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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Omer Catalbas Petitioner/Plaintiff, vs. CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center; DANIEL BRIGHTMAN, Field Office Director, San Diego Office of Detention and Removal; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; and PAMELA BONDI, Attorney General, U.S. Department of Justice; and KRISTI NOEM, Secretary, U.S. Department of Homeland Security Respondents/Defendants.	Case No.: '25CV3579 LL DDL **PETITION FOR A WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

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Petitioner Omer Catalbas ("Petitioner") petitions this Court for a writ of habeas corpus pursuant to 28 USC §2241 to remedy his unlawful detention and states as follows:

INTRODUCTION

1. Petitioner is a Turkish citizen who entered the U.S. without being admitted or paroled on March 17, 2024. Ex. 1. He was detained by Customs & Border Patrol ("CBP"), then released on his own recognizance after being served with an I-862 Notice to Appear charging him as an "alien present in the United States who has not been admitted or paroled." *See* Ex. 1, 2. He filed an I-589 Application for Asylum and for Withholding of Removal on July 24, 2024. Ex. 3.
2. Over a year after entering the U.S., on June 5, 2025, Petitioner attended his hearing in immigration court in San Diego. Upon exiting the courtroom, he was detained by Immigration and Customs Enforcement ("ICE"), then imprisoned at Otay Mesa Detention Center where he has remained. Ex. 4.
3. At issue is whether Respondents violated Petitioner's due process right to liberty by re-detaining him without notice or hearing after fifteen months living in the interior of the U.S. The second issue is whether Petitioner is detained under 8 USC §1225(b) and thus subject to mandatory detention, or rather, under Section 1226(a) which would result in bond eligibility. The

Department of Homeland Security's own documents related to Petitioner as well as the plain language of 8 USC §1225(b) and §1226 irrefutably show that he is detained pursuant 8 USC §1226(a).

4. Petitioner asks that this Court issue an order to show cause ("OSC") to the Respondents "forthwith," unless Petitioner is not entitled to relief. 28 USC §2243. If an OSC 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.*

5. Petitioner further requests a writ of habeas corpus ordering his immediate release from detention to restore the *status quo ante* and prohibiting his re-arrest without a pre-detention hearing to contest such arrest before a neutral adjudicator at which the government must show by clear and convincing evidence that Petitioner is a flight risk or a public danger, as well a declaratory judgment finding that his detention is pursuant to 8 USC §1226(a).

6. As an alternative to immediate release, Petitioner seeks an order directing that a bond hearing before a neutral arbiter be held within 10 days, and that the government bear the burden of demonstrating by clear and convincing evidence that he is a flight risk or danger to the public.

JURISDICTION AND VENUE

7. Jurisdiction is proper and relief available pursuant to 28 USC §2241 (habeas corpus jurisdiction), 28 USC §1331 (federal question), 28 USC §1346 (U.S. as defendant), and Art. I, §9, Clause 2 of the United States Constitution (the Suspension Clause), and the Administrative Procedure Act, 5 USC §701, *et seq*.

8. This Court may grant relief pursuant to 28 USC §2241 (All Writs Act), and 28 USC §§2201-02 (Declaratory Judgment Act).

9. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioners are currently detained.

10. Venue is also proper in this Court pursuant to 28 USC §1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of California.

CUSTODY AND REQUIREMENTS OF 28 USC §§2241

11. The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (citing U.S. Const., Art I, § 9, Clause 2). "The essence of habeas corpus is an attack by a person in custody upon the legality of that

custody, and . . . the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973). A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. 28 USC §2241(c)(3). Historically, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). A district court's habeas jurisdiction includes challenges to immigration-related detention. *Zadydas v. Davis*, 533 U.S. 678, 687 (2001); *see also Demore v. Kim*, 538 U.S. 510, 517 (2003).

12. Petitioner is "in custody" for the purpose of 28 USC §2241, because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention Center in San Diego, California. He is under Respondents' direct control.

PARTIES

13. Petitioner is a 31-year-old citizen of Turkey detained by Respondents since June 5, 2025. He is currently imprisoned at OMDC under the direct control of Respondents.

14. Respondent Christopher J. LaRose ("LaRose"), named in his official capacity, is the Warden of OMDC. He oversees the day-to-day operations

of, and the confinement of non-citizens detained at, the facility. He is the immediate physical custodian of Petitioner. He acts at the direction of Respondents Brightman, Lyons, and Noem. He is a proper Respondent in this habeas petition under current Ninth Circuit law. *Doe v. Garland*, 109 F.4th 1188, 1197 (9th Cir. 2024).

15. Respondent Daniel Brightman ("Brightman") is the Field Office Director of ICE Enforcement and Removal Operations ("ERO"), a federal law enforcement agency within DHS in San Diego, California. ERO is a division of ICE that manages and oversees the immigration detention system. He is the legal custodian of Petitioner and is named in his official capacity.

16. Respondent Todd M. Lyons ("Lyons") is the Acting Director for ICE and is named in his official capacity. He is responsible for ICE's policies, practices, and procedures, including those relating to the detention of non-citizens charged with being removable from the U.S. As Acting Director of ICE, Lyons is the legal custodian of Petitioner.

17. Respondent Kristi Noem ("Noem") is the Secretary of DHS and has authority over the actions of all other DHS Respondents in this case, as well as all operations and federal agencies of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with faithfully administering the immigration and naturalization laws of the United States. 8

USC §1103. Respondent Noem is the legal custodian of Petitioner and is named in her official capacity.

18. Respondent Pamela Bondi ("Bondi") is the Attorney General of the United States and the most senior official in the U.S. Department of Justice ("DOJ") which encompasses the Board of Immigration Appeals ("BIA") and the immigration courts as sub-units of the Executive Office of Immigration Review ("EOIR"). In this capacity, she has the authority to interpret immigration laws and adjudicate removal and custody cases. As the head of EOIR, she supervises Immigration Judges, including those who preside at OMDC, and can instruct an Immigration Judge ("IJ") to hold a bond hearing. Respondent Bondi is the legal custodian of Petitioner and is named in her official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. There is no statutory requirement to exhaust administrative remedies when noncitizens challenge the lawfulness of their detention. 28 USC §2241.

20. Nevertheless, Petitioner filed a motion for custody redetermination with the immigration court in July 2025 which was denied by the IJ in an Order stating, "Respondent entered on March 17, 2024 without inspection, was detained, and later released on parole. The court finds it does not have jurisdiction to redetermine the bond. . . ." Ex. 5.

21. Two months later, on September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that foreign nationals present in the U.S. without admission (as is Petitioner) are categorically detained pursuant to 8 USC 1225(b) and therefore not entitled to bond. Although Petitioner could file an appeal with the BIA, prudential exhaustion is not mandated when it would be futile and result in irreparable harm. *See McCarthy v. Madigan*, 503 U.S. 140, 146-48 (1992) (superseded by statute on unrelated grounds); *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Here, "pursuit of administrative remedies would be a futile gesture," and "irreparable injury will result" from requiring further pursuit. See *Id.* [quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)].

22. Petitioner cannot be expected to endure the very harm he seeks to avoid by appealing an IJ bond order to the BIA and waiting many more months for a decision. As *Yajure Hurtado* is a precedent decision regarding exactly the issue at hand, an appeal is not mandated. *See Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) ("[W]here the agency's position on the question at issue appears already set, and it is very likely what the result of recourse to administrative remedies would be, such recourse would be futile and is not required.")

23. Every day that Petitioner remains in detention violates his due process right to liberty and constitutes irreparable harm. See *Addington v. Texas*, 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."). To date, Petitioner has already been unlawfully detained for over six months.

24. Absent a federal court order, the immigration court will not conduct a bond hearing for Petitioner. There is no adequate procedure or administrative remedy to address Petitioner's detention excepting a writ of habeas corpus which is now the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and restore his liberty. Without this Court's intervention, he faces indefinite detention during the pendency of his removal proceedings, without the opportunity for release on bond.

LEGAL FRAMEWORK

25. This case presents a challenge to the Government's new policy of mandatory detention of all noncitizens charged with entering the United States without inspection during the entirety of their removal proceedings.

26. The issues in this case are 1) whether a noncitizen once released by DHS has a protected liberty interest of which he cannot be deprived without notice and a pre-detention hearing, and 2) whether persons who have entered the

U.S. and are present without admission or parole are eligible for bond under 8 USC §1226(a) as they have been for decades, or whether they are arriving aliens seeking admission to the U.S. who are ineligible for bond under §1225(b).

A. Petitioner's Protected Liberty Interest

27. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. This protection extends to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (*quoting Zadvydas*, 533 US at 693).

28. These due process rights are both substantive and procedural. Substantive due process thus requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention -- ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92: *see also Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28, 31 (2003).

29. Even when the government has discretion to detain an individual, its subsequent decision to release the individual creates "an implicit promise" that she will be re-detained only if she violates the conditions of her release. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Where DHS releases a noncitizen pending removal proceedings, the noncitizen has a protected liberty interest in remaining out of immigration custody. *See e.g., Prieto-Cordova v. Larose,* No. 3:25-cv-2824, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lucas v. Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal Dec. 4, 2025); *Shen v. Larose,* 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025).

30. For that reason, procedural due process generally "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

31. In the current case, Petitioner was released by DHS on his own recognizance in March 2024, and thereafter re-detained in June 2025. His re-detention violated both his substantive and procedural due process rights, as his detention bears no legitimate, non-punitive purpose and it was not preceded by notice or a pre-detention hearing.

B. Petitioner is Not Subject to Mandatory Detention

1. The Distinction Between 8 USC §1225 and §1226

32. The Immigration & Nationality Act prescribes two forms of detention for noncitizens in removal proceedings conducted pursuant to 8 USC §1229a who have not yet received final orders of removal.

33. The first, 8 USC §1226(a), authorizes the discretionary detention of noncitizens in removal proceedings before an IJ. These individuals are generally eligible for bond, *see* 8 C.F.R. §§1003.19(a), 11226.1(d), excepting those who have been arrested, charged, or convicted of certain crimes who are therefore subject to mandatory detention under §1226(c).

34. The second, 8 USC 1225(b), provides for mandatory detention of other noncitizen applicants for admission who are seeking admission to the U.S. and who are deemed not clearly entitled to be admitted. 8 USC §1225(b)(2).

35. Both detention provisions, §1226(a) and §1225(b)(2), were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. Pub. L. No. 104--208, Div. C, §§302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. 8 USC §1226(c) was most recently amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

36. Following the enactment of the IIRIRA, EOIR drafted new regulations applicable to proceedings before immigration judges explaining that, in

general, people who entered the country without inspection -- also referred to as being "present without admission" -- were not considered detained under §1225, but rather §1226. See *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

37. In the decades that followed, most people who entered the U.S. without inspection and were placed in standard 8 USC §1229a removal proceedings received bond hearings before IJs, unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 USC §1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1 at 229 (1996) [noting that §1226(a) simply "restates" the detention authority previously found at 8 USC §1252(a)].

38. All of this changed on July 8, 2025 with the publication of DHS policy memo *Interim Guidance Regarding Detention Authority for Applicants for Admission*[1] which the BIA thereafter adopted in *Matter of Yajure Hurtado*, in an abrupt and startling upending of established jurisprudence. The Interim

[1] Available at: https://immpolicytracking.org/policies/ice-issues-memoeliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

Guidance and *Yajure Hurtado* mandate that all noncitizens present within the United States who entered without inspection shall now be deemed "applicants for admission" under 8 USC §1225, and therefore subject to mandatory detention under §1225(b)(2)(A). *Yajure Hurtado* ("Based on the plain language of section 1225(b)(2)(A) of the Immigration and Nationality Act . . . Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.")

39. As stated in *E.C. v. Noem*:

> Respondents admit . . . this shift is a substantial and far-reaching break from longstanding agency policy "to routinely release individuals who entered without inspection. . . ." . . . Until this reinterpretation of the statutory scheme by the BIA [in *Yajure*], *millions* of noncitizens had been informed that they could participate in removal proceedings, which can take months or years, out of custody, so long as they could establish they were neither a flight risk nor danger to the community."

2:25-cv-01789, 2025 WL 2916264 (D. Nev. Oct. 15, 2025).

40. The Supreme Court explained in *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), that 8 USC §1226 sets out the "default rule" for noncitizens already present in the country. 583 U.S. at 288. While §1225 "authorizes the Government to detain certain aliens *seeking admission into the country*," §1226 "authorizes the Government to detain certain aliens *already in the*

country pending the outcome of removal proceedings." (emphasis added). *Id.* at 288-289.

41. In the current case, Petitioner entered the U.S. on March 17, 2024, was apprehended by DHS, then released on recognizance into the interior where he lived for fifteen months before being re-detained in June 2025. Exs. 1, 2, & 4. Far from "seeking admission" into the U.S., Petitioner is seeking to *remain* in the U.S.

42. As explained below, Respondents' assertion that §1225(b) applies here, is contrary to DHS' own documents pertaining to Petitioner, as well as the statutory language itself.

2. Respondents' own documents demonstrate that Petitioner is detained pursuant to §1226

43. Documents completed and executed by DHS clearly demonstrate that Petitioner is detained under 8 USC §1226. First, Petitioner's Form I-862 Notice to Appear charges him as "an alien present in the United States who has not been admitted or paroled." Ex. 1. To be clear, the determination that Petitioner is "present in the United States" and not "an arriving alien" was made by Respondents' own agents.

44. As DHS concedes in Petitioner's I-862 Notice to Appear that he is "an alien present in the U.S. without admission or parole," he falls squarely within the

second category referenced in *Jennings*, a noncitizen "already in the country." *Jennings* establishes that it is §1226 that "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." However, that detention is not mandatory and is reviewable by an IJ.

45. Second, DHS issued a Form I-220A Order of Release on Recognizance on March 18, 2024, directing that "in accordance with section 236 of the Immigration and Nationality Act [8 USC §1226] . . . you are being released on your own recognizance." Ex. 2. It is somewhat disingenuous that Respondents would now claim §1225(b) authority, as DHS itself issued Petitioner's I-220A, the very document referencing §1226.

46. As Petitioner was released under §1226(a), "the Government cannot now switch tracks" and claim mandatory §1225(b) authority. *See Shen v. Larose,* 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025); *Lucas v. Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal Dec. 4, 2025).

47. A number of recent decisions from district courts in California have addressed whether persons detained, released on their own recognizance, then later re-detained, are held under §1225 or §1226, and have determined that Sections 1225(b) and 1226(a) are mutually exclusive. In one such case from August 2025, the Northern District found that:

> [w]hether the Government may have had the power to detain Ms. Salcedo Aceros under 1225(b), the reality is that the detention authority consistently applied by the government to Ms. Salcedo Aceros since her arrival in the United States has always been §1226. In 2024, the Government placed Ms. Salcedo Aceros in normal removal proceedings under Sections §1229, not §1225(b)(1), and chose to release her on conditional parole under §1226(a), not hold her in detention under §1225(b)(2). Sections 1226(a) and 1225(b) cannot be applied simultaneously. Their detention regimes are facially inconsistent: one provides for discretionary release with procedural protections, while the other mandates detention without discretion. It is not possible for Ms. Salcedo Aceros to be simultaneously subject to both detention regimes. She was and is subject to Section 1226(a), not 1225(b).

Salcedo Aceros v. Kaiser, et al, 3:25-cv-06924, 2025 WL 2606983 (N.D. Cal. Aug. 16, 2025). *See also Cuevas Guzman v. Andrews, et al*, 1:25-cv-01015, 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025) (Sections 1225 and 1226 are "mutually exclusive — a noncitizen cannot be subject to both mandatory detention under §1225 and discretionary detention under §1226").

48. The Ninth Circuit has also specifically determined that a noncitizen such as Petitioner who is released on recognizance then re-detained is held under §1226. *Ortega-Cervantes*, 501 F.3d 1111, 1115-16 (9th Cir. 2006) ("release on recognizance" is "another name for 'conditional parole' under §1226(a)").

49. Likewise, this very Court, has found that foreign nationals in circumstances similar to Petitioner (detained, charged as an alien present in the US without admission or parole, released on recognizance, then re-detained) were not subject to mandatory detention under §1225(b), because they were "released pursuant to 8 USC §1226(a) on her own recognizance, a form of conditional parole." *N.A. v. Larose, et al*, 25-cv-2384, 2025 WL 2841989 (S.D. Cal. Oct. 7, 2025. *See also Prieto-Cordova v. Larose,* No. 3:25-cv-2824, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lucas v. Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal Dec. 4, 2025); *Faizyan v. Casey*, 3:25-cv-02884, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); *Shen v. Larose,* 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025).

50. The above cases control here, as Petitioner was released by DHS on his own recognizance, and lived in the U.S. for 15 months before being re-detained summarily at his Immigration Court hearing. As Petitioner's own Form I-220A Release on Recognizance which was executed by DHS refer to Section 1226, Petitioner cannot at the same time be detained under Section 1225(b).

3. The Unambiguous Statutory Language Shows that Section 1225(b)(2) does not apply to Petitioner

51. Respondents' interpretation of Section 1225(b) runs afoul of the Supreme Court's interpretation of the relationship between 8 USC §1226 and §1225(b). In *Jennings v. Rodriguez*, the Supreme Court explained that §1225(b) governs noncitizens "seeking admission into the country," whereas §1226(a) governs noncitizens "already in the country." 583 U.S. 281 (2018). The plain language of Section 1225(b) belies Respondents' arguments to the contrary:

> [I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [full removal proceedings] of this title.

8 USC §1225(b)(2) (emphasis added).

52. Evaluating the language of §1225(b), the Northern District of California recently acknowledged that to be subject to Section §1225(b) mandatory detention, a noncitizen must be (1) an applicant for admission, (2) *"seeking admission"*, and (3) "not clearly and beyond a doubt entitled to be admitted." *Salcedo Aceros v. Kaiser*, 1:25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025) (emphasis added). In interpreting §235(b)(2), the *Salcedo Aceros* court noted that myriad courts in recent months have rejected the:

> Government's expansive construction of §1225(b)(2), which would allow it to detain without a hearing virtually any noncitizen not lawfully admitted. 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 Ms. Salcedo Aceros, living in the interior of the country.

53. The *Salcedo Aceros* court found that Respondents' reading of 1225(b)(2) would render the phrase "seeking admission" superfluous, reasoning:

> If, as the Government argues, all applicants for admission are deemed to be "seeking admission" for as long as they remain applicants, then the phrase "seeking admission" would add nothing to the provision. This "violates the rule against surplusage." . . . ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001).

54. Similarly, in *Caicedo Hinestroza v. Kaiser* the court considered the case of a noncitizen who like Petitioner had been apprehended at the border, released, then re-detained. 25-cv-07559, 2025 WL 2606983 (N.D. Cal. Sept 9, 2025). The Court stated:

> This case is part of a tsunami of similar cases in this District based on the government's theory that petitioners are "applicants for admission" to the United States who are "subject to mandatory detention under 8 USC §1225(b)." This theory has been uniformly rejected by the courts of the District.

55. This Court has reached the same result on numerous occasions. *See e.g. Lucas v. Larose*, 3:25-cv-02973, 2025 WL 3485163 (S.D. Cal Dec. 4, 2025);

Faizyan v. Casey, 3:25-cv-02884, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025); Shen v. Larose, 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025);Martinez Martinez v. Noem, 25-cv-2975, 2025 WL 3552746 (S.D. Cal. Dec. 11, 2025).

56. Moreover, were Respondents' stance that all noncitizens present in the U.S. without admission or parole are subject to mandatory detention under §1225(b) correct, portions of §1226 would be rendered wholly superfluous in violation of "one of the most basic . . . canons" of statutory interpretation, that all provisions be given effect, "so that no part will be inoperative or superfluous, void or insignificant." *See Quispe-Ardiles v. Noem*, 1:25-cv-01382, 2025 WL 2783800 (E.D. Vir. Sept. 30, 2025) (the government's theory of §1225(b) -- that "the provision applies to all persons who have not been admitted into the United States -- would render multiple provisions of §1226 superfluous") (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (internal brackets omitted).

57. Specifically, just this year, Congress amended §1226 by passing the Laken Riley Act which mandates detention for certain criminal noncitizens. *See* 8 USC §1226(c)(1)(E)(i)-(ii). This amendment created an additional category of citizens subject to mandatory detention.

> This category includes noncitizens who are (1) inadmissible under INA 212(6)(A) [present without admission or parole] . . . *and* who (2) have been charged with one of certain enumerated crimes.

Salcedo Aceros v. Kaiser, 1:25-cv-06924, 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025).

58. As held by the *Salcedo Aceros* court:

> If the Government's view of §1225(b) is correct, however, all noncitizens who are inadmissible are *already* subject to mandatory detention . . . . This view would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it. But "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397, 115 S.Ct. 1537, 131 L.Ed.2d 465 (1995); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386, 133 S.Ct. 1166, 185 L.Ed.2d 242 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). If Congress amended Section 1226 to create mandatory detention for certain inadmissible noncitizens, it follows that those noncitizens were not already subject to mandatory detention.

59. This very Court has reached the same conclusion. In *Vasquez Garcia v. Noem*, 25-cv-02180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025), the Court determined that the government's contention that any inadmissible noncitizen is "an applicant for admission" who is "seeking admission," and therefore, subject to mandatory detention under §1225(b)(2), would render the Laken Riley Act "unnccessary." *See also, Martinez Martinez v. Noem,*

25-cv-2975, 2025 WL 3552746 (S.D. Cal. Dec. 11, 2025) (same); *Lagarda v. Noem*, 3:25-cv-02970, 2025 WL 3558931(S.D. Cal. Dec. 11, 2025) (same).

60. As Petitioner was detained a full fifteen months after he entered the U.S., he can hardly be said to be seeking admission. To the contrary, he is already present and residing in the U.S, pursuing his asylum case, and seeking to remain.

61. As summed up by the Supreme Court in *Zadvydas v. Davis*, immigration detention should not be used as a punishment, but only where there has been an individualized assessment of flight risk or danger to community. 533 U.S. at 690. Accordingly, a noncitizen detained under §1226 must be released if he does not present a danger to persons or property and is not a flight risk.

62. Respondents have never asserted that Petitioner is a danger or flight risk. Rather, by releasing Petitioner in March 2024 on his own recognizance, DHS determined that he was neither a flight risk nor a danger to his community. *See Shen v. Larose,* 25-cv-3235, 2025 WL 3552747 (S.D. Cal. Dec. 11, 2025); *Ortiz Donis v. Chestnut*, 1:25-cv-1228, 2025 WL 2879514, at *1 (E.D. Cal. Oct. 9, 2025); *Pinchi v. Noem*, 792 F. Supp.3d 1025, 1034 (N.D. Cal. 2025). There has been no assertion that Petitioner violated the

conditions of his release. Thus, his continued detention serves no legitimate purpose, and he must be released.

FACTUAL BACKGROUND

63. Petitioner is a Turkish citizen detained by Respondents since June 5, 2025. Ex. 4. He is currently imprisoned at Otay Mesa Detention Center. He has requested asylum due to the persecution he experienced in Turkey on account of his religion, political opposition to the ruling party, and sexual orientation. Ex. 3.

64. Petitioner entered the U.S. on March 17, 2024 near Tecate, California. Ex. 1. He was detained by CBP agents, then released into the U.S. on his own recognizance. Ex. 2. Petitioner's Form I-862 Notice to Appear charges him as "an alien present in the United States who has not been admitted or paroled," and his Form I-220A Release on Recognizance indicates that he was released pursuant to INA §236 (8 USC §1226). Exs. 1, 2.

65. After being released, Petitioner resided in San Diego for over a year. He was re-detained by DHS when he attended his immigration court hearing on June 5, 2025. Ex. 4. At that time, he was issued a Form I-213 Record of Deportable/ Inadmissible Alien, again confirming that he entered the U.S. "without inspection" on March 17, 2024, then was "paroled" (released on his

own recognizance). *Id.* The Form I-213 also acknowledged that he had no criminal record.

66. In July 2025, Petitioner requested a bond hearing with the immigration court sitting in Otay Mesa. Ex. 5. His request was denied on jurisdictional grounds as he had entered the U.S. "without inspection." Currently, Petitioner faces unlawful, indefinite detention with no opportunity to be heard on bond.

CAUSES OF ACTION

COUNT ONE
Petitioner's Detention Violates His Fifth Amendment Right to Procedural & Substantive Due Process

67. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

68. The Government may not deprive a person of life, liberty, or property without due process of law. U.S. Constitution Amendment V. "Freedom from imprisonment -- from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Id.* at 693.

69. Petitioner has a fundamental interest in liberty and being free from official restraint. Respondents' detention of Petitioner without providing a pre-

detention notice and hearing, or a post-detention bond hearing, to determine whether he is a flight risk or a danger to others violates his right to Due Process.

COUNT TWO
Petitioner's Detention is in Violation of 8 USC §1226(a)

70. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

71. The mandatory detention provision at 8 USC§1225(b)(2) does not apply to Petitioner who was present and residing in the United State, was placed in 8 USC §1229a removal proceedings, and was charged pursuant 8 USC 1182(a)(6)(A)(i) [present without admission or parole]. Section 1225(b)(2) does not apply to noncitizens present in the U.S. rather than seeking admission. Such noncitizens are subject only to discretionary detention pursuant to §1226(a), unless subject to §1226(c).

72. The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention without a bond hearing and violates §1226(a).

COUNT THREE
Petitioner's Detention Violates the Administrative Procedure Act, 5 USC §706(2)

73. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

74. Under the Administrative Procedure Act, a court shall "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "contrary to constitutional right," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" or "without observance of procedure required by law." 5 USC §706(2)(A)-(D).

75. Respondents' detention of Petitioner pursuant to 8 USC §1225(b)(2) is arbitrary and capricious as they do not have statutory authority under §1225(b)(2) to detain him. As Petitioner's detention is not in accordance with law, his detention under §1225(b)(2) violates the APA.

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

PRAYER FOR RELIEF

77. WHEREFORE, Petitioner respectfully asks that this Court take jurisdiction over this matter and grant the following relief:

a. Issue an Order to Show Cause requiring Respondents to respond within three days;

b. Issue a Writ of Habeas Corpus ordering Petitioner's immediate release. In the alternative, order Respondents to provide Petitioner a

bond hearing within 10 days pursuant to 8 USC §1226(a) at which Respondents must show by clear and convincing evidence that Petitioner is a flight risk or poses a danger to the community;

c. Issue a declaratory judgment that Petitioner is detained pursuant to 8 USC §1226(a), and prohibit denial of bond on the basis that he is detained under 8 USC §1225(b);

d. Enjoin Respondents from transferring Petitioner out of this Court's jurisdiction during the pendency of this action;

e. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;

f. Award Petitioners' attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 USC §2412, and on any other basis justified under law; and

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

Date: December 13, 2025 Respectfully submitted,

Linette Tobin, Esq.
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VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition. Based on those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and abilities.

Executed on this 13th day of December 2025, in San Diego, California.

Linette Tobin
Attorney for Petitioner