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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ELZHIGIT NURBEKOV,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Warden, Otay Mesa Detention Center,
DANIEL A. BRIGHTMAN, Acting Field Office Director, U.S. Immigration and Customs Enforcement;
DAVID J. VENTURELLA, Acting Director, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary of United States Department of Homeland Security;
and
TODD BLANCHE, Attorney General of the United States.

Respondents.

Case No.: '26CV4600 JES DDL

PETITION FOR WRIT OF HABEAS CORPUS

Agency Doc. No. [redacted]

INTRODUCTION

1. Petitioner has been in DHS custody for over 636 days, or over 20 months, without a determination on his release from custody.

2. On July 29, 2025, the immigration judge granted Petitioner's asylum application, and DHS appealed the decision to the Board of Immigration Appeals. The Board remanded the matter back to the immigration judge.

3. on April 22, 2026, the immigration judge held a hearing in remand where Petitioner was absent due to the Respondents' failure to present him to the court. At the hearing, the immigration judge took DHS' and Petitioner's positions on the case in remand and stated that he would not change his ultimate decision, that is, the immigration judge would grant asylum again, and that he would render his decision in writing.

4. On November 20, 2025, Petitioner submitted a Habeas Corpus petition to the Arizona District Court (CV-25-04353-PHX-DWL (JFM)), that petition was denied.

5. On July 20, 2026, Petitioner submitted a second Habeas Corpus petition to the Arizona District Court (CV-26-05061-PHX-DWL).

6. The Respondents transferred Petitioner to OMDC on or about August 12, 2026, while the petition for Habeas Corpus before the Arizona District Court was still pending. This will render his Habeas Corpus Petition with the Arizona District Court moot.

7. Petitioner's current habeas corpus petition filed with the District Court of the Southern District of California alleges legal grounds not previously presented to this court and requests this court to order Respondents not to transfer Petitioner outside this court's jurisdiction, so that Respondents do not keep transferring Petitioner and in this way, avoid the adjudication of his Habeas Corpus Petition.

8. Petitioner remains in detention with Respondents knowledge that he is not a safety or a flight risk, as he is currently waiting for the immigration judge's written decision granting his asylum, again.

9. Petitioner has submitted two Parole applications to ICE, updated Respondents on the developments of his immigration case, and made multiple requests to ICE to adjudicate his parole request. Respondents have willfully ignored Petitioners requests.

10. Accordingly, to vindicate Petitioner's rights, this Court should grant the instant petition for a writ of habeas corpus and order his immediate release from custody. Petitioner asks this Court to find that his current detention is arbitrary and capricious and in violation of the law.

JURISDICTION AND VENUE

11. This action arises under the United States Constitution and the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., INA § 101 et seq., to challenge Petitioner's detention under the INA and any inherent or plenary powers the government may claim to continue holding him.

12. This Court has jurisdiction under 28 U.S.C. § 1331, § 2241; 5 U.S.C. §§ 701–706 (Administrative Procedure Act, "APA"); and the Suspension Clause, U.S. Const. art. I, § 9, cl. 2, and the Fifth and Eighth Amendments of the United States Constitution. Jurisdiction is not limited by a petitioner's nationality, immigration status, or any other classification. *See Boumediene v. Bush,* 553 U.S. 723, 747 (2008). The Court may grant relief under the Suspension Clause; the Fifth and Eighth Amendments; 5 U.S.C. § 706 (APA); and 28 U.S.C. §§ 1361 (Mandamus Act), 1651 (All Writs Act), §2201 (Declaratory Judgment Act), and §2241 (habeas corpus).

13. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's detention. Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States"

(28 U.S.C. § 2241(c)(3)), and this authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention, his petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001); *see also Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020). And federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

14. Venue is proper because Petitioner is in Respondent's custody in Southern California. Venue is further proper in this District under 28 U.S.C. §§ 1391(b)(2) and (e)(1) because a substantial part of the events or omissions giving rise to this claim have happened here. Venue is also proper under 28 U.S.C. § 2243 because Petitioner's immediate custodian resides in this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 451-52 (2004).

EXHAUSTION OF REMEDIES

15. Petitioner has exhausted all administrative remedies, and no further ones are available. Petitioner has not requested a Bond hearing before an IJ because he was designated an arriving alien by DHS; therefore, an IJ has no jurisdiction to hear Petitioner's Bond request. 8 U.S.C §1225(b)(2)(A)

REQUIREMENTS OF 28 U.S.C. § 2243

16. 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.*

17. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Thus, habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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).

PARTIES

18. Petitioner, Mr. Nurbekov, is a native and citizen of Kyrgyzstan. He is currently detained by ICE at the San Luis Regional Detention and Support Center in Arizona.

19. Respondent, Christopher J. Larose, is the Warden at the Otay Mesa Detention Center, where Petitioner is being held. Respondent Larose is Petitioner's immediate custodian. Petitioner sues him in his official capacity.

20. Respondent Daniel A. Brightman is the Acting Director of ICE's San Diego Field Office for Enforcement and Removal Operations. That office determines whether the Petitioner will be detained in ICE custody or released. Respondent Brightman has custodial authority over Petitioner, who names him in his official capacity.

21. Respondent David J. Venturella is the Acting Director of ICE. ICE is a component of the DHS, 6 U.S.C. § 271, and an "agency" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 701(b)(1). It is the agency responsible for enforcing immigration laws, and it is detaining Petitioner. Respondent Lyons has custodial authority over Petitioner, who names him in his official capacity.

22. Respondent Markwayne Mullin is the Secretary of the DHS. DHS is the federal agency responsible for enforcing immigration laws and granting immigration benefits. *See* 8 U.S.C. § 1103(a); 8 C.F.R. § 2.1. Respondent Mullin has ultimate custodial authority over the Petitioner, who names him in his official capacity.

23. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice. The Executive Office for Immigration Review is a component agency of the Department of Justice; the immigration court system is part of this component agency and its judges issue bond redetermination hearing decisions. He is sued in his official capacity.

FACTUAL BACKGROUND

24. Petitioner entered the United States on November 14, 2024, at San Ysidro, California, pursuant to a CBP One appointment. Shortly after, Petitioner was transferred to Otay Mesa Detention Center ("OMDC") in San Diego, California, and has been in DHS custody since then.

25. On December 2, 2024, Petitioner was placed in 240 removal proceedings, he was designated an arriving alien.

26. On February 6, 2025, Petitioner appeared at a hearing before an IJ and was scheduled a merits hearing for July 15, 2025, at 1:00pm.

27. On February 24, 2025, Petitioner filed his asylum application before the immigration court.

28. On July 14, 2025, Petitioner, through counsel ("Counsel"), filed a parole request with ICE, asking ICE to make a determination on his detention while his removal proceedings were pending. Petitioner received no response.

29. On July 15, 2025, Petitioner's appearance for his individual hearing was delayed because DHS had not informed the immigration court that petitioner had been transferred out of Otay Mesa Detention Center, and DHS did not have Petitioner ready to appear via Webex. After about an hour's delay, DHS presented Petitioner through Webex and he testified before the immigration court. However, Due to the limited time allotted for individual hearings, and to DHS' counsel's conflicting schedule, the individual hearing was continued for July 29, 2025.

30. That same day, July 15, 2025, at 2:03 PM after Petitioner's hearing had begun, DHS filed a "Notice to EOIR: Alien Address" informing the Court, and Petitioner's Counsel, that Petitioner had been transferred to San Luis Regional Detention and Support Center in San Luis, Arizona. At that detention center, Petitioner is housed with criminal and civil detainees alike.

31. On July 29, 2025, Petitioner appeared again before an IJ for his continued individual hearing through Webex. At the end of the hearing, the IJ granted Petitioner's asylum application. That same day, DHS' counsel reserved appeal.

32. On August 28, 2025, DHS filed a notice of appeal with the Board of Immigration Appeals ("BIA") indicating that DHS intended to file a separate brief.

33. On September 14, 2025, Petitioner was attacked by a prisoner whom, upon information and belief, was detained in criminal grounds.

34. On September 16, 2025, Petitioner's Counsel emailed ICE as a follow up on Petitioner's parole request; to update ICE on Petitioner's asylum granted by the IJ and appealed by DHS; and requesting that, at minimum, Petitioner was transferred back to Otay Mesa Detention Center because having him detained in San Luis Regional Detention center after he had been harmed was neglecting Petitioner's safety. Again, Petitioner received no response.

35. On September 29, 2025, the BIA provided a briefing schedule granting both parties until October 20, 2025, to submit briefs. Petitioner submitted a brief on October 19, 2025, and DHS submitted a brief on October 20, 2025.

36. On November 10, 2025, Petitioner, through Counsel, filed a second parole request with ICE based on changed circumstances in the forms of 1) Petitioner's asylum being granted as a showing that he is not a danger to the United States, and 2) Petitioner having a new sponsor, a U.S. Citizen, showing that Petitioner could not be considered a flight risk. Petitioner received no response.

37. On November 19, 2025, Petitioner's Counsel emailed ICE inquiring about the status of Petitioner's 2nd parole request. Again, Counsel received no response regarding the Parole request status and was directed to inquire with another office.

38. On November 20, 2025, Petitioner, through Counsel, filed a petition for habeas corpus in the District Court of Arizona. On February 2, 2026, Respondents filed a response, On February 13, 2026, Petitioner filed a reply, thus, briefing on the Habeas petition was complete that day. On March 26, Petitioner filed an emergency ex-parte motion for a TRO. On March 31, 2026, the Court ordered further briefing. On April 6, 2026, Respondents filed a response to the TRO, and on April 8, 2026, Petitioner filed a reply. That same day, a Magistrate's Judge Report and Recommendation on Petition for Writ of Habeas Corpus was filed. On April 20, 2026, Petitioner filed objections to the R&R. On May 12, 2026, the Court entered an order denying Petitioner's Habeas Corpus petition and TRO.

39. On March 9, 2026, the BIA remanded the record to the Immigration Judge for further proceedings and for entry of a new decision. Petitioner informed this District Court about this development on his emergency ex-parte motion for a TRO.

40. On April 7, 2026, Petitioner was assaulted, again, while in Respondents' custody. Petitioner's injuries were severe enough that he needed to be transferred to Yuma Medical Center Emergency Services. Respondents did not allow Petitioner to contact his counsel while he was at the hospital.

41. On April 20, 2026, the immigration court entered a Notice of In-Person Hearing requesting Petitioner's appearance for a hearing on April 22, 2026, at 1 pm.

42. On April 22, 2026, Petitioner's Counsel appeared in person before the immigration court for the scheduled hearing. DHS was also present in person at the hearing. Petitioner was not present at the hearing. When the Immigration Judge inquired about the reason for Petitioner's

absence, Petitioner's Counsel indicated that Petitioner continued to be under DHS custody. The Immigration Judge inquired with DHS about Petitioner's whereabouts and DHS counsel indicated that Petitioner was not present either in Person or through WEBEX due to a miscommunication.

43. The immigration judge waived Petitioner's presence. The immigration judge also inquired with DHS if they needed further testimony from Respondent, DHS stated no further testimony was necessary. After a brief discussion with both parties' counsels, the Immigration Judge clarified that he intended to grant asylum, requested updated country conditions and provided a deadline of May 1st, 2026, for both parties, for any additional filings. Additionally, the Immigration Judge clarified that because no further testimony would be taken, there was no need for additional hearings, and the decision would be issued in writing.

44. On May 1st, 2026, Petitioner's Counsel submitted updated country conditions and a brief to the immigration court. DHS didn't submit any filings.

45. On June 26, 2026, Petitioner's counsel contacted DHS again through Petitioner's last known deportation officer and the previously indicated contacts by DHS. Petitioner's counsel requested again a determination on Petitioner's parole requests. Counsel for Petitioner received an automatic reply, but has not received an answer regarding Petitioner's parole requests.

46. On July 2, 2026, Petitioner, through Counsel, submitted a motion for judgment to the immigration court requesting the immigration judge to render a decision on Petitioner's asylum application as required under 8 CFR § 1003.10(b) ("In the absence of exceptional circumstances, an immigration judge shall complete administrative adjudication of an asylum application within 180 days after the date an application is filed.") because more than 180 days have passed from the date Petitioner filed his asylum application with the immigration court.

47. On July 20, 2026, Petitioner submitted a second Habeas Corpus petition to the Arizona District Court.

48. On or about August 12, 2026, Petitioner was transfer to OMDC, which would render his Habeas Corpus Petition with the Arizona District Court moot.

49. As of today, August 12, 2026, Petitioner remains in DHS custody without an adjudication on his asylum application or any available process to seek his release from immigration detention, even though he is not considered a danger to the united states, as shown by the immigration judge initially granting his asylum; the BIA not reversing, but remanding the appeal filed by DHS; and the immigration judge stating that he will not change his ultimate decision, indicating that he will grant asylum again. Therefore, Petitioner's continued detention without a demonstration that removal is significantly likely in the reasonably foreseeable future or without any reply to his multiple parole requests and follow ups with DHS violates constitutional due process.

LEGAL FRAMEWORK

50. The Constitution establishes due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas* 533 U.S. at 693).

51. "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. 678, 690 (2001).

52. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2), which facially mandates detention of noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted. *See Matter of M-S-*, 27 I&N Dec. 509, 516 (A.G. 2019); 8 C.F.R. §

1003.19(h)(2)(i)(B). Nevertheless, due process prohibits civil detention that is punitive in purpose or in effect, including civil detention that is excessively prolonged in relation to its purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). Put otherwise, "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"; otherwise, their commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738).

53. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely to appear for immigration court or a danger to the community. *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001).

54. Immigration detention is a form of civil confinement that "constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 4253 (1979).

55. Even when the Constitution permits confinement that is brief, the Supreme Court has recognized that such confinement becomes punitive when it is "excessively prolonged." *United States v. Salerno*, 481 U.S. 739, 474 n.4 (1987). Moreover, as a detained person's time in custody increases, so too does their liberty interest. *See Zadvydas*, 533 U.S. at 691. "[F]or detention to remain reasonable," greater justification is needed "as the period of confinement grows." *Id.*

56. The Ninth Circuit has expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any due process is constitutional..." *Rodriguez v. Marin*, 909 F.3d 252, 255 (9th Cir. 2018).

57. Noncitizens detained under § 1225(b) for a prolonged period without an individualized bond hearing may assert a constitutional right to due process. *See, Nche v. Patrick*, 26-cv-2449-JES-DDL (S.D. Cal. May 01, 2026) (This Court, along with numerous others within this Circuit, has

found that a noncitizen's prolonged mandatory detention will, at some point, raise due process considerations.); *see also*, *Imani v. Cantu*, CV 26-01933 PHX DJH (CDB) (D. Ariz. May 04, 2026) adopted May 19, 2026 ("Although "detention during deportation proceedings [is] a constitutionally valid aspect of the deportation process," such detention must still comport with the detainee's right to due process.");

58. "The touchstone of due process is protection of the individual against arbitrary action of government," *Wolff v. McDonnell,* 418 U.S. 539, 558 (1974), including "the exercise of power without any reasonable justification in the service of a legitimate government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

59. Immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas,* 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994 ("[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger).

60. The Supreme Court has recognized that noncitizens may bring as-applied challenges to detention, including so-called "mandatory" detention. *Demore v. Kim*, 538 U.S. 510, 532-33 (2003) (Kennedy, J., concurring) ("Were there to be an unreasonable delay by the INS in pursuing and completing deportation proceedings, it could become necessary then to inquire whether the

detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.").

61. The District Courts within the Ninth Circuit's jurisdiction have generally found the test stated in *Banda v. McAleenan*, 385 F.Supp.3d 1099, 1117 (W.D. Wash. 2019) applicable to determine whether prolonged detention violates procedural due process with regard to those detained pursuant to § 1225(b). *See Nche v. Patrick*, 26-cv-2449-JES-DDL (S.D. Cal. May 01, 2026).

CLAIMS FOR RELIEF

COUNT ONE
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Without Observance of Procedure Required By Law, and
Contrary to Constitutional Right
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

62. Petitioner realleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

63. 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).

64. "Due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed"; otherwise, their commitment amounts to punishment. *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Jackson*, 406 U.S. at 738).

65. Immigration detention should not be used as a punishment and should only be used when, under an individualized determination, a noncitizen is a flight risk because they are unlikely

to appear for immigration court or a danger to the community. *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001).

66. Moreover, as a detained person's time in custody increases, so too does their liberty interest. See *Zadvydas*, 533 U.S. at 691. "[F]or detention to remain reasonable," greater justification is needed "as the period of confinement grows." *Id.*

67. The procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Therefore, Respondents' unlawful actions violate Petitioner's constitutional right to due process because they are arbitrary and do not serve a legitimate government objective. Moreover, Petitioner's duration of commitment does not bear a reasonable relation to the purpose for which was committed because Petitioner is neither a danger to the community, nor a flight risk. Respondents have run background checks on Petitioner, necessary to grant an asylum claim. Because the background checks didn't show that Petitioner was a danger to the United States, along the other requirements for asylum, the immigration judge was able to grant Petitioner's asylum application. Additionally, Petitioner cannot be considered a flight risk because there are no further hearings on his immigration matter; currently, Petitioner is waiting for a written decision from the immigration judge granting his asylum.

68. Additionally, Respondents' actions are not observing the procedure required by law. DHS has the discretionary authority to temporarily release on parole any alien applying for admission to the United States on a case-by-case basis. 8.C.F.R. 212.5; 8 U.S.C. § 1182(d)(5)(A). DHS must consider parole requests consistent with the process set forth in ICE Directive 11002.1. "The purpose of this ICE policy directive is to ensure transparent consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States." ICE Directive 11002.1 at 1. "Each alien's eligibility for parole should be considered and analyzed on its own

merits and based on the facts of the individual alien's case. However, when an arriving alien found to have a credible fear establishes to the satisfaction of DRO his or her identity and that he or she presents neither a flight risk not danger to the community, DRO should, absent additional factors (as described in paragraph 8.3 of this directive), parole the alien on the basis that his or her continued detention is not in the public interest. DRO Field Offices shall uniformly document their parole decision-making processes using the [] record of Determination/Parole Determination Worksheet." *Id.* at 6.2.

69. Respondents have not complied with the established process set forth for ICE in the determination of Parole requests. By refusing to adjudicate Petitioner's parole requests, Respondents' actions are without observance of the procedure required. Therefore, this court shall hold Respondents' actions unlawful. 5 U.S.C. § 706(2)(A)-(D).

COUNT TWO
Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A)
Abuse of Discretion
Violation of 8 U.S.C. § 1226(b), 8 C.F.R. § 1236.1(c)(9)

70. Petitioner realleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

71. 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).

72. 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)).

73. To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

74. By refusing to adjudicate Petitioner's parole requests and refusing to articulate a satisfactory explanation for Petitioner's prolonged detention without consideration of Petitioner's individualized facts and circumstances Respondents have violated the APA.

75. Because Respondents have repeatedly failed to consider Petitioner's circumstances and willfully ignored the evidence presented to them regarding Petitioner's dangerousness and flight risk, this Court should hold Respondents' actions unlawful and immediately release the Petitioner, thus, setting aside the unlawful ICE action of detaining Petitioner in abuse of their discretion.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Substantive Due Process

76. Petitioner realleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

77. According to binding Ninth Circuit precedent, "at some point [civil] detention can become excessively prolonged, and therefore punitive, resulting in a due process violation." *United States v. Torres*, 995 F.3d 695, 708 (9th Cir. 2021).

78. If conditions of civil confinement are equivalent to or more restrictive than criminal detention or civil post-commitment detention, they are presumptively punitive and the burden shifts to the government "to show (1) legitimate, non-punitive interests justifying the conditions of the detainee's confinement and (2) that the restrictions imposed are not excessive in relation to these interests." *King v. Cnty. of L.A.*, 885 F.3d 548, 557 (9th Cir. 2018) (cleaned up) (citing *Jones*, 393 F.3d at 933).

79. Due process prohibits the government from punishing people through civil detention. Civil detention becomes punitive when its duration or nature is unreasonable relative to the purpose for which the individual is detained—in this case, effectuating removal and safeguarding the community.

80. Petitioner's detention for over 610 days is excessively prolonged, and therefore punitive, resulting in a due process violation.

81. Furthermore, Petitioner's detention has been more restrictive than criminal detention and the nature of his detention is punitive; even criminal detainees are presented for their hearings, provided with the necessary medical care, given access to counsel, and allowed to call a trusted person in a medical emergency. In our case, the punitive nature of Petitioner's detention is clear in the following situations:

- Respondents have not provided Petitioner with the necessary medical care;
- Respondents have placed Petitioner in harm's way by housing him with criminal detainees;
- Respondents refused to transfer Petitioner back to a place housing only civil detainees after Petitioner was assaulted for first time;
- Respondents restricted Petitioner's access to his counsel by not allowing him to call his counsel while at the hospital after Petitioner was assaulted for a second time;
- Respondents did not present Petitioner for his hearing before the immigration court, directly interfering with his access to counsel and his immigration proceedings.

82. Although Respondents have transferred the Petitioner to Otay Mesa Detention Center, Petitioner has already been subjected to these conditions of confinement and, therefore, Petitioner's detention is punitive and in violation of due process.

COUNT THREE
Violation of Fifth Amendment Right to Due Process
Procedural Due Process

83. Petitioner realleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

84. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693; *accord Flores*, 507 U.S. at 306.

85. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

86. The Ninth Cir. has expressed "grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional or that those who founded our democracy precisely to protect against the government's arbitrary deprivation of liberty would have thought so. Arbitrary civil detention is not a feature of our American government." *Rodriguez v. Marin,* 909 F.3d 252 at 909 F.3d 256-257 (9th Cir. 2018) (internal quotation marks and citation omitted).

87. Because Petitioner has received no procedural protections and the statute under which he is detained denies him procedural protections, the risk of erroneous deprivation of his liberty interest is high. *See Azizbek Kuvonchbek Ugli Urinboev v. Rivas,* CV-26-00488-PHX-AMM (MTM) (D. Ariz. May 22, 2026) at 5; *see Garcia v. Mattos*, 2:25-cv-02580-RFB-NJK (D. Nev. Jan 14, 2026), at 8 ("The risk of erroneous deprivation is extraordinarily high where ICE and DHS agency officials have sole, unguided, and unreviewable discretion to detain Petitioner without any individualized showing of why his detention is warranted, nor any process for Petitioner to challenge the exercise of that discretion.").

88. Here, Respondents have chosen to ignore Petitioner's only avenue to seek release from detention in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Furthermore, Respondents have willfully ignored their own background checks on the Petitioner showing that he is not a danger to the community, and the specific circumstances of the Petitioner in that he is not a flight risk since there are no further hearings in his case because Petitioner is only waiting for a written decision granting his asylum, again. Therefore, it is clear that in this case, the government's actions are not rational, the government has acted arbitrarily, and Respondents' continued detention of Petitioner without any individualized showing of why his detention is warranted violates his right to procedural due process.

89. Additionally, to determine whether Petitioner's detention violates Due Process we can employ a case-specific analysis articulated in *Banda v. McAleenan*:

90. Total length of detention to date – Petitioner has been in Respondents' custody for over 610 days, or over 20 months. This period is well beyond the presumptively reasonable six-month period set forth in *Zadvydas*, 533 U.S. at 701. Courts consistently find detention beyond this threshold triggers due process scrutiny. *See Kydyrali*, 499 F. Supp. 3d at 774–75. The Court may reasonably conclude that the first *Banda* factor weighs in favor of Petitioner.

91. Likely duration of future detention – Petitioner's length of future detention has become indefinite because the immigration judge is well beyond the limitations provided by the law to adjudicate Petitioner's claim. We acknowledge that some of the time elapsed occurred under the forceable process of an appeal; however, there are no further hearings scheduled on Petitioner's case and the immigration judge has not provided a decision two months after the record for the case in remand was closed. Neither has the immigration judge ruled on Respondent's motion for judgement or provided a date for Petitioner's case resolution. Therefore, the likely duration of

future detention in Petitioner's case in indefinite. Like in *Nadarajah* Petitioner is in an administrative process that lacks strict procedural rules. *Nadarajah v. Gonzales*, 443 F.3d 1069, 1081 (9th Cir. 2006) (By any analysis, a [prolonged] period of confinement of an alien who has not been charged with any crime, and who has won relief at every administrative level, is unreasonable under the standards set forth by the Supreme Court.). Therefore, the second *Banda* factor also weighs in favor of Petitioner.

92. Conditions of detention – The conditions under which Petitioner has been detained closely resemble penal confinement. Furthermore, Respondents placed Petitioner in harm's way by housing him with criminal detainees resulting in Petitioner being assaulted twice; Respondents have not provided Petitioner with the necessary medical care; and Respondents have restricted and interfered with Petitioner's access to counsel in various occasions. Although Respondents have transferred the Petitioner to Otay Mesa Detention Center, Petitioner has already been subjected to these conditions of confinement. Further, being housed at Otay Mesa Detention Center will keep subjecting the Petitioner to detention that resembles legal confinement. Courts have recognized that the conditions at OMDC are "indistinguishable from penal confinement." *Kydyrali v. Wolf*, 499 F.Supp.3d 768, 773 (S.D. Cal. 2020). Thus, this Court most reasonably should conclude that the third *Banda* factor weighs in favor of petitioner.

93. Delays in the removal proceedings caused by the detainee – There were no delays in the removal proceedings caused by Petitioner.

94. Delays in the removal proceedings cause by the government – The government has caused several delays Petitioner's removal proceedings. First, DHS delayed informing the court, and Petitioner's counsel that he had been transferred to San Luis Regional Detention Center causing Petitioner's hearing being delayed and continued to a different date. Second, DHS's counsel did not accept the initial date proposed by the IJ to continue the individual hearing. DHS

reserved appeal on July 29, 2025; however, a notice of appeal was not filed until August 28, 2025, about a month after appeal was reserved. Finally, although DHS did not raised new arguments in the case in remand, neither submitted any new evidence, and the immigration judge will grant asylum again, the immigration judge has not rendered a written decision on Petitioner's case for over two months, neither has ruled on Petitioner's motion for judgement or provided a date for when he will render his decision. As in *Nadarajah*'s case "No one can satisfactorily assure us as to when that day will arrive. Meanwhile, petitioner remains in detention." 443 F.3d 1069, 1081 (9th Cir. 2006). The Court most reasonably conclude that the fifth *Banda* factor weighs in favor of Petitioner.

95. Likelihood that the removal proceedings will result in a final order of removal – Petitioner was granted asylum by an immigration judge; the BIA did not reverse, but remanded the case to the immigration judge; in remand, DHS did not raised new arguments, neither submitted any new evidence; and the immigration judge stated on the record that he will not change his ultimate decision, indicating that he will grant asylum again. Therefore, Petitioner has established that there is no significant likelihood of his removal in the reasonably foreseeable future. The sixth *Banda* factor weighs in favor of Petitioner.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order Respondents not to transfer the Petitioner outside this District's jurisdiction;

(3) Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from their custody,

(4) Alternatively, order Respondents to provide Petitioner a bond hearing within 7 days before a neutral adjudicator where the government must prove by clear and convincing evidence that Petitioner is a flight risk or danger to the community;

(5) Alternatively, issue and Order to Show Cause ordering Respondents to show cause, within three days, why this petition should not be granted;

(6) Declare that Respondents' refusal to consider Petitioner's parole requests is arbitrary and capricious and in violation of due process;

(7) Declare that Petitioner's detention without an individualized determination violates Due Process;

(8) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

(9) Grant any other and further relief that this Court deems just and proper.

Dated: August 12, 2026

Respectfully Submitted,

By: /s/ Rocio Sanchez Flores

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Attorney for Petitioner

VERIFICATION STATEMENT PURSUANT TO 28 U.S.C. § 2242

I, Rocio Sanchez Flores, declare as follows:

I represent Petitioner, Mr. Nurbekov, in these habeas corpus proceedings. Petitioner is currently being held in detention at Otay Mesa Detention Center, in San Diego, California, and cannot appear in my office to sign this Verification. I have reviewed the record of his detention and discussed this matter with Mr. Nurbekov. I verify that the information contained in the foregoing petition is true and correct to the best of my knowledge and belief

Dated: August 12, 2026

Respectfully Submitted,

By: /s/ Rocio Sanchez Flores
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