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Attorney for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Ali Mohammadi,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

THOMAS E. FREELEY, in his official
capacity as ICE Field Officer Director,

JOHN DOE in his official capacity as the
warden of the Henderson Detention Facility,

PAMALA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: 2:26-cv-32

VERIFIED PETITION FOR HABEAS
CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION¹

1
2 1. Ali Mohammadi (“Petitioner”), by and through his undersigned counsel, hereby files this
3 petition for a writ of habeas corpus. Petitioner is a native and citizen of Afghanistan who entered the
4 United States on December 15, 2024, at Calexico, California, pursuant to a grant of humanitarian parole
5 under 8 U.S.C. § 1182(d)(5). Exs. 1 and 2. Petitioner has no criminal history and has complied with all
6 conditions imposed by the Department of Homeland Security (“DHS”). On December 29, 2025,
7 Petitioner appeared for a scheduled ICE appointment. At that appointment, an ICE officer informed
8 Petitioner that he would be taken into custody because he was allegedly not “properly vetted.” No
9 individualized findings were made, and DHS cited no conduct, criminal history, flight risk, or danger
10 to the community as a basis for detention.
11
12

13 2. Removal proceedings against Petitioner were commenced pursuant to a Notice to Appear
14 issued on December 14, 2024. Ex. 1. Petitioner is currently detained by DHS in ICE custody, despite
15 his lawful parole into the United States and the absence of any statutory basis for mandatory detention.
16

17 3. Under 8 U.S.C. § 1226(a), noncitizens who are lawfully present in the United States and
18 placed in removal proceedings—other than those subject to mandatory detention—are entitled to an
19 individualized custody determination, including the opportunity to seek release on bond or conditional
20 parole. This statutory framework governs the detention of parolees once removal proceedings have
21 commenced and reflects Congress’s intent that civil immigration detention be subject to neutral review.
22 Immigration judges are authorized to evaluate flight risk and danger to the community and to order
23 release where detention is not justified. These procedural protections apply squarely to individuals, like
24 Petitioner, who were affirmatively paroled into the United States and later placed into proceedings.
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28 ¹ Counsel has been unable to communicate with the Petitioner and all of the following information is based on information and belief from communication with Petitioner’s family.

1 4. Notwithstanding this clear statutory scheme, DHS has detained Petitioner without affording
2 him any meaningful custody review and without articulating a lawful basis under the Immigration and
3 Nationality Act. Parole under § 1182(d)(5) constitutes lawful presence, and nothing in the INA
4 authorizes DHS to detain a paroled noncitizen indefinitely or categorically without an individualized
5 determination under § 1226(a). By treating Petitioner as presumptively detainable based on generalized
6 concerns rather than individualized findings, DHS has exceeded its statutory authority.
7

8 5. Petitioner’s detention is further unlawful because it is predicated on race, religion, and
9 national origin, in violation of the Fifth Amendment. DHS explicitly informed Petitioner that he was
10 being detained because he was allegedly not “properly vetted,” despite his lawful parole and
11 compliance with all requirements. The only identifiable factors distinguishing Petitioner from other
12 parolees are his Afghan nationality, [REDACTED] The Ninth Circuit has made clear
13 that the government may not rely on race or ethnicity as a proxy for suspicion or adverse treatment.
14 *United States v. Montero-Camargo*, 208 F.3d 1122, 1131–35 (9th Cir. 2000) (en banc). Civil
15 immigration detention based on immutable characteristics rather than individualized evidence violates
16 fundamental principles of due process and equal protection.
17

18 6. The Supreme Court has repeatedly emphasized that civil immigration detention must be non-
19 punitive and narrowly tailored to serve legitimate governmental purposes. *See Zadvydas v. Davis*, 533
20 U.S. 678, 690 (2001). Where detention is imposed without an individualized assessment and instead
21 rests on impermissible generalizations tied to nationality or religion, it ceases to be regulatory and
22 becomes constitutionally suspect. Petitioner’s continued detention serves no legitimate purpose and
23 instead reflects discriminatory enforcement inconsistent with the Constitution.
24

25 7. Moreover, under *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), federal courts
26 must exercise independent judgment when interpreting statutes and may not defer to agency
27
28

1 interpretations that conflict with statutory text or constitutional principles. This Court therefore has the
2 authority and obligation to independently assess whether DHS’s detention of a lawfully paroled Afghan
3 national—without bond eligibility, individualized findings, or statutory authorization—is lawful. It is
4 not.

5
6 **JURISDICTION AND VENUE**

7 8. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general
8 federal question jurisdiction; 5 U.S.C. §§ 701 et seq., the Due Process Clause of the United States
9 Constitution and the INA. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241
10 et. seq. and the All Writs Act, 28 U.S.C. § 1651.

11 9. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the
12 lawfulness or constitutionality of DHS conduct. Federal courts are not stripped of jurisdiction under 8
13 U.S.C. § 1252. *See e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

14 10. Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the
15 United States or officers or employees thereof acting in their official capacity or under color of legal
16 authority; Petitioner is in the custody of the Henderson Detention Center, which is in the jurisdiction
17 of the Nevada District Court and there is no real property involved in this action.

18 11. There is no requirement for exhaustion of administrative remedies in the present case as
19 neither the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INA require petitioners to
20 exhaust administrative remedies before filing petitions for habeas corpus

21
22 **REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

23 24 12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
25 (OSC) to the Respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243.
26
27
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1 If an OSC is issued, the Court must require Respondents to file a return “within three days¹ unless for
2 good cause additional time, not exceeding twenty days, is allowed.” *Id.*

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

7
8 14. Petitioner is “in custody” for the purpose of § 2241 because Petitioner is arrested and
9 detained by Respondents.

10 **PARTIES**

11 **PETITIONER**

12
13 15. Petitioner is an Afghani citizen, who is currently in the custody of the Department of
14 Homeland Security in Henderson, Nevada.

15 **RESPONDENTS**

16
17 16. Respondent Kristi Noem (Secretary Noem) is the Secretary of the Department of Homeland
18 Security, the parent agency of Immigration and Customs Enforcement which is currently detaining the
19 Petitioner. Respondent Kristi Noem is sued in her official capacity as an agent of the United States
20 Government.

21
22 17. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs
23 Enforcement, and he has authority over the actions of respondent Drew Bostock and ICE in general.
24 Respondent Lyons is a legal custodian of Petitioner.

25
26 18. Respondent Thomas E. Freeley is the Field Office Director of Immigration and Customs
27 Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement Detainees
28

1 in the Nevada District court. Respondent Thomas E. Freeley is sued in his official capacity as an agent
2 of the United States Government.

3 19. Respondent Pamela Bondi is the Attorney General of the United States, and as such has
4 authority over the Department of Justice and is charged with faithfully administering the immigration
5 laws of the United States. Pamela Bondi is sued in her official capacity as an agent of the United States.
6

7 20. Respondent U.S. Executive Office for Immigration Review is the federal agency
8 responsible for custody redetermination decisions relating to non-citizens charged with being
9 removable from the United States.

10 21. Respondent John Doe is the warden of the Joe Corely Detention Center and thus has custody
11 over the Petitioner. Respondent John Doe is sued in his official capacity as an agent of the United
12 States.
13

14 22. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for
15 custody decisions relating to non-citizens charged with being removable from the United States,
16 including the arrest, detention, and custody status of non-citizens.
17

18 LEGAL FRAMEWORK

19 24. Under 8 U.S.C. § 1226(a), the Attorney General has authority to take into custody any alien
20 who is in the United States and is subject to removal proceedings, other than arriving aliens. Section
21 1226(a) provides for discretionary release on bond or conditional parole, while also allowing for initial
22 detention pending a determination of the alien's removability. This statutory framework is designed to
23 ensure that individuals who are lawfully in removal proceedings—including those paroled into the
24 United States—receive a neutral review of their custody status. Individuals detained under § 1226(a)
25 are entitled to a bond hearing before an immigration judge, who evaluates factors such as risk of flight
26 and danger to the community, and may impose conditions of supervision as appropriate.
27
28

1 25. Parole entrants, such as Petitioner, are not arriving aliens, despite what the NTA may say, within
2 the meaning of 8 U.S.C. § 1225(b) because they entered the United States legally under a DHS-issued
3 parole authorization at a port of entry. Unlike individuals subject to expedited removal, paroled entrants
4 have been temporarily authorized to enter and remain in the United States for a specific period and
5 purpose. Therefore, they retain eligibility for § 1226(a) custody review and cannot be automatically
6 subjected to indefinite detention without bond.
7

8 26. The Supreme Court has consistently held that civil immigration detention is limited in scope
9 and must include meaningful procedural safeguards, including custody review, to satisfy due process
10 requirements. In *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Court recognized that indefinite
11 detention of noncitizens beyond the period necessary to effect removal raises serious constitutional
12 concerns and emphasized that detention must be reasonably related to the statutory purposes. Similarly,
13 in *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018), the Court reinforced that detention under § 1226(a)
14 is subject to procedural constraints and must allow individualized review, underscoring that
15 immigration detention is not unrestricted.
16

17 27. The Ninth Circuit has further recognized that discretionary determinations regarding custody
18 must not be applied in an arbitrary or discriminatory manner. In *United States v. Montero-Camargo*,
19 208 F.3d 1122, 1131–32 (9th Cir. 2000), the court emphasized that statutory and constitutional
20 safeguards require that enforcement decisions not rely solely on an individual’s national origin, race,
21 or religion. By detaining Petitioner Ali Mohammadi based solely on his Afghan nationality, Muslim
22 religion, and Arab race—without any evidence of criminal history or risk to the community—ICE has
23 effectively imposed discriminatory treatment in violation of both statutory and constitutional norms.
24

25 28. The Fifth Amendment’s Due Process Clause prohibits the federal government from depriving
26 any person, including noncitizens, of liberty without meaningful procedural protections. As recognized
27
28

1 in *Zadvydas*, detention must be reasonably necessary to fulfill statutory objectives, and individuals
2 must be provided an opportunity to contest the factual and legal bases of their detention. The Supreme
3 Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024), further underscores
4 that courts are not bound to defer to agency interpretations where such interpretations result in arbitrary
5 or unconstitutional detention, granting the judiciary authority to scrutinize agency policies on their
6 merits.

7
8 29. Detention based solely on nationality, religion, and race is impermissible under both statutory
9 and constitutional law. Federal courts, including the Ninth Circuit, have held that immigration
10 enforcement actions motivated by discriminatory animus are ultra vires and may be enjoined. By
11 detaining Ali Mohammadi because he is Afghan, ~~_____~~—without any individualized
12 assessment of flight risk, danger, or statutory ineligibility—ICE is acting outside the bounds of §
13 1226(a) and in violation of the Due Process Clause of the Fifth Amendment.

14
15 30. In sum, the legal framework governing Petitioner's detention clearly demonstrates that:

- 16 a. Individuals paroled into the United States, like Ali Mohammadi, are subject to § 1226(a)
17 custody review, not the mandatory detention framework for arriving aliens;
18
19 b. Detention must be justified by individualized assessment of risk, not by national origin,
20 race, or religion;
21
22 c. Indefinite detention without bond review violates constitutional due process protections;
23 and
24 d. ICE's current detention of Petitioner, which appears motivated solely by nationality,
25 religion, and race, is statutorily and constitutionally unlawful.
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PROCEDURAL AND FACTUAL BACKGROUND

1
2 31. Petitioner is a native and citizen of Afghanistan who entered the United States on December
3 15, 2024, at Calexico, California, pursuant to a grant of humanitarian parole under 8 U.S.C. §
4 1182(d)(5). Exs. 1 and 2. Petitioner has no criminal history and has complied with all conditions
5 imposed by the Department of Homeland Security (“DHS”). On December 29, 2025, Petitioner
6 appeared for a scheduled ICE appointment. At that appointment, an ICE officer informed Petitioner
7 that he would be taken into custody because he was allegedly not “properly vetted.” No individualized
8 findings were made, and DHS cited no conduct, criminal history, flight risk, or danger to the
9 community as a basis for detention.
10

11
12 32. Removal proceedings against Petitioner were commenced pursuant to a Notice to Appear
13 issued on December 14, 2024. Ex. 1. Petitioner is currently detained by DHS in ICE custody, despite
14 his lawful parole into the United States and the absence of any statutory basis for mandatory detention.
15

CAUSES OF ACTION


16
17 **FIRST CAUSE OF ACTION:
Violation of Fifth Amendment Right to Due Process**

18 33. Petitioner incorporates and realleges the allegations above.

19
20 34. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
21 federal government from depriving any person of “life, liberty, or property, without due process of
22 law.” U.S. Const. Amend. V. Due process protections extend to all persons within the United States,
23 including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent.
24 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

25
26 35. Petitioner Ali Mohammadi is being deprived of due process because DHS and DOJ have
27 categorically detained him without providing a bond hearing, despite his placement in removal
28 proceedings under 8 U.S.C. § 1226(a) and the absence of any statutory bar to custody review. Petitioner

1 lawfully entered the United States on December 15, 2024, at Calexico, California, on parole, and has
2 no criminal history or other factors justifying mandatory detention.

3 36. At an ICE appointment on December 29, 2025, Petitioner was informed by ICE officers
4 that he would be taken into custody because he was allegedly not “properly vetted.” The only factors
5 cited by ICE appear to be Petitioner’s nationality (Afghan), 
6 Detaining an individual based solely on these characteristics, rather than any individualized assessment
7 of flight risk or danger to the community, constitutes impermissible discriminatory treatment and a
8 violation of constitutional and statutory safeguards.

9
10 37. Under 8 U.S.C. § 1226(a), noncitizens in removal proceedings are entitled to an
11 individualized bond determination before a neutral adjudicator, who evaluates risk of flight, danger to
12 the community, and other relevant factors. The Supreme Court has emphasized that civil immigration
13 detention must include meaningful procedural protections to satisfy the Fifth Amendment. *Mathews v.*
14 *Eldridge*, 424 U.S. 319, 334–35 (1976).



15
16 38. By refusing to provide Petitioner with a bond hearing, ICE and DOJ have denied him the
17 opportunity to be heard on whether his detention is justified, effectively imposing indefinite civil
18 confinement without the procedural safeguards required by law. This is especially egregious given that
19 Petitioner’s detention appears motivated solely by his race, religion, and national origin, in violation
20 of the Fifth Amendment’s guarantee of due process.

21
22 39. As a result, Petitioner’s continued detention is arbitrary, discriminatory, and
23 unconstitutional, and constitutes a clear violation of his rights under the Fifth Amendment.

24
25 **SECOND CAUSE OF ACTION:**
26 **Violation of the Immigration and Nationality Act**

27 40. Petitioner incorporates and realleges the allegations above.
28

1 41. The Immigration and Nationality Act (INA) sets forth the circumstances under which the
2 federal government may detain noncitizens. Under 8 U.S.C. § 1226(a), the Attorney General may take
3 into custody aliens who are already in removal proceedings, while 8 U.S.C. § 1226(c) mandates
4 detention for certain criminal aliens during removal proceedings. Once a noncitizen does not fall within
5 these statutory categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*,
6 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).
7

8 42. Petitioner Ali Mohammadi entered the United States on December 15, 2024, at Calexico,
9 California, on parole, and has no criminal history, no history of immigration violations beyond his
10 parole entry, and is currently subject to removal proceedings initiated by an NTA issued on December
11 14, 2024. He is being held solely on the discretionary determination of ICE, purportedly because he
12 was “not properly vetted,” with the only factors cited being his nationality (Afghan), 
13 

14
15 42. Because Petitioner does not fall within any statutory basis for mandatory detention under
16 the INA, continued confinement exceeds the authority granted by Congress. Section 1226(a) authorizes
17 custody during removal proceedings but contemplates that detained aliens are entitled to an
18 individualized bond hearing before a neutral adjudicator, where factors such as risk of flight and danger
19 to the community are considered. No statutory provision authorizes indefinite detention based solely
20 on national origin, religion, or race.
21

22 43. DHS and DOJ’s decision to detain Petitioner without bond, without an individualized
23 assessment, and on the basis of discriminatory factors, is therefore ultra vires. Such detention violates
24 both the statutory framework of the INA and the constitutional requirement of due process. Petitioner
25 should be afforded an immediate bond hearing before a neutral adjudicator, as required under 8 U.S.C.
26 § 1226(a).
27
28

1 **THIRD CAUSE OF ACTION:**
2 **Violation of the Fifth Amendment’s Due Process Clause and Equal Protection Principles**

3 44. Petitioner incorporates and realleges the allegations above.

4 45. The Fifth Amendment to the United States Constitution prohibits the federal government
5 from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const.
6 Amend. V. The Supreme Court has recognized that the Fifth Amendment’s Due Process Clause also
7 encompasses an equal protection component, which prohibits discriminatory treatment by the federal
8 government based on race, religion, or national origin. *See Bolling v. Sharpe*, 347 U.S. 497, 499 (1954);
9 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (due process protects “all persons” within the United
10 States).

11
12 46. Here, Petitioner Ali Mohammadi has been detained by ICE solely on the basis of his
13 nationality (Afghan), religion (Muslim), and race (Arab), as admitted by the ICE officer during his
14 December 29, 2025 appointment. Petitioner has no criminal history, no prior immigration violations,
15 and no conduct that would otherwise justify detention. The only factor identified by the government
16 for his detention is his membership in a protected class.

17
18 47. By detaining Petitioner solely because of his national origin, religion, and race, the
19 Respondents have imposed differential treatment that is arbitrary and capricious, and without any
20 legitimate governmental interest. This treatment violates the Fifth Amendment’s guarantee of due
21 process and equal protection principles, and it subjects Petitioner to indefinite civil detention without
22 a constitutionally adequate explanation or individualized assessment.

23
24 48. The discriminatory detention of Petitioner is therefore unlawful and unconstitutional, and
25 Petitioner is entitled to immediate relief, including release from detention or, at minimum, a bond
26 hearing before a neutral adjudicator.
27
28

1 **RESERVATION OF RIGHTS**

2 Petitioner reserves the right to add additional allegations of agency error and related causes
3 of action upon receiving the certified administrative record.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner requests that this Court grant the following relief:

- 6
- 7 A. Assume jurisdiction over the matter.
- 8 B. Declare Petitioner's detention without a possibility of bond unlawful pursuant to the due process
9 clause and the Immigration and Nationality Act.
- 10 C. Order the Executive Office for Immigration Review to hold a bond hearing immediately.
- 11 D. Award Petitioner costs of suit and attorney's fees under the Equal Access to Justice Act, 42
12 U.S.C. § 1988 and any other applicable law;
- 13
- 14 E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to
15 remedy the harms to Petitioner;
- 16 F. Grant such further relief as this Court deems just and proper.
- 17

18 DATED: January 7, 2026

19

20

21 Respectfully submitted,

22

23 /S/ ALEC S. BRACKEN
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25 Contigo Law
26 P.O. Box 249
27 Midvale, UT 84047
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1 Certificate of Service

2 I, Alec S. Bracken, certify that a true and complete copy of this Petition was served on
3 Respondents via email to the United States Attorney's Office for the Southern District of Texas at:

4 Virginia Tomova - Virginia.Tomova@usdoj.gov

5 Dated: January 7, 2026

6 Respectfully submitted,
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8
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10
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