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11 HAMZA SARIBOGA

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

15 '26CV1566 LL MSB

16 HAMZA SARIBOGA,

17 **VERIFIED PETITION FOR WRIT OF**
18 **HABEAS CORPUS**

19 Petitioner,

20 v.

21 WARDEN OF IMPERIAL REGIONAL
22 DETENTION FACILITY,

23 GREGORY J. ARCHAMBEAULT, Director of San
24 Diego Field Office, Enforcement and Removal
25 Operations, U.S. Immigration and Customs
26 Enforcement

27 KRISTI NOEM, Secretary of the Department of
28 Homeland Security,

TODD M. LYONS, Senior Official Performing the
Duties of Director of Immigration and Customs
Enforcement; and

PAM BONDI, Attorney General of the United
States,

Respondents, acting in their official capacity

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INTRODUCTION

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1. Petitioner HAMZA SARIBOGA (“Mr. Sariboga” or “Petitioner”) has been civilly incarcerated by Immigration and Customs Enforcement (“ICE”) at Imperial Regional Detention Facility, since February of 2026 without any justification. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Mr. Sariboga is subject to mandatory detention.

2. Mr. Sariboga is charged with, inter alia, having entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i).

3. The indefinite detention has been devastating and traumatizing for Mr. Sariboga. Mr. Sariboga’s detention is particularly inexplicable and unfounded given that ICE had already determined that he was neither a flight risk nor a danger to society when he was released on parole into the United States in November 2024. Mr. Sariboga files this petition to remedy baseless civil detention without a bond hearing, in violation of his due process rights.

4. Mr. Sariboga is a Kurdish man born in Turkey, who has suffered lifelong persecution on account of his Kurdish ethnicity and political opinion. Mr. Sariboga fled Turkey and sought refuge in the United States in November 2024, fearing further persecution if returned.

5. Mr. Sariboga entered the United States without inspection and was subsequently released from DHS custody on parole.

6. On February 18, 2026, Mr. Sariboga was arrested and taken into custody by ICE officers at a gas station in Ontario, California. He was then transferred to the Imperial Regional Detention Facility located at 1572 Gateway Road, Calexico, California 92231.

7. This detention is consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

8. Furthermore, on May 15, 2025 the Board of Immigration Appeals (BIA or Board) issued a decision in *Matter of Q. Li* that sharply limits the ability of certain detained immigrants to request

1 release on bond. The decision holds that individuals who are arrested shortly after entering the
2 United States without permission – regardless of whether they entered through a port of entry –
3 are considered “arriving aliens” detained under § 235(b) of the Immigration and Nationality Act
4 (INA). As a result they are not eligible for a bond hearing under INA § 236(a). See *Matter of Q.*
5 *Li*, 29 I&N Dec. 66 (BIA 2025).

6 9. Similarly, on September 5, 2025, the BIA issued a precedent decision, binding on all
7 immigration judges, holding that an immigration judge has no authority to consider bond requests
8 for any person who entered the United States without admission. See *Matter of Yajure Hurtado*,
9 29 I. & N. Dec. 216 (BIA 2025).

10 10. The Board determined that such individuals are subject to detention under 8 U.S.C. §
11 1225(b)(2)(A) and therefore ineligible to be released on bond. Petitioner’s detention on this basis
12 violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does
13 not apply to individuals like Petitioner who previously entered and are now residing in the United
14 States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release
15 on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are
16 charged as inadmissible for having entered the United States without inspection.

17 11. Respondents’ new legal interpretation is plainly contrary to the statutory framework and
18 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

19 12. To date, no neutral adjudicator has reviewed whether Mr. Sariboga’s civil detention is
20 lawful.

21 13. Mr. Sariboga’s baseless civil detention without a neutral hearing violates his right to
22 procedural due process. Accordingly, Mr. Sariboga respectfully asks this Court to issue a writ of
23 habeas corpus and order his release unless the government schedules a bond hearing before an
24 immigration judge, at which the government must justify his continued detention by clear and
25 convincing evidence. Absent this Court’s intervention, Mr. Sariboga’s detention without review
26 remains indefinite as he faces months, if not years of continued detention without a bond hearing.

27 JURISDICTION

28 14. Mr. Sariboga is currently detained in the custody of Respondents at the Imperial Regional

1 Detention Facility located in Calexico, California. Jurisdiction is proper over a writ of habeas
2 corpus pursuant to Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause);
3 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises
4 under the Due Process Clause of the Fifth Amendment of the United States Constitution. This
5 Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory
6 Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

7 15. The federal habeas statute establishes this Court’s power to decide the legality of Mr.
8 Sariboga’s detention and directs courts to “hear and determine the facts” of a habeas petition and
9 to “dispose of the matter as law and justice require.” 28 U.S.C. § 2243. Moreover, the Supreme
10 Court has held that the federal habeas statute codifies the common law writ of habeas corpus as it
11 existed in 1789. *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) (“[A]t its historical core, the writ of
12 habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in
13 that context that its protections have been strongest.”). The common law gave courts power to
14 release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190
15 U.S. 40, 63 (1903) (“[T]he Queen’s Bench had, ‘independently of statute, by the common law,
16 jurisdiction to admit to bail.’”) (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

17 VENUE

18 16. Venue for the instant habeas corpus petition properly lies in this District because it is the
19 district with territorial jurisdiction over Respondent WARDEN OF IMPERIAL REGIONAL
20 DETENTION FACILITY, the facility at which Mr. Sariboga is currently detained. *See Rasul v.*
21 *Bush*, 542 U.S. 466, 478 (2004) (holding that “because ‘the writ of habeas corpus does not act
22 upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be
23 unlawful custody,’” proper federal district is dependent on the location of the custodian); *accord*
24 *Rumsfeld v. Padilla*, 542 U.S. 426, 444-45 (2004) (holding that jurisdiction must be obtained by
25 service within the territorial jurisdiction of the district court); *id.* at 451 (explaining petition “must
26 be filed in the district court whose territorial jurisdiction includes the place *where the custodian is*
27 *located*”) (Kennedy, J., concurring) (emphasis added).

28 EXHAUSTION OF ADMINISTRATIVE REMEDIES

1 17. Mr. Sariboga is not required to exhaust administrative remedies.

2 18. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370
3 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived if
4 “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies
5 would be a futile gesture, [or] irreparable injury will result.” *Id.* at 1000 (citation and quotation
6 marks omitted).

7 19. Mr. Sariboga was released after approximately twelve hours of detention upon his entry
8 into the United States in November of 2024. That release was suddenly and baselessly revoked,
9 despite Mr. Sariboga having spent over a year living peacefully and integrating into his new
10 community in the United States.

11 20. Mr. Sariboga did not request a bond hearing with the Immigration Judge after being
12 arrested in February of 2026 as the request would be futile. Concerning Mr. Sariboga’s proceeding
13 with the bond request, the request will be denied due to the above-mentioned cases holding that an
14 Immigration Judge lacks jurisdiction to hold a bond hearing for “an arriving alien” and those who
15 entered the United States without permission.

16 21. Moreover, requiring Mr. Sariboga to request parole or bond hearing would also inflict
17 irreparable injury. *See Laing*, 370 F.3d at 1000. Mr. Sariboga currently has an asylum case
18 pending before the immigration judge. Depending upon the outcome, his case could be appealed
19 to the Board of Immigration Appeals, remanded to the Immigration Judge, or he could seek Ninth
20 Circuit review of the agency decisions. This process could entail several more months or even
21 years of detention. Every day spent in detention subjects Mr. Sariboga to irreparable harm, as he
22 is deprived of his liberty and remains in custody, separated from his wife and community. *See*
23 *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (habeas petitioner “suffers
24 potentially irreparable harm every day that he remains in custody without a hearing, which could
25 ultimately result in his release from detention”). Given this background, the Court should decline
26 to apply an exhaustion requirement and/or find that Mr. Sariboga has exhausted the administrative
27 process available to him.

28 **REQUIREMENTS OF 28 U.S.C. § 2243**

1 22. The Court must grant the petition for writ of habeas corpus or issue an order to show cause
2 (“OSC”) to the Respondents “forthwith,” unless it finds Mr. Sariboga is not entitled to relief. 28
3 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a response “within
4 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
5 (emphasis added).

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

11 24. Habeas corpus must remain a swift remedy. Accordingly, “the statute itself directs courts
12 to give petitions for habeas corpus ‘special, preferential consideration to insure expeditious hearing
13 and determination.’” *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted).
14 In *Yong*, the court warned against any action creating the perception “that courts are more
15 concerned with efficient trial management than with the vindication of constitutional rights.” *Id.*

16 PARTIES

17 25. Mr. Sariboga is currently detained by Respondents pending removal proceedings. He was
18 previously released on his own recognizance and permitted to enter and remain in the United
19 States. However, after approximately three years of continuous presence in the United States, he
20 was taken into ICE custody in February of 2026. Mr. Sariboga has been detained at Imperial
21 Regional Detention Facility without any individualized determination or inquiry into whether his
22 continued detention is justified under ICE’s statutory or constitutional authority. After arresting
23 Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ,
24 pursuant to the Board’s decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

25 26. Respondent Warden of Imperial Regional Detention Facility, is the warden of Imperial
26 Regional Detention Facility in Calexico, California. He oversees operations at Desert View Annex
27 Detention Center, where Mr. Sariboga is detained. The Ninth Circuit has determined that the
28 facility administrator is the “immediate” and legal custodian of noncitizens held by ICE at

1 privately-run facilities. *See Doe*, 109 F.4th at 1198–99. He is named in his official capacity

2 27. Respondent Gregory J. Archambeault is the Field Office Director for the San Diego Field
3 Office of ICE Enforcement and Removal Operations (“ERO”). As such, Respondent
4 Archambeault is the federal official most directly responsible for overseeing Imperial Regional
5 Detention Facility. He is the local ICE official who has legal custody of Mr. Sariboga. He is
6 named in his official capacity.

7 28. Respondent Kristi Noem is the Secretary of the Department of Homeland Security
8 (“DHS”) and is responsible for overseeing the Department and its subagency, ICE. She has
9 ultimate responsibility for the detention of noncitizens in civil immigration custody. Secretary
10 Noem is a legal custodian of Mr. Sariboga. She is named in her official capacity.


11 29. Respondent Todd M. Lyons is the Acting Director for ICE. Respondent Lyons is
12 responsible for ICE’s policies, practices, and procedures, including those relating to the detention
13 of immigrants. He is named in his official capacity.

14 30. Respondent Pam Bondi is the Attorney General of the United States and the head of the
15 Department of Justice (“DOJ”), which encompasses the Board of Immigration Appeals (“BIA”)
16 and immigration judges as part of its sub-agency, the Executive Office for Immigration Review
17 (“EOIR”). She is empowered to oversee the adjudication of removal and bond hearings and by
18 regulation has delegated that power to the nation’s immigration judges and the BIA. She is
19 named in her official capacity.

20 **STATEMENT OF FACTS**

21 **I. Mr. Sariboga’s Life Prior to His Arrival in the United States**

22 31. Mr. Sariboga is a Kurdish man from Turkey. Because of his Kurdish identity and support
23 for the [REDACTED] he has experienced harassment, threats, and physical
24 harm from both nationalist groups and Turkish authorities. In 2022, while attending a peaceful
25 gathering in Istanbul related to Kurdish rights, police used force against participants, and Mr.
26 Sariboga was beaten and briefly detained by officers. After that incident, he continued to face
27 threats and intimidation because of his views and support for [REDACTED] When he attempted
28 to seek help from the police after receiving threats, the authorities treated him as a suspect rather

1 than protecting him. These experiences made him fear that he would continue to face harm and
2 persecution in Turkey because of his  and perceived political views, which
3 ultimately forced him to leave the country and seek safety in the United States. (See Declaration
4 of Hamza Sariboga ¶ 7).

5 **II. Mr. Sariboga's Life After Entering the United States to Apply for**
6 **Asylum**

7 32. Mr. Sariboga entered the United States on November 13, 2024. Shortly after his entry, he
8 was taken into custody by ICE officers. About 12 hours later, he was released after being served
9 with a Notice to Appear ("NTA"). He thereafter relocated to San Francisco, California, where his
10 sponsor resides. On January 13, 2025, he filed his application for asylum and withholding of
11 removal. (See Declaration of Hamza Sariboga ¶ 1).


12 33. Following his release he was scheduled for his first ICE appointment. Unfortunately, he
13 mistakenly forgot to attend that initial appointment. Shortly after missing the appointment, he
14 was involved in a serious accident that required surgery and hospitalization. Because of his
15 injuries and the recovery period following the surgery, he was physically unable to report to ICE
16 or address the missed appointment. During the time he was hospitalized and recovering, he did
17 not receive or see any phone calls, emails, or mail notifications from ICE regarding the
18 appointment or any follow-up instructions. His failure to report was not intentional, but the result
19 of my medical emergency and recovery following the accident.. (See Declaration of Hamza
20 Sariboga ¶ 2).

21 34. Mr. Sariboga's first Master Calendar Hearing for his application for asylum was
22 scheduled for February 24, 2026. (See Declaration of Hamza Sariboga ¶ 3).

23 35. On February 18, 2026, while he was at a gas station in Ontario, California, he was arrested
24 and taken into custody by ICE officers. At the time of his arrest, he was not informed of the reason
25 for his detention. After being taken into custody, he was transferred to the Imperial Regional
26 Detention Facility located at 1572 Gateway Road, Calexico, California 92231. (See Declaration
27 of Hamza Sariboga ¶ 4).

28 36. Detention has been especially difficult for him. Prior to this incident, he had never been

1 arrested, imprisoned, or convicted of any crime in the United States. (See Declaration of Hamza
2 Sariboga ¶ 5).

3 37. As a , he previously suffered persecution in Turkey at the hands of
4 government authorities and police. These experiences caused him significant psychological
5 trauma, including ongoing stress and anxiety. After arriving in the United States, he began to
6 regain a sense of safety and stability. However, being placed in immigration detention has
7 severely intensified his anxiety and revived the fear and trauma he experienced in Turkey. Being
8 confined despite not having been charged with or convicted of any crime has made him feel once
9 again vulnerable and deeply distressed. (See Declaration of Hamza Sariboga ¶ 6).

10 **LEGAL FRAMEWORK**

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

21 39. Due process requires “adequate procedural protections” to ensure that the government’s
22 asserted justification for physical confinement “outweighs the individual’s constitutionally
23 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation
24 marks omitted). In the immigration context, due process requires that the government provide bond
25 hearings to noncitizens facing prolonged detention. “The Due Process Clause foresees eligibility
26 for bail as part of due process” because “[b]ail is basic to our system of law.” *Jennings*, 583 U.S.
27 at 330 (Breyer, J., dissenting) (internal quotations and citations omitted).

28 40. On July 8, 2025, ICE, “in coordination with” the DOJ, announced a new policy entitled

1 “Interim Guidance Regarding Detention Authority for Applicants for Admission,” which stated
2 that all persons who entered the United States without inspection shall now be subject to the
3 mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a
4 person is apprehended and affects those who have resided in the United States for months, years,
5 and even decades.

6 41. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter*
7 *of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without
8 admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond
9 hearings.

10 42. Since Respondents adopted their new policies, dozens of federal courts have rejected their
11 new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of*
12 *Yajure Hurtado*, which adopts the same reading of the statute as ICE.

13 43. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,
14 Washington, immigration court stopped providing bond hearings for persons who entered the
15 United States without inspection and who have since resided here. There, the U.S. District Court
16 in the Western District of Washington found that such a reading of the INA is likely unlawful and
17 that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the
18 United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d1239 (W.D. Wash. 2025).

19 44. Subsequently, court after court has adopted the same reading of the INA’s detention
20 authorities and rejected ICE and EOIR’s new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-
21 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*,
22 No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025);
23 *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11,
24 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
25 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025
26 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE,
27 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-
28 ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-

1 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),
2 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-
3 BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-
4 02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-
5 JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
6 (ECT/DJF), --- F. Supp. 3d ---, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
7 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
8 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
9 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.
10 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
11 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
12 Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
13 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2)
14 authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3
15 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFBRCC, 2025 WL
16 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

17 45. Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the
18 INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory
19 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

20 46. Section 1226(a) applies by default to all persons “pending a decision on whether the
21 [noncitizen] is to be removed from the United States.” These removal hearings are held under §
22 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

23 47. The text of § 1226 also explicitly applies to people charged as being inadmissible, including
24 those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference
25 to such people makes clear that, by default, such people are afforded a bond hearing under
26 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific
27 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally
28 applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs.*,

1 P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)); see also Gomes, 2025 WL 1869299, at *7.

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

4 49. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently
5 entered the United States. The statute’s entire framework is premised on inspections at the border
6 of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the
7 Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s
8 borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking
9 to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

10 50. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to
11 people like Mr. Sariboga who have already entered and were residing in the United States at the
12 time they were apprehended.

13 51. Furthermore, where a noncitizen has been detained for a prolonged period or is pursuing
14 a substantial defense to removal or claim for relief, due process requires an individualized
15 determination that such a significant deprivation of liberty is warranted. *Demore*, 538 U.S. at 532
16 (Kennedy, J., concurring) (“individualized determination as to his risk of flight and dangerousness”
17 may be warranted “if the continued detention became unreasonable or unjustified”); see also
18 *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the initial commitment requires
19 additional safeguards).

20 52. In the context of parole revocation, due process requires that parolees receive an
21 individualized hearing because they have a liberty interest in their conditional release. See
22 *Morrissey*, 408 U.S. at 484 (holding that there is “no interest on the part of the State in revoking
23 parole without any procedural guarantees at all”); *Young*, 520 U.S. at 152 (holding that individuals
24 released into a pre-parole program created to reduce prison overcrowding have a protected liberty
25 interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973)
26 (holding that individuals released on felony probation have a protected liberty interest requiring
27 pre-deprivation process).

28

ARGUMENT

I. DHS’s Application of §1225(b)(2) to Mr. Sariboga is unlawful; His detention is properly governed by §1226 (a)

53. Mr. Sariboga entered the United States without inspection on November 13, 2024—approximately sixteen months prior to his current detention. He was detained for approximately two months and subsequently released and placed into standard removal proceedings. Because Mr. Sariboga was released into the interior and placed in ordinary removal proceedings, he should not be classified as an “arriving alien” under 8 U.S.C. § 1225(b)(2). Accordingly, his detention is governed by 8 U.S.C. § 1226(a), and he is entitled to an individualized bond hearing before an immigration judge.

II. Mr. Sariboga Has a Significant Private Interest in Liberty.

54. Courts have evaluated constitutional challenges to prolonged immigration detention using the *Mathews v. Eldridge* test, which balances (1) the private interest threatened by government action; (2) the risk of erroneous deprivation of such interest, and the probable value of additional procedural safeguards; and (3) the government interest. 424 U.S. 319, 335 (1976); see, e.g., *Sho v. Current or Acting Field Off. Dir.*, 1:21-cv01812 TLN AC, 2023 WL 4014649, at *3–5 (E.D. Cal. June 15, 2023) (applying the Mathews test and granting bond hearing for individual held in prolonged detention); *I.E.S. v. Becerra*, No. 23-cv-03783-BLF, 2023 WL 6317617, at *8–9 (N.D. Cal. Sept. 27, 2023) (same); *Doe v Becerra*, No. 23-cv-02382-DMR, 2023 WL 5672192, at *7–8 (N.D. Cal. Sept. 1, 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-cv-02529-AMO, 2023 WL 5352897, at *3–6 (N.D. Cal. Aug. 21, 2023) (same); *J.P. v. Garland*, 685 F.Supp.3d 943, 946–49 (N.D. Cal. Aug. 7, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-cv-01330-WHO, 2023 WL 2802230, at *3–4 (N.D. Cal. Apr. 4, 2023) (same); *Salesh P. v. Kaiser*, No. 22-cv-03018-DMR, 2022 WL 17082375, *8–9 (N.D. Cal. Nov. 18, 2022) (same); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, *2–4 (N.D. Cal. Jan. 30, 2020) (same). Indeed, in a challenge to detention under the nonmandatory provision, the Ninth Circuit applied Mathews balancing because it “remains a flexible test” commonly applied by courts in the immigration context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022). For the first prong of the *Mathews* test, the

1 Court must consider the private interest threatened by the governmental action. 424 U.S. at 335.
2 Here, Mr. Sariboga’s private interest “is the most significant liberty interest there is—the interest
3 in being free from imprisonment.” *See Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (cleaned
4 up). Mr. Sariboga has been detained without a single neutral review of his custody since February
5 2026, when ICE revoked his grant of parole. Mr. Sariboga will remain imprisoned until his pending
6 asylum application is adjudicated, which may take many more months. This length of detention
7 without a hearing automatically “raises serious due process concerns.” *Id.* at 150

8 55. Additionally, in the context of parole revocation, individuals retain a weighty liberty
9 interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration. In
10 *Morrissey v. Brewer*, a case involving parole revocation, the court held that “the liberty of a
11 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
12 termination inflicts a grievous loss on the parolee and often others.” 408 U.S. 471, 482 (1972).
13 This is true even when the freedom may ultimately be revocable should circumstances materially
14 change. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Saravia v. Sessions*, 280 F. Supp.
15 3d 1168, 1196-97 (N.D. Cal. 2017).

16 56. *Morrissey’s* basic principle – that individuals have a liberty interest in their conditional
17 release – has been reinforced by both the Supreme Court and numerous circuit courts. *See Young*,
18 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce
19 prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*,
20 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty
21 interest requiring pre-deprivation process); *Zadvydas*, 533 U.S. at 690 (holding that due process
22 protects “all ‘persons’ within the United States . . . whether their presence here is lawful, unlawful,
23 temporary or permanent” who face immigration detention). As the First Circuit has explained,
24 when analyzing the issue of whether a specific conditional release rises to the level of a protected
25 liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in
26 the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
27 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation
28 omitted); *see also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (noting

1 that “a person who is in fact free of physical confinement—even if that freedom is lawfully
2 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
3 incarcerated) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at
4 482).

5 57. Here, Mr. Sariboga, has a liberty interest in being free from confinement, which has been
6 challenged by his unjust detention and revocation of his parole. The burden on Mr. Sariboga’s
7 liberty is substantial. He has been separated from his community and deprived of his freedom.
8 Like people on parole, individuals like Mr. Sariboga who await decisions in their immigration
9 cases have a liberty interest in remaining out of custody on bond. See *Ortega v. Bonnar*, 415 F.
10 Supp. 3d 963, 969–70 (N.D. Cal. 2019) (finding that the petitioner had a substantial private interest
11 in remaining on bond and enjoining ICE from rearresting petitioner until a hearing is held) (citing
12 *Morrissey*, 408 U.S. at 482); *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277,
13 at *2 (N.D. Cal. Sept. 14, 2020) (same); *Jorge M.F. v. Wilkinson*, No. 21-cv-14340JST, 2021 WL
14 783561, at *3–4 (N.D. Cal. Mar. 1, 2021) (same); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018
15 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (same). Mr. Sariboga was never afforded a pre-
16 deprivation or post-deprivation hearing on the revocation of his parole and/or his detention.

17 **III. The Value of the Procedural Safeguard of a Bond Hearing is High**

18 58. The second prong of the *Mathews* test, the risk of erroneous deprivation of such interest
19 through the procedures used and the probable value of additional procedural safeguards, weighs
20 heavily in Mr. Sariboga’s favor as well. 424 U.S. at 335.

21 59. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a
22 neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Since Mr. Sariboga has been
23 detained in February 2026, he has not had a bond hearing and thus has never been afforded process
24 to evaluate or the opportunity to contest the necessity of his ongoing detention. See *Rajnish v.*
25 *Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at *9 (N.D. Cal. Dec. 22, 2020) (finding
26 that the value added by a hearing is “great” where petitioner had been held for nine months since
27 an “unconstitutional” initial bond hearing that “assigned the risk of error to him, not to the
28 government”). Furthermore, given the current legal framework as explained above, a bond hearing

1 would be frivolous, as the BIA has held that a person in Mr. Sariboga’s position is mandatorily
2 detainable. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

3 **IV. Respondents Have No Valid Interest that a Bond Hearing Would Harm**

4 60. The third *Mathews* factor also supports Mr. Sariboga’s petition: the government interest
5 served by Mr. Sariboga’s indefinite detention without a hearing is illegitimate here because the
6 interest at stake “is the ability to detain Petitioner *without providing him a bond hearing*, not
7 whether the government may continue to detain him at all.” *Lopez-Reyes v. Bonnar*, 362 F. Supp.
8 3d 762, 777 (N.D. Cal. 2019); *Henriquez*, 2022 WL 2132919, at *5 (“[T]he Government’s interest
9 in detaining Petitioner without providing an individualized bond hearing is low.”). While the
10 government has legitimate interests in ensuring a noncitizen’s appearance in court and protecting
11 the community, providing a bond hearing would “do nothing to undercut those interests.” *Black*,
12 103 F.4th at 153. At any ordered bond hearing, “the IJ would assess on an individualized basis
13 whether the noncitizen presents a flight risk or danger to the community, as IJs routinely do for
14 other noncitizen detainees.” *Id.* at 153–54.

15 61. Moreover, requiring Respondents to justify Mr. Sariboga’s detention “promotes the
16 Government’s interest—one [courts] believe to be paramount—in minimizing the enormous
17 impact of incarceration in cases where it serves no purpose.” *See id.* (noting that “the public interest
18 drives analysis of the third factor” under *Mathews*).

19 62. The government has not articulated any interest in detaining Mr. Sariboga without an
20 individualized bond hearing. The government has not given any reason to justify Mr. Sariboga’s
21 continued prolonged detention and has not shown that he presents a flight risk or danger to the
22 community. Thus, applying the *Mathews* factors, this Court should find that due process entitles
23 Mr. Sariboga to an individualized bond hearing by an Immigration Judge.

24 **V. Standards for Bond Hearing to Comply with Due Process**

25 63. Mr. Sariboga requests a bond hearing before a neutral adjudicator in which the government
26 bears the burden of proving his flight risk or danger by a clear and convincing evidence standard.
27 *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened
28 burden of proof on the State in civil proceedings in which the individual interests at stake...are

1 both particularly important and more substantial than mere loss of money.”) (internal quotation
2 marks omitted), *abrogated on other grounds by Rodriguez Diaz*, 53 F.4th at 1202; *see also Ixchop*
3 *Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view”
4 among District Courts concluding that after *Jennings* “where ... the government seeks to detain an
5 alien pending removal proceedings, it bears the burden of proving that such detention is justified);
6 *Gonzalez*, 2019 WL 330906, at *6 (collecting cases applying *Singh* burden of proof for prolonged
7 detention hearings post-*Jennings*); *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019) (finding
8 due process requires the government to bear the burden in immigration bond proceedings).

9 64. Due process also requires consideration of a noncitizen’s ability to pay a monetary bond.
10 “Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual’s
11 ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’” *Id.* at
12 990 (citation omitted). It follows that—in determining the appropriate conditions of release for
13 immigration detainees—due process requires “consideration of financial circumstances and
14 alternative conditions of release” to prevent against detention based on poverty. *Id.*

15 **CLAIM FOR RELIEF**

16 **VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO**
17 **THE U.S. CONSTITUTION**

18 65. Petitioner re-alleges and incorporates by reference the paragraphs above.

19 66. The Due Process Clause of the Fifth Amendment forbids the government from depriving
20 any “person” of liberty “without due process of law.” U.S. CONST. AMEND. V.

21 67. To justify Petitioner’s ongoing re-detention, due process requires that the government
22 establish, at an individualized hearing before a neutral decisionmaker, that Petitioner’s detention
23 is justified by clear and convincing evidence of flight risk or danger, even after consideration
24 whether alternatives to detention could sufficiently mitigate that risk.

25 **VIOLATION OF THE INA**

26 68. Petitioner re-alleges and incorporates by reference the paragraphs above.

27 69. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention
28 and violates the INA.

1 70. To justify Petitioner’s ongoing re-detention, due process requires that the government
2 establish, at an individualized hearing before a neutral decisionmaker, that Petitioner’s detention
3 is justified by clear and convincing evidence of flight risk or danger, even after consideration
4 whether alternatives to detention could sufficiently mitigate that risk.

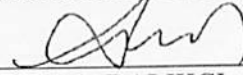
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

- 7 1) Assume jurisdiction over this matter;
- 8 2) Issue a Writ of Habeas Corpus and order Respondents, unless they elect to release
9 Petitioner, to schedule a hearing before an immigration judge where: (1) to continue
10 detention, the government must establish by clear and convincing evidence that Petitioner
11 presents a risk of flight or danger, even after consideration of conditions of supervision;
12 and (2) if the government cannot meet its burden, the immigration judge order Petitioner’s
13 release on appropriate conditions of supervision, taking into account Petitioner’s ability to
14 pay a bond;
- 15 3) Award reasonable costs and attorney fees under the Equal Access to Justice Act (“EAJA”),
16 as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under
17 law; and
- 18 4) Grant such further relief as the Court deems just and proper.

19
20 Dated: 03/12/2026

FISHER LAW FIRM, P.C.



 ADEM A. BALIKCI
 TANNER N. PURYEAR
 Attorneys for Petitioner
 HAMZA SARIBOGA

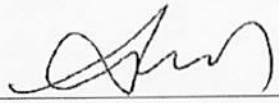
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Verification Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Hamza Sariboga because I am one of Mr. Sariboga’s attorneys. As Mr. Sariboga’s attorney, I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 03/12/2026


ADEM A. BALIKCI
TANNER N. PURYEAR
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HAMZA SARIBOGA