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5 *Attorney for Petitioner*

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

8
9 **ELDAR MURSALOV**

10 **Petitioner,**

11 **v.**

12
13 **Field Office Director, ICE San Diego Field**
Office; David Venturella, Director, U.S.
14 **Immigration and Customs Enforcement;**
15 **Markwayne Mullin, Secretary, Department of**
Homeland Security; Todd Blanche, Attorney
16 **General of the United States; and Christopher**
17 **LaRose, Warden of the Otay Mesa Detention**
Center in San Diego, California,

18 **Respondents.**
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CASE No. '26CV3360 AGS BJW

**PETITION FOR WRIT OF HABEAS
CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Eldar Magaramovich Mursalov, a citizen and national of the Russian Federation, seeks a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his ongoing physical detention by U.S. Immigration and Customs Enforcement ("ICE") at the Otay Mesa Detention Center in San Diego, California.
2. Petitioner entered the United States at the San Ysidro Port of Entry on February 18, 2023. The Department of Homeland Security ("DHS") inspected and processed him, issued him a Form I-94 and permitted him to reside in the United States while his case proceeded.
3. On September 17, 2025, DHS issued a Notice to Appear and placed Petitioner in removal proceedings. DHS allowed Petitioner to remain in the community throughout those proceedings.
4. For approximately three years, Petitioner lived openly at a known residential address in Irvine, California, supported his pregnant wife and two minor children as the family's primary financial provider, worked as a rideshare driver, appeared through counsel before the Santa Ana Immigration Court, and pursued asylum and related protection as a non-detained respondent. He has no criminal history, has never failed to appear, and has never absconded from supervision.
5. On or about May 25, 2026, ICE took Petitioner into physical custody and placed him at the Otay Mesa Detention Center. The detention followed an entirely accidental, work-related event: while driving for Lyft at approximately, Petitioner followed a passenger-selected destination near the Christianitos Gate area in San Clemente, California. Petitioner was unfamiliar with the area, did not intend to enter any restricted military facility or to violate any law, and fully cooperated with the officers he encountered.
6. ICE imposed physical custody without prior notice, without written reasons, without a meaningful opportunity to be heard, without any neutral custody review, and without any individualized determination that Petitioner had become a flight risk or a danger to the community, or that any less restrictive alternative would be insufficient.

- 1 7. Petitioner's removal proceedings, including his pending application for asylum and for
2 withholding of removal, remain pending before the Santa Ana Immigration Court. No final
3 order of removal has issued.
- 4 8. 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). Immigration
9 detention is civil, and is permissible only to ensure a noncitizen's appearance at proceedings
10 or to prevent danger to the community. *Zadvydas*, 533 U.S. at 690.
- 11 9. Petitioner respectfully requests that this Court order his immediate release or, in the
12 alternative, order constitutionally adequate process, including a prompt custody hearing
13 before a neutral decisionmaker at which the government bears the burden of justifying his
14 detention. To preserve this Court's jurisdiction, Petitioner further requests that this Court
15 order Respondents not to transfer him outside this District or remove him from the United
16 States during the pendency of this proceeding.

17 JURISDICTION AND VENUE

- 18 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question),
19 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28
20 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension
21 Clause), the Fifth Amendment to the U.S. Constitution, and 5 U.S.C. §§ 701–706
22 (Administrative Procedure Act).
- 23 11. Venue is proper in this district pursuant to 28 U.S.C. § 2241 and 28 U.S.C. § 1391(b)(2)
24 and (e)(1) because Petitioner is physically detained within this district at the Otay Mesa
25 Detention Center, located in San Diego County, California, and his immediate custodian is
26 located within this district.

27 PARTIES

1 12. Petitioner Eldar Mursalov is a citizen and national of the Russian Federation, 

2  He is currently detained at the Otay Mesa Detention Center, 7488 Calzada de la
3 Fuente, San Diego, California 92154.

4 13. Respondent Field Office Director, U.S. Immigration and Customs Enforcement, San Diego
5 Field Office, is responsible for administering and enforcing the immigration laws and
6 detention policies within ICE Enforcement and Removal Operations' San Diego Area of
7 Responsibility, which includes the facility where Petitioner is detained, and maintains an
8 office and conducts official business within this District. The Field Office Director is sued
9 in his or her official capacity.

10 14. Respondent David Venturella is the Acting Director of ICE. In that capacity he is
11 responsible for the administration and enforcement of the immigration laws of the United
12 States, routinely transacts business in this District, and is legally responsible for any effort
13 to detain and remove Petitioner. He is sued in his official capacity.

14 15. Respondent Markwayne Mullin is the Secretary of Homeland Security and has ultimate
15 authority over DHS. In that capacity and through his agents, he has broad authority over
16 and responsibility for the operation and enforcement of the immigration laws, routinely
17 transacts business in this District, and is legally responsible for any effort to detain and
18 remove Petitioner. He is sued in his official capacity.

19 16. Respondent Todd Blanche is the Attorney General of the United States and the most senior
20 official at the Department of Justice. In that capacity and through his agents, including the
21 Executive Office for Immigration Review, he is responsible for overseeing the
22 implementation and enforcement of the federal immigration laws and the administration of
23 the immigration courts. He is sued in his official capacity.

24 17. Respondent Christopher LaRose is the Warden of the Otay Mesa Detention Center, where
25 Petitioner is confined. As Warden, he has immediate physical custody of Petitioner and is
26 responsible for Petitioner's detention. He is sued in his official capacity as Petitioner's
27 immediate custodian.

28 **EXHAUSTION**

18. There is no requirement to exhaust because no other forum exists in which Petitioner can raise the claims asserted here. There is no statutory exhaustion requirement before challenging the constitutionality of an arrest or detention, or before challenging agency action under the Administrative Procedure Act. Prudential exhaustion is not required because it would be futile, and because Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). As an arriving alien, Petitioner has no right to a custody redetermination before an Immigration Judge. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). Any further exhaustion requirement would be unreasonable.

LEGAL BACKGROUND

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

19. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These rights are both substantive and procedural.

20. Due process protection does not turn on a noncitizen's immigration status or on the label the government attaches to him. Noncitizens within the United States are entitled to the protection of the Due Process Clause, *Wong Wing v. United States*, 163 U.S. 228, 238 (1896), and "[t]here are literally millions of aliens within the jurisdiction of the United States" to whom the Fifth Amendment applies, *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Moreover, the measure of process due increases as a noncitizen develops ties to this country: "once an alien gains admission to our country and begins to develop the ties that go with permanent residence[,] his constitutional status changes accordingly." *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

21. "[T]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the exercise of

1 power without any reasonable justification in the service of a legitimate government
2 objective," *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

3 22. These protections apply with full force to civil detention. "In our society liberty is the norm,
4 and detention prior to trial or without trial is the carefully limited exception." *United States*
5 *v. Salerno*, 481 U.S. 739, 755 (1987). "Freedom from imprisonment—from government
6 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that
7 [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690; *see also Reno v. Flores*,
8 507 U.S. 292, 315 (1993) (recognizing freedom from physical restraint as a core liberty
9 interest); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

10 23. Even where the government has authority to detain, the individual must receive "notice of
11 the factual basis for his [detention], and a fair opportunity to rebut the [government's]
12 factual assertions before a neutral decisionmaker." *Cf. Hamdi v. Rumsfeld*, 542 U.S. 507,
13 533 (2004) (plurality opinion). The deprivation of physical liberty cannot be imposed by
14 unilateral executive fiat.

15 24. Substantive due process requires that all forms of civil detention, including immigration
16 detention, bear a "reasonable relation" to a legitimate, non-punitive purpose. *Jackson v.*
17 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two
18 permissible non-punitive purposes for immigration detention: ensuring a noncitizen's
19 appearance at proceedings, and preventing danger to the community. *Zadvydas*, 533 U.S.
20 at 690–92; *Demore v. Kim*, 538 U.S. 510, 519–20, 527–28 (2003). Civil detention is
21 permissible only where it serves such a regulatory purpose and is not excessive in relation
22 to that purpose; detention not so related is punitive in effect and unconstitutional. *Kansas*
23 *v. Hendricks*, 521 U.S. 346, 356–58 (1997); *Salerno*, 481 U.S. at 746–47.

24 25. Immigration detention cannot be justified as "preventive" unless the government makes an
25 individualized showing - supported by clear and convincing evidence - that the specific
26 detainee poses a present danger to the community or a flight risk. *Singh v. Holder*, 638 F.3d
27 1196, 1203–05 (9th Cir. 2011). The clear-and-convincing standard reflects the weight of
28 the liberty interest at stake, *see Addington v. Texas*, 441 U.S. 418, 427 (1979), and the

principle that "the government—not the individual—must justify imprisonment in a free society," *Singh*, 638 F.3d at 1203–05. Bare allegations of misconduct, without more, satisfy neither the danger nor the flight-risk showing.

26. This principle has particular force where DHS itself permitted the noncitizen to live in the community for years without incident, and where the government has identified no violation of any condition of release, no criminal conviction, no failure to appear, and no changed circumstance. Where the government has allowed a person to remain at liberty and build a life in reliance on that liberty, a sudden pivot to physical custody without individualized findings cannot satisfy due process.

B. Procedural Due Process Requires Notice, a Meaningful Opportunity to Be Heard, and a Neutral Decisionmaker Before the Government May Imprison Petitioner.

27. "[T]he Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). As a general rule, that hearing must precede the deprivation. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); *Fuentes v. Shevin*, 407 U.S. 67, 82 (1972). And the affected individual is entitled to notice "reasonably calculated, under all the circumstances," to apprise him of the action and afford him an opportunity to respond. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

28. The adequacy of process is evaluated under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), which balances (1) the private interest affected; (2) the risk of erroneous deprivation under the procedures used, and the probable value of additional safeguards; and (3) the government's interest, including the fiscal and administrative burdens that added procedures would entail. The Ninth Circuit applies the *Mathews* framework to immigration detention. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

29. Each *Mathews* factor weighs decisively in favor of pre-deprivation process and, at minimum, prompt neutral custody review. The private interest—freedom from physical confinement—is at its peak. *Foucha*, 504 U.S. at 80. The risk of erroneous deprivation is acute where ICE acts unilaterally, without notice, without affording the detainee any

1 opportunity to respond, and without any neutral review of the circumstances. And the
 2 government's marginal burden is minimal: ICE and EOIR already operate established
 3 custody-review procedures, and DHS managed Petitioner's presence for years through non-
 4 detention. In the analogous bond context, the Ninth Circuit has required the government to
 5 consider less restrictive alternatives to detention. *Hernandez*, 872 F.3d at 990–91.

6 30. Consistent with these principles, the Ninth Circuit has held that detainees whose custody
 7 is reviewable are entitled to an individualized custody hearing at which the government
 8 bears the burden of establishing, by clear and convincing evidence, that detention is
 9 justified. *Singh*, 638 F.3d at 1203–05. This burden allocation is not a courtesy; it reflects
 10 the constitutional principle that the government must justify imprisonment in a free
 11 society. *Id.*

12 31. Where the government has affirmatively released a person and allowed him to build a life
 13 in reliance on continued liberty, it cannot summarily revoke that liberty without notice and
 14 an opportunity to be heard. *Cf. Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Ortega v.*
 15 *Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) ("[G]iven the civil context [of
 16 immigration detention], [the] liberty interest [of noncitizens released from custody] is
 17 arguably greater than the interest of parolees.").

18 FACTUAL ALLEGATIONS

19 **A. Entry, Processing, and Positive Credible-Fear Determination.**

20 32. On February 18, 2023, Petitioner presented himself for inspection and processing at the
 21 San Ysidro Port of Entry. DHS inspected and processed Petitioner and issued him a Form
 22 I-94 reflecting an arrival date of February 18, 2023.

23 33. On September 17, 2025, DHS issued a Notice to Appear (Form I-862) charging Petitioner
 24 under INA § 212(a)(7)(A)(i)(I), 8 U.S.C. § 1182(a)(7)(A)(i)(I), and placing him in removal
 25 proceedings.

26 **B. Years of Community Residence, Family Ties, and a Pending Non-Detained Asylum** 27 **Case.**

1 34. After DHS processed and released him, Petitioner resided continuously in the community
2 at a known residential address: [REDACTED] Petitioner
3 maintained that address of record with the Immigration Court and with DHS.

4 35. Petitioner is married to Alina Evstratova and is the father of two minor children, [REDACTED]

5 [REDACTED]
6 Petitioner's wife and children reside with him in the United States.

7 36. Petitioner was the primary financial provider for his household. He supported his family
8 through his work as a rideshare and food-delivery driver, including driving for Lyft.

9 37. Petitioner pursued his removal proceedings as a non-detained respondent. Through
10 counsel, he filed an updated Form I-589, Application for Asylum and for Withholding of
11 Removal, with the Santa Ana Immigration Court. The application remains pending. No
12 final order of removal has issued.

13 38. Throughout the approximately three years between his processing and his detention,
14 Petitioner appeared as required, never failed to appear at any immigration proceeding,
15 never absconded or concealed his location, and engaged in no criminal conduct. DHS
16 allowed him to remain at liberty in the community throughout that period.

17 39. On or about May 25, 2026, Petitioner was working as a Lyft driver. A passenger selected
18 a destination near the Christianitos Gate area in San Clemente, California. Petitioner was
19 unfamiliar with the area, did not intend to enter any restricted military facility, did not
20 intend to violate any law, and fully cooperated with the officers he encountered.

21 40. ICE took Petitioner into physical custody on May 25, 2026, and placed him at the Otay
22 Mesa Detention Center in San Diego, California 92154.

23 41. ICE imposed physical custody without prior notice, without written reasons, without a pre-
24 deprivation hearing, without a meaningful opportunity to be heard, without a neutral
25 decisionmaker, and without any individualized finding that detention was necessary to
26 prevent flight or danger, or that any less restrictive alternative would be insufficient. To
27 date, Petitioner has received no custody hearing before any neutral decisionmaker.
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1 42. Petitioner does not present a flight risk or a danger to the community. He has no criminal
2 history, has consistently appeared in his immigration proceedings, has maintained a known
3 address of record, has an existing credible-fear determination in his favor, and has deep
4 family and community ties, including a pregnant wife and two minor children who depend
5 on him. There is no legitimate, non-punitive purpose served by his detention; his ongoing
6 confinement is arbitrary and unconstitutional.

7 **CLAIMS FOR RELIEF**

8 **FIRST CLAIM FOR RELIEF**

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

11 43. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of
12 this Petition as if fully set forth herein.

13 44. The Fifth Amendment guarantees noncitizens present in the United States due process of
14 law, including the right not to be deprived of a liberty interest without notice, a meaningful
15 opportunity to be heard, and a hearing before a neutral decisionmaker.

16 45. Petitioner had been living in the community under DHS authorization for approximately
17 three years. He maintained a known residential address, appeared through counsel before
18 the Immigration Court, and pursued asylum as a non-detained respondent. He thus had a
19 significant, protected liberty interest in remaining free from physical detention.

20 46. Respondents violated Petitioner's right to procedural due process by detaining him on May
21 25, 2026, without meaningful pre-deprivation process, without written reasons, without a
22 meaningful opportunity to be heard, without review by a neutral decisionmaker, and
23 without any individualized custody determination. The record contains no individualized
24 finding that Petitioner presents a danger to the community or a flight risk, and no finding
25 that any less restrictive alternative would be insufficient.

26 47. The Due Process Clause prohibits Petitioner's ongoing detention without, at minimum, a
27 prompt custody hearing before a neutral decisionmaker at which the government bears the
28

1 burden of proving, by clear and convincing evidence, that detention is necessary to prevent
2 flight or danger and that no less restrictive condition will suffice.

3 **SECOND CLAIM FOR RELIEF**

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

6 48. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of
7 this Petition as if fully set forth herein.

8 49. The Due Process Clause of the Fifth Amendment protects all persons from deprivation of
9 liberty without due process of law. Immigration detention is civil and is constitutionally
10 permissible only when reasonably related to ensuring a noncitizen's appearance during
11 removal proceedings or preventing danger to the community. *Zadvydas*, 533 U.S. at 690.

12 50. DHS permitted Petitioner to reside in the community for approximately three years while
13 his immigration case proceeded. During that time he supported his family, maintained a
14 known address, appeared as required, engaged in no criminal conduct, and never
15 absconded. The government has not shown—and the record does not support—that
16 Petitioner failed to appear, attempted to abscond, threatened anyone, or became a danger
17 to the community.

18 51. Respondents' detention of Petitioner is arbitrary and excessive in relation to any legitimate
19 civil purpose. It is not reasonably related to preventing flight or protecting the community,
20 and the facts show that less restrictive alternatives would be sufficient. The detention
21 therefore functions as punitive confinement rather than a narrowly tailored civil measure,
22 in violation of the substantive component of the Due Process Clause.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests that this Court:

- 25 a) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner
26 from custody;
- 27 b) Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth
28 Amendment to the United States Constitution and applicable law;

- 1 c) In the alternative to immediate release, and only if this Court declines to order Petitioner's
2 immediate release, order Respondents to provide Petitioner—within seven (7) days—a
3 custody hearing before a neutral decisionmaker at which the government bears the burden
4 of demonstrating, by clear and convincing evidence, that Petitioner's detention is
5 necessary because he is a flight risk or a danger to the community and that no less
6 restrictive conditions can reasonably address those concerns;
- 7 d) Enjoin Respondents from re-detaining Petitioner unless and until his re-detention is
8 ordered following constitutionally adequate process and a lawful individualized
9 determination;
- 10 e) Assume jurisdiction over this matter and enjoin Respondents from transferring Petitioner
11 outside this District or removing Petitioner from the United States during the pendency of
12 these proceedings;
- 13 f) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by
14 the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 15 g) Grant such further relief as the Court deems just and proper.

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17 Date: June 2, 2026

Respectfully Submitted,

18 /s/ Magomed Esendirov
19 Magomed Esendirov, Esq. (CA SBN: 363301)
20 Musaev & Associates, PC

21 *Attorney for Petitioner*
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