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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALI KANOUNO BABAE,

Petitioner,

v.

SERGIO ALBARRAN, Field Office Director of the San Francisco Immigration and Customs Enforcement Office; DAVID J. VENTURELLA, Acting Director of United States Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security; TODD BLANCHE, Attorney General of the United States, acting in their official capacities,

Respondents.

CASE No.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. This is a petition for a writ of habeas corpus. Petitioner ALI KANOUNO BABAE is a 40-year-old national of Libya who has lived in the United States for 11 years, having lawfully entered the United States in 2015 as a student. In 2017, Petitioner affirmatively applied for asylum with the United States Citizenship and Immigration Service (USCIS). That application remains pending. To his knowledge, he has no outstanding order of removal and has never been placed in removal proceedings. He seeks immediate release from unlawful immigration detention and an order barring his re-detention without a hearing before a neutral decisionmaker.

2. In 2017, Petitioner affirmatively applied for asylum with USCIS. As part of the application process, Petitioner had his biometrics captured at an Application Service Center (ASC) and received an Employment Authorization Document ("EAD" or "work permit"). Petitioner had been renewing his EAD consistently since his initial application.

3. Petitioner has a serious medical condition, Sinus Oral Communication, an abnormal opening or passageway that connects the mouth to the sinus. If left untreated, bacteria can travel from the mouth to the sinus and cause serious harm. Petitioner's previous attempts to repair were unsuccessful and now he is scheduled for surgical repair next week.

4. Petitioner seeks relief on two independent grounds. **First**, his procedural due process rights were violated when the government detained him today, after deciding not to detain him over many years of interactions, including issuing multiple EADs. When he was arrested on today's date at his ASC biometrics appointment, that arrest violated due process because the government did not provide him a pre-deprivation hearing before a neutral decisionmaker. **Second,** Petitioner's arrest at his ASC biometrics appointment violates substantive due process because the government may not detain a person who is neither a danger nor a flight risk. The record clearly shows that Petitioner is neither a danger nor a flight risk, and, therefore, his detention violates substantive due process.

5. Petitioner requests that this Court order his immediate release. To preserve the Court's jurisdiction, Petitioner requests that the Court order the government not to transfer him

outside this District or to remove him for the duration of this proceeding.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701–706 (Administrative Procedure Act).

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district, at the ICE facility located at 630 Sansome Street, San Francisco, California, and because a substantial part of the events giving rise to these claims occurred in this district.

PARTIES

8. Petitioner ALI KANOUNO BABAE is a national of Libya. He is presently in ICE custody at 630 Sansome Street, San Francisco, California.

9. Respondent Sergio Albarran is the Field Office Director of the San Francisco Immigration and Customs Enforcement Office. He is responsible for the administration of the immigration laws and the execution of immigration enforcement and detention policy within ICE's San Francisco Area of Responsibility, including the detention of Petitioner. He maintains an office and regularly conducts business in this district. He is sued in his official capacity.

10. Respondent David J. Venturella is the Acting Director of ICE. In that capacity, he is responsible for the administration and enforcement of the immigration laws of the United States; routinely transacts business in this District; and is legally responsible for any effort to detain and remove Petitioner. He is sued in his official capacity.

11. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security and has ultimate authority over DHS. In that capacity and through his agents, he has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for any effort to detain and remove Petitioner. He is sued in his official capacity.

12. Respondent Todd Blanche is the Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through his agents, he is responsible for overseeing the implementation and enforcement of the federal immigration laws, a responsibility delegated in part to the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals. He is sued in his official capacity.

EXHAUSTION

13. There is no requirement to exhaust because no other forum exists in which Petitioner can raise the claims herein. There is no statutory exhaustion requirement prior to challenging the constitutionality of an arrest or detention, or challenging a policy under the Administrative Procedure Act. Prudential exhaustion is not required because it would be futile, and Petitioner will "suffer irreparable harm if unable to secure immediate judicial consideration of [his] claim." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Courts have confirmed that a noncitizen need not exhaust administrative remedies before the Board of Immigration Appeals before bringing a § 2241 habeas petition challenging detention. *See Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025). Any further exhaustion requirement would be unreasonable.

LEGAL BACKGROUND

A. The Constitution Protects Noncitizens Like Petitioner from Arbitrary Arrest and Detention.

14. The Constitution establishes due process rights for "all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)). These rights are both substantive and procedural.

15. ***First***, "[t]he 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 governmental objective," *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

16. These protections extend to noncitizens facing detention, as "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, "[f]reedom 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*, 533 U.S. at 690; *see also Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

17. Substantive due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92; *see also Demore v. Kim*, 538 U.S. 510, 519–20, 527–28, 531 (2003).

18. ***Second***, the procedural component of the Due Process Clause prohibits the government from imposing even permissible physical restraints without adequate procedural safeguards. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even where the liberty at issue is lawfully revocable. *See Young v. Harper*, 520 U.S. 143, 152 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972).

B. A Decision Not to Detain a Noncitizen Creates a Protected Liberty Interest in Remaining Free.

19. A noncitizen whom the government has chosen to release—*or* chosen not to detain—has a protected liberty interest in remaining free. *See Kharitonova v. Albarran*, No. 26-cv-01362-JSC, 2026 WL 531441, at *2 (N.D. Cal. Feb. 25, 2026), *appeal docketed*, No. 26-2554 (9th Cir. Apr. 24, 2026) ("Although the government did not detain and then release her, it made a decision not to detain her in the first place; Petitioner thus has the same liberty interest in her continued freedom as an individual initially detained."); *Garcia v. Albarran*, No. 26-CV-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026) (granting release on temporary

restraining order on due process theory where petitioner had not previously been detained: "In this case, the Court finds that Mr. Garcia acquired a protected liberty interest in his continued release where the respondents had chosen not to detain the petitioner upon expiration of his TPS status.") (internal quotations and citations omitted); *Njafuh v. Andrews*, No. 26-cv-03436-DAD-AC, 2026 WL 1346860, at *1 (E.D. Cal. May 14, 2026) (noncitizen "acquired a protected liberty interest in his continued release where the respondents had chosen not to detain the petitioner upon expiration of the visa"); *Villanueva-Montanez v. Lyons*, No. 2:26-cv-00954-DAD-CKD, 2026 WL 797930, at *1 (E.D. Cal. Mar. 20, 2026) (granting a temporary restraining order on the same reasoning); *Amro Yousry Abdeltawab v. Armant*, No. EDCV 26-01520-MWF (DTB), 2026 WL 1045564, at *1 (C.D. Cal. Apr. 13, 2026) (granting a preliminary injunction, because "even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he or] she has a protected liberty interest in remaining out of custody. . . . That principle extends to those like Petitioner who have never been in immigration custody in the first place due to years of deliberate acquiescence by Respondents.") (internal quotations and citations omitted).

20. Numerous courts have reached the same conclusion in recent immigration-enforcement cases, recognizing that the government's decision not to detain a noncitizen gives rise to a protected liberty interest in remaining free—even where the noncitizen was never taken into custody in the first place. *See, e.g., Kharitonova v. Albarran*, No. 26-cv-01362-JSC, 2026 WL 531441, at *2; *Garcia v. Albarran*, No. 26-CV-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026); *Villanueva-Montanez v. Lyons*, No. 2:26-cv-00954-DAD-CKD, 2026 WL 797930 (E.D. Cal. Mar. 20, 2026); *Mayank v. Robbins*, No. 1:26-cv-02059-DAD-AC, 2026 WL 788128 (E.D. Cal. Mar. 20, 2026); *Amro Yousry Abdeltawab v. Armant*, No. EDCV 26-01520-MWF (DTB), 2026 WL 1045564 (C.D. Cal. Apr. 13, 2026).

C. Detention of a Noncitizen Arrested in the Interior Is Governed by 8 U.S.C. § 1226(a).

21. The detention of a noncitizen arrested in the interior of the United States is governed by 8 U.S.C. § 1226(a), which requires an individualized custody determination as to

whether the noncitizen "pose[s] a danger to property or persons" or is unlikely "to appear for any future proceeding." 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *see Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020). If ICE detains a noncitizen under § 1226(a), the individual may seek a bond redetermination hearing before an immigration judge. *See* 8 C.F.R. § 1003.19.

22. Courts have repeatedly held that ICE may not bypass § 1226(a)'s individualized-determination requirement by invoking § 1225(b)(2)(A) to summarily detain long-resident noncitizens arrested in the interior. As a court in this district recently explained:

> Mr. Garcia has been in the United States since childhood, has lived here for decades, and was arrested in Northern California on the way to work. Courts addressing similar circumstances have repeatedly held that detention in such cases is governed by § 1226(a), not § 1225(b)(2), *and that due process demands immediate release and a hearing prior to any further detention.*

Garcia v. Albarran, No. 26-CV-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026) (emphasis added); *see also Cuy Comes v. DeLeon*, No. 25-cv-09283 (AT), 2025 WL 3206491, at *3–5 (S.D.N.Y. Nov. 14, 2025); *Bernal v. Albarran*, No. 25-CV-09772-RS, 2025 WL 3281422, at *6 (N.D. Cal. Nov. 25, 2025), *appeal dismissed sub nom. Hernandez Bernal v. Albarran*, No. 26-484, 2026 WL 1133189 (9th Cir. Feb. 25, 2026); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025) (holding that a Mexican national who had resided in the United States for over 25 years was subject to discretionary detention under § 1226(a), not mandatory detention, and that his detention violated due process); *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025) (granting a preliminary injunction and ordering immediate release where the noncitizen was likely to succeed on his claim that he was not subject to mandatory detention).

FACTUAL ALLEGATIONS

A. Petitioner's Background and Ties to the United States.

23. Petitioner was born in Libya on [redacted] He entered the United States in or around 2015 and has lived continuously in the United States for more than eleven years, principally in California.

24. Petitioner attends mosque every Friday as well as assisting with cleaning, taking

care of the plants, and other maintenance.

25. Petitioner received an EAD and works as a driver for EverDriven and Uber.

26. In 2023, Petitioner completed an associate degree in science and math from Foothills College. In 2015, he attended EC San Diego La Jolla.

27. Petitioner has a serious medical condition, Sinus Oral Communication, an abnormal opening or passageway that connects the mouth to the sinus. If left untreated, bacteria can travel from the mouth to the sinus and cause serious harm. Petitioner's previous attempts to repair were unsuccessful and now he is scheduled for surgical repair next week.

28. To Petitioner's knowledge, he has no outstanding order of removal and has never been placed in removal proceedings.

29. At the Sansome Street detention center today, an ICE agent told Petitioner and his legal representative that Petitioner has a pending felony charge; however the government refused to provide information or documentation describing what this felony charge might be. And Petitioner states that "I am now aware of any pending charge." Petitioner does appear to have a misdemeanor conviction for Cal. PC 32/550(A)(1) that has since received conviction relief pursuant to Cal. PC 1203.425.

30. Petitioner is represented by immigration counsel and has affirmatively applied for asylum in the United States.

31. On October 13, 2026, petitioner appeared for his biometrics appointment at the USCIS ASC on 250 Broadway, San Francsico, CA, as directed. He was detained.

32. Petitioner's appearance at the USCIS ASC, as directed, confirms that he is not a flight risk. He is now being deprived of his liberty without any permissible justification.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process — Detention Without a Pre-Deprivation Hearing)

33. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

34. As evidenced by Petitioner's affirmative application for asylum in 2017 and the government's repeated issuance of an EAD, the government for many years chose *not* to detain Petitioner, despite having repeated interactions with him. Rather, the government permitted Petitioner to remain in the United States where he attended school and lawfully engaged in employment. That decision created a constitutionally protected liberty interest in his continued freedom. A noncitizen whom the government has decided not to detain has "the same liberty interest in [his] continued freedom as an individual initially detained." *Kharitonova*, 2026 WL 531441, at *2; *see also Garcia v. Albarran*, No. 26-CV-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026); *Njafuh*, 2026 WL 1346860, at *1 (noncitizen acquired a protected liberty interest in his continued release where the government had chosen not to detain him); *Mayank v. Robbins*, No. 1:26-cv-02059-DAD-AC, 2026 WL 788128, at *1 (E.D. Cal. Mar. 20, 2026) (rejecting the government's argument that a noncitizen who was never previously detained lacks a liberty interest in his continued freedom); *Villanueva-Montanez v. Lyons*, No. 2:26-cv-00954-DAD-CKD, 2026 WL 797930, at *1 (E.D. Cal. Mar. 20, 2026); *Amro Yousry Abdeltawab v. Armant*, No. EDCV 26-01520-MWF (DTB), 2026 WL 1045564, at *1 (C.D. Cal. Apr. 13, 2026).

35. The government cannot deprive Petitioner of that liberty interest without first affording him the process the Constitution requires. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon*, 494 U.S. at 127.

36. Accordingly, "[i]n the context of immigration detention, it is well-settled that 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." *Hernandez*, 872 F.3d at 990 (cleaned up). For such a hearing to comply with due process, the government must bear the burden of demonstrating, by clear and convincing evidence, that the noncitizen poses a flight risk or a danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785–86 (9th Cir. 2024).

37. Here, Petitioner received no process at all. After many years of interactions with the Petitioner, the government took him into custody today with no pre-deprivation hearing. That violated due process.

38. Courts in this District have repeatedly applied these procedural due process principles to noncitizens in Petitioner's position, ordering release or enjoining re-detention absent a hearing before a neutral decisionmaker. *See e.g., Aviles-Mena v. Kaiser*, 2025 WL 2578215, at *4; *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1033 n.2 (N.D. Cal. 2025) (collecting cases).

39. Petitioner has a profound personal interest in his liberty. Because he received no procedural protections, the risk of erroneous deprivation is high. And the government has no legitimate interest in detaining Petitioner without a hearing; bond hearings are conducted as a matter of course in immigration proceedings. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020). Petitioner's detention without a pre-deprivation hearing therefore violated the procedural component of the Due Process Clause of the Fifth Amendment.

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process — Detention)

40. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

41. The Due Process Clause of the Fifth Amendment protects all "person[s]" from the deprivation 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*, 533 U.S. at 690.

42. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See id.*; *see also Bernal v. Albarran*, No. 25-CV-09772-RS, 2025 WL 3281422, at *6 (N.D. Cal. Nov. 25, 2025) ("the government may

never detain an individual that enjoys the protection of the Due Process Clause without a legal basis to do so"); *Lopez-Campos v. Raycraft*, 797 F. Supp. 3d 771 (E.D. Mich. 2025) (detention of long-resident noncitizen violated the Fifth Amendment).

43. Petitioner is neither a flight risk nor a danger to the community. Respondents' detention of Petitioner is therefore unjustified and unlawful, and violates the Due Process Clause of the Fifth Amendment.

44. Moreover, Petitioner's detention is punitive because it bears no "reasonable relation" to any legitimate government purpose. The apparent purpose of Petitioner's detention is "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons." *See Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

THIRD CLAIM FOR RELIEF

Violation of the Immigration and Nationality Act

(Detention Governed by 8 U.S.C. § 1226(a), Not § 1225(b)(2)(A))

45. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs as if fully set forth herein.

46. To the extent Petitioner may lawfully be detained at all, his detention is governed by 8 U.S.C. § 1226(a), not § 1225(b)(2)(A). Petitioner is a long-resident noncitizen arrested in the interior of the United States, and courts have repeatedly held that detention in such circumstances proceeds under § 1226(a). *See Garcia v. Albarran*, No. 26-CV-04839, 2026 WL 1454512, at *2 (N.D. Cal. May 21, 2026) ("Mr. Garcia has been in the United States since childhood, has lived here for decades, and was arrested in Northern California on the way to work. Courts addressing similar circumstances have repeatedly held that detention in such cases is governed by § 1226(a), not § 1225(b)(2), and that due process demands immediate release and a hearing prior to any further detention."); *Cuy Comes v. DeLeon*, No. 25-cv-09283 (AT), 2025 WL 3206491, at *3–5 (S.D.N.Y. Nov. 14, 2025); *Bernal*, 2025 WL 3281422, at *6; *Lopez-Campos*, 797 F. Supp. 3d 771; *Lepe v. Andrews*, 801 F. Supp. 3d 1104 (E.D. Cal. 2025).

47. Section 1226(a) and its implementing regulations require ICE to make an individualized custody determination as to whether the noncitizen poses a danger to persons or

property or is unlikely to appear for future proceedings. 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8); *Johnson v. Guzman Chavez*, 594 U.S. 523, 527 (2021); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020). A noncitizen detained under § 1226(a) may seek a bond redetermination hearing before an immigration judge. *See* 8 C.F.R. § 1003.19.

48. No such individualized determination was made here. The government did not afford Petitioner notice or an opportunity to be heard, and made no determination that he poses a flight risk or a danger before detaining him. There is "nothing to suggest that DHS exercised any discretion at all in detaining [Petitioner] . . . in contravention of the basic procedural requirements of § 1226(a)." *Cuy Comes*, 2025 WL 3206491, at *4 (citation omitted). Petitioner's detention therefore violates the INA and its implementing regulations.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody immediately;

3. Declare that Petitioner's arrest and detention violate the Fourth and Fifth Amendments to the United States Constitution and the Immigration and Nationality Act and its implementing regulations;

4. Enjoin Respondents from transferring Petitioner outside this District or removing Petitioner pending these proceedings;

5. Enjoin Respondents from re-detaining Petitioner unless his detention is ordered at a custody hearing before a neutral arbiter at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or a danger to the community;

6. Award Petitioner his costs and reasonable attorneys' fees in this action as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412;

7. Return to Petitioner all of Petitioner's personal property that the government has in its possession; and

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

Dated: October 13, 2026

Respectfully submitted,
/s/ Jeremiah Johnson
JEREMIAH JOHNSON (CA SBN #227275)
Director
Habeas Institute, U.C. Law San Francisco

Attorney for Petitioner

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

I, Jeremiah Johnson, submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on October 13, 2026, at San Francisco, California.

/s/ Jeremiah Johnson
Jeremiah Johnson
Attorney for Petitioner