

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JAYESHKUMAR MISTRY,

Petitioner,

v.

ERIC ROKOSKY, In His Official Capacity as
Warden of Elizabeth Contract Detention
Center;

JONATHAN FLORENTINO, Acting Newark
Field Office Director, Enforcement and
Removal Operations, U.S. Immigration and
Customs Enforcement (ICE)

TODD LYONS, Acting Director, U.S.
Immigration and Customs Enforcement (ICE);

KRISTI NOEM, in her Official Capacity,
Secretary of the U.S. Department of
Homeland Security;

Respondents.

Case No.

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

ORAL ARGUMENT REQUESTED

COMES NOW, Petitioner, Jayeshkumar Mistry (“Petitioner” or “Mr. Mistry”), brings this Verified Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; the Immigration and Nationality Act (“INA”) and regulations thereunder; the Administrative Procedure Act; and the Suspension Clause of the Constitution, U.S. Const. Art. I § 9, cl. 2, because he is unlawfully being detained without bond under 8 U.S.C. § 1225.

INTRODUCTION

1. Petitioner, Jayeshkumar Mistry (“Mr. Mistry”), is a citizen and national of India.
2. Mr. Mistry entered the United States on May 18, 2023, after he fled India due to political persecution.
3. Upon entry on May 18, 2023, Mr. Mistry was arrested by Customs and Border Protection (“CBP”) and transported to the Otay Mesa Detention Center in California for further processing under 8 U.S.C. § 1225(b)(1).
4. On May 19, 2023, U.S. Citizenship and Immigration Services (“USCIS”), Asylum Office (“AO”), administered Petitioner’s credible fear interview while he remained detained.
5. On May 19, 2023, the AO found that Petitioner had a positive credible fear in returning to India.
6. On June 3, 2023, The Department of Homeland Security (“DHS”), USCIS issued a Notice to Appear (“NTA”) to Petitioner while he remained detained, stating that he was placed into removal proceedings under section 240 of the Immigration and Nationality Act (“the Act”).
7. On June 15, 2023, the Petitioner, while still detained at the Otay Mesa Detention Center in California, petitioned the San Diego Immigration Court for a bond. That bond, however, was administratively closed.
8. Instead, on June 20, 2023, about one month after his entry and initial detention, DHS granted Mr. Mistry a temporary parole and released him into the United States. DHS also issued Mr. Mistry reporting requirements in Newark, New Jersey.
9. Petitioner’s venue was transferred from the San Diego Immigration Court detained docket to the Newark Immigration Court’s non-detained docket.
10. On or about November 27, 2023, Petitioner filed his Form I-589 application, requesting asylum, withholding, and protection under the Convention Against Torture (“CAT”).
11. On September 30, 2024, Mr. Mistry was issued an Employment Authorization Document

(“EAD”), valid until September 28, 2029, which allowed him to obtain employment in the U.S. The filing of an asylum application also, by regulation, stops any accrual of unlawful presence pursuant to section 212(a)(9)(B)(iii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(II) *(Asylees and asylum applicants while a bona fide asylum application is pending is not counted as unlawful presence.)*”

12. Despite this, on October 4, 2025, Petitioner was re-arrested during a routine check-in with ICE in Newark, New Jersey.

13. Between the issuance of temporary parole on June 20, 2023, and Mr. Mistry’s re-arrest on October 4, 2025, there were no material changes in the Petitioner’s circumstances. He has no criminal arrests.

14. The Petitioner remains unlawfully re-detained and is currently at the Elizbeth Contract Detention Facility.

15. He has been unlawfully detained in New Jersey since October 17, 2025.

16. Petitioner asserts that his re-detention, without any reasoned explanation or consideration of the Petitioner’s prior parole grant, compliance with ICE check-ins, adherence to the asylum regulations, his fundamental right to due process, and the Fourth Amendment’s prohibition on unreasonable seizures. His current detention without a bond hearing violates 8 U.S.C. § 1226(a).

17. Pursuant to this Court’s inherent powers in habeas corpus proceedings, Petitioner respectfully requests that this Court issue an Order to Show Cause due to the nature of this unlawful arrest and detention, and to enjoin Respondents from relocating Petitioner outside of this District.

JURISDICTION & VENUE

18. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution

(Suspension Clause), and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 *et. seq.*

19. Venue is proper because the Petitioner is detained at the Elizabeth Contract Detention Facility, 625 Evans St., Elizabeth, NJ 07201 now remains detained. *See* ICE Detainee Locator; *See also generally Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (generally, “[w]henver a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States,” he must file the petition in the district of confinement and name his immediate custodian as the respondent).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

20. Administrative exhaustion is unnecessary as it would be futile. *See, e.g., Aguilar v. Lewis*, 50 F. Supp. 2d 539, 542–43 (E.D. Va. 1999).
21. It would be futile for Petitioner to seek a custody redetermination hearing before an Immigration Judge (“IJ”) because of the Board of Immigration Appeals (“BIA”) recent decision holding that anyone who has entered the U.S. without inspection is now considered an “applicant for admission” who is “seeking admission” and therefore subject to mandatory detention under § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025); *see also Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (noting that BIA’s decision in *Yajure Hurtado* renders exhaustion futile).
22. Additionally, the agency does not have jurisdiction to review Petitioner’s claim of unlawful custody in violation of his due process rights, and it would therefore be futile for him to pursue administrative remedies. *Reno v. Amer.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 119 S.Ct. 936, 142 L.Ed.2d 940 (1999) (finding exhaustion to be a “futile exercise because the agency does not have jurisdiction to review” constitutional claims).

PARTIES

23. Petitioner Mr. Mistry is a thirty-one-year-old native and citizen of India. He resides at

 He has been in ICE custody since October 17, 2025, and is currently detained at the Elizabeth Contract Detention Facility, 625 Evans St., Elizabeth, NJ 07201.

24. Respondent Jonathan Florentino is named in his official capacity as the Acting Director of the Newark, NJ Field Office of Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE). Respondent Florentino is a legal custodian of the Petitioner and has the authority to release him.

25. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. He administers and enforces the immigration laws of the United States, routinely conducts business in the District of New Jersey, is legally responsible for pursuing efforts to remove the Petitioner, and as such is the custodian of the Petitioner. At all times relevant hereto, Respondent Lyons's address is ICE, Office of the Principal Legal Advisor, 500 12th St. SW, Mail Stop 5900, Washington DC 20536-5900.

26. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a) (2007); routinely transacts business in the District of New Jersey; is legally responsible for pursuing any effort to detain and remove the Petitioner; and as such is a custodian of the Petitioner. At all times relevant hereto, Respondent Noem's address is U.S. Department of Homeland Security, Office of the General Counsel, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528-0485.

LEGAL BACKGROUND

27. Section 2241 of 28 United States Code provides in relevant part that “[w]rits of habeas corpus may be granted by . . . the district courts within their respective jurisdictions” when a petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(a), (c)(3); *see also I.N.S. v. St. Cyr*, 533 U.S. 289, 305, 121 S. Ct. 2271 (2001).
28. District courts grant writs of habeas corpus to those who demonstrate their custody violates the Constitution or laws of the United States. 28 U.S.C. § 2241(c)(3).
29. Habeas corpus “entitles [a] prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to ‘the erroneous application or interpretation’ of relevant law.” *Boumediene v. Bush*, 553 U.S. 723, 779, 128 S. Ct. 2229 (2008) (*quoting, St. Cyr*, 533 U.S. at 302).
30. The Fifth Amendment’s Due Process Clause protects the right of all persons to be free from “depriv[ation] of life, liberty, or property, without due process of law.” U.S. Const. amend. V.
31. “It is well established that the Fifth Amendment entitles aliens to due process of law[.]” *Trump v. J. G. G.*, 604 U.S. ---, 145 S. Ct. 1003, 1006 (2025) (*quoting Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439 (1993)).
32. “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.
33. The INA prescribes three basic mechanisms for detention for non-citizens, 8 U.S.C. § 1225, for arriving aliens and applicants for admission, § 1226 the default detention statute, and § 1231 for post-final order detention.
34. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal

Immigration Reform and Immigrant Responsibility Act (“IRIRA”) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 300-582 to 3009-583, 3009-585.

Section 1226 was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

35. Following the enactment of the IRIRA, the U.S. Department of Justice’s Executive Office of Immigration Review (“EOIR”) drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (“Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination”).
36. Thus, the INA distinguishes between non-citizens seeking entry into the United States and those “already in the country.” *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).
37. In the decades that followed, most people who entered without inspection and were thereafter detained and placed in standard removal proceedings were considered for release on bond and also received bond hearings before an Immigration Judge (“IJ”), unless their criminal history rendered them ineligible. That practice was consistent with many more decades of prior practice, in which noncitizens who had entered the United States, even if without inspection, were entitled to a custody hearing before an IJ or other hearing officer. In contrast, those who were stopped at the border were only entitled to release on parole. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 220 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

38. Section 1225(b)(1) provides for mandatory detention of non-citizens subject to its provisions—that is, a non-citizen “arriving in the United States” who seeks to apply for admission. Applicants who indicate a fear of persecution if returned to their country of origin “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” § 1225(b)(1)(B)(iii)(IV). Applicants who do demonstrate a credible fear “shall be detained for further consideration of the application for asylum.” § 1225(b)(1)(B)(ii). Detention is “mandate[d] . . . throughout the completion of applicable proceedings and not just until the moment those proceedings begin.” *Jennings*, 583 U.S. at 302. Under the statute, applicants are not entitled to a bond hearing. *See id.* at 301.
39. There is a “limited” exception to mandatory detention under § 1225. *Jennings*, 583 U.S. at 301. Applicants detained under § 1225 may be paroled into the country “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” *See* 8 U.S.C. § 1182(d)(5)(A). That “authority is not unbounded,” and “under the APA, DHS’s exercise of discretion within that statutory framework must be reasonable and reasonably explained.” *Biden v. Texas*, 597 U.S. 785, 806-07 (2022).
40. Parole under § 1182(d)(5)(A) does not affect an alien’s statutory or constitutional rights, as it “shall not be regarded as an admission of the alien.” § 1182(d)(5)(A). Such parole “employs a legal fiction whereby non-citizens are physically permitted to enter the country but are nonetheless ‘treated,’ for legal purposes, ‘as if stopped at the border.’” *Martinez v. Hyde*, 2025 WL 2084238, at *3 (D. Mass. July 24, 2025) (quoting *Thuraissigiam*, 591 U.S. at 139).
41. In contrast, § 1226(a) governs the detention of non-citizens “already present in the United States.” *Jennings*, 583 U.S. at 303. It includes non-citizens who have never been legally

admitted. *See id.* at 287 (explaining that § 1226(a) governs “aliens who were inadmissible at the time of entry.” (citing 8 U.S.C. § 1227(a)). Under that provision, the Attorney General has the discretion to arrest and detain a non-citizen “[o]n a warrant . . . pending a decision on whether the alien is to be removed.” § 1226(a). The detainee may be released on bond or conditional parole, § 1226(a)(2), except if certain enumerated categories (not applicable here) apply, § 1226(c). Federal regulation further requires that § 1226(a) detainees “receive bond hearings at the outset of detention.” Jennings, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

42. On July 8, 2025, however, DHS stated a new position with regard to custody determinations as follows:

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (emphasis original).

43. As a result, according to DHS, all noncitizens who have entered the United States, including those who were issued humanitarian and conditional parole, are subject to the

grounds of inadmissibility, including long-time U.S. residents, and are now considered to be subject to mandatory detention under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS, “[only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).” *Id.*

44. Prior to July 8, 2025, the predominant form of detention authority for anyone arrested in the interior of the United States was 8 U.S.C. § 1226(a).
45. Under § 1226(a), the Attorney General may release a detainee on bond on the authority of ICE or by an Immigration Judge. There are standards for release: bond is available if the detainee “demonstrate[s] . . . that such release would not pose a danger to property or persons, and that [he] is likely to appear for any future proceeding.” 8 C.F.R. § 36.1(c)(8). “[T]he immigration judge is authorized to exercise the authority . . . to detain the alien in custody, release the alien, and determine the amount of bond.” *Id.* § 236.1(d)(1). If denied release at the initial bond hearing, a § 1226(a) detainee may request a custody redetermination hearing before an IJ. That request will “be considered only upon a showing that the alien’s circumstances have changed materially.” *Id.* § 1003.19(e).
46. As a result, any “[r]elease” of a noncitizen “reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).

47. Statutory and regulatory provisions governing re-arrest also depend on the manner of release.

Under the text of the INA and federal regulations, certain DHS officials “at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen].” 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

48. This Circuit has stated that conditional parole “provides a mechanism whereby an [noncitizen] may be released pending the determination of removal, as long as she is not a ‘danger to persons or property’ and ‘is likely to appear for any further proceeding.’” *Delgado-Sobalvarro v. Attorney Gen. of U.S.*, 625 F.3d 782, 787 (3d Cir. 2010); *See also Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010).

49. DHS has placed explicit limits on re-detention under 8 U.S.C. § 1226(b) by requiring authorization from a high-level official within the field office. By regulation, such revocations of release from custody may only be carried out in the “discretion of the district, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).” 8 C.F.R. § 236.1(c)(9).

50. Additionally, despite “the breadth of [the] statutory language” in 8 U.S.C. § 1226(b), the federal government’s authority is subject to “an important implicit limitation”: It cannot lawfully re-arrest or re-detain someone without “a material change in circumstances.” *Saravia*, 280 F. Supp. 3d at 1197; *see also, e.g., Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981).

51. In the immigration context, this limitation means that a person who immigration authorities released from initial custody cannot be re-arrested “solely on the ground that he is subject to removal proceedings,” without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196.

Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *see also U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to “limit” scope of immigration agents’ seizure authority); *Gonzalez v. United States Immigr. & Customs Enf’t*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context). The same applies here.

52. This prohibition also derives from fundamental constitutional principles enshrined in the Due Process Clause of the Fifth Amendment. “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). And those due process protections extend to “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).
53. “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). 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).
54. The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at immigration proceedings (or, in the case of a removal order, at removal); and preventing danger to the community. *Zadvydas*, 533 U.S. at

690-92; *see Demore v. Kim*, 538 U.S. 510, 519-20, 527–28, 531 (2003). It has also held that, in general, these purposes may not be assessed on a blanket or categorical basis. Instead, immigration custody decisions generally must be based on an “individualized determination” of flight risk and danger to the community. *See INS v. Nat’l Ctr. for Immigrants’ Rts., Inc.*, 502 U.S. 183, 194 (1991); *see also Zadvydas*, 533 U.S. at 690; *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 188 (D.D.C. 2015).

55. Moreover, individuals who are released from government custody have a protected liberty interest in remaining out of custody. The government’s decision to release an individual from custody creates “an implicit promise” that their liberty “will be revoked only if [they] fail[] to live up to the . . . conditions [of release].” *Morrissey*, 408 U.S. at 482.
56. Accordingly, in the criminal context, the Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).
57. These principles apply with at least equal force to people released from civil immigration detention. After all, noncitizens living in the United States have a protected liberty interest in their ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. And, “[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees.” *Ortega v. Bonmar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).
58. Thus, if 8 U.S.C. § 1226(b) were construed as allowing ICE to re-arrest and re-detain noncitizens for no reason at all, it would raise serious constitutional questions under both the Fourth Amendment and the Due Process Clause.

STATEMENT OF THE FACTS

59. Petitioner, Mr. Mistry, is a thirty-one-year-old male with no criminal history. He is a native and citizens of India.
60. On May 18, 2023, Mr. Mistry entered the United States and requested asylum. He was arrested, detained, and transported to the Otay Mesa Detention Center in California, where he remained detained for about one month.
61. On May 19, 2023, USCIS, Asylum Office administered Petitioner's credible fear interview while he remained detained. He was given a positive fear determination.
62. On June 3, 2023. The DHS, USCIS issued a Notice to Appear to Petitioner while he remained detained, stating that he was placed into removal proceedings under section 240 of the Immigration and Nationality Act ("the Act).
63. The NTA alleges that the Petitioner is an "alien present in the United States who has not been admitted or paroled," and charges Petitioner inadmissible pursuant to 8 U.S.C. §§ 1182(a)(6)(A)(i) as a non-citizen present without admission or parole, and 1182(a)(7)(A)(i)(I) as a non-citizen without valid documentation.
64. On June 15, 2023, the Petitioner, while still detained at the Otay Mesa Detention Center in California, petitioned the San Diego Immigration Court for a bond. That bond, however, was administratively closed.
65. Instead, on June 20, 2023, DHS granted Mr. Mistry parole under 8 U.S.C. § 1226(a)(2)(B) and released him into the United States. DHS also issued Mr. Mistry reporting requirements in Newark, New Jersey.
66. Petitioner's venue was transferred from the San Diego Immigration Court detained docket to the Newark Immigration Court's non-detained docket.
67. On or about November 27, 2023, Petitioner filed his Form I-589 application, requesting

asylum, withholding, and protection under the Convention Against Torture (“CAT”).

68. On September 30, 2024, Mr. Mistry was issued an Employment Authorization Document (“EAD”), valid until September 28, 2029, which allowed him to obtain employment in the U.S. The filing of an asylum application also, by regulation, stops any accrual of unlawful presence pursuant to section 212(a)(9)(B)(iii)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii)(II) (*Asylees and asylum applicants while a bona fide asylum application is pending is not counted as unlawful presence.*)
69. Despite this, on October 4, 2025, Petitioner was re-arrested during a routine check-in with ICE in Newark, New Jersey.
70. At the time of Petitioner’s re-arrest he had been paroled into the United States, had continuously lived in the country for over two years, and was not at a port of entry.
71. The Petitioner continues to be detained at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey.
72. On July 8, 2025, DHS issued a new policy memorandum to all employees of Immigration and Customs Enforcement (Hereinafter “ICE”) stating that “[t]his message serves as notice that DHS, in coordination with the Department of Justice (Hereinafter “DOJ”), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department’s legal interpretation while additional operational guidance is developed.” Memorandum, U.S. Immigration & Customs Enf’t, *Interim Guidance Regarding Detention Authority for Applications for Admission* (July 8, 2025), available at AILA Doc. No. 25071607, <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

73. On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a precedential decision that unlawfully reinterpreted the Immigration and Nationality Act (“INA”). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Prior to this decision, noncitizens like Petitioner who were apprehended inside the United States by ICE in the interior of the country were detained pursuant to 8 U.S.C. § 1226(a) and eligible to seek bond hearings before Immigration Judges (“IJs”). Instead, in conflict with nearly thirty years of legal precedent, Petitioner is now considered subject to mandatory detention under 8 U.S.C. § 1225(b) and has no opportunity for release on bond while his removal proceedings are pending.
74. Petitioner’s re-detainment, after his initial custody release, is unlawful because there have been no material changes in the Petitioner’s circumstances as it relates to flight risk or danger to the community.
75. The government’s decision to release an individual from custody creates “an implicit promise” that their liberty “will be revoked only if [they] fail[] to live up to the . . . conditions [of release].” *Morrissey*, 408 U.S. at 482.
76. Petitioner’s re-detention pursuant to § 1225(b) violates the plain language of the INA and its implementing regulations. Petitioner, who was apprehended in the interior of the U.S., should not be considered an “applicant for admission” who is “seeking admission.” Instead, he must be detained, if at all, under 8 U.S.C. § 1226(a).
77. Through this petitioner, Petitioner asks this Court to find that Respondents have deprived his due process rights by re-detaining and have violated the INA by re-detaining him without the possibility of a bond hearing under 8 U.S.C. 1226(a). Petitioner seeks immediate release from custody, and an Order to Show Cause within three days as to why the government is re-detaining him.

CLAIM FOR RELIEF

**FIRST CLAIM FOR RELIEF
VIOLATION OF 8 U.S.C. §§ 1226(a), 1225(b),
*Mandatory Detention For Those Seeking Admission***

78. Petitioner restates and realleges all paragraphs as if fully set forth here.

79. On May 18, 2023, Mr. Mistry initially presented himself for inspection upon entry.

CBP arrested and detained him. On May 19, 2023, Petitioner underwent a credible fear interview, which he passed. On June 3, 2023, DHS issued him a Notice to Appear under section 1229(a) of the Act, which alleged that he was inadmissible to the United States.

On June 20, 2023, he was issued a conditional parole and released from custody.

80. Because DHS previously exercised its parole from detention under 8 U.S.C. § 1226(a)(2)(B), and in its discretion released the Petitioner from detention, the government lacks authority to re-detain him under § 1225(b)'s mandatory provisions. At the time of Petitioner's re-arrest in October 2025, Petitioner had been living in the United States for over two years, had a pending asylum application with the immigration court, and a work permit. Therefore, Petitioner was not subject to detention pursuant to § 1225(b), and any custody must proceed, if at all, under § 1226(a).

81. Petitioner's continuing re-detention is therefore unlawful.

**SECOND CLAIM FOR RELIEF
Continued Detention Constitutes A Violation Of Due Process**

82. Petitioner incorporates all factual allegations as though restated here.

83. ICE detained Mr. Mistry without reasonable suspicion and continues to do so in violation of his constitutional rights protected under the Fifth Amendment.

84. 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.

85. “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 [of the Fifth Amendment] protects.” *Zadvydas*, 533 U.S. at 690.
86. First, immigration detention must always “bear[] a reasonable relation to the purpose for which the individual was committed.” *Demore v. Kim*, 538 U.S. 510, 527 (2003) (citing *Zadvydas*, 533 U.S. at 690).
87. Whereas here, the government has released the Petitioner on parole to apply for asylum, in which the Petitioner did, Respondent’s cannot simple re-arrest and re-detain Petitioner for no reason at all.
88. The Government’s authority to arrest a noncitizen and revoke their release is proscribed by the Due Process Clause because it is well-established that individuals released from incarceration have a liberty interest in their freedom. To protect that interest, due process requires notice and a hearing, prior to any re-arrest, at which hearing the individual is afforded the opportunity to advance their arguments as to why they're release should not be revoked.
89. Second, the Due Process Clause requires that any deprivation of Petitioner’s liberty be narrowly tailored to serve a compelling government interest. *See Reno v. Flores*, 507 U.S. 292, 301-02 (1993) (holding that due process “forbids the government to infringe certain ‘fundamental’ liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest”); *Demore*, 538 U.S. at 528 (applying less rigorous standard for “deportable aliens”).
90. Petitioner’s ongoing imprisonment does not satisfy that rigorous standard, as there was no material change since the Petitioner was released from custody, and had a pending asylum case pending with the immigration court.

91. Third, “the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention.” *Zadvydas*, 533 U.S. at 718 (2001) (Kennedy, J., dissenting).
92. Detaining Mr. Mistry was arbitrary because he had initially been released pending his removal proceedings, has authorization to work in the United States, and has no criminal arrests or convictions.

THIRD CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) ***The Petitioner’s Re-Detention is Arbitrary and Capricious***

93. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Complaint as if fully set forth herein.
94. The Administrative Procedure Act provides that courts “shall . . . hold unlawful and set aside agency action” that is “arbitrary [and] capricious, . . . or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A).
95. Petitioner’s re-detention is reviewable as final agency action because it is neither tentative nor interlocutory, and legal consequences flow from Petitioner’s re-detention.
96. By statute and regulation as interpreted by the BIA, ICE has the authority to rearrest a noncitizen and revoke their release pending the outcome of removal proceedings only when there has been a change in circumstances since the individual’s initial release. *See Panosyan v. Mayorkas*, 854 F.App’x 787, 788 (9th Cir. 2021); *Matter of Sugay*, 17 I&N Dec. 647, 640 (BIA 1981). Additionally, changed circumstances must be “material.” *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d su nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).
97. Defendants provide no reasoned or adequate explanation for re-detaining Petitioner, who, since his release from ICE custody in 2023, had filed his asylum application, received work

authorization, and compliant with the terms of his released. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016).

98. In re-detaining Petitioner, now without the ability for bond, Respondents failed to adequately consider important aspects of relevant factors, including the constitutional limitations on the government's authority to re-arrest and re-detain, and the reliance interests of the Petitioner in understanding that with his release, he could not be re-arrested absent some violation of the bond conditions.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Order Respondents to Show Cause why this Petition should not be granted within seventy-two hours;
3. Declare that Petitioner's re-detention is unlawful;
4. Issue an Order preventing Respondent from removing Petitioner from the United States without notice and an opportunity to be heard;
5. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment.
6. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;
7. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
8. Grant any further relief this Court deems just and proper.

Dated: November 17, 2025

Respectfully Submitted,

/s/ Veronica Cardenas

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