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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEVAN TETELOSHVILI,

Petitioner,

v.

MICHAEL KUNES, *in his official capacity* as Warden of the Clinton County Correctional Facility;

BRIAN MCSHANE, *in his official capacity* as Field Office Director of the Philadelphia Field Office of Enforcement and Removal Operations, U.S.

Case No. 3:26-CV-00314

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

EXPEDITED REQUEST

A # [redacted]

Immigrations and Customs Enforcement;

TODD M. LYONS, *in his official capacity* as Acting Director, U.S. Immigration and Customs Enforcement (ICE); and

KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security.

Respondents.

INTRODUCTION

1. Petitioner, LEVAN TETELOSHVILI ("Petitioner"), by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his current, unconstitutional, unlawful, and arbitrary detention by U.S. Immigration and Customs Enforcement ("ICE") at the Clinton County Correctional Facility in McElhattan, Pennsylvania.
2. Petitioner is a thirty-seven-year-old citizen of Georgia who entered the United States seeking asylum. When he initially presented himself at the border on August 30, 2023, the Department of Homeland Security ("DHS") initially placed him in removal proceedings under Section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a. After conducting a danger and flight-risk assessment pursuant to 8 U.S.C. § 1226(a), DHS released him on his own

recognizance in September 2023.

3. Petitioner complied with all conditions of his release for over two years, establishing deep ties in the community. He filed an application for asylum with the Immigration Court, consistently attended all required ICE check-ins, and has lived in the United States for over two years with the full knowledge and approval of DHS.

4. On January 17, 2026, over two years after his release, Petitioner was re-detained by DHS as he was driving, despite having violated no condition of his prior release and having consistently complied with DHS and Immigration Court requirements. ICE unlawfully arrested and re-detained Petitioner and improperly reclassified him under 8 U.S.C. § 1225(b) as an "arriving alien."

5. Petitioner's current detention pursuant to § 1225(b)(2)(A) violates the plain language of the INA and its implementing regulations. Petitioner, who has resided in the United States for over two years and who was apprehended in the interior of the United States, should not be considered an "arriving alien." Instead, he was issued a Notice to Appear under INA § 240 and released pursuant to 8 U.S.C. § 1226(a). Accordingly, Respondents' reliance on § 1225(b) is unlawful, and Respondents lack authority to retroactively reclassify Petitioner's custody status in the absence of any violation or new facts. Petitioner's detention, if any, is properly governed by § 1226(a), which permits release on bond or conditional parole.

6. Accordingly, Petitioner respectfully requests that this Court find that Respondents have unlawfully detained him under § 1225(b)(2)(A), determine that any detention must proceed under § 1226(a), reinstate DHS's initial custody determination made in 2023, and order Petitioner's immediate release from custody. *See Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

JURISDICTION

7. This Court has jurisdiction over this Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq*.

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252(e)(2).

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

9. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness or the constitutionality of their detention. *See Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

10. The Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to Respondents "forthwith," unless Petitioner is not entitled to relief. *See* 28 U.S.C. § 2243. If an OSC 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.*

11. Petitioner is "in custody" for the purpose of § 2241 because he was arrested and remains detained by Respondents.

VENUE

12. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees or officers of the United States acting in their official capacity and because a substantial part of the events or omissions giving rise to the claim occurred in the Middle District of Pennsylvania. Petitioner is under the jurisdiction of ICE's Philadelphia Field Office, and he is currently detained in McElhattan, Pennsylvania, at the Clinton County Correctional Facility. *See* ICE Detainee Location, Exhibit A.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. Under the INA, Congress mandates the exhaustion of administrative remedies only for judicial review of final orders of removal. *See* 8 U.S.C. § 1252(d)(1) ("A court may review a final order of removal only if…the [noncitizen] has exhausted all administrative remedies."). For claims that fall outside the scope of § 1252(d)(1), such as those challenging detention or procedures preliminary to a final order, exhaustion is not statutorily mandated. *See Garza-Garcia v. Moore*, 539 F. Supp. 2d 899, 904 (S.D. Tex. 2007). In such cases, a court retains the discretion to excuse or waive the requirement.

14. Moreover, even if the exhaustion requirement were applicable, it should be excused because pursuing administrative remedies would be futile. *See, e.g.*, *Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999) (noting that exhaustion is not required where the agency has already demonstrated its position on the issue). The BIA recently issued a controlling decision holding that anyone who has entered the U.S. without inspection is now considered an "applicant for admission" who is "seeking admission" and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216 (B.I.A. 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA's decision in *Yajure Hurtado* renders exhaustion futile) .

15. Finally, the agency lacks the jurisdiction to review Petitioner's claim of unlawful custody in violation of his Fifth Amendment due process rights. It is well-established that the agency cannot adjudicate the constitutionality of the statutes it administers or the regulations under which it operates, making any such administrative review a futile exercise. *See American-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995) (finding exhaustion to be a "futile exercise because the agency does not have jurisdiction to review" constitutional claims).

PARTIES

16. Petitioner Mr. Teteloshvili is a thirty-seven-year-old citizen of Georgia, who

resides at [redacted] New York 11235.

17. He has been in ICE custody since January 17, 2026, and is currently detained at the Clinton County Correctional Facility, 58 Pine Mountain Road, McElhattan, PA 17748.

18. Respondent Michael Kunes is sued in his official capacity as Warden of the Clinton County Correctional Facility, 58 Pine Mountain Road, McElhattan, PA 17748. In his official capacity, the Warden is the Petitioner's immediate custodian.

19. Respondent Brian McShane is named in his official capacity as Field Office Director of ICE Enforcement and Removal Operations (ERO) in the Philadelphia Field Office, which oversees the Clinton County Correctional Facility. Respondent McShane is a legal custodian of the Petitioner and has the authority to release him.

20. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the Middle District of Pennsylvania, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington, DC 20536-5900.

21. Respondent Kristi Noem is named in her official capacity as the Secretary of

Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Middle District of Pennsylvania; is legally responsible for pursuing any effort to detain and remove the Petitioner; and, as such, is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

LEGAL BACKGROUND

A. Due Process Principles

22. Section 2241 of 28 United States Code provides in relevant part that "[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions" when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3); *see also INS v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).

23. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).

24. Habeas corpus "entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008)

(*quoting St. Cyr*, 533 U.S. at 302).

25. The Fifth Amendment's Due Process Clause protects the right of all persons to be free from "depriv[ation] of life, liberty, or property, without due process of law." U.S. CONST. AMEND. V.

26. "It is well established that the Fifth Amendment entitles aliens to due process of law[.]" *Trump v. J.G.G.*, 604 U.S. 670, 673, 145 S. Ct. 1003, 1006 (2025) (quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).

27. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

B. Legal Framework of Removal Proceedings

28. Section 240 removal proceedings provide noncitizens with an opportunity to be heard in full immigration court hearings before an Immigration Judge. 8 U.S.C. § 1229a sets out the procedures and rights afforded to noncitizens in Section 240 removal proceedings. These include: "the privilege of being represented . . . by counsel of the alien's choosing who is authorized to practice in such proceedings," 8 U.S.C. § 1229a(4)(A), and "a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government," 8 U.S.C. § 1229a(4)(B).

29. Decisions made by "Immigration Judges may be appealed to the Board of

Immigration Appeals." 8 C.F.R. § 1003.38(a). Final orders of removal may be appealed to the federal Court of Appeals for the judicial circuit in which the Section 240 proceedings terminated. *See* 8 U.S.C. § 1252.

30. The statutorily guaranteed procedures and rights in Section 240 proceedings are significantly more expansive than those available to noncitizens designated for expedited removal under 8 U.S.C. § 1225.

31. Traditionally, non-arriving noncitizens living in the United States were only subject to removal proceedings under 8 U.S.C. § 1229a, not the fast-track expedited removal process under § 1225.

32. Unlike Section 240 proceedings, expedited removal is a process that begins—and often concludes—outside of immigration court. Noncitizens subjected to expedited removal are ordered removed by an immigration officer "without further hearing or review." 8 U.S.C. § 1225(b)(1)(A)(i).

33. The lone exception to this rule is that if a non-citizen indicates an intention to apply for asylum or a fear of persecution, the officer "shall refer the alien for an interview by an asylum officer" to conduct a credible fear interview. 8 U.S.C § 1225(b)(1)(A)(i)-(ii).

34. If the asylum officer determines that a noncitizen does not have a credible fear of persecution, the officer shall order the noncitizen removed from the United States without further hearing or review." 8 U.S.C. § 1225(b)(1)(B)(iii)(I). Upon a noncitizen's request, an immigration judge shall expeditiously review a

determination "that the alien does not have a credible fear of persecution." 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

35. If the asylum officer determines that a noncitizen does have a credible fear of persecution, the officer shall rescind the expedited removal order and refer the case for full consideration of asylum and related protection in § 240 removal proceedings. 8 U.S.C. § 1225(b)(1)(B)(ii); *see* also 8 C.F.R. §§ 208.30(f), 235.3(b)(4)(ii).

C. Detention Authority

36. The INA prescribes three primary mechanisms for detention for non-citizens: 8 U.S.C. § 1225 for arriving aliens and applicants for admission; § 1226, the default detention statute; and § 1231 for detention following a final order of removal. Section 1231 permits continued detention beyond the removal period only in limited circumstances where the noncitizen has been convicted of certain crimes or where the government makes an individualized showing that detention is necessary to effectuate removal or protect the community.

37. Section 1226 governs the detention of noncitizens "already in the country pending the outcome of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added); *see also id.* at 288, (explaining that, "once inside the United States . . . an alien present in the country may still be removed" under "Section 1226" (emphasis added)). Section 1226 distinguishes between "two different categories" of detention under the statute. *Id.* at 288.

38. The first category is "a discretionary detention framework" established by Section 1226(a). *Benitez v. Francis*, No. 25 Civ. 5937 (DEH), 2025 WL 2371588, at *3 (S.D.N.Y. Aug. 8, 2025). Section 1226(a) provides that, for a noncitizen who is "arrested and detained" "[o]n a warrant issued by the Attorney General," the Attorney General: (1) "may continue to detain" the arrested noncitizen; (2) "may release" the noncitizen on "bond"; or (3) "may release" the noncitizen on "conditional parole." 8 U.S.C. § 1226(a)(1)–(2).

39. The second category is a mandatory detention framework established by Section 1226(c), which "carves out a statutory category of [noncitizens] who may not be released" on bond or conditional parole pending the conclusion of removal proceedings. *Jennings*, 583 U.S. at 289 (emphasis in original). Specifically, Section 1226(c) provides that the "Attorney General shall take into custody any alien" who falls into one of five enumerated categories involving criminal offenses and terrorist activities. 8 U.S.C. § 1226(c)(1).

40. If a noncitizen passes a credible fear interview, they are permitted to apply for asylum through Section 240 proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

41. 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, 300-582 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).

42. Following the enactment of the IIRIRA, the U.S. Department of Justice's Executive Office of Immigration Review ("EOIR") drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.").

43. Thus, the INA distinguishes between noncitizens seeking entry into the United States and those "already in the country." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).

44. In the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge ("IJ"), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast,

those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

45. Section 1225(b)(1) provides for mandatory detention of non-citizens subject to its provisions—that is, a noncitizen "arriving in the United States" who seeks to apply for admission. Applicants who indicate a fear of persecution if returned to their country of origin "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV). Applicants who do demonstrate a credible fear "shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii). Detention is "mandate[d] . . . throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings*, 583 U.S. at 302. Under the statute, applicants are not entitled to a bond hearing. *See id.* at 301.

46. Section 1225(b)(1) applies to certain noncitizens who are arriving in the United States or at a port of entry and may be placed in expedited removal proceedings if the Department of Homeland Security determines that they are inadmissible under §§ 212(a)(6)(C) (fraud or misrepresentation) or 212(a)(7) (lack of valid entry documents), and the noncitizen has not been admitted or paroled into the United States and cannot demonstrate continuous physical presence in the United

States for at least two years. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

47. DHS's authority to parole individuals detained under 8 U.S.C. § 1225(b)(1) is preserved by the general parole statute at 8 U.S.C. § 1182(d)(5)(A). Even though § 1225(b)(1)(B)(ii) states that individuals who have been found to have a credible fear of persecution "shall be detained for further consideration of the application for asylum," Congress did not repeal or displace DHS's long-standing discretionary authority to "parole into the United States temporarily under such conditions as [it] may prescribe on a case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A). The implementing regulations likewise recognize that noncitizens "who are arriving aliens or certain other aliens described in section 235(b)(1) of the Act" may be considered for parole on a case-by-case basis under these standards. *See* 8 C.F.R. § 212.5(b), (c). Thus, even for individuals subject to § 1225(b)(1), DHS retains—and routinely exercises—parole authority where urgent humanitarian concerns or significant public benefit justify release, and nothing in *Matter of M-S-*, 27 I. & N. Dec. 509 (A.G. 2019), eliminates or restricts that statutory parole power.

D. Re-arrest

48. To protect against arbitrary re-detention and to ensure the right to liberty, due process requires "adequate procedural protections" that test whether the government's asserted justification for a noncitizen's physical confinement "outweighs the individual's constitutionally protected interest in avoiding

physical restraint." *Zadvydas*, 533 U.S. at 690 (citation modified).

49. Due process thus guarantees notice and an individualized hearing before a neutral decisionmaker to assess danger or flight risk before the revocation of an individual's release. *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) ("The fundamental requisite of due process of law is the opportunity to be heard . . . . at a meaningful time in a meaningful manner." (citation modified)); *see also, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972) (requiring "preliminary hearing to determine whether there is probable cause or reasonable ground to believe that the arrested parolee has committed . . . a violation of parole conditions" and that such determination be made "by someone not directly involved in the case" (citation modified)).

50. Consistent with this principle, individuals released on parole or other forms of conditional release have a liberty interest in their "continued liberty." *Id.* at 482.

51. As a result, any "[r]elease" of a noncitizen "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

52. Statutory and regulatory provisions governing re-arrest also depend on the manner of release. Under the text of the INA and federal regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the

[noncitizen]." 8 U.S.C. § 1226(b); *see* 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

53. Courts have recognized that conditional parole "provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a 'danger to persons or property' and 'is likely to appear for any further proceeding.'" *Delgado-Sobalvarro v. AG of the U.S.*, 625 F.3d 782, 787 (3d Cir. 2010); *see also Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 261 (B.I.A. 2010).

54. In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested "solely on the ground that he is subject to removal proceedings," without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); *Gonzalez v. U.S. Immigration & Customs Enf't*, 975

F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

55. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. And those due process protections extend to "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693).

56. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

57. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see Demore v. Kim*, 538

U.S. 510, 519–20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an "individualized determination" of flight risk and danger to the community. *See INS v. Nat'l Ctr. for Immigrants' Rights*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

58. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

59. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

60. These principles apply with at least equal force to people released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, "[g]iven the civil context [of immigration

detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

61. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and re-detain noncitizens for no reason at all, it would raise serious constitutional questions under both the Fourth Amendment and the Due Process Clause.

STATEMENT OF THE FACTS

62. Petitioner, Mr. Teteloshvili, is a thirty-seven-year-old male with no criminal history. He is a citizen of Georgia.

63. On August 30, 2023, Mr. Teteloshvili entered the United States. He was arrested and detained at or near San Ysidro, California.

64. On September 6, 2023, Mr. Teteloshvili was issued an Order of Release on Recognizance. *See* Order of Release on Recognizance, Exhibit B. In connection with his release pursuant to 8 U.S.C. § 1226(a), ICE determined that Mr. Teteloshvili was neither a flight risk nor a danger to the community.

65. Following his release, Mr. Teteloshvili has fully complied with all conditions imposed by DHS, including reporting as directed and attending all scheduled Immigration Court hearings and DHS appointments.

66. On September 6, 2023, Mr. Teteloshvili was issued a Notice to Appear ("NTA"), requiring him to appear before the Immigration Court located at 606 South Olive Street, Los Angeles, CA 90014, on January 26, 2024, at 8:30 a.m. *See* Notice to

Appear, Exhibit C. The NTA charges Mr. Teteloshvili as "an alien present in the United States without being admitted or paroled," under 8 U.S.C. § 1182(a)(6)(A)(i). *See id.*

67. On August 26, 2024, Mr. Teteloshvili timely filed his Form I-589 application, requesting asylum, withholding, and protection under the Convention Against Torture ("CAT") with the Immigration Court. *See* Form I-589, Exhibit D. The filing of an asylum application, by regulation, stops any accrual of unlawful presence pursuant to section 212(a)(9)(B)(iii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(II) (stating "unlawful presence" accrual stops at filing of asylum application).

68. On January 17, 2026, Mr. Teteloshvili was re-detained by DHS as he was working as a truck driver, despite having violated no condition of his prior release and despite his consistent compliance with DHS and Immigration Court requirements.

69. At the time of Mr. Teteloshvili's re-arrest, he had been released into the United States, had continuously lived in the country for over two years, and was not at a port of entry.

70. Mr. Teteloshvili was transferred to the Clinton County Correctional Facility, 58 Pine Mountain Road, McElhattan, PA 17748, where he remains detained.

71. On July 8, 2025, DHS issued a new policy memorandum to all employees of ICE stating that "[t]his message serves as notice that DHS, in coordination with the

Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." Memorandum, U.S. Immigration & Customs Enf't, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

72. On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision that unlawfully reinterpreted the INA. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who were apprehended inside the United States by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges ("IJs"). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b) and has no opportunity for release on bond.

73. Mr. Teteloshvili's re-detainment, after his initial custody release, is unlawful because there have been no material changes in his circumstances as it relates to flight risk or danger to the community.

74. The government's decision to release an individual from custody creates "an implicit promise" that their liberty "will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Morrissey*, 408 U.S. at 482.

75. Mr. Teteloshvili's re-detention pursuant to § 1225(b) violates the plain language of the INA and its implementing regulations. Mr. Teteloshvili, who was apprehended in the interior of the U.S., should not be considered an "applicant for admission" who is "seeking admission." Instead, he must be detained, if at all, under 8 U.S.C. § 1226(a).

76. Through this petition, Mr. Teteloshvili asks this Court to find that Respondents have violated his due process rights by re-detaining him and have acted contrary to the INA by re-detaining him without the possibility of a bond hearing under 8 U.S.C. 1226(a). Petitioner seeks immediate release from custody and an Order to Show Cause within three days as to why the government is re-detaining him.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
VIOLATION OF 8 U.S.C. §§ 1226(a), 1225(b),
Mandatory Detention for Those Seeking Admission

77. Petitioner restates and realleges each and every preceding paragraph as if fully set forth herein.

78. On August 30, 2023, Mr. Teteloshvili presented himself for inspection upon entry, at which time CBP arrested and detained him. On September 6, 2023, he was released from custody pursuant to an Order of Release on Recognizance.

79. On September 6, 2023, DHS issued him a Notice to Appear under Section 1229a of the INA, alleging that he had not been admitted or paroled into the United States after inspection.

80. Because DHS previously exercised its discretion to release Mr. Teteloshvili from custody under 8 U.S.C. § 1226(a)(2)(B), and, in its discretion, released him from detention, the government lacks authority to re-detain him under § 1225(b)'s mandatory provisions. At the time of Mr. Teteloshvili's re-arrest in January 2026, he had been living in the United States for over two years pursuant to that release and had a pending asylum application with the Immigration Court. Therefore, Mr. Teteloshvili was not subject to detention pursuant to § 1225(b), and any custody must proceed, if at all, under § 1226(a).

81. Mr. Teteloshvili's continued re-detention is unlawful because it is not authorized under § 1225(b) or § 1226(a).

SECOND CLAIM FOR RELIEF
Continued Detention Constitutes a Violation of Due Process

82. Petitioner restates and realleges each and every preceding paragraph as if fully set forth herein.

83. ICE re-detained Mr. Teteloshvili without reasonable suspicion and continues to do so in violation of his constitutional rights under the Fifth Amendment.

84. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend.

V.

85. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690.

86. First, immigration detention must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (*citing Zadvydas*, 533 U.S. at 690).

87. Where, as here, the government released Mr. Teteloshvili from custody on parole to apply for asylum, Respondents cannot simply re-arrest and re-detain him without a lawful basis, including an individualized determination that detention is warranted.

88. The Government's authority to re-arrest a noncitizen and revoke their release is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. To protect that interest, due process requires notice and a hearing prior to any re-arrest, at which the individual is afforded the opportunity to advance their arguments for why their release should not be revoked.

89. Second, the Due Process Clause requires that any deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter

what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest"); *Demore*, 538 U.S. at 528 (applying less rigorous standard for "deportable aliens").

90. Mr. Teteloshvili's ongoing imprisonment does not satisfy that rigorous standard, as there has been no material change in circumstances since his prior release from custody, and Respondents have made no individualized showing that detention is necessary to effectuate removal or to address any risk of flight or danger to the community.

91. Third, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).

92. Detaining Mr. Teteloshvili was arbitrary because he had previously been released pending his removal proceedings and has no criminal arrests or convictions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Declare that Petitioner's re-detention is unlawful;
3. Issue an Order preventing Respondents from removing Petitioner from the United States without notice and an opportunity to be heard;

4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
6. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
7. Grant any further relief this Court deems just and proper.

Dated: February 8, 2026

Respectfully Submitted,

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