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UNITED STATES DISTRICT COURT

Southern District of California

SAMETCAN AVCI,

Petitioner,

v.

CHRISTOPHER J. LaROSE, Senior Warden Otay Mesa Detention Center; TODD BLANCHE, Acting United States Attorney General; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; PATRICK DIVVER, ICE San Diego Field Office Director, in their official capacities,

Respondents.

Case Number: '26CV3870 LEK MSB

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Oral Argument Requested

Petitioner alleges:

INTRODUCTION

1. Petitioner SAMETCAN AVCI [redacted] is subjected to unlawful detention by Respondents at the Otay Mesa Detention Center. In March 2024 petitioner arrived to the USA, fleeing religious persecution in Turkiye. The DHS started a removal proceeding, but allowed him to remain free on his own recognizance pending the removal proceeding. In June 2026, respondents re-detained petitioner without any hearing, explanation, or change in circumstances. Petitioner seeks an order compelling respondents to immediately release him from detention on the same terms and conditions as the original OR release.

JURISDICTION

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act ("APA"), 5 U.S.C. § 500, *et seq*.

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 et seq. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

REQUIREMENTS OF 28 U.S.C. § 2243

7. The Court must grant the habeas corpus petition or issue an order to show cause (OSC) to the respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause 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.*

8. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

9. Petitioner SAMETCAN AVCI ("Petitioner") is a citizen of Turkiye. He is detained by the Respondents at the Otay Mesa Detention Center.

10. Respondent CHRISTOPHER J. LaROSE is sued in his official capacity as the Senior Warden of the (Otay Mesa Detention Center). Defendant LaRose has custody of petitioner.

11. Respondent TODD BLANCHE is being sued in his official capacity as the Acting Attorney General of the United States. He is the official generally charged with supervisory authority over all operations of the Department of Justice. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office for Immigration Review ("EOIR"), a component of the DOJ, which includes the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). He is empowered to oversee the adjudication of removal and bond hearings and by regulation has delegated that power to the nation's Immigration Judges and the BIA.

12. Respondent MARKWAYNE MULLIN is being sued in his official capacity as the Secretary of the United States Department of Homeland Security. He is the executive officer who has been given authority to manage and control U.S. Immigration and Customs Enforcement ("ICE"). As such, he is the ultimate legal custodian of petitioner.

13. Respondent PATRICK DIVVER is being sued in his official capacity as the Field Office Director for the San Diego Field Office of Immigration and Customs Enforcement (ICE), a component of DHS with responsibility over persons in immigration custody at the Otay Mesa Detention Center. Director Divver has custody of petitioner.

LEGAL FRAMEWORK

14. This petition presents the legal question of whether an alien released on her own recognizance and placed in a full removal proceeding is subject to an arbitrary re-detention by the DHS without any hearing, explanation, or change in circumstances. A secondary legal question is whether an alien residence in the United States is subject to detention pursuant to 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225.

15. As a threshold matter, the United States Supreme Court has re-affirmed that aliens are entitled to due process of law in deportation proceedings and must be given notice and an opportunity to be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. ___, 145 S. Ct. 1003, 1006 (2025).

Re-Detention Law

16. "The Fifth Amendment guarantees that "[n]o person shall be ... deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (9th Cir. 2001). "[I]t is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Reno v. Flores*, 507 U.S. 292, 306 (1993). The Due Process Clause generally "requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). "Even individuals who face significant constraints on their liberty or over whose liberty the government wields significant discretion retain a protected interest in their liberty." *Pinchi v. Noem*, No. 25-cv-5632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 25, 2025) (citations omitted). Although the initial decision to detain or release an individual may be within the government's discretion, "the government's decision to release an individual from custody creates 'an implicit promise,' upon which that individual may rely, that their liberty 'will be revoked only if [they] fail[ ] to live up to the ... conditions [of release].' " *Id.* (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody." *Pinchi*, 2025 WL 2084921, at *3 (citing *Romero v. Kaiser*, No. 22-cv-20508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022))." *Perez v. LaRose*, No. 25 cv 3409-LL-DDL, 26 WL 92045 (S.D. Cal. Jan. 13, 2026).

17. Many other District Courts have also held that the DHS may not lawfully re-detain a non-citizen for no good reason. "This Court has granted several habeas petitions filed by similarly situated petitioners who were released from ICE detention on conditional parole and re-detained several years later. In *Faizyan v. Casey*, the Court applied the due process inquiry in *Mathews v. Eldridge*, 424 U.S. 319 (1976) and found that Respondents' summary revocation of the petitioner's "conditional parole without an opportunity to be heard deprived [him] of his due process rights." Case No.: 3:25-cv-02884-RBM-JLB, 2025 WL 3208844, at *7 (S.D. Cal. Nov. 17, 2025); *see also*

Perez v. LaRose, Case No.: 3:25-cv-02620-RBM-JLB, 2025 WL 3171742, at *2 (S.D. Cal. Nov. 13, 2025) (reaching the same conclusion as to the revocation of a petitioner's humanitarian parole). The Court "conclude[d] that due process require[d] [the petitioner] to be released from custody and receive a bond hearing before an immigration judge before he can be re-detained." *Faizyan*, 2025 WL 3208844, at *7." *Xie v. LaRose*, No. 25 cv 03649-RBM-MSB, 26 WL 92066 (S.D. Cal. Jan. 13, 2026). Alsmadi v. LaRose, No. 26-CV-3582-JLS (SBC), 2026 WL 1836466, at *1 (S.D. Cal. June 25, 2026) (The Court finds that Petitioner is entitled to release.) *See,e.g., Noori v. LaRose*, 807 F. Supp. 3d 1146, 1163–67, 1169 (S.D. Cal. 2025) (granting release under similar facts); *Tran v. LaRose*, No. 26-CV-2653 JLS (GC), 2026 WL 1303166, at *1–3 (S.D. Cal. May 12, 2026) (same); *Antonio v. LaRose*, No. 26-CV-2387-LL-MMP, 2026 WL 1215037, at *1–3 (S.D. Cal. May 4, 2026) (same).

1225 or 1226 Jurisdiction Issue

18. The "usual removal process" involves an evidentiary hearing before an immigration judge. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated under 8 U.S.C. § 1229(a), also known as "full removal," by filing a Notice to Appear with the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226 provides that while removal proceedings are pending, a noncitizen "may be arrested and detained" and that the government "may release the alien on ... conditional parole." § 1226(a)(2); *accord Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be "detained" or "allowed to reside in this country").

19. When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). A noncitizen will be released if he or she "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *Id.* (citing 8 C.F.R. § 236.1(c)(8)). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing, the detainee demonstrates by the preponderance of the evidence that he or she is not "a threat to

national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk," the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)).

20. While "§ 1226 applies to *aliens already present in the United States*," U.S. immigration law also "authorizes the Government to detain certain *aliens seeking admission into the country* under §§ 1225(b)(1) and (b)(2)," a process that provides for expedited removal. *Jennings*, 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen "who has not been admitted or who arrives in the United States" is considered "an applicant for admission." 8 U.S.C. § 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes "expedited removal." § 1225(b)(1).

21. In July 2025, the current administration in Washington decided to try and change the detention rules that have been applied for decades in immigration court. Ignoring the plain meaning of the statutes as well as the decades of legal precedent, respondents began to say that the expedited removal mandatory detention rules apply to *all* noncitizens who entered the United States unlawfully. Respondents' central argument is that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA's recent decision in *Yajure Hurtado,* 29 I & N Dec. 216 (BIA 2025), which affirmed the government's new interpretation of § 1225.

22. As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

23. Multiple District Courts across the entire United States have concluded that the government's proposed interpretation of the statute (a) disregards the plain meaning of section 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior statutory interpretation and practice. The following quote is a representative example:

"The Court follows other decisions in this Circuit finding that "seeking admission

> requires an affirmative act such as entering the United States or applying for status, and that it does not apply to individuals who, like [Petitioner], have been residing in the United States and did not apply for admission or a change of status." *Mosqueda v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1 ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025) (finding that petitioner who was released on bond and rearrested was entitled to a bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)."

Esquivel-Pina v. LaRose, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

24. For some reason, the litigation of this issue still continues across the nation. In late November 2025, another District Court judge included a survey of cases that reached the same conclusion: "This is not the first time the administration's change of heart has been challenged in court. By a recent count, the central issue in this case – the administration's new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed – has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant." *Barco Mercado v. Francis*, No. 25-cv-1234, 25 WL 3295903 (S.D. New York November 26, 2025). (footnotes 22 and 23 omitted but attached to this

petition as Appendix A and Appendix B). The judge clarified that none of these citations were binding precedent on the court, as each judge must make an independent assessment of whether the 1225 or 1226 rules apply to the individual petitioner.

25. Further, some District Courts have found that immediate release, rather than a bond hearing, is the appropriate remedy. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.");*Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[ ] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

FACTUAL ALLEGATIONS

26. Petitioner SAMETCAN AVCI is a 25-year-old citizen of Turkiye. Petitioner is not married. He has no children. Petitioner has been regularly employed. He was working as a Lyft and Uber driver. He has no criminal record.

27. Petitioner arrived to the United States on March 26, 2026 seeking to apply for asylum. The DHS detained petitioner at the border for a day or so then released him from detention on his own recognizance. The DHS served petitioner with a Notice to Appear for a removal proceeding at the Los Angeles Immigration Court.

28. In July 2024, the judge transferred the venue of the removal proceeding to the San Francisco Immigration Court. In August 2024, petitioner filed an asylum application. The asylum application is based primarily on religion. Petitioner is an atheist who faces social intimidation, discrimination, and legal challenges in predominantly Sunni Muslim Turkiye. Among other things, the Penal Code criminalizes perceived insults to Islam. See Turkiye Penal Code § 216. Petitioner received an employment authorization card and began working as a driver for Lyft and Uber.

29. During these years while the removal case has been pending, petitioner was at

liberty. Around June 27, 2026, petitioner gave a military member a ride from the San Diego Airport to a military base in Oceanside, California. The guards there detained petitioner and called the Border Patrol. The DHS officials sent Petitioner to the Otay Mesa Detention Center, in California, where he remains today. No one provided petitioner a pre-detention hearing or otherwise explained how and why he was being re-detained.

30. Petitioner has not filed a motion for custody redetermination at the Otay Mesa Immigration Court because this is futile. The immigration judges at Otay Mesa conclude there is no jurisdiction to even consider setting a bond based on the case *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025) and Matter of Q. Li, 29 I. & N. Dec 66 (BIA 2025). Moreover, the Ninth Circuit Court of Appeals has stayed the decision in *Maldonado-Bautista*. Besides, the primary basis for this petition is the unlawful arbitrary re-detention of petitioner.

CAUSES OF ACTION

COUNT 1

(Violation of the Immigration and Nationality Act)

31. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 30.

32. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225; therefore he is entitled to a bond redetermination hearing before an immigration judge.

33. Petitioner's continued detention under Section 1226(a) in the absence of a bond hearing and decision on the merits violates the INA.

COUNT 2

(Violation of the Due Process Clause)

34. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 33.

35. In March 2024, the DHS detained petitioner but then released her from detention on his own recognizance, rightfully conceding that he was not a danger to the community or a flight risk. In June 2026, Border Patrol agents detained petitioner without a pre-detention hearing, explanation, or change of circumstances. The DHS sent petitioner to the Otay Mesa Detention Center, whereshe remains today..

36. The re-detention of petitioner without notice, a hearing, a change in circumstances,

or the opportunity to apply for a bond violates Ninth Circuit case law and the Due Process Clause of the Fifth Amendment to the United States Constitution

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA, and the APA;

(4) Issue a Writ of Habeas Corpus ordering Respondents to either (a) release Petitioner immediately or (b) schedule a bond hearing pursuant to 8 U.S.C. § 1226(a);

(5) Issue an order prohibiting respondents from re-detaining petitioner without a material change in circumstances and a pre-deprivation hearing where respondents must prove by clear and convincing evidence that petitioner is either a flight risk or danger to the community;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28 U.S.C. § 2412), and any other applicable statute or regulation; and

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

DATED: 06 July 2026

Respectfully submitted,

/s/ *William Baker*

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VERIFICATION

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

DOĞRULAMA

YALAN YEMİN CEZASI ALTINDA BEYAN

Amerika Birleşik Devletleri yasaları uyarınca, yalan yere yemin cezası altında beyan ederim ki, dilekçeyi veren kişi benim; dilekçeyi okudum veya anladığım bir dilde bana okundu ve dilekçedeki bilgiler doğru ve gerçektir. Önemli bir konuda yanlış beyanda bulunmanın, yalan yere yemin suçundan dolayı yargılanmaya yol açabileceğini anlıyorum.

Sametcan Avci
Petitioner/ Dilekçe sahibi