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OMER SARIBOGA

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

OMER SARIBOGA,

Petitioner,

v.

WARDEN OF MESA VERDE DETENTION CENTER,

DIRECTOR OF SAN FRANCISCO FIELD OFFICE, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement,

MARKWAYNE MULLIN, Secretary of the Department of Homeland Security,

DAVID VENTURELLA, Senior Official Performing the Duties of Director of Immigration and Customs Enforcement; and

TODD BLANCHE, Acting Attorney General of the United States,

Respondents, acting in their official capacity

CASE NO:

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

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INTRODUCTION

1. Petitioner OMER SARIBOGA ("Mr. Sariboga" or "Petitioner") has been civilly incarcerated by Immigration and Customs Enforcement ("ICE") at Mesa Verde Detention Center, since July 14, 2026 without any justification. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) have concluded Mr. Sariboga is subject to mandatory detention.

2. Mr. Sariboga is charged with, inter alia, having entered the United States without admission or inspection. See 8 U.S.C. § 1182(a)(6)(A)(i) and 8 U.S.C. § 1182(a)(7)(A)(i)(I).

3. Mr. Sariboga entered the United States without inspection and was subsequently released from DHS custody on parole.

4. On July 14, 2026, Mr. Sariboga was arrested and taken into custody by ICE officers He was then transferred to the Mesa Verde Detention Center located at 425 Golden State Ave, Bakersfield, California 93301.

5. This detention is consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Furthermore, on May 15, 2025 the Board of Immigration Appeals (BIA or Board) issued a decision in *Matter of Q. Li* that sharply limits the ability of certain detained immigrants to request release on bond. The decision holds that individuals who are arrested shortly after entering the United States without permission – regardless of whether they entered through a port of entry – are considered "arriving aliens" detained under § 235(b) of the Immigration and Nationality Act (INA). As a result they are not eligible for a bond hearing under INA § 236(a). See *Matter of Q. Li,* 29 I&N Dec. 66 (BIA 2025).

7. Similarly, on September 5, 2025, the BIA issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. See *Matter of Yajure Hurtado,*

29 I. & N. Dec. 216 (BIA 2025).

8. The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

9. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

10. To date, no neutral adjudicator has reviewed whether Mr. Sariboga's civil detention is lawful.

11. Mr. Sariboga's baseless civil detention without a neutral hearing violates his right to procedural due process. Accordingly, Mr. Sariboga respectfully asks this Court to issue a writ of habeas corpus and order his release unless the government schedules a bond hearing before an immigration judge, at which the government must justify his continued detention by clear and convincing evidence. Absent this Court's intervention, Mr. Sariboga's detention without review remains indefinite as he faces months, if not years of continued detention without a bond hearing.

JURISDICTION

12. Mr. Sariboga is currently detained in the custody of Respondents at the Mesa Verde Detention Center located in Bakersfield, California. Jurisdiction is proper over a writ of habeas corpus pursuant to Article 1 § 9, clause 2 of the United States Constitution (the Suspension Clause); 28 U.S.C. § 2241 (habeas corpus); and 28 U.S.C. § 1331 (federal question). This action arises under the Due Process Clause of the Fifth Amendment of the United States Constitution. 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.*, and the All Writs Act, 28 U.S.C. § 1651.

13. The federal habeas statute establishes this Court's power to decide the legality of Mr. Sariboga's detention and directs courts to "hear and determine the facts" of a habeas petition and

to "dispose of the matter as law and justice require." 28 U.S.C. § 2243. Moreover, the Supreme Court has held that the federal habeas statute codifies the common law writ of habeas corpus as it existed in 1789. *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001) ("[A]t its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."). The common law gave courts power to release a petitioner to bail even absent a statute contemplating such release. *Wright v. Henkel*, 190 U.S. 40, 63 (1903) ("[T]he Queen's Bench had, 'independently of statute, by the common law, jurisdiction to admit to bail.'") (quoting *Queen v. Spilsbury*, 2 Q.B. 615 (1898)).

VENUE

14. Venue for the instant habeas corpus petition properly lies in this District because it is the district with territorial jurisdiction over Respondent WARDEN OF MESA VERDE DETENTION CENTER, the facility at which Mr. Sariboga is currently detained. *See Rasul v. Bush*, 542 U.S. 466, 478 (2004) (holding that "because 'the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,'" proper federal district is dependent on the location of the custodian); *accord Rumsfeld v. Padilla*, 542 U.S. 426, 444-45 (2004) (holding that jurisdiction must be obtained by service within the territorial jurisdiction of the district court); *id.* at 451 (explaining petition "must be filed in the district court whose territorial jurisdiction includes the place *where the custodian is located*") (Kennedy, J., concurring) (emphasis added).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Mr. Sariboga is not required to exhaust administrative remedies.

16. Exhaustion for habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004). The prudential exhaustion requirement may be waived if "'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, [or] irreparable injury will result.'" *Id.* at 1000 (citation and quotation marks omitted).

17. Mr. Sariboga did not request a bond hearing with the Immigration Judge after being arrested in July of 2026 as the request would be futile. Concerning Mr. Sariboga's proceeding with

the bond request, the request will be denied due to the above-mentioned cases holding that an Immigration Judge lacks jurisdiction to hold a bond hearing for "an arriving alien" and those who entered the United States without permission.

18. Moreover, requiring Mr. Sariboga to request parole or bond hearing would also inflict irreparable injury. *See Laing*, 370 F.3d at 1000. Mr. Sariboga currently has an asylum case pending before the immigration judge. Depending upon the outcome, his case could be appealed to the Board of Immigration Appeals, remanded to the Immigration Judge, or he could seek Ninth Circuit review of the agency decisions. This process could entail several more months or even years of detention. Every day spent in detention subjects Mr. Sariboga to irreparable harm, as he is deprived of his liberty and remains in custody, separated from his wife and community. *See Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (habeas petitioner "suffers potentially irreparable harm every day that he remains in custody without a hearing, which could ultimately result in his release from detention"). Given this background, the Court should decline to apply an exhaustion requirement and/or find that Mr. Sariboga has exhausted the administrative process available to him.

REQUIREMENTS OF 28 U.S.C. § 2243

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

20. 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) (emphasis added).

21. Habeas corpus must remain a swift remedy. Accordingly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing

and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). In *Yong*, the court warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

PARTIES

22. Mr. Sariboga is currently detained by Respondents pending removal proceedings. He was previously released on his own recognizance and permitted to enter and remain in the United States. However, after nearly four years of continuous presence in the United States, he was taken into ICE custody in July of 2026. Mr. Sariboga has been detained Mesa Verde Detention Center without any individualized determination or inquiry into whether his continued detention is justified under ICE's statutory or constitutional authority. After arresting Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an IJ, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

23. Respondent WARDEN OF MESA VERDE DETENTION CENTER, is the warden of Mesa Verde Detention Center in Bakersfield, California. He oversees operations at Mesa Verde Detention Center, where Mr. Sariboga is detained. The Ninth Circuit has determined that the facility administrator is the "immediate" and legal custodian of noncitizens held by ICE at privately-run facilities. *See Doe*, 109 F.4th at 1198–99. He is named in his official capacity

24. Respondent DIRECTOR OF SAN FRANCISCO FIELD OFFICE, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement, is the Field Office Director for the San Francisco Field Office of ICE Enforcement and Removal Operations ("ERO"). As such, Respondent DIRECTOR OF SAN FRANCISO FIELD OFFICE is the federal official most directly responsible for overseeing Mesa Verde Detention Center. He is the local ICE official who has legal custody of Mr. Sariboga. He is named in his official capacity.

25. Respondent MARKWAYNE MULLIN, is the Secretary of the Department of Homeland Security ("DHS") and is responsible for overseeing the Department and its subagency, ICE. He has ultimate responsibility for the detention of noncitizens in civil immigration custody. Secretary Mullin is a legal custodian of Mr. Sariboga. He is named in his official capacity.

26. Respondent DAVID VENTURELLA is the Acting Director for ICE. Respondent

Ventruella is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants. He is named in his official capacity.

27. Respondent TODD BLANCHE is the Attorney General of the United States and the head of the Department of Justice ("DOJ"), which encompasses the Board of Immigration Appeals ("BIA") and immigration judges as part of its sub-agency, the Executive Office for Immigration Review ("EOIR"). He is empowered to oversee the adjudication of removal and bond hearings and by regulation has delegated that power to the nation's immigration judges and the BIA. She is named in his official capacity.

STATEMENT OF FACTS

I. Mr. Sariboga's Life Prior to His Arrival in the United States

[redacted] Unable to endure further persecution, he made the decision to leave Turkey and seek asylum in the United States.

II. Mr. Sariboga's Life After Entering the United States to Apply for Asylum

29. Mr. Sariboga entered the United States on October 3, 2022. Shortly after his entry, he was taken into custody by ICE officers. He was released after being served with a Notice to Appear ("NTA"). He thereafter relocated to San Francisco, California. On April 11, 2023, Mr. Sariboga filed his application for asylum and withholding of removal. (See Declaration of Omer Sariboga ¶ 1).

30. On July 14, 2026 Mr. Sariboga was arrested and taken into custody by ICE officers. After being taken into custody, he was transferred to the Mesa Verde Detention Center located at 425 Golden State Avenue, Bakersfield, California 93301.

LEGAL FRAMEWORK

31. Mr. Sariboga has a profound liberty interest in freedom from physical confinement. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507

U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 721 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 ("both removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious").

32. Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due process" because "[b]ail is basic to our system of law." *Jennings*, 583 U.S. at 330 (Breyer, J., dissenting) (internal quotations and citations omitted).

33. On July 8, 2025, ICE, "in coordination with" the DOJ, announced a new policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," which stated that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

34. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

35. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

36. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma,

Washington, immigration court stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez* v. *Bostock*, 779 F. Supp. 3d1239 (W.D. Wash. 2025).

37. This court has also previously addressed the legal issues raised in this Petition. See *Selis Tinoco v. Noem*, 1:25-cv-01762-DC-JDP, 2025 WL 3567862 (E.D. Cal. Dec. 14, 2025), *Labrador-Prato v. Noem*, 1:25-cv-01598-DC-SCR, 2025 WL 3458802 (E.D. Cal. Dec. 2, 2025), *D.L.C. v. Wofford*, 1:25-cv-01996-DC-JDP, 2026 WL 25511 (E.D. Cal. Jan. 5, 2026). *Garcia Mariagua v. Chestnut*, No. 1:25-cv-01744-DJC-CSK; *Ortega v. Noem*, No. 1:25-cv-01663-DJC-CKD; *Lopez v. Lyons*, No. 2:25-cv-03174-DJC-CKD,

38. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

39. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

40. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (*citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); see also *Gomes*, 2025 WL 1869299, at *7.

41. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

42. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C.§ 1225(b)(2)(A). Indeed, the

Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez,* 583 U.S. 281, 287 (2018).

43. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Mr. Sariboga who have already entered and were residing in the United States at the time they were apprehended.

44. Furthermore, where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim for relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Demore*, 538 U.S. at 532 (Kennedy, J., concurring) ("individualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); see also *Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (detention beyond the initial commitment requires additional safeguards).

45. In the context of parole revocation, due process requires that parolees receive an individualized hearing because they have a liberty interest in their conditional release. See *Morrissey*, 408 U.S. at 484 (holding that there is "no interest on the part of the State in revoking parole without any procedural guarantees at all"); *Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

ARGUMENT

I. DHS's Application of §1225(b)(2) to Mr. Sariboga is unlawful; His detention is properly governed by §1226 (a)

46. Mr. Sariboga entered the United States without inspection on October 3, 2022—approximately four years prior to his current detention. He was released and placed into standard removal proceedings. Because Mr. Sariboga was released into the interior and placed in ordinary removal proceedings, he should not be classified as an "arriving alien" under 8 U.S.C. §

1225(b)(2). Accordingly, his detention is governed by 8 U.S.C. § 1226(a), and he is entitled to an individualized bond hearing before an immigration judge.

II. Mr. Sariboga Has a Significant Private Interest in Liberty.

47. Courts have evaluated constitutional challenges to prolonged immigration detention using the *Mathews v. Eldridge* test, which balances (1) the private interest threatened by government action; (2) the risk of erroneous deprivation of such interest, and the probable value of additional procedural safeguards; and (3) the government interest. 424 U.S. 319, 335 (1976); see, e.g., *Sho v. Current or Acting Field Off. Dir.*, 1:21-cv01812 TLN AC, 2023 WL 4014649, at *3–5 (E.D. Cal. June 15, 2023) (applying the Mathews test and granting bond hearing for individual held in prolonged detention); *I.E.S. v. Becerra*, No. 23-cv-03783-BLF, 2023 WL 6317617, at *8–9 (N.D. Cal. Sept. 27, 2023) (same); *Doe v Becerra*, No. 23-cv-02382-DMR, 2023 WL 5672192, at *7–8 (N.D. Cal. Sept. 1, 2023) (same); *Rodriguez Picazo v. Garland*, No. 23-cv-02529-AMO, 2023 WL 5352897, at *3–6 (N.D. Cal. Aug. 21, 2023) (same); *J.P. v. Garland*, 685 F.Supp.3d 943, 946–49 (N.D. Cal. Aug. 7, 2023) (same); *Hernandez Gomez v. Becerra*, No. 23-cv-01330-WHO, 2023 WL 2802230, at *3–4 (N.D. Cal. Apr. 4, 2023) (same); *Salesh P. v. Kaiser*, No. 22-cv-03018-DMR, 2022 WL 17082375, *8–9 (N.D. Cal. Nov. 18, 2022) (same); *Jimenez v. Wolf*, No. 19-cv-07996-NC, 2020 WL 510347, *2–4 (N.D. Cal. Jan. 30, 2020) (same). Indeed, in a challenge to detention under the nonmandatory provision, the Ninth Circuit applied Mathews balancing because it "remains a flexible test" commonly applied by courts in the immigration context. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206–07 (9th Cir. 2022). For the first prong of the *Mathews* test, the Court must consider the private interest threatened by the governmental action. 424 U.S. at 335. Here, Mr. Sariboga's private interest "is the most significant liberty interest there is—the interest in being free from imprisonment." *See Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (cleaned up). Mr. Sariboga has been detained without a single neutral review of his custody when ICE revoked his grant of parole. Mr. Sariboga will remain imprisoned until his pending asylum application is adjudicated, which may take many more months. This length of detention without a hearing automatically "raises serious due process concerns." *Id.* at 150

48. Additionally, in the context of parole revocation, individuals retain a weighty liberty

interest under the Due Process Clause of the Fifth Amendment in avoiding reincarceration. In *Morrissey v. Brewer*, a case involving parole revocation, the court held that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." 408 U.S. 471, 482 (1972). This is true even when the freedom may ultimately be revocable should circumstances materially change. *See Matter of Sugay*, 17 I&N Dec. 637, 640 (BIA 1981); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1196-97 (N.D. Cal. 2017).

49. *Morrissey*'s basic principle – that individuals have a liberty interest in their conditional release – has been reinforced by both the Supreme Court and numerous circuit courts. *See Young*, 520 U.S. at 152 (holding that individuals released into a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon*, 411 U.S. at 781–82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process); *Zadvydas*, 533 U.S. at 690 (holding that due process protects "all 'persons' within the United States . . . whether their presence here is lawful, unlawful, temporary or permanent" who face immigration detention). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (noting that "a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

50. Here, Mr. Sariboga, has a liberty interest in being free from confinement, which has been challenged by his unjust detention and revocation of his parole. The burden on Mr. Sariboga's liberty is substantial. He has been separated from his community and deprived of his freedom. Like people on parole, individuals like Mr. Sariboga who await decisions in their immigration

cases have a liberty interest in remaining out of custody on bond. See *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70 (N.D. Cal. 2019) (finding that the petitioner had a substantial private interest in remaining on bond and enjoining ICE from rearresting petitioner until a hearing is held) (citing *Morrissey*, 408 U.S. at 482); *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5517277, at *2 (N.D. Cal. Sept. 14, 2020) (same); *Jorge M.F. v. Wilkinson*, No. 21-cv-14340JST, 2021 WL 783561, at *3–4 (N.D. Cal. Mar. 1, 2021) (same); *Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (same). Mr. Sariboga was never afforded a pre-deprivation or post-deprivation hearing on the revocation of his parole and/or his detention.

III. The Value of the Procedural Safeguard of a Bond Hearing is High

51. The second prong of the *Mathews* test, the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional procedural safeguards, weighs heavily in Mr. Sariboga's favor as well. 424 U.S. at 335.

52. "[T]he risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial." *Diouf*, 634 F.3d at 1092. Since Mr. Sariboga has been detained, he has not had a bond hearing and thus has never been afforded process to evaluate or the opportunity to contest the necessity of his ongoing detention. *See Rajnish v. Jennings*, No. 3:20-CV-07819-WHO, 2020 WL 7626414, at *9 (N.D. Cal. Dec. 22, 2020) (finding that the value added by a hearing is "great" where petitioner had been held for nine months since an "unconstitutional" initial bond hearing that "assigned the risk of error to him, not to the government"). Furthermore, given the current legal framework as explained above, a bond hearing would be frivolous, as the BIA has held that a person in Mr. Sariboga's position is mandatorily detainable. See *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

IV. Respondents Have No Valid Interest that a Bond Hearing Would Harm

53. The third *Mathews* factor also supports Mr. Sariboga's petition: the government interest served by Mr. Sariboga's indefinite detention without a hearing is illegitimate here because the interest at stake "is the ability to detain Petitioner *without providing him a bond hearing*, not whether the government may continue to detain him at all." *Lopez-Reyes v. Bonnar*, 362 F. Supp. 3d 762, 777 (N.D. Cal. 2019); *Henriquez*, 2022 WL 2132919, at *5 ("[T]he Government's interest

in detaining Petitioner without providing an individualized bond hearing is low."). While the government has legitimate interests in ensuring a noncitizen's appearance in court and protecting the community, providing a bond hearing would "do nothing to undercut those interests." *Black*, 103 F.4th at 153. At any ordered bond hearing, "the IJ would assess on an individualized basis whether the noncitizen presents a flight risk or danger to the community, as IJs routinely do for other noncitizen detainees." *Id.* at 153–54.

54. Moreover, requiring Respondents to justify Mr. Sariboga's detention "promotes the Government's interest—one [courts] believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." *See id.* (noting that "the public interest drives analysis of the third factor" under *Mathews*).

55. The government has not articulated any interest in detaining Mr. Sariboga without an individualized bond hearing. The government has not given any reason to justify Mr. Sariboga's continued prolonged detention and has not shown that he presents a flight risk or danger to the community. Thus, applying the *Mathews* factors, this Court should find that due process entitles Mr. Sariboga to an individualized bond hearing by an Immigration Judge.

V. Standards for Bond Hearing to Comply with Due Process

56. Mr. Sariboga requests a bond hearing before a neutral adjudicator in which the government bears the burden of proving his flight risk or danger by a clear and convincing evidence standard. *See Singh v. Holder*, 638 F.3d 1196, 1204 (9th Cir. 2011) ("[D]ue process places a heightened burden of proof on the State in civil proceedings in which the individual interests at stake…are both particularly important and more substantial than mere loss of money.") (internal quotation marks omitted), *abrogated on other grounds by Rodriguez Diaz*, 53 F.4th at 1202; *see also Ixchop Perez v. McAleenan*, 435 F. Supp. 3d 1055, 1062 (N.D. Cal. 2020) (noting the "consensus view" among District Courts concluding that after *Jennings* "where ... the government seeks to detain an alien pending removal proceedings, it bears the burden of proving that such detention is justified); *Gonzalez*, 2019 WL 330906, at *6 (collecting cases applying *Singh* burden of proof for prolonged detention hearings post-*Jennings*); *Singh v. Barr*, 400 F. Supp. 3d 1005 (S.D. Cal. 2019) (finding due process requires the government to bear the burden in immigration bond proceedings).

57. Due process also requires consideration of a noncitizen's ability to pay a monetary bond. "Detention of an indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (citation omitted). It follows that—in determining the appropriate conditions of release for immigration detainees—due process requires "consideration of financial circumstances and alternative conditions of release" to prevent against detention based on poverty. *Id.*

CLAIM FOR RELIEF

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

58. Petitioner re-alleges and incorporates by reference the paragraphs above.

59. The Due Process Clause of the Fifth Amendment forbids the government from depriving any "person" of liberty "without due process of law." U.S. CONST. AMEND. V.

60. To justify Petitioner's ongoing re-detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, even after consideration whether alternatives to detention could sufficiently mitigate that risk.

VIOLATION OF THE INA

61. Petitioner re-alleges and incorporates by reference the paragraphs above.

62. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

63. To justify Petitioner's ongoing re-detention, due process requires that the government establish, at an individualized hearing before a neutral decisionmaker, that Petitioner's detention is justified by clear and convincing evidence of flight risk or danger, even after consideration whether alternatives to detention could sufficiently mitigate that risk.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1) Assume jurisdiction over this matter;

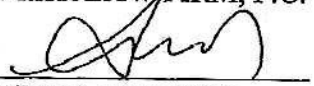
2) Issue a Writ of Habeas Corpus and order Respondents, unless they elect to release Petitioner, to schedule a hearing before an immigration judge where: (1) to continue detention, the government must establish by clear and convincing evidence that Petitioner presents a risk of flight or danger, even after consideration of conditions of supervision; and (2) if the government cannot meet its burden, the immigration judge order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond;

3) Award reasonable costs and attorney fees under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and

4) Grant such further relief as the Court deems just and proper.

Dated: 07/20/2026

FISHER LAW FIRM, P.C.



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Attorneys for Petitioner
OMER SARIBOGA

Verification Pursuant to 28 U.S.C. § 2242

I am submitting this verification on behalf of Omer Sariboga because I am one of Mr. Sariboga's attorneys. As Mr. Sariboga's attorney, I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 07/20/2026

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OMER SARIBOGA