

JOHN WELLS, SBN 358423
Global Law Group San Diego, P.C
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-0001
Facsimile: (619) 839-3152

Attorney for Petitioner Darren Burton

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DARREN BURTON

Petitioner,

vs.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and MARKWAYNE MULLIN,
Secretary, U.S.
Department of Homeland Security

Respondents.

Case No.: '26CV2627 JES BJW



**PETITION FOR WRIT OF
HABEAS CORPUS AND ORDER
TO SHOW CAUSE WITHIN
THREE DAYS; COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

**PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW
CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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2 Petitioner DARREN BURTON (“Mr. Burton”) petitions this Court for a writ
3 of habeas corpus under 28 U.S.C. section 2241 to remedy Respondents’ detaining
4 him unlawfully, and states as follows:

5
6 1. Petitioner is a citizen and national of Antigua & Barbuda. He is
7 detained at Otay Mesa Detention Center in San Diego, California.

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9 2. Petitioner first entered the United States as a child and later adjusted
10 to Lawful Permanent Resident (“LPR”) status on January 7, 2005. Respondents
11 placed him in removal proceedings based on his criminal record, including a 2009
12 controlled-substance conviction, rather than because he lacked an opportunity to
13 renew his Form I-551 while in detention. In February 2025, Petitioner was awoken
14 at his home by ICE officers and taken into Respondents’ custody at Otay Mesa
15 Detention Center.
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18 3. Petitioner remains a longtime LPR and resident of the United States,
19 although DHS alleges that his 2009 controlled-substance conviction renders him
20 removable under Immigration and Nationality Act (“INA”) §§ 237(a)(2)(A)(iii) and
21 237(a)(2)(B)(i). His physical Form I-551 card or renewal history is not the basis of
22 this habeas challenge. Petitioner, through his undersigned counsel, submitted his
23 application for Withholding of Removal and Protection under the Convention
24 Against Torture on June 12, 2025. On October 22, 2025, Petitioner was ordered
25 removed to Antigua & Barbuda after the Immigration Judge denied Petitioner’s
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1 request for relief. Petitioner is in the process of appealing said decision.

2 4. Respondents commenced removal proceedings against him in
3 immigration court under 8 U.S.C. § 1229a, entitling him to present his claims with
4 the due process rights available in section 240 proceedings.
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6 5. In immigration court, noncitizens have the right to pursue claims for
7 relief from removal, including withholding of removal and protection under the
8 Convention Against Torture, be represented by counsel, gather and present
9 evidence, and pursue appeals. 8 U.S.C. § 1229a. Those safeguards are particularly
10 important here because DHS relies on Mr. Burton's criminal record as the basis for
11 removability and detention, while Mr. Burton seeks review of his prolonged
12 custody and medical and mental-health conditions.
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16 6. Respondents now seek to keep Mr. Burton detained without a
17 meaningful opportunity to seek a bond hearing. *See* 8 U.S.C. § 1226. Respondents
18 do so based principally on Mr. Burton's criminal record, without adequate
19 consideration of his personal circumstances, medical needs, mental-health history,
20 family ties, rehabilitation, and individualized risk.
21

22 7. But Respondents cannot evade due process requirements so easily. The
23 U.S. Constitution requires the Respondents provide at least the rights available to
24 him when he filed his application.
25

26 8. The Constitution protects Mr. Burton—and every other person present
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1 in this country—from arbitrary deprivations of his liberty, and guarantees him due
2 process of law. The government’s power over immigration is broad, but as the
3 Supreme Court has declared, it “is subject to important constitutional limitations.”
4 *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). “Freedom from bodily restraint has
5 always been at the core of the liberty protected by the Due Process Clause from
6 arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

9 9. Mr. Burton seeks declaratory and injunctive relief to compel his
10 immediate release from the immigration detention where he has been held by DHS
11 since being detained in February 2025, without first being provided a due process
12 hearing to determine whether his prolonged detention is justified.

14 10. Absent review in this Court, no other neutral adjudicator will examine
15 Mr. Burton’s plight: Respondents will continue—unchecked—to detain him under
16 8 U.S.C. § 1226 without a timely, meaningful hearing to determine whether his
17 prolonged detention remains justified. Mr. Burton appeared before the Otay Mesa
18 Immigration Court within Otay Mesa Detention Center in San Diego, California.

21 11. For the reasons outlined below, Mr. Burton’s prolonged detention and
22 inability to obtain a meaningful custody hearing violate his statutory and
23 constitutional rights, including Due Process protections under the U.S.
24 Constitution. Mr. Burton respectfully requests that this Court grant the instant
25 petition for a writ of habeas corpus, without any bond requirement, and for
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1 declaratory and injunctive relief, to prevent such harms from recurring. Mr. Burton
2 also asks this Court to find that Respondents' prolonged detention and threatened
3 transfer are arbitrary and capricious and in violation of the law, and to immediately
4 issue an order preventing his transfer out of this district. Mr. Burton asks this
5 Court, through his first, second, and third causes of action, to find that his
6 prolonged detention is unlawful in accordance with the Administrative Procedure
7 Act and in violation of his Fifth Amendment rights.
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10 12. Respondents have repeatedly denied Mr. Burton appropriate medical
11 care for his medical condition, severe obstruction sleep apnea, throughout his time
12 in their custody. Therefore, Mr. Burton asks this Court to require Respondents to
13 release him on account of his medical condition, which he has been unable to
14 accurately monitor or care for while in Respondents' custody.
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17 13. Petitioner respectfully petitions this Honorable Court for a writ of
18 habeas corpus to release Petitioner from his prolonged detention and an injunction
19 to obtain medical records due to Petitioner's medical conditions.
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21 14. Petitioner has severe obstruction sleep apnea. Petitioner conducted an
22 overnight sleep study while in Respondent's custody and was diagnosed with severe
23 obstruction sleep apnea. The hospital staff suggested Petitioner should use a CPAP
24 machine to help with his medical condition. Petitioner requested a CPAP machine
25 numerous times from the staff at Otay Mesa Detention Center, under Respondents'
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1 control. However, Petitioner has been waiting for over a year for this CPAP device.
2 As such, Respondents have failed to provide Petitioner with adequate medical care
3 during his detention.
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5 15. Additionally, Mr. Burton's prolonged detention is independently
6 unlawful because Respondents are confining an individual with a serious,
7 documented mental illness without the procedural safeguards the Constitution
8 requires. Mr. Burton has been diagnosed with schizophrenia since 2017, is
9 prescribed Olanzapine to manage his condition, and has required prior
10 hospitalization. He regularly experiences auditory hallucinations that distort his
11 perception of reality and prevent him from meaningfully participating in his own
12 proceedings. On March 25, 2025, the Immigration Justice Project formally
13 submitted a Notice of Respondent with Indicia of Mental Incompetence to the
14 immigration court, and undersigned counsel's own visitation with Mr. Burton has
15 confirmed these concerns. On July 10, 2025, the Immigration Judge granted
16 safeguards for Petitioner due to his psychological conditions. However, through
17 Petitioner's continuous detention, his psychological conditions have not been
18 appropriately treated. For these reasons, this Court should order Mr. Burton's
19 immediate release.
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25 16. Petitioner requests that this Court issue a writ of habeas corpus and
26 order Petitioner's release due to prolonged detention and due process concerns
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1 within 10 days unless Respondents schedule a hearing before an IJ where: (1) to
2 continue detention, the government must establish by clear and convincing
3 evidence that Petitioner presents a risk of flight or danger, even after consideration
4 of alternatives to detention that could mitigate any risk that Petitioner's release
5 would present; and (2) if the government cannot meet its burden, the IJ shall order
6 Petitioner's release on appropriate conditions of supervision, taking into account
7 Petitioner's ability to pay a bond. Additionally, Petitioner requests an injunction to
8 obtain copies of the relevant medical records from Otay Mesa Detention Center
9 concerning his medical complications.
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13 JURISDICTION

14 17. This action arises under the Constitution of the United States and the
15 Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq.
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17 18. This court has subject matter jurisdiction under 28 U.S.C. §
18 2241(habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl.
19 2 of the United States Constitution (Suspension Clause), and 28 U.S.C. § 1346 (U.S.
20 as defendant), and 28 U.S.C. § 1651 (All Writs Act). Federal district courts have
21 jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness
22 of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing
23 habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533
24 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL
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1 1898025, at *3 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-
2 01006 JLT SAB, 2025 WL 2420068, at *7 (E.D. Cal. Aug. 21, 2025) (same).

3
4 19. This Court may grant relief under the habeas corpus statutes, 28 U.S.C.
5 § 2241, et seq., the Declaratory Judgment Act, 28 U.S.C. § 2201, et seq., the All
6 Writs Act, 28 U.S.C. § 1651, and the Court's inherent equitable powers.

7 VENUE

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9 20. Venue is proper because Petitioner is in Respondents' legal and
10 physical custody at Otay Mesa Detention Center in San Diego, California. Venue is
11 further proper because a substantial part of the events or omissions giving rise to
12 Petitioner's claims occurred in this District, where Petitioner is now in Respondents'
13 legal and physical custody, including his current and ongoing detention under the
14 legal and physical custody of Respondent LaRose, warden of Otay Mesa Detention
15 Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas
16 petition must be addressed to the federal district court of confinement); *Wairimu v.*
17 *Dir., Dep't of Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at *2
18 (S.D. Cal. Feb. 5, 2019) (district of confinement is the preferable forum even if the
19 Court otherwise has personal jurisdiction). For these same reasons, venue should be
20 found proper under Local Civil Rule HC.1.

21 CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

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24 21. The Court must grant the petition for writ of habeas corpus or issue an

1 order to show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is
2 not entitled to relief. 28 U.S.C. 2243. If an OSC is issued, the Court must require
3 Respondents to file return “within three days unless good cause additional time,
4 not exceeding twenty days, is allowed.” *Id.*

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

13 23. Mr. Burton is “in custody” for the purpose of 28 U.S.C. section 2241
14 because he was arrested by Respondents and remains in their legal and physical
15 custody at Otay Mesa Detention center in Otay Mesa, California. He is under
16 Respondents’ and their agents’ direct control.
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PARTIES

24. Mr. Burton (“Petitioner”) is a 39-year-old citizen and national of Antigua & Barbuda. Petitioner first entered the United States as a child and later adjusted to Lawful Permanent Resident (“LPR”) status on January 7, 2005, after his parents applied for immigration status on his behalf. DHS now alleges that his criminal record renders him removable; this case should not be framed as a failure to renew an LPR card while detained.

25. Mr. Burton sought withholding of removal, or protection under the Convention Against Torture on June 12, 2025, for fear of returning to Antigua & Barbuda on account of his LGBT membership and his religion. Mr. Burton is a LGBT male and fears future persecution on account of his sexuality.

26. Petitioner has lived in the United States for the majority of his life. In February 2025, Petitioner was awoken at his home by ICE officers and was taken into Respondents’ custody at the Steward Detention Center in Atlanta, Georgia. Around March 15, 2025, Petitioner was moved to the Otay Mesa Detention Center in San Diego, California. Petitioner had not been in removal proceedings prior to his detention in February 2025.

27. Petitioner was detained by Respondents without any ability to explain his previous history in the United States.

28. Petitioner is not married.

1 29. In 2009, Petitioner was convicted of possession of cocaine with intent
2 to distribute. He served the sentence imposed by the criminal court, including
3 incarceration, probation, and mandated classes. Respondents now rely on that
4 conviction to charge removability and support detention. Nevertheless, Petitioner
5 has substantial equities, including long residence in the United States, family ties,
6 rehabilitation, and documented medical and mental-health needs. Petitioner has
7 many family members with status in the United States: an elderly father with Lawful
8 Permanent Residence Status; a United States citizen mother; a United States citizen
9 daughter; and United States citizen aunts, uncles, and cousins. He was not in
10 removal proceedings until he was detained in February 2025 from his home and
11 taken into Respondents' custody.
12

13 30. Since the detention in February 2025, Mr. Burton has remained in
14 Respondents' custody.
15

16 31. Mr. Burton is currently residing in Respondents' custody at Otay Mesa
17 Detention Center in San Diego, California, as of the time of the filing of this
18 petition.
19

20 32. Respondent Christopher LaRose ("LaRose") is the Senior Warden at
21 Otay Mesa Detention Center in San Diego, California, where Mr. Burton is
22 detained. Mr. LaRose is responsible for the day-to-day operations and confinement
23 of non-citizens detained at that facility. He acts at the direction of Respondents
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1 Divver, Lyons, and Mullin. Mr. LaRose is a custodian of Mr. Burton and is named
2 in his official capacity.

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4 33. Respondent Patrick Divver ("Divver") is the Field Office Director of
5 ICE in San Diego, California. He acts at the direction of Respondents Lyons and
6 Mullin. ICE is responsible for local custody decisions relating to non-citizens
7 charged with being removable from the U.S., including the arrest, detention,
8 custody status, and removal of non-citizens. The San Diego Field Office's area of
9 responsibility includes San Diego and Imperial Counties in California. Respondent
10 Divver is a custodian of Mr. Burton and is named in his official capacity.
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13 34. Respondent Todd Lyons ("Lyons") is the Acting Director of ICE, and
14 he has authority over the actions of Respondents LaRose and Divver. ICE is
15 responsible for local custody decisions relating to non-citizens charged with being
16 removable from the U.S., including the arrest, detention, custody status, and
17 removal of non-citizens. Respondent Lyons is a custodian of Mr. Burton and is
18 named in his official capacity.
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21 35. Respondent Markwayne Mullin ("Mullin") is the Secretary of DHS
22 and has authority over the actions of all other DHS Respondents in this case, as well
23 as all operations and federal agencies of DHS, including ICE. In his capacity as
24 Secretary of DHS, Respondent Mullin is charged with faithfully administering the
25 immigration and naturalization laws of the United States. 8 U.S.C. § 1103(a).
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1 Respondent Mullin is a custodian of Mr. Burton and is named in his official
2 capacity.

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4 36. Respondent ICE is responsible for local custody decisions relating to
5 non-citizens charged with being removable from the U.S., including the arrest,
6 detention, custody status, and removal of non-citizens.

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8 37. Respondent DHS is the federal agency that has authority over the
9 actions of ICE and all other DHS Respondents.

10 38. This action is commenced against Respondents LaRose, Divver,
11 Lyons, and Mullin (collectively, "Respondents") all in their official capacities.

12
13 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

14 39. The Refugee Act of 1980, the cornerstone of the U.S. asylum system,
15 provides a right to apply for asylum to individuals seeking safe haven in the United
16 States. The purpose of the Refugee Act is to enforce the "historic policy of the
17 United States to respond to the urgent needs of persons subject to persecution in
18 their homelands." Refugee Act of 1980, § 101(a), Pub. L. No. 96-212, 94 Stat. 102
19 (1980).

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21
22 40. The "motivation for the enactment of the Refugee Act" was the United
23 Nations Protocol Relating to the Status of Refugees, "to which the United States
24 had been bound since 1968." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432–33
25 (1987). The Refugee Act reflects a legislative purpose "to give 'statutory meaning
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1 to our national commitment to human rights and humanitarian concerns.” *Duran*
2 v. *INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

3
4 41. The Refugee Act established the right to apply for asylum in the United
5 States and defined the standards for granting asylum. It is codified in various
6 sections of the INA.

7
8 42. The INA gives the Attorney General or the Secretary of Homeland
9 Security discretion to grant asylum to noncitizens who satisfy the definition of
10 “refugee.” Under that definition, individuals generally are eligible for asylum if they
11 have experienced past persecution or have a well-founded fear of future persecution
12 on account of race, religion, nationality, membership in a particular social group, or
13 political opinions and if they are unable or unwilling to return to and avail
14 themselves of the protection of their homeland because of that persecution or fear.
15
16 8 U.S.C. § 1101(a)(42)(A).

17
18 43. Although a grant of asylum may be discretionary, the right to apply for
19 asylum is not. The Refugee Act broadly affords a right to apply for asylum to any
20 noncitizen “who is physically present in the United States or who arrives in the
21 United States[.]” 8 U.S.C. § 1158(a)(1).

22
23
24 44. Because of the life-or-death stakes, the statutory right to apply for
25 asylum is robust. The right necessarily includes the right to counsel, at no expense
26 to the government, see 8 U.S.C. §§ 1229a(b)(4)(A), 1362, the right to notice of the
27

1 right to counsel, *see* 8 U.S.C. § 1158(d)(4), and the right to access information in
2 support of an application, *see* § 1158(b)(1)(B) (placing the burden on the applicant
3 to present evidence to establish eligibility.).
4

5 45. Noncitizens seeking asylum are guaranteed Due Process under the
6 Fifth Amendment to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306
7 (1993).
8

9 46. Noncitizens who are applicants for asylum are entitled to a full hearing
10 in immigration court before they can be removed from the United States. 8 U.S.C.
11 § 1229a. Consistent with due process, noncitizens may seek administrative
12 appellate review before the Board of Immigration Appeals of removal orders
13 entered against them and judicial review in federal court upon a petition for review.
14
15 8 U.S.C. § 1252(a) et seq.
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17 47. DHS placed Mr. Burton in removal proceedings under INA § 240, 8
18 U.S.C. § 1229a, and the Notice to Appear alleges removability based on criminal
19 grounds under INA §§ 237(a)(2)(A)(iii) and 237(a)(2)(B)(i). Thus, the relevant
20 custody question is whether Respondents may continue to detain him under INA §
21 236, 8 U.S.C. § 1226, without the meaningful procedural safeguards required when
22 civil detention becomes prolonged.
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25 48. DHS may rely on certain criminal convictions to assert mandatory
26 detention under 8 U.S.C. § 1226(c). But mandatory detention does not transform
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1 immigration custody into punishment; it remains civil detention and must be
2 reasonably related to the government's legitimate purposes of ensuring appearance
3 at proceedings and protecting the community.
4

5 49. The Supreme Court has recognized that immigration detention is
6 constitutionally limited because freedom from bodily restraint lies at the core of the
7 liberty protected by the Due Process Clause. *See Zadvydas v. Davis*, 533 U.S. 678,
8 690 (2001). Prolonged detention without a meaningful opportunity to contest
9 custody implicates that liberty interest.
10

11 50. Accordingly, when detention becomes prolonged, due process requires
12 a meaningful opportunity to be heard, an individualized assessment of flight risk
13 and danger, and consideration of less restrictive alternatives. A custody decision
14 that relies categorically on a stale conviction without considering current
15 circumstances is arbitrary and constitutionally suspect.
16

17 51. Here, Mr. Burton has been detained since February 2025. Respondents
18 have not provided a constitutionally adequate hearing at which the government
19 bears the burden of proving that continued detention is necessary, even after
20 consideration of alternatives to detention and conditions of release.
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22 52. Mr. Burton's immigration case also involves claims for withholding of
23 removal and protection under the Convention Against Torture. Those claims require
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1 the opportunity to consult with counsel, gather evidence, present testimony and
2 supporting documentation, and pursue administrative review.

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4 53. Detention has materially impaired Mr. Burton's ability to participate
5 in those proceedings and to obtain consistent medical and mental-health treatment.
6 The Court should therefore evaluate his custody under the statutes and
7 constitutional principles governing prolonged detention in removal proceedings.
8

9 54. A continued custody decision must be supported by a reasoned
10 explanation and substantial evidence. Respondents must consider Mr. Burton's
11 current circumstances, including his decades-long residence in the United States,
12 family ties, health conditions, mental-health safeguards ordered in immigration
13 court, and the lack of any individualized finding that he currently presents a flight
14 risk or danger.
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17 55. The government's interest in enforcing the immigration laws does not
18 permit indefinite or unduly prolonged detention without adequate process. Nor may
19 Respondents rely solely on the existence of a removable offense to avoid a
20 meaningful custody redetermination once detention has become prolonged.
21

22 56. Mr. Burton does not ask this Court to decide the merits of his removal
23 case. Rather, he seeks habeas and equitable relief requiring Respondents to justify
24 his continued civil detention through constitutionally adequate procedures and to
25 provide access to necessary medical records and care.
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1 57. Thus, consistent with long-standing habeas principles, this Court
2 should require Respondents to provide a prompt, meaningful bond or custody
3 redetermination hearing, or release Mr. Burton under appropriate conditions of
4 supervision.
5

6 58. Immigration detention should not be used as a punishment and should
7 only be used when, under an individualized determination, a noncitizen is a flight
8 risk because they are unlikely to appear for immigration court or a danger to the
9 community. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). In *Zadvydas*, the
10 Supreme Court rejected the argument that § 1231(a)(6) detainees possess no liberty
11 interest in freedom from civil detention merely because they lack a legal right to
12 live at large in the United States. 533 U.S. 678, 690 (2001). This liberty interest
13 applies not only to indefinite detention, but also to prolonged detention.
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17 59. On information and belief, Mr. Burton alleges that Respondents
18 continue to detain him categorically based on the alleged criminal-removability
19 grounds, without adequate consideration of his current risk, medical and
20 psychological circumstances, family ties, or alternatives to detention. Since
21 February 2025, Mr. Burton has been subject to prolonged detention without
22 adequate relief or a meaningful opportunity to present why he should be able to
23 pursue immigration relief outside detention.
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1 60. On information and belief, Respondents are using prolonged detention
2 and potential extra-territorial transfer as a means to pressure or punish individuals
3 such as Mr. Burton for asserting rights under the INA and the Refugee Act. Mr.
4 Burton is in section 240 removal proceedings, has lived in the United States for
5 most of his life, and has requested withholding of removal and protection under the
6 Convention Against Torture. Without a meaningful custody hearing and
7 explanation of the basis for continued detention, Respondents unlawfully continue
8 to detain him for a prolonged period in their custody.
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12 **FACTUAL BACKGROUND**

13 61. Mr. Burton (“Petitioner”) is a 39-year-old citizen of Antigua &
14 Barbuda.
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16 62. Mr. Burton sought withholding of removal, or protection under the
17 Convention Against Torture on June 12, 2025, for fear of returning to Antigua &
18 Barbuda on account of his LGBT membership and his religion. Mr. Burton is a
19 LGBT male and fears future persecution on account of his sexuality. Mr. Burton
20 has lived in the United States for the majority of his life.
21

22 63. Petitioner first entered the United States as a child and later adjusted
23 to LPR status on January 7, 2005. DHS alleges that Petitioner is removable based
24 on his 2009 controlled-substance conviction and may assert mandatory detention
25 due to that criminal history. Despite those allegations, Petitioner is entitled to
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1 exhaust his remedies, pursue his pending appeal, and bring this habeas petition
2 seeking immediate release or, at minimum, a constitutionally adequate custody
3 redetermination/bond hearing after prolonged detention.
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5 64. In February 2025, Petitioner was awoken at his home by ICE officers
6 and was taken into Respondents' custody at Otay Mesa Detention Center.
7 Petitioner's father opened the door and was greeted by several officers. The officers
8 stated that they were looking for the owner of the family car and that the car was
9 allegedly involved in a criminal investigation. Petitioner stepped outside to speak
10 with the officers and was handcuffed and taken into ICE custody. Even after asking
11 what the allegations were, Respondents did not give Petitioner a meaningful
12 explanation of the reasons for his immigration custody or continued prolonged
13 detention.
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17 65. Petitioner adjusted to LPR status on January 7, 2005.
18 DHS has alleged that his criminal record, rather than inability to renew his Form I-
19 551 while detained, is the basis for removability and detention. Petitioner, through
20 his undersigned counsel, submitted his application for Withholding of Removal and
21 Protection under the Convention Against Torture on June 12, 2025. On October 22,
22 2025, Petitioner was ordered removed to Antigua & Barbuda after the Immigration
23 Judge denied Petitioner's request for relief. Petitioner is in the process of appealing
24 said decision.
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1 66. The DHS started this removal proceeding in February 2025.

2 67. Respondents charged him as removable under INA §§
3
4 237(a)(2)(A)(iii) and 237(a)(2)(B)(i), based on alleged aggravated-felony and
5 controlled-substance grounds arising from his criminal record.

6 68. Petitioner has severe obstruction sleep apnea. Petitioner conducted an
7
8 overnight sleep study while in Respondent's custody and was diagnosed with
9 severe obstruction sleep apnea. The hospital staff suggested Petitioner should use
10 a CPAP machine to help with his medical condition. Petitioner requested a CPAP
11 machine numerous times from Respondents and the Otay Mesa Detention Center
12 staff. However, Petitioner has been waiting for over a year for this CPAP device.¹
13
14 As such, Respondents have failed to provide Petitioner with adequate medical care
15 during his detention.
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17 69. Mr. Burton remains in Respondents' legal and physical custody at
18 Otay Mesa Detention Center, in San Diego, California.
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24 ¹ Without the prescribed CPAP, severe obstructive sleep apnea can lead to dangerous and
25 sometimes life-threatening complications that may include: heart damage and heart failure; and
26 sudden cardiac death. *See Obstructive Sleep Apnea (OSA)*, Cleveland Clinic,
27 <https://my.clevelandclinic.org/health/diseases/24443-obstructive-sleep-apnea-osa> (last updated
28 Dec. 4, 2024) (last accessed Mar. 24, 2026).

CAUSES OF ACTION

COUNT ONE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Prolonged Detention

70. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

71. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).

72. Once a removal proceeding has been initiated under INA § 240, Respondents must ground any detention decision in the detention authority that actually applies to Petitioner. Here, Respondents rely on criminal-removability charges under INA § 237, not on a failure to renew LPR documentation while in detention. Any continued custody decision must comply with the INA, implementing regulations, the APA, and the Constitution.

73. Respondents may assert custody authority under INA § 236(c), 8 U.S.C. § 1226(c), because of Petitioner’s criminal record. However, that asserted authority does not eliminate the requirement that prolonged detention be justified by a lawful and reasoned custody determination consistent with due process.

1 74. It is a well-established administrative principle that “agency action
2 taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v.*
3 *Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), (citing *SW General, Inc. v. NLRB*,
4 796 F.3d 67, 79 (D.C. Cir. 2015)); *see also Hooks v. Kitsap Tenant Support Servs.,*
5 *Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was
6 taken by unauthorized official).
7

9 75. Under the APA, an agency must provide “reasoned explanation for its
10 action” and “may not depart from a prior policy sub silentio or simply disregard
11 rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502,
12 515 (2009). On information and belief, Respondents have maintained Mr. Burton’s
13 prolonged detention categorically, without a reasoned explanation addressing his
14 long residence, family and community ties, medical and mental-health needs,
15 rehabilitation, and the lack of a current individualized finding that he is a flight risk
16 or danger. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5
17 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to meet an administrative
18 quota, or because the government has not yet established constitutionally required
19 pre-detention procedures is not a legitimate government interest.”).
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24 76. In deciding to detain and continue detaining Mr. Burton, Respondents
25 further violated the APA by “entirely fail[ing] to consider an important aspect of
26 the problem” – namely, the important procedural rights and liberty interests
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1 implicated by prolonged civil immigration detention. *See Motor Vehicle Mfrs. Ass'n*
2 *of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also*
3 *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24–33
4 (2020) (holding that rescission of immigration policy without considering
5 “particular reliance interests” is arbitrary and capricious in violation of the APA).
6

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8 77. The arbitrary and capricious detention of Mr. Burton was not
9 supported by a reasoned, individualized custody determination and causes Mr.
10 Burton irreparable harm.
11

12 78. DHS’s theory, as reflected in the Notice to Appear, is that Mr. Burton
13 is removable based on criminal grounds under INA § 237(a)(2). Mr. Burton’s
14 habeas claim therefore focuses on unlawful prolonged detention and the denial of a
15 meaningful custody hearing, not on any lack of opportunity to renew LPR
16 documentation. Without a formal and meaningful custody hearing, Respondents
17 continue to detain Petitioner in violation of the APA.
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20 79. Additionally, the original and continued, prolonged detention is
21 contrary to the powers permitted to Respondents under the APA. Petitioner was a
22 LPR when he was detained by Respondents in February 2025, and DHS alleges
23 removability based on criminal grounds. Respondents’ continued detention of
24 Petitioner, for more than fifteen months, without due process and credit to his
25 particular facts, is an abuse of discretion and power under the APA.
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1 80. Petitioner has demonstrated that he remains interested in seeking
2 immigration relief in the United States as he filed a I-589 application for
3 withholding of removal and protection under the C.A.T. shortly after he was
4 detained. For these reasons, the Court should find that the decision to detain Mr.
5 Burton is arbitrary, capricious, and unsupported by substantial evidence as
6 Respondents fail to consider his continuous presence in the United States and
7 compliance with court mandated appearances. *See* 5 U.S.C. § 706(2)(A), (E).
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10 **COUNT TWO**

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12 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in**
13 **Accordance with Law and in Excess of Statutory Authority, Unlawful**
14 **Detention**

15 81. Petitioner restates, realleges, and incorporates by reference each and
16 every allegation in the paragraphs above as if fully set forth herein.

17 82. Under the APA, a court shall “hold unlawful and set aside agency
18 action...” that is “...(A) arbitrary, capricious, an abuse of discretion, or otherwise
19 not in accordance with law; (B) contrary to constitutional right, power, privilege, or
20 immunity...” 5 U.S.C. § 706(2)(A)-(B).
21

22 83. An action is an abuse of discretion if the agency “entirely failed to
23 consider an important aspect of the problem, offered an explanation for its decision
24 that runs counter to the evidence before the agency, or is so implausible that it could
25 not be ascribed to a difference in view or the product of agency expertise.” *Nat’l*
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1 *Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting
2 *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.
3 29, 43 (1983)).

4
5 84. To survive an APA challenge, the agency must articulate “a
6 satisfactory explanation” for its action, “including a rational connection between
7 the facts found and the choice made.” *Dep’t of Com. v. New York*, 588 U.S. 752,
8 773 (2019) (citation omitted).

9
10 85. Under the APA, non-citizens are entitled to determinations related to
11 their release revocations that are not arbitrary, capricious or an abuse of discretion.

12
13 86. By detaining Mr. Burton without adequate notice or consideration of
14 his individualized facts and circumstances, Respondents have violated the INA,
15 implementing regulations, and the APA. Mr. Burton has lived in the United States
16 for the majority of his life and adjusted to LPR status on January 7, 2005. DHS now
17 relies on his criminal record as the basis for removability and detention. But
18 Respondents have failed to conduct a meaningful individualized assessment of his
19 current circumstances, including long residence, family ties, compliance with prior
20 proceedings, medical and mental-health needs, and alternatives to detention. For
21 these reasons, continued detention without a meaningful custody hearing is
22 arbitrary, capricious, and an abuse of discretion.
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1 87. Respondents rely on Petitioner's criminal record to justify detention.
2 Petitioner acknowledges the 2009 controlled-substance conviction cited in the
3 Notice to Appear and the government may argue that he is subject to mandatory
4 detention based on that history. Nevertheless, Petitioner completed the sentence
5 imposed for that conviction and has substantial evidence of rehabilitation, family
6 support, and medical and psychological vulnerability. Respondents have not made
7 an individualized, current finding that no condition of release could mitigate any
8 risk. Petitioner is entitled to exhaust his remedies by bringing this habeas petition
9 and seeking immediate release or release on appropriate conditions after a
10 meaningful custody redetermination.

14 88. Respondents have made no finding that Petitioner is a flight risk.

16 89. On information and belief, by detaining Mr. Burton categorically and
17 without notice, Respondents have further abused their discretion because, since the
18 agency made its initial custody determination, on information and belief, there have
19 been no changes to Mr. Burton's specific facts or circumstances that support his
20 detention for more than fifteen months.

22 90. Petitioner is still in DHS custody and requests release due to his
23 medical complications. His release is justified on medical grounds, and Petitioner
24 poses no danger or flight risk. Absent intervention by this Court, Petitioner cannot
25 and will not be released to seek medical attention for his severe obstruction sleep

1 apnea, nor will he be able to obtain copies of the medical records from Otay Mesa
2 Detention Center concerning his medical complications. Petitioner has expressed
3 concern regarding his medical condition and access to care sufficient to manage
4 his severe obstruction sleep apnea while his Respondents' custody. Though
5 Petitioner has expressed these concerns to Respondents, Respondents continue to
6 deprive Petitioner of meaningful or adequate medical care.
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9 91. Additionally, Mr. Burton's continued detention is independently
10 unlawful because Respondents are confining an individual with a serious,
11 documented mental illness without the procedural safeguards the Constitution
12 requires. Mr. Burton has been diagnosed with schizophrenia since 2017, is
13 prescribed Olanzapine to manage his condition, and has required prior
14 hospitalization. He regularly experiences auditory hallucinations that distort his
15 perception of reality and prevent him from meaningfully participating in his own
16 proceedings. On March 25, 2025, the Immigration Justice Project formally
17 submitted a Notice of Respondent with Indicia of Mental Incompetence to the
18 immigration court, and undersigned counsel's own visitation with Mr. Burton has
19 confirmed these concerns. On July 10, 2025, the Immigration Judge granted
20 safeguards for Petitioner due to his psychological conditions. However, through
21 Petitioner's continuous and prolonged detention, his psychological conditions
22 have not been appropriately treated.
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1 For these reasons, this Court should order Mr. Burton's immediate release.

2 92. Not only is Petitioner unlawfully detained as Respondents have failed
3 to demonstrate he poses a danger to the community or that he is a flight risk,
4 Respondents also have failed to provide adequate medical care to Petitioner while
5 in their custody.
6

7 93. Petitioner asks this Court to find the conditions of his detention to be
8 contrary to the APA and requests his release from their custody.
9

10 **COUNT THREE**

11 **Violation of Fifth Amendment Right to Due Process – Procedural Due**
12 **Process, U.S. Const. Amend. V.**

13 94. Petitioner restates, realleges, and incorporates by reference each and
14 every allegation in the paragraphs above as if fully set forth herein.
15

16 95. The government may not deprive a person of life, liberty, or property
17 without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—
18 from government custody, detention, or other forms of physical restraint—lies at
19 the heart of the liberty that the Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678,
20 690 (2001).
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22 96. Mr. Burton has a fundamental interest in liberty and being free from
23 official restraint.
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1 97. The government's detention of Petitioner without notice or an
2 opportunity to be heard before detention violates his right to due process.

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4 98. The government's prolonged detention of Petitioner without a
5 meaningful bond hearing to determine whether he is a flight risk or danger to others
6 violates his right to due process.

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8 99. In February 2025, Petitioner was awoken at his home by ICE officers
9 and taken into Respondents' custody at Otay Mesa Detention Center. Petitioner was
10 not provided a meaningful explanation of the basis for custody at the time of
11 detention or a meaningful opportunity to address why his prolonged detention was
12 unjustified.

13
14 100. Respondents allege that Petitioner is removable based on his criminal
15 record, including the controlled-substance conviction cited in the Notice to Appear.
16 However, Petitioner was a longtime LPR and remained entitled to constitutionally
17 adequate process before continued prolonged detention. Respondents failed to
18 provide a meaningful opportunity to address his lawful history in the United States,
19 his current risk profile, his medical and mental-health conditions, and alternatives
20 to detention.

21
22 101. For these reasons, the Court should find that the decision to continue
23 detaining Mr. Burton without a meaningful bond or custody redetermination
24 hearing violates his Fifth Amendment due process rights.

PRAYER FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;
- (3) Declare that Petitioner's detention without an individualized determination violates the Due Process Clause of the Fifth Amendment;
- (4) Declare that refusal to allow Petitioner a meaningful bond hearing violates the INA, APA, and Due Process;
- (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from custody;
- (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this district without the Court's approval;
- (7) Issue an Order requiring Respondents to provide a bond and custody redetermination hearing within 14 days to meaningfully consider his eligibility for release from DHS custody.
- (8) Grant Petitioner a preliminary injunction to obtain copies of his relevant medical records from Otay Mesa Detention Center.
- (9) Award Petitioner's counsel reasonable attorney's fees and costs under Equal Access to Justice Act, and on any other basis justified under law;
- (10) Grant such further relief as the Court deems just, equitable, and appropriate; and
- (11) Grant any and all other further relief this Court deems just or proper.

1 Dated: 4/24/2026

Respectfully Submitted,

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3 *//s// John Wells*

4 _____
5 John Wells, Esq.
6 Attorney for Petitioner
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