IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Sokhibdzhon RAFIBAEV
***Petitioner*,**
v.

KRISTI NOEM,
In her official capacity as Secretary of Homeland Security;

TODD LYONS,
In his official capacity as Acting Director, U.S. Immigration and Customs Enforcement,

ROBERT GUADIAN,
In his official capacity as Field Office Director of Enforcement and Removal Operations, Denver Field Office, Immigration and Customs Enforcement;

JUAN BALTASAR,
In his official capacity as Warden of Denver Contract Detention Facility

Respondents.

Civil Action No.

File No. [redacted]

EMERGENCY VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND INCORPORATED MEMORANDUM OF LAW

PRELIMINARY STATEMENT

1. Petitioner, Sokhibdzhon Rafibaev, is an asylum seeker from Russia who entered the United States through a designated port of entry and was granted **humanitarian parole by U.S. Customs and Border Protection (CBP)** on December 6, 2023.

2. When Respondents granted Petitioner on humanitarian parole, they determined that Petitioner was neither a flight risk nor a danger to the community.

3. On November 13, 2025, Petitioner was involved in a non-injurious traffic accident, for which he received a routine citation. Although the incident resulted only in a minor citation, the State Police contacted and subsequently surrendered Petitioner to Immigration and Customs Enforcement (ICE) custody. He is currently detained at the Denver Contract Detention Facility located in Aurora, Colorado.

4. Despite longstanding practice and clear statutory language, both DHS and the Department of Justice ("DOJ") now insist that all persons who entered without inspection are detained pursuant to 8 U.S.C. § 1225(b)(2) and therefore subject to mandatory detention. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which a person initially entered the country.

5. As a matter of statutory construction, the requirement under 8 U.S.C. § 1182(d)(5)(A) that a noncitizen be returned to 'custody' refers to the restoration of legal custody and DHS supervision, not a return to physical detention. *Qasemi v. Francis*, No. 25-CV-10029 (LJL), 2025 WL 3654098, at *10 (S.D.N.Y. Dec. 17, 2025) (quoting *Clark v. Martinez*, 543 U.S. 371, 385 (2005)).

6. Because Petitioner's parole's purpose has not been served, he has a liberty interest.

7. Petitioner respectfully requests that this Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C. § 2243.

8. Petitioner further requests that the Court compel Respondents to produce any **"Warrant of Arrest"** issued at the time of detention, if any such warrant exists.

THE PARTIES

9. Petitioner, Sokhibdzhon Rafibaev, is a 40-year-old Russian national who is seeking asylum in the United States. He is not an arriving alien, nor is he seeking admission. for Respondents to justify re-detaining Petitioner.

10. Petitioner is currently in Immigration and Customs Enforcement ("ICE") custody at the Denver Contract Detention Facility located in Aurora, Colorado.

11. Respondent Robert Guadian is the Director of the Denver ICE Field Office and is sued in his official capacity. Respondent Guadian is the immediate custodian of Plaintiff (and other similarly situated) and is responsible for detaining Plaintiff and others similarly situated.

12. Respondent Kristi Noem is the Secretary of Homeland Security. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Petitioner.

13. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). He is sued in his official capacity. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner.

14. Respondent Juan Baltasar is employed by The GEO Group as Warden of the Aurora Facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

JURISDICTION & VENUE

15. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570.

16. This Court has jurisdiction under 28 U.S.C, § 2241, Art. I, § 9, el. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

17. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Petitioner is in Respondents' custody in the District of Colorado. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is now in Respondent's custody. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States.

EXHAUSTION OF REMEDIES

18. No statutory requirement of administrative exhaustion applies to Petitioner's challenge to the unlawfulness of her detention. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

19. DHS has taken the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. Further, in a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, regardless of her prior release and placement in standard removal proceedings, any person who is present in the United States without having been formally admitted or paroled is an

"applicant for admission" under the law, regardless of how long they have been physically inside the country. Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief.

20. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-*, 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues).

FACTS

21. Petitioner is a 40-year-old citizen of Russia who entered the United States through a designated port of entry and was granted humanitarian parole by U.S. Customs and Border Protection (CBP) on December 6, 2023. *See* Ex. A, Form I-94.

22. Petitioner has timely filed an Application for Asylum and Withholding of Removal and has a work permit valid until December 24, 2029. *See* Ex. B, Employment Authorization Document. Petitioner has never missed a court hearing, or otherwise violated the conditions of his release from custody.

23. On November 13, 2025, Petitioner was involved in a non-injurious traffic accident, for which he received a routine citation. *See* Ex. C, Citation. Although the incident resulted only in a minor citation, the State Police contacted and subsequently surrendered Petitioner to Immigration and Customs Enforcement (ICE) custody. Respondents provided no individualized reason or explanation for this new detention and are denying Petitioner any opportunity for a custody redetermination.

24. He is currently detained at the Denver Contract Detention Facility located in Aurora, Colorado.

PETITIONER IS BEING UNLAWFULLY DETAINED BASED UPON THE GOVERNMENT'S MISAPPLICATION OF THE STATUTORY FRAMEWORK

25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a custody redetermination ("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).

27. 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 § 1225(b)(2).

28. Finally, 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).

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

30. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

31. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not detained under § 1225 but

instead under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

32. In the nearly three decades following, most people who entered without admission or parole and who were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible for release. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ 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 § 1252(a)).

33. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected this well-established understanding of the statutory framework and abruptly reversed decades of practice.

34. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without admission or parole shall now be deemed "applicants for admission" under 8 U.S.C. § 1225, and therefore subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of when a person was apprehended and applied those who have been in the United States for months, years, and even decades.

35. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are considered applicants for admission who are seeking admission and therefore subject to mandatory detention.

36. In recent months federal district courts have overwhelmingly rejected Respondents' new interpretation of the INA's detention authorities.[1]

---

[1] See, e.g., *Quituizaca v. Bondi*, No. 6:25-CV-6527-EAW, 2025 WL 3264440 (W.D.N.Y. Nov. 24, 2025); *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 WL 3085032, at *10 (W.D.N.Y. Nov. 4, 2025); *Rodriguez Vazquez v.*

37. Subsection 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without admission or parole. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

38. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

39. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people

---

Bostock, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); Jose J.O.E. v. Bondi, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). It does not apply to noncitizens, like Petitioner, who were paroled into the country, placed in standard removal proceedings, and allowed to apply for asylum. Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

40. Respondents' detention of Petitioner rests on the legal fiction that he is currently "seeking admission" at the border. This Court should find the reasoning in *Qasemi v. Francis*, 2025 WL 3654098 (S.D.N.Y. 2025), dispositive. In *Qasemi*, the court addressed the similar scenario of a paroled asylum seeker being "swept up" and placed in mandatory detention.

41. First, Petitioner is no longer "arriving." As the *Qasemi* court correctly held, "arriving" is a physical act of reaching a destination, "not an interminable status." *Id.* at *6. Mr. Rafibaev has lived in the U.S. for nearly two years. While the termination of parole may change a noncitizen's possessory right to certain benefits, it does not rewind the clock to the moment of physical arrival at the border. As a matter of plain English and statutory construction, "arrival" is a physical process that concludes once a noncitizen is released into the interior. *Qasemi*, *2025 WL 3654098 at 6.*

42. Because the "purposes of such parole"—the adjudication of his asylum claim—have not been served, Petitioner remains a noncitizen present in the United States, not one "arriving" at its threshold. Under 8 U.S.C. § 1182(d)(5)(A), the government may only return a person to "custody" when the purpose of parole is complete; it cannot use a calendar expiration to unilaterally strip Petitioner of the statutory shield he earned through his 2023 parole and treat him as a new arrival.

A. Procedural Requirements to Detain Noncitizens Under 8 U.S.C. § 1226(a)

43. Government may detain noncitizens under 8 U.S.C. § 1226(a). However, while Section 1226(a) authorizes the discretionary detention of any alien within the country, it also expressly mandates

that such an arrest be predicated on a validly issued warrant. In the absence of a warrant, the detention is statutorily unauthorized.

44. The "[a]pprehension and detention of aliens" is governed under 8 U.S.C. § 1226, which provides that:

> **On a warrant issued by the Attorney General**, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, **the Attorney General ... may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General.**

8 U.S.C. § 1226(a)(2)(A) (emphasis added).

45. The regulations provide that, to detain a person under 8 U.S.C. § 1226(a), the Department **must issue an I-200 to take a person into custody**. The regulation states:

> (b) Warrant of arrest—
>
> (1) In general. At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, **the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest.** A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.
>
> (2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.
>
> (c) Custody issues and release procedures—
>
> (1) In general.
>
> (i) After the expiration of the Transition Period Custody Rules (TPCR) set forth in section 303(b)(3) of Div. C of Pub.L. 104–208, no alien described in section 236(c)(1) **of the Act may be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.**

8 C.F.R. § 236.1(b). (emphasis added).

46. Under the governing regulations, to take a person into custody under Section 1226(a), the Department must issue a **Form I-200, Warrant of Arrest**. *See* 8 C.F.R. § 236.1(b)(1) (emphasis added). "[I]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *See* Ex. A, *Roseline K. N. v. Bondi*, No. 26-cv-540 (KMM/SGE), (D. Minn. Jan. 25, 2026) (quoting *Cristian Z. v. Bondi*, No. 26-CV-157 (ECT/ECW), 2026 WL 123116, at *2 (D. Minn. Jan. 16, 2026)).

47. Neither Petitioner nor Counsel have been able to verify whether Respondents issued a Warrant of Arrest (Form I-200) at the time of the arrest by Respondents. Consequently, Petitioner respectfully requests that this Court compel Respondents to produce any warrant or legal instrument used to authorize the detention.

48. If Respondents cannot produce a valid Form I-200 (Warrant of Arrest) issued at the time of the arrest, the detention is doubly unauthorized under 8 U.S.C. § 1357(a)(2). In the absence of both a valid warrant and a valid mandatory detention statute, there is no legal basis to justify Petitioner's continued detention.

49. Lacking valid statutory authority, Petitioner's detention violates Due Process and is statutorily unauthorized. Immediate release is the only proper remedy.

B. Parolee Has a Liberty Interest and Purpose of the Parole Has not Been Served

50. Petitioner has a substantial liberty interest in remaining free from physical detention, having been lawfully released on INA § 212(d)(5) parole in January 2025. *See Fernandez Lopez v. Wofford*, 2025 WL 2959319 , at *4 (E.D. Cal. Oct. 17, 2025). Having determined that Petitioner was neither a flight risk nor a danger at the time of his initial release, the Government cannot re-detain him on January 6, 2026, without a reasoned explanation or evidence of changed circumstances.

51. The "purpose" of Petitioner's parole was to allow him to remain in the United States while pursuing his applications for asylum and withholding of removal. Because Petitioner's asylum claim remains pending and he is still in removal proceedings under 8 U.S.C. § 1229a, the purpose of his parole

has not been served. *See Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1145 (D. Or. 2025). Consequently, any attempt to return Petitioner to physical custody before the adjudication of his asylum claim violates the express terms of the Parole Statute. *See Noori v. Larose*, 2025 WL 2800149, *13 (S.D. Ca. Oct. 1, 2025) (noting that **a paroled non-citizen should not be returned to custody unless the purposes of the parole have been served**) (emphasis added); *Orellana v. Francis*, 2025 WL 2402780, *5 (E.D.N.Y. Aug, 19, 2025) (noting that the **purpose of parole was not satisfied when an asylum seeker had not completed the asylum process** and granting the petitioner release because his re-detention violated the Administrative Procedure Act) (emphasis added).

52. When Respondents paroled Petitioner into the United States, they considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. No changes to the facts have occurred that might justify this revocation of his release.

53. By detaining Petitioner without articulating a rationale based on her individualized circumstances, and by detaining her in contradiction of her individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA. Noori, 2025 WL 2800149 at * 10 (parolee developed a private interest in remaining free in the one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, F.Supp.3d, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, F.Supp.3d, 2025 WL 1898025, * 14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

54. Because the private interest in freedom from immigration detention is substantial, due process requires the government to bear the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community before re-detaining him. See e.g., *Fernandez Lopez*, 2025 WL 2959319 at *8; *J.S.H.M v. Wofford*, 2025 WL 2938808, *16 (E.D. Ca. Oct. 16, 2025) (unpub);

Mata Velasquez v. Kurzdorfer, F.Supp.3d, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process).

CLAIMS FOR RELIEF

COUNT 1: VIOLATION OF 8 U.S.C. § 1225(b)(2)

55. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein and does so for all additional counts.

56. 8 U.S.C. § 1225(b)(2)(A), specifically, cannot apply as it only applies to those "applicants for admission" who are "seeking admission" at the time of detention and Petitioner was neither an "applicant for admission," nor was he "seeking admission" at the time he was detained, nor is he doing so now. 8 U.S.C. § 1225(b)(2)(A).

57. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

COUNT 2: VIOLATION OF 8 U.S.C. § 1226(a)

58. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein and does so for all additional counts.

59. Section 1226 of Title 8 of the U.S. Code allows the government to detain noncitizens "pending a decision on whether the alien is to be removed from the United States," but only "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a).

60. Absent such a warrant of arrest, detention is unlawful and immediate request is required.

COUNT 3: VIOLATION OF DUE PROCESS

61. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

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

63. Petitioner has a fundamental interest in liberty and being free from official restraint.

64. The government's re-detention of Petitioner without any pre-deprivation process was unlawful.

65. The government's re-detention of Petitioner is unjustified. Respondents have not demonstrated that Petitioner needs to be detained. *See Zadvydas*, 533 U.S. at 690 (finding immigration detention must further the twin goals of (1) ensuring the noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument that Petitioner cannot be safely released back to his community.

66. Petitioner has a substantial liberty interest in remaining free from physical detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S.Ct. 2633, 159 L.Ed.2d 578 (2004)). Having determined that Petitioner was neither a flight risk nor a danger at the time of his initial release, the Government cannot re-detain him on without a reasoned explanation or evidence of changed circumstances.

67. The "purpose" of Petitioner's release was to allow him to remain in the United States while pursuing his applications for asylum and withholding of removal. Because Petitioner's asylum claim remains pending and he is still in removal proceedings under 8 U.S.C. § 1229a, the purpose of his parole has not been served. *See Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011) (determining that "[i]n other words, theUnited States accepts an alien paroled under § 1182(d)(5)(A) into the country for as long as the humanitarian or public benefit purpose persists"); *see also Y-Z-L-H v. Bostock*, 792 F. Supp. 3d

1123, 1145 (D. Or. 2025). Consequently, any attempt to return Petitioner to physical custody before the adjudication of his asylum claim violates his due process rights without showing any justifiable cause.

68. Because of Petitioner's profound legal interest in his liberty as a noncitizen, his detention violates his due process rights. *See generally Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before deprivation of a legally protected interest).

69. Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

70. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g.*, *Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody.").

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Order that Respondents not transfer the Petitioner outside of this District during the pendency of this Petition;

(3) Expedite consideration of this action pursuant to 28 U.S.C. § 1657 because it is an action brought under 28 U.S.C. § 153;

(4) Order the Petitioner's immediate release from custody; or

(5) Issue a writ of habeas corpus requiring that Respondents release;

(6) Declare ICE's July 8 policy and the BIA's *Matter of Yajure Hurtado* decision unlawful;

(7) Order Respondents to immediately return all of Petitioner's seized personal property, including but not limited to any government-issued identification or immigration documents, such as a

state driver's license or Employment Authorization Document (EAD) to the extent such items were seized and remain in Respondents' possession;

(8) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law;

(9) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.

(10) Grant any further relief this court deems just and proper.

Respectfully submitted.

Dated: February 6, 2026

/s/ Mehmet Y. Turkoglu
Mehmet Y. Turkoglu, Esq.
Attorney for Petitioner
MYT Law Firm
5775 Wayzata Blvd, Ste 700
Minneapolis MN 55416
(612) 720-0075
mturkoglu@mytlegal.com

VERIFICATION BY PETITIONER'S COUNSEL PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: February 6, 2026

/s/ Mehmet Y. Turkoglu
Mehmet Y. Turkoglu, Esq.
Attorney for Petitioner
MYT Law Firm
5775 Wayzata Blvd, Ste 700
Minneapolis MN 55416
(612) 720-0075
mturkoglu@mytlegal.com