

1 Theodora E. Adoghe, Esq., CASBN358199
Law Offices Of Mariana L. Hanna
2 402 West Broadway, Suite 1730
Phone: 619-234-3635
3 Email: theodoraadoghe@gmail.com

4 Mariana L. Hanna, Esq., CASBN230127
Law Offices Of Mariana L. Hanna
5 402 West Broadway, Suite 1730
Phone: 619-234-3635
6 Email: mlhlawoffice@yahoo.com

7 Attorneys for the Petitioner

8 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

9 Mamadou Samba Tounkara
10 *Petitioner,*

11 *v.*

12 CASEY JEREMY, Warden, Imperial Regional
Adult Detention Facility, Calexico, California
in his official capacity, GREGORY J.
13 ARCHAMBEAULT, Field Office Director, San
Diego Field Office, U.S. Immigration and
14 Customs
Enforcement, in his official capacity;
15 U.S. Immigration and Customs Enforcement;
KRISTI NOEM, Secretary, U.S. Department
16 of Homeland Security, in her official capacity;
TODD M. LYONS, Acting Director of U.S.
17 Immigration and Customs Enforcement, in his
official capacity
18 PAMELA BONDI, U.S. Attorney General, in her
official capacity,
19 *Respondents.*

Case No. '26CV1306 AGS DDL
PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Mamadou Samba Tounkara (“Petitioner”) seeks a writ of habeas corpus because he is currently detained at the Imperial Regional Adult Detention Facility, Calexico, California, by the Department of Homeland Security (“DHS”) in violation of the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment.
2. Petitioner is a native and citizen of Guinea. He entered the United States without inspection on December 25, 2023. He was apprehended after entry by U.S. Border Patrol agents and taken into custody for processing.
3. After conducting a background check and confirming that he had no criminal history, no outstanding warrants, and posed no threat to public safety or national security, DHS released him on his own recognizance on December 29, 2023, pursuant to INA § 236(a), 8 U.S.C. § 1226(a). That same day, DHS initiated removal proceedings under INA § 240 through the issuance of a Notice to Appear (“NTA”), alleging that Petitioner was present in the United States without being admitted or paroled under INA § 212(a)(6)(A)(i). Those proceedings remain pending.
4. Following his release, Petitioner timely filed Form I-589 seeking asylum, withholding of removal, and protection under the Convention Against Torture. He obtained employment authorization from United States Citizenship and Immigration Services (“USCIS”), maintained lawful employment, and appeared at every immigration court hearing. Petitioner also complied with all U.S. Immigration and Customs Enforcement

1 (“ICE”) reporting requirements and appeared for all immigration court hearings. He has
2 never been arrested, charged, or convicted of any crime.

3 5. On October 3, 2025, Petitioner appeared for a scheduled immigration hearing. At the
4 conclusion of the hearing, Petitioner left the courtroom and was approached by ICE
5 agents and arrested without notice or a deprivation hearing.

6 6. This petition challenges only the legality of Petitioner’s present detention. It does not
7 seek review of the removability charge or the merits of his applications for relief.

8 7. First, Petitioner’s detention is governed by INA § 236(a), 8 U.S.C. § 1226(a), which
9 authorizes discretionary detention. DHS exercised that authority when it released him on
10 his own recognizance pursuant to INA § 236(a). He was later re-detained in the United
11 States while removal proceedings were pending, so § 1226(a) continues to govern his
12 custody. He is not subject to mandatory detention under 8 U.S.C. § 1225(b), and DHS
13 lacks statutory authority to impose mandatory detention in this posture.

14 8. Second, Petitioner’s re-detention violates the Due Process Clause of the Fifth
15 Amendment. DHS revoked his previously granted liberty without advance notice and
16 without providing a meaningful opportunity to be heard.

17 9. Third, Petitioner’s continued detention reflects Executive overreach. The immigration
18 court has relied on unsupported flight risk findings to circumvent controlling district
19 court authority, reflecting a broader pattern and practice that advances the Executive
20 Branch’s immigration agenda.

21 10. In Preiser v. Rodriguez, 411 U.S. 475, 484 (1973), the Supreme court explained that
22 where, as here, a petitioner challenges the fact of detention itself, habeas corpus is the

proper vehicle and release is the core remedy.

11. For these reasons, Petitioner respectfully requests that this Court issue a writ of habeas corpus ordering his immediate release from immigration detention.

JURISDICTION

12. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Petitioner is in federal custody and challenges the legality of his present physical detention under the Constitution and laws of the United States.

13. Jurisdiction also arises under 28 U.S.C. § 1331 and Article I, Section 9, Clause 2 of the United States Constitution. The Suspension Clause preserves the writ of habeas corpus as a means of testing the lawfulness of executive detention.

14. This Court has authority to grant relief pursuant to 28 U.S.C. § 2241. See INS v. St. Cyr, 533 U.S. 289, 301–314 (2001) (recognizing habeas jurisdiction over questions of law in immigration detention). The Court may also grant appropriate relief under 28 U.S.C. §§ 2201 and 1651 as necessary to protect and effectuate its jurisdiction.

15. Jurisdiction is not barred by 8 U.S.C. §§ 1252(b)(9) or 1252(g) because Petitioner does not challenge a removal order or the conduct of removal proceedings. He challenges only the statutory and constitutional authority for his present detention. Federal courts retain habeas jurisdiction over such custody claims. See Nadarajah v. Gonzales, 443 F.3d 1069, 1075–1080 (9th Cir. 2006); Demore v. Kim, 538 U.S. 510, 516–517 (2003).

VENUE

16. Venue is proper in this District under 28 U.S.C. § 2241(a) because Petitioner is detained at the Imperial Regional Detention Facility in Calexico, California, within this judicial

1 district.

2 17. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are officers or
3 agencies of the United States acting in their official capacities, and a substantial part of
4 the events giving rise to the challenged detention occurred in this District.

5 18. Venue over the immediate custodian is proper in this District because Petitioner is
6 confined at the Imperial Regional Detention Facility in Calexico, California, and his
7 custodian is subject to this Court's authority. See Braden v. 30th Judicial Circuit Court
8 of Kentucky, 410 U.S. 484, 493 to 500 (1973); Rumsfeld v. Padilla, 542 U.S. 426, 442
9 to 447 (2004).

10 **REQUIREMENTS OF 28 U.S.C. § 2243**

11 19. Under 28 U.S.C. § 2243, this Court must promptly grant the writ of habeas corpus or
12 issue an order directing Respondents to show cause why the writ should not be granted,
13 unless the petition makes clear that the petitioner is not entitled to relief.

14 20. If an order to show cause is issued, § 2243 requires Respondents to make a return
15 forthwith and directs the Court to proceed to a hearing and determination of the matter
16 as law and justice require. The statute reflects Congress's intent that habeas petitions
17 receive expedited judicial consideration because they involve ongoing restraints on
18 personal liberty.

19 21. The writ of habeas corpus has long served as a safeguard against unlawful executive
20 detention. The Supreme Court has described it as a swift and imperative remedy in all
21 cases of illegal restraint or confinement. See Fay v. Noia, 372 U.S. 391, 400 (1963).

22 22. The Ninth Circuit has likewise recognized that habeas petitions challenging immigration

1 detention warrant prompt resolution, given that the petitioner remains in custody while
2 the case is pending. See Yong v. INS, 208 F.3d 1116, 1120 (9th Cir. 2000).

3 **PARTIES**

4 23. Petitioner Mamadou Samba Tounkara is currently detained at the Imperial Regional
5 Detention Facility in Calexico, California.

6 24. Respondent Casey Jeremy, Warden of the Imperial Regional Detention Facility,
7 Calexico, California, is Petitioner's immediate physical custodian for purposes of habeas
8 corpus. See Rumsfeld v. Padilla, 542 U.S. 426, 442 to 447 (2004).

9 25. Respondent, Field Office Director, San Diego Field Office, U.S. Immigration and
10 Customs Enforcement, is sued in his official capacity. The San Diego Field Office
11 oversees detention operations within this judicial district, including the Imperial
12 Regional Detention Facility.

13 26. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs
14 Enforcement. He is responsible for national ICE detention policies and is sued in his
15 official capacity.

16 27. Respondent Kristi Noem is the Secretary of the United States Department of Homeland
17 Security and is sued in her official capacity. The Department of Homeland Security is
18 charged with the administration and enforcement of the immigration laws.

19 28. Respondent Pam Bondi is the Attorney General of the United States and is sued in her
20 official capacity. The Attorney General oversees the Executive Office for Immigration
21 Review, which conducts removal proceedings under the Immigration and Nationality
22 Act. See 8 U.S.C. §§ 1103(a)(1), 1103(g).

1 29. Each Respondent is sued in his or her official capacity for actions taken under color of
2 federal law in connection with Petitioner's detention..

3 **FACTUAL AND PROCEDURAL BACKGROUND**

4 30. Petitioner is a native and citizen of Guinea. He fled Guinea on account of his Fulani
5 ethnicity and political opinion.

6 31. On December 25, 2023, Petitioner entered the United States without inspection seeking
7 asylum. He was detained by Border Patrol agents and taken into custody. At that time,
8 Immigration and Customs Enforcement ("ICE") conducted thorough background checks
9 and confirmed that Petitioner had no criminal history, outstanding wants or warrants,
10 and posed no threat to national security.

11 32. On December 29, 2023, ICE released Petitioner on his own recognizance. That same
12 day, removal proceedings under INA § 240 were initiated against him through the
13 issuance of a Notice to Appear alleging that he was present in the United States without
14 being admitted or paroled pursuant to INA § 212(a)(6)(A)(I).

15 33. After release, Petitioner timely filed Form I-589 seeking asylum, withholding of
16 removal, and protection under Article 3 of the Convention Against Torture. He also
17 applied for and received employment authorization. During this period, he attended
18 adult school to study and learn English.

19 34. Petitioner resided in the United States for nearly two years under supervised release. He
20 was fully compliant with all ICE check-ins and all scheduled immigration court
21 hearings. He did not violate the terms of his release, and there was no fundamental or
22 material change in circumstances that would have warranted detention.

1 35. On October 3, 2025, Petitioner appeared for a scheduled immigration hearing. At the
2 conclusion of the hearing, he left the courtroom and was approached by ICE agents and
3 arrested without notice or cause. He was not provided a pre-deprivation hearing, in
4 violation of the Due Process Clause.

5 36. Since his rearrest on October 3, 2025, Petitioner has remained detained without bond at
6 the Imperial Regional Detention Facility in Calexico, California.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 37. No statutory exhaustion requirement applies to this habeas petition. Petitioner
9 challenges only the legality of his present detention under 28 U.S.C. § 2241. Federal
10 courts retain jurisdiction where detention exceeds statutory authority or violates the
11 Constitution. See Jennings v. Rodriguez, 583 U.S. 281, 292 to 295 (2018).

12 38. Although courts may impose prudential exhaustion in limited circumstances, exhaustion
13 is not required where administrative remedies are unavailable, inadequate, or futile, or
14 where the agency lacks authority to grant the relief sought. See McCarthy v. Madigan,
15 503 U.S. 140, 144 to 145 (1992).

16 39. Petitioner does not seek review of his removal proceedings or of any final order of
17 removal. He challenges only the statutory and constitutional basis for his present
18 detention. Detention-only claims fall within the core of habeas corpus and are not
19 subject to the INA's administrative channeling provisions. See Nadarajah v. Gonzales,
20 443 F.3d 1069, 1075 to 1080 (9th Cir. 2006).

21 40. Petitioner does not seek review of his removal proceedings or of any final order of
22 removal. He challenges only the statutory and constitutional basis for his present

1 detention. Detention-only claims fall within the core of habeas corpus and are not
2 subject to the INA's administrative channeling provisions. See *Nadarajah v. Gonzales*,
3 443 F.3d 1069, 1075 to 1080 (9th Cir. 2006).

4 41. Where the agency has taken the position that detention is categorically mandatory,
5 requiring further administrative exhaustion would be futile. See *Zadvydas v. Davis*, 533
6 U.S. 678, 688 (2001).

7 42. Accordingly, the Court should waive any prudential exhaustion requirement and
8 consider this petition.

9 LEGAL FRAMEWORK

10 COUNT ONE

11 **Petitioner's Re-Detention Is Governed by 8 U.S.C. § 1226(a), and His Continued Custody**

12 **Violates the INA**

13 43. Petitioner seeks immediate release because his present detention is governed by INA §
14 236(a), codified at 8 U.S.C. § 1226(a), which authorizes discretionary detention under
15 these circumstances. He is not subject to mandatory detention under 8 U.S.C. § 1225.

16 44. Petitioner incorporates by reference the factual allegations set forth above.

17 45. The Supreme Court has drawn a clear distinction between detention at the threshold of
18 entry and detention during removal proceedings. Section 1226 "authorizes the
19 Government to detain certain [noncitizens] already in the country pending the outcome
20 of removal proceedings." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Section
21 1226 governs individuals inside the United States who are in removal proceedings.

22 46. By contrast, Section 1225 governs detention during the inspection and admissibility

1 determination process. Once DHS initiated proceedings under INA § 240 and released
2 Petitioner under INA § 236(a), the inspection stage ended and custody authority arose
3 under 8 U.S.C. § 1226.

4 47. After electing § 240 proceedings and exercising release under § 236(a), DHS cannot
5 later recharacterize Petitioner's custody under § 1225(b). Petitioner's re detention
6 occurred within the United States after he had lived in the United States for more than
7 two years. On October 3, 2025, DHS re detained Petitioner inside the United States after
8 a scheduled immigration court hearing. He was not at a port of entry, was not
9 undergoing inspection, and was not seeking admission.

10 48. Under these undisputed facts, § 1226(a) supplies the operative redetention authority
11 because it governs custody in the interior of the United States. Section 1225(b), which
12 addresses detention during the inspection of applicants for admission seeking entry, does
13 not apply to an individual living in the interior of the United States who has been placed
14 into removal proceedings and released pursuant to § 236(a). Accordingly, Petitioner's
15 redetention is governed by the discretionary framework of INA § 1226(a).

16 49. Respondents' reliance on § 1225(b) is foreclosed by authority within this Circuit. In
17 Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, 2025 WL 3289861
18 (C.D. Cal. Dec. 18, 2025), the court entered final judgment and vacated DHS's July 8,
19 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission"
20 as contrary to law under the Administrative Procedure Act. The court rejected DHS's
21 position that individuals detained within the interior of the United States were subject to
22 detention under § 1225 notwithstanding their interior posture. The court further held that

1 it agreed with the Maldonado petitioners that § 1226 governs detention of noncitizens
2 detained in the interior of the United States and interpreted § 1226 to apply to
3 noncitizens who have not been admitted or paroled and were arrested inside the United
4 States.

5 50. Pursuant to that same litigation, on February 18, 2026, the Central District of California
6 in Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb. 18,
7 2026), vacated the Board's decision in Matter of Yajure Hurtado, 29 I&N Dec. 216
8 (2025), which had held that noncitizens were subject to mandatory detention under 8
9 U.S.C. § 1225(b)(2). The court further reiterated that the DHS interim guidance was
10 vacated as contrary to law.

11 51. Consistent with that statutory interpretation, Petitioner's charging NTA states that he has
12 not been admitted or paroled. This was addressed by the Maldonado Bautista court,
13 which explained that for a noncitizen arrested in the interior who has not been admitted
14 or paroled, § 1226 is the governing statute. Furthermore, Courts addressing materially
15 similar circumstances have applied § 1226(a), not § 1225(b), to individuals who were
16 released into the interior and later re detained. In Morales-Flores v. Lyons, No.
17 1:25-cv-01640-TLN-EFB, 2025 WL 3552841 (E.D. Cal. Dec. 11, 2025), the court held
18 that § 1226(a) governed the petitioner's detention after she was initially released by
19 DHS and re detained within the interior of the United States.

20 52. Here, Petitioner's custodial posture mirrors those decisions. DHS exercised
21 discretionary release authority under INA § 236(a) on December 29, 2023. His
22 subsequent re detention in the interior outside the courthouse does not alter his

1 procedural posture or convert him into an applicant for admission seeking entry under 8
2 U.S.C. § 1225. DHS's reliance on § 1225 to impose mandatory detention is a
3 misclassification and is inconsistent with the detention framework established by the
4 INA.

5 53. In sum, § 1226 governs Petitioner's current detention. He entered without inspection and
6 was arrested after he effectuated entry. DHS then determined on December 29, 2023,
7 that Petitioner's custody was governed by INA § 236(a) when it released him under that
8 statute. More than two years later, while he remained in the interior of the United States
9 and his case was pending, on October 3, 2026, DHS re detained him and invoked §
10 1225(b). Petitioner's re detention is governed by § 1226(a) because he was re detained
11 within the interior of the United States. Continued custody under a mandatory detention
12 theory therefore violates the INA and governing authority within this Circuit, which has
13 stated that § 1226 governs noncitizens in a custody posture similar to Petitioner's.

14 54. Accordingly, Petitioner seeks immediate release because § 1226(a) governs his
15 detention. By subjecting him to mandatory detention under a statutory framework that
16 does not apply to his custodial posture, DHS has acted contrary to the INA and in
17 violation of the Constitution. Immediate release is the appropriate remedy.

18 COUNT TWO

19 Petitioner Seeks Immediate Release Because DHS Violated the Fifth Amendment Due

20 Process Clause at the Onset of His Detention

21 55. Petitioner independently seeks immediate release because DHS violated the Fifth
22 Amendment Due Process Clause when it revoked his authorized release and re-detained

1 him without sufficient justification or process. Petitioner was released pursuant to INA §
2 236(a) and lived at liberty for more than two years while fully complying with all
3 conditions of supervision. On October 3, 2025, DHS summarily re-detained him without
4 alleging any violation of those conditions or materially changed circumstances, and
5 without providing notice or a predeprivation hearing. As a result, his ongoing detention
6 violates both substantive and procedural due process under the Fifth Amendment.

7 56. The Fifth Amendment provides that no person shall be deprived of liberty without due
8 process of law. U.S. Const. amend. V. The Due Process Clause applies to all “persons”
9 within the United States, including noncitizens regardless of status. Zadvydas v. Davis,
10 533 U.S. 678, 693 (2001). As the Supreme Court explained, “Freedom from
11 imprisonment—from government custody, detention, or other forms of physical
12 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” Id. at
13 690.

14 I. Petitioner Redetention Violates Substantive Due Process

15 57. Substantive due process prohibits arbitrary civil confinement. Immigration detention is
16 constitutionally permissible only while it remains reasonably related to a legitimate,
17 nonpunitive regulatory purpose and is accompanied by adequate procedural protections.
18 Zadvydas. Civil confinement outside the criminal context is permitted only in limited
19 circumstances supported by sufficient justification. United States v. Salerno, 481 U.S.
20 739 (1987); Foucha v. Louisiana, 504 U.S. 71, 80 (1992); Kansas v. Hendricks, 521
21 U.S. 346, 356 (1997).

22 58. Courts analyzing as-applied due process challenges to immigration re-detention apply a

1 two-step framework. First, the court asks whether the petitioner has a protected liberty
2 interest under the Due Process Clause. Second, the court determines what procedures are
3 constitutionally required before that liberty may be withdrawn. R.D.T.M. v. Wofford,
4 2025 WL 2617255, at *7 (E.D. Cal. Sept. 9, 2025) (citing Kentucky Dep’t of Corr. v.
5 Thompson, 490 U.S. 454, 460 (1989)).

6 A. Petitioner Has a Protected Liberty Interest Upon Release

7 59. A protected liberty interest may arise from conditional release from physical restraint.
8 Young v. Harper, 520 U.S. 143, 147–49 (1997). Even when a statute authorizes arrest
9 and detention, the Due Process Clause may require procedural protections before
10 conditional liberty is revoked. Id. See, Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973);
11 Morrissey v. Brewer, 408 U.S. 471, 482 (1972). To determine whether a specific
12 conditional release gives rise to a protected liberty interest, courts compare “the specific
13 conditional release in the case before them with the liberty interest in parole as
14 characterized by Morrissey.” R.D.T.M. v. Wofford, 2025 WL 2617255, at *7 (E.D. Cal.
15 Sept. 9, 2025).

16 60. In Morrissey v. Brewer, 408 U.S. 471, 482 (1972), the Supreme Court explained that
17 parole “enables [the parolee] to do a wide range of things open to persons” who are not
18 confined, including living at home, working, and maintaining family and community
19 ties. Although subject to supervision, the parolee’s condition “is very different from that
20 of confinement in a prison.” Id. Release carries “at least an implicit promise that parole
21 will be revoked only if [the individual] fails to live up to the parole conditions,” and
22 revocation “inflicts a grievous loss.” Id.

1 61. Here, DHS exercised its authority under INA § 236(a) to release Petitioner after
2 determining he posed neither a danger nor a flight risk. He remained at liberty for more
3 than two years. During that period, he complied with all conditions of supervision,
4 appeared for required ICE check-ins and immigration hearings, pursued immigration
5 relief, attended school, and obtained a work permit. Importantly, he was not arrested,
6 charged, or convicted of any crime while released.

7 62. DHS may rely on the fact that Petitioner's release was discretionary. However, DHS
8 cannot rely on that fact to defeat his protected liberty interest. Even where release is
9 discretionary, that discretion does not eliminate a protectable liberty interest. "The fact
10 that a decision-making process involves discretion does not prevent an individual from
11 having a protectable liberty interest." Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D.
12 Cal. 2019). DHS's exercise of discretionary authority under INA § 236(a) does not
13 negate the liberty interest that attached once release occurred.

14 63. Accordingly, Petitioner's release falls squarely within the conditional-liberty framework
15 described in Morrissey and applied in R.D.T.M. His continued liberty carried the same
16 "implicit promise" that it would not be revoked absent a violation of release conditions.
17 Petitioner did not violate those conditions and did not commit any crime. Therefore,
18 Petitioner possesses a protected liberty interest in his continued release under the Due
19 Process Clause.

20 B. The Re-Detention Was Not Reasonably Related to a Legitimate Regulatory Purpose

21 64. Because Petitioner possessed protected conditional liberty, DHS's re-detention must be
22 evaluated under the substantive limits the Due Process Clause places on civil

1 confinement. See R.D.T.M. v. Wofford, 2025 WL 2617255 (E.D. Cal. Sept. 9, 2025).

2 65. Civil detention is constitutionally permissible only so long as it remains reasonably
3 related to a legitimate regulatory purpose. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).
4 In the immigration context, those purposes are ensuring appearance at proceedings and
5 protecting the community.

6 66. When the government has previously determined that release under supervision is
7 sufficient, renewed detention must remain supported by a concrete factual basis tied to
8 flight risk or danger. See Saravia v. Sessions, 280 F. Supp. 3d 1168, 1197 (N.D. Cal.
9 2017) (examining whether changed circumstances justified re-arrest following release);
10 Carballo v. Andrews, 2025 WL 2381464, at *8 (E.D. Cal. Aug. 15, 2025) (recognizing
11 due process concerns where re-detention followed government-authorized release absent
12 allegations of violations or changed conditions).

13 67. Here, DHS did not allege any violation of Petitioner's supervision conditions. Petitioner
14 appeared at required ICE check-ins and immigration hearings, including the appearance
15 immediately preceding re-detention. He was not arrested, charged, or convicted of any
16 crime during more than two and a half years at liberty. The record reflects no materially
17 changed circumstance altering DHS's prior determination that supervision was
18 sufficient.

19 68. In the absence of a new factual basis tied to flight risk or danger, revoking Petitioner's
20 previously authorized liberty is not reasonably related to a legitimate regulatory purpose.

21 69. Petitioner's continued detention therefore violates substantive due process.

1 II. Petitioner's Re-Detention Violates Procedural Due Process

2 70. Because Petitioner possessed a protected liberty interest in his continued release, the
3 Court must determine what process was constitutionally required before DHS could
4 revoke that liberty. See R.D.T.M. v. Wofford, 2025 WL 2617255 (E.D. Cal. Sept. 9,
5 2025).

6 71. Independent of the substantive violation, the Fifth Amendment required constitutionally
7 adequate procedures before DHS could withdraw Petitioner's previously authorized
8 liberty. Procedural due process requires "the opportunity to be heard at a meaningful
9 time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976)
10 (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)). Under Mathews, courts
11 balance (1) the private interest affected, (2) the risk of erroneous deprivation under the
12 procedures used and the probable value of additional safeguards, and (3) the
13 Government's interest. 424 U.S. at 335. In the immigration context, the analysis also
14 accounts for the Government's enforcement interests. Rodriguez Diaz v. Garland, 53
15 F.4th 1189, 1206 (9th Cir. 2022).

16 72. Applying the Mathews factors weighs decisively in Petitioner's favor.

17 A. Private Interest

18 73. The first Mathews factor evaluates the private interest affected. Here, the interest at
19 stake is Petitioner's freedom from physical confinement after more than two years of
20 government-authorized liberty. In Zadvydas v. Davis, 533 U.S. 678, 690 (2001), the
21 Supreme Court explained that freedom from imprisonment lies at the core of the liberty
22 protected by the Due Process Clause. Likewise, in Morrissey v. Brewer, 408 U.S. 471,

1 482 (1972), the Court held that termination of conditional liberty “inflicts a grievous
2 loss.”

3 74. Here, Petitioner’s liberty was summarily withdrawn after he had remained at liberty,
4 established community ties, attended school, and complied with all release conditions.
5 The withdrawal of that liberty inflicts the type of grievous loss recognized in *Morrissey*.
6 This factor weighs in Petitioner’s favor.

7 B. Risk of Erroneous Deprivation

8 75. The second Mathews factor evaluates the risk of erroneous deprivation when a
9 pre-deprivation hearing is not provided before re-detention. Here, the risk of erroneous
10 deprivation was high because DHS re-detained Petitioner immediately after a scheduled
11 immigration court hearing, without advance notice, without a written explanation, and
12 without affording him an opportunity to contest renewed detention before or promptly
13 after confinement.

14 76. Courts within this circuit have expressly recognized that “[n]umerous courts have
15 concluded that individuals like Petitioner, who were released from immigration
16 detention, [are] entitled to a pre-deprivation hearing prior to any rearrest or detention as
17 a matter of due process.” J.C.E.P. v. Wofford, CV-25-01449-EFB (HC), 2025 WL
18 3268273, at *6 (E.D. Cal. Nov. 24, 2025). See also Ramirez Clavijo v. Kaiser,
19 CV-25-06248-BLF, 2025 WL 2419263, at *3 (N.D. Cal. Aug. 21, 2025) (“[Petitioner] is
20 entitled to a pre-deprivation hearing before a neutral decision maker prior to any
21 re-arrest or detention under the Due Process Clause”); Singh v. Andrews,
22 CV-25-00801-KES-SKO (HC), 2025 WL 1918679, at *8 (E.D. Cal. July 11, 2025)

(holding “on the balance, the Mathews factors show that petitioner is entitled to due process, and that process should have been provided before petitioner was detained.”).

77. The rationale of these cases applies here. Petitioner was released on his own recognizance on December 29, 2023, and was summarily re-detained on October 3, 2025, without notice or a pre-deprivation hearing. Under the authorities cited above, due process required a pre-deprivation hearing before his re-detention.

78. Because DHS failed to provide Petitioner notice or an opportunity to be heard before revoking his liberty, the risk of erroneous deprivation under the procedures used was substantial.

79. The Mathews Court emphasized the importance of additional safeguards in reducing the risk of error. Here, notice of the basis for re-detention and a prompt neutral custody determination before neutral decision would have required DHS to articulate specific grounds for renewed confinement and would have substantially reduced the risk of arbitrary detention. Custody redetermination are routine procedural measures and impose minimal administrative burdens relative to the liberty interest at stake.

Accordingly, the second Mathews factor weighs strongly in Petitioner’s favor.

C. Government Interest

80. The final Mathews factor evaluates the Government’s interest, including the function involved and the fiscal and administrative burdens that additional procedures would entail. The Government has legitimate interests in ensuring appearance at immigration proceedings and protecting the community. However, the Ninth Circuit has made clear that the Government has no legitimate interest in detaining individuals who have been

determined not to be a danger and whose appearance can reasonably be ensured through supervision. Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017).

81. Here, DHS previously determined that supervision under INA § 236(a) was sufficient to ensure Petitioner's appearance and to mitigate any risk. Petitioner attended all immigration court hearings and ICE check-ins while at liberty. With respect to public safety, there is no articulated concern. Petitioner has no criminal history, was never arrested or charged while released, and DHS previously determined, following background and security screening, that he posed neither a danger nor a flight risk. He was re-detained during a routine encounter without committing a crime or violating any release condition.

82. Under these facts, the Government's interest in summary re-detention without prior notice or an individualized determination is minimal.

83. Therefore, balancing the Mathews factors, the Constitution required notice of the basis for re-detention and a meaningful opportunity to challenge renewed custody either before or promptly after Petitioner's liberty was revoked. The private interest was substantial. The risk of erroneous deprivation was significant under the procedures used. The Government's asserted interests were limited under the record. Yet Petitioner's liberty was withdrawn without constitutionally adequate procedural safeguards.

84. Accordingly, independent of the statutory violations addressed elsewhere, DHS's summary re-detention violated procedural due process at its inception and remains constitutionally deficient.

COUNT III

Immediate Release Is Appropriate to Safeguard Against Constitutional Overreach by the Executive Branch.

85. Petitioner submits that immediate release is the appropriate remedy to safeguard against constitutional overreach by the executive branch. This Court vacated the DHS Interim Policy and later vacated Matter of Yajure Hurtado due to Respondents' continued reliance on legally defective detention interpretations. Nevertheless, immigration judges have continued denying bond by relying on Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025), which rests on the same legal reasoning previously rejected. Under these circumstances, referring Petitioner back to the immigration court for a bond hearing would not provide meaningful relief.

86. As stated by Federal District Court Judge Sykes, Respondents, whom act on behalf of executive agencies "have far crossed the boundaries of constitutional conduct." Maldonado Bautista v. Santracruz, 5:25-cv-01873-SSS-BFM (C.D. Cal. Feb 2026) ("Bautista II"). Respondents continue to ignore federal district court decisions and implement the executive agency's legal interpretation of the law thereby eroding "any semblance of separation of powers." Id.

87. Immigration judges are not part of the judicial branch. Rather, they are administrative employees of the Executive Office of Immigration Review ("EOIR"), an agency within the Department of Justice ("DOJ"), which operates under the executive branch. Although EOIR states that its mission is to adjudicate immigration cases "fairly, expeditiously, and uniformly,"¹ this objective has been undercut by the current

¹ <https://www.justice.gov/eoir/about-office>

1 administration's hard-line immigration agenda, which includes a militarization of the
2 immigration court system, mass arrest and detention of immigrants, and encroachment
3 on federal judicial authority.

4 88. On June 27, 2005, the acting director of EOIR issued a nationwide memorandum to all
5 immigration judges accusing certain judges of bias against the administration, advising
6 those judges to consider another career, and threatening to terminate their employment.
7 Following this memorandum, the Trump administration engaged in a mass firing of
8 judges who did not align with its mass deportation goals. Exhibit ("Exh.") 13.

9 89. Since 2025, the Trump administration has fired over 100 immigration judges without
10 cause and replaced them with temporary military lawyers. "Most of the judges fired
11 either had higher rates of granting asylum, were former immigration defense attorneys,
12 or had dual citizenship." Exh. 11,13. In doing so, the administration essentially purged
13 EOIR of immigration judges who did not align with or would not be willing to advance
14 the current administration's policy objectives. As a result, the administration stripped
15 EOIR of its status as a neutral arbitrator and reconstructed it as a tool to advance
16 anti-immigration policies.

17 90. As of September 2025, the Department of Defense ("DOD") has approved sending up to
18 600 military lawyers to serve as temporary immigration judges. Exhs. 12. Hiring
19 military lawyers to act as temporary immigration judges advances the perception that the
20 purpose of these new judges is to deport rather than to weigh each case on its merits.
21 This move further signals this administration's goal to use the immigration courts as a
22 tool to advance its anti-immigration policies.

- 1 91. What has resulted is an abuse of executive power in which EOIR has blatantly
2 circumvented the federal judiciary by ignoring court decisions. Exh. 8, 9, 10. This is
3 clearly demonstrated by the administration's decision to arrest and subject millions of
4 immigrants, like Petitioner, to mandatory detention.
- 5 92. Specifically, on July 8, 2025, ICE issued an internal memorandum, deviating from long-
6 standing precedent, calling for the arrest and mandatory detention of millions of
7 undocumented immigrants. Specifically, the DHS policy entitled "Interim Guidance
8 Regarding Detention Authority for Applicants for Admission," ("DHS Interim Policy")
9 held that any non-citizen present in the United States without being admitted or paroled
10 was subject to mandatory, indefinite detention under INA § 235(b). The BIA, which
11 also falls under the purvey of the executive branch, codified mandatory detention
12 through its subsequent issuance of Matter of Q. Li, 29 I&N Dec. 66 (BIA 2025) and
13 Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025).
- 14 93. On December 18, 2025, the United States District Court for the Central District of
15 California, in Maldonado Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, 2025
16 WL 3289861 (C.D. Cal. Dec. 18, 2025), entered a final judgment restoring bond
17 eligibility for the aforementioned individuals. In so doing, the Court specifically
18 vacated the DHS Interim Policy under the Administrative Procedure Act as not in
19 accordance with law. 5 U.S.C. § 706(2)(A). Despite this, EOIR, again acting under the
20 direction of the executive branch, decided it was not bound by the federal court's ruling.
- 21 94. Specifically, on January 13, 2025, Chief Immigration Judge Teresa L. Riley issued a
22 nationwide guidance instructing all immigration judges **not to follow** Maldonado

Bautista stating it was not binding on the immigration courts. Exh. 7. **The failure by the executive branch to recognize the validity of a decision by an Article III Court amounts to constitutional overreach and encroaches on the judiciary’s authority to interpret the law.**

95. On January 27, 2026, the United States Central District Court of California entered an order in Inzuna v. Warden of Adelanto Detention Facility et al., 5:26-cv-00078-SSS-BFM, in which it denounced the immigration judges’ open defiance of judicial orders. The Court recognized that Respondents have “deliberate[ly]” continued to defy *Maldonado Bautista* and stated that “[d]espite the final judgement in *Bautista*, it appears that immigration judges continue to rely on legal interpretations that were expressly found unlawful.” Accordingly, the Court entered an order collaterally estopping Respondents from relitigating whether Bond Eligible Class members are entitled to relief.

96. On February 18, 2026, the United States District Central District Court of California issued an order in Bautista II in which it explicitly vacated Matter of Yajure Hurtado, due to its continued reliance by Respondents. Specifically, the Court held that it had previously vacated the DHS Interim Policy finding it violated the law, that Yujure Hurtado was “functionally equivalent to the DHS Interim Policy,” and that the Respondents continued to rely on Yujure Hurtado despite a finding that the rationale upon which Yajure Hurtado was premised contradicted the Court’s interpretation of the law. Id.

97. Bautista II centered exclusively on Respondents continued blatant defiance of federal

1 court orders and interpretations of law. As stated by Federal District Court Judge Sykes
2 the “separation of powers” and the Respondents’ blatant disregard for the Constitution
3 lay at the heart of the case.

4 98. Each branch of the government is imbued with its own Constitutional duties.

5 “ “[I]nterpretation of the laws” is “the proper and peculiar province of the courts.” “The
6 Supreme Court observed recently that ‘the Framers structured the Constitution to allow
7 judges to exercise that judgement independent of influence from political branches.’” Id.
8 citing Loper Bright Enters. v. Raimondo, 603 U.S. 369, 385 (2024) (citations omitted).
9 “That independence is crucial.” Id. Thus “an order issued by a court with jurisdiction
10 over the subject matter and person must be obeyed by the parties until it is reversed by
11 orderly and proper proceedings.” United States v. United Mine Workers of Am., 330
12 U.S. 258, 293, (1947). “It is ‘emphatically the province and duty of the judicial
13 department to say what the law is.’” Marbury v. Madison, 5 U.S. 137, 177 (1803). “It is
14 not the executive’s department’s province and duty to say what the law is. The role of
15 the judiciary is to continue to demand compliance with the law even in the face of
16 outright defiance by the executive.” Id. Thus Respondents are bound by the federal
17 district courts interpretations of the law.

18 99. EOIR continues to overstep its constitutional boundaries by refusing to comply with the
19 federal district court’s legal interpretation of the law.

20 100. On a nationwide level, immigration judges have reportedly been systematically denying
21 bond based on a baseless finding of “flight risk.” Exh. 5. As reflected in the attached
22 exhibits, bond orders often state that the noncitizen has failed to establish that s/he is not

1 a flight risk without providing any reasoning or analysis. In most cases, the flight risk
2 finding is unsupported by the record as the detainees seeking bond had previously been
3 released from ICE custody on an order of supervision and complied with the terms of
4 their release, including appearing at all immigration court hearings and ICE check-ins.
5 Most in fact, were arrested while appearing for court or during an ICE check-in.

6 101. This nationwide pattern of bond denials following habeas relief, based solely on
7 meritless findings of flight risk, suggests the existence of internal guidance directing
8 immigration judges to continue circumventing federal court orders, in the same manner
9 in which they were explicitly instructed to disregard the district court's decision in
10 Maldonado Bautista, in order to continue to detain immigrants. This is further bolstered
11 by the most recent development, namely one day after the Central District of California
12 vacated Yujure Hurtado, the immigration court denied bond jurisdiction based on Q.Li,
13 a case premised on the same legal reasoning which was found unconstitutional in Yujure
14 Hurtado.

15 102. As applied to Petitioner, DHS released him under INA § 236(a) on December 29, 2023.
16 He lived in the community for over two years, attended all immigration court hearings
17 and ICE check-ins, incurred no criminal violations, and complied with all conditions of
18 supervision. Nevertheless, he was re-detained on October 3, 2025, outside of
19 immigration court, despite no identified violation of supervision and no material change
20 in circumstances.

21 103. Petitioner remains detained within this jurisdiction under a mandatory detention
22 interpretation this Court has expressly vacated.

1 104. Accordingly, immediate release is the appropriate remedy to ensure compliance with
2 this Court's rulings and to safeguard against continued detention under a legal
3 interpretation rejected by an Article III court.

4 **CONCLUSION**

5 105. Respondents lack statutory authority to detain Petitioner under INA § 1225(b). Petitioner
6 was released under INA § 236(a) on December 29, 2022, after DHS determined that he
7 posed neither a flight risk nor a danger to the community. He remained in the
8 community for more than two years in full compliance with all supervision conditions
9 while his removal proceedings were pending before the immigration court. On October
10 3, 2025, he was re-detained outside immigration court within the United States. His
11 detention is governed by INA § 236(a), not § 1225(b).

12 106. The re-detention independently violated the Fifth Amendment. DHS withdrew
13 previously authorized conditional liberty without notice, without a meaningful
14 opportunity to be heard, and without identifying any violation of supervision conditions
15 or any material change in circumstances.

16 107. Because Petitioner's detention exceeds statutory authority and violates the Due Process
17 Clause, this Court should grant the writ of habeas corpus and order Petitioner's
18 immediate release.

19 **PRAYER FOR RELIEF**

20 108. WHEREFORE, Petitioner respectfully requests that this Court:

21 109. Grant the Petition for a Writ of Habeas Corpus;

22 110. Declare that Petitioner's current detention is governed by INA § 236(a) and that DHS

1 lacks statutory authority to detain him under INA § 1225(b)

2 111. Order Petitioner's immediate release from immigration custody as the appropriate
3 remedy for detention imposed without statutory authority and in violation of the Fifth
4 Amendment's Due Process Clause;

5 112. In the alternative, only if the Court declines to order immediate release, order a prompt
6 and individualized custody determination pursuant to INA § 236(a), to occur within a
7 reasonable period not to exceed three (3) days, at which: (a) The government bears the
8 burden of proving, by clear and convincing evidence, that continued detention is
9 justified; (b) The adjudicator conducts an individualized assessment based on the totality
10 of the circumstances, including Petitioner's full compliance with supervision for one
11 year and eleven months, absence of any violation of release conditions, lack of criminal
12 history, consistent attendance at immigration court hearings and ICE check-ins, and
13 pursuit of lawful immigration relief; (c) Detention is not treated as mandatory or
14 presumptive; (d) Release on recognizance or the least restrictive conditions necessary to
15 ensure appearance is meaningfully considered; and (e) Any conditions of release are
16 narrowly tailored to legitimate civil immigration purposes;

17 113. Grant appropriate injunctive relief sufficient to ensure that any further detention of
18 Petitioner complies with governing statutory and constitutional requirements;

19 114. Award reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act,
20 28 U.S.C. § 2412, to the extent permitted by law; and

21 Dated: March 2, 2026

Respectfully Submitted,

/s/ *Theodora E. Adoghe*

Theodora E. Adoghe, Esq., CASBN358199
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: theodoraadoghe@gmail.com

/s/ *Mariana L. Hanna*

Mariana L. Hanna, Esq., CASBN230127
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: mlhlawoffice@yahoo.com

VERIFICATION

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under the penalty of perjury that the facts set forth in the foregoing Petition for Habeas Corpus are true and correct. Executed this day of March 2nd, 2026.

/s/ Theodora E. Adoghe

Theodora E. Adoghe, Esq., CASBN358199
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: theodoraadoghe@gmail.com

/s/ Mariana L. Hanna

Mariana L. Hanna, Esq., CASBN230127
Law Offices Of Mariana L. Hanna
402 West Broadway, Suite 1730
Phone: 619-234-3635
Email: mlhlawoffice@yahoo.com