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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SANJEEV BUDHA,
Petitioner,

v.

RON MURRAY, Mesa Verde ICE
Processing Center Facility Administrator;
SERGIO ALBARRAN, Acting Field Office
Director of the San Francisco Immigration
and Customs Enforcement Office; TODD
LYONS, Acting Director of United States
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the United
States Department of Homeland Security,
PAMELA BONDI, Attorney General of the
United States, acting in their official
capacities,

Respondents.

Case No.

**PETITION FOR WRIT OF
HABEAS CORPUS**

Date Filed: December 18, 2025

I. INTRODUCTION

1. Sanjeev Budha ("Petitioner") is an asylum seeker who fled Nepal. He arrived in the U.S. on February 7, 2025, and entered without visa or inspection. He was encountered and apprehended by Customs and Border Protection inside the United States. He was detained and removal proceedings were initiated. He requested a bond hearing and was granted release upon posting of \$12,000 bond. Then, on October 26, 2025, despite complying with all terms of release, Respondents located Petitioner at his home and

1 redetained him. Respondents now claim that Petitioner is not eligible for release on bond,
2 and an immigration judge has found that he does not have jurisdiction to hold a bond
3 hearing. As hundreds of Federal Courts have determined, the redetention in this case
4 without change in circumstances is unconstitutional and Petitioner is not properly subject
5 to 'mandatory detention.' At a minimum, an Immigration Court has power to hold a
6 bond hearing to determine if Petitioner should be released.

7 2. Petitioner initially asks this Court to issue order requiring his release from custody
8 because his re-arrest following initial detention and release, without change in
9 circumstance, violates his Constitutional rights. Additionally, Petitioner requests a
10 declaration that any detention of Petitioner, until and unless he is subject of a final order
11 of removal, is pursuant to 8 U.S.C. 1226 and that he is not subject to mandatory detention
12 under Section 1225.

13 3. Petitioner was initially arrested and released on bond pursuant to immigration
14 judge order pursuant to INA section 236. He filed an application for asylum with the
15 Court and has not missed hearings, failed to report address changes, or otherwise failed to
16 comply with requirements of his release on bond.

17 4. Petitioner remains detained at the Mesa Verde Detention Center and was recently
18 denied opportunity to be considered for release on bond. His next scheduled hearing in
19 immigration court is in March of 2026.

20 5. As has been recognized by numerous Federal Judges, detention of persons
21 similarly situated to Petitioner is unlawful. Alberto R.C. v. Murray, No. 1:25-cv-01618-
22 KES-SKO (HC), 2025 U.S. Dist. LEXIS 260211, at *2 (E.D. Cal. Dec. 16, 2025)
23 Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----,
24 2025 U.S. Dist. LEXIS 233085 (C.D. Cal. Nov. 25, 2025) Gagandeep Singh v. Bowen,
25 No. 5:25-cv-03034-CAS-PD, 2025 LX 590018, at *9 (C.D. Cal. Nov. 21, 2025); Estrada
26 Elias v. Knight, No. 1:25-CV-00594-BTW, 2025 WT 3228262, at *1 (D. Idaho Nov. 19,
27 2025) (collecting cases); see also Tut v. Noem, No. 5:25-cv-02701-DOC-AGR, 2025 LX
28 415266, at *9 n.1 (C.D. Cal. Oct. 16, 2025) (collecting cases in this district) Nadia
Cristina DA Rocha Rosado v. Fred Figueroa, Warden, Eloy Det. Ctr., 2025 U.S. Dist.

1 LEXIS 156344, *30 (Dist. Of Az, August 11, 2025); Pinchi v. Noem, 2025 U.S. Dist.
2 LEXIS 142213 (N.D. Cal. July 24, 2025); Sequen v. Kaiser, 2025 U.S. Dist. LEXIS
3 148751 (N.D. Cal. August 1, 2025); Martinez v. Hyde, 2025 U.S. Dist. LEXIS 141724,
4 *7 (July 24, 2025)(same); *see also* Guillermo M. R. v. Kaiser, No. 25-CV-05436-RFL,
5 2025 U.S. Dist. LEXIS 138205, at *7 n.4 (N.D. Cal. July 17, 2025) (collecting cases in
6 which courts have found there are at least serious questions as to whether due process
7 entitles noncitizens released from custody to a hearing before or immediately after re-
8 detention).

9 5. Civil Immigration Detention is generally only permissible for only two reasons: to
10 ensure a noncitizen's appearance at immigration hearings and to prevent danger to the
11 community. But DHS did not arrest and detain Petitioner—who demonstrably poses no
12 risk of absconding or danger to the community—for either of these reasons. Instead, as
13 part of its broader enforcement campaign, DHS detained Petitioner to strip him of his
14 procedural rights and seeking to pressure Petitioner into giving up his claim for
15 protection or to process his case without his ability to fully assist in preparing evidence in
16 support of his claim.

17 6. Petitioner's arrest and detention are causing him and his family ongoing harm.
18 Petitioner's liberty is crucial to his ability to afford legal counsel, to support himself, and
19 to provide support to his loved ones outside the U.S. as well as to his ability to assist in
20 preparation and presentation for his claim for asylum protection.

21 7. The Constitution protects Petitioner—and every other person present in this country—
22 from arbitrary arrest and detention and guarantees him due process of law. While the
23 Executive Branch has broad power over the regulation of noncitizens, those powers are
24 still “subject to important constitutional limitations.” Zadvydas v. Davis, 533 U.S. 678,
25 695 (2001). “Freedom from bodily restraint has always been at the core of the liberty
26 protected by the Due Process Clause from arbitrary governmental action.” Foucha v.
27 Louisiana, 504 U.S. 71, 80 (1992).
28

1 8. Petitioner respectfully, and urgently, seeks a writ of habeas corpus ordering the
2 government to release him from unlawful detention, prohibiting his re-arrest absent a
3 finding that he is a danger to his community or a flight risk from a neutral decisionmaker.
4 In addition, to preserve this Court's jurisdiction, Petitioner asks for an order that the
5 government not deport him for the duration of this proceeding.

6 **II. JURISDICTION AND VENUE**

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

12 10. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28
13 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this
14 district.
15

16 **III. PARTIES**

17 11. Petitioner, Sanjeev Budha, is a 32-year-old native and citizen of Nepal. Prior to being
18 detained, he resided in Daly City, California. He was arrested on entry to the United States
19 in February of 2025 and detained in Eloy, Arizona. He was released on order of immigration
20 judge and upon posting \$12,000 bond. He was redetained in October and is presently in
21 physical custody of Immigration and Customs Enforcement (ICE) at the Mesa Verde
22 Detention Center located at 425 Golden State Ave Bakersfield, CA 93301.

23 12. Respondent Ron Murray is the Mesa Verde ICE Processing Center Facility
24 Administrator and is responsible for the day-to-day operations of the facility where
25 Petitioner is detained. He is sued in his official capacity.

26 13. Respondent Sergio Albarran is the Acting Field Office Director of the San Francisco
27 Immigration and Customs Enforcement Office. He is responsible, for leadership and
28 direction of all ICE operations within the San Francisco Field Office's area of control

1 including the Mesa Verde Detention Center. He is sued in his official capacity.

2
3 14. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official
4 Performing the Duties of the Director of ICE, he is responsible for the administration and
5 enforcement of the immigration laws of the United States, routinely transacts business in
6 this District, and is legally responsible for pursuing any effort to detain and remove the
7 Petitioner. Respondent Lyons is sued in his official capacity.

8 15. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate
9 authority over DHS. In that capacity and through her agents, Respondent Noem has broad
10 authority over and responsibility for the operation and enforcement of the immigration
11 laws; routinely transacts business in this District; and is legally responsible for pursuing
12 any effort to detain and remove the Petitioner. Respondent Noem is sued in her official
13 capacity.

14 16. Respondent Pamela Bondi is the Attorney General of the United States and the most
15 senior official at the Department of Justice. In that capacity and through her agents, she is
16 responsible for overseeing the implementation and enforcement of the federal
17 immigration laws. The Attorney General delegates this responsibility to the Executive
18 Office for Immigration Review, which administers the immigration courts and the BIA.
19 Respondent Bondi is sued in her official capacity.

20
21 **IV. EXHAUSTION**

22 17. There is no requirement to exhaust because no other forum exists in which Petitioner
23 can raise the claims herein. There is no statutory exhaustion requirement prior to
24 challenging the constitutionality of an arrest or detention or challenging a policy under the
25 Administrative Procedure Act. Prudential exhaustion is not required here because it
26 would be futile, and Petitioner will “suffer irreparable harm if unable to secure immediate
27 judicial consideration of [their] claim.” McCarthy v. Madigan, 503 U.S. 140, 147 (1992).
28 Any further exhaustion requirements would be unreasonable.

V. LEGAL BACKGROUND

A. The Constitution prohibits arbitrary arrest and detention of noncitizens

18. The Constitution affords and requires due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” Hernandez v. Sessions, 872 F.3d 976, 990 (9th Cir. 2017) (quoting Zadvydas, 533 U.S. at 693). These due process rights are both substantive and procedural.

19. 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 government objective,” Cnty. of Sacramento v. Lewis, 523 U.S. 833, 846 (1998).

20. These protections extend to noncitizens 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.

21. 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 at 519–20, 527–28, 31 (2003).

22. Secondly, the Due Process Clause’s procedural protections require that even permissible forms of detention only be imposed where procedural safeguards are in place and have been followed. Lopez v. Heinauer, 332 F.3d 507, 512 (8th Cir. 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to constitutional

1 protections of due process.")

2
3 23. Except in rare situations, "the Constitution requires some kind of a hearing before the
4 State deprives a person of liberty or property." Zinerman v. Burch, 494 U.S. 113, 127
5 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v.*
6 *D.C., Gov't*, 864 F.3d at 683 (citing Young v. Harper, 520 U.S. 143, 152 (1997) (re-
7 detention after pre-parole conditional supervision requires pre-deprivation hearing));
8 Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973) (same, in probation context); Morrissey v.
9 Brewer, 408 U.S. 471 (1972) (same, in parole context).

10 24. After an initial release from custody on conditions, even a person paroled following a
11 conviction for a criminal offense for which they may lawfully have remained incarcerated
12 has a protected liberty interest in that conditional release. Morrissey, 408 U.S. at 482. As
13 the Supreme Court recognized, "[t]he parolee has relied on at least an implicit promise
14 that parole will be revoked only if he fails to live up to the parole conditions." Id. "By
15 whatever name, the liberty is valuable and must be seen within the protection of the
16 [Constitution]." Id.

17 25. This reasoning applies with equal or greater force to people released from civil
18 immigration detention. Noncitizens residing in the United States, like Petitioner, have a
19 protected liberty interest in their ongoing freedom from detention. *See Zadvydas*, 533
20 U.S. at 690. Further, "[g]iven the civil context [of immigration detention], [the] liberty
21 interest [of noncitizens released from custody] is arguably greater than the interest of
22 parolees." Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

23 24 VI. FACTUAL ALLEGATIONS

25 A. DHS Expands the Scope of Expedited Removal.

26
27 26. DHS has historically applied expedited removal nearly exclusively in the border
28 enforcement context. From 1997 until 2002, expedited removal was only applied to
noncitizens arriving at ports of entry. *See* Inspection and Expedited Removal of Aliens;

1 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures;
2 Final Rule, 62 Fed. Reg. 10312 (Mar. 6, 1997).

3
4 27. In 2002, the government for the first time invoked its authority to apply expedited
5 removal to persons already inside the country, but only for a narrow group of people who
6 arrived by sea, were not admitted or paroled, and were apprehended within two years of
7 entry. *See* Notice Designating Aliens Subject to Expedited Removal Under Section
8 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 Fed. Reg. 68924 (Nov. 13,
9 2002).

10 28. In 2004, the government authorized the application of expedited removal to
11 individuals who entered by means other than sea, but only if they were apprehended
12 within 100 miles of a land border and were unable to demonstrate that they had been
13 continuously physically present in the United States for 14 days. *See* Designating Aliens
14 for Expedited Removal, 69 Fed. Reg. 48877 (Aug. 11, 2004).

15 29. In 2019 DHS published a Federal Register Notice authorizing the application of
16 expedited removal to certain noncitizens arrested anywhere in the country who could not
17 affirmatively show that they had been continuously present for two years. *See*
18 Designating Aliens for Expedited Removal, 84 Fed. Reg. 35409 (July 23, 2019). The
19 District Court for the District of Columbia entered a preliminary injunction preventing the
20 rule from taking effect, which the D.C. Circuit later vacated. Make the Rd. New York v.
21 McAleenan, 405 F. Supp. 3d 1, 11 (D.D.C. 2019), *vacated sub nom.* Make the Rd. New
22 York v. Wolf, 962 F.3d 612, 618 (D.C. Cir. 2020).

23
24 30. In 2021 DHS initiated a review of the rule expanding expedited removal to consider
25 whether it complied with legal and constitutional requirements, including due process. In
26 2022, DHS rescinded the rule. *See* Rescission of the Notice of July 23, 2019, Designating
27 Aliens for Expedited Removal, 87 Fed. Reg. 16022 (Mar. 21, 2022).

28 31. While the 2019 expansion was in effect, the government applied expedited removal to

1 persons inside the country in only a small number of cases. Thus, from 1997 to 2025, with
2 limited exceptions, immigration authorities generally did not apply expedited removal to
3 noncitizens apprehended far from the border, or individuals anywhere in the United States
4 (including near the border) who had been residing in the country for more than fourteen
5 days.

6 32. On January 20, 2025, President Trump signed Executive Order 14159, “Protecting the
7 American People Against Invasion,” the purpose of which was “to faithfully execute the
8 immigration laws against all inadmissible and removable aliens, particularly those aliens
9 who threaten the safety or security of the American people.” Exec. Order No. 14,159, 90
10 C.F.R. § 8443 (Jan. 20, 2025). The order directed the Secretary of Homeland Security to
11 take various actions “to ensure the efficient and expedited removal of aliens from the
12 United States.” *Id.*

13 33. To implement this Executive Order, DHS issued a notice immediately authorizing
14 application of expedited removal to certain noncitizens arrested anywhere in the country
15 who cannot show “to the satisfaction of an immigration officer” that they have been
16 continuously present in the United States for at least two years. 90 Fed. Reg. 8139
17 (published Jan. 24, 2025).
18

19 34. On January 23, 2025, the Acting Secretary of Homeland Security issued a
20 memorandum “provid[ing] guidance regarding how to exercise enforcement discretion in
21 implementing” the new expedited-removal rule. The guidance directed federal
22 immigration officers to “consider . . . whether to apply expedited removal” to “any alien
23 DHS is aware of who is amenable to expedited removal but to whom expedited removal
24 has not been applied.” As part of that process, the guidance encourages officers to “take
25 steps to terminate any ongoing removal proceeding and/or any active parole status.”¹
26

27
28 ¹ Benjamine C. Huffman, Guidance Regarding How to Exercise Enforcement Discretion, Dep’t
of Homeland Sec. (Jan. 23, 2025), [https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-
and-parole-guidance.pdf](https://www.dhs.gov/sites/default/files/2025-01/25_0123_er-and-parole-guidance.pdf) (last visited August 18, 2025).

B. DHS implements policy of courthouse arrests combined with coordinated effort to dismiss removal proceedings to facilitate expanded use of expedited removal

35. Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This “coordinated operation” is “aimed at dramatically accelerating deportations” by arresting people at the courthouse and placing them into expedited removal.²

36. The first step of this enforcement operation typically takes place inside the immigration court. DHS attorneys make oral motions to dismiss proceedings, without prior notice, based on ‘changed circumstances.’ They ask the judge to immediately dismiss proceedings. Meanwhile ICE enforcement officers wait in the hallways ready to arrest unsuspecting persons when they depart the courtroom.

37. The motions appear to directly contravene existing regulations which only permit a motion to dismiss with a showing that the “[c]ircumstances of the case have changed,” 8 C.F.R. § 239.2(a)(7), (c). There is no indication that DHS attorneys have made any case-specific analysis of changed circumstances before filing these motions to dismiss.

38. Despite clear rules requiring 10-days for response to any opposed motion, many IJs have granted the government’s oral motion on the spot and immediately dismissed the case. This is consistent with recent instructions from the Department of Justice to immigration judges stating that they may allow the government to move to dismiss cases orally, in court, without a written motion, and to decide that motion without allowing the noncitizen an opportunity to file a response.

² Arelis R. Hernández & Maria Sacchetti, *Immigrant Arrests at Courthouses Signal New Tactic in Trump’s Deportation Push*, Wash. Post, May 23, 2025, <https://www.washingtonpost.com/immigration/2025/05/23/immigration-court-arrests-ice-trump/>; see also Hamed Aleaziz, Luis Ferre-Sadurni, & Miriam Jordan, *How ICE is Seeking to Ramp Up Deportations Through Courthouse Arrests*, N.Y. Times, May 30, 2025, <https://www.nytimes.com/2025/05/30/us/politics/ice-courthouse-arrests.html>.

1 39. Despite pressure from above, some IJs have asked DHS to re-file the motion as a
2 written motion and continued proceedings to allow individuals to file their response. A
3 few IJ's have denied the motion to dismiss while most IJ's have ultimately granted the
4 motions.

5 40. Whether the motion is granted or not, DHS agents, masked and waiting in the
6 hallways outside the Courtrooms, typically arrest non-citizens as they leave the
7 Courtrooms. Most reports indicate that the masked agents typically do not have an arrest
8 warrant.

9 41. Once the person has been transferred to a detention facility, the government places
10 the individual in expedited removal. In cases in which the IJ did not dismiss the person's
11 removal proceedings, DHS attorneys unilaterally transfer venue of the case to a
12 "detained" immigration court, where they renew their motions to dismiss—again with the
13 goal of putting the person in expedited removal.

14 42. DHS is aggressively pursuing this arrest and detention campaign at courthouses
15 throughout the country. In New York City, for example, "ICE agents have apprehended so
16 many people showing up for routine appointments this month that the facilities" are
17 "overcrowded," with "[h]undreds of migrants . . . sle[eping] on the floor or sitting upright,
18 sometimes for days."³

19 43. DHS's aggressive tactics at immigration courts appear to be motivated by the
20 Administration's imposition of a new daily quota of 3,000 ICE arrests. In part as a result
21 of this campaign, ICE's arrests of noncitizens with no criminal record have increased
22 more than 800% since before January.⁴

23
24
25
26 ³ Luis Ferré-Sadurní, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*,
N.Y. Times, June 12, 2025, [https://www.nytimes.com/2025/06/12/nyregion/immigration-](https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html)
27 [courthouse-arrests-trump-deportation.html](https://www.nytimes.com/2025/06/12/nyregion/immigration-courthouse-arrests-trump-deportation.html).

28 ⁴ José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*, The Guardian, June 14, 2025, [https://www.theguardian.com/us-news/2025/jun/14/ice-](https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures)
[arrests-migrants-trump-figures](https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures).

1 44. DHS officials previously permitted ICE officers to conduct “civil immigration
2 enforcement action . . . in or near a courthouse” in rare circumstances including where “it
3 involves a national security threat,” or “there is an imminent risk of death, violence, or
4 physical harm.” Though somewhat self-explanatory, DHS explained the restrictions were
5 needed because “[e]xecuting civil immigration enforcement actions in or near a
6 courthouse may chill individuals’ access to courthouses, and, as a result, impair the fair
7 administration of justice.”

8 45. The government’s new campaign is also a significant shift from previous DHS
9 practice, guided by clear judicial precedent, of only re-detaining noncitizens previously
10 released only upon a material change in circumstances. *See Saravia v. Sessions*, 280 F.
11 Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
12 F.3d 1137 (9th Cir. 2018) (describing prior practice).

13
14 **C. BIA decision blesses novel and expanded use of detention to all persons present**
15 **without having been inspected.**

16 46. For decades, noncitizens who entered without inspection, were arrested in the United
17 States and were placed into removal proceedings were generally subject to discretionary
18 detention under 8 U.S.C. § 1226(a) (and its predecessor statute). Under that framework,
19 they could be considered for release on bond or conditional parole by the Department of
20 Homeland Security (“DHS”) and receive a bond hearing in immigration court before an
21 IJ who could order release if found not to pose an undue flight risk or danger that justified
22 continued detention.

23 47. The government upended this long-held understanding of the law in 2025.

24
25 48. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued an
26 interim guidance memo stating that anyone who entered without inspection was ineligible
27
28

1 for release on bond and could not challenge their detention at a bond hearing in
2 immigration court, regardless of how long an individual has lived in the United States.

3 49. As a result, DHS attorneys started arguing, and some IJs started finding that such
4 individuals were not eligible for bond hearings in immigration court.

5
6 50. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a
7 precedential decision, binding on all IJs, holding that an IJ had no authority to consider
8 bond requests for any person who entered the United States without inspection. See Matter
9 of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

10 51. Respondents now apply this policy to any person who entered the United States
11 without inspection regardless of length of time in the U.S., prior bond hearings or detention
12 classification.

13 52. Federal Courts have almost unanimously found Respondents practices unlawful.

14
15 **C. Petitioner’s unlawful arrest and detention**

16 53. Petitioner is a 32-year-old citizen and native of Nepal.

17 54. Petitioner entered the United States without inspection in February of 2025.

18 55. Petitioner was arrested by Customs Border Protection inside the United States.

19 56. Petitioner was then detained at the Eloy, Arizona Detention Center.

20 57. Petitioner sought and was granted a bond hearing by an immigration judge in Eloy,
21 Arizona.

22 58. Petitioner was released from custody upon posting a \$12,000 bond in March of 2025.

23 59. Petitioner has never violated the terms or conditions of his release from custody.

24 60. Petitioner has appeared for all required immigration court hearings and meetings with
25 ICE.

26 61. Petitioner has never tampered with or sought to unlawfully remove the GPS tracking
27 unit ICE has required that he wear during his removal proceedings.

28 62. Petitioner has filed an application for asylum with the immigration court and his

1 application for protection from removal and for asylee status remains pending before
2 the immigration court.

3 63. Respondents detained Petitioner at his residence.

4 64. Respondents knew where to locate Petitioner because Petitioner has complied with all
5 terms of release including keeping his address up to date and properly using the GPS
6 unit.

7 65. Petitioner requested a bond hearing before an immigration judge. The Immigration
8 Judge found that he did not have jurisdiction to hold a bond hearing because of the
9 BIA's decision in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

10 66. The Notice to Appear in Petitioner's case alleges that Petitioner entered the country
11 without inspection, permission, or proper entry document and was therefore
12 inadmissible.

13 67. The Notice to Appear does not allege Petitioner is or was an 'arriving alien.'

14 68. The NTA, though containing a field for such designation, does not indicate that
15 Petitioner is an 'arriving alien.'

16 69. Instead, the NTA indicates Petitioner is a person present in the United States who has
17 not been admitted or paroled.

18 70. Petitioner remains detained in Respondents' custody at this time.

19 71. Petitioner is currently scheduled for hearing before an Immigration Judge on March 11,
20 2026.

21 72. Petitioner has fully complied with all requirements to apply for asylum protection, to
22 appear at immigration appointments when requested and to comply with the laws of the
23 United States following his unlawful entry to the U.S.

24 73. Petitioner has no criminal history.

25 74. Petitioner has never been determined to be a flight risk or danger to the community;
26 his detention is not related to either of the permissible justifications for civil
27 immigration detention. His detention does not further any legitimate government
28 interest.

D. Petitioner is suffering irreparable and ongoing harm as a result of unlawful detention

75. Petitioner is being deprived of his liberty without lawful basis or permissible justification. The government previously released him on his own recognizance finding that he did not pose a danger to the community.

76. Petitioner is precluded from earning income necessary to meet his obligations and to provide support for loved ones.

77. Petitioner is impeded in participating in the preparation and submission of evidence in support of his claim for asylum protection and from working with his legal counsel to prepare for his case hearing.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process—Detention)

78. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

79. The Due Process Clause of the Fifth Amendment protects all “person[s]” from 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.

80. 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.*

81. Petitioner is not a flight risk or danger to the community. Respondents’ detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.

82. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation” to any

1 legitimate government purpose. *Id.* (finding immigration detention is civil and thus
 2 ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s
 3 detention appears to be “not to facilitate deportation, or to protect against risk of flight or
 4 dangerousness, but to incarcerate for other reasons”—namely, to meet newly-imposed
 5 DHS quotas and transfer immigration court venue away from an IJ who refused to
 6 facilitate DHS’s new expedited removal scheme. *Demore*, 538 U.S. at 532–33 (Kennedy,
 7 J., concurring).

8 **SECOND CLAIM FOR RELIEF**

9 **Violation of the Fifth Amendment to the United States Constitution**

10 **(Procedural Due Process—Detention)**

11 83. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs
 12 of this Petition as if fully set forth herein.

13 84. Petitioner has a strong liberty interest under the Due Process Clause in not being re-
 14 incarcerated after prior release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997);
 15 *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471,
 16 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has
 17 a protected liberty interest in remaining out of custody following an IJ’s bond
 18 determination); *Nadia Cristina DA Rocha Rosado v. Fred Figueroa, Warden, Eloy Det. Ctr.*,
 19 2025 U.S. Dist. LEXIS 156344, *35

20 85. Accordingly, “[i]n the context of immigration detention, it is well-settled that due
 21 process requires adequate procedural protections to ensure that the government’s asserted
 22 justification for physical confinement outweighs the individual’s constitutionally
 23 protected interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned
 24 up); *Zinermon*, 494 U.S. at 127 (Generally, “the Constitution requires some kind of a
 25 hearing before the State deprives a person of liberty or property.”). In the immigration
 26 context, for such hearings to comply with due process, the government must bear the
 27 burden to demonstrate, by clear and convincing evidence, that noncitizen poses a flight
 28

1 risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir.
2 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

3 86. Petitioner's re-detention without a pre-deprivation hearing violated due process. Six
4 months after Petitioner was released from custody on bond under Section 1226,
5 Respondents have re-detained Petitioner without prior notice, hearing, change in
6 circumstances, and have inexplicably claimed that he is now subject to detention under
7 Section 1225.

8 87. Petitioner's continued detention without prior hearing constitutes an ongoing violation
9 of petitioner's Constitutional right to under the Due Process Clause.

10 **THIRD CLAIM FOR RELIEF**

11 **Violation of the Fourth Amendment to the United States Constitution (Unlawful** 12 **Arrest)**

13
14 88. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs
15 of this Petition as if fully set forth herein.

16 89. The Fourth Amendment protects the right of persons present in the United States to be
17 free from unreasonable seizures by government officials.

18
19 90. As a corollary to that right, the Fourth Amendment prohibits government officials
20 from conducting repeated arrests on the same probable cause. It is axiomatic that seizures
21 have purposes. When those purposes are spent, further seizure is unreasonable [T]he
22 primary purpose of an arrest is to ensure the arrestee appears to answer charges...Once
23 the arrestee appears before the court, the purpose of the initial seizure has been
24 accomplished. Further seizure requires a court order or new cause; the original probable
25 cause determination is no justification. *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir.
26 2020) (cleaned up); *see also United States v. Kordosky*, No. 88-CR-52-C, 1988 WL
27 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988) ("Absent some compelling justification,
28 the repeated seizure of a person on the same probable cause cannot, by any standard, be
regarded as reasonable under the Fourth Amendment.").

1 91. In the immigration context, this prohibition means that a person who immigration
2 authorities released from initial custody cannot be re-arrested “solely on the ground that
3 he is subject to removal proceedings” and without some new, intervening cause. Saravia
4 v. Sessions, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), *aff’d sub nom.*, Saravia for
5 A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018). Courts have long recognized that
6 permitting such rearrests could result in “harassment by continual rearrests.” United
7 States v. Holmes, 452 F.2d 249, 261 (7th Cir. 1971).

8 92. DHS agents arrested Petitioner in February of 2025 after he entered the United States,
9 and he was released on bond under Section 1226. Petitioner diligently pursued an
10 application for asylum before USCIS.

11 93. DHS re-arrested Petitioner though nothing had changed, no new circumstances
12 indicated Petitioner was now a danger or a flight risk.

13 94. Petitioner’s re-arrest and detention by Respondents after his prior release based on the
14 same immigration law violation and absent any change in circumstances is a violation of
15 Petitioner’s right to be free from unreasonable seizure under the Fourth Amendment.
16

17 **FOURTH CLAIM FOR RELIEF**

18 **Violation of the Administrative Procedure Act**

19 95. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs
20 of this Petition as if fully set forth herein.

21 96. The Administrative Procedure Act prohibits federal action that is “in excess of
22 statutory jurisdiction, authority or limitations, or short of statutory right,” 5 U.S.C. §
23 706(2)(C), and “arbitrary, capricious, an abuse of discretion, or otherwise not in
24 accordance with law,” *id.* § 706(2)(A).

25 97. Respondents’ policy subjecting all persons present in the United States to mandatory
26 detention is unlawful, arbitrary, and violates the APA. 5 U.S.C. § 706(2)(A).
27

28 98. Petitioner’s arrest and detention pursuant to the Respondents’ policy is a final agency

1 action that violates the Administrative Procedure Act. *See* 5 U.S.C. § 706(2).

2 **VIII. PRAYER FOR RELIEF**

3 Petitioner respectfully requests that this Court:

- 4 1. Assume jurisdiction over this matter;
- 5 2. Issue a writ of habeas corpus ordering Respondents to immediately release
- 6 Petitioner from custody;
- 7 3. Declare that Petitioner's arrest and detention violate the Due Process Clause
- 8 of the Fifth Amendment, the Fourth Amendment, the First Amendment, and
- 9 the Administrative Procedure Act;
- 10 4. Declare that Petitioner is not subject to 8 USC § 1225 mandatory detention.
- 11 5. Enjoin Respondents from deporting Petitioner pending these proceedings;
- 12 6. Enjoin Respondents from re-detaining Petitioner unless his re-detention is
- 13 ordered at a custody hearing before a neutral arbiter in which the
- 14 government bears the burden of proving, by clear and convincing evidence,
- 15 that Petitioner is a flight risk or danger to the community;
- 16 7. Order that Respondents may not re-detain Petitioner while Section 240
- 17 proceedings are ongoing, including during any direct appeal from dismissal
- 18 of proceedings by the IJ absent a change in circumstances;
- 19 8. Award Petitioner costs and reasonable attorneys' fees in this action as
- 20 provided for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
- 21 9. Grant such further relief as the Court deems just and proper.

22 Respectfully submitted this 18th Day of December 2025,

23 /s/ Ben Loveman
24 Attorney for Plaintiff