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8 **UNITED STATES DISTRICT COURT**  
9 **WESTERN DISTRICT OF TEXAS**  
10 **SAN ANTONIO DIVISION**

11 **GYANSINGH OLI,**  
12 Petitioner,

13 v.

14 MIGUEL VERGARA, Field Office Director of  
15 Enforcement and Removal Operations San  
16 Antonio Field Office; KRISTI NOEM,  
17 Secretary of the United States Department of  
18 Homeland Security, PAMELA BÓNDI,  
19 Attorney General of the United States, acting in  
20 their official capacities,  
21 Respondents.

)  
) Case No. 5:26-cv-00193

) A File No. 

) **PETITION FOR WRIT OF HABEAS**  
) **CORPUS**  
) **(28 U.S.C. § 2241)**  
) Date Filed: January 15, 2026

22 **I. INTRODUCTION**

23 1. GYANSINGH OLI (“Petitioner”) asks this court to grant this writ or order Respondents to  
24 show cause why the writ should not be granted. Petitioner is an asylum seeker who fled Nepal.  
25 He arrived in the U.S. on or about March 11, 2022, was encountered and apprehended by  
26 Customs and Border Protection inside the United States. He was released on his own  
27 recognizance under 8 U.S.C. 1226 and placed in § 1229a removal proceedings. Over 5-years  
28 later, at a scheduled check in meeting with ICE, he was re-arrested. The paperwork issued  
that day indicates the arrest was under § 1226. However, Respondents now claim his  
continued custody is pursuant to § 1225(b) (INA § 235(b)) and as such Petitioner is not  
eligible for bond hearing.

1 2. **Petitioner initially asks this Court to issue order requiring his release from custody**  
2 because his re-arrest following initial detention and release, without change in circumstance,  
3 violates his Constitutional rights. Additionally, Petitioner requests a declaration that any  
4 future detention of Petitioner, until and unless he is subject of a final order of removal, is  
5 pursuant to 8 U.S.C. 1226 and must comport with the requirements of that Section.

6 3. Petitioner was initially arrested and released on his own recognizance pursuant to INA 1226.  
7 He filed an application for asylum with the immigration court, and complied with all  
8 required appointments of DHS ICE. He obtained work authorization after 180 days of his  
9 asylum application being lodged. .

10 1. As has been recognized by a growing number of Federal Courts, rearrest and detention of  
11 persons similarly or identically situated to Petitioner is unlawful. Tovar v. Noem, No. 5:25-CV-  
12 1509-JKP, 2025 U.S. Dist. LEXIS 250408, at \*14 (W.D. Tex. 2025); M.K. v. Arteta, 2025 U.S.  
13 Dist. LEXIS 265542, \*11; (S.D.N.Y. Dec. 23, 2025)(*noting the number of cases and results*).  
14 Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 U.S. Dist. LEXIS  
15 233085 (C.D. Cal. Nov. 25, 2025); Nadia Cristina DA Rocha Rosado v. Fred Figueroa, Warden,  
16 Eloy Det. Ctr., 2025 U.S. Dist. LEXIS 156344, \*30 (Dist. Of Az, August 11, 2025); Guillermo  
17 M. R. v. Kaiser, No. 25-CV-05436-RFL, 2025 U.S. Dist. LEXIS 138205, at \*7 n.4 (N.D. Cal.  
18 July 17, 2025) (collecting cases).

19 4. Civil Immigration Detention is generally only permissible for only two reasons: to ensure a  
20 noncitizen’s appearance at immigration hearings and to prevent danger to the community.  
21 But DHS did not arrest and detain Petitioner—who demonstrably poses no risk of  
22 absconding or danger to the community—for either of these reasons. Instead, as part of its  
23 broader enforcement campaign, DHS detained Petitioner to strip him of his procedural rights  
24 and seeking to pressure Petitioner into giving up his claim for protection or to process his  
25 case without his ability to fully assist in preparing evidence in support of his claim.

26 5. Petitioner’s arrest and detention are causing him and his family ongoing harm. Petitioner’s  
27 income is crucial to his ability to afford legal counsel, to support himself, and to provide  
28 support to his loved ones outside the U.S.

29 6. The Constitution protects Petitioner—and every other person present in this country—from  
30 arbitrary arrest and detention and guarantees him due process of law. While the Executive  
31 Branch has broad power over the regulation of noncitizens, those powers are still “subject to

1 important constitutional limitations.” Zadvydas v. Davis, 533 U.S. 678, 695 (2001).  
2 “Freedom from bodily restraint has always been at the core of the liberty protected by the  
3 Due Process Clause from arbitrary governmental action.” Foucha v. Louisiana, 504 U.S. 71,  
4 80 (1992).

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

10 **II. JURISDICTION AND VENUE**

- 11 8. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28  
12 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C.  
13 § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause),  
14 the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701-706  
15 (Administrative Procedure Act). Oyelude v. Chertoff, 125 F. App’x 543, 546 (5th Cir.  
16 2005). Courts "retain jurisdiction to review . . . detention insofar as that detention presents  
17 constitutional issues, such as those raised in a habeas petition."  
18 9. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. §  
19 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district. Petitioner  
20 is detained at SOUTH TEXAS DETENTION FACILITY 566 VETERANS DRIVE  
21 PEARSALL, TX 78061

22 **III. PARTIES**

- 23 10. Petitioner, Gyansingh Oli, is a 43-year-old native and citizen of Nepal. Prior to his detention,  
24 he resided, worked, and was an active and respected member of his community in Texas.  
25 11. Respondent Miguel Vergara is the Field Office Director of Enforcement and Removal  
26 Operations San Antonio Field Office. He is Petitioner’s immediate custodian and has  
27 authority to order his release. He is named in his official capacity.  
28 12. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate authority  
over DHS. In that capacity and through her agents, Respondent Noem has broad authority

1 over and responsibility for the operation and enforcement of the immigration laws; routinely  
2 transacts business in this District; and is legally responsible for pursuing any effort to detain  
3 and remove the Petitioner. Respondent Noem is sued in her official capacity.

4 13. Respondent Pamela Bondi is the Attorney General of the United States and the most senior  
5 official at the Department of Justice. In that capacity and through her agents, she is  
6 responsible for overseeing the implementation and enforcement of the federal immigration  
7 laws. The Attorney General delegates this responsibility to the Executive Office for  
8 Immigration Review, which administers the immigration courts and the BIA. Respondent  
9 Bondi is sued in her official capacity.

#### 10 IV. EXHAUSTION

11 15. There is no requirement to exhaust because no other forum exists in which Petitioner can  
12 raise the claims herein. There is no statutory exhaustion requirement prior to challenging the  
13 constitutionality of an arrest or detention. Prudential exhaustion is not required here because it  
14 would be futile, and Petitioner will “suffer irreparable harm if unable to secure immediate judicial  
15 consideration of [their] claim.” McCarthy v. Madigan, 503 U.S. 140, 147 (1992). Any further  
16 exhaustion requirements would be unreasonable or futile.

17 16. As discussed further below, the Board of Immigration Appeals (BIA) has recently held that  
18 DHS’s new policy is correct. The new policy is that all persons present without inspection are  
19 subject to mandatory detention under § 235(b) and ineligible for bond hearing. Matter of YAJURE  
20 HURTADO, 29 I&N Dec. 216 (BIA 2025). Further, despite scores of successful individual habeas  
21 actions, and one class-action, Respondents continue to detain nearly any noncitizen who ever  
22 entered the U.S. without inspection on their novel theory and without regard for intervening  
23 circumstances or prior characterization, by Respondents themselves, of earlier detention. *See e.g.*  
24 M.K. v. Arteta, 2025 U.S. Dist. LEXIS 265542, \*11; (S.D.N.Y. Dec. 23, 2025)(noting the number of  
25 cases and results). IN this case, Petitioner already sought a bond hearing from the immigration  
26 judge and was refused by the immigration judge who cited lack of jurisdiction due to custody  
27 falling under § 235(b)  
28

V. LEGAL BACKGROUND

A. The Constitution prohibits arbitrary arrest and detention of noncitizens

16. The Constitution affords and requires due process rights for “all ‘persons’ within them United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001) (citation omitted). These due process rights are both substantive and procedural.

17. “Aliens even aliens whose presence in this country is unlawful, have long been recognize as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Plyler v. Doe*, 457 U.S. 202, 210, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982).

18. The Due Process Clause protects persons in the United States from being deprived of life, liberty, or property without due process of law. U.S. Const. amend. V. “It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Foucha v. Louisiana*, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992). “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

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

1 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also*  
2 *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

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

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

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

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

25 **B. Detention under the Immigration & Nationality Act: 8 U.S.C. §§ 1225 & 1226**

26 26. Detention of noncitizens who have not been ordered removed is generally governed by  
27 one of two sections of the Immigration and Nationality Act: INA §§ 235 & 236 (8 U.S.C. §§  
28 1225, 1226).

1 27. Section 235 is titled "Inspection by immigration officers; expedited removal of  
2 inadmissible arriving aliens; referral for hearing." The statute provides:

3 An alien present in the United States who has not been admitted or who arrives in the United  
4 States . . . shall be deemed for purposes of this chapter an applicant for admission. . .Subject to  
5 subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the  
6 examining immigration officer determines that an alien seeking admission is not clearly and  
7 beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section  
8 1229a of this title. 8 U.S.C. § 1225(a)(1), (b)(2)(A).

9 28. An applicant is seeking "admission," as that term is defined by § 1101(a)(13)(A), if he is  
10 seeking entry "lawful entry . . . after inspection" and authorization. Tovar v. Noem, No. 5:25-  
11 CV-1509-JKP, 2025 U.S. Dist. LEXIS 250408, at \*13 (W.D. Tex. 2025)

12 29. An "[a]rriving alien means an applicant for admission coming or attempting to come into  
13 the United States . . . regardless of the means of transport." 8 C.F.R. § 1.2. "Admission" and  
14 "admitted" mean "the lawful entry of the alien into the United States after inspection and  
15 authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

16 30. Noncitizens subject to mandatory detention under § 235(b) may be released only if they  
17 are "paroled 'for urgent humanitarian reasons or significant public benefit.'" Gomes v. Hyde, No.  
18 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at \*2 (D. Mass. July 7,  
19 2025) (quoting 8 U.S.C. § 1182(d)(5)(A)); *see also* Hyppolite v. Noem, No. 25-CV-4304  
(NRM), 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at \*7 (E.D.N.Y. Oct. 6, 2025)  
(describing mandatory detention under § 235).

20 31. Section 1226 (INA 236), titled "Apprehension and detention of aliens," states:  
21 On a warrant issued by the Attorney General, an alien may be arrested and detained pending a  
22 decision on whether the alien is to be removed from the United States. Except as provided in  
23 subsection (c) and pending such decision, the Attorney General—

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

25 (2) may release the alien on—

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

28 (B) conditional parole . . . .

1 8 U.S.C. § 1226(a). Section 236 therefore creates a "discretionary detention framework" for  
2 noncitizens arrested and detained on a warrant issued by the Attorney General. Gomes, 2025  
3 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at \*2. It "authorizes the [g]overnment to detain  
4 certain aliens already in the country pending the outcome of removal proceedings." Jennings,  
5 583 U.S. at 289.

6 32. The arresting immigration officer has authority to make the initial custody determination.  
7 *See* Gomes, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at \*2 (citing 8 C.F.R. §  
8 1236.1(c)(8)).

9 33. The noncitizen then "ha[s] the right to request a custody redetermination (i.e., bond)  
10 hearing before an Immigration Judge." *Id.* (citing 8 C.F.R. § 1236.1(c)(8), (d)(1)). "Bond may be  
11 denied only if the government 'either (1) prove[s] by clear and convincing evidence that [the  
12 noncitizen] poses a danger to the community or (2) prove[s] by a preponderance of the evidence  
13 that [the noncitizen] poses a flight risk.'" *Id.* (alterations in original) (quoting Hernandez-Lara v.  
14 Lyons, 10 F.4th 19, 41 (1st Cir. 2021)).

15 34. Section 236(a)(2)(B) also allows release "on an Order of Recognizance, which is a form  
16 of conditional parole." *Id.* (citations omitted).

17 35. Thus, § 236(a) requires "an individualized bond determination before a noncitizen may  
18 be taken into custody." Hyppolite, 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at \*8  
19 (citation omitted).

## 20 VI. FACTUAL ALLEGATIONS

### 21 A. DHS and EOIR seek to increase arrests and detentions

22 36. Since early last year, DHS has implemented a series of policies aimed at detaining  
23 noncitizens present in the United States without inspection and even those who had previously  
24 been released from custody on bond, recognizance, or on parole.

25 37. DHS's policies appear to be motivated by the Administration's imposition of quotas of 3,000  
26 ICE arrests per day. In part as a result of this campaign, ICE's arrests of noncitizens with no  
27 criminal record have increased more than 800% since before January 2025.<sup>1</sup>

28 <sup>1</sup> 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-arrests-migrants-trump-figures>.

1 38. The government’s new campaign is also a significant shift from previous DHS practice,  
2 guided by clear judicial precedent, of only re-detaining noncitizens previously released only  
3 upon a material change in circumstances. *See e.g. Lorenzo C.P. v. Noem*, No. 1:25-cv-181, 2025  
4 U.S. Dist. LEXIS 264574, at \*7-8 (S.D. Tex. 2025) *De Jesús Aguilar v. English*, No. 3:25-CV-  
5 898 DRL-SJF, 2025 U.S. Dist. LEXIS 231463, at \*15 (N.D. Ind. Nov. 25, 2025) *Salinas v.*  
6 *Woosley*, No. 4:25 Civ. 121, 2025 U.S. Dist. LEXIS 228539, 2025 WL 3243837, at \*2 (W.D.  
7 Ky. Nov. 20, 2025); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff’d sub*  
8 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior practice);

9 **B. BIA decision blesses novel and expanded use of detention to all persons present without**  
10 **having been inspected; Respondents increase pretextual rearrests.**

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

17 40. The government upended this long-held policy and understanding of the law in 2025.

18 41. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued an interim  
19 guidance memo stating that anyone who entered without inspection was ineligible for release on  
20 bond and could not challenge their detention at a bond hearing in immigration court, regardless  
21 of how long an individual has lived in the United States.

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

24 43. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a  
25 precedential decision, binding on all IJs, holding that an IJ had no authority to consider bond  
26  
27  
28

1 requests for any person who entered the United States without inspection. See Matter of Yajure  
2 Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

3 44. Respondents have continued to rearrest and detain noncitizens across the country who  
4 entered the U.S. without inspection even where the noncitizen was previously released from  
5 custody under INA § 236.

6 45. Respondents often cite to de minimis alleged violations of conditions of prior release as  
7 pretext for rearrest.

8 46. Numerous sources have reported that the alleged violations are not supported in  
9 Respondents' records keeping systems or that noncitizens report the alleged violations are simply  
10 not accurate. See e.g. Ramazan M. v. Andrews, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL  
11 3145562, at \*6 (E.D. Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where Respondents  
12 alleged check-in and other electronic monitoring violations, because “[w]hile respondents argue  
13 that petitioner is a flight risk, the purpose of a bond hearing is for a neutral decisionmaker to  
14 consider and evaluate such an argument to determine whether it is consistent with the facts and  
15 to ensure that noncitizens like petitioner are not deprived of their liberty without justification”),  
16 and at E.A. T.B. v. Wamsley, No. C25-1192-KKE, 2025 WL 2402130, at \*4 (W.D. Wash. Aug.  
17 19, 2025) (ordering immediate release of petitioner and finding that it does not “necessarily  
18 follow that Petitioner can be detained for [release conditions] violations without a hearing. That  
19 the Government may believe it has a valid reason to detain petitioner does not eliminate its  
20 obligation to effectuate the detention in a manner that comports with due process.”).

21 47. Judges have also found the supposed violations “negligible” or been skeptical of existence of  
22 purported violations. See e.g. Alas v. Albarran, 2025 U.S. Dist. LEXIS 207060 \*2 FN1(ND Cal.  
23 Oct. 15, 2025).

24 **C. Petitioner’s unlawful arrest and detention**

25  
26 48. Petitioner is a 43-year-old citizen and native of Nepal. Adhikari Decl. at Exh. 1 (I213)<sup>2</sup>.

27 \_\_\_\_\_  
28 <sup>2</sup> All exhibits referenced are attached to the ‘Adhikari Declaration.’ For ease of reading,  
only the exhibit number is mentioned hereafter.

- 1 49. Petitioner entered the United States without inspection in March of 2022. Exh. 2 (NTA).
- 2 50. Petitioner was briefly apprehended by U.S. Customs and Border Protection upon entering the
- 3 United States. Exh. 1.
- 4 51. Petitioner was subsequently released on his own recognizance under INA § 236. Exh. 1, 5
- 5 (Order or release on recognizance under INA § 236).
- 6 52. Petitioner was not formally inspected or admitted into the United States at the time of entry.
- 7 Exh. 1.
- 8 53. No credible fear or other interview as to admissibility occurred during initial arrest. Id.
- 9 54. At time release, Petitioner was served with a form I-862, Notice to Appear in Removal
- 10 Proceedings filed with an immigration court. Id.
- 11 55. Petitioner thereafter filed an application for asylum with the EOIR. Exh. 3 (Court stamped
- 12 Form I589).
- 13 56. The Notice to Appear alleges that Petitioner entered the country without inspection,
- 14 permission, or proper entry document and was therefore inadmissible. Exh. 1
- 15 57. The NTA, though containing a field for such designation, does not indicate that Petitioner is
- 16 an 'arriving alien.' Exh. 1.
- 17 58. Instead, the NTA indicates Petitioner is a person present in the United States who has not
- 18 been admitted or paroled. Id.
- 19 59. Petitioner appeared on May 28, 2025, Petitioner reported to ICE as requested. Id.
- 20 60. Petitioner was arrested and detained. Id.
- 21 61. On June 24, 2025, the immigration judge determined the immigration court did not have
- 22 jurisdiction to conduct a custody redetermination (bond) hearing. Exh. 4 (EOIR 'ECAS'
- 23 Screen shot showing bond hearing denied and reason for denial).
- 24 62. Petitioner remains detained in Respondents' custody at this time.
- 25 63. Petitioner has fully complied with all requirements to apply for asylum protection, to appear at
- 26 immigration appointments when requested and to comply with the laws of the United States
- 27 following his unlawful entry to the U.S.
- 28 64. Petitioner has no criminal history.
65. Petitioner has never been determined to be a flight risk or danger to the community, his
- detention is not related to either of the permissible justifications for civil immigration

1 detention. His detention does not further any legitimate government interest.

2 **D. Petitioner brings this action without undue delay**

3 66. Petitioner was advised by Respondents or their agents that he could not be released on bond  
4 and that the law did not allow for his release. Adhikair decl ¶ 8.

5 67. He only learned of the possibility of a habeas petition in Federal District Court through  
6 another inmate who was recently advised of the possibility. Petitioner immediately sought  
7 counsel to pursue relief and filed this petition as quickly as possible after gathering facts and  
8 evidence. Adhikari decl. at ¶¶8-9.

9 **E. Petitioner is suffering irreparable and ongoing harm as a result of unlawful  
10 detention**

11 67. Petitioner is being deprived of his liberty without lawful basis or permissible  
12 justification. The government previously released him on his own recognizance finding  
13 that he did not pose a danger to the community. Petitioner’s continued unlawful detention  
14 is causing ongoing emotional and financial harm to Petitioner, his spouse, his two minor  
15 children and his extended family and community. Adhikari decl. at ¶ 7.

16 **VII. CLAIMS FOR RELIEF**

17 **FIRST CLAIM FOR RELIEF**

18 Violation of the Fifth Amendment to the United States Constitution

19 **(Substantive Due Process—Detention)**

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

22 69. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of  
23 liberty “without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—  
24 from government custody, detention, or other forms of physical restraint—lies at the heart of  
25 the liberty that [the Due Process] Clause protects.” Zadvydas, 533 U.S. at 690.

26 70. Immigration detention is constitutionally permissible only when it furthers the government’s  
27 legitimate goals of ensuring the noncitizen’s appearance during removal proceedings and  
28 preventing danger to the community. *See id.*

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

4 72. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any  
5 legitimate government purpose. *Id.* (finding immigration detention is civil and thus ostensibly  
6 "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to  
7 be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to  
8 incarcerate for other reasons"—namely, to meet newly-imposed DHS quotas and transfer  
9 immigration court venue away from an IJ who refused to facilitate DHS's new expedited  
removal scheme. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

### 10 SECOND CLAIM FOR RELIEF

#### 11 **Violation of the Fifth Amendment to the United States Constitution**

#### 12 **(Procedural Due Process—Detention)**

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

15 74. Petitioner has a strong liberty interest under the Due Process Clause in not being re-  
16 incarcerated after prior release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon*  
17 *v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83  
18 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected  
19 liberty interest in remaining out of custody following an IJ's bond determination); *Nadia*  
20 *Cristina DA Rocha Rosado v. Fred Figueroa, Warden, Eloy Det. Ctr.*, 2025 U.S. Dist. LEXIS  
21 156344, \*35

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

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

4 76. Petitioner's re-detention without a pre-deprivation hearing violated due process. Nearly a year  
5 after deciding to release Petitioner from custody on his own recognizance, and doing so under  
6 Section 1226, Respondents have re-detained Petitioner without prior notice, hearing, change  
7 in circumstances, and have inexplicably claimed that he is now subject to detention under  
8 Section 1225.

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

11 **THIRD CLAIM FOR RELIEF**

12 **HABEAS (VIOLATION OF THE INA)**

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

15 79. No person may be held without lawful basis under the Constitution, the laws of the  
16 United States, or the laws of one of the States or territories.

17 80. Respondents do not have lawful basis to detain Petitioner under 8 U.S.C. 1226(b) (INA §  
18 236(b)).

19 81. Respondents cite to no other authority to arrest and detain Petitioner.

20 **VIII. PRAYER FOR RELIEF**

21 Petitioner respectfully requests that this Court:

- 22
- 23 1. Assume jurisdiction over this matter;
  - 24 2. Issue a writ of habeas corpus ordering Respondents to immediately release  
25 Petitioner from custody or issue order to show cause asks or order Respondents to  
26 show cause why the writ should not be granted;
  - 27 3. Declare that Petitioner's arrest and detention violate the Due Process Clause of  
28 the Fifth Amendment;
  4. Order that Respondents may not re-detain Petitioner while Section 240 proceedings  
are ongoing, including during any direct appeal from dismissal of proceedings by the IJ

1 absent compliance with INA § 236(a) and Due process;

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

3  
4 Respectfully submitted this 15<sup>th</sup> Day of January 2026,

5 /s/ Laxman Adhikari  
6 Laxman Adhikari (PHV)  
7 Attorney for Plaintiff

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