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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9 SOUTHERN DIVISION

10 Egit Tabak)

11 Plaintiff,)

Case No.: '26CV1441 BAS DEB

12 vs.)

PETITION FOR WRIT OF HABEAS
CORPUS

13 **Sixto Marrero**, Warden, Imperial Regional)
14 Adult Detention Facility, Secretary, Department)
15 of Homeland Security; **Gregory J.**)
16 **Archambeault**, Field Office Director,)
17 Enforcement and Removal Operations (ERO))
18 San Diego, CA. **Todd M Lyons**, Performing the)
19 Duties of the Immigration and Customs)
20 Enforcement; **Pamela Bondi**, United States)
21 Attorney General)

22 Defendant(s).)

23 PETITION FOR WRIT OF HABEAS CORPUS

24 PURSUANT TO 28 U.S.C. §2241 e.

25 Petitioner respectfully petitions this Honorable court for a writ of habeas corpus to remedy
26 petitioner's unlawful detention by the respondents as follows:

27 Dated this March 6, 2026

28 _____
Sajjad Hussain, Esq

1 **I. INTRODUCTION**

- 2 1. The Petitioner is a native and citizen of Turkey. He arrived in the United States near Tecate,
3 California, on or about September 6, 2024. He was neither inspected nor admitted by an
4 Immigration Officer. Upon entry, he was apprehended by Immigration and Customs
5 Enforcement and was subsequently released under an order of supervision. Thereafter, he was
6 placed in removal proceedings pursuant to INA § 240 without a Credible Fear Interview. On
7 November 14, 2024, he applied for relief from removal, including asylum, withholding of
8 removal, and protection under the Convention Against Torture (CAT).
9
- 10 2. Petitioner was detained while walking on a street in Los Angeles, California, without an arrest
11 warrant, without any pre-detention hearing or notice, and transported to the Imperial Regional
12 Adult Detention Facility (“Imperial Regional”) on February 2, 2026. Since then, he has
13 remained detained there. Petitioner is under the direct control of Respondents and their agents.
14 ICE cannot currently remove him from the United States because his applications for asylum,
15 withholding of removal, and protection under the Convention Against Torture are pending.
16
- 17 3. Following his detention, he was promptly scheduled for a master hearing before the Imperial
18 Immigration Courts. Subsequently, his case was transferred to the Imperial Immigration
19 Court, where a master hearing was scheduled for February 12, 2026. Mr. Tabak’s attorney of
20 record at that time requested a continuance due to a scheduling conflict, which the court
21 approved. The master hearing occurred on February 17, 2026, and he was subsequently given
22 an individual hearing date of February 27, 2026, with insufficient time to prepare. On that
23 date, during the hearing, Mr. Tabak’s attorney withdrew from the case, leading to a
24 postponement until March 12, 2026, before the same court. Regrettably, after the case was
25 transferred to the detained docket, it was expedited significantly. Coupled with the difficulty
26 in reaching legal counsel, this resulted in considerable harm. Immigration Judge Gabriel
27 28

1 Bradley issued a withdrawal notice informing Mr. Tabak that he would need to represent
2 himself if he lacked counsel to file a substitute. Even with new counsel, the hearing dates were
3 too proximate to adequately prepare a case involving a detained individual, thus putting the
4 petitioner at risk of losing all his rights.

5
6 4. Petitioner's detention is unlawful and violates the Due Process Clause of the Fifth
7 Amendment.

8 5. First, DHS violated Petitioner's procedural due process rights by revoking government-
9 authorized liberty without providing notice or a meaningful opportunity to be heard. DHS
10 permitted Petitioner to live in the community under supervision and accepted his
11 compliance. On Feb 02, 2026 Petitioner DHS took him into custody on the spot, without
12 advance warning, without stating any basis for re-detention, and without conducting any
13 custody review. This summary deprivation of liberty violates core procedural due process
14 protections.

15
16 6. Second, DHS violated substantive due process by detaining Petitioner even though
17 detention is no longer reasonably related to any legitimate immigration purpose. DHS
18 previously determined, that detention was unnecessary and that supervision was sufficient.
19 Nothing material changed at the time of Petitioner's re-arrest. He remained compliant,
20 posed no flight risk, and was not alleged to be dangerous. Under these facts, continued
21 detention is excessive, punitive in effect, and unsupported by any regulatory justification.

22 7. Third, DHS violated binding post-order custody regulations that strictly limit when a
23 person released under an Order of Supervision may be returned to custody. Those
24 regulations require an individualized determination based on changed circumstances and
25 removal foreseeability, as well as notice and an opportunity to respond when release is
26 revoked. DHS failed to identify any changed circumstances, failed to determine that
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1 removal had become reasonably foreseeable, and failed to provide any of the required
2 procedural protections. DHS's disregard of these regulations renders Petitioner's detention
3 unlawful from its inception.

4 8. Further, Petitioner Mr. Tabak's continued detention without a bond hearing before a neutral
5 decision-maker violates the Due Process Clause of the Fifth Amendment. Additionally,
6 according to 8 U.S.C. § 1362, "the person concerned shall have the privilege of being
7 represented (at no expense to the Government) by such counsel, authorized to practice in such
8 proceedings, as he shall choose." However, the Court has warned the Petitioner that it will not
9 grant lengthy continuances in this detained case. If he cannot find substitute counsel willing
10 to represent him on the expedited timeline set by the order allowing for his prior counsel's
11 withdrawal, he will have to represent himself. Given the time constraints and his detention, it
12 is highly unlikely that he will be able to retain a lawyer and prepare for his case sufficiently,
13 thereby violating due process.

14
15 9. Petitioner's continued detention by Respondents is unlawful. The mandatory detention
16 provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States
17 who are subject to the grounds of inadmissibility because they originally entered the United
18 States without inspection. Such noncitizens are detained under § 1226(a), unless they are
19 subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

20
21 10. Under § 1226(a), the "default rule," *id.*, a noncitizen "may be arrested and detained" [...] "On
22 a warrant issued by the Attorney General," if their removal proceedings are pending, 8 U.S.C.
23 § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged
24 with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the
25 government has discretion to release them on "bond of at least \$1,500 with security approved
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1 by, and containing conditions prescribed by, the Attorney General; or ... conditional parole.”

2 *Id.* at § 1226(a)(2)(A)–(B).

3 11. This Court should issue a writ of habeas corpus and determine that Mr. Tabak is entitled to
4 immediate release under reasonable conditions and pending further order of the Court.

5 12. Alternatively, this Court should order release unless he receives a bond hearing before a
6 neutral arbiter where: (1) the government bears the burden to establish by clear and convincing
7 evidence that is a danger or flight risk to justify his continued detention, even after
8 consideration of alternatives to detention that could mitigate any risk his release would
9 present; and (2) if the government cannot meet its burden, must be ordered released on
10 reasonable conditions, taking into account his ability to pay bond.

11
12 **II. CUSTODY**

13 13. Mr. Tabak is detained in the legal and physical custody of Respondents at the Imperial
14 Regional Detention Facility in Calexico, Imperial, California, where he is under the direct
15 control of Respondents and their agents.

16
17 **III. JURISDICTION**

18 15. This action arises under the Constitution of the United States and the Immigration and
19 Nationality Act, 8 U.S.C. § 1101 et seq.

20 16. Jurisdiction is proper under 28 U.S.C § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal
21 question); 28 U.S.C. § 1651 (All Writs Act); U.S. Const. art. I, § 9, cl. 2 (the Suspension
22 Clause); and 5 U.S.C. § 702 (Administrative Procedure Act).

23 **IV. VENUE**

24 17. Venue lies with the United States District Court for the Southern District of California because
25 Petitioner is currently detained within this Court's territorial jurisdiction at the Imperial
26 Regional Adult Detention Facility, located at 1572 Gateway Rd, Calexico, CA 92231, United
27

1 States. See 28 U.S. C. §1391. All material decisions regarding detention have been made at
2 the ICE San Diego Field Office in San Diego, California.

3 **V. EXHAUSTION**

4 18. Petitioner Mr. Tabak is not required to exhaust administrative remedies. Exhaustion for
5 habeas claims is prudential, not jurisdictional. See *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th
6 Cir. 2004). The prudential exhaustion requirement may be waived if “administrative
7 remedies are inadequate or not efficacious, pursuit of administrative remedies would be a
8 futile gesture, [or] irreparable injury will result.” *Id.* at 1000. Administrative remedies would
9 be futile, inadequate, and not efficacious. Exhausting his constitutional claim would be futile
10 because the agency lacks the authority to rule on constitutional questions. See *Wang v. Reno*,
11 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability of the INS to adjudicate the
12 constitutional claim completely undermines most, if not all, of the purposes underlying
13 exhaustion”).
14

15 19. Exhausting his statutory claim would also be futile because the Immigration Judge (“IJ”)
16 adjudicating the merits case—and to whom his bond hearing request would likely be
17 assigned—acts under the authority of the Attorney General and is required to follow precedent
18 set by the Board of Immigration Appeals (BIA). The BIA in the *Matter of Q. Li 29 I & N Dec.*
19 *66 (BIA 2025)* held that Immigration Judges lack authority to hear bond requests or grant bond
20 to individuals who are arrested and detained without a warrant while arriving in the United
21 States, whether or not at a port of entry, and subsequently placed in removal proceedings is
22 detained under section 235(b) of the Immigration and Nationality Act (“INA”),
23

24 20. Petitioner entered the United States on September 6, 2024, without inspection and was
25 charged as removable under INA § 212(a)(6)(A)(i) for being present in the United States
26 without being admitted or paroled.
27

1 21. Even if exhaustion were not futile, waiver is warranted because the claim presents purely legal
2 issues, and no purpose is served by requiring an administrative appeal. See *Hernandez v.*
3 *Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017).

4 22. Furthermore, due to consecutive court hearings, the scheduled hearing is being set for a very
5 soon date, and, due to difficulties accessing a lawyer, he is currently unable to receive proper
6 legal assistance and therefore cannot take clear steps regarding his rights.
7

8 **V. PARTIES**

9 23. Mr. Tabak is a native and citizen of Turkey. He arrived in the United States near Tecate, CA,
10 on or about September 6, 2024. He was neither admitted nor paroled after an inspection by an
11 Immigration Officer. He was placed in removal proceedings and sought relief from removal
12 under the asylum, withholding of removal, and CAT protections on November 14, 2024. He
13 has an active removal case and an active asylum application pending before the court.
14 Petitioner remains in ICE custody.

15 24. Respondent Sixto Marrero, Warden, Imperial Regional Adult Detention Facility, where
16 Petitioner is detained. He is sued in his official capacity.

17 25. Respondent, Secretary of the Department of Homeland Security, an agency of the United
18 States. The agency is responsible for administering and enforcing immigration laws. See 8
19 U.S.C. § 1103(a). Secretary is a legal custodian of Petitioner. She is sued in her official
20 capacity.
21

22 26. Respondent Gregory J. Archambeault is the Field Office Director for Enforcement and
23 Removal Operations (ERO), San Diego, California. He is sued in his official capacity.

24 27. Respondent Todd M. Lyons is performing the duties of the Director of U.S. Immigration and
25 Customs Enforcement (ICE). He is sued in his official capacity.
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1 28. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General,
2 the Respondent has the authority to interpret immigration laws and adjudicate removal cases
3 and bond hearings. See 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility
4 to the Executive Office for Immigration Review, which administers the immigration courts
5 and the BIA. Respondent Bondi is a legal custodian of Petitioner. She is sued in her official
6 capacity.

7
8 **VII. FACTUAL ALLEGATIONS**

9 29. Petitioner Mr. Tabak is a citizen and national of Turkey.

10 30. Petitioner entered the United States on September 6, 2024, without inspection and was
11 charged as removable under INA § 212(a)(6)(A)(i) for being present in the United States
12 without being admitted or paroled.

13 31. Mr. Tabak was placed in removal proceedings and sought relief from removal under the
14 asylum, withholding of removal, and CAT protection on November 14, 2024. He was
15 scheduled for a master hearing on February 9, 2028, and intended to pursue his asylum
16 application and removal case. For this purpose, he retained legal counsel to obtain legal
17 support for his case.

18 32. Mr. Tabak has an active removal case and an active asylum application before the court.
19
20 Petitioner remains in ICE custody.

21 33. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs
22 Enforcement (ICE). Petitioner was detained in the Los Angeles, California area while
23 walking on the street without an arrest warrant and was transported to the Imperial
24 Regional Adult Detention Facility on February 2, 2026.

25
26 34. Petitioner Mr. Tabak was immediately placed on the detained docket, and his hearing was
27 rescheduled to the next available date, as he is in detention.

1 35. Petitioner’s case was later transferred to the Imperial Immigration Court, where he was
2 scheduled for a master hearing on February 12, 2026.

3 36. Petitioner’s attorney of record at the time requested a continuance due to a scheduling conflict,
4 which the court granted. His master hearing occurred on February 17, 2026, and he was then
5 scheduled for an individual hearing on February 27, 2026.

6 37. On February 27, 2026, hearing, Mr. Tabak’s attorney of record withdrew from his case, and
7 the case was postponed to March 12, 2026, before the same court.

8 38. Mr. Tabak has never been arrested or committed a crime anywhere in the world, and there
9 is no basis to conclude that he poses a threat to the community or national security or is a
10 flight risk.
11

12 **VII. LEGAL ARGUMENT**

13 **A. Petitioner Is Statutorily Entitled to A Bond Hearing**

14 39. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law
15 in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*
16 *Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody,
17 detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due
18 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *id.* at 718
19 (Kennedy, J., dissenting) (“Liberty under the Due Process Clause includes protection against
20 unlawful or arbitrary personal restraint or detention.”). This fundamental due process
21 protection applies to all noncitizens, including both removable and inadmissible noncitizens.
22 See *id.* at 721 (Kennedy, J., dissenting) (“Both removable and inadmissible [noncitizens] are
23 entitled to be free from detention that is arbitrary or capricious”).
24

25 40. “Substantive due process protects noncitizens from arbitrary confinement by the government,
26 which violates a noncitizen's substantive due process rights except in certain special and
27

1 narrow nonpunitive circumstances where a special justification outweighs the individual's
2 constitutionally protected interest in avoiding physical restraint. U.S. Const. Amend. 5. Risk
3 of erroneous deprivation of noncitizens' interest in freedom from detention weighed in favor
4 of finding that ongoing immigration detention of noncitizens, who were already present in
5 United States after allegedly entering without inspection or parole, without opportunity for
6 release on bond during pendency of standard removal proceedings violated procedural due
7 process under *Mathews v. Eldridge* test; absent individualized bond hearings, government had
8 sole, unguided, and unreviewable discretion to detain noncitizens without any individualized
9 showing of why detention was warranted, government did not contend two noncitizens
10 presented danger or flight risk, and third noncitizen had been granted bond but remained
11 detained after government's appeal automatically stayed bond order. U.S. Const. Amend. 5; 8
12 C.F.R. S 1003.19(i)(2).” *Escobar Salgado v. Mattos* --- F.Supp.3d ----2025 WL 3205356.

13
14 **B. Even in the absence of a Bright-Line Six-Month Standard, An Individualized Bond**
15 **Hearing Is Required When Detention Becomes Unreasonably Prolonged**

16
17 41. Mr. Tabak’s immigration case is scheduled for a personal hearing on March 12, 2026, in the
18 detained docket. Given his counsel’s withdrawal and the court’s expedited scheduling, which
19 warns him that he may need to represent himself, he faces the risk of losing all rights as an
20 asylum seeker. Therefore, an appeal or motion for review may also be necessary. While
21 prompt action could help prevent prolonged detention, the fact that the Board of Immigration
22 Appeals (BIA) cannot review arguments at the initial stage underscores the importance of
23 comprehensive legal assistance at the merits hearing. Given that Mr. Tabak needs to prepare
24 his application from the outset, since he has only written pleadings and the I-589 form in his
25 docket, the likelihood of addressing these two due process violations appears limited at this
26 stage. In any event, either the right to liberty or the arguments presented before the court must
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1 take precedence. The appellate process, which could result in extended and uncertain
2 detention, necessitates the Petitioner's collaboration with legal counsel to ensure that all
3 claims are effectively articulated. Inadequate preparation could lead to an ineffective appeal,
4 rapid dismissal by the BIA due to new regulations, or unavoidable prolonged detention
5 without bond hearings, ultimately undermining due process.

6
7 42. Since the Supreme Court's *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth
8 Circuit has expressed "grave doubt" that "any statute that allows for arbitrary prolonged
9 detention without any process is constitutional or that those who founded our democracy
10 precisely to protect against the government's arbitrary deprivation of liberty would have
11 thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

12 43. Due process requires that the government provide bond hearings to noncitizens facing
13 prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due
14 process" because "bail is basic to our system of law." *Jennings*, 138 S. Ct. at 862 (Breyer, J.,
15 dissenting) (internal quotation marks omitted). While the Supreme Court upheld the
16 mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the
17 petitioner's concession of deportability and the Court's understanding at the time that such
18 detentions are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has
19 been detained for a prolonged period or is pursuing a substantial defense to removal or claim
20 to relief, due process requires an individualized determination that such a significant
21 deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividualized
22 determination as to his risk of flight and dangerousness" may be warranted "if the continued
23 detention became unreasonable or unjustified"); see also *Jackson v. Indiana*, 406 U.S. 715,
24 733 (1972) (holding that detention beyond the "initial commitment" requires additional
25 safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser
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1 safeguards may be appropriate” for “short-term confinement”); *Hutto v. Finney*, 437 U.S. 678,
2 685-86 (1978) (holding that, in the Eighth Amendment context, “the length of confinement
3 cannot be ignored in deciding whether [a] confinement meets constitutional standards”); *Reid*
4 *v. Donelan*, 17 F.4th 17 (1st Cir. 2021) (holding that “the Due Process Clause imposes some
5 form of reasonableness limitation upon the duration of detention” under section 1226(c))
6 (internal quotation marks omitted).

7
8 44. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process
9 requires “adequate procedural protections” that ensure the government’s asserted justification
10 for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected
11 interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks
12 omitted).

13 45. In the immigration context, the Supreme Court has recognized only two valid purposes for
14 civil detention: mitigating the risk of danger to the community and preventing flight. *Id.*;
15 *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based
16 on any other justification.

17
18 **C. The petitioner is entitled to bond because he is not subject to 8 U.S.C. §1225, but**
19 **rather to 8 U.S.C. §1226.**

20 46. Full removal proceedings under 8 U.S.C. § 1229a are “the standard mechanism for removing
21 inadmissible noncitizens.” Make the *Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL
22 2494908, at *2 (D.D.C. Aug. 29, 2025); see also *Dep’t of Homeland Sec. v. Thuraissigiam*, 591
23 U.S. 103, 108 (2020) (“The usual removal process involves an evidentiary hearing before an
24 immigration judge, and at that hearing an alien may attempt to show that he or she should not
25 be removed.”). These proceedings are initiated by serving the noncitizen with a Form I-862
26 “notice to appear” in immigration court. 8 U.S.C. § 1229(a)(1).

1 47. Full removal proceedings “take place before an [immigration judge (“IJ”)], an employee of
2 the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop
3 the record in cases before them.” *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872
4 (JMC), — F.Supp.3d —, —, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8
5 U.S.C. § 1229a(a)(1), (b)(1)).

6
7 48. In removal proceedings, noncitizens have the right to hire counsel, to a reasonable opportunity
8 to examine the evidence against them, to present evidence on their own behalf, and to cross-
9 examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). “[D]ue to the built-in
10 procedures,” full removal proceedings “typically take[] place over the course of multiple
11 hearings,” which “allows time for noncitizens to both gather evidence in support of petitions
12 for relief available in immigration court ... and seek collateral relief from other components
13 of [the Department of Homeland Security (“DHS”)].” *Coal. for Humane Immigrant Rts.*, —
14 F.Supp.3d at —, 2025 WL 2192986, at *3.

15
16 49. Accordingly, “[w]hen a person is apprehended under § 1226(a), an ICE officer makes the
17 initial custody determination.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir.
18 2022) (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer’s
19 determination, they “may request a bond hearing before an IJ at any time before a removal
20 order becomes final.” *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The procedural
21 posture progresses, and the detainee must then “establish to the satisfaction of the Immigration
22 Judge . . . that he or she does not present a danger to persons or property, is not a threat to the
23 national security, and does not pose a risk of flight.” *Hernandez v. Sessions*, 872 F.3d 976,
24 982 (9th Cir. 2017) (quoting *In re Guerra*, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on
25 an adverse decision is available with the BIA. *Id.* at 983 (citing § 236.1(d)(3)).
26

1 50. INA § 1225(b)(1) authorizes expedited removal for certain “applicants for admission” in two
2 categories. First, noncitizens “arriving in the United States” are determined by an immigration
3 officer to be inadmissible due to misrepresentation or failure to meet document requirements.
4 *Id.* at § 1225(b)(1)(A)(i); see also *id.* at § 1182(a)(6)(C), (a)(7).

5 51. Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet
6 documents requirements; (b) have not “been admitted or paroled into the United States”; (c)
7 have not “affirmatively shown, to the satisfaction of an immigration officer, that [they have]
8 been physically present in the United States continuously for the 2-year period immediately
9 prior to the date of the determination of inadmissibility”; and (d) have been designated by the
10 Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

11 52. 8 U.S.C. § 1226 “provides the general process for arresting and detaining aliens who are
12 present in the United States and eligible for removal.” *Rodriguez Diaz v. Garland*, 53 F.4th
13 1189, 1196 (9th Cir. 2022). The provision “distinguishes between two different categories”
14 of noncitizens. *Jennings*, 583 U.S.

15 53. These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention
16 “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297. Individuals that fall
17 into § 1225(b)(1) are “normally ordered removed ‘without further hearing or review’ pursuant
18 to an expedited removal process” unless claiming asylum or a fear of persecution. *Jennings*,
19 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

20 54. Under § 1226(a), the “default rule,” *id.*, a noncitizen “may be arrested and detained” [...] “On
21 a warrant issued by the Attorney General,” if their removal proceedings are pending, 8 U.S.C.
22 § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged
23 with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the
24 government has discretion to release them on “bond of at least \$1,500 with security approved
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1 by, and containing conditions prescribed by, the Attorney General; or ... conditional parole.”

2 *Id.* at § 1226(a)(2)(A)–(B).

3 55. Noncitizens who are “seeking admission” and not covered by the expedited removal
4 provisions in § 1225(b)(1) are subject to § 1225(b)(2). See *id.* at 287. This category would
5 include, for example, noncitizens who are arriving in the United States, seek admission, and
6 are inadmissible for some reason other than misrepresentation or failure to meet documents
7 requirements. See 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides
8 that such noncitizens “shall be detained” for full removal proceedings under § 1229(a) “if the
9 examining immigration officer determines” that the noncitizen “is not clearly and beyond a
10 doubt entitled to be admitted.” *Id.* at § 1225(b)(2)(A).

12 56. Until this year, DHS has applied § 1226(a) and its discretionary release and review of
13 detention “to the vast majority of noncitizens allegedly in this country without valid
14 documentation”—a practice codified by regulation. *Salcedo Aceros*, 2025 WL 2737503, at
15 *3.

17 57. The Government now contends that mandatory detention under § 1225 is the appropriate
18 detention authority for noncitizens, such as the petitioner, who have not been admitted or
19 paroled. See *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499
20 (W.D. Wash. Sept. 30, 2025) (citing *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020)).

21 58. Through *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and the authorities effectively deprived the
22 petitioner of any viable mechanism to seek release from custody, notwithstanding his lack of
23 criminal history and absence of danger or flight risk. The petitioner’s immediate placement on the
24 detained docket upon arrest dramatically expedited proceedings, thereby undermining his
25 procedural due process rights and restricting his ability to adequately prepare, obtain counsel, and
26 present evidence in support of his claims.
27

1 59. Recently, several district courts have held that the Government’s new, and more expansive,
2 interpretation of mandatory detention under the INA is either incorrect or likely incorrect on
3 the basis that this reading of the statute would render 1226(c) inoperable or moot. *See, e.g.,*
4 *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash.
5 Sept. 30, 2025).

6 **D. At Any Hearing, The Government Must Justify Ongoing Detention By Clear and**
7 **Convincing Evidence.**

9 60. Due process also requires certain minimum procedures at bond hearings. First, the
10 government must meet the burden of proof by clear and convincing evidence to justify
11 continued detention. Second, the decision-maker must consider available alternatives to
12 detention. Finally, if the government cannot meet its burden, the decision-maker must assess
13 a noncitizen’s ability to pay a bond when determining the appropriate conditions of release.

14 61. To justify prolonged immigration detention, the government must bear the burden of proof by
15 clear and convincing evidence that the noncitizen is a danger or flight risk. *See Singh v.*
16 *Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d 762, 781
17 (9th Cir. 2020), rev’d on other grounds by *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 213
18 L. Ed. 2d 102 (2022) (“Jennings’s rejection of layering [the clear and convincing burden of
19 proof standard] onto § 1226(a) as a matter of statutory construction cannot . . . undercut our
20 constitutional due process holding in *Singh*.”); Where the Supreme Court has permitted civil
21 detention in other contexts, it has relied on the fact that the Government bore the burden of
22 proof by at least clear and convincing evidence. *See United States v. Salerno*, 481 U.S. 739,
23 750, 752 (1987) (upholding pretrial detention after a “full-blown adversary hearing” requiring
24 “clear and convincing evidence” and “a neutral decisionmaker”); *Foucha v. Louisiana*, 504
25 U.S. 71, 81-83 (1992) (striking down civil detention scheme that placed burden on the
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1 detainee); *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures
2 deficient because, inter alia, they placed burden on detainee).

3 62. The requirement that the government bears the burden of proof by clear and convincing
4 evidence is also supported by application of the three-factor balancing test from *Mathews v.*
5 *Eldridge*, 424 U.S. 319, 335 (1976).

6 63. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always
7 requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; see also *Foucha*,
8 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant
9 deprivation of liberty that requires due process protection.” (citation omitted)).

10 64. Second, the risk of error is high when the government is represented by trained attorneys,
11 while detained noncitizens are often unrepresented and frequently lack English proficiency.
12 See *Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982).

13 65. Third, placing the burden on the government imposes minimal cost or inconvenience, as the
14 government has access to the noncitizen’s immigration records and other information that it
15 can use to make its case for continued detention.

16 66. Furthermore, “Whether a person is likely to escape before an administrative warrant can be
17 obtained requires an individualized determination based on knowledge of facts, particularized
18 with respect to that person.” *Barham v. Ramsey*, 434 F.3d 565, 573 (D.C. Cir. 2006) (quoting
19 *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).” See *José Escobar Molina v. U.S. Dep’t of*
20 *Homeland Sec.*, No. 25-3417 (BAH) p. 30. There is no individualized determination regarding
21 Mr. Tabak.

22 67. “At a bond hearing, to justify denial of bond and continued detention, due process requires
23 the Government to prove by clear and convincing evidence that an immigrant is a flight risk
24 or a danger to the community. *Singh*, 638 F.3d at 1203 (citing the “substantial liberty interest
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1 at stake”); see also *Obregon v. Sessions*, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20, 2017)
2 (“Case law demonstrates that establishing dangerousness by ‘clear and convincing evidence’
3 is a high burden ...”). To determine whether an immigrant who is detained under section
4 1226(a) presents a flight risk or danger to the community, IJs “look to a number of factors,”
5 like: (1) whether the immigrant has a fixed address in the United States; (2) the immigrant’s
6 length of residence in the United States; (3) the immigrant’s family ties in the United States,
7 (4) the immigrant’s employment history, (5) the immigrant’s record of appearance in court,
8 (6) the immigrant’s criminal record, including the extensiveness of criminal activity, the
9 recency of such activity, and the seriousness of the offenses, (7) the immigrant’s history of
10 immigration violations; (8) any attempts by the immigrant to flee prosecution or otherwise
11 escape from authorities; and (9) the immigrant’s manner of entry to the United States” *Perez*
12 *v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020). Petitioner Mr. Tabak has resided in the
13 United States since his entry and maintains a fixed address there. Furthermore, Mr. Tabak is
14 duly authorized to work within the United States and has continually maintained legal
15 employment status. He possesses a valid Social Security Number (SSN) and a current
16 Employment Authorization Document (EAD), and he is regularly employed in a lawful
17 workplace. Consequently, his activities are readily subject to oversight. Additionally, he has
18 not been involved in any criminal activities, neither in the United States nor in his country of
19 origin. Therefore, a bond hearing is necessary to allow him to explain all relevant matters and
20 present his case. The requirement for due process persists throughout the hearing.
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23 68. Due process also requires considering a noncitizen’s ability to pay bail. “Detention of an
24 indigent ‘for inability to post money bail’ is impermissible if the individual’s ‘appearance at
25 trial could reasonably be assured by one of the alternate forms of release.’” *Id.* at 990 (quoting
26 *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). Therefore, when
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1 determining the appropriate release conditions for immigration detainees, due process
2 demands “consideration of financial circumstances and alternative conditions of release” to
3 prevent detention based solely on poverty. *Id.* Due process also requires consideration of
4 alternatives to detention.

5 **E. Due Process Requires Consideration Of Alternatives To Detention.**

6 69. Due process also requires that a neutral decisionmaker consider available alternatives to
7 detention. A primary purpose of immigration detention is to ensure a noncitizen’s appearance
8 during removal proceedings. Detention is not reasonably related to this purpose if there are
9 alternative conditions of release that could mitigate the risk of flight. *See Bell v. Wolfish*, 441
10 U.S. 520, 538 (1979). ICE’s alternatives-to-detention program—the Intensive Supervision
11 Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at
12 removal proceedings, with compliance rates approaching 100 percent. *See Hernandez v.*
13 *Sessions*, 872 F.3d 976, 991 (9th Cir. 2017). ICE’s alternatives-to-detention program—the
14 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring
15 appearance at removal proceedings, with compliance rates approaching 100 percent.
16 *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a
17 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). Thus,
18 alternatives to detention must be considered in determining whether prolonged incarceration
19 is warranted.

20 70. Due process likewise requires consideration of a noncitizen’s ability to pay a bond. “Detention
21 of an indigent ‘for inability to post money bail’ is impermissible if the individual’s
22 ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’”
23 *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978)
24 (en banc)). Therefore, when determining the appropriate conditions of release for people
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1 detained for immigration purposes, due process requires “consideration of financial
2 circumstances and alternative conditions of release.” *Id.*; see also *Martinez v. Clark*, 36 F.4th
3 1219, 1231 (9th Cir. 2022) (“While the government had a legitimate interest in protecting the
4 public and ensuring the appearance of noncitizens in immigration proceedings, we held [in
5 Hernandez] that detaining an indigent alien without consideration of financial circumstances
6 and alternative release conditions was ‘unlikely to result’ in a bond determination ‘reasonably
7 related to the government’s legitimate interests.’ (citation omitted).”).

8
9 **F. Due Process Requires the Right to Choose Counsel**

10 71. Petitioner’s master hearing occurred on February 17, 2026, and he was then scheduled for an
11 individual hearing on February 27, 2026, giving very little time to prepare.

12 72. At the February 27, 2026, hearing, Mr. Tabak’s attorney of record withdrew from his case, and the
13 case was postponed to March 12, 2026, before the same court. Now he has very limited time to
14 find another attorney and prepare his documents while he is in the detention center.

15 73. According to 8 U.S.C. § 1362, “...the person concerned shall have the privilege of being
16 represented (at no expense to the Government) by such counsel, authorized to practice in such
17 proceedings, as he shall choose...”. Despite this, Petitioner has been warned by the Court that
18 lengthy continuances will not be granted in this detained case and that Petitioner will need to
19 represent himself if he cannot retain substitute counsel prepared to represent him on the expedited
20 timeline established by the order granting prior counsel’s withdrawal. However, due to time
21 constraints and his detention, Petitioner cannot retain counsel and adequately prepare his case,
22 thereby violating his due process rights.

23
24 74. Although the swift progress of hearings may appear to be a means of preventing prolonged
25 detention, at this stage, the petitioner’s lack of legal representation effectively prevents him from
26 exercising his right to choose counsel. Achieving a balance between these two while the petitioner
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1 is detained has become nearly impossible; therefore, priority should be given to the petitioner's
2 liberty interest against prolonged detention, and the petitioner should be able to exercise his right
3 to choose a lawyer accordingly.

4 75. According to the immigration court's decision, the appeal process may also require. If relief is
5 granted, the government may appeal. If relief is denied, Petitioner intends to appeal. As a result,
6 the duration of detention remains uncertain and potentially prolonged. At this stage, if the
7 petitioner fails to make adequate preparations and cannot present all his claims clearly and
8 concisely, even if he wishes to appeal, he will be unable to effectively conduct the appeal process
9 or articulate his arguments, as the BIA does not serve as a court of first instance for such claims
10 and arguments. Furthermore, under the recently issued BIA regulations, if they are unable to
11 prepare a comprehensive and sufficient appeal form, the appeal file may regrettably be dismissed
12 swiftly. To prevent such outcomes and safeguard due process, it is essential that he be able to
13 consult with his legal counsel, discuss all pertinent details, and present his arguments effectively.
14 Ultimately, even if the risk of immediate dismissal is mitigated and the process advances to the
15 submission stage, it appears inevitable that he will face prolonged detention periods without the
16 opportunity for bond hearings.

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19 76. However, as detailed above, the current procedure fails to provide Mr. Tabak with a meaningful
20 opportunity to discuss his case with legal counsel, as he has an upcoming individual hearing and
21 his counsel has withdrawn. This expanded expedited removal policy violates the Fifth Amendment
22 by depriving noncitizens of fundamental procedural protections.

1 **VII. CLAIMS FOR RELIEF FIRST CLAIM FOR RELIEF**

2 **FIRST CLAIM FOR RELIEF**

3 **Violation of the Fifth Amendment**

4 77. Petitioner re-alleges and incorporates by reference paragraphs 1 through 76.

5 78. The Due Process Clause of the Fifth Amendment forbids the government from depriving any
6 “person” of liberty without due process of law.” U.S. Const. Amend.
7

8 79. The Due Process Clause requires the right to choose counsel; however, it does not seem
9 possible for the petitioner, while in custody, to exercise this right.

10 80. The Due Process Clause requires the government to establish, at an individualized hearing
11 before a neutral decisionmaker, that Petitioner’s prolonged detention is justified by clear and
12 convincing evidence of flight risk or danger, even after consideration of whether alternatives
13 to detention could sufficiently mitigate that risk.
14

15 81. Petitioner’s detention is likely become prolonged or continued detention while his case is
16 adjudicated and potentially appealed to the BIA for further proceedings.

17 82. Petitioner’s ongoing detention without an individualized bond hearing violates the Due
18 Process Clause

19 83. However, the fact that the petitioner, who has not committed any crime and poses no flight
20 risk, was detained without an individualized determination and arrest warrant, and that his
21 case was transferred to the detained docket and proceeded rapidly, constitutes a violation of
22 due process regarding communication with any counsel and other issues outlined above. It is
23 also very difficult to balance the rights to liberty and to access counsel while the petitioner
24 remains in custody.
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1 **COUNT TWO**

2 **Violation of 8 U.S.C. §1225 and 8 U.S.C. §1226.**

3
4 84. Petitioner re-alleges and incorporates by reference paragraphs 1 through 76.

5 85. Petitioner's continued detention by Respondents is unlawful. The mandatory detention
6 provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States
7 who are subject to the grounds of inadmissibility because they originally entered the United
8 States without inspection. Such noncitizens are detained under § 1226(a), unless they are
9 subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.
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11 86. There has been no change to his status since then.
12

13 **PRAYER FOR RELIEF**

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

15 (i) Assume jurisdiction over this matter.

16 (ii) Grant the Order to Show Cause as requested in the application filed
17 concurrently. Declare that Petitioner's ongoing prolonged detention violates 8
18 U.S.C. § 1226(a) and the Due Process Clause of the Fifth Amendment.

19 (iv) Issue a Writ of Habeas Corpus and order Respondents to immediately release
20 Petitioner from DHS custody under reasonable conditions and enjoin Respondents
21 from re-arresting him without a pre-deprivation hearing before this Court.
22

23 (v) Alternatively, order that Petitioner be released within 14 days unless
24 Respondents schedule a hearing to take place before a neutral arbiter, where, to
25 continue detention, the government must establish by clear and convincing
26 evidence that Petitioner presents a danger or flight risk, and
27

1 address why available conditions of supervision cannot mitigate any such risks; and
2 if (a) the government fails to meet this burden, the neutral arbiter orders Petitioner's
3 release on appropriate conditions of supervision, taking into account Petitioner's
4 ability to pay a bond; or (b) the government meets this burden, the neutral arbiter
5 issue a reasoned decision explaining why the government has met its burden of
6 proof and why alternatives to detention are inadequate;

7
8 (vi) Enjoin Respondents from causing Petitioner any greater harm during the
9 pendency of this litigation and immigration court case, such as by transferring him
10 farther away from his legal Counsel or placing him into solitary confinement. (vii)
11 Award reasonable costs and attorneys' fees under the Equal Access to Justice Act,
12 28 U.S.C. § 2412, or on any other basis justified under law;

13 and

14 (viii) Grant such further relief as the Court deems just and proper.

15 Respectfully Submitted this March 2, 2026.

16
17 Dated: March 06, 2026,

By:

/s/Sajjad Hussain
Sajjad Hussain, Esq.
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19
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