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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 Najibullah AZIZI,
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Petitioner,

v.

Christopher J. LAROSE, Warden, Otay
Mesa Detention Center;
Daniel A. BRIGHTMAN, Field Office
Director, San Diego Field Office, United
States Immigration and Customs
Enforcement;
Todd M. LYONS, Acting Director,
United States Immigration and Customs
Enforcement;
Kristi NOEM, Secretary of Homeland
Security;
Pamela Jo BONDI, Attorney General, in
their official capacities,
Respondents.

Case No.: '26CV0049 JO BJW

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

Petitioner Najibullah Azizi petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

1 INTRODUCTION

2 1. Petitioner Najibullah Azizi is a noncitizen who was previously released
3 from immigration custody but was abruptly re-detained and jailed for no
4 legitimate reason. The Department of Homeland Security (DHS) necessarily
5 determined that he was neither a flight risk nor a danger to the community when
6 it previously released him from its custody.

7 2. Petitioner has no criminal history of any kind. Nor does Petitioner,
8 who has dutifully attended his hearings in his removal proceedings and timely
9 filed an affirmative asylum application with U.S. Citizenship and Immigration
10 Services (USCIS), present risk of flight that would justify re-detention. Yet U.S.
11 Immigration and Customs Enforcement (ICE) continues to unlawfully detain him
12 in prison-like conditions, keeping him separated from his family and community.

13 3. ICE provided Petitioner with no pre-deprivation hearing prior to his
14 re-detention to determine whether material changes in his circumstances warrant
15 his re-detention based on danger to the community or risk of flight, despite a
16 growing consensus among United States district courts that such a hearing is
17 necessary in similar circumstances.

18 4. Petitioner’s detention under these circumstances violates his right to
19 substantive and procedural Due Process, as it is not justified by a legitimate
20 government purpose. Additionally, under *Mathews v. Eldridge*, 424 U.S. 319
21 (1976), his fundamental liberty interest far outweighs the government’s interest
22 in detaining him, and the risk of error is great where, as here, there has been no
23 pre-deprivation process to ensure his loss of liberty is justified. For similar
24 reasons, his detention also contravenes the Immigration and Nationality Act (INA)
25 and the Administrative Procedure Act (APA), thereby violating the doctrine laid
26 out in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

27 5. After ICE arrested Petitioner in the early hours of December 31, 2025,
28 ICE detained him at the federal building at 880 Front Street for approximately 11

1 hours and then transferred him to the Otay Mesa Detention Center in south San
2 Diego, where he remains detained. Respondents contend that recent changes to
3 decades-old agency policies and practices render Petitioner ineligible to seek bond
4 before an immigration judge, leaving him with no avenue to pursue release.

5 6. Accordingly, Petitioner seeks his release and challenges his detention
6 as a violation of the Due Process Clause of the Fifth Amendment, the INA and the
7 APA.

8 7. Petitioner respectfully requests that this Court issue the Writ of
9 Habeas Corpus commanding Respondents to release him from custody and enjoin
10 Respondents from re-detaining him without notice to his counsel and a pre-
11 deprivation hearing before a neutral decision-maker at which Respondents must
12 prove material changes in circumstances justify re-detention. Petitioner seeks that
13 relief under the federal habeas statute, 28 U.S.C. § 2241, which is the proper
14 vehicle for challenging civil immigration detention. *See Doe v. Garland*, 109 F.4th
15 1188, 1194 (9th Cir. 2024) (noting that a noncitizen’s challenge to his present
16 confinement falls within the “core of habeas”).

17 CUSTODY

18 8. Petitioner Najibullah Azizi is currently in Respondents’ legal and
19 physical custody. They are detaining him at the Otay Mesa Detention Center in
20 San Diego, California. He is under Respondents’ and their agents’ direct control.

21 JURISDICTION

22 9. This Court has jurisdiction to consider this habeas petition complaint
23 under 28 U.S.C. § 1331; 28 U.S.C. § 2241; the Due Process Clause of the Fifth
24 Amendment, U.S. Const. amend. V; and the Suspension Clause, U.S. Const. art. I,
25 2.

26 VENUE

27 10. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C.
28 § 2242 because at least one Respondent is in this District, Petitioner is detained in

1 this District, Petitioner’s immediate physical custodian is located in this District,
2 and a substantial part of the events giving rise to the claims in this action have
3 taken place in this District.

4 **PARTIES**

5 11. Petitioner Najibullah Azizi is currently detained by the Respondents at
6 the Otay Mesa Detention Center, an immigration detention facility in San Diego,
7 California. He has been in ICE custody since on or about December 31, 2025. His
8 affirmative asylum application was pending before USCIS, but he is now in
9 removal proceedings at the Otay Mesa Immigration Court.

10 12. Respondent Christopher J. LaRose is the Senior Warden at the Otay
11 Mesa Detention Center, where Petitioner is being held. Respondent Larose is
12 Petitioner’s immediate custodian. Petitioner sues him in his official capacity.

13 13. On information and belief, Respondent Daniel A. Brightman is the
14 current Field Office Director responsible for the San Diego Field Office of ICE with
15 administrative jurisdiction over Petitioner’s immigration case. He is a Petitioner’s
16 legal custodian. Petitioner sues him in his official capacity.

17 14. Respondent Todd M. Lyons is the Acting Director of ICE. ICE is a
18 component of DHS, 6 U.S.C. § 271, and an “agency” within the meaning of the
19 Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible
20 for enforcing immigration laws, and it is detaining Petitioner. Respondent Lyons
21 has custodial authority over Petitioner, who names him in his official capacity.


22 15. Respondent Kristi Noem is the Secretary of the DHS. DHS is the
23 federal agency responsible for enforcing immigration laws and granting
24 immigration benefits. *See* 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Noem
25 has ultimate custodial authority over Petitioner, who names her in her official
26 capacity.

27 16. Respondent Pam Bondi is the Attorney General of the United States.
28 She is responsible for the Immigration and Nationality Act’s implementation and

1 enforcement (*see* 8 U.S.C. §§ 1103(a)(1), (g)), and oversees the Executive Office
2 for Immigration Review. Petitioner names her in her official capacity.

3 **STATEMENT OF FACTS**

4 17. Petitioner is a 32-year-old national and citizen of Afghanistan. He was
5 born in Samangan, Afghanistan, in November 1993.

6 18. Petitioner entered the United States on or about May 5, 2023, at or
7 near San Ysidro, California, with his family to escape 

8 19. Upon entering the United States, ICE paroled Petitioner and his family
9 into the United States and they have been living at liberty in San Diego County
10 ever since.

11 20. Petitioner was placed in removal proceedings in the San Diego
12 Immigration Court. An immigration judge granted Petitioner and DHS's joint
13 motion to terminate proceedings without prejudice on October 24, 2023, based
14 on Petitioner's pending Temporary Protected Status (TPS) application.

15 21. Thereafter, Petitioner, through pro bono legal representation, filed an
16 affirmative asylum application with USCIS on April 29, 2024.

17 22. Petitioner received employment authorization on or about October 26,
18 2024, and thereafter worked at the "Ultimate Finds" store in North County Mall.

19 23. While at liberty, Petitioner worked to financially support his family
20 and complied with all immigration obligations. He has no criminal history in the
21 United States or any other country.

22 24. Petitioner is the family's only breadwinner; his spouse does not drive
23 and lacks independent means of transportation for the children's needs, including
24 school.

25 25. Petitioner and his spouse have three children: a five-year-old who
26 attends school, a one-year-old, and a three-month-old; the latter two children are
27 U.S. citizens.

28

1 33. The Due Process Clause of the Fifth Amendment protects all
2 “person[s]” from deprivation of liberty “without due process of law.” U.S. Const.
3 amend. V.

4 34. While the immigration laws afford ICE discretion over its decisions to
5 arrest, detain, and revoke prior release decisions, those decisions are nonetheless
6 constrained by the laws Congress has enacted and the requirements of the
7 Constitution, including the Due Process Clause. *See generally Zadvydas v. Davis*,
8 533 U.S. 678, 690 (2001); *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir.
9 2017).

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

13 36. Immigration detention only comports with Due Process when it
14 furthers the government’s goals of “ensuring the appearance of [noncitizens] at
15 future immigration proceedings and preventing danger to the community.” *Id.*
16 (internal citations omitted). ICE detention violates substantive Due Process where
17 it is not justified by flight risk or danger concerns. *See id.*

18 37. For that reason, ostensibly “nonpunitive” ICE detention pursuant to a
19 blanket policy under which the agency claims authority to arrest and detain all
20 noncitizens who it alleges are not lawfully present in the United States, without
21 regard for whether they are a flight risk or danger, would violate the Due Process
22 Clause. *See id.* So too would ICE detention for the purposes of meeting quotas,
23 punishment, deterring immigration, or encouraging voluntary deportation.
24 *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that
25 “[i]n discussing civil commitment more broadly, the [Supreme] Court has
26 declared such ‘general deterrence’ justifications impermissible” and finding likely
27 contrary to Due Process a deterrence policy pursuant to which DHS detained “one
28 particular individual” for purposes of “sending a message of deterrence to other[s]

1] who may be considering immigration” (citing *Kansas v. Crane*, 534 U.S. 407,
2 412 (2002)).

3 38. All such detentions would be unlawful because they bear no
4 reasonable relation to a legitimate government purpose. *See id.*; *Demore v. Kim*,
5 538 U.S. 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S.
6 346, 361–62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

7 **Procedural Due Process Constraints on the Detention of an Individual Who**
8 **Was Previously Released**

9 39. Procedural Due Process ensures that no persons are deprived of their
10 liberty absent a fair process. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976),
11 courts evaluate procedural Due Process by balancing (1) the private interest
12 affected; (2) the risk of erroneous deprivation of such interest; and (3) the
13 government’s interest. *Id.* at 335.

14 40. “[T]he liberty [of a person released from government custody] is
15 valuable and must be seen as within the protection of the [Due Process Clause].”
16 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

17 41. “[E]ven when ICE has the initial discretion to detain or release a
18 noncitizen pending removal proceedings, after that individual is released from
19 custody she has a protected liberty interest in remaining out of custody.” *Pinchi v.*
20 *Noem*, 792 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No.
21 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*
22 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);
23 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug.
24 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

25 42. Courts in this district have joined a growing chorus of district courts
26 that have recognized that noncitizens have a significant liberty interest in both
27 “continued freedom *after release on own recognizance*,” *Alegria Palma v. Larose*,
28 No. 25-cv-1942-BJC-MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis
added), and in “freedom from imprisonment” after “the government grants a

1 [noncitizen] parole into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JES-
2 MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See*
3 *also Prieto-Cordova*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov.
4 19, 2025); *Faizyan v. Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D.
5 Cal. Nov. 17, 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC),
6 2025 WL 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-
7 01393-KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen*
8 *v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025);
9 *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct. 6,
10 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex.
11 Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-M JP-TLF, 2025 WL
12 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE,
13 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

14 43. “Where, as here, [the petitioner] has not received any bond or custody
15 . . . hearing, the risk of an erroneous deprivation [of liberty] is high because
16 neither the government nor [the petitioner] has had an opportunity to determine
17 whether there is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035
18 (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July
19 11, 2025)) (cleaned up). Indeed, where a petitioner “was previously released
20 following a determination that he posed no flight risk or danger to the
21 community, and absent any new evidence showing a material change in
22 circumstances, the risk of erroneous detention without a hearing is substantial.”
23 *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6 (ordering petitioner’s immediate
24 release where he was re-detained without pre-deprivation hearing).

25 44. The requirement of an individualized determination is even stronger
26 in cases of re-detention because the prior “[r]elease reflects a determination by
27 the government that the noncitizen is not a danger to the community or a flight
28 risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub*

1 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). “[T]o be lawful”
2 the re-detention “must be based on evidence that the circumstances relevant to
3 that original release decision have changed.” *Saravia*, 280 F. Supp. 3d at 1196.

4 45. “To satisfy due process, those changed circumstances must represent
5 individualized legal justification for detention.” *Sanchez v. LaRose*, No. 25-CV-
6 2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (internal
7 citations omitted)).

8 46. The government can claim no interest in re-detention where there are
9 no changed circumstances going to flight risk or danger sufficient to warrant re-
10 detention. *See Pinchi*, 792 F. Supp 3d at 1036 (“The government does not claim
11 that any material circumstances have changed that would warrant reassessment
12 of Ms. Garro Pinchi's risk of flight or dangerousness, and it has articulated no
13 other reason for her detention.”). Even if the government asserted the existence of
14 such changed circumstances, its interest in denying a pre-deprivation hearing to
15 prove that claim is negligible, particularly because custody hearings are a routine
16 practice for immigration courts. Compared to the “staggering” “costs to the public
17 of immigration detention,” *Hernandez*, 872 F.3d at 996, “[t]he effort and cost
18 required” of providing a hearing “is minimal.” *Doe v. Becerra*, 787 F. Supp. 3d
19 1083, 1094 (E.D. Cal. 2025).

20 47. Thus, detention absent a pre-deprivation hearing establishing that
21 changed circumstances justify re-detention violates procedural Due Process.

22 **The Statutory Framework Governing Petitioner’s Detention**

23 48. Petitioner is detained pursuant to 8 U.S.C. 1226(a), which provides, in
24 pertinent part, that

25 On a warrant issued by the Attorney General, a [noncitizen] may be
26 arrested and detained pending a decision on whether the [noncitizen]
27 is to be removed from the United States. Except as provided in
28 subsection (c) and pending such decision, the Attorney General--
(1) may continue to detain the arrested [noncitizen]; and
(2) may release the [noncitizen] on--
(A) bond of at least \$1,500 with security approved by, and containing
conditions prescribed by, the Attorney General; or

1 (B) conditional parole.

2 49. Section 1226(a) governs the detention of noncitizens “inside the
3 United States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281,
4 288–89 (2018).

5 50. Section 1225(b)(2), in contrast, authorizes the detention of applicants
6 for admission who are “seeking admission” but “not clearly and beyond a doubt
7 entitled to be admitted.” Unlike section 1226(a), section 1225(b)(2) provides that
8 individuals who fall under its authority “shall be detained” during the pendency of
9 proceedings, though they too remain eligible for release through the parole
10 process. *Jennings*, 583 U.S. at 300 (holding that release on “parole” under 8
11 U.S.C. § 1182(d)(5)(A) remains available even for people held under otherwise-
12 mandatory detention pursuant to section 1225(b)).

13 51. Petitioner was unquestionably detained in the interior of the country,
14 while driving, over two years after initially entering the United States; thus, he
15 was not “seeking admission” at the time of his re-detention, so his detention is
16 governed by section 1226(a). *See, e.g., Esquivel-Pina v. Larose*, No. 25-CV-2672
17 JLS (BLM), 2025 WL 2998361, at *5 (S.D. Cal. Oct. 24, 2025); *Garcia v. Noem*,
18 No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025);
19 *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8,
20 2025).

21 52. Immigration detention “has two regulatory goals: ensuring the
22 appearance of [noncitizens] at future immigration proceedings and preventing
23 danger to the community.” *Zadvydas*, 533 U.S. at 678 (internal citations omitted);
24 *see also* 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

25 53. Those previously released by DHS, like Petitioner, have necessarily
26 been deemed neither a flight risk nor a danger. 8 C.F.R. § 1236.1 (c)(8)
27 (authorizing release of noncitizens under section 1226(a) if they “would not pose
28 a danger to property or persons,” and are “likely to appear for any future

1 proceeding”); 8 C.F.R. § 212.5(b) (authorizing parole from custody of noncitizens
2 deemed “neither a security risk nor a risk of absconding”).

3 54. In cases of individuals previously released by DHS, re-detention under
4 section 1226(a) requires an individualized determination of a material change in
5 circumstances relating to flight risk or danger. *See Ortega*, 415 F. Supp. 3d at 968
6 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”
7 (citing *Saravia*, 280 F. Supp. 3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.
8 637, 640 (B.I.A. 1981) (“[W]here a previous bond determination has been made
9 by an immigration judge, no change should be made by [DHS] absent a change of
10 circumstance.”).

11 55. Absent a material change in circumstances, the re-detention of
12 noncitizens previously released by DHS violates the INA because it does not serve
13 the purpose of the statute.

14 **Administrative Procedure Act**

15 56. Under the APA, courts may set aside agency action that is contrary to
16 law or constitutional right. 5 U.S.C. § 706(2).

17 57. In order to be reviewable under the APA, the challenged action must
18 constitute final agency action, which includes “the whole or a part of an agency
19 rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure
20 to act.” 5 U.S.C. § 551(13).

21 58. Petitioner’s detention occurred pursuant to reviewable agency action.
22 Specifically, ICE’s San Diego Field Office has adopted a policy pursuant to which it
23 claims authority to arrest and detain all noncitizens who it alleges are not lawfully
24 present in the United States, without regard for whether they are a flight risk or
25 danger. Such a policy marks the “consummation” of the ICE’s decision-making
26 process and is an action “by which rights or obligations have been determined, or
27 from which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178
28 (1997) (internal citations omitted).

1 59. “[A]gency action . . . need not be in writing to be final and judicially
2 reviewable . . . [a]n unwritten policy can still satisfy the APA’s pragmatic final
3 agency action requirement.” *Al Otro Lado, Inc. v. McAleenan*, 394 F. Supp. 3d
4 1168, 1206–07 (S.D. Cal. 2019) (internal citations omitted). “[A] contrary rule
5 would allow an agency to shield its decisions from judicial review simply by
6 refusing to put those decisions in writing.” *Id.* at 1207 (internal citations omitted).

7 60. Additionally, ICE’s decisions to re-detain Petitioner constitutes final
8 agency action because the re-detentions mark the “consummation” of ICE’s
9 decision-making process on the question of Petitioner’s custody, and it is an action
10 “by which rights or obligations have been determined, or from which legal
11 consequences will flow.” *Bennett*, 520 U.S. at 178 (internal citations omitted).
12 Indeed, the “practical and legal effects of the agency action” are that Petitioner
13 has been deprived of his liberty with no end in sight. *Or. Natural Desert Ass’n v.*
14 *U.S. Forest Service*, 465 F.3d 977, 982 (9th Cir. 2006).

15 61. Courts must “hold unlawful and set aside agency actions, findings and
16 conclusions” that are (a) arbitrary, capricious, an abuse of discretion, or otherwise
17 not in accordance with the law; (b) contrary to constitutional right, power,
18 privilege or immunity; (c) in excess of statutory jurisdiction, authority, or
19 limitations, or short of statutory right; or (d) without observance of procedures
20 required by law. 5 U.S.C. § 706(2).

21 62. Final agency action is arbitrary and capricious if the agency fails to
22 “articulate a satisfactory explanation for its action, including a rational connection
23 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S. v.*
24 *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations
25 omitted). Courts may not consider an agency’s “impermissible post hoc
26 rationalizations.” *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020)
27 (internal citations omitted).

28

1 71. Immigration detention pursuant to a blanket policy under which ICE
2 claims authority to arrest and detain all noncitizens who it alleges are not lawfully
3 present in the United States, without regard for whether they are a flight risk or
4 danger—whether for deterrence, to satisfy a quota, or for other purposes that do
5 not bear a reasonable relation to preventing danger or flight risk—violates the
6 Due Process Clause. *Id.*; *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

7 72. Petitioner’s detention violates the Due Process Clause because it is not
8 rationally related to any legitimate government purpose.

9 **SECOND CAUSE OF ACTION**
10 **Violation of the Fifth Amendment Procedural Due Process Clause**

11 73. Petitioner realleges and incorporates by reference paragraphs 1-64,
12 above.

13 74. “In the context of immigration detention, it is well-settled that due
14 process requires adequate procedural protections to ensure that the government’s
15 asserted justification for physical confinement outweighs the individual’s
16 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872
17 F.3d at 990 (cleaned up).

18 75. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate
19 procedural Due Process by balancing 1) the private interest affected; 2) the risk of
20 erroneous deprivation of such interest; and 3) the government’s interest. *Id.* at
21 335.

22 76. Immigration detention always implicates the liberty interest in
23 “freedom from imprisonment.” *Zadvydas*, 533 U.S. at 690. In addition, when the
24 government releases someone, they retain a liberty interest in their on-going
25 release from government custody. *Morrissey*, 408 U.S. at 482; *Alegria Palma*, No.
26 25-cv-1942-BJC-MMP at *6; *Sanchez*, 2025 WL 2770629 at *3.

27 77. Where a detained individual does not receive any pre-deprivation
28 hearing, “the risk of an erroneous deprivation of liberty is high because neither
the government nor [the petitioner] has had an opportunity to determine whether

1 there is any valid basis for her detention.” *Pinchi*, 792 F. Supp 3d at 1035
2 (cleaned up); *Alegria Palma*, No. 25-cv-1942-BJC-MMP at *6 (“Given that
3 Petitioner was previously released following a determination that he posed no
4 flight risk or danger to the community, and absent any new evidence showing a
5 material change in circumstances, the risk of erroneous detention without a
6 hearing is substantial.”).

7 78. The government can claim no interest in re-detention where there are
8 no changed circumstances going to flight risk or danger that warrant re-detention.
9 *See Pinchi*, 792 F. Supp. 3d at 1035.

10 79. Because the government has not afforded Petitioner a pre-deprivation
11 hearing to determine whether changed circumstances going to flight risk or
12 danger warrant his re-detention, his detention violates procedural Due Process.

13 **THIRD CAUSE OF ACTION**

14 **Violation of Immigration and Nationality Act – 8 U.S.C. § 1226(a)**

15 80. Petitioner realleges and incorporates by reference paragraphs 1-64,
16 above.

17 81. Petitioner was re-detained in the interior of the country and thus is
18 currently detained under 8 U.S.C. § 1226(a).

19 82. Detention under 8 U.S.C. § 1226(a) must serve a legitimate
20 government purpose of mitigating danger or preventing flight. *See Zadvydas*, 533
21 U.S. at 690; 8 U.S.C. § 1226(a), (b); 8 C.F.R. § 1236.1(c)(8).

22 83. Petitioner’s prior release by DHS necessarily reflects a determination
23 he is neither a flight risk nor a danger to the community. 8 C.F.R. § 1236.1(c)(8)
24 (outlining requirements for release on recognizance); 8 C.F.R. § 212.5(b)
25 (outlining requirements for parole).

26 84. Thus, his re-detention pursuant to 8 U.S.C. § 1226(a) requires an
27 individualized determination of a material change in circumstances going to flight
28 risk or danger for his re-detention to serve a regulatory purpose.

1 85. Petitioner’s re-detention violates the INA because he was not afforded
2 an individualized determination of a material change in circumstances related to
3 flight risk or danger justifying re-detention.

4 **FOURTH CAUSE OF ACTION**
5 **Violation of Administrative Procedure Act – 5 U.S.C. § 706(2)**
6 **(unlawful agency action)**

7 86. Petitioner realleges and incorporates by reference paragraphs 1-64,
8 above.

9 87. The APA provides that a “reviewing court shall . . . hold unlawful and
10 set aside agency action, findings, and conclusions found to be . . . not in
11 accordance with law,” “contrary to constitutional right, power, privilege, or
12 immunity,” and “in excess of statutory jurisdiction, authority, or limitation.”
13 5 U.S.C. §§ 706(2)(A)–(C).

14 88. ICE has re-detained Petitioner pursuant to a blanket policy under
15 which ICE’s San Diego Field Office claims authority to arrest and detain all
16 noncitizens who it alleges are not lawfully present in the United States, without
17 regard for whether they are a flight risk or danger. Under the *Accardi* doctrine,
18 agencies are bound to follow their own rules and policies that constrain otherwise
19 discretionary detention decisions, and agency action that disregards those binding
20 standards is unlawful. *Accardi*, 347 U.S. 260, 266-67.

21 89. Because re-detentions pursuant to Respondents’ policy violate
22 Petitioner’s rights under the Due Process Clause of the Fifth Amendment and the
23 INA, the policy additionally violates the APA as it is not in accordance with law, is
24 contrary to constitutional right, and is in excess of statutory jurisdiction. *Id.*

25 **FIFTH CAUSE OF ACTION**
26 **Violation of Administrative Procedure Act – 5 U.S.C. § 706(2)**
27 **(arbitrary and capricious agency action)**

28 90. Petitioner realleges and incorporates by reference paragraphs 1-64,
above.

1 91. The APA provides that a “reviewing court shall . . . hold unlawful and
2 set aside agency action, findings, and conclusions found to be . . . arbitrary and
3 capricious, an abuse of discretion, or otherwise not in accordance with law.”
4 5 U.S.C. §§ 706(2)(A)–(C).

5 92. ICE’s decisions to re-detain Petitioner constitutes final agency action
6 where they mark the “consummation” of agency decision making and are actions
7 “by which rights or obligations have been determined, or from which legal
8 consequences will flow.” *Bennett*, 520 U.S. at 178.

9 93. Because ICE has failed to articulate a contemporaneous rational
10 explanation for its decision to re-detain Petitioner without a pre-detention
11 hearing, and because it cannot provide a post-hoc rationalization for this decision,
12 it is arbitrary and capricious in violation of the APA. *Motor Vehicle Mfrs. Ass’n of*
13 *U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983); *Regents*, 591
14 U.S. at 21.

15 94. Moreover, to the extent Respondents’ written regulations, policies,
16 and guidance require individualized custody determinations and consideration of
17 flight risk and danger, ICE’s failure to follow those binding standards in
18 implementing its blanket re-detention policy independently renders the policy
19 arbitrary, capricious, and “not in accordance with law” under the *Accardi*
20 doctrine. *Accardi*, 347 U.S. at 267–68.

21 95. Additionally, ICE’s policy pursuant to which ICE’s San Diego Field
22 Office claims authority to arrest and detain all noncitizens who it alleges are not
23 lawfully present in the United States, without regard for whether they are a flight
24 risk or danger, is arbitrary and capricious in violation of the APA because it fails to
25 “articulate a satisfactory explanation for its action including a rational connection
26 between the facts found and the choice made.” *State Farm*, 463 U.S. at 43.

27 **PRAYER FOR RELIEF**

28 Petitioner asks this Court to grant the following relief:

- 1 1. Assume jurisdiction over this matter;
- 2 2. Order Respondents to show cause why the writ should not be granted
3 as to Petitioner within three days, and set a hearing on this Petition within five
4 days of the return, as required by 28 U.S.C. 2243;
- 5 3. Enjoin Respondents from transferring Petitioner out of the jurisdiction
6 during the pendency of the habeas petition;
- 7 4. Issue a writ of habeas corpus requiring that Respondents release
8 Petitioner under the same conditions as his initial release;
- 9 5. Order Respondents to return all of Petitioner's belongings, including
10 his identification documents;
- 11 6. Issue a temporary restraining order and preliminary injunction
12 ordering Petitioner's release and enjoining Respondents from further detaining
13 him without providing notice to the Court and Petitioner's counsel, and a hearing
14 at which Respondents prove changed circumstances regarding his dangerousness
15 or risk of flight warrant his detention;
- 16 7. Declare that Petitioner's detention violates the Due Process Clause of
17 the Fifth Amendment, the INA, and the APA;
- 18 8. Set aside Respondents' unlawful practice pursuant to 5 U.S.C.
19 § 706(2) as contrary to law, contrary to constitutional right, and in excess of
20 statutory authority; and
- 21 9. Grant such further relief as this Court deems just and proper.

22
23 Dated: January 5, 2026

Respectfully submitted,

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26 By: /s/ Arwa J.Z. Kakavand
Arwa J.Z. Kakavand

27 Attorney for Petitioner
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TABLE OF EXHIBITS

Exhibit 1: Form I-862, Notice to Appear
Exhibit 2: Form I-797, Asylum Application Receipt Notice

1 **VERIFICATION BY SOMEONE ACTING ON PETITIONER’S BEHALF PURSUANT**
2 **TO 28 U.S.C. § 2242**

3 I, Arwa J.Z. Kakavand, do depose and state:

4 I represent Petitioner Najibullah Azizi in these habeas corpus proceedings.
5 Petitioner is currently being held in detention at the Otay Mesa Detention Center
6 and is not able to appear in my office to sign this Verification. I have reviewed
7 the record of his detention and discussed this matter with him. I verify that the
8 information contained in the foregoing petition is true and correct to the best of
9 my knowledge and belief.

10
11 Dated: January 5, 2026

Respectfully submitted,

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14 By: /s/ Arwa J.Z. Kakavand
15 Arwa J.Z. Kakavand

16 Attorney for Petitioner
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Exhibit 1

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

Event No: IMB2305000086

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FINS: [REDACTED] File No: [REDACTED]

In the Matter of:

Respondent: NAJIBULLAH AZIZI currently residing at:
[REDACTED] SAN MARCOS, CALIFORNIA, 920691633 [REDACTED]
(Number, street, city, state and ZIP code) (Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you.

1. You are not a citizen or national of the United States;
2. You are a native of AFGHANISTAN and a citizen of AFGHANISTAN;
3. You entered the United States at or near SAN YSIDRO, CA, on or about May 5, 2023;
4. You were not admitted or paroled after inspection by an Immigration Officer or at that time you arrived at a time or place other than as designated by the Attorney General.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

880 FRONT STREET SUITE 4240 San Diego CA 92101. EOIR San Diego, CA
(Complete Address of Immigration Court, including Room Number, if any)

on August 2, 2023 at 8:30 AM to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above. E04740 4740 WILCOX - SUPERVISORY DETENTION AND DEPORTATI
(Signature and Title of Issuing Officer)

Date: June 20, 2023 San Diego, California
(City and State)

EOIR - 1 of 5

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline. If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the Internet at http://www.ice.gov/contact/ere as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date:

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on June 20, 2023, in the following manner and in compliance with section 239(a)(1) of the Act.

- in person by certified mail, returned receipt # requested by regular mail
Attached is a credible fear worksheet.
Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the FARSI language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

(Signature of Respondent if Personally Served)

A 10126 GARCIA GONZALEZ - Deportation Officer (Signature and Title of officer)

EOIR - 2 of 5

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorns>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN, EOIR-001, Records and Management Information System, or any updated or successor SORN which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

Exhibit 2

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE May 23, 2024
CASE TYPE I-589, Application for Asylum and for Withholding of Removal		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER [REDACTED]	RECEIVED DATE April 29, 2024	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]

NAJIBULLAH AZIZI
 C/O GABRIELA ESPINOZA RODRIGUEZ 5 00002182
 PO BOX 12666
 SAN DIEGO, CA 92112

PAYMENT INFORMATION:

Application/Petition Fee: \$0.00
 Total Amount Received: \$0.00
 Total Balance Due: \$0.00



NAME AND MAILING ADDRESS

We have received your form and are currently processing the above case for the following applicants:

Name	Date of Birth	Country of Birth	Class (If Applicable)
AZIZI, NAJIBULLAH	[REDACTED]	AFGHANISTAN	

This is an acknowledgment your Form I-589 has been forwarded to USCIS, and it is not your Form I-589 Receipt Notice. You will receive a Receipt Notice once USCIS has conducted intake processing of your complete and properly filed application. If you indicated that you would like to include a dependent spouse or child(ren) in your application, but their names are not listed above, we were not able to add your dependent(s) to your application because they either 1) did not meet the requirements to be included as a dependent; or 2) you included more than six (6) children. If you included more than 6 children on your application, your Form I-589 Receipt Notice will indicate all eligible dependents after USCIS completes intake processing of your application. For more information on requirements for dependents, please visit uscis.gov/i-589.

If we determine you must submit biometrics, we will mail you a biometrics appointment notice with the time and place of your appointment. We will also provide a receipt number for each co-applicant with their application support center (ASC) appointment notice.

If you have questions or need to update your personal information listed above, please visit the USCIS Contact Center webpage at uscis.gov/contactcenter to connect with a live USCIS representative in English or Spanish.

USCIS Office Address:
 USCIS
 Asylum Vetting Center
 P. O. Box 57100
 Atlanta, GA 30308-0506

USCIS Contact Center Number:

(800)375-5283
 ATTORNEY COPY



Ex. 2

004

If you are visiting a field office and need directions, including public transportation directions, please see www.uscis.gov/fieldoffices for more information.

Notice for Customers with Disabilities

To request a disability accommodation:

- Go to uscis.gov/accommodations to make your request online, or
- Call the USCIS Contact Center at 1-800-375-5283 (TTY 1-800-767-1833) for help in English or Spanish.

If you need a sign language interpreter, make your request as soon as you receive your appointment notice. The more advance notice we have of your accommodation request, the better prepared we can be and less likely we will need to reschedule your appointment. For more information about accommodations, visit uscis.gov/accommodationsinfo.