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MEHMET ATILMIS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

'26CV1587 TWR BJW

MEHMET ATILMIS,

Petitioner,

v.

WARDEN OF IMPERIAL REGIONAL
DETENTION FACILITY,

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

KRISTI NOEM, Secretary of the Department of
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

VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS

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INTRODUCTION

1. Petitioner Mehmet Atilmis (“Mr. Atilmis” 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. Atilmis is subject to mandatory detention.

2. Mr. Atilmis 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. Atilmis. Mr. Atilmis’ 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 April of 2023. Mr. Atilmis files this petition to remedy baseless civil detention without a bond hearing, in violation of his due process rights.

4. Mr. Atilmis is a Kurdish man born in Turkey, who has suffered lifelong persecution on account of his Kurdish ethnicity and political opinion. Mr. Atilmis fled Turkey and sought refuge in the United States in April of 2023, fearing further persecution if returned.

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

6. On February 27, 2026, Mr. Atilmis was arrested and taken into custody by ICE officers at a checkpoint in Los Angeles, 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. Atilmis’ civil detention is lawful.

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

26 JURISDICTION

27 14. Mr. Atilmis is currently detained in the custody of Respondents at the Imperial Regional
28 Detention Facility located in Calexico, California. Jurisdiction is proper over a writ of habeas

corpus pursuant to Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the United States Constitution. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

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

VENUE

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

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. Mr. Atilmis is not required to exhaust administrative remedies.

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

19. Mr. Atilmis was released after five days of detention upon his entry into the United States in August of 2023. That release was suddenly and baselessly revoked, despite Mr. Atilmis having spent over two years living peacefully and integrating into his new community in the United States.

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

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

REQUIREMENTS OF 28 U.S.C. § 2243

22. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless it finds Mr. Atilmis is not entitled to relief. 28

1 U.S.C. § 2243. If the Court issues an OSC, it must require Respondents to file a response “within
2 *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*
3 (emphasis added).

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

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

14 PARTIES

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

23 26. Respondent Warden of Imperial Regional Detention Facility, is the warden of Imperial
24 Regional Detention Facility in Calexico, California. He oversees operations at Imperial Regional
25 Detention Facility, where Mr. Atilmis is detained. The Ninth Circuit has determined that the
26 facility administrator is the “immediate” and legal custodian of noncitizens held by ICE at
27 privately-run facilities. *See Doe*, 109 F.4th at 1198–99. He is named in his official capacity

28 27. Respondent Gregory J. Archambeault is the Field Office Director for the San Diego Field

Office of ICE Enforcement and Removal Operations (“ERO”). As such, Respondent Archambeault is the federal official most directly responsible for overseeing Imperial Regional Detention Facility. He is the local ICE official who has legal custody of Mr. Atilmis. He is named in his official capacity.

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

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

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

STATEMENT OF FACTS

I. Mr. Atilmis’ Life Prior to His Arrival in the United States

31. Mr. Atilmis is a Kurdish man from Turkey. Because of his Kurdish identity and his support for Kurdish political parties, including the  he was repeatedly targeted by Turkish authorities and nationalist groups. From a young age, he experienced discrimination and violence for speaking Kurdish and expressing his identity. As he became more involved in political activities and public gatherings related to Kurdish rights, he was subjected to multiple incidents of police violence, including being beaten by police, detained, and interrogated during protests and public events. In several instances, police officers physically assaulted and threatened him because of his Kurdish identity and perceived political views. These repeated arrests, beatings, and threats made him fear that he would be seriously harmed or imprisoned if he remained in

Turkey, which ultimately forced him to leave the country and seek safety in the United States. (See Declaration of Mehmet Atilmis ¶ 7).

II. Mr. Atilmis' Life After Entering the United States to Apply for Asylum

32. Mr. Atilmis entered the United States on April 12, 2023. Shortly after his entry, he was taken into custody by ICE officers. About five days later, he was released. He thereafter relocated to Edina, MN and filed his application for asylum and withholding of removal on August 10, 2023. (See Declaration of Mehmet Atilmis ¶ 1).

33. Following his release, he was not given any ICE appointment. He continued to pursue his immigration case through legal channels and remained in contact with his attorney regarding his case. He did not miss any ICE appointment or fail to comply with any reporting requirement. (See Declaration of Mehmet Atilmis ¶ 2).

34. Mr. Atilmis' first Master Calendar Hearing for his application for asylum was scheduled for August 17, 2023. (See Declaration of Mehmet Atilmis ¶ 3).

35. On February 27, 2026, he was detained. Mr. Atilmis works as a truck driver, and while he was driving on a highway south of Los Angeles, he was stopped at a checkpoint. A patrol officer asked him if he was a U.S. citizen, and he told him that he was not. The officer then took his work permit and my driver's license and asked whether he had an immigration court case. His final hearing had previously been canceled, and he showed him the document confirming that it had been canceled. After some time, ICE officers arrived at the location and took him into custody. Petitioner was not informed of the reason for his arrest at that time. After being taken into custody, he was transferred to the Imperial Regional Detention Facility located at 1572 Gateway Road, Calexico, California 92231. (See Declaration of Mehmet Atilmis ¶ 4).

36. Detention has been extremely difficult for him. Before this incident, he had never been arrested, imprisoned, or convicted of any crime in the United States. He has always tried to comply with the law and address his immigration case through proper legal channels. Despite this, he was taken into immigration detention, which has caused him significant stress and hardship. (See Declaration of Mehmet Atilmis ¶ 5).

LEGAL FRAMEWORK

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

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

40. On July 8, 2025, ICE, “in coordination with” the DOJ, announced a new policy entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” which stated that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

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

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

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

44. Subsequently, court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D.

1 Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D.
2 Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass.
3 Sept. 9, 2025); see also, e.g., *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2
4 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2)
5 authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3
6 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFBRCC, 2025 WL
7 2374224 at *2 (D. Neb. Aug. 14, 2025) (same).

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

11 46. Section 1226(a) applies by default to all persons “pending a decision on whether the
12 [noncitizen] is to be removed from the United States.” These removal hearings are held under §
13 1229a, to “decid[c] the inadmissibility or deportability of a[] [noncitizen].”

14 47. The text of § 1226 also explicitly applies to people charged as being inadmissible, including
15 those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference
16 to such people makes clear that, by default, such people are afforded a bond hearing under
17 subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific
18 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally
19 applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs.,*
20 *P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

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

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

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

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

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

ARGUMENT

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

53. Mr. Atilmis entered the United States without inspection on April 12, 2023—nearly three years prior to his current detention. He was detained for approximately five days and subsequently released and placed into standard removal proceedings. Because Mr. Atilmis 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.

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

55. Additionally, in the context of parole revocation, individuals retain a weighty liberty interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration. In *Morrissey v. Brewer*, a case involving parole revocation, the court held that “the liberty of a

1 parolee, although indeterminate, includes many of the core values of unqualified liberty and its
2 termination inflicts a grievous loss on the parolee and often others.” 408 U.S. 471, 482 (1972).
3 This is true even when the freedom may ultimately be revocable should circumstances materially
4 change. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Saravia v. Sessions*, 280 F. Supp.
5 3d 1168, 1196-97 (N.D. Cal. 2017).

6 56. *Morrissey’s* basic principle – that individuals have a liberty interest in their conditional
7 release – has been reinforced by both the Supreme Court and numerous circuit courts. *See Young*,
8 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce
9 prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*,
10 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty
11 interest requiring pre-deprivation process); *Zadvydas*, 533 U.S. at 690 (holding that due process
12 protects “all ‘persons’ within the United States . . . whether their presence here is lawful, unlawful,
13 temporary or permanent” who face immigration detention). As the First Circuit has explained,
14 when analyzing the issue of whether a specific conditional release rises to the level of a protected
15 liberty interest, “[c]ourts have resolved the issue by comparing the specific conditional release in
16 the case before them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
17 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation
18 omitted); *see also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (noting
19 that “a person who is in fact free of physical confinement—even if that freedom is lawfully
20 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
21 incarcerated) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at
22 482).

23 57. Here, Mr. Atilmis, has a liberty interest in being free from confinement, which has been
24 challenged by his unjust detention and revocation of his parole. The burden on Mr. Atilmis’ liberty
25 is substantial. He has been separated from his community and deprived of his freedom. Like people
26 on parole, individuals like Mr. Atilmis who await decisions in their immigration cases have a
27 liberty interest in remaining out of custody on bond. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963,
28 969–70 (N.D. Cal. 2019) (finding that the petitioner had a substantial private interest in remaining

on bond and enjoining ICE from rearresting petitioner until a hearing is held) (citing *Morrissey*, 408 U.S. at 482); *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277, at *2 (N.D. Cal. Sept. 14, 2020) (same); *Jorge M.F. v. Wilkinson*, No. 21-cv-14340JST, 2021 WL 783561, at *3–4 (N.D. Cal. Mar. 1, 2021) (same); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (same). Mr. Atilmis was never afforded a pre-deprivation or post-deprivation hearing on the revocation of his parole and/or his detention.

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

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

59. “[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial.” *Diouf*, 634 F.3d at 1092. Since Mr. Atilmis has been detained in February 2026, he has not had a bond hearing and thus has never been afforded process to evaluate or the opportunity to contest the necessity of his ongoing detention. *See Rajnish v. Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at *9 (N.D. Cal. Dec. 22, 2020) (finding that the value added by a hearing is “great” where petitioner had been held for nine months since an “unconstitutional” initial bond hearing that “assigned the risk of error to him, not to the government”). Furthermore, given the current legal framework as explained above, a bond hearing would be frivolous, as the BIA has held that a person in Mr. Atilmis' position is mandatorily detainable. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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

60. The third *Mathews* factor also supports Mr. Atilmis' petition: the government interest served by Mr. Atilmis' indefinite detention without a hearing is illegitimate here because the interest at stake “is the ability to detain Petitioner *without providing him a bond hearing*, not whether the government may continue to detain him at all.” *Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Henriquez*, 2022 WL 2132919, at *5 (“[T]he Government's interest in detaining Petitioner without providing an individualized bond hearing is low.”). While the government has legitimate interests in ensuring a noncitizen's appearance in court and protecting

1 the community, providing a bond hearing would “do nothing to undercut those interests.” *Black*,
2 103 F.4th at 153. At any ordered bond hearing, “the IJ would assess on an individualized basis
3 whether the noncitizen presents a flight risk or danger to the community, as IJs routinely do for
4 other noncitizen detainees.” *Id.* at 153–54.

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

9 62. The government has not articulated any interest in detaining Mr. Atilmis without an
10 individualized bond hearing. The government has not given any reason to justify Mr. Atilmis’
11 continued detention and has not shown that he presents a flight risk or danger to the community.
12 Thus, applying the *Mathews* factors, this Court should find that due process entitles Mr. Atilmis to
13 an individualized bond hearing by an Immigration Judge.

14 V. Standards for Bond Hearing to Comply with Due Process

15 63. Mr. Atilmis requests a bond hearing before a neutral adjudicator in which the government
16 bears the burden of proving his flight risk or danger by a clear and convincing evidence standard.
17 *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) (“[D]ue process places a heightened
18 burden of proof on the State in civil proceedings in which the individual interests at stake...are
19 both particularly important and more substantial than mere loss of money.”) (internal quotation
20 marks omitted), *abrogated on other grounds by Rodriguez Diaz*, 53 F.4th at 1202; *see also Ixchop*
21 *Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the “consensus view”
22 among District Courts concluding that after *Jennings* “where ... the government seeks to detain an
23 alien pending removal proceedings, it bears the burden of proving that such detention is justified”;
24 *Gonzalez*, 2019 WL 330906, at *6 (collecting cases applying *Singh* burden of proof for prolonged
25 detention hearings post-*Jennings*); *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019) (finding
26 due process requires the government to bear the burden in immigration bond proceedings).

27 64. Due process also requires consideration of a noncitizen’s ability to pay a monetary bond.
28 “Detention of an indigent ‘for inability to post money bail’ is impermissible if the individual’s

‘appearance at trial could reasonably be assured by one of the alternate forms of release.’” *Id.* at 990 (citation omitted). It follows that—in determining the appropriate conditions of release for immigration detainees—due process requires “consideration of financial circumstances and alternative conditions of release” to prevent against detention based on poverty. *Id.*

CLAIM FOR RELIEF

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

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

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

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

VIOLATION OF THE INA

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue a Writ of Habeas Corpus and order Respondents, unless they elect to release Petitioner, to schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner

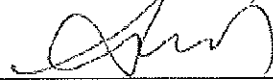
1 presents a risk of flight or danger, even after consideration of conditions of supervision;
2 and (2) if the government cannot meet its burden, the immigration judge order Petitioner's
3 release on appropriate conditions of supervision, taking into account Petitioner's ability to
4 pay a bond;

5 3) Award reasonable costs and attorney fees under the Equal Access to Justice Act ("EAJA"),
6 as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under
7 law; and

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

10 Dated: 03/12/2026

FISHER LAW FIRM, P.C.

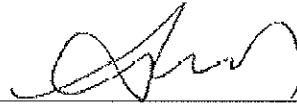


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Verification Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Mehmet Atilmis because I am one of Mr. Atilmis' attorneys. As Mr. Atilmis' 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



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