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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
12

13 **SAMSOOR ORIAKHEL,**

14 **Petitioner,**

15 **v.**

16 **KRISTI NOEM, In her official capacity as**
17 **Secretary of Homeland Security,**

18 **GREGORY JOHN ARCHAMBEAULT,**
19 **in his official capacity as Field Office**
20 **Director, San Diego Field Office, U.S.**
21 **Immigration & Customs Enforcement;**

22 **TODD LYONS, In his official capacity as**
23 **Acting Director, U.S. Immigration and**
24 **Customs Enforcement,**

25 **PAMELA BONDI, In her official capacity**
26 **as Attorney General,**

27 **Warden of the Otay Mesa Detention**
28 **Center;**

Respondents.

Civil Action No. '26CV1302 TWR DEB

Immigration No.



VERIFIED EMERGENCY PETITION FOR
WRIT OF HABEAS CORPUS AND
INCORPORATED MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

1. This matter involves a citizen of Afghanistan, Mr. Samsoor Oriakhel (“Mr. Oriakhel”), who is presently being detained in the custody of ICE ERO’s San Diego Field Office at the Otay Mesa Detention Center, without an individualized bond determination and in violation of the law. Mr. Oriakhel entered the United States on August 29, 2021 and was paroled into the country. He resides in Cajon, California and has received Special Immigrant Visa (“SIV”) status and had already applied for his permanent residency, which remains pending. Nevertheless, he was detained by ICE and taken to the Otay Mesa Detention Center on or about December 24, 2025 and has been held in custody since then without a bond hearing. He was placed into removal proceedings and issued a Notice to Appear charging him with removability as a non-citizen who is an “arriving alien” On January 2, 2026, the Immigration Judge denied his bond finding that he has no jurisdiction.
2. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under § 1225(b)(2)(A). This legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.
3. This systemic misclassification of people arrested inside the United States is in clear violation of the law. These people are generally subject to the detention provisions of 8 U.S.C. § 1226, which usually allows for release on bond and conditions during the pendency of immigration proceedings. It has been this way for decades. DHS and DOJ are now misclassifying these people as being subject to 8 U.S.C. § 1225, which does not allow for release on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country—in some cases, decades ago.
4. Accordingly, Petitioner seeks a writ of habeas corpus. Petitioner requests an order requiring

1 his immediate release, or in the alternative, his immediate release unless Respondents provide
2 a bond hearing under § 1226(a) within seven days.

3 **THE PARTIES**

4 5. Petitioner is detained in the custody of ICE. He is being detained in the custody of the San
5 Diego ICE Field Office at the Otay Mesa Detention Center, which is located within this
6 judicial district. His custody and governmental actions related to his removal are likewise
7 controlled by the ICE San Diego Field Office.

8 6. Respondent Warden of the Otay Mesa Detention Facility is the unknown individual who is in
9 charge of the Otay Mesa Detention Facility, and is therefore the individual who has direct
10 physical authority over the Petitioner. His office is located at 7488 Calzada de la Fuente, San
11 Diego, California 92154.

12 7. Respondent Gregory John Archambeault is the Field Office Director for the San Diego Field
13 Office of Enforcement and Removal Operations, U.S. Immigration and Customs
14 Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez*
15 *v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent
16 Archambeault's office is at 880 Front Street #2242, San Diego, CA 92101.

17 8. Petitioner's custody and the governmental actions related to his potential removal from the
18 district are likewise controlled by Respondents Todd Lyons (who is the Acting Director of
19 U.S. Immigration and Customs Enforcement), Kristi Noem (who is the Secretary of
20 Homeland Security), and Pamela Bondi (who is the Attorney General and therefore in control
21 of the Executive Office for Immigration Review, which administers the Immigration Courts
22 and the Board of Immigration Appeals).

23 **CUSTODY**

24 9. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs
25 Enforcement ("ICE") at the Otay Mesa Detention Center. The Deportation Officer
26 responsible for his case is employed by the San Diego Field Office of ICE. The Petitioner is
27 under the direct care, custody and control of Respondents and their agents.
28

JURISDICTION & VENUE

I. Subject Matter Jurisdiction

10. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

11. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I, § 9, el. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

II. Personal Jurisdiction

12. This Court has personal jurisdiction over Petitioner's immediate custodian (who is physically within the district).¹

III. VENUE

13. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of California, the judicial district in which Petitioner is being detained. Petitioner is being detained at the Otay Mesa facility and his detention falls under the jurisdiction of the ICE Field Office of San Diego, California, which encompasses the area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

FACTS

14. Samsoor Oriakhel ("Mr. Oriakhel") is a citizen of Afghanistan. Mr. Oriakhel arrived to the United States at Dulles Airport on August 29, 2021 legally and was paroled into the country

¹ Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the interest of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal jurisdiction.

1 under Operation Allies Refuge (OAR). His parole was for a period of 4 years. See **Ex. A, I-**
2 **94.**

3 15. Mr. Oriakhel resides in Cajon, California with his wife and children.

4 16. Mr. Oriakhel followed the legal pathways to achieving residency in the United States and has
5 received Special Immigrant Visa (“SIV”) status due to his assistance with the U.S. allied war
6 efforts in Afghanistan. He has already applied for his permanent residency, which remains
7 pending.

8 17. Nevertheless, he was detained by ICE and taken to the Otay Mesa Detention Center on or
9 about December 24, 2025 and has been held in custody since then without a bond hearing.

10 18. He was taken into custody shortly after an incident during which he had a marital
11 disagreement with his wife which resulted in police intervention and domestic violence
12 charges. Since then, however, his spouse has requested that the charges be dismissed.

13 19. Mr. Oriakhel was placed into removal proceedings on December 24, 2025 and issued a Notice
14 to Appear charging him with removability as a non-citizen who is an “arriving alien.” See **Ex.**
15 **B, Notice to Appear.**

16 20. On January 2, 2026, the Immigration Judge denied him a bond hearing, finding that he has no
17 jurisdiction. See **Ex. D, Bond Denial Order.**

18 21. On January 5, 2026, ICE issued new factual allegations in lieu of those set forth in the Notice
19 to Appear, acknowledging that Mr. Oriakhel was legally paroled into the country. See **Ex. C,**
20 **Additional Charges of Inadmissibility/Deportability.**

21 22. He is eligible for relief from removal in the form of an asylum, withholding of removal,
22 protection under the Convention Against Torture, as well as adjustment of status based on his
23 approved SIV.

24 23. ICE has issued a custody determination to continue Petitioner’s detention without an
25 opportunity to post bond or be released on other conditions. See **Ex. E, I-286 Notice of**
26 **Custody Determination.**

27 24. He is presently detained in the custody of ICE ERO’s San Diego Field Office at the Otay
28 Mesa Detention Center.

25. Without relief from this Court, Petitioner faces the prospect of months, or even years, in immigration custody, as he continues to pursue relief in the immigration courts.

LEGAL FRAMEWORK WITH RESPECT TO BOND

26. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c).

28. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

29. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

30. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).

32. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without admission or parole were not considered detained under § 1225 and that they were instead detained under § 1226(a). See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

33. Thus, in the decades that followed, most people who entered without admission or parole and were placed in standard removal proceedings received bond hearings, unless their criminal

1 history rendered them ineligible. That practice was consistent with many more decades of
2 prior practice, in which noncitizens who were not deemed “arriving” were entitled to a
3 custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also
4 H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
5 detention authority previously found at § 1252(a)).

6 34. On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new
7 policy that rejected this well-established understanding of the statutory framework and
8 reversed decades of practice.

9 35. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for
10 Admission,” claims that all persons who entered the United States without admission or
11 parole shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore
12 are subject to mandatory detention under § 1225(b)(2)(A). The policy applies regardless of
13 when a person is apprehended, and affects those who have resided in the United States for
14 months, years, and even decades.

15 36. On September 5, 2025, the BIA adopted this same position in *Matter of Yajure Hurtado*.

16 There, the Board held that all noncitizens who entered the United States without admission or
17 parole are considered applicants for admission who are seeking admission and are ineligible
18 for IJ bond hearings.

19 37. Numerous judges within this circuit and nationwide have uniformly rejected DHS’s and
20 EOIR’s new interpretation because it defies the INA. The plain text of the statutory provisions
21 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. *See, e.g.,*
22 *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3,
23 2025); *Coc Pacham v. Archeambault*, No. 3:25-cv-03163-GPC-DEB (S.D. Cal. Dec. 17,
24 2025); *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328 (E.D.
25 Cal. Oct. 27, 2025); *A.E.R.T. v. Wofford*, 1:25-CV-1824-KES-SKO (HC) (E.D. Cal. Dec. 16,
26 2025); *Garcia Mariagua v. Chestnut*, No. 1:25-cv-01744-DJC-CSK, 2025 WL 3551700 (E.D.
27 Cal. Dec. 11, 2025); *J.E.H.G. v. Chestnut*, No. 1:25-CV-01673-JLT-SKO, 2025 WL 3523108,
28 at *10 (E.D. Cal. Dec. 9, 2025) (citing *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025

1 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025)) *see also Barco Mercado v. Francis*, ___ F. Supp.
 2 3d. ___, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (noting
 3 that, in “350” of the “362” opinions to address this issue, the petitioners “prevailed, either on
 4 a preliminary or final basis,” and these cases were “decided by over 160 different judges
 5 sitting in about fifty different courts”)

6 38. In *Maldonado Bautista v. Santacruz*, the Central District of California issued both declaratory
 7 and injunctive relief holding that noncitizens who entered without inspection but were not
 8 apprehended at the border are detained under § 1226(a), not § 1225(b)(2), and are therefore
 9 entitled to bond hearings. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM,
 10 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025); *Maldonado Bautista v. Santacruz*, No. 5:25-
 11 CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

12 39. Subsection 1226(a) applies by default to all persons “pending a decision on whether the
 13 [noncitizen] is to be removed from the United States.” These removal hearings are held under
 14 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

15 40. Subsection 1226(a) applies by default to all persons “pending a decision on whether the
 16 [noncitizen] is to be removed from the United States.” These removal hearings are held under
 17 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].”

18 41. The text of § 1226 also explicitly applies to people charged as being inadmissible, including
 19 those who entered without admission or parole. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph
 20 (E)’s reference to such people makes clear that, by default, such people are afforded a bond
 21 hearing under subsection (a). “When Congress creates ‘specific exceptions’ to a statute’s
 22 applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez*
 23 *Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate*
 24 *Ins. Co.*, 559 U.S. 393, 400 (2010)).

25 42. Section 1226 therefore leaves no doubt that it applies to people who face charges of being
 26 inadmissible to the United States, including those who are present without admission or
 27 parole.

28 43. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered

1 the United States. The statute's entire framework is premised on inspections at the border of
2 people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed,
3 the Supreme Court has explained that this mandatory detention scheme applies "at the
4 Nation's borders and ports of entry, where the Government must determine whether a[]
5 [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281,
6 287 (2018).

7 44. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like
8 Petitioner, who has already entered and was residing in the United States at the time he was
9 apprehended.

10 45. This Court has held that immediate release is the appropriate remedy where a non-citizen
11 petitioner is detained unlawfully in violation of their due process rights, such as by being
12 detained without a warrant as required under § 1226(a). *See J.A.C.P. v. Wofford*, 2025 WL
13 3013328, at *8; see also *Choglo Chafila v. Scott*, No. 2:25-CV-00437-SDN, 2025 WL 2688541, at
14 *11 (D. Me. Sept. 22, 2025) ("Issuance of a warrant is a necessary condition to justify
15 discretionary detention under section 1226(a)."). "Section 1226(a) plainly states: 'On a warrant
16 issued by the Attorney General, a [noncitizen] may be arrested and detained" *Id.* (quoting 8
17 U.S.C. § 1226(a)). "As such, it follows that absent a warrant a noncitizen may not be arrested and
18 detained under section 1226(a)." *Id.* "To put it simply, [petitioner's] detention[] [is] improper
19 because there is no evidence in the record that [he was] arrested pursuant to a warrant." *Id.* "Since
20 the Government did not comply with the plain language of section 1226(a), [petitioner's]
21 immediate release is justified." *Id.*; *Chiliquinga Yumbillo v. Stamper*, No. 2:25-CV-00479-SDN,
22 2025 WL 2783642, at *5 (D. Me. Sept. 30, 2025) (reaching same conclusion).

23 24 CLAIMS FOR RELIEF

25 COUNT 1: VIOLATION OF THE INA

26 46. Petitioner re-alleges and incorporates by reference each and every allegation contained in the
27 preceding paragraphs as if set forth fully herein, and does so for all additional counts.

28 47. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens

1 residing in the United States who are subject to the grounds of inadmissibility. As relevant
2 here, it does not apply to those who previously entered the country and have been residing in
3 the United States prior to being apprehended and placed in removal proceedings by
4 Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to §
5 1225(b)(1), § 1226(c), or § 1231.

6 48. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and
7 violates the INA.

8 **COUNT 2: VIOLATION OF DUE PROCESS**

9 49. Petitioner re-alleges and incorporates by reference each and every allegation contained in the
10 preceding paragraphs as if set forth fully herein, and does so for all additional counts.

11 50. The government may not deprive a person of life, liberty, or property without due process of
12 law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
13 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause
14 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

15 51. Petitioner has a fundamental interest in liberty and being free from official restraint.

16 52. The government’s detention of Petitioner without a bond redetermination hearing to
17 determine whether Petitioner is a flight risk or danger to others violates the right to due
18 process.

19
20 **PRAYER FOR RELIEF**

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

- 22 (1) Assume jurisdiction over this matter;
- 23 (2) Prevent the Petitioner’s removal outside of this judicial district until this action is
24 decided;
- 25 (3) Issue a temporary stay of Petitioner’s removal until this action is decided;
- 26 (4) Declare ICE’s July 8 policy and the BIA’s *Matter of Yajure Hurtado* decisions
27 unlawful;
- 28 (5) Issue a writ of habeas corpus clarifying that the statutory basis for Petitioner’s

1 detention is 8 U.S.C. § 1226(a) and that 8 U.S.C. § 1225(b)(2)(A) does not apply to
2 Petitioner;

- 3 (6) Issue a writ of habeas corpus requiring that Respondents release Petitioner
4 immediately, and that if the government seeks to re-detain petitioner, it must provide
5 no less than seven (7) days' notice to petitioner and must hold a pre-deprivation bond
6 hearing before a neutral arbiter pursuant to section 1226(a) and its implementing
7 regulations, at which petitioner's eligibility for bond must be considered and where the
8 Government shall bear the burden of proving by clear and convincing evidence that
9 Petitioner poses a danger to the community or a flight risk; and
10 (7) Fashion such additional relief as is necessary and appropriate, including declaratory
11 relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and
12 international law
13
14

15 Dated: March 2, 2026

16 Respectfully Submitted,

17 /s/ Kurt R. Saccone

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

I represent Petitioner and submit this verification on Petitioner's behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 2, 2026

Respectfully Submitted,

/s/ Kurt R. Saccone

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