," 8 C.F.R. § 239.2(a)(7), (c), DHS attorneys do not conduct any case-specific analysis of changed circumstances before filing these motions to dismiss.

36. Even though individuals are supposed to have ten days to respond to a motion to dismiss, some IJs have granted the government's oral motion on the spot and immediately dismissed the case. This is consistent with recent instructions from the Department of Justice to immigration judges stating that they may allow the government to move to dismiss cases orally, in court, without a written motion, and to decide that motion without allowing the noncitizen an opportunity to file a response.

37. Despite these instructions, some IJs have still asked DHS to re-file the motion as a written motion and continued proceedings to allow individuals to file their response. A smaller group of IJs have expressly denied the motion to dismiss on the record or in a written order.

38. The next step of DHS's new campaign is taken outside the courtroom. ICE officers, in consultation with DHS attorneys and officials, station themselves in courthouse waiting rooms, hallways, and elevator banks. When an individual exits their immigration hearings, ICE officers—typically masked and in plainclothes—immediately arrest the person and detain them. ICE officers execute these arrests regardless of how the IJ rules on the government's motion to dismiss. On information and belief, they typically do not have an arrest warrant.

39. Once the person has been transferred to a detention facility, the government places the individual in expedited removal. In cases in which the IJ did not dismiss the person's removal proceedings, DHS attorneys unilaterally transfer venue of the case to a "detained" immigration court, where they renew their motions to dismiss—again with the goal of putting the person in expedited removal.

40. DHS is aggressively pursuing this arrest and detention campaign at courthouses throughout the country. In New York City, for example, "ICE agents have apprehended so many people showing up for routine appointments this month that the facilities" are "overcrowded," with "[h]undreds of migrants . . . sle[eping] on the floor or sitting upright, sometimes for days."[3]

41. DHS's aggressive tactics at immigration courts appear to be motivated by the Administration's imposition of a new daily quota of 3,000 ICE arrests.[5]

42. In part as a result of this campaign, ICE's arrests of noncitizens with no criminal record have increased more than 800% since before January.[6]

43. This is all said to exemplify how Petitioner is not and should not be the target of an ICE arrest. Even under this daily quota where ICE fishes for individuals by hiding in plainclothes at courthouses and waiting to strike and arrest, petitioner still does not fall under this policy target. He has no criminal history and a viable pending adjustment of status without inadmissibility issues.

[3] Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*, N.Y. Times, June 12, 2025, https://www.nytimes.com/2025/06/12/nyregion/immigration19 courthouse arrests-trump-deportation.html.
[4] Sarah Ravani, *ICE Arrests Two More at S.F. Immigration Court, Advocates Say*, S.F. Chron., June 12, 2025, https://www.sfchronicle.com/bayarea/article/sf-immigration-court-arrests-20374755.php; Margaret Kadifa & Gustavo Hernandez, *Immigrants fearful as ICE Nabs at least 15 in S.F., Including Toddler*, Mission Local, June 5, 2025, https://missionlocal.org/2025/06/ice-arrest-san-francisco-toddler/; Tomoki Chien, *Undercover ICE Agents Begin Making Arrests at SF Immigration Court*, S.F. Standard, May 27, 2025, https://sfstandard.com/2025/05/27/undercover-ice-agents-make-arrests-san-francisco-court/. [5] Ted Hesson & Kristina Cooke, *ICE's Tactics Draw Criticism as it Triples Daily Arrest Targets*, Reuters, June 10, 2025, https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples- daily-arrest-targets-2025-06-10/; Alayna Alvarez & Brittany Gibson, *ICE Ramps Up Immigration Arrests in Courthouses Across the U.S.*, Axios, June 12, 2025, https://www.axios.com/2025/06/12/ice-courthouse-arrests-trump.
[6] José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*, The Guardian, June 14, 2025, https://www.theguardian.com/us-news/2025/jun/14/icearrests-migrants-trump-figures.

44. In fact, DHS officials previously permitted ICE officers to conduct "civil immigration enforcement action . . . in or near a courthouse" only in highly limited circumstances, such as when "it involves a national security threat," or "there is an imminent risk of death, violence, or physical harm." These limitations were necessary, DHS explained, because "[e]xecuting civil immigration enforcement actions in or near a courthouse may chill individuals' access to courthouses, and, as a result, impair the fair administration of justice." The new policy includes no such limiting language. **What, then, are we to make of this arrest of Petitioner; who had an approved I-130 and who was attending his marriage interview, ordinarily the very last step prior to lawful adjustment of status being granted by USCIS?** Such a policy of arrests, without notice, at marriage interviews would chill the millions of immigrant hopefuls pursuing lawful adjustment of status pursuing an ordinary USCIS appointment out of fear.

45. Of critical importance, the government's new campaign is also a significant shift from previous DHS practice of re-detaining noncitizens only after a material change in circumstances. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice).

***E. Petitioner was Unlawfully Arrested and Detained Without Notice or Cause, Contrary to Regulatory Authority***

46. Petitioner's circumstances are recounted numerous times herein. His incarceration is unlawful and constitutional, and there is no authority to continue his unlawful incarceration.

47. ICE's own regulations at 8 C.F.R. 241, discussed herein supra, require DHS to issue Notice of Intent to Revoke parole, in the event of a change in circumstance, or imminent removal, and a decision is made to re-detain a person who was previously put at liberty. The regulation states notice is required, a pre-detention informal interview is required, and it is required that a pre-detention hearing ensue during which time the ICE target has an opportunity to present evidence in his favor. None of that occurred here.

***F. As a Result of His Arrest and Detention, Petitioner is Suffering Ongoing and Irreparable Harm.***

48. Petitioner was deprived of liberty without cause and under circumstances contrary to due process, in violation of regulatory authority.

49. Petitioner has an approved I 130 and was lawfully taking the next required steps for the adjudication of his lawful permanent residency application – his marriage interview- traditionally the last step prior to lawful adjustment, at the time of his re-detention. He has no admissibility issues, and has no criminal history anywhere. He is a husband to a United States Citizen and has a perfectly viable pathway to adjustment.

50. Petitioner has been unlawfully detained for three months and counting. Each day exacerbating irreparable harm as defined by the Supreme Court of the United States and this circuit. Every day of unlawful detention is an ongoing constitutional violation, which in itself is an irreparable injury. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (Concerning a preliminary injunction inquiry, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'")

## CLAIMS FOR RELIEF

### FIRST CLAIM

**Violation of the Fifth Amendment to the United States Constitution**

**(Substantive Due Process—Detention)**

51. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

52. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. "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.

53. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*

54. Petitioner has an interest in his liberty as a parolee of nearly ten years who has made a lawful life in the United States, married a U.S. Citizen, and has a viable pathway to permanent residency and citizenship.

55. Petitioner was arrested at a lawful marriage interview with USCIS without any substantive changes to his prior parole.

56. Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.*

57. Petitioner, who has a lawful pathway to adjustment, also has had a stay of removal issued making removal far from "imminent."

58. Petitioner was arrested in violation of his substantive Due Process rights and relief is required.

**SECOND CLAIM FOR RELIEF**

**Violation of the Fifth Amendment to the United States Constitution**

**(Procedural Due Process—Detention)**

59. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

60. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty liberty interest in avoiding re-incarceration after his release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ's bond determination).

61. Accordingly, "[i]n the context of immigration detention, it is well-settled that 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*, 872 F.3d at 990 (cleaned up); *Zimerman*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

62. Petitioner's re-detention without a pre-deprivation hearing violated procedural due process. Nearly 10 years after deciding to release Petitioner from custody on his own recognizance, Respondents re-detained Petitioner with no notice, no explanation of the justification of his re-detention, and no opportunity to be heard or present evidence to contest his re-detention before a neutral adjudicator before being taken into custody.

63. Petitioner has a profound personal interest in his liberty.

64. Because he received no procedural protections, the risk of erroneous deprivation is high. The government has no legitimate interest in detaining Petitioner without due process; hearings are conducted as a matter of course and in fact are mandated by ICE regulations found at 8 C.F.R. 241.

65. Nothing in Petitioner's record suggested that he would abscond or endanger the community before an informal pre-detention hearing could be carried out in accordance with the pertinent regulations. In fact, just the opposite is true, inasmuch as he was re-detained while actually at a USCIS marriage interview, in pursuit of his lawful adjustment of status. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) ("the government's concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner's strong family ties and his continued employment during the pandemic as an essential agricultural worker").

**THIRD CLAIM FOR RELIEF**

**Violation of the Fourth Amendment to the United States Constitution**

**(Unlawful Arrest)**

66. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

67. The Fourth Amendment protects the right of persons present in the United States to be free from unreasonable seizures by government officials.

68. As a corollary to that right, the Fourth Amendment prohibits government officials from conducting repeated arrests on the same probable cause, as does the Administrative Procedures Act – preventing re-arrest. Furthermore, arrests that violate established law or regulations cannot be said to be reasonable.

69. It is axiomatic that seizures must have probable cause; a reasonable articulable suspicion that some unlawful activity is afoot and that the arrestee is a party to it. When those purposes are not present, seizure is unreasonable. . . . [T]he primary purpose of an arrest is to ensure the arrestee appears to answer charges. . . . Once the arrestee appears before the court, the purpose of the initial seizure has been accomplished. Further seizure requires a court order or new cause; the original probable cause determination is no justification. *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020); *see also United States v. Kordosky*, No. 88-CR-52-C, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling justification, the repeated seizure of a person on the same probable cause cannot, by any standard, be regarded as reasonable under the Fourth Amendment.").

70. In the immigration context, this prohibition generally means that a person who immigration authorities released from custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings" and without some new, intervening cause. *Saravia v.*

*Sessions*, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff'd sub nom.*, *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

71. Courts have long cautioned that permitting such rearrests could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971).

72. Here, where petitioner had an approved I-130, a lawful pending I-485, no inadmissibility issues, and zero criminal history, and where he was arrested while attending a marriage interview marking the final phase in a lawful adjustment of status; and where not one single mandatory pre-detention regulatory procedure was followed by ICE, there was no reasonable justification for this re-detention executed in a manner contrary to established mandatory regulations.

73. Furthermore and alternatively, even *assuming arguendo* that the arrest was lawfully made pending imminent deportation after notice and an opportunity to be heard (**which is was not**), continued detention at this point in time would nevertheless constitute persisting unlawful seizure, where petitioner has a stay of removal, no inadmissibility issue, no criminal history, and attended his marriage interview marking the final phase of his lawful adjustment of status and a perfected appeal pending under Appellate Docket.: 25-73. There is no justification for continued seizure under these circumstances. Petitioner maintains that the seizure was unlawful from inception, as made contrary to Due Process and in violation of mandated regulation bearing upon re-detention of individuals in his circumstance, 8 C.F.R. 241.13.

## FOURTH CLAIM FOR RELIEF

### Violation of the Administrative Procedure Act

74. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

75. The Administrative Procedure Act prohibits federal action that is "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), and

"arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," *id.*§ 706(2)(A).

**76.** The arrest of this petitioner was in excess of statutory and regulatory authority, and was otherwise arbitrary, capricious, not in accordance with law, specifically 8. C.F.R. 241.13, et seq.

77. The arrest of this petitioner is wholly violative of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

78. The arrest is arbitrary and capricious, in violation of 5 U.S.C. § 706(2)(A).

79. The government has provided no reasoned or adequate explanation for this arrest, which is a dramatic shift from recent and longstanding agency policy and practice and rudimentary Constitutional principles.

80. Petitioner's arrest and detention pursuant to the government's policy is a final agency action that violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

## FIFTH CLAIM FOR RELIEF

**Violation of the First and Fifth Amendments to the United States Constitution**

**(Right to Access Courts and Petition for Redress)**

81. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

82. The First and Fifth Amendments to the United States Constitution guarantee the rights to access the courts and to petition for redress of grievances, which includes the right to participate as a party or witness in judicial and administrative proceedings.

83. The Constitution as a corollary prohibits systemic official action that bans or obstructs meaningful access to the courts, including the filing or presenting of legal claims. *See Christopher v. Harbury*, 536 U.S. 403 (2002).

84. Petitioner's arrest and detention without notice of an opportunity to be heard, in violation of mandatory procedures under the Code of Federal Regulations, has left him obstructed from a court of redress in direct violation of this basic Constitutional principle. Unquestionably, it is extremely

difficult to participate in proceeds while in ICE custody. For example, the undersigned attempted numerous times to meet with this petitioner, and to arrange for this petitioner to sign a Declaration either electronically or by mail with California City Detention Center, (*a privately owned ICE facility who has told the undersigned they do not take judicial orders, they take orders from ICE only*) and was unable to do so due to the obstructionist procedures of this private facility contracted by Respondents who have custody of petitioner.

85. The arrest of Petitioner deprived him of his First and Fifth Amendment rights to meaningfully access courts and to petition for redress of his grievances.

**SIXTH CLAIM FOR RELIEF**

**Violation of the Administrative Procedure Act, 5 U.S.C. §§ 702, 706**

**(Dismissal/Expedited Removal)**

86. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

87. The statute at 8 U.S.C. § 1225(b)(1) covers the "[i]nspection of aliens arriving in the United States and certain other aliens who have not been admitted or paroled." 8 U.S.C. § 1225(b)(1). Section 1225(b)(1)(A)(iii)(II) further clarifies that "[a]n alien described in this clause is an alien who is not described in subparagraph (F), who has not … been physically present in the United States continuously for the 2-year period." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

88. The government's own records and this petitioner's existing approved I 130 make clear that Petitioner does not fall within the strictures of 8 U.S.C. § 1225(b)(1) and thus it cannot be applied to him.

89. Re-detaining this Petitioner, without a change in dangerousness or risk of flight, nearly ten years later after arresting and releasing him, under circumstances where he had an I-130 approved, a filed I-485, who was in attendance at his marriage interview, and who has a pathway to adjustment unobstructed by any criminal history or inadmissibility issue, would exceed statutory authority and be contrary to the Administrative Procedures Act at 5 U.S.C. § 706(2)(A)-(B).

## SEVENTH CLAIM FOR RELIEF

**THE RE-DENTION OF THIS PETITIONER WAS UNLAWFUL BECAUSE PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION AND HIS RE-DENTENTION VIOLATED EXISTING REGULATIONS**

90. Respondents re-detained this petitioner, without notice required by 8 C.F.R. 241.13(i)(3) and did so because under the new DHS policy of July 2025, DHS believes petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). (See footnote number 4, page 5, within the Government's Motion at [DE 8] styled as a "motion to dismiss" under Rule 4.)

91. Until DHS changed its policy in July of 2025, the Government consistently applied § 1226(a), not § 1225(b)(2), to noncitizens present and residing in the United States who were detained by an immigration authorities and subject to removal. See *Morales-Flores v. Lyons, et al*, [1:25-CV-01640 – TLN – EFB] [DE 12] at p. 2. There, as here, petitioner resided in the interior of the United States long after being taken into custody and subsequently released by immigration authorities. Petitioner here is a native and citizen of Armenia. He entered the United States in 2016 and has remained continuously since that time. At the time of his entry, a custody decision was made to parole him into the country. He was provided with an Parole Card stating:

*"You are authorized to stay in the U.S. only until the date written on this form. (No date is written.) To remain past this date, without permission from Department of Homeland Security authorities is a violation of the law." A handwritten note indicates "Paroled into the U.S. per SND DFO D Flores Pending a Sec 240 Hearing before an IJ 212(d)(5)."*

92. Over the ten years that transpired since that parole and release into the United States, he has made a life here. He has a U.S. citizen wife and family in the United States. He had an approved I-130. He has a properly filed I 485 and was in attendance at his USCIS marriage interview lawfully

in pursuit of residency status. He has no criminal history whatsoever. He has no arrests, no convictions, and no pending criminal matters to speak of. He was nevertheless arrested without notice at this marriage interview.

93. Respondents claim, as they have many times before this court unsuccessfully, that under their new policy, mandatory detention applies and that he has no protected liberty interest.

As stated clearly in *Morales-Flores*, supra.:

> **"(S)ubstantial ink has been spilled on this issue. Courts nationwide, including this one, have overwhelmingly rejected Respondents' arguments and found DHS's new policy unlawful. See e.g., Hortua v. Chestnut, et al., No. 1:25-cv-01670-TLN-JDP, 2025 WL 3525916 (E.D. Cal. Dec. 9, 2025); Barco Mercado v. Francis, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (estimating over 350 cases ruled DHS's July policy improper across 160 different judges sitting in about 50 different courts nationwide); 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). "These courts examined the text, structure, agency application, and legislative history of 1225(b)(2) and concluded that it applies only to noncitizens 'seeking admission,' a category that does not include noncitizens like [Petitioner], living in the interior of the country." Salcedo Aceros v. Kaiser, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025) (collecting cases). In comparison, "[t]he government's proposed reading of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." Lepe v. Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (collecting cases).**

The new DHS policy has been deemed unlawful and petitioner is not subject to mandatory detention. In Morales-Flores, this court in materially indistinguishable circumstances, agreed *"with the chorus of well-reasoned and compelling decisions and finds no reason to reconsider its prior rulings. Particularly as the Maldonado Bautista court has already declared a statutory violation on behalf of Petitioner as a class member."* *Morales-Flories, Supra.* For that reason, the court found petitioner not to be an applicant seeking admission subject to mandatory detention under § 1225(b)(2) and must respectfully do the same in the instant matter.

**94.** Therefore, there was no justification in law for the arrest of Petitioner, made contrary to law and regulation and relief is required, as continued detention is causing irreparable harm daily.

## EIGHTH CLAIM FOR RELIEF

## PETITIONER HAS A PROTECTED LIBERTY INTEREST AND THIS ARREST AND SEIZURE UNLAWFULLY IMPEDES UPON IT

95. The Due Process Clause of the Fifth Amendment prohibits government from depriving an individual's life, liberty, or property without due process of law. *Hernandez v. Session*, 872 F.3d 976, 990 (9th Cir. 2017). The Due Process Clause applies to all "persons" within the borders of the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent."). These rights extend to immigration proceedings, including deportation proceedings. Id. at 693–94; *Demore v. Kim*, 538 U.S. 510, 523 (2003).

96. One's interest in liberty itself, that is the "freedom from imprisonment—from government custody, detention, or other forms of physical restrain—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. "Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Garro-Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. July 24, 2025).

97. This petitioner has a substantial liberty interest based on his parole ten years ago by immigration authorities in 2016, as established in *Morrissey v. Brewer*. (ECF No. 2-2 at 20–21 (citing 408 U.S. 471, 481–82 (1972) and relied upon by this court in *Morales-Flores*, supra. A noncitizen release from custody pending immigration proceedings has a protected liberty interest in remaining out of custody. *Salcedo Aceros*, 2025 WL 2637503, at *6, see also *Morales-Flores*, supra.

98. To determine whether an individual's conditional release rises to the level of a protected liberty interest, this court has cited to *Morrisey* and "compar[ed] the specific conditional release in the case before them with the liberty interest in parole as characterized by Morrissey." *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255, at *3 (E.D. Cal. Sept 9, 2025).

99. Here, the Court must find, consistent with *Morales-Flores*, that this Petitioner has developed "enduring attachments of normal life" as described in *Morrissey*, 409 U.S. at 482. Over the last ten years, Petitioner has built a life, a marriage and a family in California. Petitioner here, as in *Morales-Flores* was released from immigration authorities which created a reasonable expectation that he would be entitled to retain his liberty, absent a material change in circumstances. Just as in *Morales Flores*, this Petitioner has **not** been arrested or charged with any crimes in violation of that release. Furthermore, Petitioner had an approved I-130, a properly filed I 485, and was attending the last phase of his adjustment of status to lawful permanent resident by attending his marriage interview at the time of his arrest.

100. Pursuant to this court's prior holdings, the court must find this Petitioner, in a position materially indistinguishable from that in *Morales-Flores*. Morales-Flores was living in America post-release for 7 years; this petitioner has lived here peacefully post release for nearly 10 years. The court must therefore hold that Petitioner does in fact have a liberty interest in his release from immigration detention (parole) protected by the Due Process Clause as it has for prior individuals before this court so situated.

101. The violation of this liberty interest, without a change of circumstance and without due process is unlawful and unconstitutional and that remains unchanged simply because of a change in DHS policy pursuant to established case law in this circuit as cited herein.

## NINTH CLAIM FOR RELIEF

**DHS POLICY UPDATES DO NOT ABROGATE THE EXISTING CODE OF FEDERAL REGULATIONS, SPECIFICALLY 8 C.F.R. § 241.13(i)(3) AND THE RE-DETENTION OF THIS PETITIONER WITHOUT THE SAFEGUARDS PROVIDED BY THIS STATUTE CONSTITUTE A VIOLATION OF DUE PROCESS AND THE ADMINISTRATIVE PROCEDURES ACT**

**102.** It is axiomatic to say that DHS policy changes do not override statutory regulation of its powers. The re-detention of individuals is addressed with specificity by 8 C.F.R. § 241.13(i)(3). Under that regulatory framework, if re-detention is sought by DHS, they must provide an individual with: (1) notice of revocation; (2) a pre-detention informal interview; and (3) an opportunity to present evidence. More specifically, the regulations provide that: **"Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he [will] be removed in the reasonably foreseeable future, or that [she] has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.**

8 C.F.R. § 241.13(i)(3); *see e.g. Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025).

**103.** The DHS policy that attempts to reclassify a certain group of persons is of no moment to the matter at hand, in instances of re-arrest and re-detention, because the regulation is still the law and must be followed. Unless and until this provision of the Code of Federal Regulations is changed, after notice and opportunity for public comment, and full compliance with the Administrative Procedures Act, ICE is required to abide by the written code that provides for limits

to its powers and for the Due Process of individuals subject to its power. That said the application of the "new policy" has been repeatedly struck down by this court and courts around the country in the face of Government efforts to justify re-detention of individuals in Petitioner's circumstance. See *DeSouza v. Chestnut*, 1:26-cv-0488 (E.D. Cal. Jan. 21, 2026) [DE 8], *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at *5 (E.D. Cal. Aug. 20, 2025), See *J.L.R.P. v. Wofford*, 1:25-cv-01464-KES-SKO, *Morales-Flores v. Lyons, et al*, [1:25-CV-01640 – TLN – EFB] [DE 12] at p. 2., *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025), (collecting cases), and *Garro-Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. July 24, 2025) (collecting cases.)

## PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assert jurisdiction over this matter and enjoin the United States from transferring petitioner out of this court's jurisdiction; and

2. And issuing a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody; and

3. Enjoin Respondents from re-detaining Petitioner unless the stay of his removal is lifted and his re-detention is ordered at a custody hearing before a neutral arbiter, having the benefit of reasonable notice and the right to be represented by an attorney, in which the government bears the burden of proving, by clear and convincing evidence, that custody is warranted; and

4. That Respondent's reimburse Petitioner for all attorney's fees and costs incurred in defending against this unlawful detention in effort to mitigate his harm and place him in the position he would have been but for the unlawful detention; and

5. That upon petitioner's release, any and all property seized at the time of arrest be returned to him in full, and further that he be permitted to have reasonable communication by telephone arranged so that his family may arrange for his pickup upon release; and

6. Any further relief deemed appropriate by this court.

Respectfully submitted,

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## DECLARATION OF ATTORNEY

I, Stephanie Mc Clure, am the attorney for the Petitioner in this case. I hereby swear and affirm under oath as follows:

1. Copies of the annexed exhibits represent true and accurate copies of records provided to me from the Petitioner's immigration file.

2. The facts and circumstances relayed herein are corroborated by the documentary evidence and where statements were made by me extrapolated from the documents or from conversations with petitioner or his family, I believe them to be true and accurate.

3. Efforts were made to have petitioner verify this petition in writing, however, the California City Detention Center procedures have obstructed this process despite my good faith efforts.

4. Nevertheless the application is submitted in good faith to the court as the pertinent facts are able to be gleaned directly from the documentary evidence which is from Respondents' files, and therefore need not require Petitioner's verification as the documentary evidence alone proves the violations.

5. I hereby swear and affirm the above to be true to the best of my knowledge information and belief. I am aware that if any information is willfully false I may be subject to punishment.

6. These statements are made under oath. I am aware that statements made under oath are subject to the laws preventing against perjury as codified in United States Federal Law and California State Law.

Dated: February 11, 2026

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