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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF CALIFORNIA**

**BERHE, GENET GEBREMICAEL,**
**Petitioner,**

**v.**

**CHRISTOPHER J. LAROSE,** Warden at Otay Mesa Detention Center; **GREGORY J. ARCHAMBEAULT,** San Diego Field Office Director ICE Enforcement Removal Operations; **TODD M. LYONS,** Acting Director, Immigration and Customs Enforcement. **MARKWAYNE MULLIN,** Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; **TODD BLANCHE,** Attorney General of the United States; U.S. IMMIGRATION CUSTOMS ENFORCEMENT; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

**Respondents**

CIVIL CASE NO.: **'26CV4135 JAO BJW**

**PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS**

Agency No: [redacted]

Immediate Release Requested

# TABLE OF CONTENTS


| | Page |
|---|---|
| I. INTRODUCTION | 5 |
| II. JURISDICTION | 7 |
| III. VENUE | 7 |
| IV. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243 | 8 |
| V. PARTIES | 8 |
| VI. LEGAL FRAMEWORK | 10 |
| VII. EXHAUSTION OF REMEDIES | 13 |
| VIII. FACTUAL BACKGROUND | 14 |
| IX. CLAIMS FOR RELIEF | 16 |
| X. PRAYER FOR RELIEF | 24 |
| XI. CONCLUSION | 25 |

# TABLE OF AUTHORITIES


| | Page(s) |
|---|---|
| **Constitutional Provisions** | |
| U.S. Const. Amend. V | 18, 19, 20 |
| U.S. Const. art. I, § 9, cl. 2 | 7 |
| **Statutes** | |
| 28 U.S.C. § 1331 | 7 |
| 28 U.S.C. § 1391 | 7 |
| 28 U.S.C. § 1651 | 7 |
| 28 U.S.C. § 2201 | 7 |
| 28 U.S.C. § 2243 | 8 |
| 28 U.S.C. § 2412 | 25 |
| 8 C.F.R. § 1003.19 | 11 |
| 8 C.F.R. § 1003.6 | 11 |
| 8 C.F.R. § 1208.14 | 11 |
| 8 U.S.C. § 1101 | 7 |
| 8 U.S.C. § 1158 | 12 |
| 8 U.S.C. § 1225 | 10, 18 |
| 8 U.S.C. § 1226 | 10, 18 |
| 8 U.S.C. § 1252 | 7 |
| Local 5 Rule HC. 1 | 7 |
| **Cases** | |
| *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) | 23 |
| *Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470 (D. Colo. Jan. 13, 2026) | 21 |
| *Bejar v. Ashcroft*, 324 F.3d 127 (3d Cir. 2003) | 12 |
| Castro-Cortez v. INS, 239 F.3d 1037 (9th Cir. 2001) | 22 |
| *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931 (S.D.N.Y. July 13, 2025) | 20 |
| *Cifuentes v. Soto*, No. 25-cv-18029, 2025 WL 3771380 (D.N.J. Dec. 31, 2025) | 20 |
| *Colmenar v. INS*, 210 F.3d 967 (9th Cir. 2000) | 23 |
| *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602 (1993) | 22 |
| *Cordoba v. Knight*, 809 F. Supp. 3d 1110 (D. Idaho 2025) | 20 |
| *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026) | 21 |
| *Demore v. Kim*, 538 U.S. 510 (2003) | 19 |
| *Dept. of Com. v. New York*, 139 S. Ct. 2551 (2019) | 17 |
| *Diallo v. Trump*, 25-cv-2012-JE-JMP (W.D.L.A. Mar. 5, 2026) | 21 |
| *Elrod v. Burns*, 427 U.S. 347 (1976) | 14 |
| *Fay v. Noia*, 372 U.S. 391 (1963) | 8 |

*Foucha v. Louisiana*, 504 U.S. 71 (1992) 12
*Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) 22
*Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) 13
*J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) 13
*Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025) 13
*Liang v. Ashcroft*, 370 F.3d 994 (9th Cir. 2004) 14
*Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809 (D. Idaho Jan. 2, 2026) 13
*Motor Vehicle Mfrs. Ass'n of U.S. Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29 (1983) 17
*Munoz Materano v. Arteta*, 2025 WL 2630826 (S.D.N.Y. Sept. 12, 2025) 20
*Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006) 20
*Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644 (2007) 17
*Pechenkov v. Holder*, 705 F.3d 444 (9th Cir. 2012) 12
*Pinchi v. Noem*, No. 25-cv-05632, 2025 WL1853763 (N.D. Cal. July 4, 2025) 13
*Preiser v. Rodriguez*, 411 U.S. 475 (1973) 20
*Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098 (S.D.N.Y. Dec. 17, 2025) 21
*Reno v. Flores*, 507 U.S. 292 (1993) 22
*Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) 13
*Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759 (S.D.N.Y. Nov. 13, 2025) 20
*Salgado-Diaz v. Gonzales*, 395 F.3d 1158 (9th Cir. 2005) 22
*Sanchez-Cruz v. INS*, 255 F.3d 775 (9th Cir. 2001) 22
*Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025) 13
*Wang v. Att'y Gen.*, 423 F.3d 260 (3d Cir. 2005) 22
*Zadvydas v. Davis*, 533 U.S. 678 (2001). 12, 19

## Regulations

EOIR Policy Manual Part III § 5.2 11

Petitioner, Genet Gebremicael Burhe, petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to remedy Respondents' detaining her unlawfully, and states as follows:

## I. INTRODUCTION

1. The petitioner, Genet Gebremicael Burhe, was born [redacted] in the city of Adwa, located in Tigray Region, Ethiopia. In November 2020, a civil war broke out in Ethiopia between the Ethiopian Federal Government and the TPLF leaders of Tigray Region.

2. After Ms. Burhe graduated from college in Mekelle City, she returned to her hometown and found it was unsafe because [redacted] was looking for her. She then tried to return to Mekelle, but was unfortunately [redacted] She then went to live with her brother in Jigjiga, Ethiopia. There, she was labeled [redacted] collaborators and imprisoned by the Ethiopia Federal Government without a trial, merely because of her birthplace of Tigray.

3. After the war ended in 2022, Ms. Burhe was able to live with her family and married to her boyfriend, who soon went to Mexico for school in 2023. As the tension for another war rises, Ms. Burhe was arrested for the second time by the police as a [redacted] collaborator and was imprisoned for two weeks. To flee from the conflict, Ms. Burhe went to Mexico to live

with her husband in October 2025 and ultimately entered the United States seeking asylum.

4. On February 25, 2026, Ms. Burhe entered the United States near San Ysidro. On the next day on February 26, 2026, she was detained at Otay Mesa Detention Center in San Diego, CA. She then passed a Credible Fear Interview, indicaing it is more likely than not that the noncitizen has experienced torture and has a credible fear of torture or persecution in the home country. *See* Tab A, Record of Credible Fear Interview. On April 8, 2026, Ms. Burhe filed her Application for Asylum. *See* Tab B, Respondent's Application for Asylum, Withholding of Removal and Relief under the Convention Against Torture. On June 10, 2026, Immigration Judge Driscoll granted Ms. Burhe's asylum application. *See* Tab C, Order of the Immigration Judge to Grant Asylum. Now, DHS has filed an appeal objecting the decision with vague and ambiguous reasons, arguing the Immigration Judge "erred in failing to provide legal and factual analysis," "in finding nexus on account of the respondent being of Tigrayan ethnicity from Adwa region," and "in finding that the government of Ethiopia was unable or unwilling to protect the respondent." *See* Tab D, Notice of Appeal. These grounds for appeal are factually inaccurate and demonstrate a disregard for the lawful process in the immigration courts that pervades the system currently. In the appeal, a DHS attorney challenges Petitioner's

credibility although no argument was raised during the merits hearing regarding credibility, including when the immigration judge asked if DHS has any arguments to raise regarding to credibility of the applicant. This gross misconduct, filing an appeal not supported by the record, is the type of tactics that are creating this untenable system in which, even when a detained individual wins a trial against all odds, the government further inflicts violations of the due process clause that must be mitigated in an overtaxed federal district court.

5. Ms. Burhe has secured her legal status by the granted asylum, which terminated the removal proceeding by operation of statute. ICE erroneously refuses to release Ms. Burhe based on DHS's appeal. Ms. Burhe is presently still detained at Otay Mesa Detention Center. She has been detained for more than 20 weeks as of the day of the filing of this Petition and more than one month after she was granted asylum. This continued detention has no legal basis or legitimate governmental purposes.

6. Therefore, Ms. Burhe respectfully requests that the Court expeditiously grant the immediate release of her as a wrongfully detained individual.

## II. JURISDICTION

7. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et. seq.

8. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

9. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the All Writs Act, 28 U.S.C. § 1651, and the Immigration and Nationality Act, 8 U.S.C. § 1252 (e)(2).

## III. VENUE

10. Venue is proper because Petitioner is in Respondents' custody in San Diego, California. Venue is further proper because a substantial part of the events or omissions giving rise to Petitioner's claims occurred in this District, where Petitioner is now in Respondent's custody. 28 U.S.C. § 1391(e).

11. For these same reasons, a divisional venue is proper under Local 5 Rule HC. 1.

## IV. REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

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

14. Petitioner is "in custody" for the purpose of § 2241 because she is arrested and detained by Respondents.

## V. PARTIES

15. Genet Gebremicael Burhe ("Petitioner") is a 27-year-old citizen of Ethiopia. She is presently detained by Otay Mesa Detention Center, within the state of California, as of the time of the filing of this petition.

16. Respondent Christopher J. LaRose is the Warden of the Otay Mesa City Detention Center and is a legal custodian of Petitioner.

17. Respondent Gregory J. Archambeault is the San Diego Field Office Director ("FOD") for ICE Enforcement and Removal Operations ("ERO"). As such, Respondent Gregory J. Archambeault is responsible for the oversight of ICE operations at the California City Detention Center. Respondent Gregory J. Archambeault is being sued in her official capacity.

18. Respondent Todd Lyons is the Acting Director of Immigration and Customs Enforcement ("ICE"). As such, Respondent Lyons is responsible

for the oversight of ICE operations. Respondent Lyons is being sued in his official capacity.

19. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (DHS) and has authority over the actions of all other DHS Respondents in this case, as well as all operations of DHS. Respondent Mullin is a legal custodian of Petitioner and is charged with faithfully administering the immigration laws of the United States.

20. Respondent Todd Blanche is the Attorney General of the United States, and as such has authority over the Department of Justice and is charged with faithfully administering the immigration laws of the United States.

21. Respondent U.S. Immigration Customs Enforcement is the federal agency responsible for custody decisions relating to non-citizens charged with being removable from the United States, including the arrest, detention, and custody status of non-citizens.

22. Respondent U.S. Department of Homeland Security is the federal agency that has authority over the actions of ICE and all other DHS Respondents. This action is commenced against all Respondents in their official capacities.

23. 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.

## VI. LEGAL FRAMEWORK

### A . DHS Lacks Statutory Authority to Detain an Individual Who Has Already Been Granted Asylum

24. The INA's detention provisions apply only to "applicants for admission" or individuals "pending a decision" in removal proceedings. See 8 U.S.C. §§ 1225(b), 1226(a). Section 1225(b)(2)(A) authorizes detention only for applicants for admission "who are not clearly and beyond a doubt entitled to be admitted." Likewise, § 1226(a) authorizes detention only while removal proceedings remain unresolved.

25. Ms. Burhe is not an applicant for admission. She has already been granted asylum, which conclusively resolved her application and conferred lawful immigration status. As a result, she no longer falls within the statutory categories that permit detention under §§ 1225 or 1226. DHS therefore lacks any statutory basis to detain her.

26. Once asylum is granted, the government cannot continue to rely on § 1225(b). The person is no longer an "arriving alien," and DHS must switch to the asylum-termination framework before any further detention.

**B. The Government's Appeal Does Not Create Detention Authority**

27. No provision of the INA authorizes DHS to detain an asylee simply because DHS disagrees with the asylum grant and has filed an appeal. An appeal is a procedural mechanism, not a substantive reclassification of the individual's status. Filing a notice of appeal does not retroactively transform an asylee back into an "applicant for admission."

28. The Government's appeal of Ms. Burhe's asylum grant does not create statutory authority to detain her. No provision of the INA confers upon DHS the power to detain an asylee solely because the government has filed a notice of appeal. The filing of an appeal is a procedural step that does not alter the substantive legal status of the petitioner. The government's disagreement with the asylum grant, expressed through its appeal, does not retroactively convert Ms. Burhe into an applicant for admission or otherwise make her subject to detention.

29. In fact, the appeal fails to satisfy the prima facie standard required to justify any interim action affecting her liberty. Under EOIR appellate practice, a party seeking reversal must demonstrate at least a *prima facie* showing that the Immigration Judge committed legal or factual error. A bare notice of appeal — without substantive briefing, without identification of reversible error, and without evidence contradicting the IJ's findings — does not meet this threshold. EOIR appellate practice requires an appellant

to identify *specific* legal or factual error committed by the Immigration Judge; DHS has not done so. Instead, it filed a bare notice of appeal devoid of briefing, devoid of citations to the record, and devoid of any challenge to the IJ's factual findings. Its lone assertion—that the IJ erred in concluding Ethiopia was unable or unwilling to protect the petitioner—is internally inconsistent and legally irrelevant, as the persecutor in this case was the Ethiopian government itself. DHS never raised this argument at the merits hearing, and issues not preserved before the IJ cannot be raised for the first time on appeal. Under 8 C.F.R. § 1003.1(e)(6), such an insubstantial appeal is subject to summary affirmance, and it cannot support any continued deprivation of the petitioner's liberty.

30. The order granting Petitioner's asylum is final and terminates her removal proceeding regardless of the pending appeal. For removal proceedings, statutes expressly state that removal orders are not final when an Immigration Judge orders removal and the noncitizen appeals. See 8 U.S.C. § 1101(a)(47)(B). By contrast, when an Immigration Judge *grants asylum*, the regulations require the IJ to "enter an order granting asylum and terminating removal proceedings." 8 C.F.R. § 1208.14(c)(1). A DHS appeal does not revive or reinstate removal proceedings; it merely seeks review of the IJ's final decision. Because removal proceedings terminated upon the asylum grant, DHS lacks detention authority under 8 U.S.C. § 1226(a) or §

1226(c). And because Petitioner has no final order of removal, DHS lacks detention authority under 8 U.S.C. § 1231. Continued detention is therefore ultra vires, arbitrary, and unconstitutional.

**C. Removal Is Statutorily Barred for Asylees**

31. In fact, no automatic stay of Petitioner's asylum grant even exists in the law. The regulations governing automatic stays are narrow and specific. The regulation creating an automatic stay during appeal applies only to "automatic stay pursuant to 8 C.F.R. § 1003.19(i)(2)," which governs custody redeterminations. 8 C.F.R. § 1003.6; EOIR Policy Manual Part III § 5.2. No statute or regulation grants an automatic stay for the government's appeal of an asylum grant. Persuasive authority shows that this absence of a provision is dispositive and should be considered intentional. *See Bejar v. Ashcroft*, 324 F.3d 127, 132 (3d Cir. 2003).

32. DHS cannot justify Ms. Burhe's detention on the basis of removal risk because removal is legally barred by her asylum grant. An asylee "may not be removed from the United States" except in limited circumstances. 8 U.S.C. § 1158(c)(1)(A). The statutory bar on removal applies unless and until asylum is formally terminated pursuant to section 1158(c)(2), which permits termination only when specified conditions are met, such as conviction of an aggravated felony or a determination that the alien is no

longer a refugee. § 1158(c)(2); *Pechenkov v. Holder*, 705 F.3d 444, 447 (9th Cir. 2012). No such termination has occurred in Ms. Burhe's case.

33. In fact, on June 10, 2026, when granted asylum, Petitioner gained an even greater and more protected right to due process. Petitioner is in a lawful immigration status which certainly confers the basics of the most basic right, which is "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause."). To infer that appeal is tantamount to stripping Petitioner of her hard-fought legal case is to inflict yet another injustice, one that the government's interest can surely not justify.

**D. Immediate Release is the Appropriate Remedy**

34. With the granted asylum, immediate release is the most appropriate remedy. "In recent months, courts across the country have ordered the release of detainees in similar situations." *See Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at*5 (D. Idaho Jan. 2, 2026) (given that the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision," the court would order immediate release instead of causing additional delay

through a bond hearing) (citing *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025)); see also *Pinchi v. Noem*, No. 25-cv-05632, 2025 WL1853763, at *4 (N.D. Cal. July 4, 2025); *J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *Santiago v. Noem*, No. EP-25-CV-361, 2025 WL 2792588, at *13-14 (W.D. Tex. Oct. 2, 2025) ("Without a legitimate interest in her detention, immediate release appropriately remedies Respondents' violation of [Petitioner's] due process rights through her continued detention.").

## VII. EXHAUSTION OF REMEDIES

35. With regard to habeas claims, exhaustion of administrative remedies is prudential, not jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). A court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." Id. (quoting *Liang v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) their continued detention results in irreparable harm.

36. Petitioner has been granted asylum by an Immigration Judge. She should be released as her removal proceeding is resolved by the granted

asylum. However, DHS filed an appeal which was identical to a dismissed interlocutory appeal, and ICE refused to release Petitioner falsefully relying on the appeal. Because the administration abused the discretion to extend Petitioner's detention, Petitioner finds that seeking administrative remedy would be a futile endeavor.

37. Petitioner's continued detention will result in irreparable harm. The deprivation of constitutional rights of liberty "unquestionably constitutes irreparable injury." *E.g.*, *Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). Because Petitioner has secured her asylum and enjoys the constitutional right of liberty and due process, the continuous detention of him constitutes an irreparable harm to her, for which monetary damages are not adequate remedy.

## VIII. FACTUAL BACKGROUND

*38.* The petitioner, Genet Gebremicael Burhe, was born [redacted] in the city of Adwa, located in Tigray Region, Ethiopia. *See* Tab E, Declaration of Petitioner. In November 2020, while Ms. Burhe was in college in Mekelle, a civil war broke out in Ethiopia between the Ethiopian Federal Government and the TPLF leaders of Tigray Region. Ms. Burhe witnessed a bomb exploded while she was sitting at a cafe on campus, resulting in injury of many people and the death of her friend. *Id.* She also lost consciousness in the explosion. *Id.*

39. After Ms. Burhe graduated from college in Mekelle City, she returned to her hometown and found it was unsafe there because [redacted] was looking for her. *Id.* She then tried to return to Mekelle. *Id.* Unfortunately, on her way back, she was imprisoned by [redacted] *Id.* Then she decided to live with her brother in Jigjiga. *Id.* Shortly after in Jiajiga, she was arrested by the Ethiopia Federal Government and labeled [redacted] collaborators merely because of her birthplace of Tigray. *Id.* She was sent to a prison without trial and been imprisoned for five months. *Id.*

40. After the war ended in 2022, Ms. Burhe was able to live with her family and married to her boyfriend, who soon went to Mexico for school in 2023. *Id.* In 2025, as the tension of another war rises, Ms. Burhe was again arrested by the police as a [redacted] collaborator and imprisoned for two weeks. *Id.* To flee from the conflict, Ms. Burhe went to Mexico to live with her husband in October 2025. *Id.* Unfortunately, in Mexico, Ms. Burhe again experienced her husband's domestic violence. *Id.* Under the help of some local people, including an African woman who provided some money to her, Ms. Burhe decided to flee to the United States to seek protection from her husband. *Id.*

41. On February 25, 2026, Ms. Burhe entered the United States near San Ysidro. *See* Tab B. On the next day on February 26, 2026, she was detained at Otay Mesa Detention Center in San Diego, CA. *Id.* She has passed a Credible Fear Interview, which indicates it is more likely than not she has experienced torture and has a credible fear of torture or persecution in the home country. *See* Tab A. Ms. Burhe filed her Application for Asylum on April 8, 2026. *See* Tab B. Immigration Judge Driscoll granted Ms. Burhe's asylum application on June 10, 2026. *See* Tab C. DHS has then filed an appeal objecting to the decision. *See* Tab D. DHS's reasons for appeal are vague and ambiguous reasons. They argue that the Immigration Judge "erred in failing to provide legal and factual analysis," "in finding nexus on account of the respondent being of Tigrayan ethnicity from Adwa region," and "in finding that the government of Ethiopia was unable or unwilling to protect the respondent." *Id.* However, these contentions lack factual support. In fact, DHS has repeatedly using appeals as a procedural tool to continue detaining immigrants who have secured legal statues and enjoy constitutional rights of liberty.

42. Although Ms. Burhe has secured her legal status and resolved her removal proceeding with the granted asylum, ICE has refused to release Ms. Burhe based on the appeal. Ms. Burhe is presently still detained at Otay Mesa Detention Center. She has been detained for more than 20 weeks as of

the day of the filing of this Petition and more than one month after she was granted asylum.

## IX. CLAIMS FOR RELIEF

### COUNT ONE

### Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)

### Abuse of Discretion, No Statutory Authority to Detain Ms. Burhe With Asylum Granted

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

44. Under the APA, a court shall "hold unlawful and set aside agency action" that is an abuse of discretion. 5 U.S.C. § 706(2)(A).

45. 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).

46. To prevail against such a claim, the agency must articulate "a satisfactory explanation for its action, including a rational connection

between the facts found and the choice made." *Dept. of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

47. Ms. Burhe was initial detained after she entered the United States, which is a civil detention to ensure she can attend all the removal proceedings instead of punishment. She has been granted asylum on June 10, 2026. The basis for Ms. Burhe detention is resolved by the granted asylum. No automatic stay exists for a grant of asylum. Unlike orders of removal which only become final after appeals, orders of asylums would resolve removal proceedings once granted by the immigration judges even pending appeal. Section 1225 and 1226 only apply to "applicant for admission," which Ms. Burhe is not a member of. §§ 1225, 1226. DHS lacks detention authority under 8 U.S.C. § 1226(a) or § 1226(c). And because Petitioner has no final order of removal, DHS lacks detention authority under 8 U.S.C. § 1231. There is no statutory authorizing ICE further detention of Ms. Burhe unless a stay is issued. Continued detention is therefore ultra vires, arbitrary, and unconstitutional.

48. By refusing to release Ms. Burhe immediately after the grant of asylum, Respondents have violated the APA by failing to exercise discretion at all, let alone find facts and make a rational choice based on those facts.

## COUNT TWO

**Violation of Ms. Burhe's Substantive Due Process Rights under the Fifth Amendment**

49. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

50. The Fifth Amendment of the Constitution guarantees that civil detainees, including all immigrant detainees, may not be subjected to punishment. Immigration detention is civil, not punitive, and must always "bear[] a reasonable relation to the purpose for which the individual was committed." *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690). The Supreme Court has stated that the purpose or civil detention in this context is to "ensur[e] the appearance of [noncitizens] at future proceedings," *Zadvydas*, 533 U.S. at 690, and to prevent flight, *Demore*, 538 U.S. at 528. The federal government violates Fifth Amendment substantive due process rights when it subjects civil detainees to cruel treatment and conditions of confinement that amount to punishment or does not ensure those detainees' safety and health. *See* U.S. Const. Amend. V.

51. Ms. Burhe's detention bears no relation to the purposes of civil commitment because she poses no flight risk or danger to the community. Ms. Burhe has no criminal record in or out of the Unite States. Therefore, she has no danger to the community. She entered the United State looking

for safety from the war and violence in her home country and from her husband. Therefore, she has no flight risk.

52. The Respondents, acting unreasonably and with deliberate indifference, are subjecting Ms. Burhe to a substantial risk of serious harm, in violation of her rights under the Due Process Clause.

**COUNT FIVE**

**Immediate Release is the Appropriate Remedy**

53. Release is the customary remedy in habeas proceedings. *See* § 2243 (the habeas should "dispose of the matter as law and justice require."); *Preiser v. Rodriguez,* 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in a case like this, where Petitioner has been detained in violation of both the INA and due process, is release. *See Nadarajah v. Gonzales*, 443 F.3d 1069, 1080 (9th Cir. 2006) (holding that immediate release is the appropriate remedy when "the length of the detention [is] unreasonable"). Hundreds of courts across the country have agreed. *See, e.g., Munoz Materano v. Arteta*, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (ordering immediate release); *Rueda Torres v. Francis*, No. 25-cv-8408, 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025) (ordering immediate release); *Cifuentes v.*

*Soto*, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (ordering immediate release).

54. Release is the only appropriate remedy for the constitutional violations in this case, and a bond hearing is not necessary because Petitioner already has a lawful status from the asylum application. See *Cordoba v. Knight*, 809 F. Supp. 3d 1110, 1113 (D. Idaho 2025) (holding that continued detention of a noncitizen with no criminal history, long residence in the US, and family ties, without a bond hearing or any individualized justification, violates Fifth Amendment due process rights and warrants immediate release rather than merely ordering a bond hearing); *see also Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that petitioner had been previously released by ICE and holding a bond hearing would prolong his unlawful detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 25-cv-10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (post-deprivation review cannot remedy the due process violation of detention with no individualized assessment); *Diallo v.*

*Trump*, 25-cv-2012-JE-JMP (W.D.L.A. Mar. 5, 2026) (granting immediate release as the appropriate remedy for illegal re-detention, and in light of medical hardship petitioner was suffering in detention).

55. Because Ms. Burhe has already secured a lawful immigrating status, immediate release should be granted without the need for a bond hearing or any proceedings that will extend her detention unnecessarily.

56. Whatever authority the government previously used to hold the Petitioner, it did not retain that authority once the Petitioner was granted her legal immigration status.

## COUNT SIX

### Addressing Why Bond Hearing Within the Immigration Court under Executive Office of Review Cannot Address Due Process Violations

57. Due process requires a fair hearing, as guaranteed by the Fifth Amendment to the United States Constitution. Any court that has been pressured and incentivized to impose a particular result is not independent and is so infected with bias that it violates the Fifth Amendment's guarantee.

58. Under the current Administration, removal proceedings before IJs and before the BIA are fundamentally unfair because they are influenced by the Administration's agenda to remove as many noncitizens from the

United States as possible. The factors on which IJs and the BIA rely in reaching their decision increasingly and impermissibly lie outside the record of evidence and arguments and derive from the Attorney General's and EOIR's dictates[1].

59. Former Baltimore IJ Emmett Soper stated, "I think the current administration of the immigration courts does not fundamentally see the immigration courts as neutral decision-makers; . . . they see the immigration courts as a tool for this administration to advance its policy objectives."[2] Former San Francisco IJ Jeremiah Johnson similarly understood "the hint that they should be hearing cases a certain way, deciding cases a certain way. Move faster. Less due process, essentially."[3] Former San Francisco IJ George Pappas was even more direct: "We were told to facilitate deportation . . . . **Due process is dead in immigration courts."**[4]

60. Established in 1983, the immigration court system has never been a fully independent body, in large part because it is not organized under

[1] *Marcello v. Bonds*, 349 U.S. 302, 314 (1955).
[2] Geoff Bennett & Ali Schmitz, *Ousted Immigration Judge Describes Deepening Court Backlog*, PBS NewsHour, Nov. 12, 2025, https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog.
[3] Hilda Gutierrez, Michael Bott & Son Vo, *'An all-out attack on immigration court:' SF immigration judges speak out after firings*, NBC Bay Area, Nov. 25, 2025, https://www.nbcbayarea.com/investigations/san-francisco-immigration-judges-speak-out-firings/3986850/.
[4] Marco Poggio, *Judges See an Immigration Court Gutted from Inside*, Law360, Oct. 31, 2025, https://www.law360.com/articles/2381003/judges-see-an-immigration-court-gutted-from-inside.

Article I of the United States Constitution[5]. Instead, the immigration court system operates within the DOJ under the authority of the Attorney

[5] Mary Holper, The Fourth Amendment Implications of "U.S. Imitation Judges," 104 Minn. L. Rev. 1275, 1339 (2020). *See, e.g.*, Hearing on Strengthening and Reforming America's Immigration Court System Before the Subcomm. on Border Sec. & Immigration of the S. Judiciary Comm., 115th Cong. (Statement of Judge A. Ashley Tabaddor, President, National Association of Immigration Judges) (2018) [hereinafter Statement], https://www.judiciary.senate.gov/imo/media/doc04-18-18%20Tabaddor%20Testimony.pdf [https://perma.cc/RF4H-JZKF] (discussing the inconsistencies of having a judicial court in a law enforcement department); Immigration Reform and the Reorganization of Homeland Defense: Hearing before the Subcomm. on Immigration of the S. Comm. on the Judiciary, 107th Cong. 72-73, 85 (2002) (statement of Dana Marks Keener, President, National Association of Immigration Judges), https://govinfo.gov/content/pkg/CHRG-107shrg86931/pdf/CHRG-107shrg86931.pdf [https://perma.cc/MRS7-5U66] (recommending the adoption of a 1997 proposal to fix the problems of immigration courts); U.S. Comm'n on Immigration Reform, Becoming an American: Immigration and Immigration Policy (1997), https://files.eric.ed.gov/fulltext/ED424310.pdf [https://perma.cc/GUS7-YAVL] (making recommendations to Congress on how to reform the immigration system); Sec'y of Labor's Comm. on Admin. Procedure, The Immigration and Naturalization Service 81-82 (mimeo. 1940); Am. Bar Ass'n, Reforming the Immigration System (2010), https://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf [https://perma.cc/6E3P-QX4H] (proposing solutions to the problems with IC); Appleseed, Assembly Line Injustice: Blueprint to Reform America's Immigration Courts 35 (2009), https://www.appleseednetwork.org/uploads/1/2/4/6/124678621/assembly_line_injustice-_blueprint_to_reform_americas_immigration_courts.pdf [https://perma.cc/VT6K-TT4E] (advocating for impartial IJs); Jaya Ramji-Nogales et al., Refugee Roulette: Disparities in Asylum Adjudication and Proposals for Reform 12-16 (2011) (outlining the structure of IC); Lawrence H. Fuchs, Immigration Policy and the Rule of Law, 44 U. Pitt. L. Rev. 433, 439 (1983) (describing 1981 report of the Select Commission on Immigration and Refugee Policy, appointed in 1978, which proposed creation of an Article I immigration court); Stephen H. Legomsky, Deportation and the War on Independence, 91 Cornell L. Rev. 369, 372-75 (2006) [hereinafter Legomsky, War on Independence] (discussing the history of IJs); Stephen H. Legomsky, Restructuring Immigration Adjudication, 59 Duke L.J. 1635, 1644-51 (2010) [Legomsky, Restructuring Immigration Adjudication] (detailing the criticisms of IC); Dana Leigh Marks, An Urgent Priority: Why Congress Should Establish an Article I Immigration Court, 13 Bender's Immigr. Bull. 3, 3-4, 10-11 (2008) [hereinafter Leigh Marks, An Urgent Priority] (explaining that many problems remain unsolved with respect to IC); Dana Leigh Marks, Still a Legal Cinderella? Why the Immigration Courts Remain an Ill-Treated Stepchild Today, 59 Fed. Law. 25, 29 (2012) [hereinafter Leigh Marks, Still a Legal Cinderella] (showing how IC are important for all lawyers to understand); Peter J. Levinson, A Specialized Court for Immigration Hearings and Appeals, 56 Notre Dame Law. 644, 644-45 (1981) (explaining the inefficiencies with dependence on the Immigration and Naturalization Service); Will Maslow, Recasting Our Deportation Laws: Proposals for Reform, 56 Colum. L. Rev. 309, 309 (1956) (arguing that the procedures of justified deportation warrant scrutiny); M. Isabel Medina, Judicial Review--A Nice Thing? Article III, Separation of Powers and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 29 Conn. L. Rev. 1525, 1562 (1997) (proposing an Article I court for immigration law); Denise Noonan Slavin & Dorothy Harbeck, A View from the Bench by the National Association of IJs, 63 Fed. Law. 67, 68 (2016) (explaining how a growing caseload, coupled with inconsistent obligations, affects IC); Denise Noonan Slavin & Dana Leigh Marks, Conflicting Roles of Immigration Judges: Do You Want Your Case Heard by a "Government Attorney" or by a "Judge"?, 16 Bender's Immigr. Bull. 1785, 1787 (2011) (demonstrating the complexities of IC); Maurice A. Roberts, Proposed: A Specialized Statutory Immigration Court, 18 San Diego L. Rev. 1, 7 (1980) (examining the expanded role of the Immigration and Naturalization Service); Harry N. Rosenfield, Necessary Administrative Reforms in the Immigration and Nationality Act of 1952, 27 Fordham L. Rev. 145, 151 (1958) ("[W]here the consul denies, or refuses to issue, a visa, he is a law unto himself, and his action is final and cannot be reviewed by any other administrative authority."); Note, The Special Inquiry Officer in Deportation Proceedings, 42 Va. L. Rev. 803, 818-25 (1956) (describing the process of discretionary relief); Press Release, Am. Immigration Lawyers Ass'n, AILA Renews Call for an Independent Immigration Court (May 27, 2003) ("AILA urges the creation of an independent immigration court system ....").

General. The Executive Branch controls the prosecutor, via DHS, and the adjudicator, via DOJ. These two arms of the Executive Branch cooperate in promulgating regulations that govern the adjudication of removal proceedings.[6] Because both departments are agents of the Executive, this forum "is indisputably partial[,] . . . betrays the norm of bilateral dispute resolution," and is "inherently biased."[7] Precisely because of this structure, it must be insulated from abuse to ensure fundamental fairness.

61. "Immigration proceedings, although not subject to the full range of constitutional protections, must conform to the Fifth Amendment's requirement of due process." *Salgado-Diaz v. Gonzales*, 395 F.3d 1158, 1162 (9th Cir. 2005) (*as amended*); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings."). "The Due Process Clause requires that [noncitizen]s 'threatened with deportation' are provided with the right to 'a full and fair hearing.'" *Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001) (quoting *Getachew v. INS*, 25 F.3d 841, 845 (9th Cir. 1994)); *see also Zadvydas*, 533 U.S. at 693 ("But once an alien enters the country, the legal circumstance changes, for the Due Process

[6] *See Flores v. N.Y. Football Giants, Inc.*, 150 F.4th 172,183-84 (2d Cir. 2025); *McMullen v. Meijer*, 355 F.3d 485, 493-94 (6th Cir. 2004); *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 939 (4th Cir. 1999).
[7] *Flores v. N.Y. Football Giants, Inc.*, 150 F.4th 172, 185 n. 65 (2d Cir. 2025).

Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

62. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001); *see also Wang v. Att'y Gen.*, 423 F.3d 260, 267–68 (3d Cir. 2005) (noting the duty of IJs to remain neutral and impartial when they conduct immigration hearings); *Concrete Pipe & Products of Cal., Inc. v. Construction Laborers Pension Trust for Southern Cal.*, 508 U.S. 602, 617-618 (1993) ("As against these supposed threats to the trustees' neutrality, due process requires a 'neutral and detached judge in the first instance'").

63. Where an IJ acts as a partisan adjudicator rather than a neutral decisionmaker, a respondent's due process rights may be violated. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). An IJ's predisposition against a respondent could amount to a denial of the fundamental fairness to which a person appearing before an IJ is entitled. *Id.* Similarly, undue pressure and influence from the Attorney General or the Executive Branch contravenes IJs' duty to decide cases according to their "own understanding and conscience." *Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954) ("the Board must … exercise its own independent discretion, after a fair hearing, which is nothing more than what the regulations accord petitioner as a right.").

64. When the New York Times reviewed the firings of IJs, its findings supported the explanation of political motivations. After interviewing more than 85 people including immigration judges, administration officials, asylum seekers and lawyers, and after analyzing data on millions of IC cases dating back to 2009, they found that the "Trump administration has systematically pressured the nation's immigration judges, threatening them with disciplinary action if they do not deport more people and firing those seen as insufficiently supportive of the president's aggressive enforcement agenda."[8] As of April 13, 2026, the Trump administration has dismissed more than 100 experienced immigration judges out of about 750 in place at the start of 2025, and this does not include those judges who left of their own accord through retirement or those that voluntarily left the bench.[9] Former New York IJ David K.S. Kim gave one explanation for the targeting criteria, stating, "I do not know the exact reason for my termination, but most of those dismissed, including myself, were judges with high asylum approval rates."[10] In fact, the Merit Systems Protection Board just issued a

[8] Nicholas Nehamas et. al, *How Trump Purged Immigration Judges to Speed Up Deportations*, New York Times, April 9, 2026, https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.a1A.s3Hs.sqD3-VVgPTof&smid=url-share.

[9] Nicholas Nehamas et. al, *How Trump Purged Immigration Judges to Speed Up Deportations*, New York Times, April 9, 2026, https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html?unlocked_article_code=1.a1A.s3Hs.sqD3-VVgPTof&smid=url-share.

[10] Woo-Sun Lim, *Former judge highlights legal failures in U.S. worker detentions*, The Dong-A Ilbo, Sep. 20, 2025, https://www.donga.com/en/article/all/20250920/5859412/1.

decision on March 20, 2026, ordering that IJs are at-will employees and may be fired for any reason, including relatively high grant rates.[11]

65. Unfortunately, currently the evidence overwhelmingly demonstrates that EOIR is no longer an independent and impartial agency and that, accordingly, its adjudicators—who are bound by its policies and precedent decisions—have become systematically infected with bias. *See* 8 C.F.R. § 1001.1(l). Such a system, in turn, is an affront to due process. Immigration Judges are required to adjudicate proceedings in accordance with the rule of law and their "own understanding and conscience." *Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954). Yet, the Executive Branch that houses EOIR has made it abundantly clear that the job of its employees is to effectuate deportation by adhering to directives from the President and department heads rather than decide proceedings in an impartial manner following a full and fair hearing. Through quotas, published administrative decisions that uniformly favor the Department of Homeland Security (DHS), IJ appointments, policy memoranda, and internal directives sent to judges. EOIR has been reconstructed as an enforcement agency in the pursuit of the Executive's mass deportation campaign rather than the adjudicative body that Congress designed it to be.[12]

[11] *Jackler & Jaroch Consol. v. Dep't of Justice*, 2026 M.S.P.B. 3, Docket No. CF-0752-26-0069-I-1, at 1, 4 (Mar. 20, 2026).

[12] Mimi Tsankov, *Amid Turmoil on the Border, New DOJ Policy Encourages Immigration Judges To Cut Corners*, Brookings Inst. (June 18, 2018), https://www.brookings.edu/blog/fixgov/2018/06/18/amid-turmoil-on-the-border-new-doj-policy-encourages-immigration-judges-to-cut-corners/ (maintaining that the threat of quotas on IJ performance and

66. Therefore, even if this Court declines to order Petitioner's immediate release—which the record fully justifies—the Constitution demands, at minimum, that Petitioner receive a fair and impartial individualized bond hearing.

## X. PRAYER FOR RELIEF

WHEREFORE, Ms. Burhe asks that this Court grant the following relief:

1. Assume jurisdiction over this matter;

2. Order that Ms. Burhe shall not be transferred outside the Southern District of California or deported pending these proceedings;

3. Issue a Writ of Habeas Corpus requiring Respondents to release Ms. Burhe's immediately without conditions;

4. Enjoin Respondents from re-detaining Ms. Burhe;

5. Award Ms. Burhe attorney's fees and costs under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

6. Grant any other and further relief that this Court deems just and proper.

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adjudication were "designed to infringe on decisional independence," and that the measures were "agenda-driven, unproductive, and harmful"). *See also Strengthening and Reforming America's Immigration Court System: Hearing Before the Border Sec. and Immigration Subcomm. of the S. Comm. on the Judiciary*, 115th Cong. 1, 7 (2018) (statement of Judge A. Ashley Tabaddor, President, Nat'l Ass'n of Immigration Judges), https://www.judiciary.senate.gov/imo/media/doc/04-18-18%20Tabaddor%20Testimony.pdf. *See also Immigration Judge Performance Quotas FOIA Request*, Am. Immigr. Council, https://www.americanimmigrationcouncil.org/foia/immigration-judge-performance-metrics-foia-request (last visited July 17, 2026).

7. I affirm, under penalty of perjury, that the foregoing is true and correct.

## XI. CONCLUSION

For all these reasons, this Court should grant the petition.

Dated: 07/19/2026

/s/Caroline G. Matthews
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## CERTIFICATE OF SERVICE

I, Caroline Matthews, CERTIFY

I am over the age of 18 and not a party to this matter. My business address is 120 Stevens Avenue, Solana Beach, CA 92075. On July 19, 2026, I served a copy of this **Petition for Writ of Habeas Corpus and Order to Show Cause Within Three Days.**

Dated: 07/19/2026

/s/Caroline G. Matthews
Caroline Matthews, Esq.
Pro Bono Attorney for
Petitioner