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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ULLAH, Nayem

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; FIELD OFFICE DIRECTOR, San Diego Field Office, U.S. Immigration and Customs Enforcement; DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security, and their successors in office,

Respondents-Defendants.

Case No.: '26CV4093 RSH VET

A-Number: [redacted]

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

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INTRODUCTION

1. Mr. Nayem Ullah ("Mr. Ullah" or "Petitioner") is a 30-year-old citizen and national of Bangladesh who is confined in civil immigration custody at Otay Mesa Detention Center in San Diego, California. He seeks protection from persecution in Bangladesh based on his political opinion and support for the political opposition.

2. Respondents have detained Mr. Ullah continuously since on or about December 28, 2025. As of the filing of this Petition, his confinement has lasted approximately 200 days - more than six months - without a bond hearing or any other neutral, individualized determination that detention remains necessary.

3. DHS has placed Mr. Ullah in removal proceedings under 8 U.S.C. § 1229a. His case remains pending. The immigration court docket reflects that proceedings were initiated on January 20, 2026, and that his next in-person master calendar hearing is scheduled for July 23, 2026, at 1:00 p.m., before Immigration Judge Mark Sameit.

4. Mr. Ullah has already appeared for approximately six master calendar hearings while detained. He has not received a merits hearing, a final administrative decision, or a meaningful custody hearing before a neutral adjudicator. His detention therefore has no reasonably definite endpoint.

5. Mr. Ullah has no criminal history, no arrests, no convictions, and no record of danger to any person. Respondents have never established through an adversarial

hearing that he presents a danger to the community or an unmanageable risk of nonappearance.

6. Mr. Ullah is married, has one dependent, and remains closely connected to his family. He is prepared to comply with reporting, monitoring, residence, travel, or other reasonable conditions that the Court or immigration judge considers necessary to ensure his appearance.

7. Prolonged confinement has also aggravated Mr. Ullah's inability to sleep and has intensified the physical and psychological strain of detention. Continued detention impairs his ability to communicate with counsel, obtain supporting declarations, and prepare his protection claims.

8. Immigration detention is civil, not punitive. Its legitimate purposes are limited to preventing danger and ensuring appearance at proceedings. Confinement without an individualized determination of necessity, imposed solely because Respondents invoke a mandatory-detention label, cannot remain constitutionally adequate as months accumulate and the end of proceedings remains uncertain.

9. The Fifth Amendment protects every person within the United States from arbitrary deprivation of liberty. Freedom from physical restraint is at the core of that protection. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

10. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 297-300 (2018), held that the detention statutes do not themselves contain an implied six-month bond-

hearing requirement. But the Court expressly did not decide the constitutional claims. On remand, the Ninth Circuit confirmed that those constitutional questions remained open. *Rodriguez v. Marin*, 909 F.3d 252, 255-57 (9th Cir. 2018).

11. The most directly relevant authority is *Faizi v. LaRose*, No. 25-cv-02974-JO-MSB, 2026 WL 1112035 (S.D. Cal. Apr. 24, 2026). There, this District addressed prolonged detention under 8 U.S.C. § 1225(b)(1) at the same facility, applied the balancing test of *Mathews v. Eldridge*, 424 U.S. 319 (1976), found a due process violation, and required an individualized bond hearing at which the Government bore the burden by clear and convincing evidence.

12. Mr. Ullah therefore asks this Court to order his immediate release unless Respondents promptly provide a constitutionally adequate bond hearing before a neutral immigration judge. At that hearing, the Government must prove by clear and convincing evidence that Mr. Ullah is a danger or such a flight risk that no bond or alternative condition can reasonably assure his appearance. The decisionmaker must consider ability to pay, alternatives to detention, and the least restrictive conditions sufficient to serve the Government's legitimate interests.

JURISDICTION

13. 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 habeas statute, 28 U.S.C. § 2241.

14. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241(c)(3), because Mr. Ullah is in custody in violation of the Constitution and laws of the United States; 28 U.S.C. § 1331; the Suspension Clause, U.S. Const. art. I, § 9, cl. 2; 28 U.S.C. § 1346; 28 U.S.C. §§ 2201-2202; and 28 U.S.C. § 1651.

15. Federal district courts retain habeas jurisdiction over constitutional and statutory challenges to immigration detention. *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *INS v. St. Cyr*, 533 U.S. 289, 301-05 (2001).

16. Mr. Ullah does not ask this Court to review the merits of his asylum claim, determine removability, review an order of removal, or interfere with the immigration judge's adjudication of the removal case. He challenges only the legality of his present physical confinement and the absence of constitutionally adequate procedures to test whether continued detention is necessary.

17. Because this claim is independent of and collateral to the removal process, 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not withdraw jurisdiction. *Jennings v. Rodriguez*, 583 U.S. 281, 292-95 (2018); *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016); *Ibarra-Perez v. United States*, 154 F.4th 989, 996-98 (9th Cir. 2025); *Faizi v. LaRose*, 2026 WL 1112035, at *2-3.

18. Section 1252(a)(5) likewise does not apply because Mr. Ullah is not seeking review of a final removal order. His removal proceedings remain pending, and the requested relief concerns custody only.

19. The Court may grant habeas relief and may issue declaratory and injunctive relief necessary to make that relief effective. 28 U.S.C. §§ 2241, 2243, 2201-2202, 1651; *Roman v. Wolf*, 977 F.3d 935, 942 (9th Cir. 2020); *Boumediene v. Bush*, 553 U.S. 723, 779-80 (2008).

20. The requested hearing would not order discretionary parole or dictate the outcome of a custody decision. It would require only the constitutionally necessary process through which a neutral adjudicator determines whether Respondents can justify continued confinement.

VENUE

21. Venue is proper in the Southern District of California because Mr. Ullah is physically confined at Otay Mesa Detention Center within this District and is in the immediate custody of Respondent LaRose. 28 U.S.C. § 1391(e).

22. A core habeas challenge to present physical custody is ordinarily filed in the district of confinement and directed to the immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 434-35, 443 (2004).

23. A substantial part of the events giving rise to this action - including Mr. Ullah's present confinement, the denial of any neutral custody hearing, the operation of the detention facility, and the continuing deprivation of liberty - occurs in this District. Venue is also consistent with Local Civil Rule HC.1.

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241 AND 2243

24. Mr. Ullah is "in custody" within the meaning of 28 U.S.C. § 2241 because Respondents exercise direct legal and physical control over him at Otay Mesa Detention Center.

25. The writ of habeas corpus is the traditional and appropriate vehicle for challenging unlawful civil immigration detention and obtaining release or a hearing necessary to determine the lawfulness of custody. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Zadvydas v. Davis*, 533 U.S. at 687-88.

26. Under 28 U.S.C. § 2243, the Court must award the writ or direct Respondents to show cause forthwith why the writ should not be granted. If a return is ordered, the statute directs a response within three days unless additional time, not exceeding twenty days, is allowed for good cause.

27. Section 2243 further directs the Court to dispose of the matter as law and justice require. That authority permits immediate release, a prompt bond hearing with constitutionally adequate safeguards, and prospective relief necessary to prevent circumvention of the writ. *Fay v. Noia*, 372 U.S. 391, 438 (1963); *Faizi v. LaRose*, 2026 WL 1112035, at *7-8.

PARTIES

28. Petitioner Nayem Ullah is a citizen and national of Bangladesh, [redacted]. He is Muslim, married, and has one dependent. He is detained in Respondents' custody at Otay Mesa Detention Center.

29. Mr. Ullah fled Bangladesh after persecution connected to his political opinion and his support for the political opposition, including the Bangladesh Nationalist Party. He fears renewed persecution if returned and is pursuing protection in his pending immigration proceedings.

30. Respondent Christopher J. LaRose is the Senior Warden of Otay Mesa Detention Center and Mr. Ullah's immediate physical custodian. He is sued in his official capacity.

31. Respondent Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement ("ICE"), is responsible for local custody determinations, detention operations, transfers, release decisions, and implementation of orders concerning persons detained within the San Diego area. The officer is designated by official title under Federal Rule of Civil Procedure 17(d) and sued in an official capacity.

32. Respondent David J. Venturella is the Acting Director of ICE. ICE is responsible for the detention and custody policies being applied to Mr. Ullah. He is sued in his official capacity.

33. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS") and has supervisory authority over ICE and its detention operations. He is sued in his official capacity.

34. Under Federal Rule of Civil Procedure 25(d), the successors to the public officers named or designated in this Petition are automatically substituted as parties when appropriate.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. Mr. Ullah has no available administrative procedure capable of providing the relief sought here if, as Respondents are expected to contend, he is detained under 8 U.S.C. § 1225(b). Under that position, an immigration judge lacks ordinary bond jurisdiction and cannot adjudicate the constitutional lawfulness of prolonged mandatory detention.

36. A request for discretionary parole to DHS is not an adequate substitute for a neutral bond hearing. Parole is decided by the detaining agency, does not place the burden on the Government, does not require an evidentiary hearing, and does not provide review equivalent to the process requested here.

37. Administrative exhaustion under § 2241 is prudential rather than jurisdictional. It may be excused where administrative remedies are unavailable or inadequate, exhaustion would be futile, or the claim presents a constitutional question beyond the agency's authority. *Laing v. Ashcroft*, 370 F.3d 994, 1000-01 (9th Cir. 2004).

38. Requiring Mr. Ullah to pursue a process that cannot award a constitutionally sufficient hearing would only extend the very detention challenged in this action. The balance of interests therefore strongly favors immediate judicial review.

39. To the extent Respondents contend that 8 U.S.C. § 1226(a) governs instead, that statute expressly contemplates release on bond or conditional parole and an immigration judge may conduct custody review. In that alternative, Respondents' failure to provide the ordinary custody process confirms that judicial relief is warranted.

STATUTORY AND CONSTITUTIONAL FRAMEWORK

40. The Fifth Amendment provides that no person may be deprived of liberty without due process of law. Its protection extends to noncitizens in civil immigration proceedings. *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Zadvydas v. Davis*, 533 U.S. at 693.

41. Physical liberty is a fundamental interest. Detention by the Government is therefore constitutionally permissible only when it serves a legitimate, nonpunitive purpose and is accompanied by procedures adequate to prevent erroneous or arbitrary confinement. *Foucha v. Louisiana*, 504 U.S. at 80; *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

42. Before a final order of removal, Respondents may invoke 8 U.S.C. § 1225(b) or § 1226 as detention authority depending on a person's procedural posture. Nothing in this Petition asks the Court to rewrite those statutes. The question is whether application of any asserted detention authority to Mr. Ullah, after more than six months without neutral review, satisfies the Fifth Amendment.

43. In *Jennings v. Rodriguez*, the Supreme Court rejected a statutory construction that inserted periodic bond hearings into §§ 1225(b), 1226(a), and 1226(c). 583 U.S. at 297-312. The Court remanded without resolving whether prolonged detention under those statutes violates the Constitution as applied. Id. at 312.

44. The Ninth Circuit has accordingly recognized that *Jennings v. Rodriguez* did not decide the constitutional issue. *Rodriguez v. Marin*, 909 F.3d at 255-57. District courts remain obligated to adjudicate individual due process claims based on the length, circumstances, and procedures of detention.

45. In *Demore v. Kim*, the Supreme Court upheld § 1226(c) against a facial challenge based on detention that was ordinarily brief and had a definite termination point. 538 U.S. at 528-31. Justice Kennedy emphasized that an individualized hearing may be constitutionally required when continued detention becomes unreasonable or unjustified. Id. at 532-33 (Kennedy, J., concurring).

46. In *Zadvydas v. Davis*, the Supreme Court explained that immigration detention must bear a reasonable relationship to a legitimate immigration purpose and cannot continue without meaningful limits. 533 U.S. at 690, 699-701. Although *Zadvydas v. Davis* addressed post-order detention, its constitutional analysis confirms the central importance of liberty and the impermissibility of arbitrary civil confinement.

47. The Government may rely on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), but that decision concerned the scope of habeas review

sought to obtain additional process regarding an expedited removal determination. Mr. Ullah does not seek admission or review of removal merits; he invokes the traditional habeas function of testing present physical custody. *Faizi v. LaRose*, 2026 WL 1112035, at *4-5; *Sadeqi v. LaRose*, 809 F. Supp. 3d 1090, 1093 (S.D. Cal. 2025).

48. Procedural due process is evaluated under *Mathews v. Eldridge*, which considers (1) the private interest affected, (2) the risk of erroneous deprivation under existing procedures and the value of additional safeguards, and (3) the Government's interest and the burdens of additional process. 424 U.S. at 334-35.

49. The Ninth Circuit has regularly applied *Mathews v. Eldridge* to immigration proceedings. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022). That decision did not hold that a person may be detained indefinitely without any custody hearing; the petitioner there had received an initial bond hearing, Board review, and the ability to seek redetermination based on changed circumstances. Id. at 1194-96, 1207-10.

50. Mr. Ullah, by contrast, has received no neutral bond hearing at all. The procedural protections that informed *Rodriguez Diaz v. Garland* are absent, and the risk of error is correspondingly far greater.

51. Courts assessing prolonged detention also consider the total duration of confinement, the likely future duration, the conditions of confinement, whether the detainee or Government caused delay, and the likelihood that proceedings will

culminate in removal. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1117-20 (W.D. Wash. 2019); *Abduraimov v. Andrews*, No. 1:25-cv-00843-EPG-HC, 2025 WL 2912307, at *5-8 (E.D. Cal. Oct. 14, 2025).

52. Recent decisions in this District hold that detention under § 1225(b) may become constitutionally unreasonable and require an individualized bond hearing. See *Faizi v. LaRose*, 2026 WL 1112035, at *4-7; *Bayani v. LaRose*, No. 26-cv-00266-JES-VET, 2026 WL 1270059, at *4-8 (S.D. Cal. May 8, 2026); *Sadeqi v. LaRose*, 809 F. Supp. 3d at 1093-94; *Gao v. LaRose*, 805 F. Supp. 3d 1106, 1110-12 (S.D. Cal. 2025).

53. Other courts in this Circuit have reached the same conclusion under *Mathews v. Eldridge*. See *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *6-10 (E.D. Cal. May 16, 2025), adopted, 2025 WL 1808676 (E.D. Cal. July 1, 2025); *Lopez v. Garland*, 631 F. Supp. 3d 870, 882-83 (E.D. Cal. 2022).

54. When due process requires a bond hearing after prolonged detention, the Government must bear the burden of justifying continued confinement by clear and convincing evidence. *Singh v. Holder*, 638 F.3d 1196, 1203-05 (9th Cir. 2011), abrogated on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281; *Martinez v. Clark*, 124 F.4th 775, 785-86 (9th Cir. 2024); *Faizi v. LaRose*, 2026 WL 1112035, at *7.

55. A constitutionally adequate hearing must also consider ability to pay and alternatives to monetary bond. Detention cannot rest on an amount the person

cannot afford when less restrictive conditions would serve the Government's interests. *Hernandez v. Sessions*, 872 F.3d 976, 990-91 & n.18 (9th Cir. 2017).

56. The hearing must result in a contemporaneous record and a reasoned determination sufficient for review. *Singh v. Holder*, 638 F.3d at 1208. A conclusory statement or unexplained reliance on the fact of entry does not provide meaningful process.

FACTUAL BACKGROUND

57. Mr. Ullah [redacted] is a citizen and national of Bangladesh. Before detention, he supported himself through various forms of employment and ordinary work.

58. Mr. Ullah supported the political opposition in Bangladesh, [redacted] and opposed the governing political forces. He was persecuted because of that political opinion and fears that persons aligned with those forces will harm him if he is returned. Petitioner was a member of the [redacted] which supported Shik Hashina as prime minister. When BNB took power, Shik Hashina was prosecuted and had to flee the country. Many opponents to the regime, such as the Petitioner, were prosecuted and were forced to flee the country after suffering prosecution and threats.

59. Mr. Ullah entered the United States seeking safety and was taken into DHS custody on or about December 28, 2025. He has remained continuously confined since that date.

60. On January 20, 2026, DHS's removal case against Mr. Ullah was docketed in immigration court. The case is pending before the Otay Mesa Immigration Court.

61. Mr. Ullah has attended approximately six master calendar hearings while in custody. His next in-person master calendar hearing is set for July 23, 2026, at 1:00 p.m., before Immigration Judge Mark Sameit.

62. No merits hearing or final administrative decision has occurred. Even after the next master hearing, additional preparation, merits proceedings, and possible administrative or judicial review may require many more months.

63. Mr. Ullah has never been convicted of any crime. He reports no arrest history and no prior trouble with police in the United States or any other country.

64. Mr. Ullah is married and has one dependent. His family relationships, protection claim, and desire to obtain a lawful decision provide powerful reasons to appear for every hearing.

65. Because Mr. Ullah was detained upon arrival and has remained confined, he has never had an opportunity to demonstrate compliance in the community. That circumstance cannot reasonably be converted into evidence that he would fail to appear if released under appropriate conditions.

66. Mr. Ullah is willing to accept reasonable conditions, including regular ICE check-ins, electronic monitoring if genuinely necessary, geographic restrictions, residence requirements, and prompt notice of any change of address.

67. Mr. Ullah has experienced persistent inability to sleep in detention. The strain of prolonged confinement is compounded by separation from his family and uncertainty about when his protection claim will be heard. The conditions of detention have worsened his medical condition.

68. Respondents have not provided Mr. Ullah a hearing at which they were required to present evidence of danger or flight risk.

69. No neutral adjudicator has considered his clean record, family responsibilities, asylum claim, medical concerns, ability to pay, or suitability for alternatives to detention.

70. Respondents nevertheless continue to deprive Mr. Ullah of liberty based on a categorical detention position rather than a current, individualized assessment.

71. The result is a growing and potentially lengthy civil confinement that bears no demonstrated relationship to danger or nonappearance.

COUNT ONE

Violation Of the Fifth Amendment Right to Procedural Due Process

72. Mr. Ullah realleges and incorporates every preceding paragraph as though fully set forth here.

73. The Fifth Amendment prohibits the Government from depriving any person of liberty without due process of law. U.S. Const. amend. V.

74. Mr. Ullah's more-than-six-month physical confinement constitutes a severe deprivation of the most fundamental private interest. Every additional day imposes

an irretrievable loss of liberty and further impairs family life, health, and preparation of his immigration case.

75. Under the first *Mathews v. Eldridge* factor, the private interest weighs overwhelmingly in Mr. Ullah's favor. Physical restraint is not a financial or regulatory inconvenience; it is total government control over where he lives, moves, communicates, and prepares his defense.

76. The duration of detention magnifies that interest. Mr. Ullah has been held for approximately 200 days, far longer than the brief periods that informed the facial ruling in *Demore v. Kim*, 538 U.S. at 529-30, and his case remains only at the master-calendar stage.

77. The likely future duration is substantial and uncertain. The next hearing is another master hearing, not a guaranteed merits adjudication. A merits decision and any administrative review may extend detention well beyond the period already served.

78. Under the second *Mathews v. Eldridge* factor, the risk of erroneous deprivation is exceptionally high because the existing procedure is no procedure at all. Respondents have never been required to identify evidence of danger or flight risk, carry any burden of proof, or persuade a neutral decisionmaker.

79. A discretionary parole request to the detaining agency cannot cure that risk. It lacks the neutrality, adversarial testing, burden allocation, consideration of ability

to pay, and reasoned record that due process requires once detention becomes prolonged.

80. The omitted safeguards have obvious value. A neutral hearing would permit Mr. Ullah to present his clean record, family obligations, protection claim, willingness to comply, health concerns, and proposed conditions. It would require Respondents to disclose and prove the actual basis for continued confinement.

81. Mr. Ullah's individual circumstances sharply reduce any legitimate detention rationale. He has no criminal history, no evidence of violence, no prior failure to appear, and strong incentives to pursue his pending claim. Conditions short of detention can address any reasonably supported concern about appearance.

82. The Government's interest under the third *Mathews v. Eldridge* factor is limited to preventing danger and ensuring appearance. It has no legitimate interest in detention for its own sake, punishment, administrative convenience, or pressure to abandon a protection claim.

83. Providing a bond hearing imposes minimal administrative burden. Immigration judges routinely conduct custody hearings under § 1226(a), and the Government already maintains the records and personnel necessary to present its position. *Faizi v. LaRose*, 2026 WL 1112035, at *6.

84. The Government cannot attribute the duration of confinement to Mr. Ullah merely because he is exercising the right to seek asylum and prepare evidence. A noncitizen does not forfeit liberty protections by declining to abandon a potentially

meritorious defense to removal. *Rodriguez v. Robbins*, 715 F.3d 1127, 1139 (9th Cir. 2013), rev'd on other grounds by *Jennings v. Rodriguez*, 583 U.S. 281.

85. The balance of the *Mathews v. Eldridge* factors therefore requires a prompt individualized hearing. The same conclusion follows from the duration-and-circumstances factors applied in *Banda v. McAleenan*, *Sadeqi v. LaRose*, *Gao v. LaRose*, *Bayani v. LaRose*, and *Faizi v. LaRose*.

86. At the required hearing, due process places the burden on the Government because Respondents seek to continue a severe deprivation of liberty. The Government must prove by clear and convincing evidence that Mr. Ullah is a danger or such a flight risk that no amount of bond or alternative conditions can reasonably assure appearance. *Singh v. Holder*, 638 F.3d at 1203; *Martinez v. Clark*, 124 F.4th at 785-86.

87. The neutral adjudicator must consider Mr. Ullah's ability to pay before setting any monetary bond and must evaluate nonmonetary alternatives. An unaffordable bond that ignores less restrictive conditions would function as a detention order without constitutionally adequate justification. *Hernandez v. Sessions*, 872 F.3d at 990-91 & n.18.

88. The hearing must be recorded, must permit Mr. Ullah to present evidence and respond to the Government's evidence, and must produce findings explaining why detention or particular conditions are necessary. *Singh v. Holder*, 638 F.3d at 1208.

89. Respondents' continued detention of Mr. Ullah without those protections violates the Fifth Amendment. Unless a constitutionally adequate hearing is provided immediately, the proper habeas remedy is release under reasonable conditions.

COUNT TWO

Violation Of the Fifth Amendment: Arbitrary and Unreasonable Civil Detention

90. Mr. Ullah realleges and incorporates every preceding paragraph as though fully set forth here.

91. Civil detention must remain reasonably related to a permissible regulatory purpose. When confinement becomes excessive in relation to that purpose, or continues without evidence that the purpose exists in the individual case, it becomes arbitrary and punitive in effect. *Jackson v. Indiana*, 406 U.S. at 738; *Zadvydas v. Davis*, 533 U.S. at 690.

92. Respondents have confined Mr. Ullah for more than six months without an individualized finding that he is dangerous, that he will fail to appear, or that conditions short of incarceration are inadequate. A categorical statutory label does not establish those facts.

93. The confinement is increasingly disproportionate to any legitimate purpose. Mr. Ullah has no criminal record, has attended each proceeding while detained, has a pending protection claim, and is willing to accept reasonable supervision. Respondents have not identified a fact-specific reason why incarceration remains necessary.

94. The detention also lacks a definite endpoint. Mr. Ullah remains at the master-calendar stage, and the adjudicative process may continue for months. The ongoing restraint therefore resembles the open-ended detention that due process subjects to searching review, not the brief and finite detention considered in *Demore v. Kim*.

95. Because Respondents have not justified continued custody through any reliable, individualized process, detention has become arbitrary as applied to Mr. Ullah. The Constitution does not permit the Government to imprison a civil detainee first and postpone all meaningful consideration of necessity until an unknown future date.

96. Immediate release is warranted. At minimum, Respondents must provide the constitutionally adequate hearing described above within seven days, and Mr. Ullah must be released if the Government does not timely carry its burden.

97. To make habeas relief effective, Respondents should also be prohibited from transferring Mr. Ullah outside this District while this action is pending without advance notice and Court approval, and from redetaining him during pending removal proceedings without a new hearing that satisfies the same constitutional standards. *Faizi v. LaRose*, 2026 WL 1112035, at *7-8; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

COUNT THREE

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority Violation of 8 C.F.R. § 239.2(c)

98. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

99. Under the APA, a court "shall . . . hold unlawful . . . agency action" that is "not in accordance with law;" "contrary to constitutional right;" "in excess of statutory jurisdiction authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(D).

100. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make "an informed adjudication . . . based on an evaluation of the factors underlying the [DHS] motion." *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

101. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.

102. It is a well-established administrative principle that "agency action taken without lawful authority is at least voidable, if not void ab initio." *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant*

Support Servs., Inc., 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by an unauthorized official).

103. Under the APA, an agency must provide "reasoned explanation for its action" and "may not depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief, Respondents' intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material change in circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("Detention 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.").

104. In deciding to detain Mr. Ullah, Respondents further violated the APA by "entirely fail[ing] to consider an important aspect of the problem" – namely, the important procedural rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of immigration policy without considering "particular reliance interests" is arbitrary and capricious in violation of the APA).

105. The arbitrary and capricious detention of Mr. Ullah was not made in furtherance of an enumerated reason set forth in the regulations and causes Mr. Ullah irreparable harm. For these reasons, the Court should find that the decision to detain Mr. Ullah is arbitrary, capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

COUNT FOUR

Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with Law and in Excess of Statutory Authority, Unlawful Detention

106. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

107. Under the APA, a court shall "hold unlawful and set aside agency action..." that is "...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity..." 5 U.S.C. § 706(2)(A)-(B).

108. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

109. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

110. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court explained the process of discretionary release from custody in immigration cases and noted that before revoking the release, the non-citizen must be given written notice of the impending revocation, which must include a cogent description of the reasons. Under the APA, non-citizens are entitled to determinations related to their release revocations that are not arbitrary, capricious, or an abuse of discretion. *See id.* at *10.

111. By detaining Mr. Ullah without notice or consideration of his individualized facts and circumstances, Respondents have violated the INA, implementing regulations, and the APA.

112. Respondents have made no finding that Petitioner is a danger to the community.

113. Respondents have made no finding that Petitioner is a flight risk.

114. On information and belief, by detaining Mr. Ullah categorically and without notice, Respondents have further abused their discretion because, since the agency made its initial custody determination, on information and belief, there have been

no changes to Mr. Ullah's specific facts or circumstances that support his detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Nayem Ullah respectfully requests that this Court:

(1) Assume jurisdiction over this action and retain jurisdiction until Respondents have fully complied with the Court's judgment;

(2) Issue an Order to Show Cause directing Respondents to show within three days why the Petition should not be granted, unless good cause is shown for the limited extension permitted by 28 U.S.C. § 2243;

(3) Declare that Mr. Ullah's continued civil immigration detention, after more than six months without a neutral and individualized custody hearing, violates the Due Process Clause of the Fifth Amendment;

(4) Issue a writ of habeas corpus ordering Mr. Ullah's immediate release under reasonable conditions, or, in the alternative, ordering Respondents to provide within seven days a bond hearing before a neutral immigration judge;

(5) Order that, at any bond hearing, the Government bear the burden of proving by clear and convincing evidence that Mr. Ullah is a danger to the community or such a flight risk that no amount of bond or alternative conditions can reasonably assure his appearance;

(6) Order that the immigration judge consider Mr. Ullah's ability to pay, alternatives to monetary bond, and the least restrictive conditions sufficient to address any proven risk;

(7) Order that the hearing permit the presentation and testing of evidence, be contemporaneously recorded, and result in a reasoned decision stating the evidentiary basis for any continued detention or conditions of release;

(8) Order Mr. Ullah released immediately if Respondents do not provide the required hearing within the time fixed by the Court or if the Government fails to carry its burden at that hearing;

(9) Issue a Stay of Removal Order prohibiting Respondents from transferring Petitioner outside this District, or to any location that would frustrate counsel access or this Court's jurisdiction, without advance notice to counsel and leave of Court;

(10) Enjoin Respondents, if Mr. Ullah is released, from redetaining him during the pendency of his removal proceedings absent materially changed circumstances and a prior individualized hearing before a neutral adjudicator at which the Government satisfies the standards ordered by this Court;

(11) Grant any other relief the Court deems just, equitable, and proper under 28 U.S.C. § 2243 and the Court's inherent equitable authority.

Dated: July 15, 2026

Respectfully submitted,

//s// Mario Portugal
Mario Portugal
Attorney for Petitioner Nayem Ullah