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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MOHAMMAD RAFI OMARI Petitioner, v. JOHN MATTOS, Warden, Nevada Southern Detention Center; RUBEN LEYVA Acting Field Office Director Salt Lake City Enforcement and Removal Operations, United States Immigration and Customs Enforcement (ICE/ERO); BRIAN HENKE Acting Field Office Director Las Vegas/Salt Lake City ICE/ERO KRISTI NOEM, Secretary, United States Department of Homeland Security (DHS), Pamela BONDI Attorney General of the United States Respondents.	PETITION FOR WRIT OF HABEAS CORPUS Case No. 2:26-cv- JUDGE: Agency Case No. [redacted]

I. INTRODUCTION.

1) Petitioner is presently in the custody of the Respondent John Mattos, warden at the Nevada Southern Detention Center.

2) Petitioner, by and through the above-named counsel of record, submits this Petition for Writ of Habeas Corpus against the above-named Respondents for unlawful detention in contravention of the laws and constitution of the United States.

3) Mr. Omari is a 36-year-old native of Afghanistan. He is married and has two children, the youngest of whom was born in the United States on [redacted]. Exhibit G.

4) [redacted]

5) Because the visa process was incomplete when [redacted] in 2021, Mr. Omari had to go into hiding in Afghanistan for approximately a year, until he was able to be evacuated to Iran. Exhibit D: I-589 Asylum Application and attached statement.

6) He traveled with his wife and son to Brazil, and from there to the U.S. border.

7) The family entered the United States without inspection on November 21, 2023.

8) Upon their entry into the U.S. on November 21, 2023, Mr. Omari and his family were detained by Customs and Border Protection (CBP) from the Department of Homeland Security (DHS).

9) That same day, November 21, 2023, DHS issued individual Notices to Appear (NTA) to initiate removal proceedings under 8 U.S.C. § 1229(a) against Petitioner, his wife and their son, (Exhibit B) and issued Orders of Release on Recognizance. Exhibit C.

10) The Order of Release on Recognizance explicitly states that "You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance, provided you comply with the following conditions." Exhibit C.

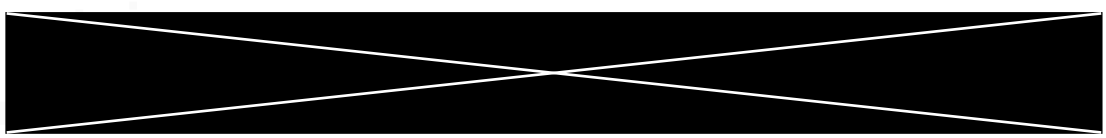
11) The Notice to Appear alleges that Mr. Omari entered the United States at or near San Ysidro, California, on or about November 21, 2023, and that he was not then admitted or paroled after inspection by an Immigration Officer. Exhibit B.

12) The Notices to Appear charged Mr. Omari, his wife and son under 8 USC § 1182 (a) (6) (A) (i) as being aliens 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. Exhibit B.

13) They were scheduled for an initial appearance before the Immigration Court in West Valley City, Utah, on October 8, 2025. Exhibit B.

14) Upon information and belief, Petitioner has been fully and completely compliant with the requirements of the Order of the Release on Recognizance.

15) After their arrival in Utah, Petitioner promptly retained counsel and filed his Form I-589 application for asylum. Exhibit D.

16) 

17) Petitioner and his counsel were preparing for their final Individual Hearing, which had been scheduled for May 28, 2026. Exhibit F.

18) In late 2025 Mr. Omari received an appointment from ICE, asking him to come in for a routine appointment on January 27, 2026 regarding the Alternatives to Detention program. Exhibit E.

19) Prior to the appointment Respondents had made no complaints, accusations, or allegations against the Petitioner that he had in any manner violated the terms of his release.

20) At the January 27th appointment Petitioner was detained and was told he was not going to be released.

21) That arrest took place in West Valley City, Utah, and was done by the ICE Alternatives to Detention office.

22) The Immigration and Nationality Act ("INA") provides no authority for DHS to retroactively revoke a lawful ROR and re-detain a compliant noncitizen years later.

23) Petitioner, at the time of his arrest, was fully compliant with the terms of his release on recognizance. Petitioner had committed no criminal offense; ICE had no reason to actively seek his arrest and ICE officers involved had no valid reason to detain him.

24) After review of what is believed to be all of the documents and records of Petitioner, Counsel for Petitioner have been unable to ascertain what legal authority the U.S. government is asserting in support of Petitioner's arbitrary and capricious re-detention.

25) This lack of legal authority is completely consistent with the Respondents' current practice across the United States. *See, e.g., Conejos Arias v. Noem*, SA-26-cv-415-FB (WD TX Order of January 31, 2026).

26) This forum is Petitioner's sole avenue for judicial and constitutional review of DHS' arbitrary and unlawful decision to redetain him without a hearing or any evidence of changed circumstances.

27) Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

28) Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released immediately on the same terms as his prior release.

II. JURISDICTION

29) Petitioner is in the physical custody of Respondents.

30) This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, Section 9, Clause 2 of the United Sates Constitution (the Suspension Clause), and 5 U.S.C. § 702.

31) This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq, 5 U.S.C. § 706 and the All Writs Act, 28 U.S.C. § 1651.

32) Jurisdiction is not barred by 8 U.S.C. § 1252, because Petitioner does not seek review of a removal order.

33) Rather, Petitioner is challenging the statutory and constitutional authority for his redetention by Respondents, after his initial release on recognizance, without any proof or evidence of changed circumstances. *Soberanes*, 388 F.3d at 1310–11; *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018); *Hamdi v. Rumsfeld,* 542 U.S. 507, 525 (2004).

III. VENUE

34) Pursuant to *Burden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court of Nevada, the judicial district in which Petitioners are currently detained. Thus, residents of Utah and attorneys who reside in Utah are forced to file this action in Nevada solely because ICE moved the Petitioners from Utah to Nevada.

35) Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in Nevada.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

36) The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondent must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

37) Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative relief in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

38) Petitioner Mohammed Omar Rafi is a citizen of Afghanistan who has been in immigration detention since January 27, 2026. After detaining Petitioner in West Valley City, Utah, at what was titled an ATD (Alternatives to Detention) follow up appointment, ICE refused to release Petitioner and has provided zero legal, statutory or other justification for his current custody.

39) On November 21, 2023 Petitioner was released from CBP/DHS custody on his own recognizance release commonly known as an "ROR," Order of Release on Recognizance.

40) He was in full compliance with that prior ROR agreement on January 27, 2026.

41) Respondent John Mattos is employed by CoreCivic as Warden of the Nevada Southern Detention Center, where Petitioners are detained. Mr. Mattos has immediate physical custody of Petitioner. He is sued in his official capacity.

42) Respondent BRIAN HENKE is the Las Vegas/Salt Lake City Regional Field Office Director of ICE/ERO, and the individual presently in charge of Petitioner's custody. He is named in his official capacity.

43) Respondent, MARTIN LAWRENCE, is the ICE/ERO Officer in charge of the Salt Lake City Alternatives to Detention Unit and is the individual who requested Petitioner come into a "follow up" appointment. He is named in his official capacity.

44) Respondent KRISTI NOEM is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

45) Respondent PAMELA BONDI is the Attorney General of the United States. She is responsible for the Department Justice, of which the Executive Office for Immigration Review (EOIR) (the immigration court system) is a component agency. She is sued in her official capacity.

VI. LEGAL FRAMEWORK

46) The INA authorizes immigration detention under 8 U.S.C. §§ 1225, 1226, or 1231.

47) First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

49) Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

50) Finally, 8 U.S.C. § 1357 authorizes "an officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant--

> (1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;
>
> (2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;
>
> (3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

> (4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and
>
> (5) to make arrests-
>
> > (A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or
> >
> > (B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,
>
> if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

51) None of those statutory provisions authorize Respondents to rearrest and redetain the Petitioner at his follow up ATD appointment.

52) As authorized by 8 U.S.C. § 1226 (a), Respondents chose to issue Petitioner a Notice to Appear (Exhibit B) and release him with his family on their own recognizance upon their entry into the United States on November 21, 2023. (Exhibit C).

53) § 1226 was amended and recodified by Congress as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

54) In the decades that followed implementation of IIRIRA, most people (like Petitioner and his family) who entered the United States without inspection were placed in standard removal proceedings and received bond hearings, unless their criminal history rendered them ineligible.

55) That practice was consistent with many more decades of prior practice, in which noncitizens who were not seeking admission at the U.S. border were entitled to a custody

hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1251(a)).

56) In *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) the U.S. Supreme Court held that detention under § 1226(a) is discretionary and permits release.

57) Although DHS retains discretion to initiate enforcement actions, the statutory authority governing detention is dictated by procedural posture, not agency preference.

58) Once a noncitizen has been released into the United States and placed into § 1229a proceedings, detention authority arises, if at all, under § 1226(a). *See Soberanes v. Comfort*, 388 F.3d 1305, 1310–11 (10th Cir. 2004); *Casas-Castrillon v. DHS*, 535 F.3d 942, 948–51 (9th Cir. 2008); *Hechavarria v. Sessions*, 891 F.3d 49, 54–56 (2d Cir. 2018) and *Innovation Law Lab v. McAleenan,* 924 F.3d 503 (9th Cir. 2019).

59) In this instance DHS chose to give the Petitioner an ROR (Release on Recognizance) over 26 months ago.

60) Multiple decisions from the Board of Immigration Appeals (BIA) and the Federal Courts have held that while DHS has discretion at initial processing to choose between expedited removal and removal proceedings under § 1229a. *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520, 523 (BIA 2011); *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023).

61) In *Innovation Law Lab v. McAleenan*, 924 F. 3d 503, 508 (9th Cir. 2019) the Ninth Circuit held that § 1225(b) creates "two mutually exclusive *post-inspection* categories." *Id.* at 509.," 924 F.3d 503, 508 (9th Cir. 2019). Similarly, in *Thuraissigiam v. Department of Homeland Security*, the Ninth circuit described the INA as providing that

noncitizens are removed "either via expedited removal under § 1225(b)(1) or via the removal procedures under § 1229a." 917 F.3d 1097, 1102 (9th Cir. 2019) (emphasis added), rev'd on other grounds, 591 U.S. 103 (2020).

62) In this instance, Petitioner was placed directly into Section 1229a removal proceedings. Exhibit B; Exhibit C.

63) Once DHS makes that initial processing choice and decides to release a noncitizen under § 1226(a), the statute provides no mechanism for retroactive reversal absent new facts or what has been defined as a "material change."

64) Even though DHS possesses revocation authority under INA § 236(b), 8 U.S.C. § 1226(b), the Board of Immigration Appeals has long recognized that custody determinations are not to be altered arbitrarily and should not be changed absent materially changed circumstances. In *Matter of Sugay*, the BIA held that "where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change of circumstance," explaining that this limitation is necessary to ensure that custody decisions are not exercised in an "arbitrary or capricious" manner. 17 I. & N. Dec. 637, 640 (BIA 1981).

65) Federal courts have confirmed that DHS itself has represented that it adheres to this changed-circumstances rule in practice. In *Saravia v. Sessions*, the Ninth Circuit noted that "the government explained that DHS complies with *Sugay* by conducting a 'changed circumstances' bond hearing before an immigration judge within seven to fourteen days of an arrest," and further observed that, according to government counsel, DHS "has incorporated this holding into its practice." 905 F.3d 1137, 1147–48 (9th Cir. 2018).

66) Accordingly, where—as here—DHS rearrests a noncitizen after a prolonged period of full compliance with an Order of Release on Recognizance and without any intervening change in facts, such re-detention is both arbitrary and capricious and procedurally unlawful unless DHS can articulate and prove changed circumstances through a meaningful custody hearing.

67) Nevertheless, as the Court is undoubtedly aware, Respondents are now, 8 years after *Saravia,* routinely asserting in Immigration Court that the Immigration Judges no longer have jurisdiction to grant bond to any noncitizen who, like this Petitioner, originally entered the United States without inspection, regardless of how the noncitizen was initially processed at the U.S. border, and regardless of the noncitizen's compliance with the terms of their prior release. *Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025); *See e.g., Vazquez v. Feeley*, 2:25-cv-01542-RFB-EJY (D. Nev. Sep. 17, 2025); *Baca-Beltrand v. Mattos*, 2:25-cv-01430-CDS-EJY (D. Nev. Nov. 14, 2025); *Rojas-Medina v. Mattos,* 2:25-cv-02020-CDS-BNW (D. Nev. Jan. 4, 2026).

68) Challenges to detention under an incorrect statutory framework or imposed in an arbitrary manner are properly brought through habeas corpus. *Hamdi v. Rumsfeld,* 542 U.S. 507 (2004); *INS v. St. Cyr,* 533 U.S. 289, 301-07 (2001).

69) The agency's conclusion in *Yajure*, holding that all foreign nationals present in the United States without being admitted are subject to mandatory detention without bond, contradicts the statutory language, the expressed Congressional intent, the agency's own prior precedents, as well as U.S. Supreme Court and Federal Court precedent.

70) In this case, as was the case in *Baca-Beltrand v. Mattos*, 2:25-cv-01430-CDS-EJY (D. Nev. Nov. 14, 2025), Petitioner and his family relied in good faith on the prior actions

taken by DHS, releasing them on their own Recognizance and placing them in removal proceedings under 8 U.S.C. § 1229a. As noted above, Petitioner acted promptly to file a completed I-589 Application for Asylum in March 2024. (Exhibit D).

VII. CLAIMS FOR RELIEF

COUNT I
Violation of the INA – Ultra Vires Detention

71) Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

72) On November 21, 2023 DHS completed a lawful § 1226(a) custody determination and chose to release Petitioner and his family on an Order of Release on Recognizance.

73) To be absolutely clear: 8 U.S.C. § 1225 and 8 U.S.C. § 1226 provide DHS with several choices for how to process a noncitizen whom it alleges is inadmissible pursuant to 8 U.S.C. § 1182 (a)(6).

74) What DHS does not have is any statutory authority authorizing the agency to reverse that choice ex post facto, again, *absent a material change in circumstances*. *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981).

75) As a matter of constitutional due process, this must be the case to protect people from any governmental attempt to apply changes in government policy ex post facto.

76) For some inadmissible noncitizens detained on entry, such as Petitioner and his family, DHS can either place them into expedited removal under 8 U.S.C. § 1225(b)(1) or place them into full removal proceedings under 8 U.S.C. § 1225(b)(2). *See Matter of E-R-M- & L-R-M-*, 25 I&N Dec. at 523 (holding that "DHS has discretion to put [noncitizens] in section 240 removal proceedings even though they may also be subject to expedited

removal under section 1225(b)(1)(A)(i) of the Act"); *Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 748 (BIA 2023).

77) But once that choice is made, DHS is locked into that choice by the due process clause of the Fourteenth Amendment, and must show a material change in *the individual's* circumstances prior to redetaining any previously processed person.

78) A government policy change does not constitute a material change in the individual's circumstances.

79) The Supreme Court has long recognized that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). To do so would add "new legal consequences to events completed [prior to the expansion]." *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 269-70 (1994); *see also, INS v. St. Cyr*, 533 U.S. 289, 315-316 (2001).

COUNT II
Violation of the Fifth Amendment – Procedural Due Process

80) Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

81) "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

82) The Fifth Amendment prohibits deprivation of liberty without due process of law.

83) "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S.

206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

84) "Freedom from imprisonment… lies at the heart of the liberty that the Due Process Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

85) DHS detained Petitioner without notice, hearing, or identification of any violation of release conditions.

86) The arbitrary revocation of a completed custody determination without any process whatsoever violates procedural due process. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

87) In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

88) As to the first Mathews factor, the private interest affected by the government action in this case is Petitioner's liberty interest.

89) The Supreme Court has long recognized that "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001).

90) In *Zavala v. Ridge,* 310 F. Supp 2d 1071 (N.D. Cal. 2004) the Northern District Court in California wrote that "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification, ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.' *Kansas v. Hendricks*, 521 U.S. 346, 356, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997); *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491."

91) The California district court continued, referencing *Zadvydas*, "Substantive due process protections from arbitrary confinement apply to aliens, notwithstanding their residency status. *Id.* at 693, 121 S.Ct. 2491 ('[t]he Due Process Clause applies to all `persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.')." *Zavala v. Ridge,* 310 F. Supp 2d 1071, 1076 (N.D. Cal. 2004).

92) As to the second Mathews factor, this Court must look to the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards.

93) Respondents have long experience applying the material change in circumstances substantive and procedural standard to redetention decisions.

94) Respondents failed to apply that experience in this case.

95) Respondents have provided Petitioner with no procedure. They have cited no legal authority and provided no procedural safeguards against their illegal and arbitrary detention--their affirmative and misleading actions taken to deprive Petitioner of his liberty, of his constitutional right to remain free from detention without due process.

96) DHS has offered no change in circumstances to contradict their prior decision in 2023 to release Petitioner and his family on their own recognizance.

97) As to the third Mathews factor, the government has no cognizable interest in acting in violation of the law.

98) Finally, in order to prevail on a claim asserting the deprivation of due process, a petitioner must also show prejudice. "To show prejudice, [a Petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

99) The fact of detention--of forcible separation from Petitioner's wife and children, of the potential loss of employment due to his forced absence, of his inability as a husband and father to work and support his family--these are the actual, damaging, highly prejudicial consequences of Respondents' actions.

COUNT III
Violation of the Fifth Amendment – Substantive Due Process

100) Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

101) Substantive due process prohibits arbitrary and punitive detention.

102) Immigration detention is constitutionally permissible only to ensure appearance or protect the community. *Zadvydas*, 533 U.S. at 690.

103) Petitioner Mr. Omari has no criminal arrests or convictions. Petitioner has appeared as directed for every Immigration Court hearing.

104) DHS has alleged neither danger nor flight risk.

105) Petitioner's redetention after 28 months, and any continued detention at this time, is both arbitrary and punitive and violates substantive due process.

COUNT IV
Violation of Article I, Section 9, Clause 3 – Retroactivity / Ex Post Facto Principles

106) Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

107) DHS seeks to impose new detention consequences based on policies announced after Petitioner's entry and release.

108) Retroactive imposition of new legal consequences violates fundamental due process principles. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269–70 (1994); *INS v. St. Cyr*, 533 U.S. 289, 315–16 (2001).

COUNT V
Violation of the Suspension Clause

109) Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

110) The Suspension Clause guarantees meaningful judicial review of executive detention.

111) Habeas corpus is Petitioner's only avenue to challenge his unlawful detention.

112) Any interpretation of the INA that forecloses habeas review would raise serious constitutional concerns. *St. Cyr*, 533 U.S. at 300–01.

COUNT VI
Violation of the Administrative Procedure Act – 5 U.S.C. § 706

113) Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

114) DHS has acted in violation of the law and in excess of statutory authority.

115) DHS failed to consider Petitioner's reliance interests. Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1913 (2020).

116) Petitioner has no other forum in which to seek judicial review of the constitutional and legal issues raised by his arbitrary re-detention without process, in violation of the law.

VIII. PRAYER FOR RELIEF

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

A. Assume jurisdiction over this matter.

B. Issue an Immediate Order to Respondents to show cause regarding their legal authority, if any, for redetaining this fully compliant Petitioner.

C. Declare that the Petitioner's re-detention by ICE without any showing of changed circumstances or individualized determination of danger or flight risk a violation the Due Process Clause of the Fifth Amendment and ultra vires to the Respondents' statutory authority;

D. Issue a Temporary Restraining Order prohibiting Respondents from transferring Petitioner from this jurisdiction, pending a decision on this Petition.

E. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under the law; and

F. Grant any other and further relief that this Court deems just and proper.

RESPECTFULLY SUBMITTED this 3rd day of February, 2026.

STOWELL CRAYK PLLC

/s/ Adam L. Crayk
Attorney for Petitioner

/s/ Marti L. Jones
Attorney for Petitioner

/s/ Kaleb D. Anderson
Attorney for Petitioner

EXHIBIT LIST

Exhibit A – Special Immigrant Visa Recommendation

Exhibit B – Notice to Appear

Exhibit C – Order of Release on Recognizance

Exhibit D – I-589 Application and Declaration

Exhibit E – ICE ATD Appointment Notice

Exhibit F – Prior Individual Hearing Notice

Exhibit G – Daughter's U.S. passport