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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Abdljeber Abubeker KASIM,
12
13 Petitioner-Plaintiff,

14 v.

15 Christopher J. LAROSE, Senior Warden,
16 Otay Mesa Detention Center, San Diego,
17 California;
18 Daniel A. BRIGHTMAN, Acting Field
19 Office Director, San Diego Office of
20 Detention and Removal, U.S.
21 Immigrations and Customs Enforcement;
22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;
Sirce OWEN, Acting Director for
Executive Office for Immigration Review;
Kristi NOEM, Secretary, U.S. Department
of Homeland Security;
Pam BONDI, Attorney General of the
United States;

Respondents-
Defendants.

Case No.: '25CV3673 CAB MSB

**PETITION FOR WRIT OF HABEAS
CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS;
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration
Under Color of Immigration Detention
Statutes; Request for Declaratory and
Injunctive Relief

Agency File No.:



1 Petitioner ABDLJEBER ABUBEKER KASIM petitions this Court for a writ of
2 habeas corpus under 28 U.S.C. § 2241 to remedy Respondents detaining him unlawfully,
3 and states as follows:

4
5 **INTRODUCTION**

6 1. Petitioner, ABDLJEBER ABUBEKER KASIM (“Mr. Kasim” or “Petitioner”), is
7 an Indian asylum seeker detained at the Otay Mesa Detention Center in San Diego,
8 California. Petitioner, by and through his undersigned counsel, hereby files this petition
9 for writ of habeas corpus and complaint for declaratory and injunctive relief to compel
10 his immediate release from immigration detention where he has been held by the U.S.
11 Department of Homeland Security (DHS) since being unlawfully re-detained on June 10,
12 2025, without first being provided a due process hearing to determine whether his
13 incarceration is justified. Petitioner was previously released on June 11, 2024, by DHS on
14 conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination
15 that he was neither a flight risk nor a danger to the community.

16
17 2. Petitioner further submits this habeas petition under 28 U.S.C. § 2241 for a judicial
18 check on Respondents’ administrative decisions to detain him under 8 U.S.C.
19 § 1225(b)(2), INA § 235(b)(2), despite the authority to do so in that Petitioner is not an
20 applicant for admission nor is he seeking admission. And because the government
21 purports to hold him under § 1225(b)(2), it has not provided him with an individualized
22 bond hearing to challenge his detention under 8 U.S.C. § 1226(a), INA § 236(a),
23 contravening his rights under the Immigration and Nationality Act and the Fifth
24 Amendment’s Due Process Clause.

1 3. Petitioner seeks declaratory and injunctive relief to compel his immediate release
2 from the immigration jail where he has been held by the U.S. Department of Homeland
3 Security (DHS) since being unlawfully re-detained on June 10, 2025, without first being
4 provided a due process hearing to determine whether his incarceration is justified.

5 4. Absent review in this Court, no other neutral adjudicator will examine Petitioner's
6 plight: Respondents will continue to detain him in violation of the law essentially
7 indefinitely. Petitioner thus urges this Court to review the lawfulness of his detention;
8 declare that his detention under 8 U.S.C. § 1225(b)(2) is unlawful; order either his
9 immediate release or that, at a minimum, Respondents provide him a bond hearing
10 complying with the procedural requirements in *Singh v. Holder*, 638 F.3d 1196 (9th Cir.
11 2011).

12 5. Petitioner must be released from custody unless and until DHS proves to a neutral
13 adjudicator, by clear and convincing evidence, material changed circumstances
14 (including that he is a flight risk and/or a danger to the community) that would justify
15 cancelling Petitioner's release from ICE custody on June 11, 2024 on conditional parole
16 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a
17 flight risk nor a danger to the community.

18 6. The Due Process clause of the Fifth Amendment, as well as statutory and
19 regulatory authorities, require the government to provide noncitizens with notice and a
20 hearing prior to re-detention. Here, Petitioner's rights were violated and continue to be
21 each day he is detained.
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1 7. Mr. Kasim further seeks immediate release from custody because Respondents
2 have held him since June 10, 2025—a prolonged period—even though he has hired
3 counsel and has acted diligently to have his asylum application heard by an immigration
4 judge (“IJ”), and his proceedings have been continued through no fault of his own. His
5 continued detention without a hearing as to flight risk and danger to the community
6 violates the U.S. Constitution and federal law.

7
8 **STATEMENT OF FACTS**

9 8. Mr. Kasim is an Ethiopian man born in Shashamae, Ethiopia. He fled Ethiopia due
10 to being persecuted and tortured on account of his political opinion.

11 9. On June 29, 2020, an Oromo artist, Hachalu Hundessa, was assassinated, which
12 triggered unrest in the Oromia Region. The Ethiopian government began conducting
13 mass arrests of Oromo youth, and one day, Mr. Kasim was arrested from school. He was
14 accused of supporting the [REDACTED] and mobilizing youth to oppose
15 the government. Mr. Kasim was arrested in July 2020, when he was 17, and during his
16 two-month imprisonment, [REDACTED]
17 [REDACTED] He was released without charge.

18 10. Then, on May 31, 2021, Mr. Kasim attended a peaceful protest against the
19 government's oppression. Despite the protest being peaceful, police opened fire on the
20 protesters without warning. [REDACTED]. He does not
21 remember what happened next, but he was brought to the hospital where he recovered.
22 The government continued to search for him and harassed his family, so he was forced to
23 flee the country.
24

1 11. Mr. Kasim arrived in the United States on or about June 7, 2024, and entered the at
2 or near Tecate- U.S. border in California, without inspection and without valid entry
3 documents or a visa. Upon arrival, he walked up to border officials and informed them he
4 had a fear to return to Ethiopia.

5 12. Mr. Kasim was detained for approximately four days by border patrol officials and
6 he was then released on about June 11, 2024 on conditional parole pursuant to INA
7 section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a
8 danger to the community that he could not be released on his own recognizance. On the
9 same date, Mr. Kasim was issued a Notice to Appear (NTA) ordering him to appear
10 before the San Diego Immigration Court.
11

12 13. The Form I-286, Notice of Custody Determination states in pertinent part as
13 follows: “Pursuant to the authority contained in section 236 of the Immigration and
14 Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined
15 that, *pending a final administrative determination in your case*, you will be: ...
16 Released ... on your own recognizance.” (conditional parole pursuant to INA section 236
17 (8 U.S.C. § 1226)).
18

19 14. The NTA issued to Mr. Kasim stated that he is an “alien present in the United
20 States who has not been admitted or paroled” under Section 212(a)(6)(A)(i). After his
21 release, Mr. Kasim’s removal proceedings were assigned to the San Diego Immigration
22 Court.
23
24

1 15. Mr. Kasim not only complied with all conditions of his release on conditional
2 parole, but he also attended all his court hearings, timely filed his application for asylum,
3 attended his biometrics appointment, and otherwise obeyed all laws of the United States.

4 16. Mr. Kasim's first Master Calendar hearing was set for October 7, 2024. This
5 hearing never happened. Instead, he was served a scheduling order on September 24,
6 2024 and hearing was vacated. The Court set a filing deadline for pleadings for October
7 24, 2024. With assistance of his counsel, Mr. Kasim filed his form I-589, asylum
8 application on October 1, 2024. Mr. Kasim's written pleadings were filed on October 8,
9 2024.
10

11 17. On November 26, 2024, a second scheduling order was issued by the Court, with a
12 deadline of January 24, 2025 to file all evidence and to brief Circumvention of Lawful
13 Pathways (CLP) and other issues. Mr. Kasim's pre-hearing statement and evidence was
14 filed on January 23, 2025.

15 18. On February 5, 2025, the Court issued another scheduling order setting the
16 proceedings for another Master Calendar hearing on March 20, 2025. At the March 20.
17 2025 hearing, the government insisted that the case cannot be set for a merits until they
18 have examined all original evidence. Mr. Kasim's counsel handed over all original
19 evidence that day, but the government nevertheless insisted on a continuance.
20 Proceedings were reset to June 10, 2025.
21

22 19. In May 2025, the IJ assigned to the case was abruptly terminated, and courthouse
23 arrests began at the San Diego Court. The case was reassigned to another IJ. Mr. Kasim's
24 counsel filed a motion for Mr. Kasim to appear by Webex. That motion is never ruled on.

1 20. On June 10, 2025, at his scheduled Master Calendar hearing at the San Diego
2 Immigration Court, after living free in the U.S. for a year and developing ties here, the
3 government moved to dismiss his proceedings with the intention to initiate expedited
4 removal proceedings against him pursuant to 8 U.S.C. § 1225, which the IJ granted.¹
5 Upon leaving the courtroom on the same date, Mr. Kasim was suddenly detained by ICE
6 officers without any notice or opportunity to be heard, or any showing of any changed
7 circumstances. He was then transferred to the Otay Mesa Detention Center where he has
8 been held ever since. He was then issued an expedited removal order by an Immigration
9 Officer and after Mr. Kasim expressed a fear of persecution in Ethiopia, he was referred
10 to an Asylum Officer for a Credible Fear Interview.
11

12 21. On July 16, 2025, an Asylum Officer conducted Mr. Kasim's credible fear
13 interview, found Mr. Kasim to be credible and made a positive credible fear
14 determination. On August 12, 2025, Mr. Kasim was issued a new Notice to Appear
15 before an Immigration Judge at the Otay Mesa Immigration Court.

16 22. Since his release on June 11, 2024 from ICE custody on conditional pursuant to
17 INA section 236 (8 U.S.C. § 1226), Mr. Kasim has no criminal record and there have
18 been no other changed circumstances from the time that he was initially apprehended and
19 released justifying his apprehension. As stated above, he attended all his ICE check-ins
20 and court hearings.
21

22 23. On August 25, Mr. Kasim appeared for his first master calendar hearing following
23 the issuance of his second Notice to Appear, represented by counsel. Prior to that hearing,
24

¹ Mr. Kasim timely appealed that decision but the Board of Immigration Appeals dismissed that appeal.

1 on August 20, 2025, Mr. Kasim's counsel re-filed all evidence in his case in order to
2 avoid any potential future delays. At that hearing, the IJ set the matter for an individual
3 merits hearing for September 23, 2025 with a call-up date of September 9, 2025. Mr.
4 Kasim's counsel filed legal brief and updated country conditions reports on September 8,
5 2025. The individual merits hearing was held on September 23, 2025, however the
6 hearing was not completed in time due to the Court's time constraints and it was reset to
7 October 9, 2025.
8

9 24. The continued individual merits hearing was held on October 9, 2025. Although
10 the IJ granted Mr. Kasim withholding of removal, the IJ denied his application on the
11 sole basis being the application of the CLP bar. The IJ found that Mr. Kasim was unable
12 to rebut the presumption of asylum ineligibility under the Circumvention of Lawful
13 Pathways rule. He has appealed that decision before the BIA on the grounds that the IJ
14 only analyzed the three listed per se categories at 8 CFR § 1208.33(3)(i)(A)-(C) and
15 ended his analysis there. The IJ did not complete a proper analysis of whether Mr. Kasim
16 had presented otherwise exceptionally compelling circumstances outside of the per se
17 categories to rebut the presumption. That appeal is still pending.
18

19 25. On October 24, 2025, Mr. Kasim appealed the IJ's denial of asylum. That appeal is
20 presently pending before the BIA. The government did not appeal.

21 26. Mr. Kasim's continued detention without a tenable justification and without a
22 demonstration that removal is significantly likely in the reasonably foreseeable future
23 violates constitutional due process. *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Kydyrali v.*
24 *Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020).

1 27. The government has failed to effectuate Mr. Kasim's removal within a reasonable
2 period of time or present any evidence that his removal is significantly likely to occur in
3 the reasonably foreseeable future.

4 28. Mr. Kasim's detention without a tenable justification violates his rights under the
5 Due Process Clause of the Fifth Amendment.

6 CUSTODY

7
8 29. Petitioner is currently in Respondents' legal and physical custody. They are
9 detaining him at the at the Otay Mesa Detention Center in San Diego, California.
10 CoreCivic, Inc., a Maryland corporation, operates that facility. He is under Respondents'
11 and their agents' direct control. Prior to his arrest and re-detention Petitioner was not
12 provided with a constitutionally and statutorily compliant bond hearing.

13 JURISDICTION

14
15 30. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
16 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'
17 custody under the United States' color of authority, and such custody violates the United
18 States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's
19 nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*,
20 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2;
21 U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act),
22 2241 (habeas corpus).

1 31. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
2 Petitioner’s re-detention without being provided an individualized bail hearing prior to
3 his re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioner’s
4 challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal
5 district courts possess broad authority to issue writs of habeas corpus when a person is
6 held “in custody in violation of the Constitution or laws or treaties of the United States”
7 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges
8 that survived the REAL ID Act’s jurisdictional restrictions.
9

10 32. Because Petitioner seeks the traditional habeas remedy of release from allegedly
11 unlawful detention rather than additional administrative review of his underlying claims,
12 his petition presents precisely the type of threshold legality-of-detention question that §
13 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also*
14 *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at
15 1211-12)). And no court has ruled on the legality of Petitioner’s detention.
16

17 **REQUIREMENTS OF 28 U.S.C. § 2243**

18 33. The Court must grant the petition for writ of habeas corpus or issue an order to
19 show cause (OSC) to Respondents “forthwith,” unless the petitioner is not entitled to
20 relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a
21 return “within *three days* unless for good cause additional time, *not exceeding twenty*
22 *days*, is allowed.” *Id.* (emphasis added).
23
24

1 34. Courts have long recognized the significance of the habeas statute in protecting
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the
3 most important writ known to the constitutional law of England, affording as it does a
4 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
5 372 U.S. 391, 400 (1963) (emphasis added).
6

7 35. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
8 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
9 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.
10 2000) (internal citations omitted). The Ninth Circuit warned against any action creating
11 the perception “that courts are more concerned with efficient trial management than with
12 the vindication of constitutional rights.” *Id.*
13

14 **VENUE**

15 36. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
16 Respondents are employees or officers of the United States, acting in their official
17 capacity; because a substantial part of the events or omissions giving rise to the claim
18 occur in San Diego County in the Southern District of California where Petitioner is
19 currently detained, and because there is no real property involved in this action.
20

21 **INTRADISTRICT ASSIGNMENT**

22 37. The decision to re-arrest and re-detain Petitioner was made by the San Diego field
23 office of ICE, and until he was unlawfully re-detained by ICE, his case was pending
24 before the San Diego Immigration Court. He was then transferred to Otay Mesa

1 Detention Center in San Diego, California and the venue for his proceedings was then
2 changed to the Otay Mesa Immigration Court .

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 38. In habeas claims, exhaustion of administrative remedies is prudential, not
5 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may
6 waive the prudential exhaustion requirement if “administrative remedies are inadequate
7 or not efficacious, pursuit of administrative remedies would be a futile gesture,
8 irreparable injury will result, or the administrative proceedings would be void.” *Id.*
9 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation
10 marks omitted)). Petitioner asserts that exhaustion should be waived because
11 administrative remedies are (1) futile and (2) his continued detention results in irreparable
12 harm.
13

14
15 39. Pursuant to the Board’s recent precedential decisions in *Matter of Q. Li*, 29 I&N
16 Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an
17 immigration judge would not take jurisdiction over any custody redetermination hearing.
18 Per those decisions, contravening decades of law and practice by Respondents, Petitioner
19 is erroneously deemed an applicant for admission ineligible for a bond hearing before an
20 immigration judge (IJ).
21

22 40. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful
23 custody in violation of his due process rights, and there are no administrative remedies
24 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d

1 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a “futile exercise because the agency
2 does not have jurisdiction to review” constitutional claims); *In re Indefinite Det. Cases*,
3 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

4 41. Exhausting administrative remedies here is futile because Respondents contend
5 Petitioner is subject to mandatory detention. As such, no parole request to release
6 Petitioner from custody would be considered by ICE. Moreover, in contravention to the
7 INA and long-standing precedent and practice, the Board of Immigration Appeals and
8 Attorney General have deemed no noncitizen eligible for bond before an immigration
9 judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any
10 attempts to exhaust administrative remedies would be entirely futile.

11 42. More importantly, every day that Petitioner remains detained causes him harm that
12 cannot be repaired. His continued detention puts his physical and mental health at greater
13 risk, further warranting a finding of irreparable harm and the waiver of the prudential
14 exhaustion requirement. The Court must consider this in its irreparable harm analysis of
15 the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
16 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
17 petitioner “continues to suffer significant psychological effects from his detention,
18 including anxiety caused by the threats of other inmates and two suicide attempts,” in
19 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
20 requirement).

1 43. Health concerns are one factor the Court should consider in its irreparable harm
2 analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*,
3 No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that
4 the petitioner “continues to suffer significant psychological effects from his detention,
5 including anxiety caused by the threats of other inmates and two suicide attempts,” in
6 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
7 requirement).

9 44. During his detention, Mr. Kasim has developed serious psychological conditions
10 which include flashbacks, lack of focus, constant worry, nightmares, and worrying about
11 being killed if returned to Ethiopia. He has undergone multiple surgeries to attend to
12 gunshot wound and remove projectile. He has recently been diagnosed with
13 Posttraumatic Stress Disorder, Major Depressive Disorder, Victim of Torture, and Target
14 of (Perceived) Adverse Discrimination or Persecution. There is no adequate treatment for
15 these symptoms while he is detained at the Otay Mesa Detention Center.

17 **PARTIES**

18 45. Petitioner Abdljeber Abubeker Kasim is an Ethiopian asylum seeker. He fled
19 Ethiopia due to being persecuted and tortured on account of his political opinion. He is
20 presently seeking asylum in the United States before the Board of Immigration Appeals
21 (BIA). He has been granted withholding of removal by the Immigration Judge (IJ) but
22 has been denied asylum solely pursuant to the IJ’s finding that he was unable to rebut the
23 presumption of asylum ineligibility under the Circumvention of Lawful Pathways rule.
24

1 He has appealed that decision before the BIA on the grounds that the IJ only analyzed the
2 three listed per se categories at 8 CFR § 1208.33(3)(i)(A)-(C) and ended his analysis
3 there. The IJ did not complete a proper analysis of whether Mr. Kasim had presented
4 otherwise exceptionally compelling circumstances outside of the per se categories to
5 rebut the presumption. That appeal is still pending.
6

7 46. Petitioner is currently in Respondents' legal and physical custody at the Otay Mesa
8 Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation,
9 operates that facility.

10 47. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San
11 Diego, California and is named in his official capacity. ICE is the component of DHS that
12 is responsible for detaining and removing noncitizens according to immigration law and
13 oversees custody determinations. In his official capacity, he is the legal custodian of
14 Petitioner.

15 48. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
16 official capacity. Among other things, ICE is responsible for the administration and
17 enforcement of the immigration laws, including the removal of noncitizens. In his official
18 capacity as head of ICE, he is the legal custodian of Petitioner.
19

20 49. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
21 responsibility for overseeing the operation of the immigration courts and the Board of
22 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
23 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
24

1 removal proceedings, including for custody redeterminations in bond hearings. She is
2 sued in her official capacity.

3 50. Respondent Kriti NOEM is the Secretary of the DHS and is named in her official
4 capacity. DHS is the federal agency encompassing ICE, which is responsible for the
5 administration and enforcement of the INA and all other laws relating to the immigration
6 of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the
7 administration and enforcement of the immigration and naturalization laws pursuant to
8 section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135
9 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal
10 custodian of Petitioner.
11

12 51. Respondent Pam BONDI is the Attorney General of the United States and the most
13 senior official in the U.S. Department of Justice (DOJ) and is named in her official
14 capacity. She has the authority to interpret the immigration laws and adjudicate removal
15 cases. The Attorney General delegates this responsibility to the Executive Office for
16 Immigration Review (EOIR), which administers the immigration courts and the BIA.
17

18 52. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
19 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
20 to-day operations of the Otay Mesa Detention Center and acts at the Direction of
21 Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a
22 custodian of Petitioner and is named in their official capacity.

23 ///

24 ///

1 **LEGAL FRAMEWORK AND ANALYSIS**

2 **Statutory Framework Regarding Re-Detention**

3 53. The Due Process clause of the Constitution, Congress’s statutes and implementing
4 regulations as well as precedential decisions narrow DHS’s authority to unilaterally
5 revoke any noncitizen’s immigration bond or conditional parole and re-arrest the
6 noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

7
8 54. ICE can release a noncitizen from custody after the noncitizen “demonstrate[s] to
9 the satisfaction of the officer that such release would not pose a danger to property or
10 persons” and that the noncitizen is “likely to appear for any future proceeding.” §
11 1236.1(c)(8).3 “Release [therefore] reflects a determination by the government that the
12 noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F.
13 Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
14 F.3d 1137 (9th Cir. 2018).

15
16 55. Petitioner was released from ICE custody on June 11, 2024, on conditional parole
17 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a
18 flight risk nor a danger to the community.

19 56. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since June
20 10, 2025, despite lacking authority to hold him under § 1225(b)(2), and without giving
21 him an individualized bail hearing before a neutral adjudicator under § 1226(a). That
22 violates Petitioner’s rights under the INA, the APA and the Fifth Amendment’s Due
23 Process Clause.
24

1 57. Petitioner was arrested and is detained despite the fact that Respondents failed to
2 provide him notice and a pre-deprivation hearing before a neutral arbiter demonstrating
3 materially changed circumstances justifying his re-detention, and despite the fact that he
4 is not an applicant for admission seeking admission to the United States as required by
5 Section 1225(b)(2). Instead, Petitioner has been residing in the U.S. for almost two years
6 and as such is subject to Section 1226(a).

8 **Materially Changed Circumstances – Right to a Hearing Prior to Re-**
9 **incarceration.**

10 58. The Board of Immigration Appeals has clearly identified limits to DHS’s authority
11 to re-detain noncitizens: “where a previous bond determination has been made by an
12 immigration judge, no change should be made by [the DHS] absent a change of
13 circumstance,” a position adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec.
14 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
15 2021) (“Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.”).

16 59. The government has further clarified in litigation that the showing of changed
17 circumstances applies “both where the prior bond determination was made by an
18 immigration judge *and* where the previous release decision was made by a DHS officer.”
19 *Saravia v. Barr*, 280 F. Supp. 3d at 1197 (emphasis added).

20 60. Further, DHS has in practice limited its authority and “generally only re-arrests
21 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances,” not just
22
23
24

1 any changed circumstances. *Id.* (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90)
2 (emphasis added).

3 61. Guidance from *Matter of Sugay* and DHS practice alone —that ICE should not re-
4 arrest a noncitizen absent changed circumstances— are insufficient to protect Petitioner’s
5 weighty interest in his freedom from detention. Federal district courts in California have
6 repeatedly recognized that the demands of due process and the limitations on DHS’s
7 authority to revoke a noncitizen’s bond or parole require a pre-deprivation hearing for a
8 noncitizen on bond, like Petitioner, before ICE re-detains him, to comport with the Due
9 Process clause of the Constitution. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D.
10 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*
11 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
12 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal.
13 Mar. 1, 2021)

14 62. Just in the last few months, several federal courts in California have agreed that
15 immigration re-detention after being released in the community warrants a pre-
16 deprivation hearing. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D.
17 Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D.
18 Cal. July 11, 2025); *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-
19 PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F.*
20 *Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).
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1 63. It follows that prior to re-detaining Petitioner who had previously been released
2 pursuant to 8 U.S.C. § 1226(b), DHS should have provided him with a pre-detention
3 hearing and notice of such hearing at which DHS had the burden of proving that
4 Petitioner's conditional parole should be canceled.

5
6 64. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without
7 having an immigration judge or a neutral adjudicator assess whether circumstances have
8 materially changed since his release on June 11, 2024, on conditional parole pursuant to
9 INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk
10 nor a danger to the community..

11 **Petitioner's due process rights**

12
13 65. The government cannot deprive any person of "life, liberty, or property, without
14 due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons'
15 within the United States, including [non-citizens], whether their presence here is lawful,
16 unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

17 **A. Petitioner's Liberty Interest is protected**

18
19 66. "Freedom from imprisonment—from government custody, detention, or other
20 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
21 protects." *Zadvydas*, 533 U.S. at 690.

22
23 67. A continued liberty interest also exists where an individual was detained and is
24 subsequently released, even if conditionally released and even when an initial decision to
detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-

1 82 (1972). “[S]ubject to the conditions of his parole, [a parolee] can be gainfully
2 employed and is free to be with family and friends and to form the other enduring
3 attachments of normal life.” *Id.* at 482. The parolee relies “on at least an implicit promise
4 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The
5 Court explained that “the liberty of a parolee, although indeterminate, includes many of
6 the core values of unqualified liberty and its termination inflicts a grievous loss on the
7 parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and
8 must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at
9 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed
10 in a pre-parole program created to reduce prison overcrowding have a protected liberty
11 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82
12 (1973) (holding that individuals released on felony probation have a protected liberty
13 interest requiring pre-deprivation process).
14
15

16 68. As the First Circuit has explained, when analyzing the issue of whether a specific
17 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved
18 the issue by comparing the specific conditional release in the case before them with the
19 liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*,
20 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*
21 *also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person
22 who is in fact free of physical confinement—even if that freedom is lawfully revocable—
23 has a liberty interest that entitles him to constitutional due process before he is re-
24

1 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
2 408 U.S. at 482).

3 69. The protectable liberty interest created by conditional parole also applies to
4 immigration detention. “[T]he government’s discretion to incarcerate non-citizens is
5 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d
6 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation status have a
7 liberty interest, so too does [a noncitizen released from immigration detention] have a
8 liberty interest in remaining out of custody on bond.” *Ortega v. Bonnar*, 415 F. Supp.
9 3d 963, 969 (N.D. Cal. 2019). Even where “a decision-making process involves
10 discretion does not prevent an individual from having a protectable liberty interest.” *Id.* at
11 970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
12 (N.D. Cal. May 6, 2022).

13
14
15 70. The protected liberty interest is even more substantial when balancing the
16 nonpunitive purpose of immigration detention against the “irreparable harms imposed on
17 anyone subject to immigration detention,” including “subpar medical and psychiatric care
18 in ICE detention facilities, the economic burdens imposed on detainees and their families
19 as a result of detention, and the collateral harms to children of detainees whose parents
20 are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

21
22 71. “[R]elease from ICE custody constitute[s] an ‘implied promise’ that [the
23 noncitizen’s] liberty would not be revoked unless she ‘fail[s] to live up to the conditions
24 of her release.’ The regulatory framework makes clear that those conditions [a]re that [the

1 noncitizen] remain[s] neither a danger to the community nor a flight risk. *Pinchi v. Noem*,
2 — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D.
3 Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).

4 72. A noncitizen released from custody pending removal proceedings therefore has a
5 protected liberty interest in remaining out of custody. See *Diaz v. Kaiser*, No. 3:25-CV-
6 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-
7 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); see also *Ramirez Clavijo v.*
8 *Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).

9
10 73. Petitioner has a substantial liberty interest in not being detained. He has been living
11 in the United States for almost two years, has been working and supporting himself and
12 has developed extensive community ties.

13
14 **B. Petitioner’s Liberty Interest Mandated a Hearing Before any Re-Arrest and
15 Revocation of Parole**

16 74. “Adequate, or due, process depends upon the nature of the interest affected. The
17 more important the interest and the greater the effect of its impairment, the greater the
18 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
19 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
20 481-82). This Court must “balance [Petitioner’s] liberty interest against the
21 [government’s] interest in the efficient administration of” its immigration laws in order to
22 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
23 him of his liberty. *Id.* at 1357.

1 75. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth
2 Circuit, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps
3 the Court assess adequate safeguards: “[F]irst, the private interest that will be affected by
4 the official action; second, the risk of an erroneous deprivation of such interest through
5 the procedures used, and the probative value, if any, of additional or substitute procedural
6 safeguards; and finally the government’s interest, including the function involved and the
7 fiscal and administrative burdens that the additional or substitute procedural requirements
8 would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

10 76. The Due Process Clause typically requires a hearing of some sort before the
11 government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127
12 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due
13 process always requires, at a minimum, notice and an opportunity to respond.”). Post-
14 deprivation remedies may satisfy the requirements of due process only in a “special case”
15 where they are “the only remedies the State could be expected to provide” and where
16 “one of the variables in the *Mathews* equation—the value of post deprivation
17 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the
18 State cannot be required constitutionally to do the impossible by providing post
19 deprivation process.” *Zinermon*, 494 U.S. at 985.

21 **1. Petitioner has a substantial liberty interest in staying out of detention**

22 77. An individual's interest in not being detained is “the most elemental of liberty
23 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578
24

1 (2004). “Freedom from bodily restraint has always been at the core of the liberty
2 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This
3 liberty interest also exists where ICE decides to unilaterally nullify its own prior parole
4 decision and take away his physical freedom, *i.e.*, his “constitutionally protected interest
5 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
6 (internal quotation omitted). Courts have routinely agreed that “a petitioner’s interest in
7 remaining out of custody as ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-
8 06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
9 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the
10 more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

11
12
13 **2. There is a risk of erroneous deprivation that the additional procedural
safeguard of a pre-detention hearing would help protect against.**

14 78. Even if the Government believes “it has a valid reason” to re-detain noncitizens, it
15 “does not eliminate its obligation to effectuate the detention in a manner that comports
16 with due process.” *Guillermo M.R. v. Kaiser*, — F. Supp. 3d —, —, No. 25-cv-
17 05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding “undeniably
18 stark” risk of erroneous deprivation where the Government contends that
19 “notwithstanding a neutral arbiter’s determination that Petitioner should be released, ICE
20 is entitled to unilaterally terminate the IJ’s order by re-detaining Petitioner without a
21 hearing for at least six months, based on ICE’s own determination in its sole discretion
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1 that additional conditions of release unilaterally set by ICE had been violated”); *see also*
2 *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

3 79. Where the petitioner “has not received any bond or custody ... hearing, the risk of
4 an erroneous deprivation [of liberty] is high because neither the government nor
5 [Petitioner] has had an opportunity to determine whether there is any valid basis for her
6 detention.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025
7 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing
8 significantly decreases that risk because the government has to prove to a neutral
9 adjudicator by clear and convincing evidence that circumstances have materially changed
10 to justify re-detention, and a hearing is likelier to produce accurate determinations
11 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
12 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989)
13 (when “delicate judgments depending on credibility of witnesses and assessment of
14 conditions not subject to measurement” are at issue, the “risk of error is considerable
15 when just determinations are made after hearing only one side”).

16 80. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be
17 decreased where a neutral decisionmaker, rather than ICE alone, makes custody
18 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.
19 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*
20 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (“A neutral judge
21 is one of the most basic due process protections.”)

1 81. Any argument that noncitizens can request a custody determination hearing once
2 re-detained goes against the due process safeguards envisioned in the Constitution,
3 because such hearing happens after the fact and cannot prevent an erroneous deprivation
4 of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D.
5 Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-detention bond
6 hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already
7 suffered the harm that is the subject of his motion: that is, his potentially erroneous
8 detention.”). Further, custody determination hearings are routinely conducted in
9 immigration court and this is not a “special case” that warrants post-deprivation remedies
10 because other remedies are impractical the way it was in *Zinerman*.

12 82. Consequently ICE was required to provide Petitioner with notice and a hearing
13 prior to any re-incarceration and revocation of his conditional parole. *See Morrissey*, 408
14 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494
15 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
16 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
17 commitment proceedings may not constitutionally be held in jail pending the
18 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the
19 balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation
20 hearing before a neutral adjudicator, which ICE failed to provide.

21 83. Further, immigration detention is civil (as opposed to criminal), and its primary
22 purpose is to ensure a noncitizen’s appearance during removal proceedings and protect
23
24

1 against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678,
2 690, 697 (2001). Due process thus also requires consideration of alternatives to detention
3 at any custody redetermination hearing that may occur, and where alternatives to
4 detention that could mitigate risk of flight exist, detention is not warranted. *See Bell v.*
5 *Wolfish*, 441 U.S. 520, 538 (1979).

7 **3. The government’s interest in detaining Petitioner is minimal, and in fact the**
8 **procedural requirements of a hearing would promote judicial and**
9 **administrative efficiency given the government’s limited resources**

10 84. The efficient allocation of the government’s limited fiscal resources further
11 supports holding a hearing prior to re-detaining noncitizens. The “fiscal and
12 administrative burdens” as a result of the due process safeguard are nonexistent. *See*
13 *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long
14 recognized that “[t]he costs to the public of immigration detention are ‘staggering,’”
15 *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz*, 2025 WL 1676854, at
16 *3. In 2017 – with inflation numbers are likely higher today– immigration detention cost
17 “\$158 each day per detainee, amounting to a total daily cost of \$6.5 million.” *Hernandez*,
18 872 F.3d at 996. On the other hand, “[i]n immigration court, custody hearings are routine
19 and impose a minimal cost.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-
20 05632-PCP, 2025 WL 2084921, at *10 (N.D. Cal. July 24, 2025) (citing *Singh v.*
21 *Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)). The
22 cost of re-detaining an immigrant who was previously released “pending any bond
23
24

1 hearing would significantly exceed the cost of providing [the immigrant] with a pre-
2 detention hearing.” *Pinchi*, 2025 WL 2084921, at *10.

3 85.ICE’s new policy to make a minimum number of arrests each day under the new
4 administration² does not constitute a material change in circumstances and cannot stand
5 to replace regulations enacted by Congress that allow the release of noncitizens in the
6 first place. It is “arbitrary, capricious [and] an abuse of discretion” “in excess of statutory
7 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-
8 (C). Even if the government “ultimately demonstrates to a neutral decisionmaker by clear
9 and convincing evidence that her detention is necessary to prevent danger to the
10 community or flight,” then the only potential injury the government faces is a short delay
11 in detaining” Petitioner. *Pinchi*, 2025 WL 2084921, at *12. “Faced with ... a conflict
12 between minimally costly procedures and preventable human suffering, [the Court has]
13 little difficulty concluding that the balance of hardships tips decidedly in plaintiff[’s]
14 favor.” (internal citations omitted). *Id.*

15
16
17 86.Consequently the government’s interest in keeping Petitioner in detention without
18 a due process hearing is outweighed by Petitioner’s significant private interest in his
19 liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and
20 until the government demonstrates by clear and convincing evidence that he is a flight
21 risk or danger to the community. It becomes abundantly clear that the *Mathews* test
22

23
24 ² See “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (June 10, 2025),
available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 favors Petitioner when the Court considers that the process Petitioner seeks—release
2 from custody pending notice and a hearing regarding whether his conditional parole
3 should be revoked and, if so, whether a new bond amount should be set—is a standard
4 course of action for the government. In the alternative, providing Petitioner with a
5 hearing before this Court (or a neutral decisionmaker) to determine whether there is clear
6 and convincing evidence that Petitioner is a flight risk or danger to the community would
7 impose only a *de minimis* burden on the government, because the government routinely
8 provides this sort of hearing to detained individuals like Petitioner.

10 **Statutory Framework Regarding Detention – Section 1225 and Section 1226**

11 87. The Immigration and Nationality Act (INA) prescribes three basic forms of
12 detention for noncitizens in removal proceedings.

13 88. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-
14 expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a.
15 Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their
16 detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been
17 arrested, charged with, or convicted of certain crimes are subject to mandatory detention,
18 see 8 U.S.C. § 1226(c).

19 89. Second, the INA provides for mandatory detention of noncitizens subject to
20 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking
21 admission referred to under § 1225(b)(2).
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1 90.Last, the Act also provides for detention of noncitizens who have been previously
2 ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C.
3 § 1231(a)–(b).

4 91.This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

5 92.The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
6
7 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L.
8 No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–
9 585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,
10 Pub. L. No.119-1, 139 Stat. 3 (2025).

11 93.Following enactment of the IIRIRA, EOIR drafted new regulations explaining that,
12 in general, people who entered the country without inspection were not considered
13 detained under § 1225 and that they were instead detained under § 1226(a). See
14 Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct
15 of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

16 94.Thus, in the decades that followed, most people who entered without inspection—
17 unless they were subject to some other detention authority—received bond hearings. That
18 practice was consistent with many more decades of prior practice, in which noncitizens
19 who were not deemed “arriving” were entitled to a custody hearing before an IJ or other
20 hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at
21 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously
22 found at § 1252(a)).
23
24

1 95. On May 15, 2025, the Board issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025)
2 stating that an applicant for admission who is arrested and detained without a warrant
3 while arriving in the United States, whether or not at a port of entry, and subsequently
4 placed in removal proceedings is detained under 8 U.S.C. § 1225(b), and is ineligible for
5 any subsequent release on bond under 8 U.S.C. § 1226(a).
6

7 96. On September 5, 2025, the Board of Immigration Appeals issued a precedent
8 decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that
9 noncitizens who entered the United States without inspection were ineligible for bond
10 redetermination hearings because they were seeking admission, and fell within 8 U.S.C. §
11 1225(b)(2)(A).
12

13 97. This legal theory espoused by the BIA's decisions in *Matter of Q Li* and *Matter of*
14 *Yajure Hurtado* that noncitizens who entered the United States without admission or
15 parole are ineligible for bond hearings has been universally rejected by the district courts.
16 *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash.
17 Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL
18 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-
19 SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*,
20 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-
21 02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-
22 ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-
23 01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No.
24

1 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No.
2 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v.*
3 *Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025);
4 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn.
5 Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D.
6 La. Aug. 27, 2025) *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

8 98. The Board’s interpretation defies the INA. The plain text of the statutory
9 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

10 99. Section 1226(a) applies by default to all persons “pending a decision on whether
11 the [noncitizen] is to be removed from the United States.” These removal hearings are
12 held under § 1229a, which “decid[e] the inadmissibility or deportability of a[]
13 [noncitizen].”

15 100. The text of § 1226 also explicitly applies to people charged as being
16 inadmissible, including those who entered without inspection. See 8 U.S.C. §
17 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default,
18 such people are afforded a bond hearing under subsection (a). Section 1226 therefore
19 leaves no doubt that it applies to people who face charges of being inadmissible to the
20 United States, including those who are present without admission or parole.

22 101. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or
23 who recently entered the United States. The statute’s entire framework is premised on
24

1 inspections at the border of people who are “seeking admission” to the United States. 8
2 U.S.C. § 1225(b)(2)(A).

3 102. In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held
4 that “the phrase ‘at the time of application for admission’...refers to the particular point
5 in time when a noncitizen submits an application to physically enter into the United
6 States.” 976 F.3d at 924. The Ninth Circuit held that “inadmissibility must be measured
7 at the point in time that an immigrant actually submits an application for entry into the
8 United States.” *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen
9 only makes an application for admission when they seek permission to physically enter
10 the United States. *Id.* at 924.

11
12 103. In short, *Torres* clarified there is a temporal limitation to a classification of
13 applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir.
14 2024) (stating that “*Torres* merely rejected the view that an alien remains in a perpetual
15 state of applying for admission”).

16
17 104. Accordingly, the mandatory detention provision of § 1225(b)(2) does not
18 apply to people like Petitioner who are alleged to have entered the United States without
19 admission or parole.

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FIRST CLAIM FOR RELIEF

Due Process

U.S. Const. amend. V

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2
3 105. Petitioner incorporates by reference the allegations of fact set forth in the
4 preceding paragraphs.

5
6 106. The Supreme Court has long recognized that the Fifth and Fourteenth
7 Amendments refer to all “persons,” not just “citizens.” Aliens, even inadmissible or
8 removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118
9 U.S. 356, 369 (1886) (“The Fourteenth Amendment to the Constitution is not confined to
10 the protection of citizens.”). As stated by the Court, the provisions of the Fourteenth
11 Amendment “are universal in their application, to all persons within the territorial
12 jurisdiction, without regard to any differences of race, of color, or of nationality” *Id.*
13 (emphasis added).

14
15 107. The Supreme Court has held that “even one whose presence in this country
16 is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the
17 Due Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz.*, 426
18 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his
19 status under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of
20 that term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the
21 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
22 property without due process of law.”).

1 108. Petitioner’s continued detention without any bond hearing violates his right
2 to due process under the Fifth Amendment.

3 109. The Government may not deprive a person of life, liberty, or property
4 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment— from
5 government custody, detention, or other forms of physical restraint—lies at the heart of
6 the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

7 110. Petitioner has a vested liberty interest in his conditional release. Due Process
8 does not permit the government to strip him of that liberty without a hearing before this
9 Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

10 111. Petitioner’s re-arrest without a hearing violated the Constitution both
11 substantively, because Respondents have no valid interest in detaining him since
12 circumstances have not changed, and procedurally, because he was not provided with a
13 pre-detention hearing.

14 112. Furthermore, as there is no final order of removal, and there doesn’t appear
15 to be one in the reasonably foreseeable future, Mr. Kasim may not be removed from the
16 United States. His removal is not reasonably foreseeable, and his detention no longer
17 serves any legitimate purpose under the INA.

18 113. In *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. 2020), a judge in this
19 District granted habeas relief in a substantially similar case, applying a six-factor
20 balancing test first articulated in *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D.
21 Wash. 2019), which considers: (1) total length of detention to date; (2) likely duration of
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1 future detention; (3) conditions of detention; (4) delays in the removal proceedings
2 caused by the detainee; (5) delays in the removal proceedings caused by the government;
3 and (6) the likelihood that the removal proceedings will result in a final order of removal.

4 The court determined that prolonged detention, when considered alongside other due
5 process concerns, can rise to the level of a constitutional violation warranting release.

6 *Kydyrali*, 499 F. Supp. 3d at 773.

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8 114. Applying the Banda six-factor framework here supports granting Mr.
9 Kasim's petition.

10 115. The final factor—finality—strongly supports the grant of this habeas
11 petition. Mr. Kasim is statutorily eligible to apply for asylum, and until that application is
12 finally adjudicated, he cannot be removed from the United States. Thus, the only prospect
13 for removal from the United States would be a speculative, and not factually unsupported
14 prospect of removal to a third country.

15 116. All delays in this case are attributable to the government, and none
16 whatsoever are attributable to Mr. Kasim. He promptly requested asylum at the border
17 and he has timely attended all of his interviews and court hearings. He has never
18 requested any continuances in his case and has retained counsel at a very early stage of
19 his case to represent him. His removal proceedings were initially assigned to the San
20 Diego Immigration Court non-detained docket, they were then dismissed, Mr. Kasim was
21 reincarcerated and issued an expedited removal order, upon expressing a fear of
22 persecution in India, he was provided a Credible Fear Interview and he was determined to
23 have a credible fear interview by an Asylum Officer, his proceedings were then
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1 commenced all over again at the Otay Mesa Immigration court, and after the matter was
2 finally set to final individual merits hearing, he was denied asylum by IJ but granted
3 withholding of removal. He has timely appealed that decision and the appeal is presently
4 pending

5 117. Mr. Kasim has now been detained by ICE for more than six months since
6 his re-detention on June 10, 2025. This period is well beyond the presumptively
7 reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701. Courts consistently
8 find detention beyond this threshold triggers due process scrutiny. *See Kydyrali*, 499
9 F.Supp. 3d at 774–75.

10 118. Conditions of confinement also raise constitutional concerns as the medical
11 treatment available at the Otay Mesa Detention Center is not adequate to address Mr.
12 Kasim’s health conditions.

13 119. Mr. Kasim poses no risk of flight and no danger to the community. He has
14 no criminal history, has demonstrated compliance with all prior immigration
15 requirements, and has community support in the United States.

16 120. Mr. Kasim’s continued detention without a tenable justification violates his
17 Fifth Amendment right to due process.

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20 **SECOND CLAIM FOR RELIEF**
21 **Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)**
22 **Unlawful Denial of Bond**

23 121. Petitioner repeats re-alleges and incorporate by reference each and every
24 allegation in the preceding paragraphs as if fully set forth herein.

1 122. Under the Administrative Procedures Act (“APA”), an agency must act in a
2 manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to
3 “hold unlawful and set aside agency action” that is arbitrary and capricious); *Dep’t of*
4 *Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a
5 “satisfactory explanation” for its action, “including a rational connection between the
6 facts found and the choice made”).

8 123. A court must “hold unlawful and set aside agency action” that is “arbitrary,
9 capricious, an abuse of discretion, or otherwise not in accordance with the law,” that is
10 “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction,
11 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

12 124. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
13 to noncitizens residing in the United States who are subject to the grounds of
14 inadmissibility because they originally entered the United States without inspection or
15 parole. Such noncitizens are detained under § 1226(a), unless they are subject to another
16 detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

18 125. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
19 redetermination hearing before an immigration judge is arbitrary, capricious, and not in
20 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

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THIRD CLAIM FOR RELIEF

Statutory Violation – Petitioner’s Detention is in Violation of 8 U.S.C. § 1226(a)-(b)

126. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

127. Respondents lack statutory authority to detain Petitioner under 8 U.S.C. § 1225(b)(2), because that statute requires that the individual be an applicant for admission and seeking admission to the U.S.

128. As Petitioner does not meet these criteria, his detention must be governed by 8 U.S.C. § 1226(a) which provides discretionary detention authority and requires ICE to make an individualized custody determination.

129. Under § 1226(a), individuals may be detained as a matter of discretion, released on their own recognizance, or released on bond of at least \$1,500.

130. Respondents’ failure to apply the correct statutory framework violates the INA and exceeds the government’s detention authority.

131. Thus, Petitioner respectfully requests that this Court order his release from detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of his removal proceedings under 8 U.S.C. § 1229a, INA § 240. Alternatively, he requests that this Court order a constitutionally adequate bond hearing complying with the procedural requirements in *Singh*.

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PRAYER FOR RELIEF

WHEREFORE, the Petitioner prays that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Issue the writ of habeas corpus and order Respondents to show cause, within three days of Petitioner's filing this petition, why the relief he seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. § 2243);
- (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Southern District of California pending the resolution of this case;
- (4) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner on the conditions of his prior conditional parole;
- (5) Alternatively conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the Court takes into consideration alternatives to detention and Petitioner's ability to pay a bond;
- (6) Alternatively, order an immediate bond hearing before a neutral decisionmaker where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and where alternatives to detention and Petitioner's ability to pay a bond are considered;

1 (7) Award reasonable costs and attorney fees under the Equal Access to
2 Justice Act (“EAJA”), as amended, 28 U.S.C. § 2412, and on any other
3 basis justified under law;

4 (8) Grant such further relief as the Court deems just and proper.

5 Dated: December 19, 2025,

Respectfully submitted,

6 By: /s/ Bashir Ghazialam
7 Bashir Ghazialam
8 Attorneys for Petitioner
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