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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Nosir Aliev
Petitioner,

v.

Markwayne MULLIN, in his official capacity, Secretary, U.S. Department of Homeland Security;

Todd LYONS, in his official capacity as Acting Director of Immigration and Custom Enforcement;

Warden of the Imperial Regional Adult Detention Facility,
Respondents.

Case No.: '26CV2123 BJC BLM

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

[Expedite Handling Requested]

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I. INTRODUCTION

1. Respondents are re-detaining Petitioner, Nosir Aliev ("Petitioner"), in violation of law.

2. Petitioner entered into the United States on or about September 14, 2022. *See* Ex. A, Notice to Appear.

3. Respondents later released Petitioner shortly after his initial detention.

4. Petitioner filed an I-589 Application for Asylum and Withholding of Removal and has a valid work permit.

5. On March 18, 2026, Immigration Judge ordered Petitioner's removal, and Petitioner timely appealed this decision. *See* Ex. B, Appeal Filing Notice.

6. The continued detention of Petitioner serves no legitimate purpose.

7. The risk of erroneous deprivation of liberty here is substantial.

8. To remedy this unlawful detention, Petitioner seeks declaratory and injunctive relief in the form of immediate release.

9. Petitioner respectfully requests that this Court order Respondents to show cause why this Petition should not be granted within three days. *See* 28 U.S.C.

10. Pending the adjudication of his petition, Petitioner seeks an order restraining the Respondents from transferring him to outside of this Court's jurisdiction.

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11. Pending the adjudication of this Petition, Petitioner also respectfully requests that Respondents be ordered to provide seventy-two (72) hour notice of any movement of Petitioner.

II. PARTIES

12. Petitioner is a Russian and Tajikistan national who is seeking asylum in the United States. He is not an arriving alien, nor is he seeking admission. for Respondents to justify re-detaining Petitioner.

13. Petitioner is currently in Immigration and Customs Enforcement ("ICE") custody at the Imperial Regional Adult Detention Facility.

14. Respondent Markwayne Mullin is the Secretary of Homeland Security. He is sued in his official capacity. In that capacity, Defendant Mullin is responsible for overseeing the enforcement of federal immigration policies, including those that resulted in the detention of Petitioner.

15. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement (ICE). He is sued in his official capacity. As the head of ICE, he is responsible for decisions related to the detention and removal of certain noncitizens, including Petitioner. As such, he is also the legal custodian of Petitioner.

16. Respondent, Warden of the Imperial Regional Adult Detention Facility. He/she is sued in his official capacity. In that capacity, he/she is the custodian of

detained non-citizens, including Petitioner, housed at the Imperial Regional Detention Facility.

III. JURISDICTION AND VENUE

17. This court has subject-matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Federal questions in this case arise under the Immigration and Naturalization Act, 8 U.S.C. § 1101-1524, and the United States Constitution.

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

19. Under 28 U.S.C. § 2241 and § 1391(b), (e), venue is proper in this district. Venue is proper because Petitioner is in Respondents' custody in the District of California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this district, where Petitioner is now in Respondent's custody. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States

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IV. EXHAUSTION OF REMEDIES

20. No statutory requirement of administrative exhaustion applies to Petitioner's challenge to the unlawfulness of her detention. Moreover, the judicially created "general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts" does not apply to Petitioner's present challenge, as there are no prescribed administrative remedies to which he could resort. *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992), superseded by statute on other grounds as recognized in *Woodford v. Ngo*, 548 U.S. 81 (2006).

21. DHS has taken the position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225. Further, in a published decision, the Board of Immigration Appeals recently held that "Immigration Judges lack authority to hear bond requests or to grant bond to [noncitizens] who are present in the United States without admission." *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Under the BIA's interpretation, regardless of his prior release and placement in standard removal proceedings, Petitioner is ineligible for bond as a noncitizen who entered the United States without inspection. Accordingly, there are no administrative remedies that Petitioner could exhaust before seeking habeas relief.

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22. Further, neither an immigration judge nor the Board of Immigration Appeals can rule on a petitioner's constitutional claims. *See Matter of R-A-V-P-,* 27 I. & N. Dec. 803, 804 n.2 (B.I.A. 2020) (holding that IJs and the BIA lack any authority to consider the constitutionality of the statutes or regulations governing immigration detention that they administer and are bound to follow); *Matter of C--*, 20 I. & N. Dec. 529, 532 (B.I.A. 1992) ("[I]t is settled that the immigration judge and this Board lack jurisdiction to rule upon the constitutionality of the Act and the regulations."); *see also Gonzalez v. O'Connell*, 355 F.3d 1010, 1017 (7th Cir. 2004) (noting that "the BIA has no jurisdiction to adjudicate constitutional issues").

V. **FACTUAL BACKGROUND**

23. Petitioner entered into the United States on or about September 14, 2022. *See* Ex. A, Notice to Appear.

24. Petitioner filed an I-589 Application for Asylum and Withholding of Removal and has a valid work permit.

25. Respondents re-detained Petitioner in the state of New Jersey on September 27, 2026.

26. On March 18, 2026, Immigration Judge ordered Petitioner's removal, and Petitioner timely appealed this decision. *See* Ex. B, Appeal Filing Notice.

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27. Petitioner is currently detained at the Imperial Regional Adult Detention Facility.

VI. LEGAL BACKGROUND

A. Custody Determination Under INA

28. As relevant here, the Immigration and Naturalization Act, 8 U.S.C. §1101-1524, describes two means of handling the custody and potential removal of noncitizens.

29. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard removal proceedings. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). The text of § 1226 explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the Rodriguez Vazquez court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez v.*

Bostock, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

30. In addition, while on release, the noncitizen may apply for asylum or other relief in the United States. 8 U.S.C. § 1158. While a grant of asylum is discretionary, the right to apply for asylum is not. The Refugee Act, codified in various sections of the INA, broadly affords a right to apply for asylum to any noncitizen, like Petitioner, "who is physically present in the United States or who arrives in the United States[.]" 8 U.S.C. § 1158(a)(1); Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102 (1980).

31. The INA guarantees to noncitizens in standard removal proceedings who apply for asylum and other relief valuable procedural rights that reduce the risk of an erroneous decision. These include the rights to legal counsel, 8 U.S.C. § 1229a(b)(4)(A) and § 1362; to present supporting evidence (both documentary and through lay and expert witness testimony) and to challenge through cross-examination adverse evidence during a full adversarial hearing before an immigration judge (IJ), 8 U.S.C. § 1148(b)(1)(B); to seek reconsideration or reopening of an adverse decision, 8 U.S.C. § 1229a(c)(6)-(7), to appeal an adverse decision of an IJ to the Board of Immigration Appeals based on the full evidentiary record, 8 U.S.C. § 1229a(c)(5), and to appeal an adverse decision of the Board to a federal circuit court of appeals, 8 U.S.C. § 1252(b).

32. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment to the *U.S. Constitution. Reno v. Flores*, 507 U.S. 292, 306 (1993).

33. The second relevant means of detention is governed by 8 U.S.C. § 1225, which 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 under 8 U.S.C. § 1225(b)(2). Respondents treat noncitizens subject to mandatory detention under § 1225 as ineligible for bond.

34. The mandatory detention scheme under 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at U.S. ports of entry 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). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added).

35. As to 8 U.S.C. § 1225(b)(1), this subsection provides for mandatory detention of noncitizens subject to expedited removal. Because expedited removal provides very few procedural protections, it applies narrowly to only those noncitizens who are inadmissible to the United States because they

1 engaged in fraud or misrepresentation to procure admission or other immigration
2 benefits, 8 U.S.C. § 1182(a)(6)(C), or who are applicants for admission without
3 required documentation, 8 U.S.C. § 1182(a)(7). As relevant here, the government
4 may not subject any other person to expedited removal. 8 C.F.R. § 235.3(b)(1),
5 (b)(3).
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8 36. For noncitizens in expedited removal, the INA does not grant them the
9 rights enshrined in standard removal proceedings. To begin, an immigration
10 officer may order them removed "without further hearing or review," 8 U.S.C. §
11 1225(b)(1)(A)(i), unless the noncitizen has expressed an intent to apply for
12 asylum or a fear of persecution. But even then, the noncitizens' rights are
13 truncated. Although the immigration officer "shall refer the [noncitizen] for an
14 interview by an asylum officer," 8 U.S.C § 1225(b)(1)(A)(i)-(ii), a "credible
15 fear" interview differs from an asylum application. First, the INA does not, as it
16 does during standard removal proceedings, guarantee the noncitizen with the
17 rights to counsel, to present documents or witness testimony, or to cross-examine
18 adverse evidence. See id. § 1225(b)(1)(B)(iv). Second, if the asylum officer
19 decides that the noncitizen does not have a credible fear of persecution, the
20 noncitizen may seek review before an IJ, but review is limited to the record of the
21 interview. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). Finally, if the IJ concurs with the
22 asylum officer, the noncitizen is removed without any further review by the
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Board of Immigration Appeals or a federal court. Only if a noncitizen passes a credible fear interview may they apply for asylum and related relief in full removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(B); 8 C.F.R. § 208.30(f).

37. An expedited removal order comes with significant consequences beyond removal itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C.§ 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after having been found inadmissible based on misrepresentation are subject to a lifetime bar on admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C. § 1182(a)(6)(C).

38. These two processes have governed removal proceedings for nearly three decades. The release provisions for noncitizens placed in standard removal proceedings under § 1226 and the mandatory detention provisions for noncitizens recently arriving in the United States under § 1225(b)(1) and (b)(2) were enacted in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585.

39. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond

1 hearings, unless their criminal history rendered them ineligible. That practice was
2 consistent with many more decades of prior practice, in which noncitizens who
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4 were not deemed "arriving" were entitled to a custody hearing before an IJ or
5 other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-
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7 469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention
8 authority previously found at § 1252(a)); *Martinez v. Hyde*, 2025 WL 2084238,
9 at *8 (D. Mass. July 24, 2025) ("The idea that a different detention scheme
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11 would apply to non-citizens 'already in the country,' as compared to those
12 'seeking admission into the country,' is consonant with the core logic of our
13 immigration system ") (citing *Jennings v. Rodriguez*, 583 U.S. at 289) (cleaned
14
15 up))
16 40. 8 U.S.C. 1226(a) applies to those who are "already in the country" and are
17 detained "pending the outcome of removal proceedings." *Jennings v. Rodriguez*,
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19 583 U.S. 281, 289 (2018).
20 41. 8 U.S.C. 1226(a) applies not just to persons who are deportable, but also
21 to noncitizens who are inadmissible. Specifically, while § 1226(a) provides the
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23 general right to seek release, § 1226(c) carves out discrete categories of
24 noncitizens from being released—including certain categories of inadmissible
25 noncitizens—and subjects those limited classes of inadmissible aliens instead to
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27 mandatory detention. *See*, e.g., 8 U.S.C. § 1226(c)(1)(A), (C).
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42. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* LRA, PL 119-1, January 29, 2025, 139 Stat 3. Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E).

43. This legislative amendment would be entirely unnecessary if all entrants without inspection were already subject to mandatory detention under Section 1225. *See Jimenez v. FCI Berlin, Warden*, 799 F. Supp. 3d 59, 71 (D.N.H. 2025). Because Petitioner has no criminal history, the LRA does not apply, and he remains under the default discretionary authority of Section 1226(a).

44. By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like lawful permanents residents, who have been lawfully admitted and continue to have lawful status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been admitted to the United States. *See*, e.g., *Barton v.*

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Barr, 590 U.S. 222, 234 (2020) ("specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies.") (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,* 559 U.S. 393, 400 (2010)).

45. On January 20, 2025, President Donald Trump issued several executive actions relating to immigration, including "Protecting the American People Against Invasion," an order (EO) setting out a series of interior immigration enforcement actions. The Trump administration, through this and other actions, has outlined sweeping, executive branch-led changes to immigration enforcement policy, establishing a formal framework for mass deportation. The "Protecting the American People Against Invasion" EO instructs the DHS Secretary "to take all appropriate action to enable" ICE, Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) to prioritize civil immigration enforcement procedures including through the use of mass detention.

46. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued for public inspection and effective immediately a designation expanding the scope of expedited removal to apply nationwide and to certain noncitizens who are unable to prove they have been in the country continuously for two years. On January 24, 2025, DHS published a Notice that expanded the

1 application of expedited removal. Office of the Secretary, Dep't of Homeland
2 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139
3 ("January 2025 Designation"). The designation was "effective on" January 21,
4 2025.
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6 47. The January 2025 Designation expands the pool of noncitizens who can
7 be subjected to the summary removal process substantially to include noncitizens
8 who are apprehended anywhere in the United States and who have not been in
9 the United States continuously for more than two years. *Id.* at 8140.
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11 48. The January 2025 Designation does not state that it applies to noncitizens
12 who were in the United States before its effective date.
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14 49. On July 8, 2025, without congressional authorization, the Executive
15 Branch announced a new policy entitled "Interim Guidance Regarding Detention
16 Authority for Applicants for Admission." The policy asserts that all
17 undocumented noncitizens deemed "applicants for admission" are subject to
18 mandatory detention under § 1225(b)(2)(A). The policy purports to apply even to
19 those, like Petitioner, whom at the time of the policy shift, the government had
20 already placed in standard removal proceedings, released from custody, and
21 allowed to apply for asylum. The policy shift also violates the government's own
22 regulations. These regulations limit the government from seeking dismissal of
23 full removal proceedings unless it can show that the "[c]ircumstances of the case
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have changed". *See* 8 C.F.R. § 239.2(a)(7) (emphasis added). But the government's new policy purports to allow it to seek dismissal based on changed circumstances independent of the noncitizen's case.

50. Adopting this same position, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision holding that all noncitizens who entered the United States without admission or parole are considered applicants for admission and are ineligible for immigration judge bonds. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

51. In recent months federal district courts have overwhelmingly rejected Respondents' new interpretation of the INA's detention authorities.[1]

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[1] See, e.g., *Quituizaca v. Bondi*, No. 6:25-CV-6527-EAW, 2025 WL 3264440 (W.D.N.Y. Nov. 24, 2025); *Alvarez Ortiz v. Freden*, No. 25-CV-960-LJV, 2025 WL 3085032, at *10 (W.D.N.Y. Nov. 4, 2025); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). *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.

52. Under 8 U.S.C. § 1226(a), the Attorney General is authorized, pending a removal decision, to either "detain" or "release" a noncitizen on "bond" or "conditional parole." While this provision grants the Government broad authority, "due process must account for the wide discretion that Section 1226(a) vests in the Government to arrest any person in the United States suspected of being removable." *Reyes v. King*, No. 19 Civ. 8674, 2021 WL 3727614, at *6 (S.D.N.Y. Aug. 20, 2021) (emphasis in original).

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

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53. Before this discretion is exercised to deprive an individual of their liberty, "§ 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination." *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020). This requirement is rooted in the statutory text itself; because the Attorney General "may continue to detain" an arrested noncitizen, the Supreme Court has made clear that such permissive language requires "some level of individualized determination." *Id.* at 235 (quoting *I.N.S. v. Nat'l Ctr. for Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991))

B. Petitioner is Currently Detained Pursuant to 8 U.S.C. § 1226(a) Because the Automatic Stay of Removal Issued Under 8 C.F.R. § 1003.6(a) Precludes the Commencement of the Post-Order Removal Period

54. The threshold legal question in this habeas petition is the identity of the statutory authority under which Respondents currently hold Petitioner. There are two mutually exclusive detention frameworks: "pre-final order" detention under 8 U.S.C. § 1226 and "post-final order" detention under 8 U.S.C. § 1231.

55. Respondents' authority to detain under § 1231—the post-removal statute—is strictly contingent upon the commencement of the "removal period." Under 8 U.S.C. § 1231(a)(1)(B), the removal period begins only on the latest of several milestones, including the date the removal order becomes "administratively final."

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56. Petitioner's removal order is not final. Pursuant to 8 C.F.R. § 1241.1(a), an order of removal becomes final only upon the "dismissal of an appeal by the Board of Immigration Appeals." Because Petitioner's timely appeal remains pending before the Board, the order has reached no such finality.

57. Furthermore, 8 C.F.R. § 1003.6(a) mandates that the "decision of the Immigration Judge shall be stayed" during the period allowed for filing an appeal and while that appeal is pending. This is an "automatic stay" created by federal regulation to prevent the irreparable harm of removing an individual before their administrative rights are exhausted.

58. The Second Circuit has provided a definitive command on this interplay. In *Hechavarria v. Sessions*, 891 F.3d 42 (2d Cir. 2018), the Court held that 8 U.S.C. § 1226 and 8 U.S.C. § 1231 are "mutually exclusive" and that the "removal period" under § 1231 "begins only after the stay is lifted." *Id.* at 54.

59. While a stay is currently in place, the government is legally prohibited from executing the removal. As removal is not a legal possibility, the detention authority remains locked in the "pre-final" framework of 8 U.S.C. § 1226. See also *Guerra v. Shanahan*, 831 F.3d 59, 62-63 (2d Cir. 2016).

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C. Under the Plain Text of 8 U.S.C. § 1226(a), Detention Authority Persists "Up to the Time Removal Proceedings are Completed," and an Appeal to the BIA Means Proceedings are Not Complete

60. The plain language of 8 U.S.C. § 1226(a) (INA § 236) provides that "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.".

61. Implementing this statute, the government's own regulations at 8 C.F.R. § 236.1(b)(1) clarify that this authority exists "[a]t the time of issuance of the notice to appear, or at any time thereafter and **up to the time removal proceedings are completed.**"

62. A removal proceeding is not "completed" upon the issuance of an IJ's order if that order is timely appealed. The BIA is the "final administrative authority for interpreting the immigration laws" and possesses de novo review authority over legal and discretionary issues. As long as the BIA has not issued a final dismissal, the "removal proceedings" are ongoing.

63. This interpretation is consistent with *Matter of Lok*, 18 I&N Dec. 101 (BIA 1981), where the Board held that "finality" and "completion" of proceedings only occur once the right to appeal is waived or the BIA has rendered its decision.

1 64. Because the proceedings are not "completed," Petitioner remains under
2 the jurisdiction of § 1226(a). Any attempt by Respondents to truncate these
3 proceedings by treating Petitioner as a "final order" detainee violates the plain
4 text of 8 U.S.C. § 1226(a).
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6 **D. Administrative Procedures Act**
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8 65. Under the APA, a court shall "hold unlawful and set aside agency action"
9 that is an abuse of discretion. 5 U.S.C. § 706(2)(A).
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11 66. An action is an abuse of discretion if the agency "entirely failed to
12 consider an important aspect of the problem, offered an explanation for its
13 decision that runs counter to the evidence before the agency, or is so implausible
14 that it could not be ascribed to a difference in view or the product of agency
15 expertise." Nat'l Ass'n of Home *Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658
16 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto.*
17 *Ins*. Co., 463 U.S. 29, 43 (1983)).
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19 67. To avoid an abuse of discretion, the agency must articulate "a satisfactory
20 explanation" for its action, "including a rational connection between the facts
21 found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569
22 (2019) (citation omitted).
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68. Under the Accardi doctrine, an agency must follow its own established rules and procedures. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

69. Respondents established a regulatory record classifying Petitioner as "present" and released him under § 1226(a) regulations. Their sudden pivot to a mandatory detention framework without a change in facts is "arbitrary, capricious, and an abuse of discretion" under the APA. 5 U.S.C. § 706(2)(A).

70. The government's internal inconsistency—wherein USCIS authorizes Petitioner to work during his appeal while ICE seeks to imprison him is the definition of arbitrary agency action.

71. Respondents here have acted in a manner that is arbitrary and capricious by detaining Petitioner without explaining why his parole was terminated, failing to provide written notice, and failing to act through any of the regulatorily authorized actors empowered to terminate parole.

D. Petitioner's Prolonged Detention Violates the Fifth Amendment Absent an Individualized Determination that Continued Restraint is Narrowly Tailored to a Legitimate Regulatory Goal

72. By detaining Petitioner without articulating a rationale based on her individualized circumstances, and by detaining her in contradiction of her individualized circumstances as Respondents have previously assessed them, they have abused their discretion under the APA. *Noori*, 2025 WL 2800149 at *

10 (parolee developed a private interest in remaining free in the one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley,* F.Supp.3d, 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee's liberty interest did not expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, F.Supp.3d, 2025 WL 1898025, * 14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his asylum process to be arbitrary and capricious and ordering immediate release).

73. Because the private interest in freedom from immigration detention is substantial, due process requires the government to bear the burden of proving by clear and convincing evidence that Petitioner is a flight risk or danger to the community before re-detaining him. See e.g., *Fernandez Lopez v. Wofford*, 2025 WL 2959319 at *8; J.S.H.M v. Wofford, 2025 WL 2938808, *16 (E.D. Ca. Oct. 16, 2025) (unpub); *Mata Velasquez v. Kurzdorfer*, F.Supp.3d, 2025 WL 1953796, *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed circumstances and without a meaningful opportunity to be heard violates due process).

74. To the extent that Respondents purport to detain Petitioner pursuant to 8 U.S.C. § 1225(b)(2), his detention under that statute is unlawful the mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens

residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and were explicitly released under 8 U.S.C. 1226. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

76. The Due Process Clause of the Fifth Amendment to the U.S. Constitution applies to all persons within the United States. Once a noncitizen enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies to the noncitizen. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

E. Government's Affirmative Grant of Employment Authorization Under 8 C.F.R. § 208.7 Creates A Vested Liberty Interest and Confirms That Petitioner Remains in "Pre-Completion" Proceedings.

a. Petitioner Possesses a Vested Liberty Interest Reinforced by Authorized Employment.

77. Petitioner's detention is uniquely egregious because it contradicts the affirmative authorization granted to him by the Department of Homeland Security ("DHS"). Petitioner holds an Employment Authorization Document ("EAD") issued pursuant to 8 C.F.R. § 208.7(a).

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78. Under subsection (a)(1), the regulations specify that an applicant for asylum "shall be eligible" to request employment authorization subject only to the restrictions in sections 208(d) and 236(a) of the Act.

79. By granting this authorization, the government has already performed an eligibility check and determined that Petitioner is a bona fide asylum applicant who has crossed the requisite 180-day "asylum clock" threshold.

80. This affirmative grant of a work permit constitutes more than a mere travel document; it is a government-issued license to enter the national workforce, pay into the Social Security system, and establish a "private interest" in remaining free from physical restraint. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (emphasizing that the "private interest" in liberty is at its zenith when an individual is a productive, documented member of the community).

b. The "Renewal and Termination" Provisions of 8 C.F.R. § 208.7(b) Prove that Proceedings are Not "Completed."

81. An Immigration Judge's removal order is not a final order of removal if it has been timely appealed. Indeed, the government's own regulations regarding Employment Authorization Documents (EAD), as set forth in 8 C.F.R. § 208.7(b), demonstrate that such an order does not "complete" proceedings for the purposes of stripping an individual of their liberty.

82. Subsection (b) explicitly states that employment authorization "shall be renewable... **for the continuous period of time necessary... for completion of any administrative or judicial review**." (emphasis added). Furthermore, 8 C.F.R. § 208.7(b)(2) clarifies that even if an application is denied by an Immigration Judge, the authorization **"terminates upon the expiration of the employment authorization document, unless the applicant has filed an appropriate request for administrative or judicial review."** (emphasis added).

83. Because Petitioner has filed a timely appeal with the Board of Immigration Appeals ("BIA"), he is, by definition, in the "administrative review" phase contemplated by this regulation.

84. Therefore, the government continues to recognize Petitioner's status as a "pending asylum applicant" for the purpose of work authorization. It is legally inconsistent for the government to recognize Petitioner as a work-eligible "pending applicant" under § 208.7 while simultaneously claiming he is a "final order" or "mandatory" detainee for purposes of 8 U.S.C. § 1231.

85. This regulatory scheme confirms the statutory argument made in above: the removal proceedings are not "completed" under 8 U.S.C. § 1226(a) until the BIA has issued a final dismissal.

c. The Conflict Between USCIS Authorization and ICE Detention Violates the Fifth Amendment

86. The government cannot, consistent with Due Process, extend a right with one hand (USCIS work authorization) and revoke the underlying liberty with the other (ICE detention) without a reasoned, individualized explanation.

87. Petitioner has a "settled expectation" of liberty based on his valid EAD. The Supreme Court has held that when the government creates a system of benefits and expectations, it cannot deprive an individual of those interests in an arbitrary or capricious manner. *Mathews v. Eldridge*, 424 U.S. 319 (1976).

88. Because the Executive Branch has invited Petitioner's participation in the national workforce through the "administrative review" window of 8 C.F.R. § 208.7(b), his detention without a bond hearing is a violation of the Fifth Amendment.

89. Therefore, Respondents' detention of Petitioner under 8 U.S.C. § 1225(b)(2) violates the Due Process Clause of the United States Constitution. Petitioner's ongoing detention violates the Fifth Amendment's guarantee that "[n]o person shall be. . . deprived of life, liberty, or property without due process of law." U.S. Const., Amend. 5.

90. Due Process requires that detention "bear a reasonable relation to the purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Ethiopiana*, 406 U.S. 715, 738 (1972)).

91. Although neither the Constitution nor the federal habeas statutes delineate the necessary content of habeas relief, *I.N.S. v. St. Cyr*, 533 U.S. 289, 337 (2001) (Scalia, J., dissenting) ("A straightforward reading of [the Suspension Clause] discloses that it does not guarantee any content to . . . the writ of habeas corpus"), implicit in habeas jurisdiction is the power to order release. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008) ("[T]he habeas court must have the power to order the conditional release of an individual unlawfully detained.").

92. The Supreme Court has noted that the typical remedy for unlawful detention is release from detention. *See, e.g., Munaf v. Geren*, 553 U.S. 674 (2008) ("The typical remedy for [unlawful executive detention] is, of course, release."); *see also Wajda v. US*, 64 F.3d 385, 389 (8th Cir. 1995) (stating the function of habeas relief under 28 U.S.C. § 2241 "is to obtain release from the duration or fact of present custody."). "[B]eing free from physical detention is 'the most elemental of liberty interests.'" *Günaydın*, 2025 WL 1459154, at *7 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 531 (2004)).

93. Petitioner seeks immediate release to the extent that Respondents justify his detention on 8 U.S.C. § 1225(b)(2), which plainly does not apply to him

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VII. CAUSE OF ACTION

COUNT ONE: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT - 8 U.S.C. § 1225(b)(2)

94. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

95. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) because he is not an "arriving alien." As confirmed by Petitioner's NTA, the Government checked the box identifying Petitioner as an "alien present in the United States who has not been admitted or paroled," rather than checking the box for "arriving alien." *See Hernandez-Parrilla v. De Anda-Ybarra*, 2025 WL 3632769, at 4 (D.N.M. Dec. 15, 2025) (holding that when the NTA fails to check the "arriving alien" box, the petitioner is substantially likely to establish he is not subject to mandatory detention under Section 1225).

96. Section 1225(b)(2)(A) applies only to those "seeking admission" at a port of entry. Petitioner is not "seeking admission"; he has established a residence in the interior. *See Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. 2025).

97. Treating Petitioner as an "applicant for admission" under § 1225 years after entry violates the canon against surplusage, as it renders the phrase "seeking admission" meaningless. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

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98. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

COUNT TWO: VIOLATION OF THE IMMIGRATION & NATIONALITY ACT - 8 U.S.C. § 1226(a)

99. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

100. Section 1226 of Title 8 of the U.S. Code governs the detention of aliens pending a determination of removal from the United States.

101. Under the plain language of the statute and 8 C.F.R. § 236.1(b)(1), this authority persists "up to the time removal proceedings are completed."

102. Because Petitioner has a timely appeal pending before the BIA, his removal proceedings are not "completed," and the IJ's order is not final. See *Matter of Lok*, 18 I&N Dec. 101 (BIA 1981).

103. Therefore, Petitioner's re-detention is legally defect. Petitioner is not an applicant for admission.

104. As Respondents assert authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A), and no such authority exists under that provision, he requests that he be immediately released.

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COUNT THREE: VIOLATION OF THE FIFTH AMENDMENT

105. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

106. The Fifth Amendment Due Process Clause protects against arbitrary detention and requires that detention be reasonably related to its purpose and accompanied by adequate procedures to ensure that detention is serving its legitimate goals.

107. Petitioner possesses a profound liberty interest in remaining free while his asylum claim is adjudicated. *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

COUNT FOUR: VIOLATION OF THE APA – FAILURE TO COMPLY WITH REGULATORY MANDATE AND *ACCARDI* DOCTRINE

108. Petitioner re-alleges and incorporates by reference each allegation contained in the preceding paragraphs as if set forth fully herein.

109. Petitioner's re-detention violates the Due Process Clause and the APA because the discretionary authority under 8 U.S.C. § 1226(a).

110. Here, Respondents re-detained Petitioner based on a statute does not applicable to him.

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111. Respondents must observe the rules, regulations or procedures which it has established. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

112. The conflict between USCIS's grant of work authorization and ICE's re-detention of the same individual constitutes an arbitrary and inconsistent agency action.

113. Respondents' action violates the APA.

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;

2. Issue an order restraining Respondents from attempting to move Petitioner from the District of Southern California during the pendency of this Petition;

3. Ordered that Respondents shall file a Response to the Order to Show Cause why the Writ of Habeas Corpus should not be granted within three (3) days.

4. Declare that Respondents' action is arbitrary and capricious and an abuse of discretion under the Administrative Procedure Act;

5. Declare that Respondents failed to adhere to its regulations;

6. Order Petitioner's immediate release;

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7. Order that Respondents are permanently enjoined from rearresting or otherwise detaining Petitioner under § 1225;

8. Order Respondents to immediately return all of Petitioner's seized personal property, including but not limited to any government-issued identification or immigration documents, such as a state driver's license or Employment Authorization Document (EAD) to the extent such items were seized and remain in Respondents' possession;

9. Grant such other and further relief as the Court may deem just and proper, including any equitable relief necessary to restore Petitioner to his status prior to the unlawful detention.

10. Retain jurisdiction over this matter to ensure compliance with the Court's orders and to allow Petitioner to move to reopen proceedings should Respondents seek to re-detain him;

11. Grant Petitioner reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(A).

12. Grant any further relief this court deems just and proper.

1 Dated: April 3, 2026
2
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Verification by Petitioner's Legal Counsel
18 **Pursuant to 28 U.S.C. § 2242**

I am submitting this verification because I am the Attorney for the Petitioner. I
19
20 hereby verify that the statements made in the attached Petition for Writ of Habeas
21 Corpus, including the statements regarding Petitioner's detention status are true and
22 correct to the best of my knowledge.
23
24 /s/ *Mehmet Y. Turkoglu* Date: April 3, 2026
25 Mehmet Y. Turkoglu, Esq
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