

1 Magomed Esendirov, Esq. (CA SBN: 363301)  
2 Musaev & Associates, PC  
3 409 N Camden Dr., Suite 108  
4 Beverly Hills, CA 90210  
5 esendirov@musaev.com  
6 tel: (424) 599-6556

7 *Attorney for Petitioner*

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

10 Shamil Masakov

11 Petitioner,

12 v.


13 Christopher J. LaRose, Warden of the Otay  
14 Mesa Detention Center in San Diego,  
15 California; Todd M. Lyons, Director, U.S.  
16 Immigration and Customs Enforcement;  
17 Markwayne Mullin, Secretary, Department of  
18 Homeland Security; Todd Blanche, Attorney  
19 General of the United States; and Field Office  
20 Director, ICE San Diego Field Office.

21 Respondents.

CASE No. **'26CV2824 BAS DEB**

**PETITION FOR WRIT OF HABEAS  
CORPUS**

**INTRODUCTION**

1. Petitioner Shamil Masakov ("Petitioner") seeks a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his ongoing civil immigration detention at the Otay Mesa Detention Center in San Diego, California.
2. Petitioner is a citizen and national of the Russian Federation, born  in the Chechen Republic.
3. Petitioner applied for admission to the United States on September 5, 2021, at the San Ysidro Port of Entry. On that same date, the Department of Homeland Security issued a Notice to Appear ("NTA"), charging Petitioner with inadmissibility under INA § 212(a)(7)(A)(i)(I) for arriving without valid entry documents.
4. Following his entry and issuance of the NTA, Petitioner was paroled into the United States. His Form I-94 reflects an admission class of "DT" (deferred inspection / parole) and an Admit Until Date of September 3, 2022. That release reflected an affirmative government determination that Petitioner had established his identity, was likely to appear for all scheduled hearings, and did not present a security risk or danger to the community.
5. Following his release, Petitioner filed a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture. Petitioner has at all times sought to pursue his protection claims on the merits.
6. Prior to his February 2026 re-detention, Petitioner had lived in the United States as a non-detained respondent for more than four years. He had no criminal history of any kind, no arrests, no criminal charges, and no alleged violation of any condition of his release. He was at all times in compliance with his immigration parole and the requirements of his pending removal proceedings.
7. In April 2025, after his family's relocation to Illinois, Petitioner personally traveled to the Van Nuys Immigration Court and, at the Court's filing window, filed (1) a Form EOIR-

1 33/IC notifying the Court of his new address in Vernon Hills, Illinois, and (2) a written  
2 motion to change venue to the appropriate Immigration Court in Illinois. Petitioner  
3 thereafter received no further communications from the Immigration Court—no Notice of  
4 Hearing, no ruling on his motion to change venue, no correspondence of any kind.

5 8. On information and belief, the Van Nuys Immigration Court nevertheless held a hearing in  
6 Petitioner's absence on February 2, 2026, and entered an in absentia removal order.  
7 Petitioner did not learn that any hearing had been scheduled or that any order had been  
8 entered until after he was taken into immigration custody.

9 9. On February 19, 2026, U.S. Immigration and Customs Enforcement ("ICE") detained  
10 Petitioner. ICE provided no advance notice, no written reasons, no individualized  
11 determination that Petitioner had become a danger to the community or a flight risk, and  
12 no opportunity to be heard before a neutral decisionmaker. Petitioner has been detained at  
13 the Otay Mesa Detention Center since shortly after that date.

14 10. On April 28, 2026, Petitioner filed before the Van Nuys Immigration Court a motion to  
15 reopen and rescind the in absentia removal order, premised on lack of notice under INA §  
16 240(b)(5)(C)(ii) and, in the alternative, on exceptional circumstances. By statute, the filing  
17 of that motion stays Petitioner's removal pending the Immigration Judge's disposition. INA  
18 § 240(b)(5)(C). That motion remains pending.

19 11. As of the date of this filing, Petitioner has received no individualized custody determination  
20 on the merits of his re-detention. No neutral decisionmaker has ever assessed, on the merits,  
21 whether he poses a flight risk or danger to the community sufficient to justify his civil  
22 detention. His re-detention was not triggered by any criminal conduct, any release  
23 violation, or any individualized finding of dangerousness or flight risk—it was triggered  
24 by an in absentia order entered in proceedings of which Petitioner had no notice, in a court  
25 he had asked, in person, to transfer venue away from.

1 12. Petitioner respectfully requests that this Court order his immediate release, and/or order  
2 constitutionally adequate process, including a prompt custody hearing before a neutral  
3 decisionmaker where the government bears the burden to justify his re-detention.

4 13. The Due Process Clause applies to "all 'persons' within the United States, including  
5 [noncitizens], whether their presence here is lawful, unlawful, temporary, or  
6 permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from bodily restraint  
7 has always been at the core of the liberty protected by the Due Process Clause from  
8 arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

9 14. Immigration detention is civil and thus is permissible for only two reasons: to ensure a  
10 noncitizen's appearance at immigration hearings and to prevent danger to the  
11 community. *Zadvydas*, 533 U.S. at 690. Here, Petitioner has no criminal history, lived in  
12 the United States openly for more than four years without incident, was paroled by the  
13 government on the determination that he was neither a danger nor a flight risk, traveled  
14 across the country to update his address with the Court, and is the spouse of a derivative  
15 protection applicant who resides with him. He does not present a flight risk or danger to  
16 the community. His detention is thus not justified under the Constitution. *See id.*

17 15. Additionally, because Petitioner was previously paroled into the United States by the  
18 government, he possesses a protected liberty interest in his conditional freedom that cannot  
19 be revoked without a pre-deprivation hearing. *See Morrissey v. Brewer*, 408 U.S. 471, 482  
20 (1972). The government's re-detention of Petitioner—without notice, without written  
21 reasons, without changed circumstances, without any individualized assessment of flight  
22 risk or danger, and on the basis of an in absentia order entered in proceedings of which he  
23 had no actual or constructive notice—violates both substantive and procedural due process.

24 16. Petitioner respectfully seeks a writ of habeas corpus ordering the government to  
25 immediately release him from his ongoing, unlawful detention, and prohibiting his re-arrest  
26 without a hearing before a neutral decisionmaker. In addition, to preserve this Court's  
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1 jurisdiction, Petitioner also requests that this Court order the government not to transfer  
2 him outside of the District or deport him for the duration of this proceeding.

3 **JURISDICTION AND VENUE**

4 17. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),  
5 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28  
6 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension  
7 Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701–  
8 706 (Administrative Procedure Act).

9 18. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C.  
10 § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district at the  
11 Otay Mesa Detention Center.

12 **PARTIES**

13 19. Petitioner Shamil Masakov is a citizen and national of the Russian Federation, born on  
14  bearing Alien Registration Number  He is currently detained  
15 at the Otay Mesa Detention Center, San Diego, California.

16 20. Respondent the Field Office Director of the San Diego Immigration and Customs  
17 Enforcement Field Office is responsible for administering and enforcing the immigration  
18 laws and detention policies within ICE ERO's San Diego Area of Responsibility, which  
19 includes the facility where Petitioner is detained. He/she maintains an office and conducts  
20 official business within this District. He/she is sued in his/her official capacity.

21 21. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official  
22 Performing the Duties of the Director of ICE, he is responsible for the administration and  
23 enforcement of the immigration laws of the United States; routinely transacts business in  
24 this District; and is legally responsible for pursuing any effort to detain and remove the  
25 Petitioner. Respondent Lyons is sued in his official capacity.

1 22. Respondent Markwayne Mullin is the Secretary of Homeland Security and has ultimate  
2 authority over DHS. In that capacity and through her agents, Respondent Noem has broad  
3 authority over and responsibility for the operation and enforcement of the immigration  
4 laws; routinely transacts business in this District; and is legally responsible for pursuing  
5 any effort to detain and remove the Petitioner. Respondent Mullin is sued in her official  
6 capacity.

7 23. Respondent Todd Blanche is the Attorney General of the United States and the most senior  
8 official at the Department of Justice. In that capacity and through her agents, she is  
9 responsible for overseeing the implementation and enforcement of the federal immigration  
10 laws. The Attorney General delegates this responsibility to the Executive Office for  
11 Immigration Review, which administers the immigration courts and the BIA. Respondent  
12 Blanche is sued in her official capacity.

13 24. Christopher J. LaRose is the Warden of the Otay Mesa Detention Center in San Diego,  
14 California, and is responsible for the custody and supervision of individuals detained at  
15 that facility, including Petitioner. He is sued in his official capacity as Petitioner's  
16 immediate custodian.

#### 17 EXHAUSTION

18 25. There is no requirement to exhaust because no other forum exists in which Petitioner can  
19 raise the claims herein. There is no statutory exhaustion requirement prior to challenging  
20 the constitutionality of an arrest or detention, or challenging a policy under the  
21 Administrative Procedure Act. Prudential exhaustion is not required here because it would  
22 be futile, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial  
23 consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further  
24 exhaustion requirements would be unreasonable.

#### 25 LEGAL BACKGROUND

1 **A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and**  
2 **Detention.**

3 26. The Constitution establishes due process rights for "all 'persons' within the United States,  
4 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or  
5 permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*,  
6 533 U.S. at 693). These due process rights are both substantive and procedural.

7 27. *First*, "[t]he touchstone of due process is protection of the individual against arbitrary  
8 action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the  
9 exercise of power without any reasonable justification in the service of a legitimate  
10 government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

11 28. These protections extend to noncitizens facing detention, as "[i]n our society liberty is the  
12 norm, and detention prior to trial or without trial is the carefully limited exception." *United*  
13 *States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom from  
14 imprisonment—from government custody, detention, or other forms of physical restraint—  
15 lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S.  
16 at 690.

17 29. Substantive due process requires that all forms of civil detention, including immigration  
18 detention, bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*,  
19 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-  
20 punitive purposes for immigration detention: ensuring a noncitizen's appearance at  
21 immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at  
22 690–92; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 531 (2003).

23 30. Critically, immigration detention cannot be justified as "preventive" unless the government  
24 makes an individualized showing, supported by clear and convincing evidence, that the  
25 specific detainee poses a present danger to the community or a flight risk. *Singh v. Holder*,  
26 638 F.3d 1196, 1203–05 (9th Cir. 2011). Here, no such showing has been made—and on  
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1 these facts, none could be. Petitioner has no criminal history, lived openly in the United  
2 States for more than four years without incident, has a pending I-589, has a wife who lives  
3 with him, and traveled across the country to inform the very Immigration Court designated  
4 in his NTA of his change of address.

5 31. *Second*, the procedural component of the Due Process Clause prohibits the government  
6 from imposing even permissible physical restraints without adequate procedural  
7 safeguards. Generally, "the Constitution requires *some kind of a hearing* before the State  
8 deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990)  
9 (emphasis added). This is especially true where, as here, the government seeks to revoke  
10 an existing liberty interest—Petitioner's parole—on the basis of an in absentia removal  
11 order entered in proceedings of which Petitioner had no actual or constructive notice.

12 32. DHS regulations provide that ICE may release a noncitizen on bond or parole only upon a  
13 determination that "such release would not pose a danger to property or persons, and that  
14 the [noncitizen] is likely to appear for any future proceedings." 8 C.F.R. § 236.1(c)(8).  
15 Where the government previously made that affirmative determination—as it did here  
16 when it paroled Petitioner into the United States in September 2021—it cannot silently  
17 reverse course years later without identifying any changed circumstance. The mere  
18 existence of an in absentia order, particularly where that order is itself the subject of a  
19 meritorious motion to reopen for lack of notice, does not establish that the prior parole  
20 determination was wrong, much less that Petitioner now presents a danger or flight risk  
21 justifying ongoing confinement.

22 33. After an initial release from custody on conditions, a person has a protected liberty interest  
23 in that conditional release that cannot be revoked without process. *Morrissey v. Brewer*,  
24 408 U.S. 471, 482 (1972). As the Supreme Court recognized, "[t]he parolee has relied on  
25 at least an implicit promise that parole will be revoked only if he fails to live up to the  
26 parole conditions." *Id.* "By whatever name, the liberty is valuable and must be seen within  
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1 the protection of the [Constitution]." *Id.* This reasoning applies with full force to Petitioner,  
2 who was paroled into the United States, complied with all conditions of that parole for  
3 more than four years, and was re-detained without notice or an opportunity to be heard.  
4 "[G]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens  
5 released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*,  
6 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

7 ***B. The Government's Re-Detention of Petitioner After Years of Liberty, Without Notice,***  
8 ***Reasons, Changed Circumstances, or a Hearing Violates Due Process.***

9 34. Recent decisions from this District confirm that the government violates the Due Process  
10 Clause when it re-detains a noncitizen who has previously been released, without providing  
11 notice, written reasons, evidence of changed circumstances, an individualized  
12 determination of danger or flight risk, or a meaningful opportunity to be heard. *See Isaev*  
13 *v. LaRose* (S.D. Cal.) (granting habeas where previously paroled petitioner was re-detained  
14 without notice, reasons, or an opportunity to be heard, and ordering immediate release  
15 subject to prior parole conditions); *Nayem v. LaRose* (S.D. Cal.) (granting habeas where  
16 petitioner was re-arrested without evidence of an individualized determination that the  
17 circumstances originally justifying release had changed, that he had violated release  
18 conditions, or that he was a danger or flight risk—even where the original parole period  
19 had since expired); *Besalti v. LaRose* (S.D. Cal.) (procedural due process rights arise from  
20 existing conditional parole, and re-detention without notice or opportunity to be heard  
21 violates the Due Process Clause); *Guerrero Urbina v. LaRose* (S.D. Cal.) (ordering  
22 immediate release subject to prior release conditions where the government re-detained a  
23 noncitizen previously released without complying with constitutional process).

24 35. These cases articulate a clear due-process rule: once the government has affirmatively  
25 released a noncitizen into the community, the noncitizen acquires a protected liberty  
26 interest in that conditional freedom, and the government cannot strip that interest away

1 years later without identifying a material change in circumstances and providing a  
2 constitutionally adequate hearing. The rule applies whether the original release was on  
3 bond, on conditional parole, or on parole through the inspection process at a port of  
4 entry. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom.*  
5 *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) ("[O]nce a noncitizen has been  
6 released, the law prohibits federal agents from rearresting him merely because he is subject  
7 to removal proceedings. Rather, the federal agents must be able to present evidence of  
8 materially changed circumstances—namely, evidence that the noncitizen is in fact dangerous  
9 or has become a flight risk, or is now subject to a final order of removal.").

10 36. Courts have made clear that due process requires not only "changed circumstances" but  
11 also "evidence of urgent concerns" before a person previously released on parole or  
12 recognizance can be re-detained without a pre-deprivation hearing. *See Guillermo M. R. v.*  
13 *Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) ("absent evidence of urgent concerns,  
14 a pre-deprivation hearing is required to satisfy due process, particularly where an individual  
15 has been released on bond by an IJ") (emphasis added); *Rodriguez v. Kaiser*, No. 1:25-CV-  
16 01111-KES-SAB (HC), 2025 WL 2855193, at \*7 (E.D. Cal. Oct. 8, 2025) (pre-deprivation  
17 hearing required "given the absence of evidence of urgent concerns"); *Y.M.M. v. Wamsley*,  
18 No. 2:25-cv-02075, 2025 U.S. Dist. LEXIS 219064, at \*5 (W.D. Wash. Nov. 6, 2025).  
19 Although these cases frequently arise in the context of bond releases, the same due process  
20 principle applies with equal—and arguably greater—force where, as here, the government  
21 released Petitioner pursuant to a formal parole determination at the port of entry.

22 37. The government cannot justify Petitioner's re-detention by pointing to the February 2, 2026  
23 in absentia removal order. That order was entered in proceedings of which Petitioner had  
24 no actual or constructive notice. He had personally traveled to the very Immigration Court  
25 designated in his NTA, filed an EOIR-33/IC change-of-address form, and filed a motion to  
26 change venue to Illinois. He thereafter received no Notice of Hearing, no ruling on his  
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1 venue motion, and no other communication from the Court. He filed a motion to reopen  
2 and rescind the in absentia order under INA § 240(b)(5)(C)(ii) on April 28, 2026 - a motion  
3 premised on lack of notice and not subject to any time limit. The filing of that motion, by  
4 operation of statute, stays Petitioner's removal pending the Immigration Judge's  
5 disposition. INA § 240(b)(5)(C). The government cannot use an order that is statutorily  
6 stayed, and that is being challenged on lack-of-notice grounds with strong supporting  
7 evidence, as a substitute for the individualized custody process the Constitution requires.

8 38. Nor can the government rely on a theory that Petitioner's current detention is somehow a  
9 continuation of the initial border processing in 2021 governed by 8 U.S.C. § 1225(b). The  
10 current custody is not initial border detention - it is a re-detention in 2026, after more than  
11 four years during which Petitioner lived in the United States as a non-detained respondent,  
12 after the government affirmatively paroled him into the country, and after he pursued his  
13 protection claims in regular § 240 proceedings. Whatever the metaphysics of the statutory  
14 authority, the constitutional analysis is straightforward: the government may not strip  
15 Petitioner of his liberty without providing him the process that the Due Process Clause  
16 requires.

17 39. The legal principle is clear: the government's prior parole of Petitioner in 2021 - and his  
18 uninterrupted, compliant liberty for the four-plus years that followed - created a protected  
19 liberty interest. That interest cannot be stripped away without notice, without written  
20 reasons, without changed circumstances, and without a hearing at which the government  
21 demonstrates, by clear and convincing evidence, that Petitioner is in fact dangerous or a  
22 flight risk. No such notice was given. No such reasons were provided. No such  
23 circumstances have been identified. No such hearing has been held. Petitioner's re-  
24 detention is therefore unconstitutional.

## 25 **FACTUAL ALLEGATIONS**

### 26 **A. Petitioner's Entry into the United States and Initial Release on Parole.**

1 40. Petitioner Shamil Masakov is a citizen and national of the Russian Federation, born on  
2  in the Chechen Republic.

3 41. Petitioner applied for admission to the United States on September 5, 2021, at the San  
4 Ysidro Port of Entry. On that same date, the Department of Homeland Security issued  
5 Petitioner a Notice to Appear (Form I-862), charging him with inadmissibility pursuant to  
6 INA § 212(a)(7)(A)(i)(I)—arriving at a port of entry without valid entry documents.

7 42. Following his initial border processing, Petitioner was paroled into the United States. His  
8 Form I-94 reflects an admission class of "DT" (deferred inspection / parole).

9 43. Following his release, Petitioner timely filed a Form I-589 application for asylum,  
10 withholding of removal, and protection under the Convention Against Torture. His  
11 protection claims remain pending.

12 **B. Petitioner's Compliance, His Move to Illinois, and His In-Person Filing of an**  
13 **EOIR-33 and Motion to Change Venue.**

14 44. From his release in September 2021 through his February 2026 re-detention, Petitioner  
15 lived in the United States openly and without incident.

16 45. In April 2025, after the family's relocation to Illinois, Petitioner personally traveled to the  
17 Van Nuys Immigration Court at 6230 Van Nuys Blvd., Suite 300, Van Nuys, CA 91401—  
18 the very Immigration Court designated in his NTA. While physically present at the Court,  
19 Petitioner personally filed at the Court's filing window two documents: (1) a Form EOIR-  
20 33/IC, Alien's Change of Address, notifying the Court of his new address in Vernon Hills,  
21 Illinois; and (2) a written motion to change venue requesting that the proceedings be  
22 transferred to the appropriate Immigration Court in Illinois.

23 46. After the April 2025 filing, Petitioner received no further communications from the  
24 Immigration Court. He never received a Notice of Hearing setting any date in any court.  
25 He never received a written ruling on his motion to change venue. He never received any  
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1 correspondence at his Vernon Hills address, his prior Los Angeles address, or by any other  
2 means.

3 47. Petitioner had no criminal history of any kind. He was never arrested, never charged with  
4 any offense, and never alleged to have violated any condition of his release. He pursued  
5 his immigration case in good faith and remained in compliance with all requirements at all  
6 times.

7 **C. The February 2, 2026 In Absentia Order, the February 19, 2026 Re-Detention, and**  
8 **the Pending Motion to Reopen.**

9 48. On information and belief, the Van Nuys Immigration Court held a hearing in Petitioner's  
10 absence on February 2, 2026, and entered an in absentia removal order. Petitioner did not  
11 learn that any hearing had been scheduled or that any order had been entered until after his  
12 February 19, 2026 re-detention.

13 49. On February 19, 2026, ICE detained Petitioner. ICE provided no advance notice, no written  
14 reasons, no individualized determination that Petitioner had become a danger to the  
15 community or a flight risk, no allegation that he had violated any release condition, and no  
16 opportunity to be heard before a neutral decisionmaker.

17 50. Petitioner filed a motion to reopen and rescind the in absentia removal order. That motion  
18 was filed in the Van Nuys Immigration Court on April 28, 2026.

19 51. As of the date of this filing, Petitioner has received no individualized custody determination  
20 on the merits of his re-detention. No neutral decisionmaker has ever assessed, on the merits,  
21 whether he poses a flight risk or danger to the community sufficient to justify his civil  
22 detention.

23 52. Petitioner has been deprived of his liberty continuously since February 19, 2026. He has  
24 been separated from his family. He has been stripped of his ability to assist meaningfully  
25 in the preparation of his immigration case from outside detention, including in the  
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1 preparation of evidence in support of his protection claims and his pending motion to  
2 reopen.

3 53. Petitioner does not present a flight risk or danger to the community. He has no criminal  
4 history of any kind, has appeared for and pursued his immigration proceedings in good  
5 faith for more than four years, traveled across the country to update his address with the  
6 Court, and poses no threat to persons or property. There is no legitimate, non-punitive  
7 purpose served by his re-detention. His ongoing confinement is arbitrary and  
8 unconstitutional.

9 **CLAIMS FOR RELIEF**

10 **FIRST CLAIM FOR RELIEF**

11 ***Violation of the Fifth Amendment to the United States Constitution (Substantive***  
12 ***Due Process—Detention)***

13 54. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of  
14 this Petition as if fully set forth herein.

15 55. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation  
16 of liberty "without due process of law." U.S. Const. amend. V. "Freedom from  
17 imprisonment—from government custody, detention, or other forms of physical restraint—  
18 lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S.  
19 at 690.

20 56. Immigration detention is constitutionally permissible only when it furthers the  
21 government's legitimate goals of ensuring the noncitizen's appearance during removal  
22 proceedings and preventing danger to the community. *See id.*

23 57. Petitioner was previously paroled into the United States. This previous release constituted  
24 a determination by Respondents that he was neither dangerous to the community nor a  
25 flight risk.

1 58. Petitioner has not become a danger or flight risk since his release from custody. He has no  
2 criminal history, has remained in compliance with all requirements of his immigration  
3 proceedings for more than four years, traveled across the country to update his address with  
4 the Court, and has no alleged violation of any release condition. His re-detention thus does  
5 not serve a legitimate goal. Accordingly, his re-detention violates the Due Process Clause.

6 **SECOND CLAIM FOR RELIEF**

7 *Violation of the Fifth Amendment to the United States Constitution (Procedural*  
8 *Due Process—Detention)*

9 59. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of  
10 this Petition as if fully set forth herein.

11 60. The Fifth Amendment guarantees noncitizens present in the country with due process  
12 rights, including the right to not be deprived of a liberty or property interest without notice  
13 and a hearing before a neutral decision-maker.

14 61. Petitioner has already been determined not to pose a flight risk or danger to the community.  
15 He has a protected liberty interest in his freedom from detention and is entitled to due  
16 process before the government can deprive him of his liberty by re-detaining him. The Due  
17 Process Clause prohibits Petitioner's re-detention without a pre-deprivation hearing before  
18 a neutral decision-maker in which the government bears the burden of demonstrating that  
19 he poses a flight risk or danger to the community.

20 62. Respondents provided no advance notice, no written reasons, no identification of any  
21 changed circumstance, no individualized determination of danger or flight risk, and no  
22 opportunity to be heard before a neutral decisionmaker before re-detaining Petitioner on  
23 February 19, 2026. Respondents' conduct violates procedural due process.

24 **PRAYER FOR RELIEF**

25 Petitioner respectfully requests that this Court:  
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- 1 a) Assume jurisdiction over this matter and enjoin Respondents from transferring Petitioner  
2 outside this District or deporting Petitioner pending these proceedings;
- 3 b) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from  
4 custody, subject to the same or substantially similar conditions that existed prior to his  
5 February 19, 2026 re-detention;
- 6 c) Declare that Petitioner's re-detention violates the INA, implementing regulations, and the  
7 Due Process Clause of the Fifth Amendment;
- 8 d) Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a  
9 custody hearing before a neutral arbiter in which the government bears the burden of  
10 proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the  
11 community and that no less restrictive alternative will reasonably assure his appearance  
12 and community safety;
- 13 e) In the alternative to (b) above, order Respondents to provide Petitioner with a custody  
14 hearing within fourteen (14) days, before a neutral decisionmaker, at which Respondents  
15 bear the burden of establishing by clear and convincing evidence that Petitioner is a danger  
16 to the community or a flight risk and that no less restrictive alternative can reasonably  
17 address those concerns;
- 18 f) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by  
19 the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 20 g) Grant such further relief as the Court deems just and proper.

21  
22 Date: May 4, 2026

Respectfully Submitted,

23 /s/ Magomed Esendirov  
24 Magomed Esendirov, Esq. (CA SBN: 363301)  
25 Musaev & Associates, PC  
26  
27