

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----X	:	
Gurpreet Singh SANDHU (A# 078-834-388),	:	
	:	
<i>Petitioner,</i>	:	Case No. 2:25-cv-14607
	:	
v.	:	
	:	
John TSOUKARIS, in his official capacity as Newark, NJ	:	
Field Office Director, Immigration and Customs	:	
Enforcement, Enforcement and Removal Operations;	:	
	:	
Warden, Delaney Hall Detention Facility, and	:	
	:	
Kristi NOEM, in her official capacity	:	
as United States Secretary of Homeland Security;	:	
	:	
<i>Respondents.</i>	:	
-----X	:	

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

1. Petitioner, Gurpreet Singh Sandhu (“Petitioner” or “Mr. Sandhu”), by his undersigned counsel, respectfully petitions this Honorable Court to order Respondents to release him from his unlawful confinement in the Delaney Hall Detention Facility, where he is currently confined at the direction of the Newark, New Jersey Field Office of Immigration and Customs Enforcement Enforcement and Removal Operations (“ICE ERO”). In support of this Petition, Petitioner alleges as follows:

JURISDICTION

2. This Court has habeas corpus jurisdiction pursuant to 28 U.S.C. § 2241 and Art. 1, § 9, Cl. 2 of the United States Constitution (the “Suspension Clause”), as Petitioner is subject to immediate detention and custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws or treaties of the United States.

3. This Court may also exercise jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) which provides, “(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises pursuant to the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*, in conjunction with the Administrative Procedures Act (“APA”), 5 U.S.C. § 701 *et seq.*, and the regulations implemented pursuant thereto (Title 8 of the Code of Federal Regulations (“C.F.R.”)).

4. This Court may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

5. To the extent that any portion of 8 U.S.C. § 1252 would preclude the exercise of jurisdiction under the above statutory provisions, it would be unconstitutional as applied to Petitioner, because it would violate the Suspension Clause and Petitioner’s right under the Fifth Amendment to the U.S. Constitution not to be deprived of liberty without due process of law.

VENUE

6. Venue is proper in this District because, at the time this petition is being filed, Petitioner is detained in the Delaney Hall Detention Facility, located at 451 Doremus Avenue, Newark, NJ 07105, within this District, and because Respondent Tsoukaris, in his official capacity as Director of the Newark, New Jersey Field Office of ICE ERO, is located within this District.

PARTIES

7. Petitioner, Gurpreet Singh Sandhu, is a native and citizen of India. He is the beneficiary of a pending Form I-130 Petition for Alien Relative filed by his wife, Mandeep Kaur. He

is currently confined in the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, NJ 07105, at the direction of the Newark, New Jersey ERO Field Office and Respondent Tsoukaris.

8. Respondent John Tsoukaris is the Field Office Director of the Newark, New Jersey Field Office of ICE ERO, located at 970 Broad Street, 11th Floor, Newark, NJ 07102. We would submit that he is currently the immediate custodian of Petitioner, because he is the official with the authority to direct the release of Petitioner. On information and belief, he will retain the authority to direct the release of Petitioner even if and after Petitioner is transferred to a detention facility other than Delaney Hall.
9. The Warden of the Delaney Hall Detention Facility is, in the alternative, arguably the immediate custodian of Petitioner. He or she is sued by title because the name of this Warden, if there is indeed such a person, is not known to the undersigned. If such a person exists, then he or she would be, in his or her official capacity, located at the Delaney Hall Detention Facility, 451 Doremus Avenue, Newark, NJ 07105.
10. Respondent Kristi Noem is the United States Secretary of Homeland Security. She is responsible for the administration of the Department of Homeland Security (“DHS”) and the implementation and enforcement of the immigration laws of the United States. In that capacity, she oversees ICE ERO.

V. FACTUAL AND PROCEDURAL BACKGROUND

11. Mr. Sandhu was born in December of 1984 in India. On information and belief, he has resided in the United States since approximately June of 2000, that is, since he was under the age of 16.

12. An I-130 petition filed for Mr. Sandhu by his U.S. citizen stepmother, Kim Hunter, on April 30, 2001, was approved on September 1, 2006. A copy of the approval notice is annexed as **Exhibit A**. (On information and belief, the approval of the I-130 petition was later revoked, but it may still be the basis of an argument that the petition “was approvable when filed,” 8 C.F.R. § 1245.10(a)(1)(A), so as to allow Mr. Sandhu’s adjustment of status on another basis under INA § 245(i), 8 U.S.C. § 1255(i).)
13. Mr. Sandhu married Mandeep Kaur (“Mandeep” or “Ms. Kaur”) in July 2012. A copy of their marriage certificate is annexed as **Exhibit B**. The couple has a U.S. citizen daughter. Until his detention, Mr. Sandhu had been residing with Ms. Kaur and their daughter, although since approximately a year and a half ago, Ms. Kaur had been going back and forth to California to take care of her ill mother and had been relying on Mr. Sandhu to take care of their daughter during her travels. Ms. Kaur’s mother died on May 29, 2025.
14. In September 2012, Mr. Sandhu was placed in removal proceedings by a putative Notice to Appear that charged him as inadmissible under sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i)(I) of the INA. The INA § 212(a)(6)(A)(i) charge was based on being present in the United States without admission or parole, and the INA § 212(a)(2)(A)(i)(I) charge was based on an alleged 2004 criminal conviction that has since been vacated. A copy of the putative Notice to Appear is annexed as **Exhibit C**. Because it did not state a date or time to appear, it would not “stop time” for purposes of cancellation of removal under 8 U.S.C. § 1229b even if Mr. Sandhu had not already been in the United States for ten years (as he had). *See Niz-Chavez v. Garland*, 593 U.S. 155 (2021); *Pereira v. Sessions*, 585 U.S. 198 (2018).

15. On October 4, 2012, Mr. Sandhu was granted release from immigration custody on bond of \$6,000 by order of Immigration Judge Dorothy A. Harbeck. DHS waived appeal, and Mr. Sandhu was released from custody. A copy of the order is annexed as **Exhibit D**.
16. In March of 2015, Mr. Sandhu's U.S. citizen spouse, Ms. Kaur, filed an I-130 Petition for Alien Relative on his behalf. A copy of the receipt notice for that petition is annexed as **Exhibit E**. On information and belief, the petition remains pending.
17. On information and belief, around 2015 or 2016, Mr. Sandhu was granted deferred action by DHS. A copy of the approval notice for his Form I-765 Application for Employment Authorization, showing authorization under code C14, which corresponds to deferred action, *see* 8 C.F.R. § 274a.12(c)(14), with validity from September 16 to May 2017, is annexed as **Exhibit F**.
18. The removal proceedings against Mr. Sandhu were administratively closed by order of the Immigration Judge on June 15, 2016. "Administrative closure is the temporary suspension of a case. Administrative closure removes a case from the immigration court's active calendar until the case is recalendared." 8 C.F.R. § 1003.18(c). The undersigned is not in possession of a copy of the Immigration Judge's June 15, 2016 order, but annexed as **Exhibit G** is a copy of a PDF printout from the EOIR Case Portal regarding Mr. Sandhu's case, indicating that "The Immigration Judge administratively closed the proceedings." The "IJ Decision Date" is indicated as 06/15/2016.
19. On or about May 21, 2025, Mr. Sandhu was taken back into immigration custody by DHS, despite the previous grant of bond to him, and without any prior request by DHS to the Immigration Court to revoke that grant of bond. Ms. Kaur was in California at the

time Mr. Sandhu was detained, and needed to return hurriedly overnight because there was no one else to take care of the couple's daughter.

20. On May 21, 2025, DHS issued Mr. Sandhu a Form I-286 "Notice of Custody Determination" signed by SDDO "STOCKER, J" of the ICE ERO New Jersey Field Office in Newark, NJ. A copy of the Form I-286, as later entered into the record in Mr. Sandhu's bond proceedings before the Immigration Court, is annexed as **Exhibit H**. The Form I-286 indicated that "Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be: Detained by the Department of Homeland Security." **Exhibit H** at 1.
21. The Form I-286 indicated that "You may request a review of this custody determination by an immigration judge." **Exhibit H** at 1. It then requested Mr. Sandhu to "acknowledge receipt of this notification" and provided two options in the form of boxes to tick: either "I **do** request an immigration judge review of this custody determination" or "I **do not** request an immigration judge review of this custody determination." *Id.* Mr. Sandhu understandably selected the former option rather than the latter option. No option was provided on the Form I-286 to indicate that an Immigration Judge had already granted bond. Nor was there a space provided for Mr. Sandhu to write a lengthier explanation or objection rather than ticking one of the two boxes.
22. On information and belief, it does not appear that ICE ERO even considered the relevance of the previous grant of bond to Mr. Sandhu before re-detaining him.
23. Following the new custody redetermination / bond hearing before the Immigration Court that Mr. Sandhu had effectively been forced by the design of the Form I-286 to request if

he did not concede that he should remain detained, Immigration Judge Ramin Rastegar issued an order on July 14, 2025, a copy of which is annexed as **Exhibit I**. The order stated that “The respondent requested a custody redetermination pursuant to 8 CFR § 1236” and that “the respondent’s request for a change in custody status is hereby ordered: Denied, because Respondent is a danger to the community and a flight risk.” **Exhibit I** at 1.

24. Mr. Sandhu, by his undersigned counsel, has filed an appeal of the July 14, 2025 bond denial with the Board of Immigration Appeals (“BIA”), addressing the merits of the bond determination. However, it does not appear that the question of whether DHS was permitted to re-detain Mr. Sandhu in the first instance, before the commencement of the recent bond proceedings in Immigration Court, without a prior request to the Immigration Judge to revoke or otherwise modify the prior bond determination, falls within the jurisdiction of the BIA.
25. This Petition is filed to seek relief from Mr. Sandhu’s unlawful detention by DHS, the illegality of which is not cured by Immigration Judge Rastegar’s post-detention ruling in custody redetermination proceedings—proceedings that should never have been necessary in the first place, given the pre-existing grant of bond to Mr. Sandhu.
26. Petitioner respectfully requests that the Court use its authority under 28 U.S.C. § 2243 to order the Respondents to file a return within three days, unless they can show good cause for additional time. *See* 28 U.S.C. § 2243 (Order to show cause why a petition for a writ of habeas corpus should not be granted should be “returned within three days unless for good cause additional time, not exceeding twenty days, is allowed”).

VI. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Revocation/Disregard of Bond in Violation of Statute – 8 U.S.C. § 1226)

27. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

28. Section 236(a) of the INA, 8 U.S.C. § 1226(a), provides in relevant part that

pending a decision on whether the alien is to be removed from the United States. . . . the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole;

8 U.S.C. § 1226(a).

29. Section 236(b) of the INA, 8 U.S.C. § 1226(b), provides: “The Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b).

30. Immigration Judges are appointees of the Attorney General, *see* 8 U.S.C. § 1101(b)(4), who “act as the Attorney General's delegates in the cases that come before them.” 8 C.F.R. § 1003.10(a).

31. Although the “Attorney General” as used in the INA can sometimes refer to the Secretary of Homeland Security, the best reading of 8 U.S.C. § 1226(a)-(b) is that the “Attorney General” who “may revoke a bond or parole authorized under subsection (a)”, 8 U.S.C. § 1226(b), is the same “Attorney General” (or delegates thereof) who released the alien on that bond pursuant to 8 U.S.C. § 1226(a). The statute should not be read to allow

DHS, rather than a delegate of the Attorney General, to revoke a bond that was granted by a delegate of the Attorney General, rather than by DHS.

32. The BIA concluded in *Matter of Sugay*, 17 I&N Dec. 637, 639-640 (BIA 1981), that what was then 8 C.F.R. § 242.2(c), the predecessor to current 8 C.F.R. § 236.1(c)(9) and 8 C.F.R. § 1236.1(c)(9), authorizes re-detention by the then-INS (now DHS) even in the face of a prior grant of bond by an immigration judge. 8 C.F.R. § 1236.1(c)(9) currently provides:

When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

8 C.F.R. § 1236.1(c)(9); accord 8 C.F.R. § 236.1(c)(9).

33. The BIA has held that it “is bound to uphold agency regulations.” *Matter of Ponce De Leon-Ruiz*, 21 I&N Dec. 154, 158 (BIA 1996); see *Matter of Anselmo*, 20 I&N Dec. 25, 30 (BIA 1989) (“A regulation promulgated by the Attorney General has the force and effect of law as to this Board and immigration judges, and neither has any authority to consider challenges to regulations implemented by the Attorney General....”).

Accordingly, a claim that a regulation violates the governing statute need not be presented to the BIA (or an immigration judge) for exhaustion purposes, even in contexts where exhaustion is otherwise mandatory, because a petitioner “ha[s] no obligation to present the BIA with a challenge it ha[s] no authority to consider.” *Qatanani v. Att’y Gen.*, No. 24-1849, ___ F.4th ___, 2025 WL 1934523, at *10 (3d Cir. July 15, 2025).

34. By re-detaining Petitioner without any prior authorization from an Immigration Judge or other delegate of the Attorney General, despite the prior grant to Petitioner of release on \$6,000 bond in 2012, Respondents violated 8 U.S.C. § 1226(a)-(b).

SECOND CLAIM FOR RELIEF

(Deprivation of Liberty Without Due Process of Law – Fifth Amendment)

35. Petitioner restates and re-alleges the allegations contained in paragraphs 1 through 26 as though fully set forth herein.

36. The Fifth Amendment to the Constitution of the United States provides that

“no person shall . . . be deprived of life, liberty, or property, without due process of law.”

37. Given his extensive ties to the United States, as evidenced by his long residence in this country and his long-pending I-130 petition, Petitioner is entitled to the protection of the Fifth Amendment.

38. Petitioner was not provided with any discernible pre-detention process to determine whether he should be re-detained by DHS despite the 2012 bond order of Immigration Judge Harbeck.

39. Principles of fundamental fairness embodied in the Fifth Amendment’s guarantee of due process do not permit DHS to unilaterally overrule the prior decision of an Immigration Judge that Petitioner was entitled to release on bond, and then place the burden on Petitioner to make a sufficient showing to convince an Immigration Judge to overrule DHS’s unilateral action after the fact.

40. Petitioner should, as a matter of due process, have been provided with a hearing prior to the revocation of his release on bond and his re-detention, even if one assumes for the

sake of argument that the statute permitted his re-detention. *See Ortega v. Bonnar*, 415 F.Supp.3d 963, 969-970 (N.D. Cal. 2019).

41. In the alternative, even if one assumes for the sake of argument that the statute and the Fifth Amendment permitted Petitioner's re-detention without a pre-detention hearing, DHS should at least have considered the relevance of Petitioner's release on bond in deciding whether to re-detain him.
42. Even if one assumes for the sake of argument that the statute and the Fifth Amendment permitted Petitioner's re-detention without a pre-detention hearing, DHS should at least have been required, under these circumstances, to establish by clear and convincing evidence, at a post-detention hearing, that Petitioner was a danger to the community or a flight risk, and that there was compelling good cause to set aside the previous determination granting Petitioner's release on bond. It was not sufficient, as a matter of due process, to afford Petitioner an additional custody re-determination hearing at which he bore the burden to convince an Immigration Judge that DHS had erred in detaining him and that he should be released once again.
43. Petitioner's continued detention under these circumstances constitutes deprivation of liberty without due process of law in violation of the Fifth Amendment.
44. The BIA lacks jurisdiction to adjudicate whether the application of a regulation "comports with the constitutional minimums of due process." *Qatanani*, 2025 WL 1934523 at *10. Thus, even where exhaustion is otherwise mandatory, a Fifth Amendment due process claim attacking the application of a regulation is not subject to any exhaustion requirement. *See id.*

VI. PRAYER FOR RELIEF

45. **WHEREFORE, Petitioner, Gurpreet Singh Sandhu, respectfully prays that the Court:**

- (a) Order that Respondents release Petitioner from custody pursuant to the \$6,000 bond granted to him on October 4, 2012;
- (b) Enjoin Respondents from re-detaining Petitioner unless and until the October 4, 2012 decision ordering Petitioner's release on a \$6,000 bond is properly vacated or revoked by the Immigration Court or an appropriate appellate authority, following a hearing at which DHS bears the burden of proof by clear and convincing evidence;
- (c) Declare that Petitioner's legal and constitutional rights were violated by his May 2025 re-detention in the face of the October 2012 release on bond, and that any similar re-detention in the future, without a prior revocation or vacatur of the October 2012 bond decision by the Immigration Court or an appropriate appellate authority, following a hearing at which DHS bears the burden of proof by clear and convincing evidence, would violate Petitioner's statutory and constitutional rights;
- (d) Grant such other and further relief at law and in equity as justice may require; and
- (e) Grant attorney's fees and costs of Court to Petitioner under the Equal Access to Justice Act.

Respectfully submitted,

/s/ David A. Isaacson
David A. Isaacson
Cyrus D. Mehta & Partners PLLC
One Battery Park Plaza, 9th Floor
New York, NY 10004
Tel: (212) 425-0555
Fax: (212) 425-3282
Email: disaacson@cyrusmehta.com
Attorney for Petitioner

VERIFICATION

David A. Isaacson, pursuant to 28 U.S.C. § 1746, declares under penalty of perjury as follows: I represent the Petitioner in these habeas corpus proceedings. The Petitioner, Gurpreet Singh Sandhu, is being held in detention at the Delaney Hall Detention Facility at the time of filing this Petition. Therefore, he has not been able to appear in my office to sign this Verification. I have discussed this matter with Petitioner and his wife, Mandeep Kaur. I verify that the information contained in the Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief, which is being submitted to the Court contemporaneously herewith, is true and correct to the best of my knowledge and belief.

David A. Isaacson
Attorney for Petitioner

/s/ David A. Isaacson
Cyrus D. Mehta & Partners PLLC
One Battery Park Plaza, 9th Floor
New York, NY 10004
Tel: (212) 425-0555
Fax: (212) 425-3282
Email: disaacson@cyrusmehta.com
Counsel for Petitioner Gurpreet Singh Sandhu

Dated: August 13, 2025