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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALEXANDER EYOB-HAGOS,

Petitioner,

v.

JEREMY CASEY, Warden, Imperial Regional Adult Detention Facility, DANIEL A. BRIGHTMAN, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement, DAVID VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement, MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, and TODD W. BLANCHE, Acting Attorney General of the United States, in their official capacities,

Respondents.

No. **'26CV3272 BJC DEB**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner Alexander Eyob-Hagos ("Eyob-Hagos") is presently detained in Calexico, California in the custody of the U.S. Department of Homeland Security ("DHS"). He petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

2. Eyob-Hagos is a native and citizen of Eritrea. He was previously detained by the DHS at the Imperial Regional Adult Detention Facility between December of 2019 and March of 2021. However, on or about March 19, 2021, U.S. Immigration and Customs Enforcement ("ICE") released him on an order of recognizance. *See* Exhibit 2.

3. Following his release from custody, an Immigration Judge ("IJ") thereafter denied Eyob-Hagos's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158 and 1231(b)(4), as well as protection under the Convention Against Torture ("CAT").

4. After the Board of Immigration Appeals ("BIA") dismissed Eyob-Hagos's appeal, he filed a petition for review in the Ninth Circuit on December 20, 2024. His petition for review remains pending.

5. Eyob-Hagos is now the father of two U.S. citizen twin sons. *See* Exhibits 3 and 5. They are a year old. Their mother is a lawful permanent resident ("LPR"). *See* Exhibit 4. After being released by ICE, he reported on multiple occasions for check-ins. He most recently did so on August 18, 2025 and was instructed to report back on February 19, 2026. *See* Exhibit 2.

6. Nevertheless, on or about January 22, 2026, Eyob-Hagos was rearrested by U.S. Customs and Border Protection ("CBP") agents while working as a truck driver. On January 24, 2026, he was transported back to the Imperial Regional Adult Detention Facility in Calexico, California. He has remained there ever since. During this time, he has been separated from his family.

7. Following his rearrest, Eyob-Hagos filed a motion for a stay of removal with the Ninth Circuit on January 26, 2026. His removal has been automatically "temporarily stayed until further order of the court" pursuant to Ninth Circuit General Order 6.4(c). *See* Exhibit 7 (Dkt. No. 33).

8. Eyob-Hagos's ongoing detention violates the Due Process Clause of the Fifth Amendment. He is currently being detained pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1231, since his removal has been temporarily stayed by the Ninth Circuit. *See Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008). He is therefore entitled to a bond hearing under the INA. However, based on the Government's current policies, he is unable to obtain a bond hearing. Beyond that, he has been detained by the DHS without an opportunity for a hearing despite his significant family ties and the fact that he had previously reported to ICE.

9. Accordingly, Eyob-Hagos requests that this Court order his immediate release or, alternatively, order Respondents to promptly provide him with a bond hearing.

CUSTODY

10. Eyob-Hagos is currently detained at the Imperial Regional Adult Detention Facility in Calexico, California. Respondents and their agents have physical custody of Eyob-Hagos and/or have direct control over his custody.

JURISDICTION

11. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq*. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

13. Venue is proper pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 2241(a) because Eyob-Hagos is detained at the Imperial Regional Adult Detention Facility in Calexico, California, which lies within this district.

REQUIREMENTS OF 28 U.S.C. § 2243

14. Pursuant to 28 U.S.C. § 2243, the Court must grant the petition for writ of habeas corpus or issue an order to show cause ("OSC") to the Respondents "forthwith," unless Eyob-Hagos is not entitled to relief. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

15. Eyob-Hagos is a native and citizen of Eritrea. He has been detained at the Imperial Regional Adult Detention Facility in Calexico, California since January of this year.

16. Respondent Jeremy Casey is sued in his official capacity as the Warden of the Imperial Regional Adult Detention Facility in Calexico, California. He has immediate physical custody of Eyob-Hagos. Respondent Casey is a legal custodian of Eyob-Hagos.

17. Respondent Daniel A. Brightman is sued in his official capacity as Field Office Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement ("ICE"). In this capacity, he is responsible for and oversees the agency's enforcement and removal operations in San Diego and Imperial County, California. Respondent Brightman is a legal custodian of Eyob-Hagos.

18. Respondent David Venturella is sued in his official capacity as the Acting Director of ICE. In this capacity, Respondent Venturella is responsible for and oversees ICE's enforcement and removal operations. Respondent Venturella is a legal custodian of Eyob-Hagos.

19. Respondent Markwayne Mullin is sued in his official capacity as the Secretary of the DHS. In this capacity, Respondent Mullin oversees ICE, the component agency responsible for Eyob-Hagos's detention. Respondent Mullin is a legal custodian of Eyob-Hagos.

20. Respondent Todd W. Blanche is sued in his official capacity as the Acting Attorney General of the United States. In that capacity, he oversees the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Blanche is a legal custodian of Eyob-Hagos.

STATEMENT OF FACTS

A. Eyob-Hagos's First Detention and Immigration Proceedings

21. Eyob-Hagos is a native and citizen of Eritrea who entered the United States without inspection on or about December 24, 2019. He was apprehended by the DHS, which detained him at the Imperial Regional Adult Detention Facility in Calexico, California.

22. The Government issued Eyob-Hagos a Notice to Appear dated March 30, 2020, which charged him with being removable because he had not been admitted or paroled into the United States. *See* Exhibit 1. After being placed in removal proceedings, he applied for asylum, withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3), and protection under CAT.

23. Eyob-Hagos testified at a hearing on August 18, 2020 while still detained in the custody of the DHS. He provided further testimony at a continued hearing on October 21, 2020. The IJ took the matter under advisement without rendering a decision following the October 2020 hearing.

24. Eyob-Hagos was subsequently released from custody by ICE on an order of recognizance on or about March 19, 2021. *See* Exhibit 2. Prior to his release, he had been detained for well over a year and two months.

25. The IJ thereafter issued a written decision on October 29, 2021 denying Eyob-Hagos's applications for asylum, withholding of removal, and protection under CAT. The IJ determined that his testimony was purportedly not credible and that he had failed to independently establish his eligibility for protection under CAT.

26. The IJ's adverse credibility finding was based in part on a Report of Investigation ("ROI"), which the DHS filed on the same day as the October 21, 2020 hearing. The ROI allegedly "revealed that no one arrived in Brazil with a Sudanese travel document from 5/2/19 to 5/12/19" and that "no one arrived in Brazil during the month of May 2019 using a name similar to 'Mahmed Sahleh.'" The IJ claimed that the ROI contradicted Eyob-Hagos's account of how he traveled to Brazil.

27. The attorney for the DHS represented in the proceedings before the IJ that the ROI was based on a "post 9/11 database" of flight manifests. However, the underlying contents of the database were never disclosed to Eyob-Hagos during the proceedings before the IJ. The ROI itself consists of hearsay evidence.

28. Eyob-Hagos moved to subpoena testimony from the two governmental agents who had conducted the investigation that led to the ROI. Before issuing her written decision, the IJ denied Eyob-Hagos's motion to subpoena their testimony. She did so even though the INA provides that a noncitizen must be afforded a "reasonable opportunity" after being placed in removal proceedings "to cross-examine witnesses presented by the Government." 8 U.S.C. § 1229a(b)(4)(B).

29. Eyob-Hagos filed an appeal from the IJ's decision with the BIA on November 24, 2021. The BIA dismissed his appeal in a decision dated November 27, 2024, in which it adopted and affirmed the IJ's decision. Accordingly, the BIA upheld the IJ's decision denying Eyob-Hagos's applications for asylum, withholding of removal, and protection under CAT.

B. Eyob-Hagos's Petition for Review

30. Eyob-Hagos filed a timely petition for review on December 20, 2024 in the Ninth Circuit after the BIA dismissed his appeal. He was not detained in the custody of the DHS when he petitioned for review.

31. Eyob-Hagos's petition for review was served on the prior Field Office Director of ICE's San Diego Field Office. ICE is aware that he has sought judicial review of the BIA's decision.

32. Eyob-Hagos submitted an opening brief on April 23, 2025 in support of his petition for review. The Government filed its answering brief on August 6, 2025. Eyob-Hagos then submitted a reply brief on September 26, 2025. The Ninth Circuit has yet to render a decision. *See* Exhibit 7.

33. In his opening brief, Eyob-Hagos argued that the IJ had failed to offer a reasoned explanation for denying his motion to subpoena testimony from the Government's witnesses and that he had been deprived of his right to cross-examine them, which rendered the proceedings below fundamentally unfair. He further argued that the IJ's adverse credibility finding was not supported by the record and that, regardless of his credibility, the BIA erred in upholding the IJ's denial of his CAT claim.

C. Eyob-Hagos's Time in the United States

34. After being released by ICE, Eyob-Hagos became the father of two U.S. citizen twin sons, who were born in Burien, Washington and are only a year old. *See* Exhibits 3 and 5. Prior to being rearrested, he was living in the Seattle area with the mother of his children, Titi Kiflom Tesfamariam, and his two infant sons. Their mother is a lawful permanent resident. *See* Exhibit 4.

35. Eyob-Hagos has worked as a truck driver to financially support his family. He has been granted an employment authorization document ("EAD") as an asylum seeker by U.S. Citizenship and Immigration Services ("USCIS"), which remains valid pursuant to 8 C.F.R. § 208.7(b) since his case remains under "judicial review." *See* Exhibit 6.

36. Eyob-Hagos has never been convicted of any crimes and has reported to ICE multiple times while living in the Seattle area. Eyob-Hagos most recently

reported to ICE on August 18, 2025. When he did so, he was instructed to report again on February 19, 2026. *See* Exhibit 2.

D. Eyob-Hagos's Rearrest in January of 2026

37. On or about January 22, 2026, Eyob-Hagos was working as a truck driver in California along with another driver. They stopped at a gas station at night. CBP agents approached him and asked him about his immigration status after he exited his vehicle. He showed them his driver's license and EAD. The CBP agents arrested Eyob-Hagos after ascertaining that he did not have a future hearing scheduled. They did not inform him that there was a warrant for his arrest.

38. The other driver who was with Eyob-Hagos was also asked by the agents about his status. However, he was not arrested because he had a future hearing scheduled. The CBP agents also were questioning other individuals in the same area to ascertain their status.

39. Eyob-Hagos was transported to a CBP office following his arrest. He spent the night at that office. On January 23, 2026, he was transferred to another office. On January 24, 2026, Eyob-Hagos was transported back to the Imperial Regional Adult Detention Facility in Calexico, California.

E. Eyob-Hagos's Continued Detention

40. Eyob-Hagos has continued to be detained for the past four months at the Imperial Regional Adult Detention Facility. During this time, he has been separated from his twin sons and their mother, which has caused severe emotional hardship. Beyond that, it has also caused the mother of his children to experience severe financial hardship. Prior to Eyob-Hagos being taken back into custody, he was working to support his family while she focused on taking care of their two infant children and was reliant on him for financial support.

41. After DHS rearrested Eyob-Hagos and took him back into custody, he filed a motion for a stay of removal with the Ninth Circuit on January 26, 2026. *See* Exhibit 8. On January 27, 2027, a Ninth Circuit clerk entered a docket entry noting:

"Under General Order 6.4, a temporary stay of removal is in effect until further order of the court." *See* Exhibit 7 (Dkt. No. 33).

42. Eyob-Hagos supplemented his motion to stay his removal on February 9, 2026 as permitted by the Ninth Circuit's rules. In his supplemental filing with the Ninth Circuit, he argued that he had demonstrated that he merited a stay under the factors set forth in *Nken v. Holder,* 556 U.S. 418, 434 (2009). The Government filed a brief in opposition to Eyob-Hagos's motion for a stay on February 16, 2026.

43. On April 16, 2026, Eyob-Hagos moved that the Ninth Circuit expedite the issuance of a formal decision pertaining to his motion for a stay of removal and, in so doing, informed the circuit court of his intention of filing a habeas petition. However, the Ninth Circuit has yet to formally adjudicate the pending motion. Consequently, the temporary stay of removal remains in effect.

44. The DHS is detaining Eyob-Hagos even though, as noted by President Trump, "Eritrea has historically refused to accept back its removable nationals." *See* Proclamation No. 10949, 90 Fed. Reg. 24497 (June 4, 2025). Even if the Ninth Circuit were to deny Eyob-Hagos's petition for review, it is highly unlikely that the Government would be able to deport him to Eritrea.

LEGAL FRAMEWORK

A. 8 U.S.C. § 1226(a)

45. 8 U.S.C. §1226(a) authorizes the arrest and of a noncitizen "[o]n a warrant issued by the Attorney General." The statute permits the Government to detain him or her pending a decision as to whether the individual "is to be removed from the United States." However, it further provides that the Attorney General "may release the alien on" a "bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." §1226(a)(2)(A). Additionally, it also provided the Attorney General with the authority to release a noncitizen on conditional parole. 1226(a)(2)(B). Thus, detention under § 1226(a) is discretionary rather than mandatory.

46. Noncitizens who have committed certain criminal offenses are subject to mandatory detention under § 1226(c). However, where a noncitizen's detention falls within the ambit of § 1226(a), the statute contemplates that he or she is entitled to an individualized custody determination and permits the noncitizen's release.

B. 8 U.S.C. § 1231

47. Under 8 U.S.C. § 1231, after a noncitizen has been issued an order of removal, detention is mandatory during the "removal period." § 1231(a)(1)(A) states that the government "shall remove" a noncitizen within a 90-day removal period. § 1231(a)(2)(A)(2) further provides that a noncitizen "shall" be detained during this period.

48. By definition, "[t]he removal period begins on the latest of" three different points in time. *See* 8 U.S.C. § 1231(a)(1)(B). The first relevant date that can cause the removal period to commence is "[t]he date the order of removal becomes administratively final." 8 U.S.C. § 1231(a)(1)(B)(i). The second date only occurs "[i]f the removal order is judicially reviewed and if a court orders a stay of the removal of the alien." 8 U.S.C. § 1231(a)(1)(B)(ii). In that case, "the date of the court's final order" is the relevant point in time. *Id.* Additionally, another date that may cause the removal period to commence is "the date the alien is released from detention or confinement" if he or she has been detained other than in the immigration context. 8 U.S.C. § 1231(a)(1)(B)(iii).

C. *Prieto-Romero*

49. The Ninth Circuit addressed whether a noncitizen with a pending petition for review who has been granted a stay of removal is subject to discretionary detention under 8 U.S.C. §1226(a) or mandatory detention under § 1231 in *Prieto-Romero*, 534 F.3d at 1058-62. Citing § 1231(a)(1)(B)(ii), it concluded "that when a court of appeals issues a stay of removal pending its decision on an alien's petition for review of his removal order, the removal period begins only after the court denies the petition and withdraws the stay of removal."

Id. at 1059-60. The Ninth Circuit added: "the plain language of § 1231(a) provides no authority to detain aliens … whose removal order is *administratively*—but not *judicially*—final." *Id.* at 1060 (emphasis in original).

D. 8 U.S.C. § 1225(b)(2)(A)

50. Another provision of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention of an "applicants for admission" during removal proceedings after an "examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." Multiple courts have held that the provision does not extend to a noncitizen who has been released on an order of recognizance before later being rearrested by the DHS since, in that scenario, the noncitizen is no longer affirmatively "seeking admission." *See, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 486-91 (S.D.N.Y. 2025); *Bethancourt Soto v. Soto*, 807 F. Supp. 3d 397, 402-08 (D.N.J. 2025).

51. The BIA nevertheless held in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (BIA 2025), that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission" under 8 U.S.C. § 1225(b)(2)(A). According to *Hurtado*, they "must be detained for the duration of their removal proceedings." *Id.* The Fifth and Eighth Circuits have interpreted § 1225(b)(2)(A) in the same manner. *See Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026); *Avila v. Bondi*, 170 F.4th 1128 (8th Cir. 2026). Prior to *Hurtado*, however, "for five Presidential administrations over nearly three decades, [governmental authorities] did consistently release detainees on bond whom the government now argues are covered by Section 1225(b)(2)(A)." *Cunha v. Freden*, No. 25-3141-pr, —— F.4th ——, 2026 WL 1146044, at *20 (2d Cir. Apr. 28, 2026).

52. In keeping with the longstanding understanding of § 1225(b)(2)(A), three circuit courts have held that it only applies to noncitizens who are actively "seeking admission" after entering without inspection. *See Cunha*; *Lopez-Campos*

v. Raycraft, — F.4th —, No. 25-1965, 2026 WL 1283891 (6th Cir. May 11, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, Nos. — F.4th —, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). These cases instruct that "[w]hen the statute says, 'alien seeking admission,' it therefore refers to a noncitizen who is seeking admission *right now*, not one who sought admission in the past but no longer is." *Cunha*, 2026 WL 1146044, at *8 (emphasis in original). Beyond that, as recently noted by the Second Circuit in *Cunha*, "some 90 percent of the hundreds of district judges across the land who have heard [the Government's] argument have rejected it." *Id.* at 25.

E. Constitutional Right to Due Process

53. Detention of noncitizens must comply with the constitutional guarantee of due process. The Due Process Clause of the Fifth Amendment precludes the Government from depriving any "person" in the United States "of life, liberty, or property, without due process of law."

54. The Supreme Court observed in *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001): "A statute permitting indefinite detention of an alien would raise a serious constitutional problem." Applying the canon of constitutional avoidance, it interpreted 8 U.S.C. § 1331(a)(6)—which provides that noncitizens who have been issued orders of removal "may be detained beyond the [90-day] removal period" or released under governmental supervision—as creating a "presumptively reasonable period of detention" of six months. *Id.* at 682, 701. The court interpreted the statute in this manner since it "limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States" without allowing for indefinite detention. *Id.* at 689.

55. The Supreme Court subsequently held in *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018), that the doctrine of constitutional avoidance could not justify interpreting § 1226(a) to require "periodic bond hearings every six months." However, the court did not resolve the constitutional issues. *See id.* at 312. On

remand, the Ninth Circuit expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

56. The Supreme Court has explained: "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The Supreme Court set forth a three-part balancing test in *Mathews*. *See id.* at 335. First, a court must assess "the private interest that will be affected by the official action." *Id.* Second, a court must analyze "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Id.* Third, a court must evaluate "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.*

57. In *Prieto-Romero*, 534 F.3d at 1062-65, the Ninth Circuit determined that the Government had not detained Prieto-Romero in violation of his constitutional right to due process. The court noted that § 1226(a) "on its face authorizes the detention of aliens during the removal order review process" and that the Government would be able to deport him to Mexico if his petition for review failed. *Id.* at 1062. Prieto-Romero had also been afforded sufficient process. *See id.* at 1065-67. He had "received two bond hearings while his case was pending before the IJ and BIA and a third at the direction of the district court." *Id.* at 1065. At the third hearing, the IJ granted him bond in the amount of $15,000, which—while beyond his financial means—was within the IJ's discretion. *Id.* at 1067.

58. In *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), the Ninth Circuit further addressed prolonged detention during the pendency of a petition for review. Rodriguez Diaz was detained by ICE after serving a sentence at a county jail. *Id.* at 1194. An IJ denied bond upon finding that he "was a danger to the

community based on his gang membership." *Id.* The IJ denied bond once again after he petitioned for review. *Id.* at 1195. Applying *Mathews*, which it assumed applied without deciding that issue, the Ninth Circuit held that his ongoing detention did not violate his right to due process. *Id.* at 1206-10. The Government had an "obvious interest in 'protecting the public from dangerous criminal aliens.'" *Id.* at 1208 (quoting *Demore v. Kim*, 538 U.S. 510, 515 (2003)). The court also alluded to the risk that Rodriguez Diaz would abscond. *Id.* at 1208-09.

59. The Due Process Clause is implicated when the Government rearrests a noncitizen whom it has previously released since "[t]he Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025).

60. When a noncitizen has established strong family and community ties after being released by the DHS, this is significant in creating a liberty interest under *Mathews*. *See Pablo Sequen v. Kaiser*, 800 F. Supp. 3d 998, 1010-13 (N.D. Cal. 2025). In contrast, the Government has "only a minimal countervailing interest in re-detaining [a noncitizen] without first providing a hearing." *Id.* at 1013.

61. While a bond hearing may in certain circumstances be sufficient to rectify a due process violation, "courts across the country have ordered the immediate release of detainees" who have been detained by the DHS despite a lack of evidence that they are a flight risk or that their release would pose a public safety threat. *Elias v. Knight*, 817 F. Supp. 3d 970, 986 (D. Idaho 2025). Immediate release is an appropriate remedy when the Government is unable to even demonstrate a "legitimate interest" in detaining a noncitizen. *Id.*

CLAIMS FOR RELIEF

COUNT ONE

Violation of 8 U.S.C. § 1226(a)

62. The allegations in the above paragraphs are realleged and incorporated herein.

63. Respondents are detaining Eyob-Hagos under 8 U.S.C. § 1226(a), not § 1231, based on the Ninth Circuit's decision in *Prieto-Romero.* Because he has been granted a temporary stay of removal after being rearrested and taken back into custody by the DHS, the "removal period" has not yet commenced.

64. Eyob-Hagos is not presently being detained under 8 U.S.C. § 1225(b)(2)(A). That provision, correctly understood, only applies to noncitizens who are actively "seeking admission" after entering without inspection.

65. Since Eyob-Hagos is being detained under 8 U.S.C. § 1226(a), the Government has a statutory obligation to provide him with a bond hearing.

66. The Government has deprived Eyob-Hagos of an opportunity for a bond hearing based on the BIA's erroneous interpretation of 8 U.S.C. § 1225(b)(2)(A) in *Hurtado*. More broadly, Respondents have adopted a policy of denying bond hearings to all noncitizens who have not been admitted or paroled into the United States before being taken into custody.

67. Based on the majority view of the circuit courts and the overwhelming view of district court judges, the BIA's decision in *Hurtado* misconstrues 8 U.S.C. § 1226(a) to deny noncitizens who have resided in the United States for years an opportunity for a bond hearing.

68. Although Eyob-Hagos has not requested a bond hearing on the basis that he is being detained under 8 U.S.C. § 1226(a) under *Prieto-Romero*, doing so would be futile. Immigration Judges must follow the BIA's erroneous interpretation of 8 U.S.C. § 1225(b)(2)(A) in *Hurtado*, in accordance with the directives of EOIR, absent controlling circuit court precedent to the contrary.

COUNT TWO

Violation of the Due Process Clause of the Fifth Amendment

69. The allegations in the above paragraphs are realleged and incorporated herein.

70. Eyob-Hagos is being detained by Respondents in violation of the Due Process Clause of the Fifth Amendment based on the balancing test set forth in *Mathews*, 424 U.S. at 335. In *Rodriguez Diaz*, 53 F.4th at 1207, the Ninth Circuit assumed without deciding that the *Mathews* balancing test applies to noncitizens who are detained under 8 U.S.C. § 1226(a).

71. Under the first factor in *Mathews*, Eyob-Hagos has a strong liberty interest. It has now been detained for over four months since he was taken back into custody on or about January 22, 2026. He was previously detained at the same detention facility from late December of 2019 until he was released on an order of recognizance on or about March 19, 2021.

72. Additionally, Eyob-Hagos also has a liberty interest given that he resided in the United States for over four years in the Seattle area before being taken back into custody. During this time, he has reported to ICE on several occasions. He most recently did so on August 18, 2025.

73. Eyob-Hagos's family ties further demonstrate that he has a significant liberty interest. He is the father of two U.S. citizen twin sons, who are only a year old. Prior to being rearrested by the DHS, he was living with the mother of his children and his two sons in the Seattle area. He has been granted employment authorization by USCIS and has been financially supporting his family.

74. The Government's interest in detaining Eyob-Hagos—the third factor in *Mathews*—does not justify his prolonged detention. Even if the Ninth Circuit were to deny his petition for review, it is highly unlikely that the Government would be able to deport him to Eritrea. This significantly diminishes its interest in detaining him since he has already been granted a temporary stay of removal.

75. Eyob-Hagos does not have any criminal convictions and is not a danger to the community. Beyond that, Eyob-Hagos has already demonstrated that he is not a flight risk given that he has continued to report to ICE after filing his petition for review.

76. The second factor in *Mathews* looks to "the risk of an erroneous deprivation of [an individual's liberty] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards." *Mathews*, 424 U.S. at 335. This factor underscores the magnitude of the due process violation.

77. Even though Eyob-Hagos is currently being detained under 8 U.S.C. § 1226(a) under *Prieto-Romero*, it would be futile for him to request a bond hearing on that basis in view of the BIA's erroneous holding in *Hurtado*. Respondents have adopted a policy of denying bond hearings to all noncitizens who have not been admitted or paroled into the United States.

78. Given that the Eyob-Hagos is unable to obtain a bond hearing despite being detained pursuant to 8 U.S.C. § 1226(a), under which detention is discretionary, there has been a clear due process violation. The violation is particularly acute since "[t]he fundamental requirement of due process is the opportunity to be heard" in a meaningful manner. *Mathews*, 424 U.S. at 333.

PRAYER FOR RELIEF

Wherefore, Eyob-Hagos respectfully prays that the Court grant relief as follows:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause to Respondents directing them to show why a writ of habeas corpus should not be granted;

(3) Declare that Respondents have failed to provide Eyob-Hagos with a bond hearing in violation of 8 U.S.C. § 1226(a);

(4) Declare that Respondents have detained Eyob-Hagos in violation of the Due Process Clause of the Fifth Amendment;

(5) Issue a writ of habeas corpus and order that Respondents immediate release Eyob-Hagos from their custody;

(6) Alternatively, order Respondents to provide Eyob-Hagos with a prompt bond hearing before an Immigration Judge; and

(7) Grant any further relief this Court deems just and proper.

Dated: May 28, 2026

Respectfully submitted,

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