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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABUDUREXITI, MIJITI

Petitioner,

v.

GREGORY ARCHAMBEAULT, FIELD OFFICE DIRECTOR OF ENFORCEMENT AND REMOVAL OPERATIONS, SAN DIEGO FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT;

MARKWAYNE MULLIN, SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY; U.S.

DEPARTMENT OF HOMELAND SECURITY; TODD BLANCHE, U.S. ATTORNEY GENERAL; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

CHRISTOPHER LAROSE, WARDEN OF OTAY MESA DETENTION CENTER,

Respondents.

Case No. '26CV3986 LL SBC

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

**VERIFIED PETITION**

**PETITIONER'S DHS NO:** [redacted]

## INTRODUCTION

1. ABUDUREXITI, Mijiti ("Petitioner"), is a Chinese foreign national, a and a Uyghur Muslim escaping the Chinese government's ethnic and religious persecution of the Uyghur minority in China.

2. Petitioner initially entered the United States ("U.S") on a B-1/B-2 nonimmigrant visitor visa and was inspected and admitted at San Francisco Airport. Soon after his arrival, he filed affirmatively for asylum on February 5, 2024. However, when his father's health deteriorated and was admitted to the hospital in critical condition, Petitioner had to travel back to China to take care of his ailing father on May 19, 2024. Petitioner returned to the U.S. on his B-1/B-2 visa, which remained valid, on December 22, 2024.

3. On December 5, 2025, Petitioner inadvertently crossed into Mexico, near San Ysidro, California, when he was driving a Lyft, and dropping a client near the U.S/Mexican border. Petitioner was not unique in crossing the border by mistake. This particular border junction has been known to confuse many drivers primarily because highway signage can be confusing and missed exits trap drivers in southbound lanes without a safe place to turn around, and navigating applications frequently reroute lost drivers directly into border-bound traffic EXHIBIT ("Exh".A, B & C). Furthermore, the layout of Interstate 5 and Interstate 805 leading south makes it incredibly difficult to course-correct if a driver misses the last U.S. exit. Realizing his mistake, he immediately communicated with a Mexican border officer who directed him to execute a U-turn and seek re-entry to the U.S. Petitioner was never admitted into Mexico. Petitioner attempted to explain the obvious error to the U.S Customs and Border Patrol ("CBP") officer, nevertheless Petitioner was charged as an 'arriving alien" and detained. Petitioner remains at the Otay Mesa detention center to this day.

4. It is unequivocal that Petitioner was never admitted to Mexico, did not clear Mexican immigration or encounter any Mexican authority and was never authorized to enter Mexico in any legally knowable immigration sense. Petitioner returned to the U.S within approximately two hours of the initial incident, nearly all of which was spent in the immigration zone waiting in his vehicle for his turn to be inspected and admitted. Petitioner has not at any point effectuated a legally cognizable departure and consequently, he did not make a "new" entry" or "arrival" upon his "return" to the U.S. Flagrantly disregarding these undisputed facts, the Department of Homeland Security ("DHS") persisted in considering Petitioner an arriving alien and treated his return as a new application for admission.

5. On January 22, 2026, Petitioner filed a Motion for Bond Hearing citing Immigration and Nationality Act ("INA" §236 and 8 C.F.R. § 1003.19 (c)(1)). (Exh.D). The IJ held that Petitioner was found ineligible as an "arriving alien" under INA §235(a)(1) and 8 U.S Code §1225.

6. The immigration judge asserted the position that EOIR did not have jurisdiction to issue bond, in accordance with DOJ's new policy issued on July 8, 2025, instructing California immigration judges to disregard *Maldonado Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM, 2025 WL 8954703 (C.D. Cal. Dec. 18, 2025) and continue to follow *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Said directive rejected a well-established understanding of the statutory framework and reversed decades of practice. The Board of Immigration Appeals' (BIA) radical new interpretation has been rejected by the vast majority of federal courts that have considered the matter (See Mot. To Dismiss, *Rodrigues Vazquez v. Bostock,* No. 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27-3, Salcedo Aceros v. Kaiser, No. 3:25-cv-06924-EMC (N.D. Cal Sept. 21, 2025) at *13-21; Lepe v. Andrews, No. 1:25-cv-01163-KES-SKO, 2025 U.S. Dist. LEXIS187233, at *n.5 (E.D. Cal., Sept. 23, 2025) (finding Matter of Yajure Hurtado unpersuasive); Cuevas Guzman v. Andrews, No. 1:25-cv-01015-KES-SKO

at *6-9 (E.D. Cal. Sep. 9, 2025); Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, 2025 LX 341363, at *15 (E.D. Cal. July 28, 2025).

7. Because Petitioner never effectuated a proper exit from the U.S., his Detention violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered on a valid B2 visa after being inspected and admitted and are now residing in the United States. Instead, such individuals are subject to a different statute, §1226(a), that allows for release on conditional parole or bond. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).

8. Given DHS's deviation from a time-honored interpretation of the law, and the unequivocal bias and trend observed within EOIR, filing an appeal on the issue of bond would be futile, would only prolong Petitioner's detention, would yield the same denial and would irreparably harm Petitioner, emotionally, psychologically, physically and financially. Therefore, Petitioner has prudentially exhausted his remedies within the agency, and his only recourse is bringing his prayer of relief to the district court (See *Puga v. Chertoff, 448 F2d812 (9th Cir. 2007); Singh v. Holder, 638 F.3d 1196, 1203 n.3 (9th Cir. 2011)).*

9. On February 4, 2026, Petitioner filed a Motion to Vacate Arriving Alien Designation. (Exh.E). The motion was denied.

10. On March 18, 2026, from within the detention center, Petitioner filed his Defensive asylum application with the Executive Office of Immigration Review ("EOIR"). (Exh.F). His individual hearing took place on May 11, 2026, and May 13, 2026. The immigration judge ("IJ") entered her final judgement on June 1, 2026. The Court held that Petitioner was removable under Immigration and Nationality Act (INA): 212(a)(7)(A)(i)(I) and Petitioner's asylum application was denied. Withholding of Removal under section 242(b)(3) was also denied as well as Withholding of Removal under the Convention Against Torture. (Exh.G).

11. Petitioner filed his Notice of Appeal with the Board of Immigration

Appeals ("BIA") on June 25, 2026, which, at the time of drafting this petition, is still pending.

12. Prior to his detention, Petitioner lived with his daughter, who is a legal Permanent Resident ("LPR") in San Diego.

13. Petitioner also has a son, Abudurexiti Mujiayiti, who is a U.S. citizen ("USC") and a member of the U.S. military (Exh H). He is currently serving as a Private First Class in the Virginia Army National Guard, based in Fredericksburg, VA. Petitioner's wife and younger son are both in the U.S. with pending Asylum applications.

14. On March 31, 2026, Mr. Mujiayiti filed Form I-130, Petition for Alien Relative, on behalf of Petitioner with the United States Citizenship and Immigration Services ("USCIS"). The From was accepted and the receipt notice was received. (Exh.I). The petition is bona fide, well documented, and is highly likely to be approved since Petitioner has substantiated the application with all required documents to establish father/son relationship and he has no criminal or inadmissibility bars.

15. Additionally, Mr. Mujiayiti has filed a Military Parole in Place ("Military PIP") application with USCIS on behalf of Petitioner. The application has been delivered to USCIS as confirmed by delivery records, and the formal receipt notice is anticipated. Upon approval of the Military PIP, Petitioner will be granted deferred action and will be eligible to file Form I-485, Application to Register Permanent Residence or Adjust Status, without first departing the U.S.

16. On April 7, 2026, Petitioner filed a motion to terminate removal proceedings based on the pending I-130 and Military PIP applications (Exh.J). Petitioner argued that these two pathways present a clear and foreseeable route to lawful permanent residence that renders continued removal proceedings both premature and contrary to the interests of Judicial economy, fairness, and the

longstanding Congressional policy of protecting the families of those who serve in the U.S. Armed Forces.

17. On April 22, 2026, the IJ denied the motion stating that Petitioner is not prima facie eligible to adjust because his Form I-130 has not been approved yet (Exh.K).

18. Petitioner has been in detention for over six (6) months, which is considered a prolonged period of time under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). He has a family who relies upon him, emotionally and financially, family who have themselves provided invaluable service to the U.S. He is a 55-year-old man with no criminal history and who represents no threat to the national security of the United States. His detention is arbitrary, in violation of his Constitutional due process rights and without foundation in law.

19. More critically, in addition to his unjust detention and the hardships this presents to Petitioner's USC and LPR children, on December 4, 2025, the day before his detention, Petitioner underwent a colonoscopy which led to the removal of three polyps from his intestine (Exh.L). The family has been unable to receive the results of the biopsy performed on these polyps due to medical privacy laws and are very concerned about a reported decline in his health since he was placed in detention, including periods of over a week, in June, when he was not able to hold down solid food of any kind (Exh.M & N).

20. Petitioner was diagnosed with colon cancer and underwent surgery in 2021, to remove the cancerous tumors, which gives rise to concern that his cancer may have recurred. (Exh.O). Reports show that the medical care available at Otay Mesa is utterly inadequate (Exh.S P &Q).

21. Accordingly, Petitioner seeks a writ of habeas corpus requiring the Government to immediately release Petitioner from ongoing and unlawful detention, and to enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings, and enjoin and

prohibit Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community.

## JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction under the habeas corpus statutes, 28 U.S.C.§ 2241 et seq., the Suspension Clause Article I, § 9 cl.2 of the United States Constitution, and under 28 U.S.C. § 1331 because this action arises under federal law, including the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., and the APA, 5 U.S.C. § 551 et seq.

23. This Court may grant the requested relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the habeas corpus statutes, 28 U.S.C. § 2241 et seq.

24. Venue properly lies within the District of California under 28 U.S.C. § 1391, because this is a civil action in which Respondents are agencies and officers of the United States, Petitioner is currently detained in this district, and because a substantial part of the events or omissions giving rise to this action occurred in the district (See *Ex Parte Endo,* 323 U.S 283 (1944); *Rumsfeld v. Padilla,* 542 U.S. 426 (2004); and *Doe v. Garland,* 109 F.4th 1188 (9th Cir. 2024)).

## PARTIES

25. Petitioner Mijiti Abudurexiti is 55-year-old man and a citizen of China who has been in immigration detention since December 5, 2025. Petitioner has resided in the United States since December 22, 2024, notwithstanding his brief and the inadvertent exit on December 5, 2025. Petitioner is currently detained in Otay Mesa Detention Facility and in the custody, and under the direct control of Respondents and their agents.

26. Respondent Gregory Archambeault is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Mr. Archambeault is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

27. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity.

28. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

29. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. He is sued in his official capacity.

30. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

31. Respondent Christopher LaRose is employed by Core Civic as Warden of the Otay Mesa Detention Center, and is the highest ranking official at the detention facility where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

## FACTUAL ALLIGATIONS

32. Petitioner has resided in the U.S since December 22, 2024, and lives in San Deigo, California with his U.S. Citizen son who is a member of the U.S military, his Legal Permanent Resident daughter as well as his wife and younger son who have

pending asylum applications.

33. Petitioner is Uyghur, which is an ethic minority predominately found in Northwest China. The Chinese government have systematically been persecuting and targeting Uygurs with detention, surveillance, religious suppression, forced labor, and other forms of severe mistreatment for decades, a fact well-documented by international human rights organizations as well as the U.S. Department of State in its annual human rights reports. Petitioner arrived in the U.S seeking protection and hoping for a better, safer and more dignified life.

34. Petitioner was an attorney in China by profession. Because of his relentless Work representing Uygurs and protecting their civil rights and liberties, he was [redacted] Petitioner applied for Asylum in the U.S. soon after his arrival.

35. Unable to work as an attorney in California because of the language barrier And California Bar requirements, Petitioner sought to earn an honest living and worked as an Uber driver to support himself and his family and to become a productive member of the community.

36. On December 5, 2025, in his capacity as an Uber driver, Petitioner mistakenly crossed into Mexico near San Ysidro in San Diego, California when he was dropping off a client near the border.

37. As soon as he realized his mistake, he sought directions from the Mexican border officers who directed him to make a U-turn and return to join the line of cars to renter the U.S. Petitioner was never admitted into Mexico and have not engaged in any "proper departure" as defined by law. In fact, he spent three hours in the re-entry car line and none on proper Mexican territories, staying within the border crossing zone.

38. Nevertheless, CBP erroneously and baselessly designated him as an "arriving alien", in spite of the fact that Petitioner presented his driver's license

showing his address (EXH. R) and stated that he had been living in San Diego for close to one year at the time of his detention and had a pending asylum application with USCIS.

39. Petitioner was detained and transferred to Otay Mesa Detention Center where he remains to this day.

40. In his Motion to Vacate "arriving alien" designation, Petitioner argued that longstanding immigration law establishes that a noncitizen who leaves the U.S but is not admitted to a foreign country has not effectuated a legally cognizable departure. Consequently, such an individual does not make a new "entry" or "arrival" upon return to the U.S.

41. Petitioner was never admitted to Mexico, never cleared Mexican immigration and was promptly guided back to the U.S port of entry within hours. Therefore, Petitioner is legally deemed never to have departed the U.S.

42. An "arriving alien" on the other hand, is defined as a person who seeks admission at port of entry after departure from the U.S. INA §101(a)(13); 8 C.F.R. §1.2. Here, because Petitioner never legally departed, he cannot be an arriving alien as a matter of law.

43. Petitioner's designation as an "arriving alien" has had catastrophic implications. As an individual with a pending asylum application, USCIS lost jurisdiction over his application after he was detained and put in removal proceedings and Petitioner had to file defensively with EOIR. In addition, he has had to endure six months in detention until his individual hearing was concluded on June 1, 2026, with a legally and factually unsupported denial of his asylum application, now pending appeal which has as of this writing been submitted to the Board of Immigration Appeals. Petitioner faces return to China where he will certainly face arrest, torture and indefinite detention.

44. Petitioner's pending Petitioner for Alein Relative, Form I-130, filed by his USC son who is in active duty with the National Guard, will be impacted and

delayed as long as he remains in removal proceedings. When the form I-130 is approved, he will almost certainly be precluded from filing Form I-485 to adjust his status to legal permanent resident, based on the erroneous designation of "arriving alien," unless this designation is reversed and he is released.

45. DHS and ICE have also chosen to deny Petitioner his bond hearing and he Remains detained and separated from his family, community and support system as he navigates his immigration nightmare alone in detention with no end in sight.

46. Petitioner is neither a flight risk nor a danger to the community. He has a Stable address in San Diego, California, where he has resided for nearly two years with his lawful permanent resident daughter and U.S. citizen son, who, as discussed earlier, is loyally serving in the U.S. military.

47. He has had steady employment history, including working as an Uber driver and his family relies upon his contributions toward rent and household expenses.

48. Following Petitioner's arrest and transfer to Otay Mesa Detention Facility, ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions.

49. Petitioner's Motion for a bond hearing filed on January 22, 2026, was denied.

50. Petitioner's Motion to Vacate "arriving alien" designation filed on February 4, 2026, was denied.

51. Petitioner's asylum application was denied by the Immigration Judge on June 1, 2026, and is pending appeal, based on serious errors of law, fact and due process.

52. As a result, Petitioner remains in perpetual detention. Without relief from This court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his family and community.

53. DHS's new detention policy was issued "in coordination with DOJ," which oversees the immigration courts, suggesting that DOJ is unlikely to mitigate this

policy of its own accord. Further, as noted, the most recent unpublished BIA decision on this issue held that persons like Petitioner are subject to mandatory detention as applicants for admission. Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General are defendants, DOJ has affirmed its position that individuals like Petitioner are applicants for admission and subject to detention under § 1225(b)(2)(A), in complete defiance of years of precedent and practice.

54. Since his detention, and given his poor health and Petitioner has suffered greatly from the condition of the detention and from being separated from his family. His mental health has deteriorated, and he has been struggling with anxiety and depression. Petitioner has made every effort to abide by the law and have not violated any immigration rules or regulations. He promptly and timely filed the required applications and attended all necessary hearings. Yet Petitioner remains detained under inhumane conditions and treated like a criminal. Respondents have absolutely refused to provide due process for, or evidence of, an individualized finding that he is in any way a flight risk or danger to society to justify his continued detention.

## CLAIMS OF RELIEF

### COUNT I

### Violation of the Fifth Amendment to the U.S Constitution

### *Procedural Due Process*

55. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

57. Respondents have deprived Petitioner of his liberty without any legitimate purpose in violation of her due process rights under the Fifth Amendment.

58. The government may not deprive any person of life, liberty, or property

without due process of law. U.S. Const. amend. V.

59. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

60. The Due Process Clause applies to all "person[s]," including noncitizens, within the United States, "whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions,* 872 F.3d 976,990 (9th Cir. 2017) quoting *Zadvydas,* 533 U.S at 693; *Trump v. J. G. G.*, 604 U.S. 670, 673 (2025) ("It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (internal quotation marks and citation omitted). The Supreme Court has indicated that " [t]he touchstone of due process is protection of the individual against arbitrary action of the government," *Wolff v. McDonnell,* 418 U.S. 539, 558 (1974), including government "exercise of power without any reasonable justification in the service of a legitimate government objective." *City of Sacramento v. Lewis,* 523 U.S. 833, 846 (1998). Due process protections suggest that "liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno,* 481 U.S. 739, 755 (1987).

61. Moreover, "an individual already enjoying certain forms of conditional release has a protected liberty interest in retaining them." *Borchers v. Belcher*, No. CV 11-1018-PHX-DGC, 2012 WL 1231742, at *5 (D. Ariz. Mar. 9, 2012) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). A noncitizen who was inspected and admitted into the U.S—like Petitioner, who remained at liberty for close to one year—has a specific and protected liberty interest in remaining out of custody. *See, e.g.*, *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025).

62. Like any civil detention, immigration detention violates the Due Process Clause if it is not reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at

690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)); *see also Demore v. Kim*, 538 U.S. 510, 527 (2003) (immigration detention must "bear[] a reasonable relation to the purpose for which the individual was committed") (quoting *Zadvydas*, 533 U.S. at 690).

63. In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention: (1) to mitigate the risk of flight and (2) prevent danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.

64. Petitioner presents neither a flight risk nor any danger. The government cannot contend that Petitioner presents a flight risk given that he has very strong ties to his family and a strong interest to follow through with his family based immigration petition and asylum appeal (*Cf. Reno v. Flores*, 507 U.S. 292, 301–02 (1993) (holding that due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest").) Petitioner also does not present any danger. He has no criminal history, and he has complied with all immigration-related requirements.

65. Respondents' detention of Petitioner simply based on a brief and inadvertent border crossing for more than six months, is not reasonably related to a statutory purpose. *See Zadvydas*, 533 U.S. at 690.

66. Petitioner also came to the United States seeking protection from persecution, and has a vested interest in continuing meaningful participation in his removal case in the United States to obtain the relief he seeks.

67. At a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas*, 533 U.S. at 718 (Kennedy, J., dissenting).

68. Where, as here, an individual has lived in complete compliance with all applicable laws and previously been determined to present neither a flight risk nor danger, as established by his biometrics for his I-130 application as well as his

asylum Form I-589 application, suddenly arresting him for an unequivocal and clearly innocent mistake and imprisoning him is paradigmatically arbitrary, and a violation of the most basic protections of the Due Process Clause.

69. Petitioner's detention, without *any* individualized review, is also unreasonable under the *Mathews v. Eldridge* due process test which balances: (1) the private interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

70. Here, each factor weighs in Petitioner's favor, requiring this Court to promptly hold a hearing to evaluate whether the Government can justify his ongoing detention.

71. First, Petitioner indisputably has a strong liberty interest in being free from detention—the core private interest at stake here. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment . . . lies at the heart of the liberty [the Due Process Clause] protects."). Petitioner's private interest is particularly strong because neither release nor removal are imminent. *Id.* at 701 (strength of liberty interest increases as period of confinement grows)., *See Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (in applying the first *Mathews* factor, weighing the right to "rejoin [one's] immediate family" as "rank[ing] high among the interests of" a detainee).

72. Moreover, his liberty interest is particularly profound and exigent because he is a 55-year-old man, in poor health and with a history and has been separated from his family. In addition, time is of the essence for his release given the fact that a day prior to his detention, he underwent a medical check-up and colonoscopy after suffering from severe digestive issues and headaches which may potentially signify a recurrence of colon cancer.

73. Second, Petitioner is at great risk of erroneous deprivation of this liberty without an individualized evidentiary hearing. No neutral evaluation has been conducted regarding whether the government can justify Petitioner's detention.

Indeed, Petitioner has already been subject to an erroneous deprivation of his liberty, "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf v. Napolitano*, 634 F.3d 1081, 1092 (9th Cir. 2011).

74. Third, the government's interest is very low in continuing to detain Petitioner without providing any neutral review. *See Mathews*, 424 U.S. at 335. The specific interest at stake here is not the government's ability to continue to detain Petitioner, but rather the government's ability to continue to detain him, potentially indefinitely, for months on end, without any individualized review. *See Ambriz v. Barr*, 420 F. Supp. 3d 953, 964 (N.D. Cal. 2019); *Henriquez v. Garland*, No. 5:22-CV-00869-EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022). The cost of providing an individualized inquiry is minimal. *See Henriquez*, 2022 WL 2132919, at *5. The government has repeatedly conceded this fact. *See Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Singh v. Barr*, 400 F. Supp. 3d 1005, 1021 (S.D. Cal. 2019); *Ambriz*, 420 F. Supp. 3d at 964.

75. *Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), does not disturb this result. In *Diaz*, the Ninth Circuit applied the *Mathews* test to hold that the detention of a noncitizen who had *already received an initial bond hearing* and remained the Ninth Circuit applied the *Mathews* test to hold that the detention of a noncitizen detained under a different detention statute, 8 U.S.C. § 1226(a), did not violate procedural due process. 53 F.4th at 1195. Unlike section 1225(b), section 1226(a) mandates that detained individuals receive an individualized bond hearing at the outset of detention and provides for further bond hearings upon a material change in circumstances. *See* 8 C.F.R. § 1003.19(e). The panel's decision in *Diaz* was predicated on the immediate and ongoing availability of this administrative process under § 1226(a). 53.F.4th at 1202 ("Section 1226(a) and its implementing regulations provide extensive procedural protections that are unavailable under other detention provisions . . . .").

76. Unlike the petitioner in *Diaz*, Petitioner has no statutory access to individualized review of his detention, as acknowledged by the Immigration Judge who denied his bond solely based on lack of jurisdiction. (*See* Lively Decl. Ex. A (Order Denying Bond); *see also Matter of Q. Li*, 29 I&N Dec. 66, at 69 (BIA 2025). (individuals deemed "arriving aliens" and detained under section 235(b) are ineligible for release on bond because detention is mandated until removal proceedings are concluded).) Respondents have not offered any indication of when Petitioner might be released. Petitioner is informed, believes, and thereupon alleges that Respondents will continue to detain Petitioner and appeal the matter until and unless they have exhausted all appeals or a final order of removal is entered.

## COUNT II

**Violation of the Fourth Amendment to the United States Constitution**

***Unlawful Arrest***

77. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

78. The Fourth Amendment protects the right of persons present in the United States to be free from unreasonable seizures by government officials.

79. As a corollary to that right, the Fourth Amendment prohibits government officials from whimsically detaining law-abiding individuals where clearly a mistaken border crossing has taken place and no intent to cross and re-entry as an arriving alien can reasonably be established.

80. In Matter of T, 6 I&N Dec. 638 (BIA 1955), the Board of Immigration Appeals held that where a noncitizen departed the United States but was never admitted to a foreign country and was immediately returned, the individual did not make a new entry into the United States.

81. The Board reasoned that a meaningful departure requires actual entry into a

foreign sovereign, and that a failed departure under official restraint is legally no departure at all.

82. The Ninth Circuit—whose law governs proceedings arising from San Ysidro, California—has consistently reaffirmed this principle. In United States v. Ambriz-Ambriz, 586 F.3d 719, 723–25 (9th Cir. 2009), the court held that a defendant who drove to Canada, was denied admission, and immediately returned was legally considered never to have left the United States. The court emphasized that denial of foreign admission and continuous official restraint precluded a legal departure. The Ninth Circuit reaffirmed this reasoning in United States v. Gonzalez-Diaz, 650 F.3d 1239 (9th Cir. 2011).

83. Similarly, in Handa v. Crawford, 401 F.3d 1129 (9th Cir. 2005), the Ninth Circuit held that a Visa Waiver Program entrant who traveled to Canada, was denied admission, and returned to the United States was not an applicant for admission upon return, because he had never effected a meaningful departure from the United States.

84. To deem Petitioner an arriving alien when he clearly was not, and detain him on that basis, constitutes an unlawful arrest and his malicious detention is in clear violation of Respondent's Fourth Amendment protections and rights.

## COUNT III

### Violation of the Administrative Procedure Act

85. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

86. The Administrative Procedure Act prohibits federal action that is "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,"*Id.* § 706(2)(A).

87. The government's arbitrary and capricious arrest policy is in violation of 5

U.S.C. § 706(2)(A). When Petitioner encountered the CBP officer, he asserted and established that he lived and continued to live in the U.S. and had never legally departed, by virtue of his car with a California license plate, his California driver's license, the fact that he had not been in any way admitted into Mexican territory and his receipt notice for his pending asylum case, yet the officer insisted on detaining Petitioner and designating him an "arriving alien" to justify the arrest. In doing so, the CBP officer abused his discretion and the law and was patently in excess of his statutory authority and in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

## COUNT IV

### Violation of the INA

88. Though Petitioner's claim is ultimately constitutional, it turns on an antecedent statutory question. Namely, does either section 1225(b) or section 1226(a) provide a valid basis to detain him?

89. The denial of Petitioner's bond request based on lack of jurisdiction, unequivocally indicates that the DHS has classified Petitioner under the 1225(b) statutory authority, paving the road for Respondents to argue that Petitioner is subject to mandatory detention during the pendency of his removal proceedings. This argument is fatally flawed.

90. As established, Petitioner never formally departed the U.S. during his brief and inadvertent border crossing. Therefore, he should not have been subject to section 1225(b) and the IJ erred at his bond hearing by deeming him an arriving alien and denying his bond request based on lack of jurisdiction.

91. DHS's construct of the statute also shrinks the discretionary detention provision, section 1226, beyond recognition. Section 1226(a) provides that "on a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed." That provision also permits the Attorney General to "release the alien…on conditional parole." *Id.* §

1226(a)(2)(B). The implementing regulations permits ICE officers to release the alien in the officers' discretion "provided that the alien must demonstrate 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 proceedings." 8 U.S.C. § 236.1(c)(8).

92. For many years, the understanding, shared by the Executive and the Supreme Court, was that section 1226, not section 1225, governed immigration arrests conducted within the interior of the United States. *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled...will be eligible for bond and bond redetermination."); *Jennings v. Rodriguez,* 583 U.S. 281, 289 (2018).

93. If DHS's construction of the statute were to be adopted, every noncitizen in the interior of the country would be both an "applicant for admission" and "seeking admission", making them all subject to mandatory detention under the statute.

94. Based on the above, Petitioner's detention is not authorized under section 1225(b). The only conceivable authority for his detention would have been under section 1226(a), and Petitioner should have been afforded a bond hearing and released, as he is clearly neither a flight risk nor a danger.

## PRAYER OF RELIEF

**WHEREFORE,** Petitioner prays that this Court grant the following relief:

(1) Exercise jurisdiction over this matter;

(2) Issue a writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody pending his removal proceedings;

(3) Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner to country of origin or a third country pending these proceedings;

(4) Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;

(5) Enjoin Respondents from imposing electronic monitoring on Petitioner as unlawful and overly restrictive condition or release.

(6) Set aside Respondents' unlawful practice pursuant to 5 U.S.C. §706(2) as contrary to law, contrary to constitutional right, and in excess of statutory authority;

(7) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and;

(8) Grant such further relief as this Court deems just and proper.

**VERIFICATION**

I, PERIHAN ABDELBAKY, represent the Petitioner, MIJITI ABUDUREXITI, and submit this verification on their behalf. I have discussed the events described in this Petition for Writ of Habeas Corpus with the Petitioner and reviewed the relevant documents. On the basis of these discussions and reviews, I hereby verify that the factual statements made in the foregoing petition are true and correct to the best of my knowledge

DATED this 10 of July, 2026.



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