UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

ADHANOM DEBRU TESFAMARIAM, *Petitioner*, v. KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; DAREN K. MARGOLIN, Director, Executive Office for Immigration Review, in his official capacity; SYLVESTER M. ORTEGA, in his official capacity as Director of the San Antonio Field Office of ICE, Enforcement and Removal Operations ERO; and CHARLOTTE COLLINS, Warden of the T. Don Hutto Detention Center, *Respondents*.	Civil Action No. 1:26-cv-363 Immigration No. [redacted] **PETITIONER'S ORIGINAL VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This is a habeas action challenging the manner in which Respondents are executing Petitioner's detention and imminent removal, not the validity of the underlying 2018 removal order. Petitioner ADHANOM DEBRU TESFAMARIAM ([redacted]) is a native and citizen of Eritrea who has resided in the United States for many years, most recently in the Central Texas region. Although the Notice to Appear and government online systems, including ODLS and EOIR, currently identify Petitioner as a native and

citizen of Ethiopia, that designation is incorrect. Petitioner was recently transferred to ICE custody in Texas and is presently detained at the T. Don Hutto Detention Center in Taylor, Texas. *See* Ex. A, Proof of Detention in ICE Custody.

2. Petitioner has lived in the United States for approximately eight years and in Austin, Texas for nearly seven years. Following the entry of his removal order in 2018, the Department of Homeland Security elected to release him into the community under supervision. For years, Petitioner complied with all reporting requirements, electronic monitoring conditions, and directives issued by Immigration and Customs Enforcement. He remained at liberty in the community pursuant to the Government's own discretionary determination that he did not require detention.

3. In December 2025, without warning and despite full compliance with supervision conditions, ICE officers arrested Petitioner at his residence and placed him into custody. He is now detained at the T. Don Hutto Detention Center within this District. Yet, since the entry of his removal order, materially new facts have arisen demonstrating that Petitioner faces a substantial risk of imprisonment and torture if returned to Eritrea. He is preparing a motion to reopen based on changed country conditions and newly discovered evidence.

4. Respondents now seek to execute removal during the statutory removal period, before Petitioner has a meaningful opportunity to present his newly ripe claims and before any neutral adjudicator has evaluated the constitutional and statutory implications of those claims.

5. This case presents a narrow but fundamental question: whether the Government may abruptly revoke a years-long grant of supervised liberty and execute removal in a manner that deprives Petitioner of meaningful access to statutory reopening procedures and protection against refoulement, without affording constitutionally sufficient process.

6. Petitioner does not seek review of the underlying removal order through the present habeas action. Rather, he seeks only to prevent Respondents from executing detention and removal in a manner that violates the Fifth Amendment and exceeds statutory authority.

7. Mr. Tesfamariam therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, including a Temporary Restraining Order ("TRO") directing Respondents to provide him an individualized custody hearing or release him under reasonable conditions without delay.

II. JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by persons held in custody in violation of federal law or the Constitution. This action also invokes the Court's authority under the All Writs Act, 28 U.S.C. § 1651.

9. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek classwide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as "*Reno v. AADC*"). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

10. Venue is proper in this District, and in the Austin Division, because Petitioner is detained at the T. Don Hutto Detention Center in Taylor, Texas, within this Court's jurisdiction, whereas Petitioner's detention is controlled by the San Antonio Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

11. Petitioner, ADHANOM DEBRU TESFAMARIAM ("Mr. Tesfamariam"), is a citizen and national of Eritrea who has lived in the United States for approximately eight years, including continuous residence in Austin, Texas since February 2019. He was taken into ICE custody on December 15, 2026, following a planned enforcement action conducted by ICE officers near his home in Travis County, Texas, and was thereafter transferred to the T. Don Hutto Detention Center, where he remains detained. At the time of his arrest, Mr. Tesfamariam was in compliance with ICE supervision requirements, including electronic ankle monitoring, and had been advised at his most recent check-in that he would not be arrested. Petitioner is presently subject to a removal order issued in proceedings under INA § 240, 8 U.S.C. § 1229a, arising from his § 240 removal proceedings at the San Diego Immigration Court, where a hearing was held on May 23, 2018. *See* Ex. B, Documentation of Immigration Case. Mr. Tesfamariam did not previously appeal or seek reopening of that order because he was unrepresented despite diligent efforts to secure counsel and did not understand the appellate process.

12. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"). She is sued in her official capacity.

13. Respondent TODD LYONS is the Acting Director of Immigration and Customs Enforcement ("ICE"), an executive branch agency within the Department of Homeland Security. He is sued in his official capacity.

14. Respondent DAREN K. MARGOLIN is the Director of the Executive Office for Immigration Review ("EOIR"), the component of the Department of Justice responsible for immigration court adjudications, including bond hearings for noncitizens in removal proceedings. He is sued in his official capacity because EOIR, through its Immigration Judges, exercises exclusive authority over the conduct and scheduling of bond hearings, and EOIR's refusal to provide Petitioner with a constitutionally adequate bond hearing is an underlying basis of the unlawful detention challenged in this habeas petition.

15. Respondent SYLVESTER M. ORTEGA is the Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

16. Respondent, CHARLOTTE COLLINS, is the Warden of the T. Don Hutto Detention Center. As such, he is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The T. Don Hutto Detention Center is located at 1001 Welch St., Taylor, TX 76574. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

17. Respondents Noem, Lyons, and Margolin who represent DHS, ICE, and EOIR are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act ("APA").

IV. FACTUAL BACKGROUND

1. Petitioner ADHANOM DEBRU TESFAMARIAM is a thirty-four-year-old citizen of Eritrea who has made the United States his home for many years. He entered the United States on or about more than eight years ago through San Ysidro, CA and has lived here continuously since that date.

2. Until his recent arrest and detention, Mr. Tesfamariam lived and worked in Central Texas, where he has resided continuously since February 2019 and developed deep ties to his local community. Prior to his detention, he was under ICE supervision, including electronic ankle monitoring, with which he fully complied, and he maintained steady employment, including work with Uber, Amazon, and UPS. Mr. Tesfamariam has a lawful pending asylum application, no criminal history, no history of violence, and no disqualifying convictions of any kind. He has longstanding ties to the Eritrean and Ethiopian Orthodox communities in Austin, Texas, where he has volunteered his time and contributed to church and community support efforts. He also has close family members in the United States and a willing sponsor prepared to support him. These facts underscore that Mr. Tesfamariam has consistently lived as a contributing and law-abiding member of his community and does not pose a danger to society. *See* Ex. B, Documentation of Immigration History.

3. Although a removal order is now in place, Mr. Tesfamariam did not previously appeal or seek reopening because he was unrepresented, despite his repeated efforts to obtain counsel, so he did not understand the appellate process. He now presents newly discovered evidence that Eritrean government officials have repeatedly demanded [redacted] in retaliation for [redacted]

and [redacted]—facts that materially affect his fear of persecution if removed. He also has significant ties to the United States, including close family members, a willing sponsor, and longstanding involvement with the Eritrean and Ethiopian Orthodox communities in Austin, Texas. *See* Ex. B.

4. On December 15, 2026, despite his history of compliance with ICE supervision and his reliance on representations made at his most recent check-in that he would not be arrested, ICE officers conducted a planned enforcement operation near Mr. Tesfamariam's residence in Travis County, Texas, apprehended him, and placed him into custody. He was thereafter transferred to the T. Don Hutto Detention Center, where he remains detained. Mr. Tesfamariam is currently subject to a prior removal order issued in proceedings under INA § 240, 8 U.S.C. § 1229a, based on a Notice to Appear charging him as removable under INA § 212(a)(6)(A)(i). That order was entered while Mr. Tesfamariam was unrepresented, despite diligent efforts to secure counsel, and without his understanding of the availability or mechanics of appeal or reopening. As set forth below, Mr. Tesfamariam is now presenting newly discovered facts and evidence to the immigration court, bearing directly on his fear of return and eligibility for relief, which were not previously available or considered and which form the basis for a forthcoming motion to reopen his removal proceedings. *See* Ex. B.

5. Since the entry of the prior removal order, Mr. Tesfamariam has also obtained newly discovered and previously unavailable evidence concerning conditions specific to him in Eritrea. In particular, [redacted] have repeatedly demanded that [redacted] in retaliation for Mr. Tesfamariam's [redacted], which is enforced through severe

punishment. The most recent such demand occurred on or about November 10. These facts were not known to Mr. Tesfamariam at the time of his prior proceedings and were never presented to or considered by the Immigration Court. If returned to Eritrea, Mr. Tesfamariam reasonably fears that he would be [redacted] on account of [redacted]—facts that materially affect both his eligibility for relief and the equities relevant to reopening and continued detention. *See* Ex. B.

6. Critically, when Mr. Tesfamariam was served with a Notice to Appear and his case was filed with the Immigration Court, he was placed into removal proceedings under INA § 240, entitling him to the full procedural protections guaranteed by the INA and the Due Process Clause, including the opportunity to seek relief from removal and to meaningfully present evidence in support of that relief. The subsequent entry of a removal order occurred while Mr. Tesfamariam was unrepresented and without consideration of newly discovered, material evidence bearing directly on his fear of return to Eritrea.

7. In light of his longstanding presence in the United States, his forthcoming motion to reopen his removal proceedings based upon new evidence, and his compliance with ICE supervision—which conferred a liberty interest upon Petitioner—continued detention without a meaningful opportunity for review or consideration of release cannot be treated as a summary or automatic consequence of the prior order.

8. Despite this posture, Mr. Tesfamariam has been treated for bond immigration purposes as subject to mandatory detention. As a result, Mr. Tesfamariam now finds himself locked away at the T. Don Hutto Detention Center in Taylor, Texas, a remote

facility hundreds of miles from his family and community in the North Texas Region. *See* Ex. A. He is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal conviction that would bar his release under Section 236(c) of the INA. Each day of confinement exacerbates the harm—separating him from family and community support, impeding her ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

9. In sum, Mr. Tesfamariam has deep roots in the United States, strong claims for humanitarian protection, and no disqualifying criminal record. He has been thrust into prolonged civil detention solely because of recent change in the government's immigration enforcement policy that contravene the Petitioner's constitutional rights, including his right to procedural due process. His detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust.

V. LEGAL FRAMEWORK

A. The Mathews v. Eldridge Framework Governs.

10. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. The protection extends to noncitizens physically present within the United States, including those subject to final orders of removal.

11. Although Congress has broad authority over immigration, executive action implementing removal must comply with constitutional constraints. Where the Government restrains physical liberty or destroys a statutory right to seek protection from removal, due process protections apply.

12. After the entry of his removal order in 2018, the Government elected to release Petitioner under supervision rather than detain him. He lived and worked in the community for years, complied with ICE reporting requirements, and remained subject to electronic monitoring.

13. That supervised release created a significant conditional liberty interest. While subject to a final removal order, Petitioner was not incarcerated. He was permitted to live in the community, maintain employment, participate in religious life, and build ties within Austin.

14. The Supreme Court has repeatedly recognized that physical freedom from government detention is a core liberty interest protected by the Due Process Clause. The Government's decision to revoke that liberty and reimpose physical confinement constitutes a deprivation of liberty that must comport with due process.

15. In addition, Petitioner has a statutory right to seek reopening of his removal proceedings based on changed country conditions. Executing removal in a manner that nullifies that right implicates a protected procedural interest.

16. When determining what process is constitutionally required, courts apply the balancing test articulated in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts weigh: (i) the private interest affected by the official action; (ii) The risk of erroneous deprivation through the procedures used, and the probable value of additional safeguards; and (iii) the Government's interest, including fiscal and administrative burdens.

17. Federal courts within this District have recently applied *Mathews* in the immigration detention context. *See, e.g.*, *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS

188232 (W.D. Tex. Sept. 21, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751 (W.D. Tex. Oct. 21, 2025). In those decisions, the Court recognized that immigration detention implicates substantial liberty interests and that procedural safeguards are required where the risk of erroneous deprivation is significant.

B. Application of Mathews to this Case.

18. The balancing required under *Mathews v. Eldridge*, 424 U.S. 319 (1976), confirms that temporary injunctive relief is constitutionally warranted here.

19. First, the private interests at stake are substantial and irreversible. Petitioner's liberty interest is not abstract. For nearly seven years, the Government permitted him to live in the community under supervision. He complied with reporting requirements, electronic monitoring, and all directives imposed by ICE. During that time, he worked, participated in religious and community life in Austin, and remained physically free from confinement. The abrupt revocation of that conditional liberty—followed by physical detention—implicates one of the most fundamental interests protected by the Due Process Clause: freedom from bodily restraint.

20. The liberty interest extends beyond detention itself. Petitioner faces removal to Eritrea, where he was [redacted]. *See* Ex. C, Petitioner's Declaration.

21. Removal would not merely alter his immigration status; it would expose him to a substantial risk of [redacted] It would also permanently

foreclose his statutory right to seek reopening based on materially changed country conditions. *See* Ex. D, Declaration of Attorney Marron Gebremeskel.

22. These combined interests—physical liberty, protection fro[redacted]and access to statutory process—are weighty in the constitutional balance.

23. Second, the risk of erroneous deprivation under the current course of action is significant. The newly arisen evidence concerning extortion demands against Petitioner's mother and continued targeting by [redacted] post-dates the 2018 removal order and was never adjudicated in prior proceedings. *See* Ex. C, Petitioner's Declaration.

24. If removal is executed before a motion to reopen can be filed and adjudicated, Petitioner will be deprived of any meaningful opportunity to present those claims to a neutral decisionmaker. The harm would be irreversible. Once removed to Eritrea, he would be beyond the practical reach of this Court, and any subsequent reopening order would provide little or no effective protection. The additional safeguard requested—a temporary stay of removal pending adjudication—directly mitigates that risk. It ensures that Congress's reopening framework functions as intended and that statutory non-refoulement protections are not nullified by timing.

25. Finally, the Government's interests do not outweigh these concerns. While the Government has a legitimate interest in executing final removal orders efficiently, that interest must operate within constitutional and statutory limits. Congress has expressly provided for reopening based on changed country conditions, reflecting a legislative judgment that new facts can materially alter the propriety of removal. A temporary stay preserving adjudication imposes minimal administrative burden and does not invalidate

or vacate the underlying removal order. It simply ensures that removal is not carried out in a manner that renders statutory safeguards illusory.

26. In this context, the *Mathews* balance favors process before irreversible action. The Due Process Clause requires that Petitioner be afforded a meaningful opportunity to invoke reopening procedures and have his newly arisen claims evaluated before Respondents execute removal to a country where he faces a substantial risk of imprisonment and torture. Absent such procedural protection, the deprivation of liberty would be constitutionally infirm.

VI. CLAIMS FOR RELIEF

Count I – Fifth Amendment Due Process Violation

27. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

28. Petitioner's continued detention without access to an individualized custody redetermination hearing also violates the Due Process Clause of the Fifth Amendment. Prolonged detention without bond review is arbitrary, punitive, and unconstitutional.

29. The Supreme Court has long recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Immigration detention is civil in nature, but it nonetheless implicates this fundamental liberty interest.

30. Because Petitioner is detained by ICE at the T. Don Hutto Detention Center, he is categorically barred from presenting evidence that he is not a danger to the community and that he poses no flight risk. The blanket denial of access to a bond hearing strips

Petitioner of the individualized determination required by due process and by the plain language of Section 236(a).

31. Unlike noncitizens subject to mandatory detention for serious criminal offenses under Section 236(c) [8 U.S.C. § 1226(c)], Petitioner has no qualifying convictions that justify a categorical denial of release. The government has no legitimate basis to insist that Petitioner's detention be mandatory, yet he remains confined with no opportunity for release.

32. Denying Petitioner any access to a bond hearing deprives him of procedural protections guaranteed by the Due Process Clause. Moreover, prolonged detention without meaningful review violates the substantive limits of due process, as articulated in *Zadvydas* and *Demore v. Kim*, 538 U.S. 510 (2003).

33. Petitioner is a longtime resident of the United States, having lived in this country for approximately eight years, including continuous residence in Austin, Texas since 2019. He has substantial family, community, and religious ties in Central Texas, has maintained steady employment, and has fully complied with ICE supervision, including electronic monitoring, prior to his arrest. Petitioner also has a pending, lawfully filed asylum application, which has never been adjudicated on a full and accurate record. There has been no finding that Petitioner poses a danger to the community or a risk of flight. Nevertheless, he remains detained without meaningful individualized consideration of these factors and without consideration of newly discovered, material evidence bearing on his eligibility for relief. The resulting deprivation of liberty—based solely on the mechanical enforcement of a prior order entered without counsel and

without consideration of current facts—constitutes an arbitrary detention in violation of the Fifth Amendment's Due Process Clause.

34. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be afforded an immediate bond hearing, or that she be released from custody pending the final outcome of these proceedings.

Count II – Unlawful Agency Action (APA)

35. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

36. Respondents' arrest and detention of Petitioner without first affording him a bond hearing also constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706. The abrupt departure from longstanding precedent without reasoned explanation violates the Administrative Procedure Act.

37. The APA requires agencies to engage in reasoned decision-making and prohibits arbitrary or capricious action. 5 U.S.C. § 706(2)(A). The BIA's reversal of decades of established law without acknowledging or adequately explaining its departure is the very definition of arbitrary and capricious action. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

38. Although Petitioner has not filed a bond application since entering ICE custody on or about December 15, 2025, doing so would be futile, because the existence of his current removal order renders him mandatorily detained pursuant to the Immigration and Nationality Act. *See generally* 8 U.S.C. § 1226(c).

39. Accordingly, Respondents' refusal to provide Petitioner an individualized custody redetermination hearing constitutes unlawful agency action under the APA, and this Court should grant habeas relief to remedy the violation.

VII. REQUEST FOR INJUNCTIVE RELIEF

40. Petitioner respectfully requests that this Court grant injunctive relief directing Respondents to provide her an immediate individualized custody redetermination hearing under INA § 236(a) within seven (7) days, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner will also request preliminary injunctive relief and a Temporary Restraining Order in a separate filing, which is forthcoming.

41. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Tesfamariam might file—due to the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a).

42. There is no evidence that Petitioner poses a danger to the community or presents a risk of flight. To the contrary, Petitioner has affirmatively complied with DHS requirements by initiating and maintaining a lawful Application pursuing asylum protection through his pending application, maintaining compliance with all prior ICE monitoring requirements, and consistently appearing for required ICE check-ins. He has lived and worked lawfully in his community, taken concrete steps to regularize his residence here and remained in full compliance with immigration authorities.

43. Granting Petitioner an individualized bond hearing promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents

the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner's interest, but in the interest of the public at large.

44. For these reasons, this Court should grant injunctive relief, requiring Respondents to release Mr. Tesfamariam or provide him with a bond hearing as soon as possible.

VIII. PRAYER FOR RELIEF

45. For the above and foregoing reasons, Petitioner respectfully requests that this Court take the following actions:

a. Issue a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;

b. Petitioner respectfully requests that the Court grant a TRO and preliminary injunction requiring an individualized bond hearing or, alternatively, Petitioner's immediate release;

c. Declare that Respondents may not remove Mr. Tesfamariam from the United States while he seeks judicial and administrative review of his removal order, including through a forthcoming motion to reopen his proceedings under INA § 240, and without first affording him meaningful, individualized process consistent with due process and the INA;

d. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;

e. Grant permanent injunctive relief as appropriate;

f. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and

g. Grant such other relief as this Court deems just and proper.

DATE: February 16, 2026.

Respectfully submitted,

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VERIFICATION

My name is Marron Gebremeskel ("Declarant"), and my name is included in the foregoing document as Petitioner's immigration counsel. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that I am above the age of twenty-one (21) years of age, I am of sound mind, and I am in all ways competent to execute this verification. I further declare and acknowledge that I have read the substance of the foregoing document, that I have personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of my knowledge and belief.

s/ *Marron Gebremeskel*
MARRON GEBREMESKEL,
Declarant