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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Nitin VATS,

12 Petitioner-Plaintiff,

13 v.

14 Christopher J. LAROSE, Senior Warden,
15 Otay Mesa Detention Center, San Diego,
16 California;

17 Daniel A. BRIGHTMAN, Acting Field
18 Office Director, San Diego Office of
19 Detention and Removal, U.S.

20 Immigrations and Customs Enforcement;
21 Todd M. LYONS, Acting Director,

22 Immigration and Customs Enforcement,
23 U.S. Department of Homeland Security;

24 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.: '25CV3684 JLS KSC

**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 NITIN VATS petitions this Court for a writ of habeas corpus under
2 28 U.S.C. § 2241 to remedy Respondents detaining him unlawfully, and states as follows:

3 **INTRODUCTION**

4
5 1. Petitioner, NITIN VATS (“Mr. Vats” or “Petitioner”), is an Indian asylum seeker
6 detained at the Otay Mesa Detention Center in San Diego, California. Petitioner, by and
7 through his undersigned counsel, hereby files this petition for writ of habeas corpus and
8 complaint for declaratory and injunctive relief to compel his immediate release from
9 immigration detention where he has been held by the U.S. Department of Homeland
10 Security (DHS) since being unlawfully re-detained on November 9, 2025, without first
11 being provided a due process hearing to determine whether his incarceration is justified.
12 Petitioner was previously released on October 13, 2023, by DHS on conditional parole
13 pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a
14 flight risk nor a danger to the community.

15
16 2. Petitioner further submits this habeas petition under 28 U.S.C. § 2241 for a judicial
17 check on Respondents’ administrative decisions to detain him under 8 U.S.C.
18 § 1225(b)(2), INA § 235(b)(2), despite the authority to do so in that Petitioner is not an
19 applicant for admission nor is he seeking admission. And because the government
20 purports to hold him under § 1225(b)(2), it has not provided him with an individualized
21 bond hearing to challenge his detention under 8 U.S.C. § 1226(a), INA § 236(a),
22 contravening his rights under the Immigration and Nationality Act and the Fifth
23 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 November 9, 2025, without first
4 being 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 October 13, 2023 on conditional
16 parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was
17 neither a 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 STATEMENT OF FACTS

2 7. Mr. Vats is an Indian man born in Panipat, India. He fled India due to being
3 persecuted and tortured on account of his religion as well as political opinion. Mr. Vats
4 was targeted by members of [REDACTED]
5 [REDACTED] because he had converted from the Hindu religion to Christianity. Both
6 parties are Hindu radical groups. Mr. Vats was attacked on two separated occasions and
7 by members of the aforementioned parties because they wanted him to revert back to the
8 Hindu Religion and because he refused to do so. Otherwise, they threatened to kill him.

9 8. Mr. Vats arrived in the United States on or about October 12, 2023, and entered the
10 at or near Lukeville, Arizona, without inspection and without valid entry documents or a
11 visa. Upon arrival, he walked up to border officials and informed them he had a fear to
12 return to India.
13

14 9. Mr. Vats was detained for approximately one day by border patrol officials and he
15 was then released on about October 13, 2023 on conditional parole pursuant to INA
16 section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight risk nor a
17 danger to the community that he could not be released on his own recognizance. On the
18 same date, Mr. Vats was issued a Notice to Appear (NTA) ordering him to appear before
19 the Los Angeles Immigration Court.
20

21 10. The Form I-286, Notice of Custody Determination states in pertinent part as
22 follows: "Pursuant to the authority contained in section 236 of the Immigration and
23 Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined
24 that, pending a final administrative determination in your case, you will be: ...

1 Released ... on your own recognizance.” (conditional parole pursuant to INA section 236
2 (8 U.S.C. § 1226)).

3 11. The NTA issued to Mr. Vats stated that he is an “alien present in the United States
4 who has not been admitted or paroled” under Section 212(a)(6)(A)(i). After his release,
5 Mr. Vats’ removal proceedings were assigned to the Los Angeles Immigration Court.

6 12. Mr. Vats not only complied with all conditions of his release on conditional parole,
7 but he also attended all his court hearings, timely filed his application for asylum,
8 attended his biometrics appointment, and otherwise obeyed all laws of the United States.
9 He was issued a work permit as well as a U.S. Social Security Card and a California
10 driver’s license.
11

12 13. On November 9, 2025, after a brief trip to San Diego, Mr. Vats was returning
13 home when he accidentally exited the freeway and drove up to the gate at the Marine Corps
14 Base Camp Pendleton military base in Oceanside. At the entry gate, he was stopped by
15 security officers. The officers inquired about Mr. Vats’ immigration status, and when Mr.
16 Singh informed them that he was an asylum applicant and showed them his employment
17 authorization card and driver’s license, the officers contacted ICE and ordered Mr. Vats
18 to wait. Upon arrival, ICE officers arrested him. Mr. Vats was arrested despite following
19 all traffic and other laws and despite having a valid work permit and driver’s license.
20

21 14. Mr. Vats was re-detained by ICE officers without any notice or opportunity to be
22 heard, or any showing of any changed circumstances. He was then transferred to the Otay
23 Mesa Detention Center where he has been held ever since.
24

1 15. At the time he was re-detained, Mr. Vats' immigration court proceedings were
2 pending before the Los Angeles Immigration Court and he was awaiting his final
3 individual merits hearing. He had timely filed his asylum application.

4 16. Since his release on October 13, 2023 from ICE custody on conditional pursuant to
5 INA section 236 (8 U.S.C. § 1226), Mr. Vats has no criminal record and there have been
6 no other changed circumstances from the time that he was initially apprehended and
7 released justifying his apprehension. As stated above, he attended all his ICE check-ins
8 and court hearings.

9 17. Mr. Vats has lived in the United States for over two years, during which he not
10 only timely filed his asylum application and obtained his work permit, but he has also
11 been working to support himself and his family. He has also developed community ties
12 here in the United States, has obeyed all laws of the United States and has no criminal
13 record.

14 18. In short, nothing has changed – let alone materially changed – since he was
15 released on his own recognizance over two years ago in October of 2023 such that his
16 current detention is justified..

17
18
19 **CUSTODY**

20 19. Petitioner is currently in Respondents' legal and physical custody. They are
21 detaining him at the at the Otay Mesa Detention Center in San Diego, California.
22 CoreCivic, Inc., a Maryland corporation, operates that facility. He is under Respondents'
23

1 and their agents' direct control. Prior to his arrest and re-detention Petitioner was not
2 provided with a constitutionally and statutorily compliant bond hearing.

3 **JURISDICTION**

4 20. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United
5 States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents'
6 custody under the United States' color of authority, and such custody violates the United
7 States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's
8 nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*,
9 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2;
10 U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act),
11 2241 (habeas corpus).
12

13 21. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review
14 Petitioner's re-detention without being provided an individualized bail hearing prior to
15 his re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioner's
16 challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal
17 district courts possess broad authority to issue writs of habeas corpus when a person is
18 held "in custody in violation of the Constitution or laws or treaties of the United States"
19 (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges
20 that survived the REAL ID Act's jurisdictional restrictions.
21

22 22. Because Petitioner seeks the traditional habeas remedy of release from allegedly
23 unlawful detention rather than additional administrative review of his underlying claims,
24

1 his petition presents precisely the type of threshold legality-of-detention question that §
2 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also*
3 *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at
4 1211-12)). And no court has ruled on the legality of Petitioner’s detention.

5
6 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

12 24. Courts have long recognized the significance of the habeas statute in protecting
13 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the
14 most important writ known to the constitutional law of England, affording as it does a
15 *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*,
16 372 U.S. 391, 400 (1963) (emphasis added).

17 25. Habeas corpus must remain a swift remedy. Importantly, “the statute itself directs
18 courts to give petitions for habeas corpus ‘special, preferential consideration to insure
19 expeditious hearing and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir.
20 2000) (internal citations omitted). The Ninth Circuit warned against any action creating
21 the perception “that courts are more concerned with efficient trial management than with
22 the vindication of constitutional rights.” *Id.*

1 **VENUE**

2 26. Venue is properly before this Court pursuant to 28 U.S.C. § 1391(e) because the
3 Respondents are employees or officers of the United States, acting in their official
4 capacity; because a substantial part of the events or omissions giving rise to the claim
5 occur in San Diego County in the Southern District of California where Petitioner is
6 currently detained, and because there is no real property involved in this action.
7

8 **INTRADISTRICT ASSIGNMENT**

9 27. The decision to re-arrest and re-detain Petitioner was made by the San Diego field
10 office of ICE, and until he was unlawfully re-detained by ICE, his case was pending
11 before the Los Angeles Immigration Court. He was then transferred to Otay Mesa
12 Detention Center in San Diego, California and the venue for his proceedings was then
13 changed to the Otay Mesa Immigration Court .
14

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 28. In habeas claims, exhaustion of administrative remedies is prudential, not
17 jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may
18 waive the prudential exhaustion requirement if “administrative remedies are inadequate
19 or not efficacious, pursuit of administrative remedies would be a futile gesture,
20 irreparable injury will result, or the administrative proceedings would be void.” *Id.*
21 (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation
22 marks omitted)). Petitioner asserts that exhaustion should be waived because
23
24

1 administrative remedies are (1) futile and (2) his continued detention results in irreparable
2 harm.

3 29. Pursuant to the Board's recent precedential decisions in *Matter of Q. Li*, 29 I&N
4 Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an
5 immigration judge would not take jurisdiction over any custody redetermination hearing.
6 Per those decisions, contravening decades of law and practice by Respondents, Petitioner
7 is erroneously deemed an applicant for admission ineligible for a bond hearing before an
8 immigration judge (IJ).
9

10 30. No statutory exhaustion requirements apply to Petitioner's claim of unlawful
11 custody in violation of his due process rights, and there are no administrative remedies
12 that he needs to exhaust. *See Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d
13 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency
14 does not have jurisdiction to review" constitutional claims); *In re Indefinite Det. Cases*,
15 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).
16

17 31. Exhausting administrative remedies here is futile because Respondents contend
18 Petitioner is subject to mandatory detention. As such, no parole request to release
19 Petitioner from custody would be considered by ICE. Moreover, in contravention to the
20 INA and long-standing precedent and practice, the Board of Immigration Appeals and
21 Attorney General have deemed no noncitizen eligible for bond before an immigration
22 judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any
23 attempts to exhaust administrative remedies would be entirely futile.
24

1 32. More importantly, every day that Petitioner remains detained causes him harm that
2 cannot be repaired. His continued detention puts his physical and mental health at greater
3 risk, further warranting a finding of irreparable harm and the waiver of the prudential
4 exhaustion requirement. The Court must consider this in its irreparable harm analysis of
5 the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*, No. 19-CV-
6 07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that the
7 petitioner “continues to suffer significant psychological effects from his detention,
8 including anxiety caused by the threats of other inmates and two suicide attempts,” in
9 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
10 requirement).

11
12 33. Health concerns are one factor the Court should consider in its irreparable harm
13 analysis of the effects on Petitioner as his detention continues. *See De Paz Sales v. Barr*,
14 No. 19-CV-07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020) (noting that
15 the petitioner “continues to suffer significant psychological effects from his detention,
16 including anxiety caused by the threats of other inmates and two suicide attempts,” in
17 finding that petitioner would suffer irreparable harm warranting waiver of exhaustion
18 requirement).

19
20
21 **PARTIES**

22 34. Petitioner Nitin VATS is an Indian asylum seeker. He fled India due to being
23 persecuted and tortured on account of his religion and political opinion. He is presently
24 seeking asylum in the United States before the Immigration Court.

1 35. Petitioner is currently in Respondents' legal and physical custody at the Otay Mesa
2 Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation,
3 operates that facility.

4 36. Respondent Daniel A. BRIGHTMAN is the Field Office Director of ICE in San
5 Diego, California and is named in his official capacity. ICE is the component of DHS that
6 is responsible for detaining and removing noncitizens according to immigration law and
7 oversees custody determinations. In his official capacity, he is the legal custodian of
8 Petitioner.

9
10 37. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his
11 official capacity. Among other things, ICE is responsible for the administration and
12 enforcement of the immigration laws, including the removal of noncitizens. In his official
13 capacity as head of ICE, he is the legal custodian of Petitioner.

14 38. Respondent Sirce OWEN is the Acting Director of EOIR and has ultimate
15 responsibility for overseeing the operation of the immigration courts and the Board of
16 Immigration Appeals, including bond hearings. Executive Office for Immigration Review
17 (EOIR) is the federal agency responsible for implementing and enforcing the INA in
18 removal proceedings, including for custody redeterminations in bond hearings. She is
19 sued in her official capacity.

20
21 39. Respondent Kriti NOEM is the Secretary of the DHS and is named in her official
22 capacity. DHS is the federal agency encompassing ICE, which is responsible for the
23 administration and enforcement of the INA and all other laws relating to the immigration
24 of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the

1 administration and enforcement of the immigration and naturalization laws pursuant to
2 section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135
3 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal
4 custodian of Petitioner.

5 40. Respondent Pam BONDI is the Attorney General of the United States and the most
6 senior official in the U.S. Department of Justice (DOJ) and is named in her official
7 capacity. She has the authority to interpret the immigration laws and adjudicate removal
8 cases. The Attorney General delegates this responsibility to the Executive Office for
9 Immigration Review (EOIR), which administers the immigration courts and the BIA.
10

11 41. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention
12 Center where Petitioner is being held. Respondent Christopher LaRose oversees the day-
13 to-day operations of the Otay Mesa Detention Center and acts at the Direction of
14 Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a
15 custodian of Petitioner and is named in their official capacity.

16 LEGAL FRAMEWORK AND ANALYSIS

17 **Statutory Framework Regarding Re-Detention**

18 42. The Due Process clause of the Constitution, Congress's statutes and implementing
19 regulations as well as precedential decisions narrow DHS's authority to unilaterally
20 revoke any noncitizen's immigration bond or conditional parole and re-arrest the
21 noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).
22

23 43. ICE can release a noncitizen from custody after the noncitizen "demonstrate[s] to
24 the satisfaction of the officer that such release would not pose a danger to property or

1 persons” and that the noncitizen is “likely to appear for any future proceeding.” §
2 1236.1(c)(8).3 “Release [therefore] reflects a determination by the government that the
3 noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F.
4 Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff’d sub nom. *Saravia for A.H. v. Sessions*, 905
5 F.3d 1137 (9th Cir. 2018).

6
7 44. Petitioner was released from ICE custody on October 13, 2023, on conditional
8 parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that he was
9 neither a flight risk nor a danger to the community.

10 45. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since
11 November 9, 2025, despite lacking authority to hold him under § 1225(b)(2), and without
12 giving him an individualized bail hearing before a neutral adjudicator under § 1226(a).
13 That violates Petitioner’s rights under the INA, the APA and the Fifth Amendment’s Due
14 Process Clause.
15

16 46. Petitioner was arrested and is detained despite the fact that Respondents failed to
17 provide him notice and a pre-deprivation hearing before a neutral arbiter demonstrating
18 materially changed circumstances justifying his re-detention, and despite the fact that he
19 is not an applicant for admission seeking admission to the United States as required by
20 Section 1225(b)(2). Instead, Petitioner has been residing in the U.S. for almost two years
21 and as such is subject to Section 1226(a).
22

23 ///

24 ///

1 **Materially Changed Circumstances – Right to a Hearing Prior to Re-**
2 **incarceration.**

3 47. The Board of Immigration Appeals has clearly identified limits to DHS’s authority
4 to re-detain noncitizens: “where a previous bond determination has been made by an
5 immigration judge, no change should be made by [the DHS] absent a change of
6 circumstance,” a position adopted by the Ninth Circuit. *Matter of Sugay*, 17 I. & N. Dec.
7 637, 640 (BIA 1981); *see also Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir.
8 2021)(“Thus, absent changed circumstances ... ICE cannot re-detain Panosyan.”).

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

13 49. Further, DHS has in practice limited its authority and “generally only re-arrests
14 [noncitizens] pursuant to § 1226(b) after a *material* change in circumstances,” not just
15 any changed circumstances. *Id.* (quoting Defs.’ Second Supp. Br. at 1, Dkt. No. 90)
16 (emphasis added).
17

18 50. Guidance from *Matter of Sugay* and DHS practice alone—that ICE should not re-
19 arrest a noncitizen absent changed circumstances—are insufficient to protect Petitioner’s
20 weighty interest in his freedom from detention. Federal district courts in California have
21 repeatedly recognized that the demands of due process and the limitations on DHS’s
22 authority to revoke a noncitizen’s bond or parole require a pre-deprivation hearing for a
23
24

1 noncitizen on bond, like Petitioner, before ICE re-detains him, to comport with the Due
2 Process clause of the Constitution. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D.
3 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v.*
4 *Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020);
5 *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal.
6 Mar. 1, 2021)

8 51. Just in the last few months, several federal courts in California have agreed that
9 immigration re-detention after being released in the community warrants a pre-
10 deprivation hearing. *See Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D.
11 Cal. June 14, 2025); *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D.
12 Cal. July 11, 2025); *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-
13 PCP, 2025 WL 2084921 (N.D. Cal. July 24, 2025); *Victor Amado Rodriguez-Flores v. F.*
14 *Semaia et al.*, No. CV 25-6900 JGB (JCX), 2025 WL 2684181 (C.D. Cal. Aug. 14, 2025).

16 52. It follows that prior to re-detaining Petitioner who had previously been released
17 pursuant to 8 U.S.C. § 1226(b), DHS should have provided him with a pre-detention
18 hearing and notice of such hearing at which DHS had the burden of proving that
19 Petitioner's conditional parole should be canceled.

21 53. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without
22 having an immigration judge or a neutral adjudicator assess whether circumstances have
23 materially changed since his release on October 13, 2023, on conditional parole pursuant
24

1 to INA section 236 (8 U.S.C. § 1226) after a determination that he was neither a flight
2 risk nor a danger to the community..

3 **Petitioner’s due process rights**

4 54. The government cannot deprive any person of “life, liberty, or property, without
5 due process of law[.]” U.S. Const. Amend. V. Due process extends to “all ‘persons’
6 within the United States, including [non-citizens], whether their presence here is lawful,
7 unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
8

9 **A. Petitioner’s Liberty Interest is protected**

10 55. “Freedom from imprisonment—from government custody, detention, or other
11 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
12 protects.” *Zadvydas*, 533 U.S. at 690.

13 56. A continued liberty interest also exists where an individual was detained and is
14 subsequently released, even if conditionally released and even when an initial decision to
15 detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-
16 82 (1972). “[S]ubject to the conditions of his parole, [a parolee] can be gainfully
17 employed and is free to be with family and friends and to form the other enduring
18 attachments of normal life.” *Id.* at 482. The parolee relies “on at least an implicit promise
19 that parole will be revoked only if he fails to live up to the parole conditions.” *Id.* The
20 Court explained that “the liberty of a parolee, although indeterminate, includes many of
21 the core values of unqualified liberty and its termination inflicts a grievous loss on the
22 parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is valuable and
23
24

1 must be seen within the protection of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at
2 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed
3 in a pre-parole program created to reduce prison overcrowding have a protected liberty
4 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82
5 (1973) (holding that individuals released on felony probation have a protected liberty
6 interest requiring pre-deprivation process).
7

8 57. As the First Circuit has explained, when analyzing the issue of whether a specific
9 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved
10 the issue by comparing the specific conditional release in the case before them with the
11 liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*,
12 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See*
13 *also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person
14 who is in fact free of physical confinement—even if that freedom is lawfully revocable—
15 has a liberty interest that entitles him to constitutional due process before he is re-
16 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*,
17 408 U.S. at 482).
18

19 58. The protectable liberty interest created by conditional parole also applies to
20 immigration detention. “[T]he government’s discretion to incarcerate non-citizens is
21 always constrained by the requirements of due process.” *Hernandez v. Sessions*, 872 F.3d
22 976, 981 (9th Cir. 2017). “Just as people on preparole, parole, and probation status have a
23 liberty interest, so too does [a noncitizen released from immigration detention] have a
24

1 liberty interest in remaining out of custody on bond.”). *Ortega v. Bonnar*, 415 F. Supp.
2 3d 963, 969 (N.D. Cal. 2019). Even where “a decision-making process involves
3 discretion does not prevent an individual from having a protectable liberty interest.” *Id.* at
4 970 (N.D. Cal. 2019); *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2
5 (N.D. Cal. May 6, 2022).

6
7 59. The protected liberty interest is even more substantial when balancing the
8 nonpunitive purpose of immigration detention against the “irreparable harms imposed on
9 anyone subject to immigration detention,” including “subpar medical and psychiatric care
10 in ICE detention facilities, the economic burdens imposed on detainees and their families
11 as a result of detention, and the collateral harms to children of detainees whose parents
12 are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

13
14 60. “[R]elease from ICE custody constitute[s] an ‘implied promise’ that [the
15 noncitizen’s] liberty would not be revoked unless she ‘fail[s] to live up to the conditions
16 of her release.’ The regulatory framework makes clear that those conditions [a]re that [the
17 noncitizen] remain[s] neither a danger to the community nor a flight risk. *Pinchi v. Noem*,
18 — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D.
19 Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).

20
21 61. A noncitizen released from custody pending removal proceedings therefore has a
22 protected liberty interest in remaining out of custody. *See Diaz v. Kaiser*, No. 3:25-CV-
23 05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025); *Romero v. Kaiser*, No. 22-cv-
24

1 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6,2022); *see also Ramirez Clavijo v.*
2 *Kaiser*, 25-cv-06248-BLF, at 6 (N.D. Cal. Aug. 21, 2025)(gathering cases).

3 62.Petitioner has a substantial liberty interest in not being detained. He has been living
4 in the United States for over two years, has been working and supporting himself and has
5 developed extensive community ties.

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

9 63.“Adequate, or due, process depends upon the nature of the interest affected. The
10 more important the interest and the greater the effect of its impairment, the greater the
11 procedural safeguards the [government] must provide to satisfy due process.” *Haygood v.*
12 *Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at
13 481-82). This Court must “balance [Petitioner’s] liberty interest against the
14 [government’s] interest in the efficient administration of” its immigration laws in order to
15 determine what process he is owed to ensure that ICE does not unconstitutionally deprive
16 him of his liberty. *Id.* at 1357.

17 64.The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth
18 Circuit, *see Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps
19 the Court assess adequate safeguards: “[F]irst, the private interest that will be affected by
20 the official action; second, the risk of an erroneous deprivation of such interest through
21 the procedures used, and the probative value, if any, of additional or substitute procedural
22 safeguards; and finally the government’s interest, including the function involved and the
23
24

1 fiscal and administrative burdens that the additional or substitute procedural requirements
2 would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

3 65. The Due Process Clause typically requires a hearing of some sort before the
4 government may deprive a person of liberty. *Zinerman v. Burch*, 494 U.S. 113, 127
5 (1990) (*see also United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) (“Due
6 process always requires, at a minimum, notice and an opportunity to respond.”). Post-
7 deprivation remedies may satisfy the requirements of due process only in a “special case”
8 where they are “the only remedies the State could be expected to provide” and where
9 “one of the variables in the *Mathews* equation—the value of post deprivation
10 safeguards—is negligible in preventing the kind of deprivation at issue” such that “the
11 State cannot be required constitutionally to do the impossible by providing post
12 deprivation process.” *Zinerman*, 494 U.S. at 985.

13
14
15 **1. Petitioner has a substantial liberty interest in staying out of detention**

16 66. An individual's interest in not being detained is “the most elemental of liberty
17 interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578
18 (2004). “Freedom from bodily restraint has always been at the core of the liberty
19 protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). This
20 liberty interest also exists where ICE decides to unilaterally nullify its own prior parole
21 decision and take away his physical freedom, *i.e.*, his “constitutionally protected interest
22 in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)
23 (internal quotation omitted). Courts have routinely agreed that “a petitioner’s interest in
24

1 remaining out of custody as ‘substantial.’” *Rodriguez-Flores v. Semaia*, No. 2:25-CV-
2 06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025
3 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been released, the
4 more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

5
6 **2. There is a risk of erroneous deprivation that the additional procedural
safeguard of a pre-detention hearing would help protect against.**

7 67. Even if the Government believes “it has a valid reason” to re-detain noncitizens, it
8 “does not eliminate its obligation to effectuate the detention in a manner that comports
9 with due process.” *Guillermo M.R. v. Kaiser*, — F. Supp. 3d —, —, No. 25-cv-
10 05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding “undeniably
11 stark” risk of erroneous deprivation where the Government contends that
12 “notwithstanding a neutral arbiter’s determination that Petitioner should be released, ICE
13 is entitled to unilaterally terminate the IJ’s order by re-detaining Petitioner without a
14 hearing for at least six months, based on ICE’s own determination in its sole discretion
15 that additional conditions of release unilaterally set by ICE had been violated”); *see also*
16 *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

17
18 68. Where the petitioner “has not received any bond or custody ... hearing, the risk of
19 an erroneous deprivation [of liberty] is high because neither the government nor
20 [Petitioner] has had an opportunity to determine whether there is any valid basis for her
21 detention.” *Pinchi v. Noem*, — F. Supp. 3d —, —, No. 5:25-cv-05632-PCP, 2025
22 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing
23
24

1 significantly decreases that risk because the government has to prove to a neutral
2 adjudicator by clear and convincing evidence that circumstances have materially changed
3 to justify re-detention, and a hearing is likelier to produce accurate determinations
4 regarding factual disputes, such as whether a certain occurrence constitutes a “changed
5 circumstance.” *See Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989)
6 (when “delicate judgments depending on credibility of witnesses and assessment of
7 conditions not subject to measurement” are at issue, the “risk of error is considerable
8 when just determinations are made after hearing only one side”).

10 69. Further, the risk of an erroneous deprivation of liberty under *Mathews* can be
11 decreased where a neutral decisionmaker, rather than ICE alone, makes custody
12 determinations. *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir.
13 2011); *see also Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), *abrogated on*
14 *other grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) (“A neutral judge
15 is one of the most basic due process protections.”)

17 70. Any argument that noncitizens can request a custody determination hearing once
18 re-detained goes against the due process safeguards envisioned in the Constitution,
19 because such hearing happens after the fact and cannot prevent an erroneous deprivation
20 of liberty. *Domingo v. Kaiser*, No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D.
21 Cal. July 14, 2025) (“Even if Petitioner-Plaintiff received a prompt post-detention bond
22 hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already
23 suffered the harm that is the subject of his motion: that is, his potentially erroneous
24

1 detention.”). Further, custody determination hearings are routinely conducted in
2 immigration court and this is not a “special case” that warrants post-deprivation remedies
3 because other remedies are impractical the way it was in *Zinermon*.

4 71. Consequently ICE was required to provide Petitioner with notice and a hearing
5 prior to any re-incarceration and revocation of his conditional parole. See *Morrissey*, 408
6 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494
7 U.S. at 985; see also *Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*,
8 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
9 commitment proceedings may not constitutionally be held in jail pending the
10 determination as to whether they can ultimately be recommitted). Under *Mathews*, “the
11 balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-deprivation
12 hearing before a neutral adjudicator, which ICE failed to provide.
13
14

15 72. Further, immigration detention is civil (as opposed to criminal), and its primary
16 purpose is to ensure a noncitizen’s appearance during removal proceedings and protect
17 against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678,
18 690, 697 (2001). Due process thus also requires consideration of alternatives to detention
19 at any custody redetermination hearing that may occur, and where alternatives to
20 detention that could mitigate risk of flight exist, detention is not warranted. See *Bell v.*
21 *Wolfish*, 441 U.S. 520, 538 (1979).

22 ///

23 ///

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

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

19
20 74. ICE’s new policy to make a minimum number of arrests each day under the new
21 administration¹ does not constitute a material change in circumstances and cannot stand
22

23
24 ¹ *See* “Trump officials issue quotas to ICE officers to ramp up arrests,” *Washington Post* (November 9, 2025),
available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>.

1 to replace regulations enacted by Congress that allow the release of noncitizens in the
2 first place. It is “arbitrary, capricious [and] an abuse of discretion” “in excess of statutory
3 jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-
4 (C). Even if the government “ultimately demonstrates to a neutral decisionmaker by clear
5 and convincing evidence that her detention is necessary to prevent danger to the
6 community or flight,” then the only potential injury the government faces is a short delay
7 in detaining” Petitioner. *Pinchi*, 2025 WL 2084921, at *12. “Faced with ... a conflict
8 between minimally costly procedures and preventable human suffering, [the Court has]
9 little difficulty concluding that the balance of hardships tips decidedly in plaintiff[’s]
10 favor.” (internal citations omitted). *Id.*

11
12 75. Consequently the government’s interest in keeping Petitioner in detention without
13 a due process hearing is outweighed by Petitioner’s significant private interest in his
14 liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and
15 until the government demonstrates by clear and convincing evidence that he is a flight
16 risk or danger to the community. It becomes abundantly clear that the *Mathews* test
17 favors Petitioner when the Court considers that the process Petitioner seeks—release
18 from custody pending notice and a hearing regarding whether his conditional parole
19 should be revoked and, if so, whether a new bond amount should be set—is a standard
20 course of action for the government. In the alternative, providing Petitioner with a
21 hearing before this Court (or a neutral decisionmaker) to determine whether there is clear
22 and convincing evidence that Petitioner is a flight risk or danger to the community would
23
24

1 impose only a *de minimis* burden on the government, because the government routinely
2 provides this sort of hearing to detained individuals like Petitioner.

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

4 76. The Immigration and Nationality Act (INA) prescribes three basic forms of
5 detention for noncitizens in removal proceedings.
6

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

14 78. Second, the INA provides for mandatory detention of noncitizens subject to
15 expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking
16 admission referred to under § 1225(b)(2).

17 79. Last, the Act also provides for detention of noncitizens who have been previously
18 ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C.
19 § 1231(a)–(b).
20

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

22 81. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the
23 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L.
24 No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–

1 585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act,
2 Pub. L. No.119-1, 139 Stat. 3 (2025).

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

8 83. Thus, in the decades that followed, most people who entered without inspection—
9 unless they were subject to some other detention authority—received bond hearings. That
10 practice was consistent with many more decades of prior practice, in which noncitizens
11 who were not deemed “arriving” were entitled to a custody hearing before an IJ or other
12 hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at
13 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously
14 found at § 1252(a)).

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

20 85. On September 5, 2025, the Board of Immigration Appeals issued a precedent
21 decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that
22

1 noncitizens who entered the United States without inspection were ineligible for bond
2 redetermination hearings because they were seeking admission, and fell within 8 U.S.C. §
3 1225(b)(2)(A).

4 86. This legal theory espoused by the BIA's decisions in *Matter of Q Li* and *Matter of*
5 *Yajure Hurtado* that noncitizens who entered the United States without admission or
6 parole are ineligible for bond hearings has been universally rejected by the district courts.
7 *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash.
8 Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL
9 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-
10 SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*,
11 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-
12 02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-
13 ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz*, 5:25-cv-
14 01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No.
15 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No.
16 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v.*
17 *Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025);
18 *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn.
19 Aug. 27, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D.
20 La. Aug. 27, 2025) *Rodriguez v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

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

3 88. Section 1226(a) applies by default to all persons “pending a decision on whether
4 the [noncitizen] is to be removed from the United States.” These removal hearings are
5 held under § 1229a, which “decid[e] the inadmissibility or deportability of a[]
6 [noncitizen].”
7

8 89. The text of § 1226 also explicitly applies to people charged as being inadmissible,
9 including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E).
10 Subparagraph (E)’s reference to such people makes clear that, by default, such people are
11 afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that
12 it applies to people who face charges of being inadmissible to the United States,
13 including those who are present without admission or parole.
14

15 90. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who
16 recently entered the United States. The statute’s entire framework is premised on
17 inspections at the border of people who are “seeking admission” to the United States. 8
18 U.S.C. § 1225(b)(2)(A).

19 91. In *Torres v. Barr*, 976 F.3d 918, 926 (9th Cir. 2020), the en banc Court held that
20 “the phrase ‘at the time of application for admission’ ... refers to the particular point in
21 time when a noncitizen submits an application to physically enter into the United States.”
22 976 F.3d at 924. The Ninth Circuit held that “inadmissibility must be measured at the
23 point in time that an immigrant actually submits an application for entry into the United
24

1 States.” *Torres v. Barr*, 976 F.3d at 923. Under section 212(a)(7), a noncitizen only
2 makes an application for admission when they seek permission to physically enter the
3 United States. *Id.* at 924.

4 92. In short, *Torres* clarified there is a temporal limitation to a classification of
5 applicant for admission. See *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir.
6 2024) (stating that “*Torres* merely rejected the view that an alien remains in a perpetual
7 state of applying for admission”).

8 93. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to
9 people like Petitioner who are alleged to have entered the United States without
10 admission or parole.

11
12 **FIRST CLAIM FOR RELIEF**
13 **Due Process**
14 **U.S. Const. amend. V**

15 94. Petitioner incorporates by reference the allegations of fact set forth in the
16 preceding paragraphs.

17 95. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments
18 refer to all “persons,” not just “citizens.” Aliens, even inadmissible or removable aliens,
19 must be afforded due process protection. See *Yick Wo v. Hopkins*, 118 U.S. 356, 369
20 (1886) (“The Fourteenth Amendment to the Constitution is not confined to the protection
21 of citizens.”). As stated by the Court, the provisions of the Fourteenth Amendment “are
22 universal in their application, to all persons within the territorial jurisdiction, without
23 regard to any differences of race, of color, or of nationality” *Id.* (emphasis added).
24

1 96. The Supreme Court has held that “even one whose presence in this country is
2 unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due
3 Process Clauses of the Fifth and Fourteenth Amendments]” *Mathews v. Diaz.*, 426 U.S.
4 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) (“Whatever his status
5 under the immigration laws, an alien is surely a ‘person’ in any ordinary sense of that
6 term.”); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) (“Persons within the
7 territory of the United States... even aliens... [may not]... be deprived of life, liberty or
8 property without due process of law.”).

9
10 97. Petitioner’s continued detention without any bond hearing violates his right to due
11 process under the Fifth Amendment.

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

16
17 99. Petitioner has a vested liberty interest in his conditional release. Due Process does
18 not permit the government to strip him of that liberty without a hearing before this Court.
19 See *Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

20 100. Petitioner’s re-arrest without a hearing violated the Constitution both
21 substantively, because Respondents have no valid interest in detaining him since
22 circumstances have not changed, and procedurally, because he was not provided with a
23 pre-detention hearing.
24

1 101. Mr. Vats poses no risk of flight and no danger to the community. He has no
2 criminal history, has demonstrated compliance with all prior immigration requirements,
3 and has community support in the United States.

4 **SECOND CLAIM FOR RELIEF**

5 **Petitioner’s Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2)**
6 **Unlawful Denial of Bond**

7 102. Petitioner repeats re-alleges and incorporate by reference each and every
8 allegation in the preceding paragraphs as if fully set forth herein.

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

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

19 105. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply
20 to noncitizens residing in the United States who are subject to the grounds of
21 inadmissibility because they originally entered the United States without inspection or
22
23
24

1 parole. Such noncitizens are detained under § 1226(a), unless they are subject to another
2 detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

3 106. The application of § 1225(b)(2) to bar Petitioner from receiving a bond
4 redetermination hearing before an immigration judge is arbitrary, capricious, and not in
5 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).
6

7 **THIRD CLAIM FOR RELIEF**

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

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

11 108. Respondents lack statutory authority to detain Petitioner under 8 U.S.C.
12 § 1225(b)(2), because that statute requires that the individual be an applicant for
13 admission and seeking admission to the U.S.

14 109. As Petitioner does not meet these criteria, his detention must be governed by
15 8 U.S.C. § 1226(a) which provides discretionary detention authority and requires ICE to
16 make an individualized custody determination.
17

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

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

22 112. Thus, Petitioner respectfully requests that this Court order his release from
23 detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of his removal
24

1 proceedings under 8 U.S.C. § 1229a, INA § 240. Alternatively, he requests that this Court
2 order a constitutionally adequate bond hearing complying with the procedural
3 requirements in *Singh*.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Mr. Vats prays that this Court grant the following relief:

- 6 (1) Assume jurisdiction over this matter;
- 7 (2) Issue the writ of habeas corpus and order Respondents to show cause,
8 within three days of Petitioner's filing this petition, why the relief he
9 seeks should not be granted; and set a hearing on this matter within five
10 days of Respondents' return on the order to show cause (*see* 28 U.S.C.
11 § 2243);
- 12 (3) Enjoin Respondents from transferring Petitioner outside the jurisdiction
13 of the Southern District of California pending the resolution of this case;
- 14 (4) Issue a Writ of Habeas Corpus requiring Respondents to release
15 Petitioner on the conditions of his prior conditional parole;
- 16 (5) Alternatively conduct an immediate bond hearing before this Court
17 where DHS bears the burden of justifying Petitioner's continued
18 detention by clear and convincing evidence and the Court takes into
19 consideration alternatives to detention and Petitioner's ability to pay a
20 bond;
- 21 (6) Alternatively, order an immediate bond hearing before a neutral
22 decisionmaker where DHS bears the burden of justifying Petitioner's
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1 continued detention by clear and convincing evidence and where
2 alternatives to detention and Petitioner’s ability to pay a bond are
3 considered;

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

7 (8) Grant such further relief as the Court deems just and proper.
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9 Dated: December 19, 2025,

Respectfully submitted,

10 By: /s/ Bashir Ghazialam
11 Bashir Ghazialam
12 Attorneys for Petitioner
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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 one of Petitioner’s attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner’s immigration file. Based on said review and 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.

Executed on this December 19, 2025, in San Diego, California.

/s/ Bashir Ghazialam
Bashir Ghazialam
Attorney for Petitioner