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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GENET GEBREMICAEL BEHRE, Petitioner, v. CHRISTOPHER J. LAROSE; et al., Respondents.	Case No.: 26-cv-04135-JAO-BJW **RESPONSE TO PETITION**

Petitioner has filed a habeas petition under 28 U.S.C. § 2241 seeking an order directing her release. However, the premise of the present petition relies on an incorrect assertion of law.

Petitioner claims that DHS lacks statutory authority to detain an individual who has already been granted asylum. ECF 1 at 11. This claim is misleading as Petitioner does not presently have a final grant of asylum. Unless otherwise prohibited in 8 C.F.R. § 1208.13(c), an immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 8 U.S.C. § 1101(a)(42) of the Act. 8 CFR § 1208.14(a). The decision of the Immigration Judge becomes final upon waiver of

appeal or upon expiration of the time to appeal if no appeal is taken whichever occurs first. 8 CFR § 1003.39.

Here, Petitioner does not have a final grant of asylum. Specifically, because DHS timely filed an appeal of Petitioner's asylum grant to the Board of Immigration Appeals (BIA), Petitioner does not have a final grant of asylum. *See* Exhibit 1 (BIA Appeal Receipt). Therefore, because Petitioner does not have a grant of asylum, Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). *See Jennings v. Rodriguez*, 583 U.S. 281 (2018); 8 U.S.C. § 1225(b)(1)(B)(ii) (For an applicant for admission to the United States found to have a credible fear of persecution, Petitioner's detention is mandated); *see also* Exhibit 2 (Notice to Appear with Attached Credible Fear Interview); *see also* Exhibit 3 (I-213).

Nevertheless, despite Petitioner's reliance on an incorrect legal premise, the government acknowledges that courts in this District have repeatedly inferred a constitutional right against prolonged mandatory detention. Taking into consideration those prior rulings and the length of time Petitioner has been in custody, the government concedes that this Court should order that Petitioner receive a bond hearing, where the government would bear the burden of proof of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight. *See Sadeqi v. LaRose*, 809 F. Supp. 3d 1090 (S.D. Cal. Nov. 12, 2025); *Gao v. LaRose*, 805 F. Supp. 3d 1106 (S.D. Cal. Sept. 26, 2025).

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s/ Antonio Estrada
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