

1 BRIAN SCOTT GREEN, CO Bar # 56087

2 BrianGreen@greenUSimmigration.com

3 LAW OFFICE OF BRIAN GREEN

4 8700 E Jefferson Avenue, #370021

5 Denver, CO 80237

6 TEL: (443) 799-4225

7 Attorney for Petitioner Baiarta Batuev

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10
11 BAIARTA BATUEV

12 Petitioner, :

13
14 -against- :

15 WARDEN, FLORENCE SERVICE PROCESSING
16 CENTER; :

**PETITION FOR
WRIT OF HABEAS
CORPUS**

17 JOHN CANTU, ACTING PHOENIX FIELD OFFICE
18 DIRECTOR, ENFORCEMENT AND REMOVAL
19 OPERATIONS, U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT (ICE); :

No.

20 TODD M. LYONS, ACTING DIRECTOR, U.S.
21 IMMIGRATION AND CUSTOMS ENFORCEMENT
22 (ICE); :

Agency Case No.


23 KRISTI NOEM, IN HER OFFICIAL CAPACITY AS
24 SECRETARY OF THE UNITED STATES
25 DEPARTMENT OF HOMELAND SECURITY; :

26 Respondents. :

27
28 Petition for Writ of Habeas Corpus - 1

INTRODUCTION


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2
3 1. This case concerns the illegal arrest and the illegal subsequent detention of
4 Petitioner, Baiarta Batuev (“Mr. Batuev”), a thirty-two-year-old father of a
5 two-year-old U.S. citizen autistic child and unborn child due in
6 approximately two months, and asylum seeker who fled Russia. Mr. Batuev
7 entered the United States almost four years ago and has done everything the
8 government asked him to do: he followed the process in the United States for
9 people seeking asylum outside of court proceedings, timely filed his asylum
10 application, received his work authorization. Yet, on September 9, 2025, after
11 living in the U.S. for almost four years, the Department of Homeland
12 Security (“DHS”) began to summarily remove him through expedited
13 removal before he could meaningfully access relief through court
14 proceedings.
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19 2. Mr. Batuev's arrest and detention are wholly unjustified and unrelated to
20 any individualized consideration of Mr. Batuev's circumstances. When he
21 presented himself with his wife at the southern border in February 2022,
22 DHS allowed him to enter. He had already been living in the country for
23 almost four years, with the knowledge and approval of DHS. DHS did not
24 place him into immigration court, and so Petitioner began his affirmative
25 asylum process with USCIS. Yet, on September 9, 2025, the government
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27

1 reversed course and required him to undergo a credible fear interview, three
2 and a half years after his entry.

3
4 3. The typical removal proceedings for noncitizens like Mr. Batuev, who had
5 been living in the country for almost four years, are commonly referred to as
6 Section 240 proceedings and governed by 8 U.S.C. § 1229(a)—where non-
7 citizens are afforded procedural rights. The purpose of the credible fear
8 interview, even three and a half years after his arrival, was to facilitate
9 expedited removal pursuant to 8 U.S.C. 1225(b)(1) —a process that is
10 initiated outside immigration court and deprives non-citizens of the
11 procedural protections built into Section 240 proceedings. In order to
12 summarily remove Petitioner, as DHS was able to do, it fast-tracked his
13 process.
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16
17 4. Petitioner, Baiarta Batuev (“Mr. Batuev”), is a citizen and national of
18 Russia.

19
20 5. Mr. Batuev left Russia with his wife, Mrs. Darima Batueva. The family
21 entered the United States on or about February 1, 2022, at San Ysidro Port
22 of Entry, as a unit, after fleeing Russia because the Petitioner 

23
24  the Russian law enforcement,

25 

26 .
27

1 6. On February 1, 2022, Mr. Batuev was issued a humanitarian parole pursuant
2 to 8 U.S.C. § 1185(d)(5), section 212(d)(5) of the Immigration and
3 Nationality Act (“INA”).
4

5 7. Mr. Batuev was also issued Form I-94 # [REDACTED], affirming his
6 admission as parolee, with an issuance date February 1, 2022.
7

8 8. When the family entered into the United States in February 2022, they were
9 processed and then travelled to Brooklyn, New York, to live there.

10 9. Mr. Batuev has been present in the United States for almost 4 years.

11 10. Mr. Batuev was not initially placed into removal proceedings.

12 11. After entry, Mr. Batuev timely filed asylum Form I-589 with the U.S.
13 Citizenship and Immigration Services (“USCIS”) on January 27, 2023,
14 because he was not yet issued a Notice to Appear in the immigration court.
15 USCIS received his application I-589 on January 30, 2023, and issued a
16 receipt notice on March 16, 2023, for Petitioner’s asylum case.
17

18 12. On August 2, 2023, Petitioner was granted his initial work authorization in
19 connection with his pending asylum application.
20

21 13. On July 16, 2023, Mr. Batuev and his wife Darima became parents of their
22 first child, S.B. He just recently turned two, and he is a U.S. Citizen.
23 Unfortunately, S.B. has been diagnosed with Autism Spectrum Disorder
24 (“ASD”). He has difficulty sleeping, eating and cries very frequently. Mr.
25
26
27

1 Batuev has always been there for his wife and son and supported them in
2 any way possible.
3

4 14. In 2025 Mr. Batuev's wife Darima became pregnant with their second child,
5 she is currently twenty-nine (29) weeks pregnant with an estimated delivery
6 date of February 19, 2026. Darima's pregnancy is dangerous and
7 complicated due to her 8 mm right obstructive ureteral stone and
8 hydronephrosis that poses a significant risk of sepsis, obstruction and severe
9 renal colic. Her condition causes her frequent emergency hospitalizations.
10 And given their son S.B.'s required extensive daily care due to his ASD, Mr.
11 Batuev's presence home is essential. His detention causes negative impact
12 on well-being of three human beings.
13

14 15. Despite living in the United States for almost four years, having his family
15 here and close ties to the community, and despite having been issued
16 humanitarian parole in 2022, USCIS cancelled Mr. Batuev's pending asylum
17 case. USCIS also required him to undergo a credible fear interview on
18 September 9, 2025, with USCIS in Bethpage, New York.
19

20 16. Mr. Batuev's immigration attorney attempted to reschedule and/or cancel the
21 credible fear interview based on agency's improper reading of 8 U.S.C. §
22 1225 and a recent federal court decision that enjoined the government's
23 attempt to extend expedited removal to parolees, finding that policy contrary
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1 to the statute. *See Coalition for Humane Immigrant Rights (CHIRLA) v.*
2 *Noem*, No. 1:25-cv-00872 (D.D.C.)

3
4 17. USCIS instructed Mr. Batuev to write and submit a request for continuance
5 on the spot. After internal discussions, they denied his request and required
6 him to proceed with the interview.

7
8 18. After the interview was done, Enforcement and Removal Operations
9 (“ERO”) detained him on September 9, 2022.

10
11 19. Mr. Batuev was transferred from New York to New Jersey, then from New
12 Jersey to Louisiana, and then from Louisiana to Florence, Arizona on
13 September 15, 2025. *See Exhibit A, ICE Detainee Locator Results.*

14
15 20. He has been unlawfully detained for nearly three months since September 9,
16 2025. *Id.*

17
18 21. Expedited removal is an extraordinary procedure that allows removal from
19 the United States with little to no due process. While expedited removal has
20 historically been used only for people in the process of seeking admission at
21 a port of entry or for people encountered in the country a short time after
22 entry within a 100 miles of a land border, who had “not been admitted or
23 paroled into the United States”, on January 21, 2025, the administration
24 decided to expand the scope of expedited removal to include individuals
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1 throughout the United States who have been continuously present here for
2 less than two years.

3
4 22. On January 23, 2025, the administration issued a memorandum
5 implementing the above expansion of expedited removal by directing agency
6 personnel to consider using the fast-track removal authority of any non-
7 citizens eligible for processing through expedited removal, including
8 individuals who had previously been granted parole.

9
10 23. On February 18, 2025, the administration issued a directive that purports to
11 expose individuals paroled into the country at ports of entry to the threat of
12 expedited removal with “no time limit on the ability to process such aliens
13 for ER [expedited removal]”.

14
15 24. On July 8, 2025, DHS issued a new policy memorandum to all employees of
16 Immigration and Customs Enforcement (Hereinafter “ICE”) stating that
17 “[t]his message serves as notice that DHS, in coordination with the
18 Department of Justice (Hereinafter “DOJ”), has revisited its legal position on
19 detention and release authorities. DHS has determined that section 235 of
20 the Immigration and Nationality Act (INA), rather than section 236, is the
21 applicable immigration detention authority for all applicants for admission.
22 The following interim guidance is intended to ensure immediate and
23 consistent application of the Department’s legal interpretation while
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1 additional operational guidance is developed.” Memorandum, U.S.
2 Immigration & Customs Enft, *Interim Guidance Regarding Detention*
3 *Authority for Applications for Admission* (July 8, 2025), available at AILA
4 Doc. No. 25071607, [https://www.aila.org/ice-memo-interim-guidance-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
5 [regarding-detention-authority-for-applications-for-admission.](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
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7
8 25. Through his pending asylum application, Mr. Batuev will have the
9 opportunity to become a lawful permanent resident, and his removal is not
10 reasonably foreseeable due to a pending application for relief.

11
12 26. On September 12, 2025, the U.S. Court of Appeals for the District of
13 Columbia Circuit denied the government’s request to stay the district court’s
14 order to stay to protect those paroled into the Unites States from expedited
15 removal. The ruling left in place the district court’s order issued on August
16 1, 2025, finding that the government’s practice of targeting people who were
17 issued humanitarian parole for expedited removal was unlawful.
18

19
20 27. On September 19, 2025, ERO and on September 29, 2025, Phoenix
21 Outreach denied Mr. Batuev Humanitarian Parole request (twice) as “an
22 alien present without admission or parole”, however, in February 2022 he
23 was paroled in the United States under § 212(d)(5).
24

25 28. On November 21, 2025, Mr. Batuev requested a custody re-determination
26 from an immigration judge. However, it was denied as the immigration
27

1 judge found it did not have jurisdiction to review his custody
2 redetermination due to a new policy memo and *Matter of Yajure Hurtado*,
3 29 I&N Dec. 216 (BIA 2025) holding that everyone present in the United
4 States who did not enter with a valid visa is subject to mandatory detention
5 under 8 U.S.C. § 1225(b)(2)(A).
6

7
8 29. Petitioner's detention pursuant to § 1225(b) violates the plain language of
9 the INA and its implementing regulations. Petitioner, who was apprehended
10 in the interior of the U.S., should not be considered an "applicant for
11 admission" who is "seeking admission." Rather, he should be detained
12 pursuant to 8 U.S.C. § 1226(a), which was DHS's initial determination for
13 Mr. Batuev when he was released in 2022.
14

15
16 30. Even if DHS is not clear on how to designate Mr. Batuev, in February 2022
17 he was paroled under § 212(d)(5) and released. Given his conditional parole
18 he, therefore, cannot be classified as an arriving alien.
19

20 31. Through this petition, Mr. Batuev asks this Court to find that Respondent
21 has unlawfully detained him under § 1225(b)(2)(A), because he was issued a
22 humanitarian parole and is not subject to expedited removal. Mr. Batuev
23 asks this Court to immediately release him from custody in accordance with
24 the initial custody determination made in 2022. *Zadvydas v. Davis*, 533 U.S.
25 678, 687-88 (2001).
26
27

JURISDICTION & VENUE

1
2 32. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas
3 corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the
4 United States Constitution (Suspension Clause), and the Immigration and
5 Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*

6
7 33. Venue is proper because the Petitioner is detained at the Florence Service
8 Processing Center, 3250 North Pinal Parkway, Florence, AZ 85132, now
9 remains detained. *See* ICE Detainee Locator; *See also generally Rumsfeld v.*
10 *Padilla*, 542 U.S. 426, 447 (2004) (generally, “[w]henver a § 2241 habeas
11 petitioner seeks to challenge his present physical custody within the United
12 States,” he must file the petition in the district of confinement and name his
13 immediate custodian as the respondent).

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16
17 **PARTIES**

18 34. Petitioner Mr. Batuev is a thirty-two-year-old citizen and national of Russia.
19 He resides at 1357 85th St., Fl.1, Brooklyn, NY 11228 with his 29 weeks
20 pregnant wife and a two-year-old autistic son. He has been in ICE custody
21 since September 9, 2025, at the Florence Correctional Center, 1100 Bowling
22 Rd., Florence, AZ 85132. *See* Exhibit A.

23
24 35. Respondent WARDEN, FLORENCE SERVICE PROCESSING CENTER IS NAMED
25 IN HIS OR HER OFFICIAL CAPACITY AS PETITIONER’S PHYSICAL CUSTODIAN.
26
27

1 36. Respondent John Cantu is named in his official capacity as the Acting
2 Director of the Phoenix, AZ Field Office of Enforcement and Removal
3 Operations (ERO), U.S. Immigration and Customs Enforcement (ICE).
4 Respondent Cantu is a legal custodian of the Petitioner and has the authority
5 to release him.
6

7
8 37. Respondent Todd M. Lyons is named in his official capacity as the Acting
9 Director of ICE. He administers and enforces the immigration laws of the
10 United States, routinely conducts business in the District of Arizona, is
11 legally responsible for pursuing efforts to remove the Petitioner, and as such
12 is the custodian of the Petitioner. At all times relevant hereto, Respondent
13 Lyons' address is ICE, Office of the Principal Legal Advisor, 500 12th St.
14 SW, Mail Stop 5900, Washington DC 20536-5900.
15
16

17 38. Respondent Kristi Noem is named in her official capacity as the Secretary of
18 Homeland Security in the United States Department of Homeland Security.
19 In this capacity, she is responsible for the administration of immigration
20 laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007);
21 routinely transacts business in the District of Arizona; is legally responsible
22 for pursuing any effort to detain and remove the Petitioner; and as such is a
23 custodian of the Petitioner. At all times relevant hereto, Respondent Noem's
24 address is U.S. Department of Homeland Security, Office of the General
25
26
27

1 Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-
2 0485.
3

4 **LEGAL BACKGROUND**

5 39. Section 2241 of 28 United States Code provides in relevant part that
6 “[w]rits of habeas corpus may be granted by . . . the district courts
7 within their respective jurisdictions” when a petitioner “is in custody in
8 violation of the Constitution or laws or treaties of the United States.” 28
9 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305,
10 121 S. Ct. 2271 (2001).
11

12 40. District courts grant writs of habeas corpus to those who demonstrate
13 their custody violates the Constitution or laws of the United States. 28
14 U.S.C. § 2241(c)(3).
15

16 41. Habeas corpus “entitles [a] prisoner to a meaningful opportunity to
17 demonstrate that he is being held pursuant to ‘the erroneous application
18 or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723,
19 779, 128 S. Ct. 2229 (2008) (*quoting, St. Cyr*, 533 U.S. at 302).
20

21 42. The Fifth Amendment’s Due Process Clause protects the right of all
22 persons to be free from “depriv[ation] of life, liberty, or property, without
23 due process of law.” U.S. Const. amend. V.
24

25 43. “It is well established that the Fifth Amendment entitles aliens to due
26 process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006
27

1 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439
2 (1993)).

3
4 44. “Freedom from imprisonment—from government custody, detention, or
5 other forms of physical restraint—lies at the heart of the liberty that [the
6 Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

7
8 *A. Legal Framework of Removal Proceedings*

9 45. USCIS, through the Asylum Office, has initial jurisdiction over
10 Petitioner’s asylum application when no Notice to Appear is initially
11 filed with the immigration court. When USCIS has jurisdiction, they
12 are under an obligation to adjudicate each complete application by
13 interview under 8 C.F.R. § 208.9(a), either by granting asylum under
14 8 C.F.R. § 208.14(b), referring the case to the immigration court, or,
15 in limited circumstances, dismissing the case.
16

17
18 46. Asylum regulations contemplate a dismissal for failure to appear at an
19 interview or failure to comply with fingerprint requirements. *See* 8
20 C.F.R. § 208.10. The regulations make clear that those are the only
21 two reasons to dismiss an asylum application. Notably, dismissal for
22 a credible fear interview is not listed.
23

24 47. 8 C.F.R. § 208.14, titled “Approval, Denial, Referral, or Dismissal of
25 Application,” also speaks to when DHS can dismiss applications.

26
27 Specifically, 8 C.F.R. § 208.14(c) states:

1 48. “If the asylum officer does not grant asylum to an applicant **after an**
2 **interview conducted in accordance with § 208.9**, or if, as provided in §
3 208.10, the applicant is deemed to have waived his or her right to an
4 interview or an adjudication by an asylum officer, the asylum officer shall
5 deny, refer, or dismiss the application, as follows.” 8 U.S.C. § 208.14(c).
6

7
8 49. The regulation goes on to list four sections. However, dismissal must occur
9 after an interview in accordance with §208.9.

10 50. Section 240 removal proceedings provide non-citizens with an
11 opportunity to be heard in full immigration court hearings before an
12 Immigration Judge. 8 U.S.C. § 1229(a) sets out the procedures and
13 rights afforded to non-citizens in Section 240 removal proceedings.
14 These include: “the privilege of being represented . . . by counsel of
15 the alien’s choosing who is authorized to practice in such
16 proceedings” 8 U.S.C. § 1229a(4)(A) and “a reasonable opportunity
17 to examine the evidence against the alien, to present evidence on the
18 alien’s own behalf, and to cross-examine witnesses presented by the
19 Government.” 8 U.S.C. § 1229a(4)(B).
20
21
22

23 51. Decisions made by “Immigration Judges may be appealed to the
24 Board of Immigration Appeals.” 8 C.F.R. § 1003.38(a). Final orders
25 of removal may be appealed to the Federal Court of Appeals for the
26 judicial circuit in which the respective Section 240 proceedings
27

1 terminate. See 8 U.S.C. § 1252.

2 52. The statutorily guaranteed procedures and rights in Section 240
3 proceedings are significantly more expansive than those available to
4 non-citizens designated for expedited removal under 8 U.S.C. § 1225.
5

6 53. Traditionally, non-arriving noncitizens living in the United States
7 were only subject to removal proceedings under 8 U.S.C. § 1229(a),
8 not the fast-track expedited removal process under § 1225.
9

10 54. Unlike Section 240 proceedings, expedited removal is a process that
11 begins—and often concludes—outside of immigration court. Non-
12 citizens subjected to expedited removal are ordered removed by an
13 immigration officer “without further hearing or review.” 8 U.S.C. §
14 1225(b)(1)(A)(i).
15

16 55. The lone exception to this rule is that if a non-citizen indicates an
17 intention to apply for asylum or a fear of persecution, the officer
18 “shall refer the alien for an interview by an asylum officer” to
19 conduct a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(i)-(ii). If
20 the asylum officer determines that an alien does not have a credible
21 fear of persecution, the officer shall order the alien removed from the
22 United States without further hearing or review.” 8 U.S.C. §
23 1225(b)(1)(B)(iii)(I). Upon a non-citizen’s request, an immigration
24 judge shall expeditiously review a determination “that the alien does
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26
27

1 not have a credible fear of persecution.” 8 U.S.C. §
2 1225(b)(1)(B)(iii)(III).

3
4 *B. Expansion of Expedited Removal*

5 56. Since expedited removal was created nearly three decades ago,
6 federal immigration authorities have focused the use of expedited
7 removal in limited circumstances: to non-citizens who are seeking
8 admission at a port of entry, who have been apprehended near the
9 border shortly after they entered the country, or who arrive in the
10 United States by sea. 20. However, on January 21, 2025, DHS issued
11 a Federal Register Notice, to be published in the Federal Register on
12 January 24, 2025, that authorizes the application of expedited
13 removal to certain non-citizens arrested anywhere in the country who
14 cannot show “to the satisfaction of an immigration officer” that they
15 have been continuously present in the United States for longer than
16 two years. U.S. Dep’t of Homeland Sec., Designating Aliens for
17 Expedited Removal (Jan. 21, 2025), [https://public-](https://public-inspection.federalregister.gov/2025-01720.pdf)
18 [inspection.federalregister.gov/2025-01720.pdf](https://public-inspection.federalregister.gov/2025-01720.pdf) (“Rule”). The effective
19 date of the Rule was January 21, 2025.

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23
24 57. The Enforcement Discretion Memo directs DHS to affirmatively
25 evaluate if individuals’ parole should be terminated. Officers are
26 directed to consider applying expedited removal to people whose
27

1 parole DHS terminates and to people whose § 240 removal
2 proceedings DHS moves to terminate, as well as to any other person
3 who is “amenable to expedited removal but to whom expedited
4 removal has not been applied.” *Id.* In February, Immigration and
5 Customs Enforcement (ICE) issued a directive (ICE ER Directive),
6 ordering officers to consider for expedited removal all noncitizens
7 previously released by Customs and Border Protection (CBP) who
8 have not affirmatively applied for asylum, including paroled “arriving
9 [noncitizens]”.

10
11
12
13 58. The administration takes the position that expedited removal applies
14 to people like Petitioner, who entered the United States without the
15 inspection, were initially encountered at entry, even if they have spent
16 more than two years in the United States. In other words, the
17 administration believes that a person is forever eligible for expedited
18 removal because they entered without inspection.

19
20 59. As a result, non-citizens like Petitioner who have been continuously
21 present in the country for more than two years, can be summarily
22 removed.

23
24 *C. Detention Authority*

25
26 60. The INA prescribes three basic mechanisms for detention for non-
27 citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for

1 admission, § 1226 the default detention statute, and § 1231 for post-
2 final order detention.

3
4 61.If a non-citizen passes a credible fear interview, they are permitted to
5 apply for asylum through Section 240 proceedings. See 8 U.S.C. §
6 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

7
8 62.The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as
9 part of the Illegal Immigration Reform and Immigrant Responsibility Act
10 (“IIRIRA”) of 1996, Pub. L. No. 104-208. Div. C, §§ 302-03, 110 Stat.
11 3009-546, 300-582 to 3009-583, 3009-585. Section 1226 was most
12 recently amended earlier this year by the Laken Riley Act, Pub. L. No.
13 119-1, 139 Stat. 3 (2025).

14
15 63.Following the enactment of the IIRIRA, the U.S. Department of Justice’s
16 Executive Office of Immigration Review (“EOIR”) drafted new
17 regulations explaining that, in general, people who entered the country
18 without inspection were not considered detained under § 1225 and that
19 they were instead detained under § 1226(a). See Inspection and
20 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct
21 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,
22 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens
23 who are present without having been admitted or paroled (formed
24 referred to as aliens who entered without inspection) will be eligible for
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27

1 bond and bond redetermination”).

2 64. Thus, the INA distinguishes between non-citizens seeking entry into the
3 United States and those “already in the country.” *See Jennings v.*
4 *Rodriguez*, 583 U.S. 281, 289 (2018).

5
6 65. In the decades that followed, most people who entered without
7 inspection and were thereafter detained and placed in standard removal
8 proceedings were considered for release on bond and also received bond
9 hearings before an Immigration Judge (“IJ”), unless their criminal
10 history rendered them ineligible. That practice was consistent with many
11 more decades of prior practice, in which noncitizens who had entered the
12 United States, even if without inspection, were entitled to a custody
13 hearing before an IJ or other hearing officer. In contrast, those who were
14 stopped at the border were only entitled to release on parole. *See* 8
15 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 220
16 (1996) (noting that § 1226(a) simply “restates” the detention authority
17 previously found at § 1252(a)).

18
19
20
21 66. Section 1225(b)(1) provides for mandatory detention of non-citizens
22 subject to its provisions—that is, a non-citizen “arriving in the United
23 States” who seeks to apply for admission. Applicants who indicate a
24 fear of persecution if returned to their country of origin “shall be
25 detained pending a final determination of credible fear of persecution
26
27

1 and, if found not to have such a fear, until removed.” §
2 1225(b)(1)(B)(iii)(IV). Applicants who do demonstrate a credible fear
3 “shall be detained for further consideration of the application for
4 asylum.” § 1225(b)(1)(B)(ii). Detention is “mandate[d] . . . throughout
5 the completion of applicable proceedings and not just until the moment
6 those proceedings begin.” *Jennings*, 583 U.S. at 302. Under the
7 statute, applicants are not entitled to a bond hearing. *See Id.* at 301.

10 67. Section 1225(b)(1) applies to a non-citizen who *is* arriving in the
11 United States or a port of entry may be placed into expedited removal
12 proceedings if the Department of Homeland Security determines that
13 they are inadmissible under §§ 212(a)(6)(C), fraud or
14 misrepresentation, or 212(a)(7), lack of valid entry document and the
15 non-citizen is either *arriving* in the United States, has not been
16 admitted or paroled into the United States, and cannot show that they
17 have been continuously present in the United States for two years. *See*
18 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

22 68. On January 23, 2025, Acting DHS Secretary Benjamine Huffman
23 issued a memo entitled “Guidance Regarding How to Exercise
24 Enforcement Discretion,” (Enforcement Discretion Memo). *See* DHS,
25 Memorandum on Guidance Regarding How to Exercise Enforcement
26 Discretion (Jan. 23, 2025),
27

1 https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-
2 [parole-guidance.pdf](https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf). This Memo directs DHS to consider placing
3 additional noncitizens who are already in the United States into
4 expedited removal in light of the January 2025 expansion. The
5 Enforcement Discretion Memo directs DHS to affirmatively evaluate
6 if individuals' parole should be terminated. Officers are directed to
7 consider applying expedited removal to people whose parole DHS
8 terminates and to people whose § 240 removal proceedings DHS
9 moves to terminate, as well as to any other person who is "amenable
10 to expedited removal but to whom expedited removal has not been
11 applied." *Id.* at 2.
12
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14

15 69. Under 8 C.F.R. § 235.3(b)(1)(ii), if the government seeks to
16 implement expedited removal against a noncitizen physically
17 present in the interior, it may do so only where the individual has **not**
18 established, to the satisfaction of the immigration officer, that they
19 have been continuously physically present in the United States for the
20 two-year period immediately preceding the inadmissibility
21 determination.
22
23

24 70. Under 8 C.F.R. § 235.3(b)(6), if the government seeks to implement
25 expedited removal against a noncitizen, that noncitizen "will be given
26 a reasonable opportunity to establish to the satisfaction of the
27

1 examining immigration officer that he or she was admitted or paroled
2 into the United States following inspection at a port-of-entry.”

3
4 71. In contrast, § 1226(a) governs the detention of non-citizens “already
5 present in the United States.” *Jennings*, 583 U.S. at 303. It includes non-
6 citizens who have never been legally admitted. *See Id.* at 287 (explaining
7 that § 1226(a) governs “aliens who were inadmissible at the time of
8 entry.” (citing 8 U.S.C. § 1227(a)). Under that provision, the Attorney
9 General has the discretion to arrest and detain a non-citizen “[o]n a
10 warrant . . . pending a decision on whether the alien is to be removed.” §
11 1226(a). The detainee may be released on bond or conditional parole, §
12 1226(a)(2), except if certain enumerated categories (not applicable here)
13 apply, § 1226(c). Federal regulation further requires that § 1226(a)
14 detainees “receive bond hearings at the outset of detention.” *Jennings*,
15 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

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19 72. On July 8, 2025, however, DHS stated a new position with
20 regard to custody determinations as follows:

21
22 An “applicant for admission” is an alien present in the United
23 States who has not been admitted or who arrives in the United
24 States, whether or not at a designated port of arrival. INA §
25 235(a)(1). **Effective immediately, it is the position of DHS that**
26 **such aliens are subject to detention under INA § 235(b) and**
27 **may not be released from ICE custody except by INA §**
28 **212(d)(5) parole.** These aliens are also ineligible for a custody
redetermination hearing (“bond hearing”) before an immigration
judge and may not be released for the duration of their removal

1 proceedings absent a parole by DHS. For custody purposes, these
2 aliens are now treated in the same manner that “arriving aliens”
3 have historically been treated. **The only aliens eligible for a**
4 **custody determination and release on recognizance, bond, or**
5 **other conditions under INA § 236(a) during removal**
6 **proceedings are aliens admitted to the United States and**
7 **chargeable with deportability under INA § 237, with the**
8 **exception of those subject to mandatory detention under INA**
9 **§ 236(c).**

10 Moving forward, ICE will not issue Form I-286, Notice of
11 Custody Determination, to applicants for admission because Form
12 I-286 applies by its terms only to custody determinations under
13 INA § 236 and part 236 of Title 8 of the Code of Federal
14 Regulations. With a limited exception for certain habeas
15 petitioners, on which the Office of the Principal Legal Advisor
16 (OPLA) will individually advise, if Enforcement and Removal
17 Operations (ERO) previously conducted a custody determination
18 for an applicant for admission still detained in ICE custody, ERO
19 will affirmatively cancel the Form I-286. *See*
20 [https://www.aila.org/ice-memo-interim-guidance-regarding-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
21 [detention-authority-for-applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (emphasis
22 original).

23 73. As a result, according to DHS, all noncitizens who have entered the
24 United States, including those who were issued humanitarian and
25 conditional parole, are subject to the grounds of inadmissibility,
26 including long-time U.S. residents, and are now considered to be subject
27 to mandatory detention under INA § 235(b) and ineligible for release on
28 bond. Conversely, according to DHS, “[only aliens eligible for a custody
determination and release on recognizance, bond, or other conditions
under INA § 236(a) during removal proceedings are aliens admitted to
the United States and chargeable with deportability under INA § 237,

1 with the exception of those subject to mandatory detention under INA §
2 236(c).” *Id.*

3
4 74. Prior to July 8, 2025, the predominant form of detention authority for
5 anyone arrested in the interior of the United States was 8 U.S.C. §
6 1226(a).

7
8 75. Under § 1226(a), the Attorney General may release a detainee on bond
9 on the authority of ICE or by an Immigration Judge. There are standards
10 for release: bond is available if the detainee “demonstrate[s] . . . that
11 such release would not pose a danger to property or persons, and that
12 [he] is likely to appear for any future proceeding.” 8 C.F.R. §36.1(c)(8).
13 “[T]he immigration judge is authorized to exercise the authority . . . to
14 detain the alien in custody, release the alien, and determine the amount
15 of bond.” *Id.* § 236.1(d)(1). If denied release at the initial bond hearing, a
16 § 1226(a) detainee may request a custody redetermination hearing before
17 an IJ. That request will “be considered only upon a showing that the
18 alien’s circumstances have changed materially.” *Id.* §1003.19(e).

19
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21
22 76. As a result, any “[r]elease” of a noncitizen “reflects a determination by
23 the government that the noncitizen is not a danger to the community or a
24 flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal.
25 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th
26 Cir. 2018).

1 77. Statutory and regulatory provisions governing re-arrest also depend on the
2 manner of release. Under the text of the INA and federal regulations, certain
3 DHS officials “at any time may revoke a bond or [conditional] parole
4 authorized under [§ 1226(a)], rearrest the [noncitizen] under the original
5 warrant, and detain the [noncitizen].” 8 U.S.C. § 1226(b); see 8 C.F.R. §
6 236.1(c)(9). For decades, however, DHS has had a consistent policy and
7 practice of re-detaining noncitizens in removal proceedings only when the
8 individual circumstances related to their flight risk or danger to the
9 community had materially changed.
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13 78. This Circuit has stated that conditional parole “provides a mechanism
14 whereby an [noncitizen] may be released pending the determination of
15 removal, as long as she is not a ‘danger to persons or property’ and ‘is likely
16 to appear for any further proceeding.’” Delgado-Sobalvarro v. Attorney Gen.
17 of U.S., 625 F.3d 782, 787 (3d Cir. 2010); See also Matter of Castillo-
18 Padilla, 25 I&N Dec. 257, 261 (BIA 2010).
19
20

21 79. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by
22 requiring authorization from a high-level official within the field office. By
23 regulation, such revocations of release from custody may only be carried out
24 in the “discretion of the district, acting district director, deputy director,
25 assistant district director for investigations, assistant district director for
26
27

1 detention and deportation, or officer in charge (except foreign).” 8 C.F.R. §
2 236.1(c)(9).
3

4 80. Additionally, despite “the breadth of [the] statutory language” in 8 U.S.C. §
5 1226(b), the federal government’s authority is subject to “an important
6 implicit limitation”: It cannot lawfully re-arrest or re-detain someone
7 without “a material change in circumstances.” *Saravia*, 280 F. Supp. 3d at
8 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A.
9 1981).
10

11
12 81. In the immigration context, this limitation means that a person who
13 immigration authorities released from initial custody cannot be re-arrested
14 “solely on the ground that he is subject to removal proceedings,” without
15 some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the
16 Fourth Amendment, which applies to seizures by immigration authorities,
17 prohibits such re-arrests, which courts have long held could result in
18 “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249,
19 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in
20 circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422
21 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal
22 context to “limit” scope of immigration agents’ seizure authority); *Gonzalez*
23 *v. United States Immigr. & Customs Enf’t*, 975 F.3d 788, 817 (9th Cir. 2020)
24
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1 (Fourth Amendment limits apply equally to seizures in criminal and civil
2 immigration context). The same applies here.

3
4 82. This prohibition also derives from fundamental constitutional principles
5 enshrined in the Due Process Clause of the Fifth Amendment. “Freedom
6 from imprisonment—from government custody, detention, or other forms of
7 physical restraint—lies at the heart of the liberty that [the Due Process]
8 Clause protects.” Zadvydas v. Davis, 533 U.S. 678, 690 (2001). And those
9 due process protections extend to “all ‘persons’ within the United States,
10 including [noncitizens], whether their presence here is lawful, unlawful,
11 temporary, or permanent.” Hernandez v. Sessions, 872 F.3d 976, 990 (9th
12 Cir. 2017) (quoting Zadvydas, 533 U.S. at 693).

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14
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16 83. “The touchstone of due process is protection of the individual against
17 arbitrary action of government,” Wolff v. McDonnell, 418 U.S. 539, 558
18 (1974), including “the exercise of power without any reasonable justification
19 in the service of a legitimate government objective,” Cnty. of Sacramento v.
20 Lewis, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil
21 detention—including immigration detention—bear a “reasonable relation” to
22 a non-punitive purpose. See Jackson v. Indiana, 406 U.S. 715, 738 (1972).

23
24
25 84. The Supreme Court has recognized only two permissible non-punitive
26 purposes for immigration detention: ensuring a noncitizen’s appearance at
27

1 immigration proceedings (or, in the case of a removal order, at removal);
2 and preventing danger to the community. Zadvydas, 533 U.S. at 690-92; see
3 Demore v. Kim, 538 U.S. 510, 519-20, 527-28, 531 (2003). It has also held
4 that, in general, these purposes may not be assessed on a blanket or
5 categorical basis. Instead, immigration custody decisions generally must be
6 based on an “individualized determination” of flight risk and danger to the
7 community. See INS v. Nat’l Ctr. for Immigrants’ Rts., Inc., 502 U.S. 183,
8 194 (1991); see also Zadvydas, 533 U.S. at 690; R.I.L-R v. Johnson, 80 F.
9 Supp. 3d 164, 188 (D.D.C. 2015).


10
11
12
13 85. Moreover, individuals who are released from government custody have a
14 protected liberty interest in remaining out of custody. The government’s
15 decision to release an individual from custody creates “an implicit promise”
16 that their liberty “will be revoked only if [they] fail[] to live up to the . . .
17 conditions [of release].” Morrissey, 408 U.S. at 482.

18
19
20 86. Accordingly, in the criminal context, the Supreme Court has repeatedly
21 recognized that re-detention after some form of conditional release requires
22 a pre-deprivation hearing. Young v. Harper, 520 U.S. 143, 152 (1997) (re-
23 detention after pre-parole conditional supervision); Gagnon v. Scarpelli, 411
24 U.S. 778, 782 (1973) (same, in probation context); Morrissey v. Brewer, 408
25 U.S. 471 (1972) (same, in parole context).

1 87. These principles apply with at least equal force to people released from civil
2 immigration detention. After all, noncitizens living in the United States have
3 a protected liberty interest in their ongoing freedom from confinement. *See*
4 *Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil context [of immigration
5 detention], [the] liberty interest [of noncitizens released from custody] is
6 arguably greater than the interest of parolees.” *Ortega v. Bonnar*, 415 F.
7 Supp. 3d 963, 970 (N.D. Cal. 2019).
8


9
10 88. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and
11 re-detain noncitizens for no reason at all, it would raise serious constitutional
12 questions under both the Fourth Amendment and the Due Process Clause.
13

14 **STATEMENT OF THE FACTS**

15 89. Mr. Batuev is a thirty-two-year-old male with no criminal history. He is a
16 native and a citizen of Russia. Mr. Batuev resides at 
17 Brooklyn, NY 11228, with his family, twenty-nine (29) week pregnant wife,
18 Mrs. Darima Batueva and their two-year-old autistic son, S.B., a U.S.
19 Citizen. *See* Exhibit B, Declaration.
20

21
22 90. On February 1, 2022, Mr. Batuev entered the United States with his wife,
23 Mrs. Batueva by presenting himself at the San Ysidro port of entry and
24 requesting asylum. He gave a sworn statement and was released from
25 custody under § 1182(d)(5)(A) parole. *Id.*
26

1 91. Mr. Batuev was authorized, in accordance with 8 U.S.C. § 1182(d)(5)(A),
2 for release, and he was paroled under INA §23(a), 8 U.S.C. § 1226(a), and
3 ICE determined that the Petitioner was neither a flight risk nor a danger to
4 the community. Mr. Batuev indicated his intention to apply for asylum,
5 claiming a fear of returning to Russia.
6

7
8 92. Mr. Batuev was also issued Form I-94 # , affirming his
9 admission as parolee, with an issuance date of February 1, 2022.

10 93. Mr. Batuev timely filed asylum with the U.S. Citizenship and Immigration
11 Services (“USCIS”) on January 27, 2023, because he was not yet issued a
12 Notice to Appear in the immigration court. USCIS received his application
13 I-589 on January 30, 2023, and issued a receipt notice on March 16, 2023,
14 for Petitioner’s asylum case. *Id.*
15
16

17 94. On July 16, 2023, Mr. Batuev and his wife Darima became parents of their
18 first child, S.B. Batuev. He just recently turned two, and he is a U.S. Citizen.
19 Unfortunately, S.B. has been diagnosed with Autism Spectrum Disorder
20 (“ASD”). He has difficulty sleeping, eating and cries very frequently. Mr.
21 Batuev has always been there for his wife and son and supported them in
22 any way possible. *Id.*
23
24

25 95. On August 2, 2023, Petitioner was granted his initial work authorization in
26 connection with his pending asylum application. *Id.*
27

1 96. In 2025 Mr. Batuev's wife Darima became pregnant with their second child,
2 she is currently twenty-nine (29) weeks pregnant with an estimated delivery
3 date of February 19, 2026. Darima's pregnancy is dangerous and
4 complicated due to her 8 mm right obstructive ureteral stone and
5 hydronephrosis that poses a significant risk of sepsis, obstruction and severe
6 renal colic. Her condition causes her frequent emergency hospitalizations.
7
8 And given their son S.B.'s required extensive daily care due to his ASD, Mr.
9 Batuev's presence home is essential. His detention causes negative impact
10 on well-being of three human beings. *Id.*

11
12
13 97. Mr. Batuev has no criminal history. *Id.*

14 98. Despite living in the United States for almost four years, having his family
15 here and close ties to the community, and despite having been issued
16 humanitarian parole in 2022, USCIS cancelled Mr. Batuev's pending asylum
17 case. USCIS also required him to undergo a credible fear interview on
18 September 9, 2025, with USCIS in Bethpage, New York. *Id.*

19
20
21 99. Mr. Batuev's immigration attorney attempted to reschedule and/or cancel the
22 credible fear interview based on agency's improper reading of 8 U.S.C. §
23 1225 and a recent federal court decision that enjoined the government's
24 attempt to extend expedited removal to parolees, finding that policy contrary
25
26
27

1 to the statute. See Coalition for Humane Immigrant Rights (CHIRLA) v.
2 Noem, No. 1:25-cv-00872 (D.D.C.)

3
4 100. USCIS instructed Mr. Batuev to write and submit a request for
5 continuance on the spot. After internal discussions, they denied his request
6 and required him to proceed with the interview.

7
8 101. After the interview was done, Enforcement and Removal Operations
9 (“ERO”) arrested and processed him under 8 U.S.C. § 12125(b)(1), and
10 detained Mr. Batuev on September 9, 2022.

11
12 102. Mr. Batuev presented a lawful work authorization and driver’s
13 license. He was, nonetheless arrested, detained, and transferred into ICE
14 custody without reasonable suspicion of a crime or civil immigration
15 violation.
16

17 103. Mr. Batuev was transferred from New York to New Jersey, then from
18 New Jersey to Louisiana, and then from Louisiana to Florence Service
19 Processing Center, Arizona on September 15, 2025. *See* Exhibit A.
20

21 104. He has been unlawfully detained for nearly three months since
22 September 9, 2025. *Id.*

23
24 105. While detained, Mr. Batuev received a positive Credible Fear
25 Interview (“CFI”).
26
27

1 106. Mr. Batuev requested twice to be released on humanitarian parole,
2 given his wife's complicated twenty-nine-week pregnancy and a two-year
3 old autistic son, who is a U.S. citizen. However, on September 19, 2025,
4 ERO and on September 29, 2025, Phoenix Outreach denied Mr. Batuev's
5 Humanitarian Parole requests.
6

7
8 107. Mr. Batuev requested a bond redetermination hearing, and the
9 Florence Immigration Court heard his case on November 21, 2025.

10 108. The Immigration Judge denied Mr. Batuev's request for bond, holding
11 that it did not have jurisdiction to grant bond under Matter of Yajure
12 Hurtado, 29 I&N Dec. 216 (BIA 2025).
13

14 109. Mr. Batuev's wife, whose is twenty-nine (29) weeks pregnant and is
15 experiencing pregnancy complications as well as his two-year old autistic
16 U.S. citizen son dependent on him, and his attorney are in the New York
17 area.
18

19
20 110. Without relief from this Court, Mr. Batuev faces continued detention
21 and fast-track removal under 8 U.S.C. § 1225(b)(1) from the United States
22 without the possibility of an individualized bond hearing.
23
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27

CLAIM FOR RELIEF

**I. VIOLATION OF 8 U.S.C. § 1226(a), § 1226(b)(1), MANDATORY
DETENTION FOR THOSE SEEKING ADMISSION**

111. Petitioner restates and re-alleges all paragraphs as if fully set forth here.

112. In February 2022, Mr. Batuev initially presented himself for inspection upon entry. CBP arrested and detained him. On February 1, 2022, CBP issued him a humanitarian parole and a few days later he was released from custody. Mr. Batuev was paroled under INA § 236(a), 8 U.S.C. § 1226(a), and ICE determined that the Petitioner was neither a flight risk, nor a danger to the community.

113. Because DHS previously exercised its statutory parole authority under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A), and issued a Petitioner an I-94 reflecting parole, the government lacks authority to place him in expedited removal or to detain him under § 1225(b)'s mandatory provisions. Congress explicitly limited expedited removal to arriving aliens in inspection and to certain noncitizens "who have not been admitted or paroled". 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Petitioner's parole therefore removes him from § 1225(b), and any custody must proceed, if at all, under § 1226(a).

1 114. At the time of Petitioner's re-arrest in September 2025, Petitioner had
2 been living in the United States for over three and a half years, had a
3 pending asylum application with USCIS, and a work permit.
4

5 115. Therefore, the Petitioner was not subject to detention pursuant to §
6 1225(b), and any custody must proceed, if at all, under § 1226(a).
7

8 116. In September 2025, Mr. Batuev was apprehended again even though
9 he did not violate the terms of his release under humanitarian parole. At this
10 time, DHS subjected him to detention under § 1225(b), stating that he is
11 subject to mandatory detention.
12

13 117. Petitioner may only be detained, if at all, pursuant to 8 U.S.C. §
14 1226(a).
15

16 118. DHS has already made a custody determination under 8 U.S.C. §
17 1226(a), and ordered his release from detention back in February of 2022.
18

19 119. Petitioner's continuing detention is therefore unlawful.
20

21 **II. CONTINUED DETENTION CONSTITUTES A VIOLATION OF DUE**
22 **PROCESS**

23 120. Petitioner incorporates all factual allegations as though restated here.

24 121. ICE detained Mr. Batuev without reasonable suspicion and continues
25 to do so in violation of his constitutional rights protected under the Fifth
26 Amendment.
27

1 122. The Due Process Clause of the Fifth Amendment forbids the
2 government from depriving any person of liberty without due process of
3 law. U.S. Const. amend. V.
4

5 123. “Freedom from imprisonment—from government custody, detention,
6 or other forms of physical restraint—lies at the heart of the liberty that [the
7 Due Process] Clause [of the Fifth Amendment] protects.” *Zadvydas*, 533
8 U.S. at 690.
9

10 124. Mr. Batuev’s detention violates his Fifth Amendment rights for at
11 least three related reasons.
12

13 125. First, immigration detention must always “bear[] a reasonable relation
14 to the purpose for which the individual was committed.” *Demore v. Kim*,
15 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
16

17 126. Whereas here, the government has ordered humanitarian parole to
18 apply for asylum, in which the Petitioner did, detention is not reasonably
19 related to its purpose. Respondents cannot simply re-arrest and re-detain
20 Petitioner for no reason at all.
21

22 127. The Government’s authority to arrest a non-citizen and revoke their
23 release is proscribed by the Due Process Clause because it is well-
24 established that individuals released from incarceration have liberty interest
25 in their freedom. To protect that interest, due process requires notice and
26
27

1 hearing, prior to any re-arrest, at which hearing the individual is afforded the
2 opportunity to advance their arguments as to why their release should not be
3 revoked.
4

5 128. Second, the Due Process Clause requires that any deprivation of Mr.
6 Batuev's liberty be narrowly tailored to serve a compelling government
7 interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due
8 process "forbids the government to infringe certain 'fundamental' liberty
9 interests at all, no matter what process is provided, unless the infringement is
10 narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at
11 528 (applying less rigorous standard for "deportable aliens").
12

13
14 129. Petitioner's on-going imprisonment does not satisfy that rigorous
15 standard as he did not commit any crime, was released from custody with a
16 humanitarian parole, and had a pending asylum that was unlawfully
17 cancelled.
18

19
20 130. Third, "the Due Process Clause includes protection against unlawful
21 or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718
22 (2001) (Kennedy, J., dissenting).
23

24 131. Detaining Mr. Batuev was arbitrary because he had been initially
25 issued a humanitarian parole, has authorization to work in the United States,
26 and has no criminal arrests or convictions.
27

1 132. Mr. Batuev was initially detained under §1225(b)(1), but that was
2 cancelled when CBP issued his humanitarian parole, allowing him to
3 affirmatively file with USCIS for asylum-related relief.
4

5 133. This is true for Mr. Batuev.

6 **III. VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5**
7 **U.S.C. § 706(2)(A) – THE PETITIONER’S RE-DETENTION IS**
8 **ARBITRARY AND CAPRICIOUS**
9

10 134. Petitioner repeats and re-alleges the allegations contained in all
11 preceding paragraphs of this Complaint as if fully set forth herein.
12

13 135. The Administrative Procedure Act provides that Courts “shall ... hold
14 unlawful and set aside agency action” that is “arbitrary [and] capricious, ...
15 or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A).
16

17 136. Petitioner’s re-detention is reviewable as final agency action because
18 it is neither tentative nor interlocutors, and legal consequences flow from
19 Petitioner’s re-detention.
20

21 137. By statute and regulation as interpreted by BIA, ICE has the authority
22 to re-arrest a non-citizen and revoke their release pending the outcome of
23 removal proceedings only when there has been a change in circumstances
24 since the individual’s initial release. *See Panosyan v. Mayorkas*, 865
25 F.App’x 787, 788 (9th Cir. 2021); *Matter of Sugay*, 17 I&N Dec. 647, 640
26
27

1 (BIA 1981). Additionally, changed circumstances must be “material”.

2 Saravia v. Barr, 280 F. Supp. 3D 1168, 1197 (N.D. Cal. 2017), aff’d su nom.

3
4 Saravia for A.H. V. Sessions, 906 F.3D 1137 (9th Cir. 2018).

5 138. Defendants provide no reasoned or adequate explanation for re-
6 detaining Petitioner, who, since his release from ICE custody in February
7 2022, had filed his asylum application, received work authorization, paid
8 taxes, and complied with the terms of his release. See Encino Motorcars,
9 LLC v. Navarro, 579 U.S. 211, 222 (2016).

10
11 139. In re-detaining Petitioner, now without the ability for bond,
12 Respondents failed to adequately consider important aspects of relevant
13 factors, including the constitutional limitations on the government’s
14 authority to re-arrest and re-detain, and the reliance interests of the Petitioner
15 in understanding that with his release, he could not be re-arrested absent
16 some violation of the bond conditions.

17
18
19
20 **PRAYER FOR RELIEF**

21 Wherefore, Petitioner respectfully requests this Court to grant the following:

- 22 A. Assume jurisdiction over this matter;
- 23 B. Order Respondents to Show Cause why this Petition should not be
24 granted within seventy-two hours;
- 25 c. Issue an Order preventing Respondents from removing him from the
26 United States without notice and an opportunity to be heard;
- 27

- 1 D. Declare that his detention violates the Due Process Clause of the Fifth
2 Amendment;
3
4 E. Issue a Writ of Habeas Corpus ordering Respondents to release him
5 immediately;
6
7 F. Award to him his reasonable attorney's fees and costs pursuant to the
8 Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9 G. Grant to him any further relief this Court deems just and proper.

10 Dated: December 8, 2025

11
12 Respectfully Submitted,

13
14 /s/ Brian Scott Green

15 *Brian Scott Green
16 Colorado Bar ID # 56087
17 Law Office of Brian Green
18 8700 E Jefferson Avenue
19 #370021
20 Denver, CO 80237

21 Tele: (443) 799-4225

22 BrianGreen@greenUSimmigration.com

23 *Seeking admission *pro hac vice*

/s/ Veronica Cardenas (with permission)

*VERONICA CARDENAS

New Jersey State Bar No. 02205-2010

Cardenas Immigration Law

2 Arnot Street

Suite 6, Unit 122

Lodi, NJ 07644

Tele: 201.470.4549

veronica.cardenas@cardenasimmigrati
onlaw.com

*Motion for admission *pro hac vice*
forthcoming

Attorneys for Petitioner

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

I, Brian Scott Green, hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 8th of December, 2025.

/s/Brian Scott Green
Brian Scott Green