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MUZAFFAR OSMANOV

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

MUZAFFAR OSMANOV,

Petitioner,

v.

JEFFREY LYNCH, Warden, Golden State Annex;

SERGIO ALBARRAN, Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security;

TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

MARKWAYNE MULLIN, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

TODD BLANCHE, in his Official Capacity, Attorney General of the United States,

Respondents-Defendants.

DETAINED

Case No.

Immigration alien number: [redacted]

PETITION FOR WRIT OF HABEAS CORPUS; ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR DECLARATORY RELIEF

INTRODUCTION

1. Petitioner Muzaffar Osmanov is an asylum seeker who lived at liberty in the New York and then Sacramento area for nearly four years while the asylum application on which he is a dependent proceeded before the USCIS and then the immigration court. The Department of Homeland Security ("DHS") itself released him from custody on his own recognizance in accordance with section 236 of the Act, and authorized him to work through September 5, 2030. He appeared for his biometrics, complied with every immigration obligation of which he was aware, was never enrolled in any electronic monitoring program, never missed any required appointment, and was never charged with violating any condition of his release. He has never been arrested and has no criminal history.

2. On July 4, 2026, without notice and without any hearing before a neutral decisionmaker, Immigration and Customs Enforcement ("ICE") re-arrested Mr. Osmanov near a gas station at 4311 Antelope Road in Antelope, California, and confined him at the Golden State Annex in McFarland, California. DHS made no finding that he had become a danger to the community or a flight risk. To the extent DHS suggested that his re-arrest rested on an asserted failure to appear or on his relocation from New York to California, its own records refute any such rationale: DHS knew Mr. Osmanov's California address, mailed correspondence to him there, and re-issued his charging document bearing that address months

before it arrested him.

3. When DHS released Mr. Osmanov on his own recognizance, it necessarily determined that he was neither a danger nor a flight risk, and his nearly four years of compliant liberty gave rise to a protected liberty interest in remaining free. The Government extinguished that interest with no pre-deprivation process whatsoever, in violation of the Fifth Amendment. As courts in this District have repeatedly held on materially identical facts, the remedy is immediate release restoring the status quo ante. Petitioner asks this Court to issue the writ, order his immediate release, and enjoin his re-detention absent constitutionally adequate process.

JURISDICTION AND VENUE

4. This is a petition for a writ of habeas corpus under 28 U.S.C. § 2241. The Court has jurisdiction under 28 U.S.C. §§ 2241(c)(3) and 1331 and Article I, Section 9, Clause 2 of the Constitution. A district court's habeas jurisdiction includes challenges to immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

5. No statute bars review. The review-limiting provisions of the Immigration and Nationality Act do not strip habeas jurisdiction over constitutional and legal challenges to detention. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) bars a due process challenge to the lawfulness of detention, as distinct from a challenge to a

removal order. *Margaryan v. Warden of Cal. City Det. Facility*, No. 1:25-cv-01582-EFB, 2026 WL 183731, at *2 (E.D. Cal. Jan. 23, 2026) (rejecting the Government's § 1252(g) and § 1252(b)(9) arguments under *Jennings* and granting the writ). *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Demore v. Kim*, 538 U.S. 510 (2003). Section 1226(e) bars review of discretionary judgments, not constitutional claims, 8 U.S.C. § 1226(e), and § 1252(g) is not implicated because no removal order is at issue and the question is the lawfulness of Petitioner's detention. See *C.A.R.V. v. Wofford*, 2025 WL 3059549, at *7 (E.D. Cal. Nov. 3, 2025).

6. Petitioner seeks individualized relief for himself alone and does not seek to enjoin the operation of any statute on a classwide basis; 8 U.S.C. § 1252(f)(1) is therefore not implicated. *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022).

7. Venue is proper in this District and Division. A core habeas petition challenging present physical confinement must be filed in the district of confinement, naming the immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434–47 (2004); *Doe v. Garland*, 109 F.4th 1188, 1197–99 (9th Cir. 2024). Petitioner is confined at the Golden State Annex, 611 Frontage Road, McFarland, California 93250, in Kern County, within the Fresno Division. E.D. Cal. L.R. 120(d).

8. Petitioner names his immediate custodian, the Warden of the Golden State Annex, together with the responsible supervisory officials. Naming additional supervisory respondents is permissible so long as the immediate custodian is

named. *Doe v. Garland*, 109 F.4th at 1197.

PARTIES

9. Petitioner MUZAFFAR OSMANOV [redacted] is a citizen of Russia, detained by ICE at the Golden State Annex.

10. Respondent JEFFREY LYNCH is sued in his official capacity as Warden of the Golden State Annex and is Petitioner's immediate custodian.

11. Respondent SERGIO ALBARRAN is sued in his official capacity as Field Office Director of the ICE Enforcement and Removal Operations San Francisco Field Office, which oversees the Sacramento sub-office that arrested Petitioner.

12. Respondent TODD M. LYONS is sued in his official capacity as Acting Director of ICE.

13. Respondent MARKWAYNE MULLIN is sued in his official capacity as Secretary of the U.S. Department of Homeland Security.

14. Respondent TODD BLANCHE is sued in his official capacity as Attorney General of the United States.

15. Each Respondent acts under color of federal law and has authority over Petitioner's custody or release.

EXHAUSTION IS EXCUSED

16. Section 2241 imposes no statutory exhaustion requirement. Any exhaustion

requirement is prudential, not jurisdictional, and is waived where administrative remedies are inadequate or not efficacious, where pursuit would be futile, where irreparable injury would result, or where the administrative proceeding would be void. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Several of these grounds are present.

17. Resort to the immigration court is neither adequate nor efficacious to remedy the violation Petitioner alleges. Petitioner does not ask this Court to set bond or to review a discretionary custody determination; he alleges that DHS deprived him of an established liberty interest with no pre-deprivation hearing at all. The immigration court cannot supply that remedy. It cannot adjudicate Petitioner's Fifth Amendment claim, cannot order his release to restore the pre-deprivation status quo, and cannot undo a deprivation that was already complete when ICE re-detained him without process. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (exhaustion excused where remedies are inadequate, inefficacious, or futile, or where irreparable injury would result); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (same). Requiring Petitioner to initiate custody proceedings before the same Executive Branch that violated his rights, while he remains confined, would compound the very injury the writ exists to prevent.

18. The immigration court also cannot supply constitutionally adequate process. It structurally applies the wrong burden, requiring the noncitizen to prove that he

is not a danger or a flight risk, when due process requires DHS to bear that burden by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011); *Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024). And immigration judges are employees of the Department of Justice within the Executive Branch, not the neutral decisionmakers due process requires before the deprivation of an established liberty interest.

19. The Board of Immigration Appeals cannot resolve Petitioner's Fifth Amendment claim or order his release. *Am.-Arab Anti-Discrimination Comm. v. Reno*, 70 F.3d 1045, 1058 (9th Cir. 1995); *Y.S.G. v. Andrews*, 2025 WL 2979309, at *6–7 (E.D. Cal. Oct. 22, 2025). Requiring exhaustion would also compound the irreparable injury of each additional day of unlawful confinement.

STATEMENT OF FACTS

20. Petitioner entered the United States on or about September 11, 2022, near San Ysidro, California, together with his wife and two young children, fleeing persecution in Russia. He remained in the custody of U.S. Customs and Border Protection for approximately one day and was released on September 12, 2022. He was not admitted or paroled.

21. Petitioner was *never* placed in expedited removal. No asylum officer conducted a credible-fear interview, and no order under 8 U.S.C. § 1225(b)(1) was ever

entered. DHS issued Petitioner a Notice to Appear (Form I-862) charging inadmissibility under INA § 212(a)(6)(A)(i), 8 U.S.C. § 1182(a)(6)(A)(i), and placed him in ordinary removal proceedings under INA § 240. The Notice to Appear does not allege that Petitioner is an "arriving alien." (*See* Tab A)

22. On September 12, 2022, DHS released Petitioner from custody on an Order of Release on Recognizance (Form I-220A), expressly "in accordance with section 236" of the Act. (*See* Tab B) The release imposed conditions including reporting for hearings, not changing residence without permission, and assisting in obtaining travel documents.

23. DHS thereafter recognized and reinforced Petitioner's standing to remain in the community. It granted him employment authorization in the (c)(8) category, issued as a Form I-766 Employment Authorization Document valid from September 6, 2025 through September 5, 2030, bearing the express notation that its terms and conditions are "None." (*See* Tab C)

24. Petitioner's wife, [redacted] timely filed a Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture, which USCIS received on January 12, 2023, within one year of the family's entry. (*See* Tab D) Petitioner and the couple's two minor children, [redacted], are included as dependents on that application. On April 23, 2026, the New York Asylum Office issued a written Notice of Forwarding of Form I-589 to EOIR, mailed to Petitioner's new residence at

[redacted] stating that it was forwarding the application — together with the listed dependents — to the immigration court in Sacramento as the proper venue for the family's removal proceedings. (See Tab D) That application remains pending before the Sacramento Immigration Court, and Petitioner's removal proceedings remain ongoing.

25. Petitioner complied with every obligation of his release of which he was aware. He appeared for biometrics on January 31, 2023, and complied with every direction he received. Petitioner was never enrolled in ICE's Alternatives to Detention program, was never placed on electronic monitoring, was never fitted with an ankle monitor, and was never assigned a recurring ICE check-in. He never failed to appear for any hearing or appointment.

26. Petitioner has no criminal history. He has never been arrested and has never been charged with any offense.

27. Petitioner built a stable life in reliance on his release. Upon receiving work authorization he worked lawfully and established his own business, [redacted] through which he provided automotive repair and related services and supported his family. His two young children, [redacted], live with the family; his detention has separated him from them and removed the household's primary earner. Petitioner is the family's principal source of support.

28. On July 4, 2026, ICE officers arrested Petitioner near a gas station at 4311 Antelope Road in Antelope, California. He was given no advance notice and no hearing before any neutral decisionmaker before or after the deprivation of his liberty. At the time of arrest, officers stated the arrest was based on a purported failure to appear for an appointment with ICE and on the family's relocation from New York to California. DHS provided no written notice justifying the detention and made no individualized finding that Petitioner had become a danger to the community or a flight risk.

29. On its face, Petitioner's Form I-220A directed that he not change his residence without first securing written permission from "the immigration officer listed above." No immigration officer was listed. The Order designated no reporting officer, no reporting office, and no reporting schedule, leaving no officer from whom permission could be sought and no mechanism to seek it. In any event, DHS had actual knowledge of Petitioner's California residence and ratified it. DHS's own records establish that knowledge. On April 23, 2026, the New York Asylum Office mailed Petitioner a written Notice of Forwarding of his Form I-589 to his residence at [redacted] (See Tab D) And on April 20, 2026, DHS re-issued Notices to Appear for Petitioner and each family member that bear that same Antelope, California residence and set the matter before the Sacramento Immigration Court. (See Tab A) DHS thus knew precisely where Petitioner lived, corresponded with him there, and

continued to prosecute his removal case at that address for months before arresting him.

30. Petitioner's removal proceedings are active and counseled. Undersigned counsel entered an appearance in the Sacramento Immigration Court by filing Form EOIR-28. Consistent with that court's practice, upon the entry of counsel the scheduled May 29, 2026 master calendar hearing was vacated and the matter proceeds through written pleadings. No hearing was missed, and nothing in the posture of the removal case supports any inference that Petitioner absconded or failed to appear; to the contrary, his case is proceeding in the ordinary course before the very court to which DHS venued it.

31. Petitioner is now confined at the Golden State Annex within this District and Division. Petitioner is indigent.

CLAIMS FOR RELIEF

COUNT ONE

A) Fifth Amendment — Deprivation of Liberty Without Pre-Deprivation Due Process

32. Petitioner realleges the foregoing paragraphs.

33. The Due Process Clause protects every person in the United States, including a noncitizen whose presence is unlawful or temporary, against the deprivation of liberty without due process. *Zadvydas*, 533 U.S. at 693. Freedom from physical restraint lies at the core of the liberty the Clause protects. *Id.* at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

34. This case turns on a single, clearly established constitutional principle: the government may not deprive a person of a protected liberty interest without first providing notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("the Due Process Clause requires some kind of a hearing *before* the State deprives a person of liberty") (emphasis added). ICE violated that principle in the starkest possible way. Petitioner lived in the United States for nearly four years under release, complied with every immigration obligation of which he was aware, and appeared for every government-directed appointment without exception.

35. On July 4, 2026, ICE officers arrested him near a gas station at 4311 Antelope Road in Antelope, California, and confined him. No notice. No hearing. No individualized determination of any kind. That is the constitutional violation this petition asks this Court to remedy.

36. The Due Process Clause of the Fifth Amendment prohibits the federal government from depriving any person of liberty without due process of law. That protection extends to all persons within the United States "including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "[F]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Id.* at 690. "In our society 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). When the government releases a noncitizen from custody, that release creates a protected liberty interest. "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.'" *Garro Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025). Petitioner lived at liberty for nearly four years and never failed to live up to any condition of his release. Yet ICE revoked his liberty anyway, without a hearing of any kind.

37. Courts in this district apply the *Mathews v. Eldridge* three-factor test to determine what process was constitutionally due: (1) the private interest affected; (2) the risk of erroneous deprivation and value of additional safeguards; and (3) the government's interest. 424 U.S. at 335. Every E.D. Cal. court to apply this test to facts like Petitioner's has reached the same conclusion: all three factors favor the petitioner, a pre-deprivation hearing was constitutionally required, and immediate release is the remedy. *M.D. Alauddin v. Chestnut*, No. 1:26-cv-03541, 2026 WL 1346863, at *2–3 (E.D. Cal. May 14, 2026); *Elias C.M. v. Warden of Golden State Annex*, No. 1:25-cv-02043-TLN-EFB, 2026 WL 127612 (E.D. Cal. Jan. 16, 2026); *Zhunio Malla v. Warden of Golden State Annex*, No. 1:26-cv-02402-DAD-CKD, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (granting the writ), adopting F&R, 2026 WL 1102941, at

*3–4 (E.D. Cal. Apr. 23, 2026); *O.A.C.S. v. Wofford*, No. 1:25-cv-01652-DAD-CSK (HC), 2025 WL 3485221 (E.D. Cal. Dec. 4, 2025); *C.A.R.V. v. Wofford*, No. 1:25-cv-01395-JLT-SKO, 2025 WL 3059549 (E.D. Cal. Nov. 3, 2025); *Fernandez Lopez v. Wofford*, No. 1:25-cv-01226-KES-SKO, 2025 WL 2959319 (E.D. Cal. Oct. 17, 2025).

38. A protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Courts determine whether a conditional release rises to that level by comparing it to the parole liberty interest described in *Morrissey*. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010). Like a parolee, a noncitizen released on recognizance may live, work, and "form the other enduring attachments of normal life," and relies on at least an implicit promise that his liberty will be revoked only if he fails to live up to his conditions. *Morrissey*, 408 U.S. at 482.

39. Petitioner's release on recognizance under § 236, and the nearly four years of compliant liberty that followed, gave rise to a protected liberty interest in remaining free. Chief Judge Nunley so held on materially identical facts, ruling that a conditional release "created a reasonable expectation that he would be entitled to retain his liberty absent a material change in circumstances" protected by the Due Process Clause. *Morales-Flores v. Lyons*, No. 1:25-cv-01640-TLN-EFB, 2025 WL 3552841, at *4–5 (E.D. Cal. Dec. 11, 2025). Courts in this

District have repeatedly so held on materially identical facts. See *Sagar v. Chestnut*, 2026 WL 572528, at *5–6 (E.D. Cal. Mar. 2, 2026); *Velasquez-Quevedo v. Warden, Golden State Annex*, 2026 WL 1541795, at *3 (E.D. Cal. June 1, 2026); *Diaz Luque v. Warden, California City*, 2026 WL 1475815, at *3 (E.D. Cal. May 26, 2026); *Rafael R. M.*, 2026 WL 730999, at *3–4 (E.D. Cal.); *Singh v. Chestnut*, 2026 WL 124830, at *3–4 (E.D. Cal. Jan. 16, 2026).

40. That release reflected an affirmative determination by DHS that Petitioner was neither a danger nor a flight risk. The regulations permit release on recognizance only where the noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons" and that he "is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). "Release therefore reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd, 905 F.3d 1137 (9th Cir. 2018). Petitioner's justified reliance on that determination, and on his continued liberty, is itself a protected entitlement. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

41. The process due is measured by *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022); *Hernandez*, 872 F.3d at 993. All three factors favor Petitioner. His private interest in physical liberty is fundamental and is heightened by the length of his compliant release. The risk of erroneous deprivation is high because he received

no bond or custody hearing of any kind, and his clean record makes the absence of any neutral determination especially consequential. The Government's interest in detaining him without a hearing is low, as custody hearings are routine and impose minimal cost, and the Government's interest is lower still where it already determined he was no danger and no flight risk and he has complied for years.

42. Due process required notice and a hearing before a neutral decisionmaker, at which the Government bore the burden, before Petitioner was deprived of his established liberty. He received none. The deprivation therefore violated the Fifth Amendment, and a later bond hearing would not cure a violation that was complete the moment he was re-detained without pre-deprivation process. Petitioner is entitled to immediate release restoring the status quo ante.

B) Petitioner Has a Protected Liberty Interest in Remaining Out of Custody and Was Entitled to a Pre-Deprivation Hearing Before Being Re-Detained

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

44. Petitioner has due process rights to challenge his detention. *Zadvydas*, 533 U.S. at 693, 695. The Due Process Clause applies to noncitizens regardless of whether they are "seeking admission" or "admitted" under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir. 2004). Petitioner challenges his physical detention — not the adequacy of the procedures governing his

admission — and is therefore plainly entitled to due process protections.

45. Petitioner's release into the United States on September 12, 2022, created a protected liberty interest in remaining out of custody. The Supreme Court has found that a protected liberty interest may arise from a conditional release from physical restraint. *Young v. Harper*, 520 U.S. 143, 147–49 (1997). The regulations authorizing ICE to release a noncitizen require a finding that the person is neither a flight risk nor a danger to the community. 8 C.F.R. § 1236.1(c)(8). Release therefore "reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017). Petitioner relied on that release for nearly four years, building his life in the United States with his wife and two minor children, complying with every reporting requirement, and pursuing his asylum case. That extended period of compliance and reliance only strengthened his liberty interest. *Garro Pinchi*, 792 F. Supp. 3d at 1034; *Zhunio Malla*, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (adopting 2026 WL 1102941, at *2) ("[E]ven 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."); *Hasratyan*, 2026 WL 288909, at *3 (C.D. Cal.).

46. Applying the *Mathews* balancing test, all three factors strongly favor Petitioner.

First, the private interest at stake — freedom from physical detention — is the most elemental of liberty interests. Petitioner is separated from his wife and two young children, unable to work, and confined indefinitely while the asylum application on which he is a dependent is pending. *Elias C.M.*, 2026 WL 127612, at *3; *C.A.R.V.*, 2025 WL 3059549, at *26–27 .

Second, the risk of erroneous deprivation is extremely high. Respondents provided no pre-deprivation process whatsoever. No individualized determination that Petitioner violated any condition of release, that he had become a flight risk, or that he presented any danger to the community was conducted by the Respondents. Since DHS's initial determination that Petitioner should be released on his own recognizance because he posed no danger and was not a flight risk, no evidence of changed circumstances appears anywhere in the record. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017). Civil immigration detention is permissible only to prevent flight or reduce risk of danger to the community. *Zadvydas*, 533 U.S. at 690–91.

Third, the government's interest in detaining Petitioner without a hearing is low. "[T]he government's interest in re-detaining [P]etitioner without a hearing is low, particularly in light of the fact that [P]etitioner has long complied with his reporting requirements." *Rodriguez Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *7–8 (N.D. Cal. June 14, 2025). "[D]etention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Garro Pinchi*, 792 F. Supp. 3d at 1036.

47. This Court and courts across this circuit have consistently found that all *Mathews* factors weigh in favor of requiring a pre-detention hearing and, where no such hearing was provided, granting immediate release. *M.D. Alauddin v. Chestnut*, 2026 WL 1346863, at *2–3 (E.D. Cal. May 14, 2026) (immediate release ordered; petition unopposed; petitioner re-detained at ICE check-in with BIA appeal pending and no changed circumstances — identical facts to Petitioner here); *Elias C.M.*, 2026 WL 127612, at *3 (Golden State Annex; all

Mathews factors weighed in favor of releasing petitioner); *O.A.C.S.*, 2025 WL 3485221 (E.D. Cal.) (prior release created reliance interest entitling petitioner to due process under § 1226(a)); *Saballos Rosales v. Noem*, No. 5:26-CV-00112-JWH-MBK, 2026 WL 761371, at *3 (C.D. Cal. Mar. 16, 2026) (post-detention process "is no substitute for the pre-detention process she was owed").

48. Because Respondents detained Petitioner without a pre-deprivation hearing, in violation of the Due Process Clause, his continued detention is unlawful and he must be immediately released. A post-deprivation hearing at this juncture is not an adequate remedy because it would condone the violation of Petitioner's right to due process in the first instance. *Zhunio Malla v. Warden of Golden State Annex*, No. 1:26-cv-02402-DAD-CKD, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (adopting 2026 WL 1102941, at *4) (ordering immediate release because a post-deprivation hearing "would condone the violation of petitioner's right to due process in the first instance"); *M.D. Alauddin*, 2026 WL 1346863, at *3–4 (immediate release ordered; BIA appeal pending, no final order of removal); *E.A. T.-B v. Wamsley*, No. 25-1192-KKE, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025) (same).

COUNT TWO

A) Unlawful Detention — § 1226(a), Not § 1225(b), Governs, and Detention Serves No Legitimate Purpose

49. Petitioner realleges the foregoing paragraphs.

50. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b). He was released on recognizance under § 236 and has lived in the interior since 2022; his detention is governed by § 1226(a), which is discretionary. Courts in this District and the majority nationwide have rejected the Government's contrary reading because it disregards the plain meaning of § 1225(b)(2)(A), disregards the relationship between §§ 1225 and 1226, renders a recent amendment to § 1226(c) superfluous, and is inconsistent with decades of practice. *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1112 (E.D. Cal. 2025); *Morales-Flores v. Lyons*, 2025 WL 3552841, at *2–4 (E.D. Cal. Dec. 11, 2025) (Nunley, C.J.) (interior resident released pending proceedings is governed by § 1226(a), not § 1225(b)(2); rejecting the July 2025 DHS "applicant for admission" policy); accord *Diaz Luque*, 2026 WL 1475815, at *2; *Velasquez-Quevedo*, 2026 WL 1541795, at *2; *Sagar*, 2026 WL 572528, at *3–4. Four courts of appeals have now rejected the Government's interpretation. *Lopez-Campos v. Raycraft*, 2026 WL 1283891 (6th Cir. May 11, 2026); *Barbosa da Cunha v. Freden*, 2026 WL 1146044 (2d Cir. Apr. 28, 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 2026 WL 1223250 (7th Cir. May 5, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, 2026 WL 1243395 (11th Cir. May 6, 2026). Indeed, the July 2025 DHS guidance on which the Government's mandatory-detention theory depends has been stayed within ICE's San Francisco area of responsibility — which includes this District

— pending resolution of an Administrative Procedure Act challenge. *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025). *see also Puac v. Warden*, No. 1:26-cv-1388-TLN-CKD P, 2026 WL 1133274, at *2 (E.D. Cal. Apr. 27, 2026) (§ 1225 mandatory detention theory "does not comport with [petitioner's] prior grant of bond and release from custody"); *Morales-Flores v. Lyons*, No. 1:25-CV-01640-TLN-EFB, 2025 WL 3552841, at *3 (E.D. Cal. Dec. 11, 2025) (collecting cases holding noncitizens living in the interior are not subject to mandatory detention under § 1225); *Jose Cesar Rivas Cruz v. Chestnut*, No. 1:26-cv-2041 DJC CKD P, 2026 WL 1362610, at *2 (E.D. Cal. May 15, 2026) (§ 1226 governs interior arrests); *Zhunio Malla*, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (adopting 2026 WL 1102941, at *3) (same); *Hernandez Alvarez*, 2026 WL 1243395, at *18 ("§ 1226 supplies the default rule of detention for an alien arrested and detained in the interior"); *Barbosa da Cunha v. Freden*, No. 25-3141-pr, 2026 WL 1146044, at *2–3 (2d Cir. Apr. 28, 2026) (§ 1226(a) governed petitioner arrested in interior after living in U.S. for over twenty years).

51. The term "arriving" in § 1225(b)(1) describes a process that occurs upon physical entry, not an interminable status; a person apprehended, released, and allowed to live in the United States for years "cannot be classified as a noncitizen who is arriving in the United States." *Rafael R. M.*, 2026 WL 730999, at *2. The Government's reliance on the out-of-circuit decisions in *Avila v.*

Bondi, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026), and *Buenrostro-Mendez v. Bondi*, 2026 WL 323330 (5th Cir. Feb. 6, 2026), is unpersuasive: both are contrary to the four courts of appeals and the E.D. Cal. consensus cited above, and neither reaches the pre-deprivation due process claim presented here. See *Sagar*, 2026 WL 572528, at *3–4 (declining to follow *Buenrostro-Mendez* and siding with the Seventh Circuit).

52. The entry-fiction doctrine does not apply. Courts in this District have rejected invocation of the entry fiction where, as here, the petitioner was not placed into expedited removal proceedings. *Chiguil v. Noem*, 2026 WL 983134, at *1 (E.D. Cal. Apr. 13, 2026) (citing *Castillo v. Wofford*, 2025 WL 3466064, at *8 (E.D. Cal. Dec. 2, 2025)). *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is confined to challenges to admissibility and does not limit the due process rights of a person, like Petitioner, challenging detention rather than admission. *Singh v. Chestnut*, 2026 WL 124830, at *2–3; *Padilla v. ICE*, 704 F. Supp. 3d 1163, 1171–72 (W.D. Wash. 2023).

53. Civil detention comports with due process only where it bears a reasonable relation to a legitimate purpose such as preventing danger or flight. *Zadvydas*, 533 U.S. at 690. The Government's own determinations — releasing Petitioner on recognizance, corresponding with him at his California residence, re-issuing his charging documents to that address, and authorizing him to work through 2030 — establish that no such purpose is served by his confinement. His

detention is unlawful, and he is entitled to release.

54. "[O]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." *Saravia*, 280 F. Supp. 3d at 1197. "Rather, the federal agents must be able to present evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact dangerous or has become a flight risk." *Id.* Respondents have presented no such evidence here.

55. Accordingly, the statutory basis for Petitioner's detention is 8 U.S.C. § 1226(a), which provides for discretionary detention with the right to seek release on bond or conditional parole. Petitioner is therefore entitled to habeas relief on this independently sufficient ground. *O.A.C.S.*, 2025 WL 3485221, at *3; *Ayala Cajina*, 2025 WL 3251083, at *3 (E.D. Cal.).

B) Arbitrary and Capricious Agency Action Under the APA

Petitioner's Detention Without Individualized Review Violates the APA and the Accardi Doctrine

56. The allegations in the above paragraphs are realleged and incorporated herein. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

57. ICE's longstanding policy is to release noncitizens following a grant of relief absent exceptional circumstances, and to re-detain previously released

noncitizens only after a material change in individual circumstances — specifically, evidence that the individual has become a flight risk or a danger to the community. Under the *Accardi* doctrine, ICE is bound to follow its own rules that affect the fundamental rights of individuals. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). "An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process." *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

58. "[T]he touchstone of 'arbitrary and capricious' review under the APA is 'reasoned decision-making.'" *Altera Corp. & Subsidiaries v. Comm'r*, 926 F.3d 1061, 1080 (9th Cir. 2019). "[A]n agency's action can only survive arbitrary or capricious review where it has articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir. 2023). Revocation of a discretionary release, once granted and relied upon, likewise should occur only upon a considered, individualized determination — supported by a rational connection between the facts found and the choice made — and upon written notice to the affected person. *Y-Z-L-H v. Bostock*, 2025 WL 1898025, at *12–13 (D. Or. July 9, 2025).

59. Respondents released Petitioner in September 2022 and maintained that release

for nearly four years without revocation. The July 2026 re-arrest identifies no changed circumstances. On information and belief, Respondents re-detained Petitioner pursuant to a categorical policy of mass re-detention of previously released noncitizens without consideration of individual circumstances — the same pattern courts have repeatedly found to constitute arbitrary and capricious agency action. *Saravia*, 280 F. Supp. 3d at 1197.

60. Prejudice is generally presumed when an agency violates its own policy. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Respondents' re-detention of Petitioner without individualized justification is arbitrary and capricious and violates the APA. As a remedy, this Court should order ICE to properly apply its own policies — or apply those policies itself — and order Petitioner's release consistent therewith. *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018).

REMEDY

IMMEDIATE RELEASE IS THE ONLY ADEQUATE REMEDY FOR THE COMPLETED FIFTH AMENDMENT VIOLATION

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

62. The Fifth Amendment violation in this case is complete. It occurred on July 4, 2026, the moment ICE re-arrested Petitioner without providing a pre-deprivation hearing. No post-detention proceeding can undo that constitutional wrong. Ordering a bond hearing before an Immigration Judge now would not remedy

the violation. It would only add yet another layer of process on top of an already completed, irreversible deprivation of liberty, while Petitioner remains incarcerated throughout.

63. The appropriate remedy for a constitutional violation is to restore the status quo ante litem — the last uncontested status that existed before the violation occurred. *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000). The last uncontested status was Petitioner's life under supervised release prior to July 4, 2026: residing with his wife and children in the United States, complying with all conditions of release, and pursuing his asylum application before the Sacramento Immigration Court. That is where this Court's remedy must return him. That is precisely the relief courts in this District have ordered on materially identical facts: immediate release under the same conditions as before the challenged detention, a re-detention injunction requiring a pre-deprivation hearing before a neutral decisionmaker at which the Government bears the burden by clear and convincing evidence, and waiver of the Rule 65(c) security. *Morales-Flores v. Lyons*, 2025 WL 3552841, at *7 & Order ¶¶ 2–4 (E.D. Cal. Dec. 11, 2025); *Pupykin v. Lynch*, No. 1:26-cv-04957-TLN-SCR (E.D. Cal. June 29, 2026) (Nunley, C.J.) (granting ex parte TRO and ordering immediate release of an I-220A recognizance-released petitioner to the status quo ante, enjoining re-detention absent seven days' notice and a pre-deprivation hearing, and waiving Rule 65(c) security), compliance noted, ECF No. 6 (July 2,

2026). *Hasratyan*, 2026 WL 288909, at *5–6 (C.D. Cal.) (ordering "forthwith release" to restore status quo).

64. A bond hearing before an Immigration Judge is not an adequate remedy for four independent reasons:

First, ordering a bond hearing would condone the constitutional violation. Petitioner was entitled to a hearing before his detention. Providing one now, after the fact, "would condone the violation of [P]etitioner's right to due process in the first instance." *Zhunio Malla*, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (adopting 2026 WL 1102941, at *4) (ordering immediate release rather than a post hoc bond hearing); *see also E.A. T.-B v. Wamsley*, No. 25-1192-KKE, 2025 WL 2402130, at *5 (W.D. Wash. Aug. 19, 2025) (same). The Constitution required process before deprivation of liberty, not after. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) ("the Due Process Clause requires some kind of a hearing before the State deprives a person of liberty") (emphasis added).

Second, a bond hearing is an inadequate remedy because it subjects Petitioner to further delay and continued unconstitutional detention while the hearing is scheduled, held, and appealed. Requiring Petitioner to navigate yet another round of administrative proceedings — before the same executive branch that violated his rights — to justify what should never have been taken from him is not a remedy; it is a continuation of the harm.

Third, the E.D. Cal. courts that have most carefully considered this question have consistently chosen immediate release over a bond hearing as the remedy where, as here, the petitioner was detained without any pre-deprivation process and has no criminal history. *M.D. Alauddin v. Chestnut*, 2026 WL 1346863 (E.D. Cal. May 14, 2026) (immediate release ordered; IJ denial, BIA appeal pending, re-detained at check-in with no changed circumstances — identical to Petitioner); *Zhunio Malla*, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (adopting 2026 WL 1102941) (immediate release; post-deprivation hearing "would condone the violation"); *Elias C.M.*, 2026 WL 127612 (E.D. Cal. Jan. 16, 2026) (Golden State Annex; immediate release); *Oleksandr V.M.*, slip op. at 15 (E.D. Cal. Jan. 27,

2026) (Golden State Annex; immediate release).

Fourth, and independently sufficient: no bond hearing is even available to Petitioner in the immigration court system. Ordering a bond hearing under these circumstances would not be a remedy — it would be a nullity. The exhaustion doctrine does not require pursuit of remedies that are unavailable or futile. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (exhaustion excused where "administrative remedies are inadequate or not efficacious" or "pursuit of administrative remedies would be a futile gesture"). This Court is the only forum with authority to order Petitioner's release, and immediate release is the only adequate remedy.

65. The government's interest does not require a different result. The government's interest is in detaining those who pose a flight risk or danger to the community. Petitioner demonstrably poses neither: he complied fully with the conditions of his release for nearly four years, appeared for every immigration appointment, committed no crimes, and had lived openly at the address DHS itself used to prosecute his case. The government made that determination itself in September 2022 when it released him. Nothing in the record suggests anything has changed. "[T]he government's interest in re-detaining [P]etitioner without a hearing is low." *Rodriguez Diaz v. Kaiser*, 2025 WL 1676854, at *7–8 (N.D. Cal. June 14, 2025). The balance overwhelmingly favors Petitioner's immediate release.

66. Accordingly, this Court should grant the writ, order Petitioner's immediate release from the Golden State Annex, and permanently enjoin Respondents from re-detaining Petitioner absent compliance with the constitutional requirements

he was denied here: advance written notice and a pre-deprivation hearing before a neutral adjudicator at which the government bears the burden of proof by clear and convincing evidence.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

a. Assume jurisdiction over this matter;

b. Issue an Order to Show Cause directing Respondents to show cause within three days why this Petition should not be granted;

c. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States Constitution, 8 U.S.C. § 1226(a), and the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);

d. Issue a writ of habeas corpus and declare that Petitioner's detention violates the Fifth Amendment;

e. Order Respondents to return to Petitioner, at the time of release, any documents in their custody, including his identification, work authorization, and travel documents;

f. In the alternative, order that Petitioner receive a custody hearing before this Court with all constitutionally required safeguards, at which the Government bears the burden of establishing by clear and convincing evidence that no condition or combination of conditions will reasonably assure his future appearance and the safety of the community;

g. Permanently enjoin Respondents from re-arresting or re-detaining Petitioner absent full compliance with the constitutional protections, including: (i) no less than seven (7) days' advance written notice to Petitioner and his counsel; and (ii) a pre-deprivation hearing before a neutral fact-finder at which Respondents bear the burden of demonstrating by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk, or that material changed circumstances demonstrate a significant likelihood of removal in the reasonably foreseeable future, and at which Petitioner has the right to counsel present;

h. Enjoin Respondents from transferring Petitioner outside this District during the pendency of these proceedings;

i. Award Petitioner his costs and reasonable attorney's fees, and grant such other relief as is just and proper.

Dated: July 11, 2026

Respectfully submitted,
/s/ Regina Jacobson
Regina Jacobson (SBN 233127)
LAW OFFICE OF REGINA JACOBSON
Attorney for Petitioner MUZAFFAR OSMANOV

VERIFICATION

I, Regina Jacobson, declare under penalty of perjury under the laws of the United States that I am counsel for Petitioner; that I prepared this Petition and am familiar with its contents; and that its factual allegations are true and correct to the best of my knowledge, information, and belief. Petitioner is detained and unable to verify the Petition himself; this verification is made on his behalf pursuant to 28 U.S.C. § 2242. Executed this 11th day of July, 2026, at San Francisco, California.

/s/ Regina Jacobson
Regina Jacobson