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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

**NKAFU SHALONDY DIENNE
BENDEKACA**

Petitioner,

v.

DANIEL A. BRIGHTMAN, in his official capacity as Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations San Diego Field Office; **MARKWAYNE MULLIN**, in his official capacity as Secretary of the U.S. Department of Homeland Security; **TODD BLANCHE**, in his official capacity as U.S. Attorney General; **CHRISTOPHER J. LAROSE**, in his official capacity as Warden of the Otay Mesa Detention Center,

Case No. '26CV2934 JLS VET

**PETITION FOR WRIT OF
HABEAS CORPUS
PURSUANT TO 28 U.S.C. §
2241 AND ORDER TO SHOW
CAUSE WITHIN THREE
DAYS**

**IMMIGRATION HABEAS
CASE**

Petitioner, NKAFU SHALONDY DIENNE BENDEKACA (“Petitioner”), through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and requests an order to show cause within three days why Petitioner should not be released. In support, Petitioner alleges as follows:

I. INTRODUCTION

1. Petitioner is a Cameroonian national who was arrested by U.S. Immigration and Customs Enforcement (“ICE”) agents on November 13, 2025, in California. She is currently detained at the Otay Mesa Detention Facility (“OMDC”). And OMDC is located in this jurisdiction.

2. Petitioner last entered the United States on November 13, 2025, without a visa . She was placed in removal proceedings; she is subject to a final order of removal, and her case is under appeal with the board of immigration . Petitioner has a strong claim for asylum .

3. Petitioner therefore seeks emergency intervention by this Court through a writ of habeas corpus under 28 U.S.C. § 2241 to order her immediate release from unlawful detention while she pursues her rights

under the Immigration and Nationality Act (“INA”) and the U.S. Constitution.

4. Petitioner requests injunctive relief ordering her immediate release on parole, or in the alternative, a prompt and individualized parole redetermination under the correct legal standards. Petitioner also seeks relief under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A), because ICE’s arrest and detention without any individualized necessity and in a manner that undermines reliance on lawful immigration procedures - constitutes arbitrary and capricious agency action not in accordance with law.

II. JURISDICTION & VENUE

5. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101–1538, and its implementing regulations; the Administrative Procedure Act (APA), 5 U.S.C. §§ 500–596, 701–706; and the U.S. Constitution.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

7. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651; Federal Rule of Civil Procedure 65; and the Court's inherent equitable powers.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Respondents are U.S. agencies and officers of the United States acting in their official capacities or because they reside in this district. In addition, a substantial part of the events or omissions giving rise to the claims occurred in this district, the petitioner is detained in this district, and no real property is involved in this action.

III. EXHAUSTION

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

10. Administrative remedies would be futile, inadequate, and not efficacious for Petitioner. Exhausting her constitutional claim would be futile because the agency does not have the authority to rule on

constitutional questions. *See Wang v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability of the INS to adjudicate the constitutional claim completely undermines most, if not all, of the purposes underlying exhaustion”).

11. Even if exhaustion were not futile, waiver is warranted because Petitioner’s claim presents purely legal issues, and no purpose is served by requiring an administrative appeal. *See Hernandez v. Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017).

IV. REQUIREMENTS OF 28 U.S.C. § 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

13. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative

remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

V. PARTIES

14. Petitioner, NKAFU SHALONDY DIENNE BENDEKACA, is a citizen of Cameroon who last entered the U.S. through advance parole on or about November 13, 2025. Petitioner has a pending appeal with the Board of Immigrations based on her claim for Asylum, Withholding of Removal, Convention Against Torture.

15. Respondent, Daniel A. Brightman, is the Director of the San Diego Field Office of ICE’s Enforcement and Removal Operations division. As such, Mr. Brightman is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

16. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the INA, and oversees ICE, which is responsible for Petitioner’s detention. He has ultimate custodial authority over Petitioner and is being sued in his official capacity.

17. Respondent Todd Blanch is the acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive The Office for Immigration Review and the immigration court system it operates is a component agencies. He is being sued in her official capacity.

18. Respondent, Christopher LaRose, is employed by CoreCivic, as Warden of the Otay Mesa Detention Center, where Petitioner is currently detained. He is sued in his official capacity.

VI. FACTUAL ALLEGATIONS

19. Petitioner, NKAFU SHALONDY DIENNE BENDEKACA, is a Cameroonian national who first entered the U.S. without inspection on or about November 13, 2025. Petitioner timely filed a Form I-589 asylum application with the Immigration Court.

20. After her arrest, DHS served Petitioner with a Notice to Appear (“NTA”), initiating removal proceedings. However, Petitioner was arrested and taken into ICE custody before DHS served the NTA or provided written notice of any charges, depriving her of any meaningful opportunity

to understand or contest the basis for her seizure and detention. *See* Ex. A and B.

21. Petitioner's continued detention therefore lacks a lawful basis. Petitioner has no criminal history, poses no danger and no flight risk, and is an appropriate candidate for release on parole under DHS regulations.

22. Petitioner's confinement deprives her of liberty and imposes severe hardship on her U.S. citizen spouse, who relies on her for emotional and financial support. Her detention also prevents meaningful access to counsel and interferes with her ability to pursue her pending immigration case.

23. Petitioner seeks her immediate release from custody under 28 U.S.C. § 2241 because her detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act, as it constitutes arbitrary and capricious agency action not in accordance with law.

24. Petitioner now files the instant petition for writ of habeas corpus to remedy these violations.

VII. LEGAL FRAMEWORK

25. The petitioner is an arriving alien detained by DHS. Accordingly, Petitioner's release is governed by DHS's parole authority under INA § 212(d)(5) and implementing regulations, including 8 C.F.R. § 212.5.

26. DHS must exercise parole authority on an individualized, case-by-case basis consistent with the statutory and regulatory framework, and in a manner consistent with the Due Process Clause, including consideration of relevant factors such as danger, flight risk, and humanitarian or significant public benefit considerations.

27. Petitioner is an appropriate candidate for release on parole because she has strong community ties, no criminal history, a pending appeal with the Board of Immigration Appeals, and her detention imposes severe hardship and interferes with her ability to pursue lawful status and access counsel.

28. Continued detention absent a meaningful and timely parole determination—or detention based on an erroneous or unsupported rationale—constitutes arbitrary and unconstitutional confinement warranting habeas relief.

29. The Ninth Circuit has recognized that civil immigration detention is subject to due process constraints and requires meaningful,

individualized procedures. See *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011).

30. Courts have recognized that a properly filed Form I-589 generally halts the accrual of unlawful presence and permits the applicant to remain in the United States while the application is pending. See *United States v. Atandi*, 376 F.3d 1186 (10th Cir. 2004); *Yesil v. Reno*, 958 F. Supp. 828 (S.D.N.Y. 1997); *United States v. Brissett*, 720 F. Supp. 90 (S.D. Tex. 1989); see also *Larrea v. U.S. Attorney General*, 494 F. App'x 935 (11th Cir. 2012).

VIII. CAUSES OF ACTION

Count I: Violation of Fifth Amendment Due Process Rights

31. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

32. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Civil immigration detention is subject to due process constraints and must bear a reasonable relationship to a legitimate governmental purpose. See *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 131 (2018).

33. The Due Process Clause applies to all persons in the United States, including non-citizens, and prohibits government action that strips them of liberty without fair process.

34. Access to counsel is a cornerstone of due process in immigration proceedings. Courts have recognized that the right to counsel in immigration proceedings is rooted in the Due Process Clause and codified at 8 U.S.C. § 1362 and 8 U.S.C. § 1229a(b)(4)(A).

35. Petitioner's detention violates procedural and substantive due process. Procedurally, Petitioner was deprived of meaningful notice and an opportunity to contest the legal and factual basis for her detention through timely, individualized decision-making. As the Supreme Court emphasized in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), the "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Petitioner has been afforded neither.

36. Petitioner's sudden arrest and detention under these circumstances—without individualized necessity—represents an abrupt and unjustified deprivation of liberty that heightens the due process concerns presented in this case.

37. Removal proceedings are governed by specific procedural requirements, including service of a Notice to Appear ("NTA") setting

forth the charges and basis for removability or inadmissibility. See 8 U.S.C. § 1229(a).

38. Here, Petitioner was arrested and taken into ICE custody immediately after entering the US, before she was provided written notice of charges or a meaningful explanation of the basis for her detention.

39. DHS served Petitioner with an NTA later that same day, underscoring that Petitioner was detained first and only afterward provided written notice initiating proceedings. This sequence deprived Petitioner of meaningful notice at the time of her seizure and highlights the fundamentally unfair nature of her detention.

40. Because Respondents detained Petitioner without individualized necessity and without timely, meaningful consideration of parole under the correct standards, Petitioner's continued confinement is arbitrary, unlawful, and warrants immediate habeas and injunctive relief.

Count II: Unlawful Detention and Failure to Provide a Meaningful Parole Determination (INA § 212(d)(5), 8 C.F.R. § 212.5, and the Fifth Amendment)

41. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

42. DHS must exercise parole discretion on an individualized, case-by-case basis under the applicable legal framework and consistent with due

process, including consideration of relevant factors such as danger, flight risk, and humanitarian or significant public benefit considerations.

43. Petitioner is an appropriate candidate for release on parole. She has strong family and community ties, no criminal history, and a pending appeal with the Board of Immigration Appeals. Her continued detention imposes severe hardship and interferes with her ability to access counsel and pursue lawful status.

44. Petitioner's detention is unlawful as applied because DHS has continued to detain her without a meaningful and timely parole determination under the correct legal standards, and without any individualized showing that her continued confinement is necessary to mitigate a particularized danger or flight risk.

45. Petitioner's pending appeal further supports the conclusion that continued detention is unnecessary and arbitrary in this case. Courts have likewise recognized that a properly filed application such as asylum generally halts the accrual of unlawful presence during its pendency. See *United States v. Atandi*, 376 F.3d 1186 (10th Cir. 2004); *Yesil v. Reno*, 958 F. Supp. 828 (S.D.N.Y. 1997); *United States v. Brissett*, 720 F. Supp. 90 (S.D. Tex. 1989); see also *Larrea v. U.S. Attorney General*, 494 F. App'x 935 (11th Cir. 2012).

46. Because DHS has detained Petitioner without meaningful parole consideration and without an individualized justification tied to a legitimate purpose, Petitioner is entitled to habeas relief, including immediate release or, at minimum, a prompt individualized parole redetermination consistent with the governing legal standards.

Count III: Violation of the Administrative Procedure Act – Unlawful Detention

47. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

48. The Administrative Procedure Act (“APA”) prohibits agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

49. Since Petitioner was placed in mandatory detention, Petitioner’s release is governed by DHS’s parole authority and regulations. DHS’s continued detention of Petitioner without meaningful, timely, individualized parole decision-making under the proper standards constitutes agency action that is arbitrary and capricious and an abuse of discretion.

50. Petitioner’s pending asylum application with the Board of Immigration Appeals and lack of criminal history further underscore the

arbitrary nature of continued detention, and the absence of any legitimate purpose served by confinement.

51. Absent court intervention, Respondents' arbitrary detention of Petitioner will continue to deprive her of liberty and interfere with her ability to pursue lawful status and access counsel.

52. Petitioner is therefore entitled to relief under the APA, including injunctive relief requiring Respondents to apply the correct legal standards and to conduct a prompt, individualized parole determination or redetermination.

IX. PRAYER FOR RELIEF

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

- a. Assume jurisdiction and proper venue over this matter;
- b. Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to immediately release Petitioner from immigration detention because her arrest at a scheduled USCIS adjustment interview and continued confinement are unlawful;
- c. In the alternative, order Respondents to immediately release Petitioner on parole pursuant to INA § 212(d)(5) and 8 C.F.R. § 212.5, or, at minimum, to conduct a prompt, individualized parole redetermination

under the correct legal standards and to release Petitioner absent a demonstrated danger or flight risk;

- d. In the further alternative, issue an order requiring Respondents to show cause within three (3) days why Petitioner should not be released from custody;
- e. Declare that Petitioner's detention is unlawful under the Immigration and Nationality Act, the U.S. Constitution, and the Administrative Procedure Act;
- f. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and
- g. Grant any other and further relief that this Court deems just and proper.

May 8, 2026

/s/ Nneka Jackson

Nneka Jackson, Esq.
Attorney at Law
Attorney for Petitioner

**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF
PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Date: 5/08/2026

Respectfully submitted,

/s/ Nneka Jackson

Nneka Jackson, Esq.
Attorney at Law

Attorney for Petitioner