

1 Gurpreet Kaur, Esq.  
2 Law Office of Gurpreet Kaur  
3 674 County Square Dr, Suite 305  
4 P.O. Box 2022  
5 Ventura, CA 93003  
6 Ph. 805-300-9003; Cell 909-997-4570  
7 Fax: 805-716-6100  
8 E-mail: gurpreetkauresq@gmail.com  
9 *Attorney for Petitioner*

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**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS**

SUMIT SUMIT

Petitioner,

v.

FRANCISCO VENEGAS, Warden of the El Valle Detention Facility; TODD LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAMELA BONDI, Attorney General of the United States

Respondents.

Civil Action No.

**VERIFIED PETITION FOR  
HABEAS CORPUS**

**INTRODUCTION**

1. Petitioner, Sumit, is being unlawfully detained by Respondents and deprived of release on bond. Petitioner was born in India and entered the United States on November 11, 2021. He entered the U.S. without inspection and was briefly detained by Department of Homeland Security (“DHS”) based on a Form I-200 Warrant for Arrest of Alien. Petitioner was released by DHS on a a. bond of \$7,500 pursuant to a Form I-286, Notice of Custody Determination. The conditions of release required Petitioner to post the bond and comply with all terms and conditions of release, which Petitioner fully satisfied.

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2           2.       On the same date, DHS served Petitioner with a Notice to Appear (“NTA”) which  
3 designated him as “an alien present in the United States who has not been admitted or paroled” and  
4 charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality  
5 Act as an “alien present in the United States without being admitted or paroled, or who arrived in the  
6 United States at any time or place other than as designated by the Attorney General.”  
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8           3.       Following his release from detention, Petitioner timely filed a Form I-589, Application  
9 for Asylum with the immigration court. Petitioner also obtained gainful employment and complied all  
10 the conditions of his release. Petitioner wife resides in the United States and Petitioner has a US  
11 citizen daughter. Nonetheless, ICE detained Petitioner unexpectedly on October 29, 2025 after he  
12 stopped at an inspection at Border Patrol checkpoint during the normal course of his employment.  
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14           4.       Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a).  
15 Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a  
16 change in custody redetermination (i.e. bond hearing) with an Immigration Judge (“IJ”). However, on  
17 July 8, 2025, DHS issued an internal Interim Guidance (“Policy”) that took the baseless position that  
18 —contrary to statutory principles and governing case law—noncitizens like Petitioner who entered  
19 the United States without permission or parole are subject to mandatory detention under 8 U.S.C. §  
20 1225(b) instead of discretionary detention under section 1226(a). On September 5, 2025, the  
21 Board of Immigration Appeals (“BIA”) issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec.  
22 216 (BIA 2025) that sided with DHS’ position.  
23  
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25           5.       DHS’ contention that Petitioner is subject to mandatory detention under 8 U.S.C. §  
26 1225(b) is without merit. DHS’ Policy has upended decades of DHS’ own interpretation of bond  
27 eligibility under sections 1226(a) and 1225(b). The vast majority of district courts across the country  
28

1 that has addressed this issue have rejected DHS' arguments and found that it violates the INA and  
2 noncitizens' due process rights.

3 6. Notwithstanding DHS's July 8, 2025 Interim Guidance and the Board's decision in  
4 *Matter of Yajure Hurtado*, Petitioner is eligible for release on bond under controlling federal court  
5 authority. In *Bautista-Maldonado v. DHS*, (C.D. Cal.), the district court squarely rejected DHS's  
6 attempt to reclassify noncitizens like Petitioner—who are in pre-final-order removal proceedings—as  
7 subject to mandatory detention under 8 U.S.C. § 1225(b). The court held that such individuals are  
8 properly detained, if at all, under 8 U.S.C. § 1226(a) and therefore are entitled to a bond hearing before  
9 an Immigration Judge. Because Petitioner is detained under § 1226(a), continued detention without  
10 access to bond is unlawful, and Petitioner is statutorily eligible for release on bond pending the  
11 resolution of his removal proceedings.  
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14 7. For the foregoing reasons, the Court should grant habeas relief and direct Respondents  
15 to release Petitioner.  
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### 17 JURISDICTION

18 8. This action arises under the Constitution of the United States and the INA, 8 U.S.C.  
19 § 1101 *et seq.*

20 9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28  
21 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension  
22 Clause).  
23

24 10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*,  
25 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.  
26

### 27 VENUE

28 11. Venue is proper because Petitioner is detained in El Valle Detention Facility, TX

1 which is within the jurisdiction of this District. Venue is also proper in this District because  
2 Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).

3 **PARTIES**

4 12. Respondent is sued in his official capacity as Warden of the El Valle Detention Facility.

5 Respondent is the physical custodian of Petitioner.

6  
7 13. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S.  
8 Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority  
9 to release him.

10 14. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department  
11 of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement  
12 of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody.  
13 Respondent Noem is a legal custodian of Petitioner.

14 15. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United  
15 States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to  
16 adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which  
17 administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

18 **STATEMENT OF FACTS**

19  
20 16. Petitioner was born in India and entered the United States on November 11, 2021.  
21 He entered the U.S. without inspection and was briefly detained by Department of Homeland  
22 Security ("DHS") based on a Form I-200 Warrant for Arrest of Alien. *See* Ex. A, Notice to Appear.

23  
24 17. Petitioner was released by DHS on a \$7,500 bond. *See* Ex. B.

25 18. On the same date, DHS served Petitioner with a Notice to Appear ("NTA") which  
26 designated him as "an alien present in the United States who has not been admitted or paroled" and  
27 charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality  
28

1 Act as an “alien present in the United States without being admitted or paroled, or who arrived in the  
2 United States at any time or place other than as designated by the Attorney General.”

3 19. Following his release from detention, Petitioner timely filed a Form I-589, Application  
4 for Asylum with the immigration court. Petitioner also obtained gainful employment and complied all  
5 the conditions of his ROR. Petitioner has no criminal history. His wife, brother in law and daughter  
6 also reside in the United States. Nonetheless, ICE detained Petitioner unexpectedly on October  
7 29, 2025 during the course of his employment.  
8

9 **STATUTORY FRAMEWORK**

10 20. The INA prescribes three basic forms of detention for noncitizens in removal  
11 proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited  
12 removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section  
13 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§  
14 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain  
15 crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).  
16

17 21. Second, the INA provides for mandatory detention of noncitizens subject to expedited  
18 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under  
19 8 U.S.C. § 1225(b)(2).  
20

21 22. Finally, the INA also provides for detention of noncitizens who are subject to final  
22 orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).  
23 The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal  
24 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div.  
25 C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most  
26 recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3  
27  
28

1 (2025).

2 23. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that,  
3 in general, people who entered the country without inspection were not considered detained under  
4 section 1225 and that they were instead detained under section 1226(a). *See* Inspection and Expedited  
5 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum  
6 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens  
7 who entered without inspection—unless they were subject to some other detention authority—received  
8 bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA,  
9 in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ  
10 or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229  
11 (1996) (noting that section 1226(a) simply “restates” the detention authority previously found at section  
12 1252(a)).  
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15 24. On July 8, 2025, DHS issued a memo to all employees of ICE stating that “[t]his  
16 message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited  
17 its legal position on detention and release authorities. DHS has determined that section 235 of the  
18 Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226],  
19 is the applicable immigration detention authority for all applicants for admission. The following interim  
20 guidance is intended to ensure immediate and consistent application of the Department’s legal  
21 interpretation while additional operational guidance is developed.” The memo further stated DHS’ new  
22 position with regard to custody determinations as follows:  
23  
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25 An “applicant for admission” is an alien present in the United States who has not been admitted  
26 or who arrives in the United States, whether or not at a designated port of arrival. INA §  
27 235(a)(1) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such**  
28 **aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(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

1 not be released for the duration of their removal proceedings absent a parole by DHS. For  
2 custody purposes, these aliens are now treated in the same manner that “arriving aliens” have  
3 historically been treated. **The only aliens eligible for a custody determination and release  
4 on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during  
5 removal proceedings are aliens admitted to the United States and chargeable with  
6 deportability under INA § 237, with the exception of those subject to mandatory detention  
7 under INA § 236(c) [8 U.S.C. § 1226(c)].**

8 Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants  
9 for admission because Form I-286 applies by its terms only to custody determinations under  
10 INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception  
11 for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will  
12 individually advise, if Enforcement and Removal Operations (ERO) previously conducted a  
13 custody determination for an applicant for admission still detained in ICE custody, ERO will  
14 affirmatively cancel the Form I-286.

15 *See* [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-  
16 applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (last accessed October 18, 2025) (emphasis original).

17 25. As a result, DHS now considers all noncitizens who have entered the United States  
18 without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents,  
19 to be subject to mandatory detention under section 1225(b) and ineligible for release on bond.  
20 Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on  
21 recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal  
22 proceedings are aliens admitted to the United States and chargeable with deportability under INA §  
23 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. §  
24 1226(c)].” *Id.*

25 26. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N  
26 Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack  
27 authority to hear bond requests or to grant bond to aliens who are present in the United States without  
28 admission.

29 27. Subsequent federal court authority has rejected DHS’s interpretation and confirmed that  
30 individuals in Petitioner’s position remain eligible for bond under § 1226(a). In *Bautista–Maldonado*

1 v. DHS, the district court held that DHS may not reclassify noncitizens who are already placed in  
2 removal proceedings and detained pre-final order as subject to mandatory detention under § 1225(b).  
3 The court concluded that such detention contravenes the statutory scheme and unlawfully deprives  
4 noncitizens of their right to a bond hearing. Under *Bautista-Maldonado*, noncitizens like Petitioner—  
5 who are in removal proceedings and lack a final order of removal—are properly detained, if at all,  
6 pursuant to § 1226(a) and must be afforded an individualized bond hearing before an IJ. Accordingly,  
7 Petitioner’s continued detention without access to bond violates the INA and the Due Process Clause,  
8 and Petitioner is statutorily and constitutionally eligible for release on bond pending the resolution of  
9 his removal proceedings.  
10

11 28. Petitioner further qualifies as a member of the certified class (or, at minimum, the  
12 proposed and protected class) in *Bautista-Maldonado v. DHS*. Petitioner is a noncitizen who entered  
13 the United States without inspection, is currently in pre-final order removal proceedings, and is being  
14 detained by DHS pursuant to its post-July 8, 2025 policy asserting mandatory detention under 8 U.S.C.  
15 § 1225(b). DHS has relied on that policy to deny Petitioner access to a bond hearing. These facts place  
16 Petitioner squarely within the class of individuals for whom the *Bautista-Maldonado* court held that  
17 detention must proceed, if at all, under 8 U.S.C. § 1226(a) with the attendant right to an individualized  
18 bond hearing before an Immigration Judge. As a class member, Petitioner is entitled to the relief ordered  
19 in *Bautista-Maldonado*, including restoration of bond eligibility and protection from unlawful  
20 mandatory detention.  
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23 **CLAIMS FOR RELIEF**

24 **COUNT ONE**

25 **Violation of Fifth Amendment Right to Substantive Due Process**

26 29. The allegations in the above paragraphs are realleged and incorporated herein.  
27  
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1 30. Petitioner is challenging DHS' unlawful custody determination that Petitioner is subject  
2 to detention under 8 U.S.C. § 1225(b) and is ineligible for bond and his continued detention under the  
3 automatic stay provision at 8 C.F.R. § 1003.19(i)(2), which violates Petitioner's right to substantive  
4 due process of law afforded him through the Fifth Amendment to the United States Constitution.

5 31. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived of  
6 life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. "Freedom from  
7 imprisonment—from government custody, detention, or other forms of physical restraint—lies at the  
8 heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

9 32. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release  
10 on bond. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b). Respondents have  
11 violated Petitioner's due process rights under the Fifth Amendment by detaining him without the  
12 possibility of release on bond.

13 33. As a remedy, the Court should order him released from detention, or alternatively direct  
14 that an IJ hold a constitutionally adequate bond hearing.

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17 **COUNT TWO**

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19 **Violation of Petitioner's Procedural Due Process Rights**

20 34. The allegations in the above paragraphs are realleged and incorporated herein.

21 35. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in  
22 determining if government action deprives an individual's Fifth Amendment right to procedural due  
23 process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The  
24 *Mathews* factors are as follows: First, the private interest that will be affected by the official action;  
25 [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the  
26 probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's  
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1 interest, including the function involved and the fiscal and administrative burdens that the additional  
2 or substitute procedural requirement would entail. *Id.* at 335.

3 36. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v.*  
4 *Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner has perhaps the most acute private interest known to  
5 personkind short of life itself: bodily freedom.

6  
7 37. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk.  
8 Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims. As to the third factor,  
9 there is no significant governmental interest in continuing to hold Petitioner in custody, particularly  
10 because an IJ has already found that Petitioner has satisfied his burden that he is not a danger to the  
11 community or risk of flight when it released him on ROR, and he has no criminal history or violations  
12 of the conditions of his release.

13  
14 **COUNT THREE**

15 **Violation of the Immigration and Nationality Act**

16 38. The allegations in the above paragraphs are realleged and incorporated herein.

17  
18 39. Application of 8 U.S.C. § 1225(b) to Petitioner is a violation of the INA because he is  
19 instead subject to discretionary detention under 8 U.S.C. § 1226(a). This deprives noncitizens like  
20 Petitioner of the right to a bond hearing that they are statutorily eligible for and eliminates the authority  
21 of the IJ to determine who can be released on bond.

22  
23 **PRAYER FOR RELIEF**

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

- 25 1. Assume jurisdiction over this matter;
- 26 2. Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
- 27 3. Declare that Petitioner's continued detention violates the Immigration and Nationality Act,
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
1 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;

2 4. Order Petitioner released from detention;

3 5. Grant Equal Access to Justice Act (“EAJA”) fees and costs; and

4 6. Grant any other further relief this Court deems just and proper.

5  
6 Respectfully,

7   
8 Gurpreet Kaur, Esq.

9 **Law Office of Gurpreet Kaur**

674 County Square Dr, Suite 305

P.O. Box 2022

10 Ventura, CA 93003

Ph. 805-300-9003; Cell 909-997-4570

11 Fax: 805-716-6100

12 E-mail: [gurpreetkauresq@gmail.com](mailto:gurpreetkauresq@gmail.com)

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

14 I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained  
15 at the California City Correctional Facility and immediate relief is sought, counsel verifies this petition  
16 on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the  
17 foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.  
18

19  
20 Dated this 25<sup>th</sup> day of December, 2025.

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23 \_\_\_\_\_  
Gurpreet Kaur, Esq.