



Protection officers. Ms. Foladi explained to the agents that she feared returning to Afghanistan. The agents released Ms. Foladi on his own recognizance, pending her immigration proceedings. She was not required to post bond or wear an ankle monitor.

2. Following her release, Ms. Foladi lived in Bowling Green, Kentucky, and then later Tucson, Arizona, where she located pro bono undersigned counsel.
3. She was included as a derivative on her husband's asylum application, which was denied asylum by the Immigration Judge on November 6, 2024. They timely filed an appeal to the Board of Immigration Appeals on November 22, 2024. That appeal remains pending.
4. Nonetheless, on December 4, 2025, ICE detained Ms. Foladi at a routine reporting appointment in Tucson, Arizona.
5. ICE is unlawfully subjecting Ms. Foladi to re-detention without a pre-deprivation hearing.
6. Ms. Foladi does not have any active warrants or negative criminal history that would change the circumstances from her initial custody determination made in January 2023, when she was released.
7. Ms. Foladi does not have a final order of removal. As such, Ms. Foladi's detention is a violation of her due process rights as guaranteed by the Fifth Amendment.
8. Ms. Foladi respectfully requests the Court to grant her a Writ of Habeas Corpus, and to order her to be released immediately. Such relief is proper under 23 U.S.C. § 2241, the vehicle for challenging civil immigration detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

9. In the alternative, Ms. Foladi asks the Court to order Respondents to “show cause why the writ should not be granted” within three days as prescribed by 28 U.S.C. § 2243.
10. Accordingly, to vindicate Petitioner’s constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

**JURISDICTION**

11. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).
13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

14. Venue is proper because Petitioner is detained at the Eloy Detention Center in Eloy, Arizona, which is within the jurisdiction of this District.
15. Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events or omissions giving rise to his claims occurred in this District and Petitioner resides in this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

16. The Court must grant the petition for writ of habeas corpus or issue an order to

show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).



#### PARTIES

18. Petitioner is an applicant for asylum. Petitioner is currently detained at Eloy Detention Center. She is in the custody, and under the direct control, of Respondents and their agents.
19. Respondent Christopher Howard is the Warden of Eloy Detention Center, and he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Howard is a legal custodian of Petitioner.
20. Respondent Chris McGregor is sued in his official capacity as the Acting Director of the Phoenix Field Office of U.S. Immigration and Customs Enforcement. Respondent McGregor is a legal custodian of Petitioner and has authority to release her.
21. Respondent Todd Lyons is sued in his official capacity as the Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of

Petitioner and has authority to release her.

22. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.
23. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

**STATEMENT OF FACTS**

24. Petitioner is a 29-year-old citizen of Afghanistan. She fled Afghanistan   
 She is married. She has resided peacefully in the United States since January of 2023.
25. Ms. Foladi arrived in the United States on January 30, 2023. She was released on her own recognizance after she entered without inspection and admission, seeking asylum in the United States.
26. She and her husband applied for asylum affirmatively, as the Department of Homeland Security had not yet issued their Notices to Appear. Eventually, her

application was forwarded to the Executive Office for Immigration Review after her Notice to Appear was filed in the Memphis Immigration Court. *See* Ex. D-E.

27. Ms. Foladi and her husband moved to Tucson, Arizona, where they had located undersigned pro bono counsel for their removal proceedings.
28. On April 16, 2024, the Immigration Judge held an individual hearing on the merits of Ms. Foladi's husband's application for asylum, withholding of removal, and relief under the Convention Against Torture. *see* 8 U.S.C. §§ 1158(b)(1)(A) (asylum application), 241(b)(3)(B) (withholding of removal application), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85, 113; S. Treaty Doc. No. 100-20 (1988). Ms. Foladi was included as a derivative on that application. Additional argument was requested regarding Ms. Foladi's husband's statutory eligibility for asylum, specifically relating to 8 U.S.C. § 1158(b)(2)(A)(vi) (firm resettlement exception to asylum eligibility).
29. After additional argument was provided to the Immigration Judge, their application for asylum was denied. *See* Ex. C. They timely filed their appeal, citing an erroneous interpretation of the law by the immigration judge in their notice of appeal. *See* Ex. B, F.
30. Ms. Foladi has no criminal history anywhere in the world. She has been detained now twice by the Department of Homeland Security, once upon entry in January 2023, and again as detailed in the following paragraphs.
31. On December 4, 2025, Ms. Foladi was called in for a routine check-in with Immigration and Customs Enforcement at the Tucson Field Office. However, she

and her husband were detained and taken to Florence, Arizona at that appointment, and only given the reason that “headquarters” decided she and her husband should be detained, and that they would have to wait for their “court hearing” in detention.

32. When Ms. Foladi saw her husband be placed in handcuffs, she was so shocked and afraid that she lost consciousness. Medical professionals attended her, telling her she could either receive attention at the hospital, or stay in ICE detention with her husband. Terrified of being separated from her spouse, Ms. Foladi opted to stay in ICE detention with her husband. Three months ago, Ms. Foladi had surgery on her kidney. She is still suffering the aftereffects, including pain in her kidney and back. She has not received halal food, in accordance with her Islamic faith, while in detention. Ms. Foladi is of Afghan origins, and her detention occurs in the wake of massive shifts in immigration policy, including a pause on all application adjudications for Afghan nationals, due to a shooting that occurred two weeks ago, allegedly committed by an individual of Afghan origins. *See Ex. G.*
33. Oral argument has not been requested for Petitioner’s appeal to the Board of Immigration Appeals. *See Ex. F.* Therefore, there is no scheduled hearing in Petitioner’s pending application for asylum.
34. No circumstances have changed in Ms. Foladi’s case to justify her re-detention after she had already been released by the Department of Homeland Security following her initial arrest in January of 2023.
35. Ms. Foladi is not a danger to the community, nor is she a flight risk. The Department has failed to demonstrate that either of those reasons were the basis for her re-detention, in violation of Ms. Foladi’s due process rights.

## LEGAL FRAMEWORK

36. Ms. Foladi is challenging her re-detention without a bond hearing as a violation of the Due Process Clause of the Fifth Amendment.

### Statutory Detention Framework

37. Two statutes – 8 U.S.C. §§ 1225 and 1226 – provide for the detention of noncitizens (or “aliens”) pending removal proceedings.
38. Under § 1225, a noncitizen “who ‘arrives in the United States,’ or ‘is present’ in this country but ‘has not been admitted,’ is treated as an applicant for admission.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8 U.S.C. § 1225(a)(1)).
39. All noncitizens “who are applicants for admission,” or who are “otherwise seeking admission or readmission to or transit through the United States[,] shall be inspected by immigration officers” to assess whether they may be admitted into the country. 8 U.S.C. § 1225(a)(3). An inspecting officer must then determine whether an applicant for admission is covered by either § 1225(b)(1) or § 1225(b)(2). *See Jennings*, 583 U.S. at 287.
40. Section 1225(b)(1) applies to noncitizens who, upon arriving, are initially deemed inadmissible under 8 U.S.C. § 1225(b)(1)(A)(i). It also applies to certain noncitizens designated by the Attorney General who are later determined to be inadmissible under § 1182(a)(6)(C) or (a)(7) and were not continuously present in the United States for the two-year period prior to that determination. *See id.* § 1225(b)(1)(A)(iii). Section 1225(b)(2) covers all other “applicant[s] for admission” who are “seeking admission,” with limited exceptions not applicable here. *See id.* § 1225(b)(2)(A), (B).

41. Subsections (b)(1) and (b)(2) both authorize detention pending removal proceedings in certain circumstances. Noncitizens covered by § 1225(b)(1) are subject to an expedited removal process and will be “removed from the United States without further hearing or review” unless they claim a right to asylum. *Id.* § 1225(b)(1)(A)(i)-(ii).
42. If a noncitizen states an intent to apply for asylum and an immigration officer determines that there is a credible fear of persecution, the noncitizen “shall be detained for further consideration of the application for asylum. *Id.* § 1225(b)(1)(B)(ii).
43. Noncitizens covered by § 1225(b)(2) are not subject to expedited removal. Instead, they are placed in standard removal proceedings under § 1229a, which include an evidentiary hearing before an immigration judge, the right to counsel, and the right to seek review by the Board of Immigration Appeals (BIA) and a federal court of appeals. *Id.* § 1225(b)(2)(A); *Dep’t of Homeland Sec. v. Thuraissigam*, 591 U.S. 103, 108 (2018); *see also Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at \*1 (N.D. Cal. Sept. 26, 2025) (describing the greater procedural protections available to noncitizens in standard removal proceedings).
44. Section 1225(b)(2) mandates that noncitizens “shall be detained” pending such proceedings unless they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).
45. The government may release noncitizens detained under either § 1225(b)(1) or (b)(2) only on temporary parole “for urgent humanitarian reasons or significant public benefit.” *Jennings*, 583 U.S. at 300; *see* 8 U.S.C. § 1182(d)(5)(A).

46. For noncitizens who are already in the country, § 1226 permits detention “pending the outcome of removal proceedings” in certain circumstances. *Jennings*, 583 U.S. at 289. Unlike § 1225(b)(1) and (b)(2), § 1226 affords the government significant discretion. After arresting a noncitizen “[o]n a warrant issued by the Attorney General,” the government “may continue to detain the arreste[e]” until a final removal decision is made or “may release” them on “bond” or “conditional parole.” 8 U.S.C. § 1226(a)(1)—(2).
47. “Conditional parole” may also be called “release on recognizance.” *See Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007). Section 1226 prohibits the release of a detained noncitizen, whether on bond or conditional parole, unless the noncitizen “satisfies [the government] that [she] will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceeding.” 8 U.S.C. § 1226(a)(4); *see also* 8 C.F.R. § 1236.1(c)(8). If a noncitizen wishes to contest the initial custody determination—i.e., the denial or amount of bond—she has a right to do so before an immigration judge. 8 C.F.R. § 1236.1(d)(1). “The noncitizen’s bond or parole can be revoked at any time, even if the noncitizen was previously released; however, if an [immigration judge] has determined the noncitizen ‘should be released, the DHS may not re-arrest that noncitizen absent a change in circumstance.” *Valencia Zapata v. Kaiser*, 2025 WL 2741654, at \*2 (quoting *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 WL 2637503, at \*1 (N.D. Cal. Sept. 12, 2025)). In a parallel case in this District, the Court found that “[a]lthough ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released form

custody they have a protected liberty interest in remaining out of custody.” *Rosado v. Figueroa*, 2025 WL 2337099, at \*12 (D. Ariz. Aug. 11, 2025).

48. In a handful of circumstances, § 1226 departs from its discretionary framework to mandate detention. *See* § 1225(c) (mandatory detention for noncitizens who are inadmissible or deportable because they committed certain criminal offenses, are inadmissible based on security concerns, or are inadmissible on certain bases and have been charged, arrested, or convicted for specified crimes).

### **Due Process Framework**

49. The Court analyzes the claim “in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution.” *Garcia v. Andrews*, No. 2:25-cv-01884-TLN-SCR, 2025 WL 1927586, at \*2 (E.D. Cal. July 14, 2025) (citing *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)).

### **Protected Liberty Interest**

50. A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147-49 (1997). Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute. *See id.* (Due Process requires pre-deprivation hearing before revocation of preparole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (same, in parole context).

51. To determine whether a specific conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted).
52. In *Morrissey*, the Supreme Court explained that parole “enables [the parolee] to do a wide range of things open to persons” who have never been in custody or convicted of any crime, including to live at home, work, and “be with family and friends and to form the other enduring attachments of normal life.” *Morrissey*, 208 U.S. at 482. “Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens,” such as monitoring and seeking authorization to work and travel, his “condition is very different from that of confinement in a prison.” *Id.* “The parolee has relied on at least an implicit promise that parole will be revoked only if [she] fails to live up to the parole conditions.” *Id.* The revocation of parole undoubtedly “inflicts a grievous loss on the parolee.” *Id.* (quotations omitted). Therefore, the parolee possesses a protected interest in his “continued liberty.” *Id.* at 481-84.
53. Petitioner’s release is similar. The Department of Homeland Security released petitioner in 2023 after determining that he did not pose a flight risk or danger to the community. Petitioner was able to provide for himself and his wife. He has attended all of his hearings and timely notified the administrative court of his changes in address. His situation in the United States since January of 2023 has

been “very different from that of confinement in a prison.” *Morrissey*, 408 U.S. at 482.

54. Thus, petitioner has a protected liberty interest in his release. *See Guillermo M.R. v. Kaiser*, No. 25-cv-05436-RFL, 791 F.Supp.3d 1021, 1030 (N.D. Cal July 17, 2025) (recognizing that “the liberty interest that arises upon release [from immigration detention] is *inherent* in the Due Process Clause”); *Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 WL 1771438, at \*3 (N.D. Cal. June 26, 2025) (collecting cases finding that noncitizens who have been released have a strong liberty interest).

***Mathews* Balancing**

55. The court must then determine what process is due before the government may terminate petitioner’s liberty.
56. The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

424 U.S. 319, 335 (1976); *See Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context). A proper weighing of these factors demonstrates that the petitioner should be provided a pre-deprivation bond hearing where the government bears the burden of proof.

57. Turning to the first *Mathews* factor, the petitioner has a significant private interest in remaining free from detention. “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 v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has been out of custody since 2023, she has no criminal history, and she has not committed any offense that would warrant modification of her release on recognizance since January of 2023, as she has attended her hearings and reported her address changes. *See Morrissey*, 408 U.S. at 482-84.

58. Second, the risk of an erroneous deprivation of liberty in these circumstances is considerable. *See Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263, at \*6 (N.D. Cal. Aug. 21, 2025); *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 495 (N.D. Cal. Aug. 13, 2025). Civil immigration detention, which is “nonpunitive in purpose and effect[,]” is justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigration and Customs Enforcement*, 704 F.Supp.3d 1163, 1172 (W.D. Wash. Dec. 4, 2023). “[B]ecause petitioner’s substantial liberty interest is at stake, due process [] requires [the government] to prove by clear and convincing evidence that [petitioner] is a flight risk or danger to the community *before* depriving [him] of that liberty, even though petitioner already has other procedures available to him. *Ramirez Clavijo*, 2025 WL 2419263, at \*6 (emphasis added); *see Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018) (invoking due process principles and explaining that “the substantial liberty interest at stake” warranted placing the burden on the government to “prove by clear and convincing evidence that an alien is a flight risk or a danger to the community to justify denial of bond.”). Petitioners have no

upcoming hearing, as her asylum matter is currently pending administrative appeal before the Board of Immigration Appeals, and no oral argument was requested. Board of Immigration Appeals decisions are taking a very long time. There is no reason to detain petitioner arbitrarily now, after she has followed the conditions of her release for almost three years prior to her most recent detention.

59. Third, the government's interest in detaining petitioner without a hearing is "low." *Ortega*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe v. Barrera*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at \*6 (E.D. Cal. Mar. 3, 2025). In immigration court, custody hearings are routine and impose a "minimal" cost. *Id.* at \*6. Although the government does have an interest in detaining noncitizens who are a danger to the community, and "there may be [some] situations that urgently require arrest[,] . . . a pre-deprivation hearing is required to satisfy due process" absent those urgent concerns. *Guillermo M. R. v. Kaiser*, No. 25-cv-05436-RFL, 2025 WL 1983677, at \*9 (N.D. Cal. July 17, 2025). Here, petitioners have no arrests, a singular violation of immigration law as charged in her Notice to Appear, and no changed circumstances that would lead to an urgent need to detain her before a pre-deprivation bond hearing could be held. The government's interest in detaining her without a pre-deprivation hearing is therefore low.
60. On balance, the *Mathews* factors show that petitioner is entitled to a bond hearing, which should have been provided before petitioner was detained. "[T]he root requirement' of the Due Process Clause is "that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting

*Boddie v. Connecticut*, 401 U.S. 371, 379 (1971)). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See Morrissey*, 408 U.S. at 480-86. The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

61. Numerous district courts have held that these principles extend to the context of immigration detention. *See Guillermo M.R. v. Kaiser*, 791 F.Supp.3d at 1030; *Rosado v. Figueroa*, No. 25-cv-02157-PHX-DLR, 2025 WL 2337099, at \*12 (Aug. 11, 2025).
62. Thus, Ms. Foladi's due process rights were violated when she was detained prior to any pre-deprivation hearing.

#### **CLAIMS FOR RELIEF**

##### **COUNT ONE**

##### **Violation of Fifth Amendment Right to Due Process**

1. The allegations in the above paragraphs are realleged and incorporated herein.
2. Petitioner was re-detained after her release on her own recognizance in January of 2023 without any pre-deprivation hearing as required by law.
3. For these reasons, Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

#### **PRAYER FOR RELIEF**

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.

- (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
- (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately and to hold a pre-deprivation bond hearing for Petitioner should Respondents opt to take Petitioner into custody again, at which hearing Respondents must demonstrate the changed circumstances warranting Petitioner's re-detention.
- (5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (6) Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ Pamela Rioles

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Dated: December 12, 2025

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

I represent Petitioner, Rahima Foladi, and submit this verification on her behalf. I 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 12th day of December, 2025.

/s/Pamela Rioles  
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