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

A. NERSISYAN,

Petitioner,

v.

TODD M. LYONS, et al

Respondents.

Case No.: 1:25-cv-01728

**OPPOSITION TO MOTION TO
DISMISS**

INTRODUCTION

Petitioner, through counsel, hereby opposes the Motion to Dismiss filed by Respondents as follows.

PERTINENT PROCEDURAL ISSUE

As an initial matter, the Respondent's Motion to Dismiss fails to comply with this court's direct order at DE [20] to address certain case law in its pleading or motion response.

Respondents have completely failed to do so, or to even attempt to do so. For this reason, the

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2 Motion should be stricken as not conforming and not timely, and the merits of the petition reached
3 without opposition.

4 Nevertheless, the Motion to Dismiss filed by the respondents fails on its merits for the
5 reasons that follow.

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7 **STANDARD OF REVIEW**

8 Rule 4 of the Rules Governing Section 2254 in the United States District Courts allow a
9 district court to dismiss summarily the petition on the merits when no claim for relief is
10 stated. *Gutierrez v. Griggs*, 695 F.2d 1195, 1198 (9th Cir.1983). Under the case of *White v.*
11 *Lewis*, 874 F.2d 599, 602–03 (9th Cir.1989), the Ninth Circuit held that
12 “meritorious motions” to dismiss are permitted by Rule 4. The Rule functions much as 12(b)(6)
13 acting upon a Petition, and the question before the court is whether the petition has sufficiently
14 stated facts to establish a claim under the law. “Notice pleading” is not sufficient, and a Petition
15 for Habeas Corpus must state facts sufficient which, presumed true, would establish a
16 constitutional violation. See gen. Advisory Committee Note to Rule 4, Rules
17 Governing Habeas Corpus Cases, 28 U.S.C. § 2254 foll. (1976) (quoting *Aubut v. Maine*, 431
18 F.2d 688, 689 (1st Cir.1970).
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1 **POINT ONE**

2 **THE MOTION RAISES NO ARGUMENT COGNIZABLE UNDER RULE 4 AND**
3 **SHOULD BE STRICKEN AND DENIED**

4 The Summary Dismissal portion of Rule 4 permits meritorious motions to be presented to
5 the court in instances where a petitioner has failed to set forth facts sufficient to make out a claim
6 for a constitutional violation. Here, facts sufficient are plainly pleaded. The Motion to Dismiss
7 is nothing more than what appears to be a cookie-cutter response filed in every matter as to each
8 claim. Perhaps this was the reason why the court specifically directed respondents in [DE 20] to
9 address in district case law favorable to this petitioner in its reply; rather than just their “standard”
10 motion to dismiss.
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12 The motion makes no legitimate claim of insufficient factual pleading at all. Rather, it sets
13 forth what the Respondents’ may feel is a defense to each claim, albeit defenses repeatedly
14 rejected by this court and overwhelmingly rejected nationwide.
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16 Because this court ordered Respondents to respond by either filing an answer or an
17 appropriate motion, that distinguishes this case from the overwhelming case law that supports this
18 petition, and the fact that the purported defenses raised in the motion have repeatedly been
19 rejected by this court, Petitioner prays this court not only deny the motion, but also strike it as not
20 conforming in anything but its title. Respondents, who have the full resources of the nation at
21 their fingertips, cannot be permitted to file cut and paste, frivolous filings that do not apply to a
22 given case or order and deemed to have satisfied their obligation pursuant to a judicial order.
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1 **POINT TWO**

2 **THIS COURT HAS REPEATEDLY REJECTED RESPONDENTS' ARGUMENT**
3 **RECLASSIFYING PETITIONER AS A PERSON SUBJECT TO MANDATORY**
4 **DETENTION**

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6 Respondents maintain a position that has been rejected time after time in this court and
7 others nationwide; that this petitioner is an "alien seeking admission" and is therefore subject to
8 mandatory detention.

9 Until DHS changed its policy in July of 2025, the Government consistently applied §
10 1226(a), not § 1225(b)(2), to noncitizens present and residing in the United States who were
11 detained by an immigration authorities and subject to removal. See *Morales-Flores v. Lyons, et*
12 *al.*, [1:25-CV-01640 – TLN – EFB] [DE 12] at p. 2.

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14 There, as here, petitioner resided in the interior of the United States long after being taken
15 into custody and subsequently released by immigration authorities. Petitioner is a native and
16 citizen of Armenia. He entered the United States a decade ago in 2016 and has remained here
17 peacefully and continuously since that time. At the time of his entry, he was arrested as indicated
18 in the petition, and a custody decision was made to parole him into the country. A copy of his
19 parole admission card is attached to the petition.

20 A decade later, Petitioner has a U.S. citizen wife and children. He has no criminal history
21 whatsoever. He has no arrests, no convictions, and no pending criminal matters to speak of. He
22 has an approved I-130, filed by his U.S. citizen wife. A Form 485 was filed to lawfully adjust his
23 status and a marriage interview was scheduled for October 30, 2025. Petitioner attended the
24 interview with his wife in pursuit of lawful adjustment. Petitioner was taken into custody on
25 October 30, 2025 while at his marriage interview, without notice, or other warrant in violation of
26 the re-detention processes required by applicable regulations. His liberty was taken without and in
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1 violation of due process, and he is suffering irreparable harm as defined by the Supreme Court of
2 the United States.

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

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

6 **“(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).**

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22 The new DHS policy has been deemed unlawful and petitioner is not subject to mandatory
23 detention.

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

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4 **POINT THREE**

5 **RESPONDENTS’ ARGUMENT THAT PETITIONER HAS NO LIBERTY INTEREST**
6 **IS MERITLESS AND ARGUABLY DISINGENUOUS**

7 The Due Process Clause of the Fifth Amendment prohibits government from depriving an
8 individual’s life, liberty, or property without due process of law. *Hernandez v. Session*, 872 F.3d
9 976, 990 (9th Cir. 2017). The Due Process Clause applies to all “persons” within the borders of
10 the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)
11 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including noncitizens,
12 whether their presence here is lawful, unlawful, temporary, or permanent.”). These rights extend
13 to immigration proceedings, including deportation proceedings. *Id.* at 693–94; *Demore v. Kim*,
14 538 U.S. 510, 523 (2003).

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

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24 This petitioner has a substantial liberty interest based on his release a decade ago by
25 immigration authorities in 2016, akin to the liberty of a parolee as established in *Morrissey v.*
26 *Brewer*. (ECF No. 2-2 at 20–21 (citing 408 U.S. 471, 481–82 (1972) and relied upon by this court
27 in *Morales-Flores*, *supra*. A noncitizen release from custody pending immigration proceedings has
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1 a protected liberty interest in remaining out of custody. *Salcedo Aceros*, 2025 WL 2637503, at *6,
2 see also *Morales-Flores*, supra. To determine whether an individual's conditional release rises to
3 the level of a protected liberty interest, this court has cited to *Morrissey* and "compar[ed] the
4 specific conditional release in the case before (the court) with the liberty interest in parole as
5 characterized by *Morrissey*." *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL
6 2617255, at *3 (E.D. Cal. Sept 9, 2025). Here, the Court must find, consistent with *Morales-Flores*
7 and *R.D.T.M.*, given the fact that this petitioner was also in the country, lawfully on parole, seeking
8 lawful status through lawful adjustment through his wife, and was in fact at the marriage interview
9 near the end of the adjustment of status process. This Petitioner developed "enduring attachments
10 of normal life" as described in *Morrissey*, 409 U.S. at 482. Over the last decade, Petitioner has
11 built a life, marriage, a family, including his parents who hare here, and a community in California.
12 Petitioner here, as in *Morales-Flores* was released from immigration authorities which created a
13 reasonable expectation that he would be entitled to retain his liberty absent a material change in
14 circumstances. Just as in *Morales Flores*, this Petitioner has not been arrested or charged with any
15 crimes in violation of that release.
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19 Pursuant to this court's prior holdings, the court must find this Petitioner, in a position
20 indistinguishable from that in *Morales-Flores*, (save for having accrued a liberty interest for three
21 time than the exemplary petitioner, *Morales*. *Morales-Flores* was living in America post-release
22 for 7 years; this petitioner has lived here peacefully post release for 10 years). The court must
23 therefore hold that he does in fact have a liberty interest in his release from immigration detention
24 protected by the Due Process Clause as it has for defendants before him so situated.
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1 **POINT FOUR**

2 **DHS POLICY UPDATES DO NOT ABROGATE THE EXISTING CODE OF**
3 **FEDERAL REGULATIONS, SPECIFICALLY 8 C.F.R. § 241.13(i)(3)**

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

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21 8 C.F.R. § 241.13(i)(3); *see e.g. Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL
22 2791778, at *5 (E.D. Cal. Aug. 20, 2025).

23 Therefore, whether DHS policy now seeks to reclassify a certain group of persons is of no
24 moment to the matter at hand, in instances of re-arrest and re-detention, because the regulation is
25 still the law. Unless and until this provision of the Code of Federal Regulations is changed, after
26 notice and opportunity for public comment, and full compliance with the Administrative
27 Procedures Act, ICE is required to abide by the written code that provides for limits to its powers
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1 and for the Due Process of individuals subject to its power. That said, this new DHS policy should
2 never be applied retroactively to individuals who have already been detained and released. It is
3 impossible to reconcile this new policy with the existing regulations. Therefore, unless and until
4 this provision of the C.F.R. are changed, the application of the “new policy” to individuals in
5 Petitioner’s circumstance is and will continue to be unlawful. See *J.L.R.P. v. Wofford*, 1:25-cv-
6 01464-KES-SKO.
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8 **CONCLUSION**

9 Consistent with this court’s prior rulings, this court must respectfully GRANT each and
10 every claim in the Amended Petition filed on behalf of A. Nersisyan, and all the relief requested
11 therein, including his immediate release.
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15 Dated: 3/23/26

16 Respectfully submitted,
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