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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Khalid Hakimi,

Petitioner-Plaintiff,

vs.

Christopher J. LAROSE, in his official capacity as Warden of Otay Mesa Detention Center; Daniel A. BRIGHTMAN, in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations; Todd LYONS, in his official capacity as Acting Director of ICE; Daren MARGOLIN is the Acting Director of EOIR; and Pamela BONDI, U.S. Attorney General, Kristi NOEM, in her official capacity as Secretary of Homeland Security

Respondents-Defendants.

Case No.: '26CV1458 JO MMP

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND EMERGENCY RELIEF

Agency File No.: [redacted]

INTRODUCTION

1. Khalid Hakimi, hereinafter *Petitione*r, is a 20-year-old asylum seeker from Afghanistan.
2. Petitioner and his family sought entry into the United States by registering through the Department of Homeland Security (DHS) app called CBP One. On July 20, 2024, they appeared at the San Ysidro Port of entry pursuant to their CBP One appointment, the Petitioner and his family were questioned, provided biometric information and were fingerprinted.
3. The Respondents paroled Petitioner and his family into the United States pursuant to 8 U.S.C. § 212(d)(5)(A) (Temporary admission for humanitarian reasons) after determining that they were not a "danger to the community" or a "flight risk." The parole was facially valid until July 18, 2026. *See* Exhibit B.
4. Petitioner complied with all court orders and appeared to all hearings related to his removal proceedings. On August 20, 2024, Immigration Judge (IJ) Rico Bartolomei terminated the removal proceedings after a joint motion to dismiss by Petitioner and Respondents. *See* Exhibit E.
5. Petitioner, through pro bono counsel, then applied affirmatively for asylum,

before the U.S. Citizenship and Immigration Services (USCIS) on April 25, 2025. *See* Exhibit C.

6. Petitioner is a derivative of his father's asylum application.

7. Petitioner was issued an employment authorization card and was gainfully employed as a warehouse worker at Amazon pending a final decision on his family's asylum application. *See* Exhibit D.

8. On January 9, 2026, immigration agents arrested Petitioner near his home in El Cajon, California. The Respondents have characterized his arrest as "collateral" in an enforcement operation where the intended target was Petitioner's older brother, Mohammad. *See* Exhibit G at 2.

9. Petitioner has no criminal history. *Id* at 3.

10. In short, nothing has materially changed since Petitioner and his family were initially paroled into the United States that would justify his current detention.

11. Petitioner's detention is a violation of his procedural and due process rights under the Fifth Amendment as well as the Administrative Procedures Act (APA). As such, Petitioner detention is unlawful.

12. Accordingly, to vindicate his rights, Petitioner requests the Court grant 28 U.S.C. § 2241 habeas relief and order Respondents to: 1) enjoin

Respondents from transferring Petitioner outside the jurisdiction of the Southern District of California pending the resolution of this case; 2) immediately release him from immigration detention; 3) return any confiscated property, including any identification or work authorization documents belonging to Petitioner or his family members; 4) enjoin Respondents from re-detaining the Petitioner without a pre-deprivation hearing before a neutral decision-maker at which Respondents must prove material changes in circumstances to justify re-detention; 5) declare that detaining Petitioner without notice and an individualized hearing before a neutral decisionmaker violates due process; 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 such further relief as the Court deems just and proper.

STATEMENT OF FACTS

13. Petitioner came to the United States from Afghanistan fleeing violence and extortion from the Taliban. He is a derivative in his father's asylum application. *See* Exhibit C.

14. On July 20, 2024, Petitioner entered the United States via a CBPOne

appointment and was paroled into the US. Petitioner's parole was facially valid until July 18, 2026. *See* Exhibit B.

15. On August 20, 2024, IJ Bartolomei dismissed the Petitioner and his family's removal proceedings under 8 C.F.R. § 1239.2 (C) (2026). *See* Exhibit E.

16. Petitioner and his family have lived in the US for over one and a half years in the communities of San Ysidro, El Cajon, and Oceanside, CA. While in the US, Petitioner enrolled in high school, graduated, and subsequently attended Grossmont Community College. *See* Exhibit A and Exhibit H.

17. Petitioner was lawfully employed as a warehouse worker at Amazon and was helping to financially support his family members. *See* Exhibit B at 6-7.

18. Moreover, Petitioner is a man of faith and is a parishioner at the Rey de Reyes Church in San Ysidro, CA. *See* Exhibit D.

19. On April 17, 2025 -- well within the statutory one-year filing deadline, pro bono counsel filed Form I-589 Application for Asylum before USCIS. *See* Exhibit C.

20. Despite following all requirements and orders of DHS, on January 9, 2026, Respondents arrested Petitioner while he was driving near his home.

21. His post-arrest Notice To Appear (NTA) indicates that he is charged with 8 U.S.C. § 1182(a)(7)(A)(i)(I) - as a [non-citizen] present in the U.S. without

valid documentation. *See* Exhibit F.

22. Petitioner has been unlawfully detained at the Otay Mesa Immigration Detention Center for over 54 days and has been subject to mental and emotional harm while in detention. *See* Exhibit A.

CUSTODY

23. Petitioner is currently in Respondents' legal and physical custody. They are detaining him at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility. He is under Respondents' and their agents' direct control.

JURISDICTION

24. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the United States' Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. See *Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9,

cl. 2; U.S. CONST. amends. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), 2241 (habeas corpus).

25. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's re-detention without being provided an individualized hearing prior to his re-detention and before a neutral adjudicator under 8 U.S.C.§ 1226(a), as well as Petitioner's challenge to being subjected to mandatory detention under 8 U.S.C. § 1225(b)(2). Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

26. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of his underlying claims, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. See *INS v. St. Cyr,* 533 U.S. 289, 301 (2001); see also *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020) (citing *Singh*, 638 F.3d at 1211-12)). And no court has ruled on the legality of Petitioner's detention.

REQUIREMENTS OF 28 U.S.C. § 2243

27. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 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.*

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

29. Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the

vindication of constitutional rights." *Id.*

VENUE

30. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner currently is detained.

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

32. In habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Id. (quoting *Laing v. Ashcroft*,

370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)).

33. Statutory exhaustion requirements apply to Petitioner's claim of unlawful custody in violation of his due process rights, and there are no administrative remedies that he needs to exhaust. See *Am.-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); *In re Indefinite Det. Cases*, 82 F. Supp. 2d 1098, 1099 (C.D. Cal. 2000) (same).

34. Every day that Petitioner remains detained causes him harm that cannot be repaired. His continued detention puts his physical and mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. The Court must consider this in its irreparable harm analysis of the effects on Petitioner as his detention continues. See *De Paz Sales v. Barr,* No. 19-CV07221-KAW, 2020 WL 353465, at *4 (N.D. Cal. Jan. 21, 2020).

35. Health concerns are one factor the Court should consider in its irreparable harm analysis of the effects on Petitioner as his detention continues. *Id.*

PARTIES

36. Petitioner, Khalid HAKIMI, is currently in Respondents' legal and physical custody at the Otay Mesa Detention Center in San Diego, California. CoreCivic, Inc., a Maryland corporation, operates that facility.

37. Respondent Christopher LAROSE is the Warden of the Otay Mesa Detention Center where Petitioner is being held. Respondent Christopher LaRose oversees the day to-day operations of the Otay Mesa Detention Center and acts at the Direction of Respondents Brightman, Lyons and Noem. Respondent Christopher LaRose is a custodian of Petitioner and is named in his official capacity.

38. Respondent Daniel A. BRIGHTMAN is the Acting Field Office Director of ICE in San Diego, California and is named in his official capacity. ICE is the component of DHS that is responsible for detaining and removing noncitizens according to immigration law and oversees custody determinations. In his official capacity, he is the legal custodian of Petitioner.

39. Respondent Todd M. LYONS is the Acting Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the

administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

40. Respondent Daren MARGOLIN is the Acting Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

41. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

42. Respondent Kristi NOEM the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other

laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); see also 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

LEGAL FRAMEWORK AND ANALYSIS

Due Process Constraints on Immigration Detention

43. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V.

44. Due process extends to "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)

45. While the immigration laws afford ICE discretion over its decisions to arrest, detain, and revoke prior release decisions, those decisions are nonetheless constrained by the laws Congress has enacted and the

requirements of the Constitution, including the Due Process Clause. See generally *Id.* at 690; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

46. This is because "[f]reedom 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.

47. Immigration detention only comports with Due Process when it furthers the government's goals of "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Id.* ICE detention violates substantive Due Process where it is not justified by flight risk or danger concerns. See *id.*

48. For that reason, ostensibly "nonpunitive" detention pursuant to a blanket policy under which the agency claims authority to arrest and detain all noncitizens who it alleges are not lawfully present in the United States, without regard for whether they are a flight risk or danger, would violate the Due Process Clause. See *id.* So too would ICE detention for the purposes of meeting quotas, punishment, deterring immigration, or encouraging voluntary deportation. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188–89 (D.D.C. 2015) (observing that "[i]n discussing civil commitment more

broadly, the [Supreme] Court has declared such 'general deterrence' justifications impermissible" and finding likely contrary to Due Process a deterrence policy pursuant to which DHS detained "one particular individual" for purposes of "sending a message of deterrence to other[s] who may be considering immigrating. (citing *Kansas v. Crane*, 534 U.S. 407, 412 (2002)).

49. All such detentions would be unlawful because they bear no reasonable relation to a legitimate government purpose. See *id.*; *Demore v. Kim*, 538 U.S. 510, 532–33 (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S. 346, 361–62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979).

Petitioner Has a Significant Liberty Interest as a Parolee

50. "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.

51. Parolees in particular have a weighty liberty interest under the Due Process Clause. The Supreme Court has noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family

and friends and to form the other enduring attachments of normal life." *Morrissey v. Brewer,* 408 U.S. 471, 482 (1972).

52. The parolee relies "on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." Id. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." Id. In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482; see also *Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); see also *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring predeprivation process); see also *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

53. "[T]he government's discretion to incarcerate non-citizens is always constrained by the requirements of due process." *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). Even where "a decision-making process involves discretion does not prevent an individual from having a protectable liberty interest." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970; *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022).

54. The protected liberty interest is even more substantial when balancing the nonpunitive purpose of immigration detention against the "irreparable harms imposed on anyone subject to immigration detention," including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d 976 at 995.

55. Petitioner has a substantial liberty interest in not being detained. At the time of his detention, he had been living in the United States for a year and a half. Petitioner was a student at Grossmont Community College and was an active parishioner at a local church. *See* Exhibit H and Exhibit I.

56. Petitioner's continued detention is also having a substantial economic impact on his family (including his disabled father) as they depend on his income for household essentials. *See* Exhibit A.

Petitioner's Liberty Interest Mandates a Hearing

57. The three-factor *Mathews* test (adopted by the Court of Appeals for the Ninth Circuit, see *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1206–07 (9th Cir. 2022)), helps the Court assess adequate safeguards: "[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

58. The Due Process Clause typically requires a hearing of some sort before the government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (see also *United States v. Raya-Vaca*, 771 F.3d 1195, 1204 (9th Cir. 2014) ("Due process always requires, at a minimum, notice and an opportunity to respond."). Post deprivation remedies may satisfy the

requirements of due process only in a "special case" where they are "the only remedies the State could be expected to provide" and where "one of the variables in the *Mathews* equation—the value of post deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing post deprivation process." *Zinermon*, 494 U.S. at 985.

1. Petitioner has a substantial liberty interest in remaining out of detention

59. An individual's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Courts have routinely agreed that "a petitioner's interest in remaining out of custody is 'substantial.'" *Rodriguez-Flores v. Semaia*, No. 2:25-CV06900, at *5 (C.D. Cal. Aug. 14, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)). The longer the individual has been out of custody, the more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

60. Before Respondents arrested Petitioner, he had been living in the San Diego community for over one and a half years. He worked, attended local schools and churches, and contributed positively to the community. As a parolee and asylum seeker, he has acquired a liberty interest that is protected by due process.

2. There is a risk of erroneous deprivation that the additional procedural safeguard of a pre-detention hearing would help protect against.

61. Even if the Government believes "it has a valid reason" to detain noncitizens, it "does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, No. 25-cv05436-RFL, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025) (finding "undeniably stark" risk of erroneous deprivation where the Government contends that "notwithstanding a neutral arbiter's determination that Petitioner should be released, ICE is entitled to unilaterally terminate the IJ's order by re-detaining Petitioner without a hearing for at least six months, based on ICE's own determination in its sole discretion that additional conditions of release unilaterally set by ICE had

been violated"); see also *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679 (E.D. Cal. July 11, 2025).

62. Where the petitioner "has not received any bond or custody … hearing, the risk of an erroneous deprivation [of liberty] is high because neither the government nor [Petitioner] has had an opportunity to determine whether there is any valid basis for her detention."*Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citation omitted). A pre-detention hearing significantly decreases that risk because the government has to prove to a neutral adjudicator by clear and convincing evidence that circumstances have materially changed to justify re-detention, and a hearing is more likely to produce accurate determinations regarding factual disputes, such as whether a certain occurrence constitutes a "changed circumstance." See *Chalkboard, Inc. v. Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when "delicate judgments depending on credibility of witnesses and assessment of conditions not subject to measurement" are at issue, the "risk of error is considerable when just determinations are made after hearing only one side").

63. Further, the risk of an erroneous deprivation of liberty under Mathews can be decreased where a neutral decisionmaker, rather than ICE alone, makes

custody determinations. *Diouf v. Napolitano* ("Diouf II"), 634 F.3d 1081, 1091-92 (9th Cir. 2011); see also *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006) ("A neutral judge is one of the most basic due process protections.")

64. Any argument that noncitizens can request a custody determination hearing after having been detained goes against the due process safeguards envisioned in the Constitution, because such a hearing happens after the fact and cannot prevent an erroneous deprivation of liberty. *Domingo v. Kaiser,* No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner-Plaintiff received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion: that is, his potentially erroneous detention."). Here Petitioner should not be expected to seek a bond hearing when his detention was unlawful.

65. Petitioner was arrested while driving near his home in El Cajon California. Petitioner has no criminal history, has complied with all requirements of his parole and has established strong community roots in the San Diego region. Respondents never provided notice or a hearing for Petitioner's parole

revocation, but even if they did, no substantive changes have occurred to justify such action. *See* Exhibit E.

3. The government's interest in detaining Petitioner is minimal, and in fact the procedural requirements of a hearing would promote efficiency given the government's limited resources

66. The efficient allocation of the government's limited fiscal resources further supports holding a hearing prior to detaining previously paroled noncitizens. The "fiscal and administrative burdens" as a result of the due process safeguard are nonexistent. See *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). Indeed, the Ninth Circuit has long recognized that "[t]he costs to the public of immigration detention are 'staggering,'" *Hernandez*, 872 F.3d 976, at 996 (2017); *Diaz*, 2025 WL 1676854, at *3. In 2017 – with inflation numbers are likely higher today– immigration detention cost "$158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996. On the other hand, "[i]n immigration court, custody hearings are routine and impose a minimal cost." *Pinchi v. Noem*, No. 5:25-cv05632-PCP, 2025 WL 2084921, at *10 (N.D. Cal. July 24, 2025) (citing *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *8 (E.D. Cal.

July 11, 2025)). The cost of detaining an immigrant who was previously paroled "pending any bond hearing would significantly exceed the cost of providing [the immigrant] with a pre-detention hearing." *Pinchi*, 2025 WL 2084921, at *10.

67. ICE's new policy to make a minimum number of arrests each day under the new administration does not constitute a material change in circumstances and cannot stand to replace regulations enacted by Congress that allow the release of noncitizens in the first place. It is "arbitrary, capricious [and] an abuse of discretion" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)(C). Even if the government "ultimately demonstrates to a neutral decisionmaker by clear and convincing evidence that her detention is necessary to prevent danger to the community or flight," then the only potential injury the government faces is a short delay in detaining" Petitioner. *Pinchi*, 2025 WL 2084921, at *12. "Faced with … a conflict between minimally costly procedures and preventable human suffering, [the Court has] little difficulty concluding that the balance of hardships tips decidedly in plaintiff['s] favor." (internal citations omitted). *Id.*

68. Consequently, the government's interest in keeping Petitioner in detention without a due process hearing is outweighed by Petitioner's significant private interest in his liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates by clear and convincing evidence that he is a flight risk or danger to the community.

Statutory Framework Regarding Detention – 8 U.S.C. § 1225 and 8 U.S.C. § 1226

69. Respondents may argue Petitioner is subject to mandatory detention. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

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

71. 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).

72. Lastly, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

73. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). Section 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, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

74. 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 who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

75. For this reason, Petitioner's re-detention violates the INA. Petitioner is detained under 8 U.S.C. 1226(a), which provides for detention of certain noncitizens "inside the United States" and "present in the country." *Jennings v. Rodriguez*, 584 U.S. 281, 288-89 (2018).

76. 8 U.S.C. § 1225(b)(2), in contrast, mandates detention for any noncitizen "who is an applicant for admission, if the examining immigration *officer* determines that a[] [noncitizen] *seeking admission* is not clearly beyond a doubt entitled to be *admitted*[.]" See 8 U.S.C.§1225(b)(2) (emphasis added); *Jennings*, 583 U.S. at 287 (describing section § 1225 as relating to "borders and ports of entry"). As an individual who was arrested in the interior of the country over one year and a half after they arrived in the United States, Petitioner's re-detention is governed by 8 U.S.C. § 1226(a).

77. In some cases, the government has argued that individuals like the Petitioner are detained under § 1225(b)(2), but that claim is meritless.[1] Petitioner was plainly not "*seeking admission*" at the time of his re-detention. Moreover, any interpretation suggesting that § 1225(b)(2) governs Petitioner's detention would contravene decades of agency policy and practice. Thus, § 1226(a) governs. Detention under the INA only "has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690.

[1] Such an interpretation would not be entitled to this Court's deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86, (2024) (courts must exercise "independent judgment").

78. Prior to re-detaining him, DHS had released Petitioner from its custody, necessarily determining he posed no danger or flight risk. That is because DHS released Petitioner on parole— which requires a finding that the noncitizen poses neither a danger nor a flight risk. *See* 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding"). Thus, § 1226(a) only authorizes re-detention after an individualized determination that some material change in circumstances related to flight risk or danger now justifies re-detention. See *Ortega*, 415 F.Supp.3d at 968 ("DHS re-arrests individuals only after a 'material' change in circumstances." (citing *Saravia*, 280 F.Supp.3d at 1197)); *United States v. Cisneros*, No. 19-CR00280-RS-5, 2021 WL 5908407, at *2 (N.D. Cal. Dec. 14, 2021) ("[R]e-arrest can only occur if there has been a change in circumstances."). Here, Petitioner's re-detention flowed not from individualized determinations of changed circumstances, but rather from a blanket arrest policy.

79. ICE communicated no justifications to Petitioner for his re-detention, and indeed, there are none. Petitioner has no criminal history, let alone new criminal history. Nor has Petitioner failed to comply with any conditions or otherwise demonstrated risk of flight following his release from DHS

custody. Thus, there are no changed circumstances that justify departure from the prior release and re-detention, and DHS did not engage in the required individualized determination prior to re-detaining him at their check-ins. Accordingly, Petitioner's re-detention violates 8 U.S.C. §1226(a).

FIRST CLAIM FOR RELIEF

Due Process U.S. Const. amend. V

80. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

81. Petitioner's continued detention without any pre-deprivation hearing violates his right to due process under the Fifth Amendment.

82. 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).

83. Petitioner has a vested liberty interest by virtue of having been in the United States for over one and a half years. Due Process does not permit the government to strip him of that liberty without a hearing. *See (Matute v. Wofford,* No. 1:25-cv-01206-KES-SKO (HC) U.S.Dist.LEXIS 196512, at *12, E.D.Cal. (Oct. 2, 2025).

84. Petitioner's arrest without a hearing violated the Constitution both substantively, because Respondents have no valid interest in detaining him since circumstances have not changed since he was paroled into the United States, and procedurally, because he was not provided with notice and a pre-detention hearing.

85. Petitioner poses no risk of flight and no danger to the community. See Exhibit G at 3. He has demonstrated compliance with all prior immigration requirements as well as the laws of the United States generally and has developed community ties in the United States.

86. Petitioner's continued detention without a tenable justification violates his Fifth Amendment right to due process.

SECOND CLAIM FOR RELIEF

Petitioner's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2) Unlawful Revocation of Parole / Unlawful Detention

87. Petitioner repeats re-alleges and incorporate by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

88. Under the Administrative Procedures Act ("APA"), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

89. A court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

90. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs.* 23 24 25 *Ass'n of U.S., Inc. v. State Farm Mut. Auto.Ins. Co.*, 463 U.S. 29, 43 (1983)).

91. In *Y-Z-H-L v Bostock,* 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) the court explained the parole process in immigration cases and noted that before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons therefore. Under the APA, immigration parolees are entitled to determinations related to their parole revocations that are not arbitrary, capricious or an abuse of discretion. Id. at *10.

92. By detaining the Petitioner without consideration of his individualized facts and circumstances, Respondents have violated the APA.

93. Respondents have made no finding that Petitioner, an individual with no criminal history, is a danger to the community.

94. Respondents have also made no finding that Petitioner is a flight risk because, in fact, he has appeared to all his immigration proceedings.

95. Respondents detained Petitioner by revoking his parole without notice and without a hearing, in violation of the Due Process Clause. His detention is unlawful. *See, e.g., Sanchez v. LaRose*, No. 25-CV-2396-JES-MMP, 2025 U.S. Dist. LEXIS 190593, 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025) (finding that petitioner's parole was revoked without notice and a hearing and without a showing of a change of circumstances, thus violating her due process rights and rendering her detention unlawful).

96. The proper remedy for the unlawful detention is Petitioner's immediate release subject to the conditions of his preexisting parole. *Noori v. Larose,* No. 25-cv-1824, G.P.C 2025 LX 410576, (S.D. Cal. Oct. 1, 2025.) (finding DHS violated the petitioner's due process rights by revoking his parole without notice or a hearing and ordering his immediate release); *Sanchez*, 2025 U.S. Dist. LEXIS 190593, 2025 WL 2770629, at *5 (same); *Ortega*, 415 F. Supp. 3d at 970 (ordering immediate release after the petitioner was detained while out on bond without notice or pre-deprivation hearing).

THIRD CLAIM FOR RELIEF

Statutory Violation – Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)-(b)

97. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

98. In the event it is argued, Respondents lack statutory authority to detain Petitioner under 8 U.S.C. § 1225(b)(2), because that statute requires that the individual be an applicant for admission and seeking admission to the U.S.

99. As Petitioner does not meet these criteria, his detention must be governed by 8 U.S.C. § 1226(a) which provides discretionary detention authority and requires ICE to make an individualized custody determination.

100. Under § 1226(a), individuals may be detained as a matter of discretion, released on their own recognizance, or released on bond of at least $1,500.

101. Regardless of the statute, Petitioner contends that a bond hearing would be an improper remedy given the Due Process and APA violations described above.

PRAYER FOR RELIEF

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

(1) Assume jurisdiction over this matter;

(2) Issue the writ of habeas corpus and order Respondents to show cause, within three days of Petitioner's filing this petition, why the relief he seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (see 28 U.S.C. § 2243);

(3) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Southern District of California pending the resolution of this case;

(4) Immediately release him from immigration detention on the conditions of his prior parole;

(5) Order the return of any confiscated property, including any identification or work authorization documents belonging to Petitioner or his family members (confiscated property noted in Exhibit G);

(6) Enjoin Respondents from re-detaining the Petitioner without a pre-deprivation hearing before a neutral decision-maker at which Respondents must prove material changes in circumstances justify re-detention;

(7) Declare that detaining Petitioner without notice and an individualized determination before a neutral decisionmaker violates due process;

(8) 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;

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

Dated: March 7, 2026 **Respectfully submitted,**

By: /s/ Nicholas Paúl

Nicholas Paúl

Pro Bono Attorney for

Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. 2242

I am submitting this verification on behalf of the Petitioner because I am one of Petitioner's attorneys. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner's immigration file. Based on said review and those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge. Executed on this March 7, 2026, in San Diego, California.