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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
2003 W. ADAMS AVE, EL CENTRO, CA 92243

In the Matter of:

HATEM MOHAMED S. E. A. ABDOU

Case No.: '26CV2474 JLS BJW

Petitioner,

V.

Gregory J. Archambeault., Acting Field
Office Director for Immigration and Customs
Enforcement and Removal Operations in
San Diego;

TODD M. LYONS, Acting Director of the U.S.
Immigration and Customs Enforcement;
JEREMY CASEY , Warden of Imperial
Regional Detention Center;

MARKWAYNE MULLIN, Secretary of U.S.
Department of Homeland Security;

PAM BONDI, United States Attorney General;
US DEPARTMENT OF HOMELAND
SECURITY;
US IMMIGRATION AND CUSTOM
ENFORCEMENT

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

Petitioner, Hatem Mohamed Abdou (Mr. Abdou) is a citizen of Egypt who Respondents have detained at the Imperial Detention Center. Mr. Abdou was unlawfully denied bond because of the Respondents' failure to properly interpret and apply the Immigration and Nationality Act (INA). The Immigration Judge ("IJ") was predetermined to deny his bond as his decision was empty, and without consideration of the evidence, resulting in that the bond hearing was not meaningful or constitutionally adequate. Because Mr. Abdou is likely to face many additional months of detention, he seeks relief from this Court that would allow him to challenge his continuing, lengthy and unconstitutional detention.

JURISDICTION

1. Petitioner is in physical custody of Respondents and Immigration and Customs Enforcement (ICE), an agency within the Department of Homeland Security (DHS). He is detained at the Imperial Regional Detention Facility and is under the direct control of Respondents and their agents.
2. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
3. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, clause 2 of the United States Constitution (the Suspension Clause).
4. This Court has also jurisdiction under *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024) where the Ninth Circuit held that district judges have jurisdiction to review bond denials. See *N.A. v. Warden, Adelanto Detention Facility*, No 5:25-CV-03007-CB-MBK, 2026 WL 734587, at

1 6 (C.D. Cal. Feb 20, 2026) , report and recommendation adopted, No. 5:25-CV—03007-CV-
2 MBK, 2026 WL 734585 (C.D. Cal Mar. 12, 2026).

- 3
4 5. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28
5 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
6
7 6. Nothing in the INA deprives this Court of jurisdiction, including 8 U.S.C. §§ 1252(b)(9),
8 (f)(1), or 1226(e). Congress has preserved judicial review of challenges to prolonged
9 immigration detention. *See Jennings v Rodriguez*, 138 S. Ct. 830, 839-41 (2018) (holding
10 that 8 U.S.C. §§ 1252(b)(9) and 1226(e) do not bar review of challenges to prolonged
11 immigration detention).
12

13 VENUE

- 14 7. Venue properly lies within the Southern District of California, because each named
15 Respondent is present in this district and a substantial part of the events or omissions giving
16 rise to this action occurred and continue to occur in this District. *See* 28 U.S.C. §1391(b). Mr.
17 Abdou is also currently detained within this district as the Imperial Regional Detention
18 Center which is located at 1572 Gateway Road, Calexico, CA 92231. Accordingly, the
19 “restraint complained of” is occurring within the Court’s territorial jurisdiction. *See* 28
20 U.S.C. § 2241(a).
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24 PARTIES

- 25 8. Mr. Abdou is a citizen of Egypt who most recently arrived in the United States on or about
26 March 1, 2020. He has been in custody of the Department of Homeland Security (DHS)
27 since April 1, 2026. Mr. Abdou is a derivative asylee (pending adjudication) of his
28 wife’s asylum application who is a victim of 

- 1 9. Respondent Gregory J. Archambeault is the Acting Director of the San Diego Office of
2 Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement,
3 Department of Homeland Security. As such, Mr. Archambeault is Petitioner's immediate
4 custodian. He is named in his official capacity.
- 6 10. Respondent Todd Lyons is the acting director of U.S. Immigration and Customs Enforcement,
7 and he has authority over the actions of respondent Gregory J. Archambeault and ICE in
8 general. Respondent Lyons is a legal custodian of Petitioner.
- 10 11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security
11 (DHS) and has authority over the actions of all other DHS Respondents in this case, as well
12 as all operations of DHS. Respondent Mullin is a legal custodian of Petitioner and is
13 charged with faithfully administering the immigration laws of the United States.
- 15 12. Respondent Pamela Bondi is the Attorney General of the United States, and as such has
16 authority over the Department of Justice and is charged with faithfully administering the
17 immigration laws of the United States.
- 19 13. Respondent Department of Homeland Security (DHS) is the federal agency responsible for
20 implementing and enforcing the INA, including the detention of noncitizens.
- 22 14. Respondent U.S. Immigration and Customs Enforcement is the federal agency responsible
23 for custody decisions relating to non-citizens charged with being removable from the United
24 States, including the arrest, detention, and custody status of non-citizens.

26 FACTUAL ALLEGATIONS

- 27 15. Mr. Abdou entered the United States with a valid I-94 as a nonimmigrant B2 visitor on
28 March 1, 2020, (*See* I-94 Exhibit A). Prior to the expiration of his visas, he was named as
derivative on his wife's asylum application. (*See* Exhibit B – Marriage Certificate) and

(Asylum Receipt - Exhibit C). Mr. Abdou appeared for his biometrics appointment as a derivative applicant on his spouse's application. (Biometrics Appointment – Exhibit D). His spouse, Mrs. Abdallah appeared with Mr. Abdou for her asylum interview on January 8, 2026 (Interview Notice as Exhibit E). Upon completion of this interview, Mr. Abdou's spouse was provided with a notice that her decision is pending. (Decision Pending as Exhibit F). Mr. Abdalla's spouse filed for asylum because she is a victim of [REDACTED] [REDACTED] (FGM Report by Dr. Geroge Chidi as Exhibit G).

16. It is well established the [REDACTED] is past persecution that cannot be rebutted by the Department of Homeland Security under the precedents of the Ninth Circuit, *Mohamed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005). Once approved, Mr. Abdou would automatically qualify as a derivative asylee of his wife of twenty (26) years. (Declaration of Mr. Abdou – Exhibit H).

17. Through his unadjudicated asylum application, Mr. Abdou was granted employment authorization in the US. (See Mr. Abdou's work Permit till February 2029 as Exhibit I). Mr. Abdou has ties to the community. He purchased a home in Richmond, TX where his children live. (Deed of Trust of the Home – Exhibit J). He also has leased an apartment in Ontario, CA where he resides for employment purposes. (Lease of Apartment in Ontario as Exhibit K). He was gainfully employed and trying to establish businesses in both Texas and CA. (Business Formation – Exhibit L).

18. On April 1, 2026, while driving from Texas to CA, Mr. Abdou was stopped by Customs and Border Patrol (CPB). They detained him and transferred him to Imperial Regional Detention Center.

1 19. Mr. Abdou has suffered from acute emotional trauma from his two-week confinement by
2 CBP and ongoing separation from his family. He has various medical conditions – First
3 Level Diabetes –and Heart Disease. (Medical Records – Exhibit M).
4

5 20. Mr. Abdou requested a bond before an Immigration Judge. However, the Judge was pre-
6 determined to deny his bond, and did not consider the evidence because he has a
7 predisposition to deny it, thus the hearing was not meaningful or constitutionally adequate.
8 Because he is predetermined to deny the Bond, The Judge did not even consider any other
9 factors to ensure Mr. Abdou's appearance other than detention, specifically that he was not
10 dangerous to the community. (Declaration of Mr. Abdou). Mr. Abdou has been deprived of
11 liberty since his warrantless seizure at I-10 Freeway on April 1, 2026, despite having a
12 valid work permit and the pending adjudication of his spouse's claim, and the absence of any
13 criminal or immigration-law violation that would justify detention or removal.
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17 EXHAUSTION OF ADMISNITRATIVE REMEDIES

18 21. Mr. Abdou requested a bond before an Immigration Judge. However, the bond hearing was
19 not constitutionally adequate. The decision maker was predetermined to deny the bond, as
20 his analysis was empty, void of any analysis and consideration of the evidence before it.
21 Thus, making Mr. Abdou's bond hearing not meaningful, thus amount to "no hearing".
22

23 22. Administrative remedies would be futile, inadequate, and not efficacious for
24 Mr. Abdou. Exhausting his constitutional claim would be futile because the agency does not
25 have the authority to rule on constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–
26 16 (9th Cir. 1996) (per curiam) ("the inability of the INS to adjudicate the constitutional
27 claim completely undermines most, if not all, of the purposes underlying exhaustion"). The
28

1 IJ's weighing of the nine factors for a bond and its applicability to the legal standard is a
2 question of law. See. *Martinez v. Clark*, 124 F.3d at 779.

3
4 23. Even if exhaustion is not futile, waiver is warranted because Mr. Abdou's claim presents
5 purely legal issues and no purpose is served by requiring an administrative appeal. See
6 *Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017). See also *Martinez v. Clark*,
7 holding that legal challenges are reviewed de novo in district court. *Martinez*, 124 F.4th at
8 785-86. The three prong test in *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) do not
9 require a BIA appeal in Petitioner's case. The issue before the district court is legal one, no
10 administrative appellate record is necessary to resolve the issue as it deals with the
11 unconstitutionality of the hearing provided in this case.

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14 24. Requiring exhaustion at the Board of Immigration Appeals ("BIA") will cause Mr. Abdou
15 irreparable harm in the form of additional detention and continued separation from his
16 family, including his wife and children. See *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139
17 (N.D. Cal. 2018) (habeas petitioner "'suffers potentially irreparable harm every day that he
18 remains in custody without a hearing, which could ultimately result in his release from
19 detention'"). See also *Gil Epsana v. Nessinger*, No 26-cv-014-JJM-PAS, (D.R.I. March 26,
20 2026)("It would ...be futile to require Mr. Abdou to go before the BIA because his appeal
21 would almost certainly be dismissed as being untimely filed."); *Sales v. Johnson*, No 16-cv-
22 01745-EDL, 2017 WL 6855827, at *7 (N.D. Cal. Sept. 20, 2017)(Excusing exhaustion for
23 several reasons and nothing that "it is too late for demonstrative review")
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LEGAL FRAMEWORK

Due Process Clause

25. The Due Process Clause of the Fifth Amendment provides Mr. Abdou with important protections regarding his detention. As the Supreme Court has explained, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
26. The INA envisions three basic forms of detention for noncitizens in removal proceedings. First is detention for noncitizens in regular, non-expedited removal proceedings. *See* 8 U.S.C. § 1226(a), (c). Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have committed certain crimes are subject to mandatory detention. *See id.* § 1226(c).
27. Since the Supreme Court’s *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018) decision, the Ninth Circuit has expressed “grave doubt” that “any statute that allows for arbitrary detention without any process is constitutional or that those who founded our democracy precisely to protect against the government’s arbitrary deprivation of liberty would have thought so.” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).
28. To guarantee against such arbitrary detention and to guarantee the right to liberty, due process requires “adequate procedural protections” that ensure the government’s asserted justification for a noncitizen’s physical confinement “outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

1 29. In the immigration context, the Supreme Court has recognized only two valid purposes for
2 civil detention: to mitigate the risks of danger to the community and to prevent flight. *Id.*;
3 *Demore*, 538 U.S. 510, 522, 528 (2003). The government may not detain a noncitizen based
4 on any other justification.
5

6 30. As a result, where the government detains a noncitizen or where the noncitizen pursues a
7 substantial defense to removal, due process requires an individualized hearing before a
8 neutral decision maker to determine whether detention remains reasonably related to its
9 purpose. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) (stating that an “individualized
10 determination as to [a noncitizen’s] risk of flight and dangerousness” may be warranted “if
11 the continued detention became unreasonable or unjustified”); cf. *Jackson v. Indiana*, 406
12 U.S. 715, 733 (1972) (detention beyond the “initial commitment” requires additional
13 safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249- 50 (1972) (noting that “lesser
14 safeguards may be appropriate” for “short-term confinement”); *Hutto v. Finney*, 437 U.S.
15 678, 685-86 (1978) (observing, in Eighth Amendment context, that “the length of
16 confinement cannot be ignored in deciding whether [a] confinement meets constitutional
17 standards”).
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22 31. Courts have found that automatic detention where the government has made no “showing of
23 dangerousness or flight risk,” “renders the continued detention arbitrary” and “raises a
24 substantial Fifth Amendment claim.” *Mohammed H. v. Trump*, 781 F. Supp. 3d 886, 895 (D.
25 Minn. 2025). Whilst this case is in the context denied bond hearing where the Judge was
26 predetermined to deny, did not evaluate evidence in a meaningful way, and made findings
27 not consistent with the evidence because of his disposition to deny the Bond. Immigration
28 Judges are now conducting sham bonds, with the ultimate decision is to deny bonds.

(Politico Article – Exhibit N). The same reasoning applies here: “... no special justification exists that outweighs the individual’s constitutionally protected interest in avoiding physical restraint . . .” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1077 (N.D. Cal. 2004).

32. Due process also requires certain minimal procedures at bond hearings. The decisionmaker must consider available evidence. The decisionmaker must consider alternatives to detention. Furthermore, a decisionmaker must assess a noncitizen’s ability to pay a bond when determining the appropriate conditions of release, specifically when a noncitizen, like Mr. Abdou, has no criminal record and no immigration violations. On the contrary, Mr. Abdou was a law-abiding citizen, who did everything expected of an immigrant to the US. Nonetheless, the Judge failed to do so, because of a predisposition to deny the bond, failure to evaluate the evidence and thus, making his bond hearing meaningless, empty and void of due process.

33. The requirement that Mr. Abdou remains detained is also supported by application of the three-factor balancing test from *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

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

35. With respect to the second Mathews factor, there is an unacceptably high risk that the government would erroneously deprive—or already has erroneously deprived—Mr. Abdou of his liberty interest. The primary detention is to ensure a noncitizen’s presence at removal proceedings or for removal, with a “Secondary” purpose of preventing danger to the community. *Zadvydas v. Davis*, 533 U.S. 678, 697 (2001). But Mr. Abdou was not afforded

1 a meaningful bond with a neutral finding Judge who was disposed to deny the bond due to
2 high orders by the administration. The record suggests that Mr. Abdou is not a flight risk or
3 danger to the community.
4

5 36. Third, placing the burden on the government imposes minimal cost or inconvenience, as the
6 government has access to the noncitizen's immigration records and other information that it
7 can use to make its case for continued detention.
8

9 37. In light of these considerations, "[t]he overwhelming majority of courts to consider the
10 question . . . have concluded that imposing a clear and convincing standard would be most
11 consistent with due process." *Martinez v. Decker*, No. 18-CV-6527 (JMF), 2018 WL
12 5023946, at *5 (S.D.N.Y. Oct. 17, 2018) (internal quotation marks omitted).
13

14 38. Under the three-part test of *Mathews*, 424 U.S., the balance overwhelmingly favors Mr.
15 Abdou. His interest in liberty and family unity is paramount; the Government's blanket
16 detention policy creates an extreme risk of erroneous deprivation by denying him any
17 opportunity to demonstrate eligibility for release; and the Government's interest in ensuring
18 appearance can be served by far less restrictive means. However, the immigration judge
19 failed to provide him due process which required him to provide an individualized bond
20 hearing under § 1226(a) that is meaningful where he would consider all the factors.
21
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23 39. Due process also requires that a neutral decisionmaker consider available alternatives to
24 detention. A primary purpose of immigration detention is to ensure a noncitizen's
25 appearance during removal proceedings. Detention is not reasonably related to this purpose
26 if there are alternative conditions of release that could mitigate risk of flight. *See Bell v.*
27 *Wolfish*, 441 U.S. 520, 538 (1979). ICE's alternatives to detention program—the Intensive
28 Supervision Appearance Program (ISAP)—has achieved extraordinary success in ensuring

1 appearance at removal proceedings, reaching compliance rates close to 100 percent. *See*
2 *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a
3 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”). It
4 follows that alternatives to detention must be considered in determining whether prolonged
5 incarceration is warranted.
6

- 7
8 40. Due process likewise requires consideration of a noncitizen’s ability to pay a bond.
9 “Detention of an indigent ‘for inability to post money bail’ is impermissible if the
10 individual’s ‘appearance at trial could reasonably be assured by one of the alternate forms of
11 release.’” *Id.* at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en
12 banc)). As a result, in determining the appropriate conditions of release for immigration
13 detainees, due process requires “consideration of financial circumstances and alternative
14 conditions of release” to prevent against detention. *Id.*
15
16 41. Evidence about immigration detention and the adjudication of removal cases provide further
17 support for the due process right to a bond hearing in cases of detention.
18
19 42. Immigration detainees face severe hardships while incarcerated. Immigration detainees are
20 held in lock-down facilities, with limited freedom of movement and access to their families:
21 “the circumstances of their detention are similar, so far as we can tell, to those in many
22 prisons and jails.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting); *accord Chavez-*
23 *Alvarez*, 783 F.3d at 478; *Ngo v. INS*, 192 F.3d 390, 397-98 (3d Cir. 1999); *Sopo*, 825 F.3d at
24 1218, 1221. “And in some cases[,] the conditions of their confinement are inappropriately
25 poor.” *Jennings*, 138 S. Ct. at 861 (Breyer, J., dissenting) (citing Dept. of Homeland
26 Security (DHS), Office of Inspector General (OIG), DHS OIG Inspection Cites Concerns
27 With Detainee Treatment and Care at ICE Detention Facilities (2017) (reporting instances of
28

1 invasive procedures, substandard care, and mistreatment, e.g., indiscriminate strip searches,
2 long waits for medical care and hygiene products, and, in the case of one detainee, a
3 multiday lock down for sharing a cup of coffee with another detainee)).
4

5 43. These conditions and obstacles only further underscore the serious due process concerns that
6 prolonged immigration detention pose for noncitizens like Mr. Abdou and reflect the need
7 for a decision before a neutral decisionmaker regarding continued detention.
8

9 44. Here, the Respondents can neither show that the continued detention of Mr. Abdou
10 following his detention is reasonably related to the original purpose and the *Mathews* tests
11 are satisfied. Similarly, no procedural safeguards are offered to those who remain in custody
12 pending removal proceedings.
13

14 8 USC 1225 v 1226
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16 45. Full removal proceedings under 8 U.S.C. § 1229a are “the standard mechanism for
17 removing inadmissible noncitizens.” *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025
18 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); *see also Dep’t of Homeland Sec. v.*
19 *Thuraissigiam*, 591 U.S. 103, 108 (2020) (“The usual removal process involves an
20 evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to
21 show that he or she should not be removed.”). These proceedings are initiated by serving the
22 noncitizen with a Form I-862 “notice to appear” in immigration court. 8 U.S.C.
23 § 1229(a)(1).
24

25
26 46. Full removal proceedings “take place before an [immigration judge (“IJ”)], an employee of
27 the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop
28 the record in cases before them.” *Coal.for Humane Immigrant Rts. v. Noem*, No. 25-cv-872

(JMC), — F.Supp.3d —, —, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)).

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

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

49. Under § 1226(a), the “default rule,” *id.*, a noncitizen “may be arrested and detained” “[o]n a warrant issued by the Attorney General” if their removal proceedings are pending, 8 U.S.C.

§ 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the government has discretion to release them on “bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or ... conditional parole.” *Id.* at § 1226(a)(2)(A)–(B).

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

CLAIM FOR RELIEF

COUNT 1: Violation of 8 U.S.C. § 1226(a) Petitioner Was Not Afforded a Constitutional Bond Hearing – thus Amount to No Bond

51. Petitioner herein incorporates all allegations and facts set forth in the paragraphs above. The Ninth Circuit has held that a “neutral judge is one of the most basic due process protection.” *Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003). Given the politicization of EOIR—including the mass firings of IJs and BIA members, IJs and BIA members are not neutral.¹

¹ See, The Board of Immigration Appeals Under the Second Trump Administration: An Empirical Analysis of Grant Rates and DHS Appellate Behavior, Jayashri Srikantiah and Raja Lukose (Mar. 23, 2026), <https://law.stanford.edu/documents/research-on-bia-decision-making/>. See Ted Hesson and Kristina Cooke, DHS's Tactics Draw Criticism as it Triples Daily Arrest Targets, Reuters, June 10, 2025, <https://www.reuters.com/world/us/ices-tactics-draw-criticism-it-triples-dailyarrest-targets-2025-06-10/>

Douglas MacMillan et al., ICE Documents reveal plan to double immigrant detention space this year, The Washington Post (August 15, 2025), <https://www.washingtonpost.com/immigration/2025/08/15/icedocuments-reveal-plan-double-immigrant-detention-space-this-year/>

See Karen Musalo et. al., With Fear, Favor, and Flawed Analysis: Decision-Making in U.S. Immigration Courts, 65 B.C. L. Rev. 2743, 2755 (2024).

Anusha Mathur and Ximena Bustillo, U.S. has a quarter fewer immigration judges than it did a year ago. Here's why, NPR, February 23, 2026, <https://www.npr.org/2026/02/23/g-s1-110911/trump-immigrationjudges-dismissals-numbers>
Woo-Sun Lim, Former judge highlights legal failures in U.S. worker detentions, The Dong-A Ilbo (Sept. 20, 2025), <https://www.donga.com/en/article/all/20250920/5859412/1>

The BIA and AG's Systemic Destruction of Noncitizens' Rights in Removal Proceedings, National Immigration Project, February 19, 2026, <https://nipnlg.org/work/resources/bia-and-ags-systemic-destructionnoncitizens-rights-removal-proceedings>

1 52. Predisposed to deny the bond, the IJ failed to apply the legally required standard at a bond
2 hearing and ignored relevant and probative evidence in the bond record that favors
3 Mr. Abdou. Despite the presence of a viable relief, as a derivative to a wife meritorious claim
4 for asylum based on [REDACTED] the legal manner of his entry to the US as a
5 visitor, the availability of his fixed home in Richmond that he owns, a leased apartment in
6 Ontario, the presence of his wife and three children in the US, his bakery business, his
7 lengthy presence in the US for six (6) years; his interest to appear on scheduled hearing to
8 finalize his case, the consideration of other alternative methods, other than detention, given
9 that Mr. Abdou is not dangerous to the community, the IJ still denied the Bond. See *Melchor-*
10 *Melchor v. Kristi Noem et al.*, No. 5:26-CV-00766-SSS-BFM, 2026 WL 760058 (C.D. Cal.
11 Mar. 16, 2026) (finding it was “dubious” for an IJ to find that a Form I-213 showing
12 noncitizen’s 23 years of presence in the United States established clear and convincing
13 evidence of flight risk); *N.A. v. Warden, Adelanto Detention Facility*, 2026 WL 734587, at *7,
14 report and recommendation adopted, 2026 WL 734585. See *Hosseini Miri v. Bondi*, 2026 WL
15 622302, at *7-9. See *N.A. v. Warden, Adelanto Detention Facility*, 2026 WL 734587, at *7,
16 report and recommendation adopted, 2026 WL 734585. The bond hearing was void of any
17 analysis or consideration of probative evidence, thus, amounts to NO bond.

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23 53. Because The IJ found Mr. Abdou not dangerous to the community, his analysis of flight risk
24 was even flawed, because he failed to consider any alternatives to detention. Again, his
25 failure to consider alternatives to detention is because he was not neutral and was predisposed
26 to deny the bond. (See Exhibit N- Judges Keep ordering immigration hearings- but say the
27 results are often a shame. Politico.com, March 6, 2026).
28

1 54. It is well established that an alien who not dangerous to the community, should be afforded
2 other means than detention to ensure his appearance in Court, and minimize the flight risk
3 factor. See, e.g., *Davis v. Garland*, No. 22-CV-443-LJV, 2023 WL 1793575, at *6
4 (W.D.N.Y. Feb. 7, 2023) (stating that “it stands to reason that an immigration judge who does
5 not even consider conditional release may wrongfully detain certain noncitizens who might
6 otherwise be safely released”); *Joseph v. Barr*, No. 19CV-565, 2019 WL 3842359, at *9
7 (W.D.N.Y. Aug. 15, 2019) (holding that “to sustain the prolonged detention of a[noncitizen]
8 who has been admitted to the country and is subject to removal proceedings,” a neutral
9 decisionmaker must consider “less restrictive alternatives to detention”); *Mathurin v. Barr*,
10 No. 6:19-CV06885-FPG, 2020 WL 9257062, at *11 (W.D.N.Y. Apr. 15, 2020) (same);
11 *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 239 (W.D.N.Y. 2019).

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16 55. Mr. Abdou’s bond was unconstitutional as it was a sham hearing with an IJ who failed to
17 consider probative evidence of Mr. Abdou’s ties to the community because he was pre
18 disposed to deny bond, thus, Mr. Abdou effectively received No adequate bond hearing.

19
20 **COUNT 2: Unconstitutional Detention in Violation of the Fifth Amendment**

21 56. “Freedom from imprisonment—from government custody, detention, or other forms of
22 physical restraint—lies at the heart of the liberty that [the] Clause protects.” *Zadvydas v.*
23 *Davis*, 533 U.S. 678, 690 (2001).

24
25 57. Civil immigration detention is only permissible where it bears a “reasonable relation to the
26 purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738
27 (1972); *Zadvydas*, 533 U.S. at 690. Those purposes are limited: preventing flight and
28 protecting the community. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

1 58. Neither community protection nor flight risk applies to Mr. Abdou, and therefore, the
2 detention no longer bears a reasonable relation to the purpose for which it was committed.
3
4 *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Zadvydas*, 533 U.S. at 690. Mr. Abdou is
5 derivative of a meritorious claim for asylum that was filed by his wife, a victim of female
6 genital mutilation. It is well established that female genital mutilation is past persecution.
7
8 *Benyamin v. Holder*, 579 F.3d 970, 977 (9th Cir. 2009) (the female genital mutilation that
9 petitioner's daughter suffered undoubtedly constituted past persecution); *Mohammed v.*
10 *Gonzales*, 400 F.3d 785, 795 (9th Cir. 2005) (“[W]e have no doubt that the range of
11 procedures collectively known as female genital mutilation rises to the level of persecution
12 within the meaning of our asylum law.”); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996).
13
14 Thus, Mr. Abdou a rider on his wife's application has an avenue for relief. However, the
15 Respondents detained him for no reason, and without any immigration violation. During the
16 pendency of the application, Mr. Abdo was afforded to remain in the United States, and was
17 offered lawful work permit that was valid until February 2029.

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20 59. These cumulative actions render her detention even more constitutionally suspect, as they
21 reflect punitive conduct rather than civil processing.

22 60. Accordingly, Mr. Abdou's continued detention, in the absence of removal authority and
23 contrary to DHS's own findings, constitutes a deprivation of liberty without due process of
24 law. The Court should order his release.
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PRAYER FOR RELIEF

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

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show why this Petition should not be granted within three (3) days;
3. Declare that Mr. Abdou' detention because of an unlawful bond hearing that was void of any proper consideration of evidence, that was pre-determined violates the Due Process Clause of the Fifth Amendment;
4. Issue a Writ of Habeas Corpus ordering the Respondents to release Petitioner from custody; hold a hearing if warranted; determine that Mr. Abdou's detention is not justified because the government has not established clear and convincing evidence that he presents a risk of flight in light of the available alternatives.
5. Issue an Order prohibiting the Respondents from transferring Mr. Abdou from the district without the court's approval;
6. Declare that Mr. Abdou's continued detention is unconstitutional and unlawful, as it is not reasonably related to any valid purpose of immigration detention and violates the Fifth Amendment guarantee of due process;
7. Declare that Respondents' conduct violates the Administrative Procedure Act, 5 U.S.C. §§ 702 and 706, as arbitrary, capricious, and not in accordance with law;
8. In the alternative, should the Court determine that immediate release is not warranted, order Respondents to provide Mr. Abdou an individualized bond hearing before an impartial immigration judge within 7 days, at which the government bears the burden to justify continued detention by clear and convincing evidence;

1 9. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28
2 U.S.C. § 2412, and any other applicable authority;

3
4 10. All Mr. Abdou to provide a Reply to Respondent's Opposition

5 11. Order Respondents to return to Mr. Abdou all of his personal belongings, including, but not
6 limited to, his personal identification and any work permit, social security card and all his
7 identification documents confiscated from him at the time of detention.
8

9 12. Grant such other and further relief as the Court deems just and proper.
10

11 Dated: April 20, 2026
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13 Respectfully Submitted,

14 //s//, GIHAN L. THOMAS

15 _____
16 Gihan L. Thomas
17 Certified Specialist, Immigration and Nationality Law
18 State Bar of California, Board of Legal Specialization
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LIST OF EXHIBIT OF THE SUPPORTING DOCUMENTS

A. I-94 Arrival and Departure Record of Mr. Abdou – Visitor Visa

B. Marriage Certificate Between Petitioner and his Wife Sherin sine 01/20/2000

C. Asylum Receipt showing that Petitioner's Wife filed for Asylum on March 23, 2000

D. Biometrics Appointment showing that Petitioner was named a derivative on his wife's asylum application

E. Notice of a an Interview Date of January 8, 2026 for Petitioner's Spouse

F. Pending Decision for an Application for Asylum for Petitioner's wife

G. Letter from Dr. George Chidi confirming that Petitioner's wife is a victim of FGM

H. Declaration of Petitioner Hatem Abdou

I. Work Authorization for Petitioner valid until February 22, 2029 during the pendency of the case

J. Deed of Trust and Security Agreement showing that Mr. Hatem Abdou owns a home in Richmond, TX

K. Lease agreement for Petitioner's residence in Ontario, CA

L. Certificate of LLC for Pharaophs Bakery – showing Petitioner's business

M. Medical Records of Petitioner showing that he is suffering from Diabetes and hypertension

N. Judges keep ordering immigration hearings-but say the results are often a sham – Politico.com