Mario Portugal, SBN 337525
Global Law Group San Diego, P.C
1455 Frazee Road, Suite 500
San Diego, CA 92108
Telephone: (858) 833-2020
Facsimile: (619) 839-3152

Attorney for Petitioner Nayem ULLAH

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ULLAH, Nayem **Petitioner,** **vs.** **CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center; PATRICK DIVVER, Field Office Director, San Diego Office of Detention and Removal, U.S. Immigration and Customs Enforcement; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; and MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security,** **Respondents-Defendants.**	Case No: 26-cv- 04093-RSH-VET **PETITIONER'S TRAVERSE**

PETITIONER'S TRAVERSE

Petitioner Nayem Ullah ("Petitioner"), by and through pro bono undersigned counsel, hereby submits his traverse and states as follows.

I. INTRODUCTION

Petitioner entered the United States seeking safety and was taken into DHS custody on or about December 27, 2025. Petitioner, by way of the underlying habeas petition, challenges only the legality of his detention rather than challenging an order of removal or Respondents' decision to charge him with being a removable noncitizen.

II. PROCEDURAL AND FACTUAL BACKGROUND

Department of Homeland Security (DHS) determined Petitioner to be inadmissible under INA § 212(a)(6)(A)(i) (present without admission or parole) and INA § 212(a)(7)(A)(i)(I) (no valid entry documents). DHS then issued a Notice to Appear initiating removal proceedings. The NTA expressly charges Petitioner as an alien present in the United States without being admitted or paroled. It does not charge Petitioner as an arriving alien. Respondents now appear to argue that Respondent is subject to mandatory detention on the theory that he is an "arriving alien."

III. LEGAL STANDARD

Mandatory detention under INA § 236(c) applies only to specific categories of noncitizens and does not apply to all inadmissible individuals. The government bears the burden of establishing that mandatory detention applies.

///

///

IV. ARGUMENT

A. Respondent is Not an "Arriving Alien"

Under 8 C.F.R. § 1.2, an "arriving alien" is generally one who is seeking admission at a port of entry or interdicted while attempting to enter the United States. Petitioner does not meet this definition, and the Notice to Appear issued correctly reflects this. He entered without inspection and was encountered after entry, within the interior of the United States. Once DHS elected to place Petitioner in removal proceedings under INA § 240 and charged him as present without admission or parole, DHS foreclosed treatment of Petitioner as an arriving alien.

The NTA controls the classification of a respondent in removal proceedings. Here, DHS explicitly charged Petitioner as an alien present without admission or parole. Respondents cannot now relabel Petitioner as an arriving alien for detention purposes while also prosecuting him as a non-arriving alien in removal proceedings.

B. Mandatory Detention Does Not Apply

INA § 236(c) mandates detention only for noncitizens subject to removal on enumerated criminal grounds. Petitioner is not charged under any criminal removal provision. INA § 235(b) also does not apply. Petitioner is not in expedited removal proceedings. He has not been paroled into the United States, nor has Petitioner been charged as an arriving alien. Importantly, Petitioner has no criminal history. In such a case, DHS's attempt to invoke § 235(b) detention authority is *ultra vires*.

C. The Charging Document Raises Due Process Concerns

Allowing Respondents to reclassify Petitioner as an arriving alien, contrary to its own charging document, violates due process. Petitioner is entitled to rely on the charges lodged against him and to a custody determination under the correct statutory framework. DHS has not met its burden of establishing that mandatory

detention applies by merely producing an NTA.

D. Respondent's Unlawfully Detained Petitioner in violation of the Fifth Amendment Procedural Due Process Requirements

Immigration detention is civil in nature and "...nonpunitive in purpose and effect[.]" *Zadvydas v. Davis*, 533 U.S. 678, 690. Petitioner is entitled to due process before deprivation of his liberty interest. Indeed, even where release is based on a mistake of law or fact, courts have required due process before deprivation of liberty. See *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (affirming issuance of the writ of habeas corpus in the criminal context and estopping the government from arguing ineligibility for parole after a mistaken release because it would be "inconsistent with fundamental principles of liberty and justice.")

As such, courts analyze procedural due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. See *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

Here, there are two exceptions to the general rule. The Petitioner was detained for an unreasonable time, over six months. Also, the Petitioner's medical condition warrants humanitarian concerns for release. The Petitioner's broken uncle sustained injuries on December 27, 2026, and was not properly treated. In addition, Petitioner suffers extreme anxiety and depression, which was aggravated by the confinement.

E. The Custody Redetermination Denial Does Not Preclude Relief Under The Present Action

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).

The Petitioner is not challenging the custody redetermination denial decision; rather, the Petitioner is challenging the detention conditions and prolonged civil confinement. Further, the Petitioner claims a medical condition, specifically, a persistent inability to sleep and physical strain aggravated by prolonged detention, and the lack of proper medical attention at the detention center. See the attached medical records.

Petitioner has been detained at Otay Mesa Detention Center for approximately 211 days - more than six months - without an individualized bond hearing or neutral custody review. During this time, Petitioner has appeared for approximately six master calendar hearings, yet his case remains at the preliminary master calendar stage with no final administrative decision or merits hearing in sight. Thus, a new Petition for habeas relief should be warranted.

V. CONCLUSION

For the foregoing reasons, the Court should find that the continued detention of Petitioner is unlawful and order Petitioner's release from Respondent's custody. Because Respondent is not an arriving alien and is not subject to any mandatory detention provision, DHS lacks authority to detain Respondent without an individualized custody determination. Accordingly, Petitioner requests the following:

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

(2) 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;

(3) 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. Further, 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;

Respectfully Submitted,
//s// Mario Portugal
Mario Portugal, Esq.
Attorney for Petitioner
Nayem Ullah