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**JURISDICTION**

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500, *et seq*.

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq*. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

**VENUE**

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

**PARTIES**

9. Petitioner ABDURRAHMAN GEZEN (“Petitioner”) is a 29-year-old citizen of Turkey. He is detained by the Respondents at the Otay Mesa Detention Center.



1 initiated under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with  
2 the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section  
3 § 1226 provides that while removal proceedings are pending, a noncitizen “may be arrested and  
4 detained” and that the government “may release the alien on ... conditional parole.” § 1226(a)(2);  
5 *accord Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be  
6 “detained” or “allowed to reside in this country”).

7 17. When a person is apprehended under § 1226(a), an ICE officer makes the initial  
8 custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. §  
9 236.1(c)(8)). A noncitizen will be released if he or she “demonstrate[s] to the satisfaction of the  
10 officer that such release would not pose a danger to property or persons, and that the alien is likely  
11 to appear for any future proceeding.” *Id.* (citing 8 C.F.R. § 236.1(c)(8)). “Federal regulations  
12 provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”  
13 *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing,  
14 the detainee demonstrates by the preponderance of the evidence that he or she is not “a threat to  
15 national security, a danger to the community at large, likely to abscond, or otherwise a poor bail  
16 risk,” the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N.  
17 Dec. 37, 40 (B.I.A. 2006)).

18 18. While “§ 1226 applies to *aliens already present in the United States*,” U.S.  
19 immigration law also “authorizes the Government to detain certain *aliens seeking admission into the*  
20 *country* under §§ 1225(b)(1) and (b)(2),” a process that provides for expedited removal. *Jennings*,  
21 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen “who has not been admitted  
22 or who arrives in the United States” is considered “an applicant for admission.” 8 U.S.C. §  
23 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes “expedited removal.” §  
24 1225(b)(1).

25 19. Respondents’ central argument is that petitioner is subject to mandatory detention  
26 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the  
27 BIA’s recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), affirming the  
28 government’s new interpretation of § 1225.

1           20. As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no  
2 deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024)  
3 (observing that while “agencies have no special competence in resolving statutory ambiguities,”  
4 “[c]ourts do”).

5           21. Multiple District Courts across the entire United States have recently concluded that  
6 the government’s proposed interpretation of the statute (a) disregards the plain meaning of section  
7 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a  
8 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior  
9 statutory interpretation and practice. The following quote is a representative example:

10           “The Court follows other decisions in this Circuit finding that “seeking admission  
11 requires an affirmative act such as entering the United States or applying for status,  
12 and that it does not apply to individuals who, like [Petitioner], have been residing in  
13 the United States and did not apply for admission or a change of status.” *Mosqueda*  
14 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at \*5 (C.D. Cal. Sept. 8,  
15 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL  
16 2676082, at \*11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at \*1  
17 (“Every district court to address this question has concluded that the government’s  
18 position belies the statutory text of the INA, canons of statutory interpretation,  
19 legislative history, and longstanding agency practice.”); *Guzman v. Andrews*, No. 25-  
20 CV-1015-KES-SKO (HC), 2025 WL 2617256, at \*4–5 (E.D. Cal. Sept. 9, 2025)  
21 (finding that petitioner who was released on bond and rearrested was entitled to a  
22 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at \*8 (providing petitioner  
23 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-  
24 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).”  
25 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,  
26 2025).

27           22. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. §  
28 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that

1 individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.  
2 2019). However, if an immigration judge has determined the noncitizen should be released, the  
3 DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*,  
4 854 F. App’x 787, 788 (9th Cir. 2021) Where the release decision was made by a DHS officer, not  
5 an immigration judge, the Government’s practice has been to require a showing of changed  
6 circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.  
7 2017).

8 23. District Courts have found, once immigration authorities “elect to proceed with full  
9 removal proceedings under § 1226, [they] cannot [ ] reverse course and institute § 1225 expedited  
10 removal proceedings.” *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at \*4  
11 (N.D. Cal. Aug. 21, 2025).

12 24. “The Fifth Amendment guarantees that “[n]o person shall be ... deprived of life,  
13 liberty, or property, without due process of law.” U.S. Const. amend. V. “[T]he Due Process Clause  
14 applies to all ‘persons’ within the United States, including aliens, whether their presence here is  
15 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001).  
16 “[I]t is well established that the Fifth Amendment entitles aliens to due process of law in  
17 deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Due Process Clause  
18 generally “requires some kind of a hearing before the State deprives a person of liberty or property.”  
19 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). “Even individuals who face significant constraints on  
20 their liberty or over whose liberty the government wields significant discretion retain a protected  
21 interest in their liberty.” *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at \*3 (N.D. Cal.  
22 July 25, 2025) (citations omitted). Although the initial decision to detain or release an individual  
23 may be within the government’s discretion, “the government’s decision to release an individual  
24 from custody creates ‘an implicit promise,’ upon which that individual may rely, that their liberty  
25 ‘will be revoked only if [they] fail[ ] to live up to the ... conditions [of release].’ ” *Id.* (quoting  
26 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). “Thus, even when ICE has the initial discretion to  
27 detain or release a noncitizen pending removal proceedings, after that individual is released from  
28 custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi*, 2025 WL

1 2084921, at \*3 (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250, at \*2 (N.D. Cal.  
2 May 6, 2022)).” *Perez v. LaRose*, No. 25 cv 3409-LL-DDL, 26 WL 92045 (S.D. Cal. Jan. 13,  
3 2026).

4 25. Many other District Courts have also held that the DHS may not lawfully re-detain a  
5 noncitizen for no good reason. “This Court has granted several habeas petitions filed by similarly  
6 situated petitioners who were released from ICE detention on conditional parole and re-detained  
7 several years later. In *Faizyan v. Casey*, the Court applied the due process inquiry in *Mathews v.*  
8 *Eldridge*, 424 U.S. 319 (1976) and found that Respondents’ summary revocation of the petitioner’s  
9 “conditional parole without an opportunity to be heard deprived [him] of his due process rights.”  
10 Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at \*7 (S.D. Cal. Nov. 17, 2025); *see also*  
11 *Perez v. LaRose*, Case No.: 3:25-cv-02620-RBM-JLB, 2025 WL 3171742, at \*2 (S.D. Cal. Nov. 13,  
12 2025) (reaching the same conclusion as to the revocation of a petitioner’s humanitarian parole). The  
13 Court “conclude[d] that due process require[d] [the petitioner] to be released from custody and  
14 receive a bond hearing before an immigration judge before he can be re-detained.” *Faizyan*, 2025  
15 WL 3208844, at \*7.” *Xie v. LaRose*, No. 25 cv 03649-RBM-MSB, 26 WL 92066 (S.D. Cal. Jan. 13,  
16 2026).

17 **FACTUAL ALLEGATIONS**

18 26. Petitioner arrived to the United States around November 26, 2023 near Tecate,  
19 California. Petitioner came to the United States fleeing persecution and death in Turkey. The DHS  
20 detained petitioner at the border upon his arrival for 2-3 days but then released him on his own  
21 recognizance for a removal proceeding.

22 27. Around January 22, 2024 the DHS filed a Notice to Appear in immigration court  
23 commencing a INA § 240 standard removal proceeding against petitioner. In June 2024, petitioner  
24 filed an asylum application. He attended his court hearings. In January 2025, the USCIS issued him  
25 an employment authorization and a social security card.

26 28. Petitioner is not married. He has no children. He has no criminal record. He obtained  
27 a job in a restaurant.

28 29. On December 4, 2025, petitioner was driving his vehicle on the freeway, going to a

1 house to pick up an Uber client. He was surprised to be stopped and surrounded by three vehicles on  
2 the freeway. Several men detained petitioner and without any explanation sent him to the Otay  
3 Mesa Detention Center, where he remains today.

4 **CAUSES OF ACTION**

5 **COUNT 1**

6 (Violation of the Due Process Clause)

7 30. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 29.

8 31. In November 2023, the DHS detained petitioner for a removal proceeding but then  
9 released him upon his own recognizance (OR), conceding that he was neither a flight risk nor a  
10 danger to the community.

11 32. The DHS started a removal proceeding. Petitioner filed an asylum application and  
12 obtained a work permit and social security card. He complied with all his conditions of release.

13 33. On December 4, 2025, petitioner was surprised to be stopped on the freeway and  
14 detained by armed men. The men detained petitioner and without any explanation sent him to the  
15 Otay Mesa Detention Facility, where he remains today. Respondents did not provide petitioner with  
16 a pre-deprivation of liberty hearing before a neutral decisionmaker.

17 34. The re-detention of petitioner after his OR release without any explanation, notice,  
18 hearing, or change in circumstances violates Ninth Circuit case law and the Due Process Clause of  
19 the Fifth Amendment to the United States Constitution

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

22 (1) Assume jurisdiction over this matter;

23 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
24 should not be granted within three days;

25 (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth  
26 Amendment, the INA, and the APA;

27 (4) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;  
28

1 (5) Issue an order prohibiting respondents from re-detaining petitioner without a material  
2 change in circumstances and a pre-deprivation hearing where respondents must prove by clear and  
3 convincing evidence that petitioner is either a flight risk or danger to the community;

4 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28  
5 U.S.C. § 2412), and any other applicable statute or regulation; and

6 (7) Grant any further relief this Court deems just and proper.

7 DATED: 15 January 2026

8 Respectfully submitted,

9 */s/ William Baker*

10  
11 \_\_\_\_\_  
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**VERIFICATION**


**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

**DOĞRULAMA**

**YALAN YERE YEMİN CEZASI ALTINDA BEYAN**

Amerika Birleşik Devletleri yasaları uyarınca, yalan yere yemin cezası altında beyan ederim ki, dilekçeyi veren kişi benim; dilekçeyi okudum veya anladığım bir dilde bana okundu ve dilekçedeki bilgiler doğru ve gerçektir. Önemli bir konuda yanlış beyanda bulunmanın, yalan yere yemin suçundan dolayı yargılanmaya yol açabileceğini anlıyorum.

  
Abdurrahman Gezen  
Petitioner/Peticionario