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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(HON. ROBERT S. HUIE)

SUNDARARAJU PERIYANNAN,

Petitioner,

v.

SIXTO MARRERO, Warden of Imperial County Detention Center;
MARKWAYNE MULLIN, Secretary of U.S. Department of Homeland Security;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement;
DANIEL A. BRIGHTMAN, Director, San Diego Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations;
TODD BLANCHE, Acting Attorney General of the U.S.

Respondents.

Civil No.: 26-CV-3700-RSH

AMENDED[1] PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

[1] Federal Rule of Civil Procedure 15(a)(2) permits a party to "amend its pleading . . . with the court's leave." The Court's Order granting extension permitted an amended petition by setting an August 7 deadline. [ECF 12.]

INTRODUCTION

This habeas petition presents at least four independent bases on which to grant Petitioner either immediate release or an immigration bond hearing. Sundararaju Periyannan arrived in Miami in November 2015 from India on a D-2 crewman visa. He stayed because he would face persecution if he returned to India. At least as early as July 2016, the government was aware Mr. Periyannan had overstayed his visa. They did not arrest him. For many years Mr. Periyannan lived peacefully in the United States and committed no crimes.

In July 2023, Mr. Periyannan filed a petition for VAWA relief. In response, the government did not arrest him for having overstayed his visa. Mr. Periyannan thereafter filed a request to adjust status. Again, the government acknowledged receipt and did not arrest him. Instead, it approved him for advance parole and issued him an employment authorization card.

Inexplicably, in October 2025, ICE agents arrested Mr. Periyannan at his home and took him into immigration custody. There appears no reason for that action apart from the administration's goal of increasing immigration enforcement. Mr. Periyannan immediately claimed asylum when taken into custody. The immigration judge granted him a bond on November 7 but then revoked that bond three weeks later after the government argued it and the court were using the wrong immigration section. Mr. Periyannan was taken back into custody when he reported to the immigration office for his periodic check-in. When both periods of custody are aggregated, Mr. Periyannan has now been in immigration custody for nine months.

Mr. Periyannan requests immediate release or a bond hearing for the following reasons:

(1) the immigration judge applied the wrong legal analysis when it revoked bond because Mr. Periyannan is not ineligible for bond as a D-2 visa crewman;

(2) the government either violated its own grant of parole (or parole-like liberty interest) or violated statutes and regulations pertaining to parole by arresting him, and

(3) the government arrested Mr. Periyannan before obtaining a warrant, and

(4) Mr. Periyannan's unreasonably prolonged detention as an asylum seeker violates his Fifth Amendment right to due process.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment), and United States Constitution Article I, Section 9 (Suspension Clause).

Venue is proper in the Southern District of California under 28 U.S.C. § 1391 because this is a civil action in which Respondents are agencies of the United States, Mr. Periyannan is detained in this district, and a substantial part of the events or omissions giving rise to this action occurred in this district.

PARTIES

Petitioner Sundararaju Periyannan is in removal proceedings and is detained at the Imperial Regional Detention Facility, located in the Southern District of California.

Respondent Sixto Marrero is the Warden of the Imperial Regional Detention Facility, where Mr. Periyannan is detained. He has immediate physical custody of Mr. Periyannan and is sued in his official capacity.

Respondent Markwayne Mullin is the U.S. Secretary of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Mr. Periyannan's detention. Mr. Mullin has ultimate custodial authority over Mr. Periyannan. He is sued in his official capacity.

Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement and has authority over ICE operations. In that capacity and through his agents, Mr. Lyons has authority over the operation and enforcement of the immigration laws. Mr. Lyons is sued in his official capacity.

Respondent Daniel A. Brightman is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations, which includes Imperial Valley as a sub-office. He is therefore the custodian of all people held at the Detention Center and is Mr. Periyannan's immediate custodian and responsible for his detention. He is sued in his official capacity.

Todd Blanche is the Acting Attorney General of the U.S. and is responsible for the Department of Justice. He is sued in his official capacity.

STATEMENT OF FACTS

Sundararaju Periyannan arrived in the United States for the first time at the Port of Miami as a crewman in November 2015. He had come from India on a D-2 crewman visa, which is the visa variant specified in the government's Return and in available immigration documents. Mr. Periyannan did not return to India because he feared persecution there. He therefore stayed in the U.S. more than the time permitted by his visa.

A. Life in U.S.

According to the government's Return, immigration authorities were aware of Mr. Periyannan's presence in the U.S. and served him with a Notice

of Referral on July 31, 2016. [Ret. at 2.][2] It is likely that Mr. Periyannan claimed asylum before that Notice was issued because a Notice of Referral is generally triggered if a crewman makes a claim of asylum. Mr. Periyannan does not have any record of asylum proceedings in immigration court following that Notice and the government has not attached any to its Return.

For the next nine years, Mr. Periyannan lived in the U.S. as a law-abiding person and caused no problems. Immigration authorities did not arrest him and there is no indication they were looking for him in an attempt to do so.

B. Immigration Petitions.

In 2021 Mr. Periyannan married a U.S. citizen. After several years the marriage deteriorated and Mr. Periyannan was the victim of both emotional and physical abuse from his spouse. He thereafter filed a Form I-360 petition – in which he included his address and other information – under the Violence Against Women Act (VAWA) in July 2023.[3] In response, ICE did not arrest him. Instead, they sent Mr. Periyannan a Notice of Action telling him they had received his VAWA application and that they were reviewing it. [Ex. A.]

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[2] Although the government attached a copy of the Notice of Referral dated December 9, 2025, to its Return, it did not attach a copy of the purported Notice from 2016. Mr. Periyannan is therefore unsure if that Notice was properly served and what boxes were checked.

[3] VAWA allows certain abused spouses of U.S. citizens or lawful permanent residents to seek immigration relief without relying on the abusive spouse to file on their behalf. Despite its name, VAWA protections are gender-neutral and may be available to abused male spouses as well as female spouses.

Mr. Periyannan then filed a Form I-485 Application to Register Permanent Residence or Adjust Status, which included a request for work authorization. Again, ICE did not arrest him. Instead, the government sent him an Approval Notice on January 31, 2024, which stated it had received the application and that Mr. Periyannan had been "approved for advance parole." It also stated, "We will send Your Employment Authorization Document (also known as an EAD card or Form I-766) to you separately." [Ex. B.] The Notice continued, "Your EAD card is proof that you are allowed to work in the United States." [*Id.*] The EAD card had an expiration date in 2029. The Notice also added that the approval of advance parole allowed Mr. Periyannan to travel abroad without abandoning his claim to adjustment of status." [*Id.*]

On October 17, 2025,[4] ICE officers arrived at Mr. Periyannan's home and arrested him without explanation.

C. **Immigration Proceedings.**

Mr. Periyannan claimed asylum after being taken into custody. At his initial bond hearing, the government stated it was proceeding with removal proceedings under INA § 236(a) (codified at 8 U.S.C. § 1226(a)) and the IJ granted a $10,000.00 bond. Mr. Periyannan was released after posting bond. The government then changed its interpretation of the law and filed a motion to reconsider and revoke the bond because it was actually proceeding under INA § 252(b) (codified at 8 U.S.C. § 1282(b)). The IJ agreed with the government, revoked bond because it found it did not have bond jurisdiction,

[4] The government's Return states that Mr. Periyannan was taken into immigration on December 3. But that appears to be the date after which the IJ revoked his previous grant of bond and Mr. Periyannan was taken into custody again.

and Mr. Periyannan was taken back into custody on December 3 when he checked in at the immigration office. [Ex. C.] Mr. Periyannan remains in immigration custody and has been there for nine months total.

On April 21, 2026, the IJ denied Mr. Periyannan's asylum application. Mr. Periyannan appealed to the BIA on May 22, which remains pending. He plans to appeal to the Ninth Circuit if he does not receive relief in the BIA.

Several weeks ago, Mr. Periyannan became aware that Immigration sent an envelope to his residence but it was returned because he is now in custody. He believes it was an approval notice for his VAWA application. Counsel has checked the USCIS Case Status site and it indicates,

> On June 4, 2026, the Post Office returned a notice we sent you for your Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, Receipt Number [redacted] because they could not deliver it. This could have a serious effect on your case. Please go to www.uscis.gov/e-request to request a copy of the notice immediately.

Counsel is attempting to obtain a copy of the letter/notice in case it impacts these proceedings.

D. <u>Habeas Filings.</u>

On June 24, Mr. Periyannan filed his initial *pro se* petition for habeas relief under § 2241. [ECF 1.] There he argued that he was (1) being held in violation of the Fifth Amendment due to prolonged civil detention; (2) should receive a bond hearing because he was being detained under § 1226(a), and (3) is not a flight risk or danger to the community.

In response, the government filed a one-page Return that simply repeated the finding of the IJ. [Ret. at 2.] The government stated, "Given that Petitioner was referred to an IJ via a Notice of Referral, as opposed to a Notice to Appear, Petitioner is lawfully detained pursuant to 8 U.S.C.

§ 1282(b)." [*Id.* (citing *Matter of Di Santillo*, 18 I & N Dec. 407 (BIA 1983).] The government concluded, "It is the Government's position that Petitioner is lawfully detained pursuant to 8 U.S.C. § 1282(b) and defers to the Court on the appropriate resolution of this matter." [*Id.*] The government did not mention the fact that Mr. Periyannan had pending applications for VAWA and adjustment of status and had been granted both an EAD (which is still valid) and advance parole. It attached several immigration documents to the Return. None of those documents reveal anything about what immigration proceedings occurred after Mr. Periyannan first entered the U.S. or why Immigration had not attempted to arrest Mr. Periyannan in the past nine years.

Mr. Periyannan thereafter filed several supplemental documents, including the two Notices of Action he had received from Immigration. [ECF 5.] The Court then referred Mr. Periyannan's case to Federal Defenders, who referred it to current counsel under the Criminal Justice Act. [ECF 6; 9.]

ARGUMENT

I.

INA § 252(b) DOES NOT CATEGORICALLY REQUIRE PETITIONER'S DETENTION OR DEPRIVE THE IMMIGRATION JUDGE OF BOND JURISDICTION.

The immigration judge withdrew Mr. Periyannan's bond for one reason: he concluded that INA § 252(b) "controls" and therefore deprived him of jurisdiction to release Mr. Periyannan. That conclusion rests on an incorrect reading of § 252(b) and runs contrary to authority from the Supreme Court.

A. Section 252(b) Is a Narrow Crewman-Landing Provision.

INA § 252 is codified at 8 U.S.C. § 1282 and addresses temporary landing privileges for alien crewmen. Subsection (a) authorizes immigration officers to grant a crewman a conditional permit to land temporarily. It distinguishes between two circumstances:

- Under § 252(a)(1), an immigration officer may allow temporary landing where the crewman intends to depart on the same vessel or aircraft on which he arrived. **A crewman arriving on a D-1 visa generally falls under this subsection.**
- Under § 252(a)(2), an immigration officer may permit a crewman to land for up to twenty-nine days where the crewman intends to depart on another vessel or aircraft. **A crewman arriving on a D-2 visa generally falls under this subsection.**

Section 252(b) then provides a special procedure for revoking certain conditional landing permits and taking the crewman into custody. But Congress expressly limited that subsection to the permit "granted such crewman under the provisions of subsection (a)(1)." 8 U.S.C. § 1282(b). In other words, by the plain text of subsection 1282(b), it was intended to apply only to D-1 visa holders – not to D-2 visa holders.

The upshot is that § 1282(b) does not apply to people like Mr. Periyannan who arrive on a D-2 crewman visa. Both the government and IJ missed or ignored that reality when Mr. Periyannan's bond was reconsidered and revoked.

Moreover, even if there was an argument that § 1282(b) applied to D-2 visa holders, that section does not include a mandatory detention statute and it was error for the IJ to find that he did not have jurisdiction to issue a bond.

B. <u>The Supreme Court Has Specifically Recognized that § 252(b) Does Not Apply to a D-2 Landing Permit.</u>

The Supreme Court addressed § 252(b)'s scope in *INS v. Stanisic*, 395 U.S. 62 (1969). There, a crewman received a D-1 conditional landing permit and subsequently announced that he would not return to his vessel. *Id.* at 66. In response, immigration authorities revoked the D-1 landing permit under § 252(b). *Id.*

When discussing § 252(b), the Supreme Court emphasized its narrow reach, explaining that § 252(b) is a "narrow exception" directed toward specific crewman landing permits. *Id.* at 73–75. Importantly, the Court expressly stated, "[T]he § 252(b) procedure governs a narrow range of cases only. . . . It does not apply to an alien crewman who enters the United States illegally without obtaining any landing permit at all, **or who enters on a 'D-2' permit allowing him to depart on a different vessel.**" *Id.* at 74–75 (emphasis added).

Here, there is no dispute that Mr. Periyannan arrived in the U.S. on a D-2 crewman visa. Not only does the plain text of § 1282(b) reveal that it does not apply to a D-2 visa holder but the Supreme Court has explicitly said that code section does not apply in the D-2 context. It appears that the government and IJ were operating under the assumption that any "crewman" falls under § 1282(b), which is simply not the case.

C. <u>Section 252(b) Does Not Govern an Interior Arrest Ten Years Later.</u>

In *Stanisic*, the Supreme Court noted that "Section 252(b) most plainly governs the situation in which a D-1 landing permit is revoked and the alien crewman is immediately returned to the vessel on which he arrived". 395 U.S. at 75. And federal regulations pertaining to § 252(b) reinforce that:

> A crewman whose landing permit is subject to revocation pursuant to section 252(b) of the Act may be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel of arrival, if the vessel is in any port in the United States and has not departed foreign since the crewman was issued his or her conditional landing permit. Current regulations similarly describe revocation under § 252(b) in connection with returning a crewman to the vessel of arrival.

See 8 C.F.R. § 252.2(a). In other words, it most naturally applies when almost no time has passed since arrival and the crewman can be placed back on his boat.

That bears no resemblance to Mr. Periyannan's case. Namely, he did not leave his vessel and get apprehended almost immediately so that he could be returned to his vessel. He entered the United States in 2015, remained here for approximately nine years, pursued immigration benefits with the government's knowledge, obtained employment authorization through 2029, and was inexplicably arrested at his home.

The government's reading converts § 252(b) from a "narrow exception" into a lifetime mandatory-detention statute for anyone who once entered as a crewman. That is simply not supported by the statute and applicable law and regulations.

D. <u>Relief Requested.</u>

The Court should order that Mr. Periyannan be immediately released on bond in light of the IJ's incorrect interpretation of the law. The Order should specify that the bond should be no higher than $10,000.00 because that is the amount the IJ determined was sufficient after holding the initial bond hearing.

II.

THE GOVERNMENT VIOLATED DUE PROCESS BY ABRUPTLY REVOKING PETITIONER'S PAROLE AND LONGSTANDING RELEASE WITHOUT NOTICE, CHANGED CIRCUMSTANCES, OR A PRE-DEPRIVATION HEARING.

Apart from the statutory error, Mr. Periyannan's detention violates the Fifth Amendment. When the government issued the Notice of Approval on January 31, 2024, it explicitly granted advance parole, which allowed Mr. Periyannan to depart and return to the U.S. without being placed in immigration proceedings or abandoning his adjustment of status claim. [Ex. B.]

Moreover, for many years the federal government knowingly allowed Mr. Periyannan to live freely in the United States while he pursued immigration relief and granted him employment authorization that remains valid. Mr. Periyannan relied on those decisions. He built his life outside custody and continued reporting to immigration authorities. ICE then stripped that liberty without any allegation that circumstances had changed.

A. Petitioner Developed a Substantial Liberty Interest in His Continued Freedom.

The Fifth Amendment protects every "person" from deprivation of liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001). Physical freedom lies at the heart of that protection. *Id.* at 690.

Courts addressing immigration re-detention have therefore recognized that once the government releases a noncitizen into the community, the individual develops a substantial liberty interest in remaining free. *See, e.g., Garcia Domingo v. Castro*, 806 F. Supp. 3d 1246, 1252–53 (D.N.M. 2025); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1146 (D. Or. 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC, 2025 WL 2800149, at *10 (S.D. Cal. Oct. 1, 2025). That

stems from *Morrissey v. Brewer*, which recognized that a person living outside custody enjoys a concrete liberty interest because release permits the person "to do a wide range of things" and "be with family and friends and to form the other enduring attachments of normal life." 408 U.S. 471, 482 (1972).

Here, Mr. Periyannan was arguably granted parole to remain within the U.S. without being arrested and removed. The Notice of Approval dated January 31, 2024, states that he was being granted advance parole, which would allow him to travel outside the U.S. and reenter. The Notice specified that "As long as your EAD card has not expired you may use it multiple times to request parole into the United States." [Ex. B.] This type of advance parole should be treated as the equivalent of normal parole while inside the U.S. because it would be illogical for Mr. Periyannan to have to first leave the U.S. and return to be granted parole.

And even if the Court finds that Mr. Periyannan had not officially been granted parole, his parole-like liberty interest is strong due to the government's own actions. He was free within the U.S. for nearly ten years before being apprehended by ICE. The government knew he was here for that time. He had no criminal history. He affirmatively sought humanitarian relief under VAWA. He applied for adjustment of status. The government issued employment authorization extending until 2029.

B. <u>ICE Violated its Own Regulations Regarding Parole under 8 C.F.R. § 212.5 as well as the Administrative Procedure Act and Due Process.</u>

When ICE detained Mr. Periyannan on October 17, 2025, it did not say that it was revoking his parole, so it is unclear whether a revocation occurred. Either way, the government's actions violate the Administrative Procedure

Act and Due Process.

Under the Administrative Procedures Act (APA), an agency action may be held unlawful and set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). For a challenged agency action to be upheld, the agency "must explain the evidence which is available and must offer a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs,* 463 U.S. at 52 (1983) (internal quotations omitted) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)).

Here, regardless of whether ICE formally revoked Mr. Periyannan's parole, it violated the APA. If the agency did *not* revoke his parole, then it inexplicably violated its own parole decision by detaining Mr. Periyannan in October 2025. Doing so violated the APA because the agency did not "offer a rational connection between the facts found and the choice made"—i.e., the fact that Mr. Periyannan was still on parole, yet the agency decided to detain him. *Motor Vehicle Mfrs,* 463 U.S. at 52. And nothing suggests that there *was* a "rational" reason for this choice. This was the epitome of an "arbitrary" and "capricious" act under the APA. 5 U.S.C. § 706(2)(A).

But assuming the agency did revoke his parole, it also violated the APA. Per ICE regulations, a person shall only be "returned to the custody from which he was paroled" when "the purposes of such parole . . . have been served." 8 U.S.C. § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (parole may only be terminated "upon accomplishment of the purpose for which parole was authorized"); *Y-Z-L-H*, 2025 WL 1898025, at *12 (same). Alternatively, the regulations permit revocation of parole when "neither humanitarian reasons nor public benefit warrants the [noncitizen's] continued presence." 8 C.F.R. § 212.5(e)(2)(i). But under either scenario, parole shall only be "terminated upon written notice to the alien." 8 C.F.R. § 212.5(e)(2)(i). So under the statute and the regulations, the agency may only revoke parole and re-detain a noncitizen when the parole's purpose is served or no humanitarian reasons warrant it *and* the noncitizen receives written notice. None of this occurred here.

And Mr. Periyannan never received any written notification of a revocation under 8 C.F.R. § 212.5(e). So if the agency revoked his parole, this decision violated both the statute and the regulation and was "not in accordance with law" under the APA. 5 U.S.C. § 706(2)(A). Several courts have released parolees on this basis. *See Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025); *Noori v. LaRose*, No. 25-cv-1824-GPC-MSB, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025); *Salazar v. Casey*, No. 25-cv-2784 JLS-VET, 2025 WL 3063629 (S.D. Cal. Nov. 3, 2025); *Perez v. LaRose*, No. 25-cv-02620-RBM-JLB, 2025 WL 3171742 (S.D. Cal. Nov. 13, 2025); *Y-Z-L-H v. Bostock*, No. 25-cv-965-SI, 2025 WL 1898025, at *13 (D. Or. July 9, 2025).

C. The Due Process Clause Required Notice and a Chance to be Heard Before Parole was Revoked.

Additionally, "the revocation of [Mr. Periyannan's] parole without justification or consideration of his individualized circumstances violates the Due Process Clause." *Perez v. LaRose*, No. 3:25-CV-02620-RBM, 2025 WL 3171742, at *4 (S.D. Cal. Nov. 13, 2025). Mr. Periyannan was "entitled to notice of the reasons for revocation of his parole and a hearing before an immigration judge to determine whether detention is warranted" before ICE revoked his parole. *Id.* at *7.

"The Fifth Amendment guarantees that '[n]o person shall be ... deprived of life, liberty, or property, without due process of law.'" *Salazar*, 2025 WL 3063629, at *3 (quoting U.S. Const. amend. V). "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

"Generally, due process protections depend on the situation and must account for (1) the private interest at issue, (2) the risk of erroneous deprivation of that interest through the procedures used, and (3) the Government's interest." *Noori v. LaRose*, No. 25-cv-1824-GPC, 2025 WL 2800149 (S.D. Cal. Oct. 1, 2025) (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). Weighing those considerations here, the government violated the Due Process Clause by revoking parole with no notice or hearing.

"First, Petitioner has a private interest in remaining free, which developed over the [nine years] he resided in the United States." *Id.* at *10. It does not matter that parole is temporary or discretionary. "For example, *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) – though analyzing the criminal parole context – found that 'the liberty of a parolee, although

indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others . . . [thus it] must be seen within the protection of the [Fifth] Amendment.'" *Id.*

"Second, the risk of an erroneous deprivation of such interest is high as Petitioner's parole was revoked without providing [him] a reason for revocation or giving [him] an opportunity to be heard." *Salazar*, 2025 WL 3063629, at *4. "Civil immigration detention is permissible only to prevent flight or protect against danger to the community." *Perez*, 2025 WL 3171742, at *5. But here, "[s]ince DHS's initial determination that Petitioner should be paroled because [he] posed no danger to the community and was not a flight risk, there is no evidence that these findings have changed." *Id.*

"Third, the Government's interest in detaining Petitioner without notice, reasoning, and a hearing is low." *Salazar*, 2025 WL 3063629, at *5 (cleaned up). "Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1036 (N.D. Cal. 2025).

Thus, because the government did not provide "proper notice, reasoning, and a pre-deprivation hearing" before revoking parole, Mr. Periyannan's detention violated the Due Process Clause. *Salazar*, 2025 WL 3063629, at *5. That is true regardless of whether the Court uses the grant of advance parole or the parole-like liberty interest conferred by permitting Mr. Periyannan to live in the U.S. for an extended period and by granting him advance parole, employment authorization, and a prima facie determination of his VAWA claim.

D. The Government was Required to Have a Warrant Prior to Petitioner's Arrest.

Even if Mr. Periyannan's detention does not violate due process, he should have been afforded the process in 8 U.S.C. § 1226(a). This, in addition to being afforded a bond hearing where a neutral arbiter makes determinations about dangerousness and risk of flight, requires that ICE have a warrant *prior* to any arrest. It also requires that ICE may only issue such a warrant at the time of or after the issuance of a notice to appear for removal proceedings. Mr. Periyannan was afforded none of the protections under § 1226(a) and should be released.

As discussed above, Mr. Periyannan may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). But, under section 1226, "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025). It provides that, "[o]n a warrant issued by the Attorney General, an alien may be arrested and detained." 8 U.S.C. § 1226(a). Such a warrant "must be issued before the alien is arrested and taken into custody." *Ramos v. Lyons*, 809 F. Supp. 3d 1015, 1023 (C.D. Cal. Nov. 12, 2025); *Matovu*, 2026 WL 1387476, at *3 ("Generally, the warrant must be issued before the noncitizen's arrest."). "[I]t follows that absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)." *Chogllo Chafla*, 804 F. Supp. 3d at 264 (emphasis in original).

Here, Mr. Periyannan was arrested on October 17, 2025, at his home. The government did not issue a Notice of Referral until December 3, 2025, and Mr. Periyannan was not shown a warrant before being arrested and the government has not provided one as an exhibit to its Return. Because this arrest violated the plain language of § 1226(a), his "arrest and detention are

unauthorized," and immediate release is the "appropriate remedy." *Cruz Pedraza,* 26-cv-2697-LL, ECF 12 at 4.

E. Relief Requested.

Both because the government improperly arrested Mr. Periyannan without following the applicable statutes and regulations and because they arrested him without first obtaining a warrant, Mr. Periyannan respectfully requests the Court order immediate release.

III.

PETITIONER'S PROLONGED DETENTION VIOLATES THE FIFTH AMENDMENT.

Even assuming (1) the IJ did not have jurisdiction to grant bond under 8 U.S.C. § 1282(b), (2) the government did not violate due process by arresting a person who had parole or a parole-like liberty interest, or (3) the government did not violate due process by not obtaining a warrant before arrest, the Court should order a bond hearing because Mr. Periyannan's prolonged detention violates the Fifth Amendment right to due process. That is true even if the Court finds that Mr. Periyannan is being held under 8 U.S.C. § 1225(b) (as a pre-final order asylum seeker) instead of § 1226.

A. The Cases.

"[D]istrict courts have grappled with how to address due process challenges to prolonged mandatory detention under § 1225(b)." *Banda*, 385 F. Supp. 3d at 1116. But after a full evaluation, "[n]early all district courts that have considered the issue agree that prolonged mandatory detention pending removal proceedings, without a bond hearing, will—at some point—violate the right to due process." *Id.* (cleaned up) (collecting cases).

These courts have relied on the due process concerns recognized in *Zadvydas*. *See, e.g.*, *Kydyrali*, 499 F. Supp. 3d at 771; *Banda*, 385 F. Supp. 3d at 1116–18; *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *3 (S.D. Cal. Oct. 15, 2025). As the Ninth Circuit put it, those considerations raise "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Like most courts, this Court should find that sufficiently prolonged detention violates the Due Process Clause. *See, e.g.*, *Gao v. LaRose*, No. 25-CV-2084-RSH-SBC, 2025 WL 2770633, at *3 (S.D. Cal. Sept. 26, 2025); *Abdul Kadir v. Larose*, No. 25CV1045-LL-MMP, 2025 WL 2932654, at *4 (S.D. Cal. Oct. 15, 2025); *Cong v. Noem*, No. 25-CV-3730-GPC-DEB, 2026 WL 76566, at *3 (S.D. Cal. Jan. 9, 2026); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768, 772 (S.D. Cal. 2020) (Battaglia, J.); *Mardian v. Mayorkas*, 25-CV-3467-JLS; *Raeva v. Mayorkas*, 25-CV-3175-JO; *Abdul-Samed v. Warden of Golden State Annex Det. Facility*, No. 25-CV-98-SAB-HC, 2025 WL 2099343, at *6 (E.D. Cal. July 25, 2025); *Hernandez v. Wofford*, No. 25-CV-986-KES-CDB (HC), 2025 WL 2420390, at *3 (E.D. Cal. Aug. 21, 2025); *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

B. <u>The Circumstances of Petitioner's Case Demonstrate that his Detention is Impermissibly Prolonged Under the Fifth Amendment.</u>

Though courts agree that due process mandates a bond hearing when detention grows unreasonably prolonged, they disagree about how to assess whether a particular migrant's detention has reached that point. *Sanchez-*

Rivera v. Matuszewski, No. 22-CV-1357-MMA (JLB), 2023 WL 139801, at *5–6 (S.D. Cal. Jan. 9, 2023) (Anello, J.) (surveying various approaches). Some courts have "conclude[d] . . . that detention becomes prolonged after six months and entitles [a petitioner] to a bond hearing." *Rodriguez v. Nielsen*, No. 18-CV-4187-TSH, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019). In that case, Mr. Periyannan would automatically qualify, as he has been detained for nine months.

Other courts have adopted various factor tests. *See Sanchez-Rivera*, 2023 WL 139801, at *5–6 (surveying different approaches). Courts generally agree that the relevant factors include:

(1)"the total length of detention to date,"

(2) "the likely duration of future detention," and

(3)"the delays in the removal proceedings caused by the petitioner and the government."

Id. Some courts also consider:

(4) "the conditions of detention," and

(5) "the likelihood that the removal proceedings will result in a different final order."

Id. These factors have come to be known as the "*Banda* factors" because they were used in *Banda v. McAleenan*, 385 F. Supp. 3d at 1096. Other courts have rejected the fourth and fifth factors, holding they are "not particularly suited to assisting the Court in determining whether detention has become unreasonable and due process requires a bond hearing." *Lopez v. Garland*, 631 F. Supp. 3d 870, 879 (E.D. Cal. 2022)*; accord Sanchez-Rivera*, 2023 WL 139801, at *5–6. Mr. Periyannan would prevail under any of these factor tests and submits the following analysis of the factors:

1. Length of Detention.

First, the "most important factor," length of detention, favors Mr. Periyannan. *Banda*, 385 F. Supp. 3d at 1118. In assessing this factor, "[i]t is important to bear in mind the context: The detention being examined here is the detention of a human being who has never been found to pose a danger to the community or to be likely to flee if released." *Jamal A. v. Whitaker*, 358 F. Supp. 3d 853, 859 (D. Minn. 2019). With that context, "[c]ourts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Amado v. United States Dep't of Just.*, No. 25CV2687-LL(DDL), 2025 WL 3079052, at *5 (S.D. Cal. Nov. 4, 2025).

As of the filing of this petition, Mr. Periyannan will have been in custody for nine months. That is well beyond the six-month and seven-month yardsticks. It also does not include the time it will take for the government to file a return, Mr. Periyannan to file a traverse, and the Court to issue a decision, which may involve a hearing. It is safe to say Mr. Periyannan could be looking at eleven months in custody by the time those proceedings are complete.

This factor therefore favors a bond hearing.

2. Likely Duration of Future Detention.

Second, given that Mr. Periyannan appealed the IJ's asylum denial on May 22, there will clearly be additional litigation in his case and those proceedings will take significant time – i.e., significant further detention. It is unknown how long his appeal to the BIA will take to resolve but it is safe to say it will at least take many months. And Mr. Periyannan plans to appeal to the Ninth Circuit if he loses that appeal. All told, "[t]his process may take up to two years or longer." *Banda*, 385 F. Supp. 3d at 1119. Because "Petitioner's

future detention can last several more months or even years[,]" this factor favors Mr. Periyannan's requests. *See Abdul Kadir v. Larose*, No. 25-CV-1045-LL-MMP, 2025 WL 2932654, at *5 (S.D. Cal. Oct. 15, 2025).

3. Source of Delay.

This factor is neutral.

4. Conditions of Confinement.

Fourth, Mr. Periyannan's conditions of confinement weigh in favor of a bond hearing. In considering the conditions of detention, "[t]he more that the conditions under which the [noncitizen] is being held resemble penal confinement, the stronger his argument that he is entitled to a bond hearing." *Banda*, 385 F. Supp. 3d at 1119. Mr. Periyannan is housed in the Imperial Regional Detention Facility – a facility largely indistinguishable from the jails that house criminal pretrial detainees. Mr. Periyannan is locked in a secure facility that is surrounded by razor wire. He is told what he can eat and when he may engage in any number of daily activities that those outside custody take for granted. Accordingly, his confinement at the facility is essentially the same as penal confinement.

This factor weighs in favor of bond.

5. Likelihood of a Different Result.

The fifth factor is difficult to analyze but it is safe to say that Mr. Periyannan's immigration history and situation is much more complex than many other petitioners' requests based on prolonged detention. For that fact alone, the chances of a different result on appeal are higher than in a mine-run prolonged detention habeas case.

Under any test, then, Mr. Periyannan is entitled to a bond hearing.

CLAIM AND PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court:

1. Order Respondents to immediately release Petitioner from custody without the need for a bond hearing, without the need for any bond amount, and subject to the conditions of his parole or parole-like liberty interest;

2. Alternatively order Respondents to immediately release Petitioner from custody on bond and with a bond amount and restrictions no greater than was imposed when the immigration judge initially granted bond on November 6, 2025.

3. Alternatively order Petitioner's immediate release based on the absence of a warrant as required by § 1226(a) and require Respondents to hold a pre-deprivation bond hearing before a neutral arbiter pursuant to § 1226(a) at which Respondents shall demonstrate the issuance of a warrant and at which Petitioner's eligibility for bond must be considered;

4. Alternatively order Respondents to provide Petitioner with a hearing and individualized bond determination within **ten days** of its order due to prolonged detention. The Order should specify that the IJ is not permitted to deny bond based on any perceived lack of jurisdiction under INA § 252(b).

5. Order that, prior to any re-detention of Petitioner, Petitioner is entitled to notice of the reasons for revocation of his release and a hearing before an immigration judge to determine whether detention is warranted. The government should bear the burden of establishing, by clear and convincing evidence, that circumstances have changed since the initial determination of release such that Mr. Periyannan now poses a danger to the community or is a risk of flight at that hearing;

6. Order any other relief that the Court deems just and proper.

Dated: August 7, 2026

Respectfully submitted,

By: *s/ Adam F. Doyle*
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Attorney for Mr. Periyannan