UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Isa Mohammadi,

Petitioner,

v.

Acting Warden, ERO El Paso Camp East Montana;
Acting Director, El Paso ICE Field Office;
David Venturella, Acting Director U.S. Immigration and Customs Enforcement;
Todd Blanche, Acting U.S. Attorney General;
Markwayne Mullin, U.S. Secretary of Homeland Security;
Department of Homeland Security (DHS); and
Executive Office for Immigration Review (EOIR),

Respondents.

Case No. 3:26-cv-02236

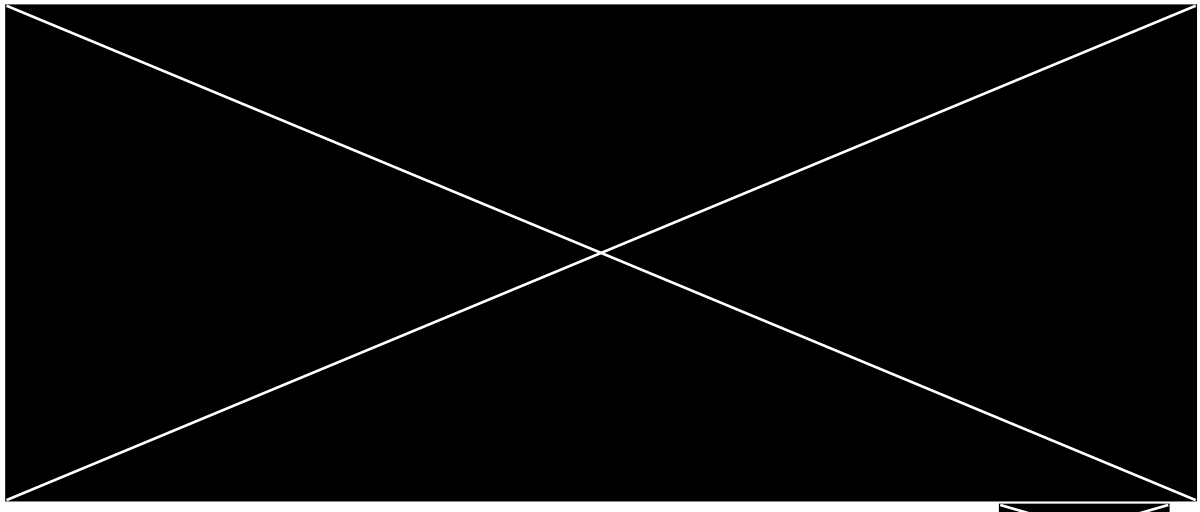
PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Isa Mohammadi is an Iranian national who entered the United States in October of 2024, having fled religious persecution in Iran.
2. Shortly after his entry in October 2024, Petitioner was paroled into the country, pursuant to 8 U.S.C. § 1182(d)(5)(A).
3. Petitioner has resided in the United States for approximately two years, building a life here with his wife and stepdaughter, who are Lawful Permanent Residents.
4. Petitioner submitted a timely I-589 application for Asylum, Withholding of Removal, and protection under the Convention Against Torture ("CAT") in April of 2025.
5. Petitioner's asylum claim was denied by an Immigration Judge on August 14, 2026, and he was ordered removed from the United States.
6. On the same day that he was ordered removed, Petitioner was arrested and detained while attending a scheduled Alternatives to Detention Intensive Supervision ("ISAP") check-in, without any notice or an opportunity to be heard, in violation of his due process rights.
7. Petitioner's removal order is not final. He has appealed the Immigration Judge's August 14, 2026 decision, and he intends to litigate his appeal before the Board of Immigration Appeals ("BIA").
8. Because Petitioner is being held in violation of his due process rights, he respectfully requests that this Court order his release.

FACTUAL BACKGROUND

9. Petitioner is a native and citizen of Iran.
10. Petitioner was born [redacted]



15. Upon information and belief, Petitioner was persecuted and tortured in Iran [redacted]

[redacted]

16. Upon information and belief, Petitioner fled Iran and arrived in the United States in or around October 9, 2024.

17. Upon information and belief, Petitioner was detained upon entry to the United States.

18. Upon information and belief, Petitioner was released on parole on or around October 25, 2024, pursuant to 8 U.S.C. § 1182(d)(5)(A). *See* Ex. 1, Interim Notice Authorizing Parole.

19. 8 U.S.C. § 1182(d)(5)(A) permits the Secretary of Homeland Security to parole individuals "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]" 8 U.S.C. § 1182(d)(5)(A).

20. Upon information and belief, upon Petitioner's release, he was enrolled in the Alternatives to Detention Intensive Supervision Appearance Program ("ATD" or "ATD-ISAP"), which "utilizes case management and technology tools to support aliens' compliance with release conditions while on ICE's non-detained docket." Immigr. &

Customs Enf't, Alternatives to Detention, available at United States Immigration & Customs Enforcement, https://www.ice.gov/features/atd (visited Aug. 24, 2026).

21. Upon information and belief, as part of Petitioner's participation in the ATD program, he wore an ankle monitor for approximately six months after he was released on parole. After that point, he wore a GPS wrist watch, up until his detention on August 14, 2026.

22. Upon information and belief, as part of Petitioner's participation in the ATD program, he frequently checked in with Immigration and Customs Enforcement ("ICE") / ISAP officers, sometimes in person and sometimes via phone.

23. Upon information and belief, Petitioner has never missed a scheduled ICE / ISAP check-in.

24. Upon information and belief, Petitioner has been fully compliant with all of the terms of the ATD ISAP program.

25. Upon information and belief, since his release from ICE custody on or around October 25, 2024, Petitioner has resided with his wife and stepdaughter.

26. Upon information and belief, Petitioner's wife and stepdaughter are Lawful Permanent Residents.

27. Upon information and belief, prior to his detention, Petitioner resided in Washington State for nearly two years with his wife and stepdaughter.

28. Upon information and belief, Petitioner has continued to practice Christianity in the United States.

29. Upon information and belief, prior to his detention, Petitioner, with his wife and stepdaughter, attended weekly church services.

30. Upon information and belief, Petitioner was placed in removal proceedings by issuance of a Notice to Appear ("NTA") on or around January 16, 2025 before the Immigration Court in Seattle, Washington.

31. Upon information and belief, Petitioner submitted an I-589 application for Asylum, Withholding of Removal, and protection under the Convention Against Torture ("CAT") on or around April 1, 2025.

32. Upon information and belief, Petitioner appeared for all of his Immigration Court hearings.

33. Upon information and belief, Petitioner was ordered removed by an order of the Immigration Court dated August 14, 2026.

34. Petitioner, through counsel, appealed his removal order on August 19, 2026 to the BIA. That appeal is pending. The BIA has not yet set a briefing schedule for Petitioner's appeal.

35. Upon information and belief, Petitioner attended a scheduled check-in with Immigration and Customs Enforcement ("ICE") / ISAP on August 14, 2026.

36. Upon information and belief, ICE / ISAP officers told Petitioner during his check-in on August 14, 2026 that he was being arrested because he had failed to renew his Iranian passport and because he missed some ICE / ISAP check-ins.

37. Upon information and belief, during Petitioner's ICE / ISAP check-in on August 14, 2026, ICE / ISAP officers informed Petitioner that, because he had failed to renew his passport, they could not send him to Iran, but they "might" send him to a third country. At the time, Petitioner's order of removal was not yet administratively final, so he was not subject to removal. *See* 8 U.S.C. § 1231(a)(1)(B)(i).

38. To date, because Petitioner's appeal is pending, he is not subject to a final order of removal. *See* 8 C.F.R. § 241.1; 8 C.F.R. § 1241.1(a).

39. Upon information and belief, prior to his arrest on August 14, 2026, Petitioner had previously been told by ICE / ISAP officers that he would need to renew his Iranian passport, but he did not do that because he believed that doing so would put his safety at risk.

40. Upon information and belief, prior to his arrest on August 14, 2026, Petitioner was not previously informed that he had missed any ICE / ISAP check-ins. Petitioner understood himself to be in full compliance with the ATD ISAP program.

41. On August 14, 2026, Petitioner was arrested and detained by ICE while attending a scheduled ISAP check-in.

42. Petitioner was subsequently transferred to ICE detention at the Northwest ICE Processing Center, 1623 East J Street, Tacoma, WA 98421.

43. On or around August 27, 2026, Petitioner was transferred to the ERO El Paso Camp East Montana in El Paso, Texas.

44. Petitioner is currently detained at the ERO El Paso Camp East Montana, located at 6920 Digital Road, El Paso, Texas 79936. *See* Ex. 2, ICE Detainee Locator (last visited August 27, 2026 at 1:49 PM EST).

45. Upon information and belief, Petitioner does not have a criminal history in the United States or abroad.

46. Upon information and belief, Petitioner was not given advance notice prior to his detention.

47. Upon information and belief, Petitioner was not given a pre-deprivation hearing prior to his detention.

48. Petitioner requested a bond hearing ("Custody Redetermination") on August 19, 2026.

49. Petitioner is currently scheduled for a bond hearing before the Immigration Court in Tacoma, WA on September 4, 2026 at 1:00 PM PT.

50. At Petitioner's bond hearing scheduled for September 4, 2026, he will bear the burden of proving "to the satisfaction of the Immigration Judge . . . that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight." *Matter of Guerra,* 24 I&N Dec. 37, 38 (BIA 2006).

51. Upon information and belief, in the time since Petitioner was detained on August 14, 2026, he has not been informed of any efforts to deport him to Iran.

52. Considering that the United States has been engaged in armed conflict against Iran since February 28, 2026, removals to Iran in the foreseeable future are highly unlikely.[1] *See* Ex. 3 – Christopher M. Blanchard, et al., Cong. Rsch. Serv., R48887, U.S. Conflict with Iran (2026); *see also* Qasim Nauman & Euan Ward, Iran Says It Targeted U.S. Military in

[1] In fact, numerous courts have recently ordered the release of Iranian habeas petitioners subject to final removal orders on the ground that their removal was not significantly likely in the reasonably foreseeable future. *See, e.g., Alireza Tamimiarabzadeh v. Vergara, et al.*, ECF No. 15, at 9, Memorandum Opinion and Order, Case No. 5:26-cv-00628 (S.D. Tex. July 30, 2026) ("Ultimately, the evidence presented by Respondents fails to rebut Petitioner's good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, especially in light of Respondents' concession that removal to Iran is not feasible[.]"); *see also id.* at 11 (ordering release); *Milad Maleki Rostamgheshlagi v. Warden, et al.*, ECF No. 8, at 7-8, Order Directing Respondents to Immediately Release Petitioner, Case No. 1:26-cv-02203-MLG-JFR (D.N.M. Aug. 3, 2026) (holding that Respondents failed to rebut Petitioner's showing that his removal to Iran was not significantly likely in the reasonably foreseeable future and ordering his immediate release); *Homan Rashidy v. Blanche, et al.*, ECF No. 9, at 1, Order Granting in Part Habeas Petition, Case No. 1:26-cv-02217 KWR-KRS (D.N.M. July 27, 2026) (holding that detention of Iranian habeas petitioner violated *Zadvydas v. Davis*, 533 U.S. 678 (2001) and ordering his immediate release).

Kuwait With Drones, N.Y. Times (July 31, 2026), https://www.nytimes.com/2026/07/31/world/middleeast/iran-us-military-kuwait-drone-attack.html.

53. Upon information and belief, in the time since Petitioner was detained on August 14, 2026, he has not been informed of any efforts to deport him to a third country.

54. Upon information and belief, in the time since Petitioner was detained on August 14, 2026, he has not been informed of any efforts by Respondents to obtain travel documents to facilitate his removal.

55. According, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of habeas corpus.

56. Petitioner asks this Court to find that his detention violates due process and order his release.

JURISDICTION

57. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question).

58. Pursuant to 28 U.S.C. § 2241, district courts have jurisdiction to hear habeas petitions by noncitizens who bring statutory and constitutional challenges to their immigration detention. 28 U.S.C. § 2241(c)(3) (authorizing habeas corpus where an individual "is in custody in violation of the Constitution or laws or treaties of the United States"); *see also Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999); *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

59. Venue is proper because, on information and belief, Petitioner is detained in this District at the ERO El Paso Camp East Montana, *et al.*, 6920 Digital Road, El Paso, Texas 79936. *See* 28 U.S.C. § 1391; *see also Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (per curiam) ("For core habeas petitions, jurisdiction lies in only one district: the district of confinement.") (internal quotation marks and citation omitted).

60. Petitioner is currently in the physical custody of Respondents.

PARTIES

61. Petitioner is an Iranian national who arrived in the United States nearly two years ago.

62. Petitioner names as a respondent the Acting Warden of the ERO El Paso Camp East Montana, as he or she is the official with immediate physical custody of the petitioner. Therefore, he or she is the Petitioner's immediate custodian.

63. Petitioner names as a respondent the Acting Director for the El Paso Field Office of U.S. Immigration and Customs Enforcement.

64. Respondent David Venturella is the Acting Director for United States Immigration and Customs Enforcement.

65. Respondent Markwayne Mullin is the U.S. Secretary of Homeland Security.

66. Respondent Todd Blanche is the Acting United States Attorney General.

67. All respondents are named in their official capacities.

68. Petitioner also names the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR").

69. Petitioner has been detained since August 14, 2026.

70. Petitioner is currently in custody in the Western District of Texas, and one or more of the Respondents is his immediate custodian.

LEGAL FRAMEWORK

I. Statutory Framework

A. Petitioner's Detention is Not Governed by 8 U.S.C. § 1231

71. 8 U.S.C. § 1231 governs the detention of non-citizens during and after the removal period. *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578-79 (2022).

72. The removal period "begins on the latest of the following:"

> (i) The date the order of removal becomes administratively final.
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B).

73. Mr. Mohammadi's removal period has not commenced because his order of removal is not "administratively final." *See* 8 U.S.C. § 1231(a)(1)(B)(i).

74. Mr. Mohammadi was ordered removed on August 14, 2026.

75. Mr. Mohammadi, through counsel, appealed his removal order on August 19, 2026.

76. Mr. Mohammadi's removal order is not yet final because his appeal is pending. *See* 8 C.F.R. § 1241.1(a).

B. Bond Hearings For 8 U.S.C. § 1225(b) Detainees

77. In *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 498, 500 (5th Cir. 2026), *petition for cert. filed*, (U.S. July 10, 2026) (No. 26-43), the Fifth Circuit agreed with the BIA's interpretation of § 1225(b)(2) and § 1226(a), which is that "unadmitted aliens apprehended anywhere in the United States are ineligible for release on bond, regardless of how long they have resided inside the United States."

78. Petitioner understands that, under *Buenrostro-Mendez*, 166 F.4th at 507-508, *petition for cert. filed*, No. 26-43, his detention is governed by 8 U.S.C. § 1225(b) and he is ineligible for release on bond pursuant to statute.[2]

79. In *Rodriguez v. Ortega*, 180 F.4th 702, 727-28 (5th Cir. 2026), *reh'g en banc granted, opinion vacated*, 181 F.4th 608 (5th Cir. 2026), the Fifth Circuit held "that the Government may detain aliens under Section 1225(b)(2)(A) for ninety days but no longer without a bond hearing." Accordingly, pursuant to *Rodriguez, id.*, to the extent Petitioner's detention is governed by 8 U.S.C. § 1225(b)(2)(A), he is eligible for a bond hearing on or before November 12, 2026.

80. Although *Rodriguez, id.*, has been vacated pending rehearing, numerous courts in this Circuit have "continue[d] to follow the panel decision as persuasive, non-binding authority." *Sanchez v. Warden ERO El Paso Camp E. Montana*, No. EP-26-CV-00645-DCG, 2026 WL 2045477, at *1 (W.D. Tex. July 10, 2026) (internal quotation marks and footnote omitted). In *Sanchez*, 2026 WL 2045477, at *2-3, the court followed *Sosnava Rodriguez* and held that, because the petitioner had been detained for over 90 days without a bond hearing, he was entitled to release.

[2] Considering the circuit courts split on this issue, and because the *Buenrostro-Mendez* petitioners are currently seeking *certiorari* before the Supreme Court, Petitioner preserves for further review the argument that his detention is governed by 8 U.S.C. § 1226(a), such that he is statutorily entitled to a bond hearing at the outset of his detention.

81. On July 21, 2026, the Fifth Circuit granted the government's request "for stay of the district court judgments pending rehearing *en banc*" of *Rodriguez*, 180 F.4th 702 (5th Cir. 2026), *reh'g en banc granted, opinion vacated*, 181 F.4th 608. *See Rodriguez*, 183 F.4th 387, 388 (5th Cir. 2026) (per curiam). However, numerous courts in this District have found that the Fifth Circuit's "interim stay order does not prohibit [] continued resolution of pending habeas petitions on due process grounds." *Junior Antonio Diaz Malavar v. T. Don Hutto Detention Center, et al.*, No. 1:26-CV-2267-RP, 2026 WL 2519137, at *1 n. 2 (W.D. Tex. Aug. 26, 2026); *see also Josefa Tiquiram-Us v. Warden, Dilley Immigr. Processing Ctr.*, et al., No. SA-26-CV-04473-OLG, 2026 WL 2242499, at *1 n. 1 (W.D. Tex. July 31, 2026). Thus, the stay issued in *Rodriguez*, 183 F.4th at 388, does not preclude this Court from adjudicating this petition.

C. Petitioner Was Paroled into the United States

82. Petitioner was paroled into the country under 8 U.S.C. § 1182(d)(5), which provides:

> The Secretary of Homeland Security may . . . in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States[.]"

8 U.S.C. § 1182(d)(5).

83. When the government makes the decision to parole a noncitizen under 8 U.S.C. § 1182(d)(5), it necessarily determines that the individual "present[s] neither a security risk nor a risk of absconding[.]" 8 C.F.R. § 212.5(b); *see also Raga Alemán v. Homan, et al.*, No. 1:26-CV-00529-DAE, 2026 WL 752450, at *5 (W.D. Tex. Mar. 16, 2026).

II. Constitutional Framework

84. Liberty from detention is the rule, rather than the exception, under American jurisprudence. 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. "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. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

85. "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law." *Shaughnessy v. U.S. ex rel. Mezei*, 345 U.S. 206, 212 (1953).

86. The Supreme Court has stated "that government detention violates [the Due Process] Clause unless the detention is ordered in a *criminal* proceeding with adequate procedural protections...or, in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks and citation omitted) (emphasis in original).

87. The Supreme Court has recognized that an individual released on parole has a protected liberty interest in their continued freedom:

> Subject to the conditions of his parole, he can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life. Though the State properly subjects him to many restrictions not applicable to other citizens, his condition is very different from that of confinement in a prison. He may have been on parole for a number of years and may be living a relatively normal life at the time he is faced with revocation. The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions.

Morrissey v. Brewer, 408 U.S. 471, 482 (1972) (footnotes omitted).

88. A number of courts in this circuit have recognized that an individual released into the country in the immigration context has a liberty interest in remaining out of custody. *See, e.g.*, *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 686 (W.D. Tex. 2025) ("once released from immigration custody, noncitizens acquire a protectable liberty interest in remaining out of custody on bond") (internal quotation marks and citation omitted); *Benitez Pena v. Bondi, et al.*, No. 1:26-CV-429-RP, 2026 WL 751967, at *3 (W.D. Tex. Mar. 13, 2026) (individual paroled into the country under 8 U.S.C. § 1182(d)(5) had a constitutional liberty interest in continued freedom from detention); *Marceau v. Noem*, No. EP-26-CV-237-KC, 2026 WL 368953, at *1 (W.D. Tex. Feb. 9, 2026) ("[A] person may obtain a liberty interest through their presence in the country, particularly where that presence is with the express permission of the Government."); *Rodriguez v. Bondi*, No. EP-26-CV-00292-DB, 2026 WL 523055, at *2 (W.D. Tex. Feb. 25, 2026) ("Because the Government released Petitioner and permitted him to live in the United States for over three years, they cannot revoke that liberty without an individualized determination of the need to do so."); *Ceballos de Parababi, Petr., v. Warden, Houston Contract Detention Facility, et al.*, No. CV 4:26-2563, 2026 WL 2255255, at *2 (S.D. Tex. Aug. 5, 2026) (individual who lived on her own recognizance in the United States for nearly five years "has a protected liberty interest under the Due Process Clause[]"); *Ramirez Navarro v. Warden, Houston Contract Detention Ctr.*, No. CV 4:26-2228, 2026 WL 2187709, at *2 (S.D. Tex. July 29, 2026); *Perozo-Mata v. Blanche*, No. 4:26-CV-05679, 2026 WL 2195373, at *2 (S.D. Tex. July 27, 2026).

89. In *Benitez Pena*, 2026 WL 751967, at *1, the petitioner, a Honduran national, entered the United States in 2022 and was paroled into the country under 8 U.S.C. § 1182(d)(5). His parole expired in 2023. *Id.* In January 2026, he and his father were stopped while driving, and the petitioner was detained without explanation or a hearing. *Id.* Petitioner challenged his detention through a writ of habeas corpus on statutory and constitutional grounds. *Id.* The court found that the petitioner's statutory claim was foreclosed by *Buenrostro-Mendez,* 166 F.4th 494, *petition for cert. filed*, No. 26-43, but it noted that *Buenrostro* did not address the petitioner's constitutional claims. *Id.* at *2. Importantly, the *Benitez Pena* court found that, even though the petitioner's parole had expired, he still had a "liberty interest in his freedom from detention." *Id.* at *3 ("the expiration of Petitioner's parole under 8 U.S.C. 1182(d)(5)(A) does not override or diminish the constitutional concern of Petitioner's liberty interest in his freedom from detention."). The court held that the petitioner's detention violated the due process clause and ordered his immediate release. *Id.* at *4-5.

90. In *Ghughunishvili v. Trump, et al.*, ECF No. 13, Memorandum Order, 1, No. 3:26-cv-00086-JE-CBW (W.D. La. March 20, 2026), the petitioner, a Georgian national, entered the United States in December 2023 and was released on her own recognizance. She complied with her release conditions, pursued an asylum claim, and resided in New York until December 2025, when she was re-arrested at an ICE check-in. *Id.* at 1-2. She brought a petition for writ of habeas corpus, which the court granted and ordered her immediate release. *Id.* at 6. The court found that "her re-detention without a hearing or other discretionary view violates the due process guarantees of the Constitution. . . [O]nce released from immigration custody, Ghughunishvili acquired a

protectable liberty interest in remaining out of custody on bond, such that she was entitled to a pre-deprivation hearing before revocation." *Id.* at 3.

91. In *Perozo-Mata v. Blanche*, the petitioner was a Venezuelan citizen who was paroled into the country under 8 U.S.C. § 1182(d)(5) in 2021. 2026 WL 2195373, at *1. Their parole expired on April 11, 2022. *Id.* The petitioner applied for Temporary Protected Status and submitted an application for asylum and withholding of removal the same year. *See id.* They were detained on April 17, 2026, after living in the United States "with the Government's knowledge since her arrival in April of 2021." *Id.* The court held that the petitioner's detention violated her due process rights. *Id.* at *2. Specifically, the court noted:

> ICE's re-detention of a noncitizen who was previously released on an Order of Release on Recognizance (ORR) or similar release order without a pre-deprivation hearing or proof of changed individual circumstances demonstrating that the noncitizen was now a flight risk or danger to the community violated the noncitizen's right to procedural due process. . . Release on parole, like release on an ORR, necessarily reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.

Id. at *2 (internal quotation marks and citation omitted).

92. Numerous courts in this circuit have noted that petitioners' due process claims are not foreclosed by the Fifth Circuit's decision in *Buenrostro-Mendez*, 166 F.4th 494, *petition for cert. filed*, (U.S. July 10, 2026) (No. 26-43). *See, e.g.*, *Ceballos de Parababi*, 2026 WL 2255255, at *1-2; *Lara v. Warden, Montgomery Processing Ctr.*, No. CV 4:26-2141, 2026 WL 2187702, at *1 (S.D. Tex. July 29, 2026) ("The Court does not base this opinion on the statutory text but instead turns to the petitioner's claim that her current detention violates her rights under the Due Process Clause."); *Benitez Pena*, 2026 WL 751967, at *2; *Rodriguez*, 2026 WL 523055, at *2 n. 2; *Marceau*, 2026 WL 368953, at

*2 ("However, the *Buenrostro-Mendez* court did not reach the due process question, confining its analysis and holding to statutory interpretation."); *Juarez-Aguilar v. Noem, et al.*, No. SA-26-CA-00987-XR, 2026 WL 693057, at *4 (W.D. Tex. Mar. 10, 2026); *Singh Singh v. Bondi*, No. SA-26-CA-00541-XR, 2026 WL 752457, at *4 (W.D. Tex. Mar. 16, 2026).

III. The Prudential Exhaustion Requirement Should Be Excused

93. "A person seeking habeas relief must first exhaust available administrative remedies." *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). However, "the exhaustion requirement in [the immigration] context is likely prudential, not jurisdictional." *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, 2026 WL 81679, at *3 (N.D. Tex. Jan. 9, 2026). Courts may excuse the exhaustion requirement where exhaustion would be "'an exercise in futility.'" *Id.* (quoting *Garner v. United States Dep't of Lab.*, 221 F.3d 822, 825 (5th Cir. 2000)). Moreover, "[a] failure to exhaust administrative remedies may be excused when the claimant advances a constitutional challenge unsuitable for determination in an administrative proceeding[.]" *Garner*, 221 F.3d at 825.

94. Waiver of the exhaustion requirement is appropriate here. Petitioner has already requested a bond hearing, which has been scheduled for September 4, 2026, before the Immigration Court in Tacoma, WA.

95. In light of his transfer from Washington to Texas, and the accompanying change in Circuit law, Petitioner recognizes that the government may now argue that he is no longer eligible for a bond hearing. To the extent Petitioner's scheduled bond hearing does not proceed on September 4, 2026, he should not be required to seek another bond hearing

before an Immigration Court in El Paso, Texas, before his habeas petition may be adjudicated.

96. First, exhaustion would be futile. Petitioner is aware that Immigration Judges across the country uniformly find that they do not have jurisdiction to conduct a bond hearing under Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025). *See Singh Singh*, 2026 WL 752457, at *2 ("Recent district court decisions have found that exhaustion would be 'an exercise in futility' where the Board of Immigration Appeals ('BIA') has recently issued binding precedent adverse to the petitioner's statutory claim, such that there is little prospect the BIA would reconsider its position."). Moreover, waiver of the exhaustion requirement is also appropriate because Petitioner raises constitutional challenges to his detention. *See id.*; *see also Lopez-Arevelo*, 801 F. Supp. 3d at 680.

CLAIM FOR RELIEF

COUNT ONE
Violation of Fifth Amendment Right to Substantive Due Process

97. Petitioner repeats and realleges each allegation of this petition here.

98. Petitioner acquired a liberty interest in remaining free from detention after he was released pursuant to 8 U.S.C. § 1182(d)(5)(A). *See Benitez Pena*, 2026 WL 751967, at *3-4.

99. Petitioner's constitutional liberty interest was infringed when he was detained on August 14, 2026, without any indication or finding that he was a flight risk or a danger to the community. That infringement continues to this date, as Petitioner has been in detention since August 14, 2026.

100. There is no "special justification" here that "outweighs [petitioner's] constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks and citation omitted).

COUNT TWO
Violation of Fifth Amendment Right to Procedural Due Process

101. Petitioner repeats and realleges each allegation of this petition here.

102. "In *Mathews v. Eldridge*, the Supreme Court adopted a balancing test for procedural due process." *Sys. Contractors Corp. v. Orleans Par. Sch. Bd.*, 148 F.3d 571, 574-75 (5th Cir. 1998) (footnote omitted). "Under the test articulated in *Mathews v. Eldridge*, the specific process due in a particular situation is found by balancing three factors: (1) the private interest that will be affected by the official's actions, (2) the risk of an erroneous deprivation of that private interest and the probable value, if any, that additional procedural protections would provide, and (3) the interest that the government seeks to achieve." *Id.* at 575 (footnote omitted).

103. The first factor favors Petitioner. "A noncitizen's interest in his freedom pending the conclusion of his removal proceedings deserves great 'weight and gravity.'" *Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 700 (W.D. Tex. 2025) (citing *Addington v. Texas*, 441 U.S. 418, 427 (1979)). As one court in this circuit stated, a petitioner released on recognizance and re-detained "acquired a protectable liberty interest in remaining out of custody on bond[.]" *Ghughunishvili*, ECF No. 13, at 3, No. 3:26-cv-00086-JE-CBW. That principle applies with equal force here, where the Petitioner was released under conditions of humanitarian parole. *See Benitez Pena*, 2026 WL 751967, at *3-4.

104. The second factor– the risk of an erroneous deprivation and the value of additional safeguards– also favors Petitioner, as he has not received any notice of the reasons for his

detention,[3] nor has he had any opportunity to contest his detention. Moreover, it does not appear that the government engaged in any meaningful assessment of his flight risk or dangerousness before taking him into custody. One of the "fundamental principles that inhere in 'due process of law' . . . is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends[.]" *Yamataya v. Fisher*, 189 U.S. 86, 100-01 (1903). "Without an individualized hearing, there is substantial risk that noncitizens with a substantial presence in the United States who pose neither flight risk nor danger to the community will be detained." *Singh Singh*, 2026 WL 752457, at *13. That is especially true where, as here, the Petitioner was already released on humanitarian parole at the border, which required a determination by the government "that he does not present a flight or security risk." *Id.*

105. The third factor likewise favors Petitioner. The government's interest in "removing deportable noncitizens, ensuring compliance with Orders of Supervision, and protecting the public . . . would be adequately served through individualized bond hearings or other detention proceedings that assess flight risk and dangerousness on a case-by-case basis." *Id.* at *14 (internal quotation marks and citation omitted). Any interest in detaining Petitioner, who has already been paroled into the country, is minimal, as the initial decision to parole him necessarily involved a determination that he is not dangerous or a flight risk. *See Raga Alemán*, 2026 WL 752450, at *5. In the years since Petitioner was paroled into this country, he has further shown that he poses neither a danger nor a flight

[3] To the extent that Respondents proffer Petitioner's lack of an updated Iranian passport or purported missed ISAP appointments as reasons for his detention, Petitioner challenges these reasons as illegitimate. First, as stated *supra*, Petitioner has not renewed his Iranian passport due to fear that doing so would jeopardize his safety. Moreover, Petitioner does not believe that he has missed any ISAP appointments.

risk: he has no criminal record, he appeared for all of his immigration court appearances, and he is pursuing an appeal of his removal order. Moreover, prior to his re-detention in 2026, he was living in Washington State, with his wife and stepdaughter, who are Lawful Permanent Residents.

106. For these reasons, detaining Petitioner without providing notice and a meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

107. Immediate release is an appropriate remedy for Respondents' violation of Petitioner's procedural due process rights. *See, e.g.*, *Ghughunishvili*, ECF No. 13, at 6, No. 3:26-cv-00086-JE-CBW (ordering release to remedy procedural due process violation); *Juarez-Aguilar*, 2026 WL 693057, at *14-15 (same); *Raga Alemán*, 2026 WL 752450, at *6 (same); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. . . The typical remedy for such detention is, of course, release.").

COUNT THREE
Violation of the INA[4]

108. Petitioner repeats and realleges each allegation of this petition here.

109. Respondents lack statutory authority to detain Petitioner under 8 U.S.C. § 1225(b)(2)(A).

110. To whatever extent Respondents may proffer a right to detain Petitioner, Petitioner's detention is governed by 8 U.S.C. § 1226(a).

[4] Petitioner recognizes that *Buenrostro-Mendez,* 166 F.4th at 507-508, *petition for cert. filed*, No. 26-43, foreclosed statutory challenges to his detention. Petitioner states this claim only in order to preserve it for further review. *See supra*, note 2.

111. If the Court finds that immediate release is not appropriate, Petitioner is eligible for a bond hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter;

(2) Order that Petitioner shall not be transferred outside the Western District of Texas pending resolution of the petition;

(3) Order that Petitioner should not be removed from the United States pending resolution of the petition;

(4) Require Respondents to provide 72 hours' written notice to Petitioner's counsel before any transfer;

(5) Direct Respondents to confirm Petitioner's precise location and identify the official exercising immediate physical custody over petitioner;

(6) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(7) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

(8) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately; or, if the Court finds that Respondent is not eligible for immediate release, order that Respondents provide Petitioner with a bond hearing before an Immigration Judge within seven days, at which the government bears the burden of proof to show by clear and convincing evidence that Petitioner is a flight risk or a danger to the

community, and at which the Immigration Judge must consider non-bond alternatives to detention or, if setting a bond, the petitioner's ability to pay; and

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

Dated: August 28, 2026

Respectfully submitted,

/s/ Andrew Heinrich
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**Applying for admission pro hac vice; application for full admission pending*

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. 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 this 28th day of August, 2026.

s/ Andrew Heinrich
Andrew Heinrich