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5  
6 **UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

7 **SINGH, Vikramjit**

FILE NO.: '26CV0410 RSH DDL

8 **Petitioner,**



9 vs.

10 **CHRISTOPHER J. LAROSE, Senior**  
11 **Warden, Otay Mesa Detention Center;**  
12 **PATRICK DIVVER, Field Office**  
13 **Director, San Diego Office of Detention**  
14 **and Removal, U.S. Immigration and**  
15 **Customs Enforcement; TODD M.**  
16 **LYONS, Acting Director, U.S.**  
17 **Immigration and Customs Enforcement,**  
18 **U.S. Department of Homeland Security;**  
19 **and KRISTI NOEM, Secretary, U.S.**  
20 **Department of Homeland Security,**

**PETITION FOR WRIT OF  
HABEAS CORPUS AND ORDER  
TO SHOW CAUSE WITHIN  
THREE DAYS; COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

CHALLENGE TO UNLAWFUL  
INCARCERATION; REQUEST FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

21 **Respondents-Defendants.**  
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1 Petitioner Vikramjit Singh petitions this Court for a writ of habeas corpus under 28 U.S.C. §  
2 2241 to remedy Respondents' detaining him unlawfully, and states as follows:

3 **INTRODUCTION**

4 1. Petitioner Vikramjit Singh ("Petitioner" or "Mr. Singh") is an Indian asylum seeker  
5 detained at Otay Mesa Detention Center in San Diego, California. He was persecuted in India on  
6 account of his religion and political opinion by police officers and members of a militant  
7 organization. The persecution he suffered in India included being detained and threatened by Indian  
8 authorities for preaching about the Christian faith and for reporting the attacks from Petitioner's  
9 Hindu counterparts.

10 2. On or about August 8, 2025, Mr. Singh entered the United States. He sought asylum.

11 3. Respondents commenced removal proceedings against him in immigration court,  
12 entitling him to present his asylum claim with the due process rights under 8 U.S.C. § 1229a.

13 4. Since then, Petitioner has attended his immigration court hearings. On or about  
14 November 10, 2025, he filed a Form I-589 Application for Asylum, Withholding of Removal, and  
15 protection under the Convention Against Torture with the immigration court.

16 5. Since approximately mid-May 2025, DHS has implemented a coordinated practice of  
17 leveraging immigration detention to strip people like Mr. Singh of their substantive and procedural  
18 rights and pressure them into deportation.<sup>1</sup> Immigration detention is civil and thus is permissible for  
19 only two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent  
20 danger to the community. But DHS did not arrest and detain Mr. Singh—who demonstrably poses  
21 no risk of absconding from immigration proceedings or danger to the community—for either  
22 of these reasons.

23 6. In immigration court, noncitizens have the right to pursue claims for relief from  
24 removal (including asylum), be represented by counsel, gather and present evidence, and pursue  
25 appeals. 8 U.S.C. § 1229(a). By dismissing an ongoing case, DHS—in its view—can transfer a  
26 noncitizen's case from removal proceedings in immigration court, governed by 8 U.S.C. § 1229a, to  
27 cursory proceedings under 8 U.S.C. § 1225(b)(1) called "expedited removal," where the procedural  
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<sup>1</sup> Steve Price, Video shows ICE agents arresting immigrants at San Diego federal courthouse, raising due process concerns, CBS8 LOCAL NEWS (June 11, 2025, 5:40 p.m. PDT), <https://www.cbs8.com/article/news/local/video-ice-agents-arrestimmigrants-at-san-diego-federal-courthouse-raises-due-process-concerns/509-49745585-774b-4144-81ff-3486c5fadbe9> (last visited September 12, 2025) ("The exact number of arrests is unclear, but footage shows agents detaining people immediately after court appearances.").

1 protections and opportunities to pursue relief from removal built into regular immigration-court  
2 proceedings do not apply.

3 7. Respondents now seek to keep Mr. Singh detained without a meaningful opportunity  
4 to seek a bond or custody redetermination hearing. *See* 8 U.S.C. § 1225. Respondents do so based  
5 not on Mr. Singh’s personal circumstances or individualized facts. Due to his detention, Mr. Singh  
6 is at risk of being transferred away from the Southern District of California while he remains in the  
7 Respondents’ physical and legal custody.

8 8. But Respondents cannot evade due process requirements so easily. The U.S.  
9 Constitution requires the Respondents provide at least the rights available to him when he filed his  
10 application for asylum.

11 9. The Constitution protects Ms. Singh—and every other person present in this  
12 country—from arbitrary deprivations of his liberty and guarantees him due process of law. The  
13 government’s power over immigration is broad, but as the Supreme Court has declared, it “is  
14 subject to important constitutional limitations.” *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001).  
15 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due  
16 Process Clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

17 10. Mr. Singh seeks declaratory and injunctive relief to compel his immediate release  
18 from the immigration jail where he has been held by DHS since being unlawfully detained on or  
19 about August 8, 2025 without first being provided a due process hearing to determine whether his  
20 incarceration is justified.

21 11. Absent review in this Court, no other neutral adjudicator will examine Mr. Singh’s  
22 plight: Respondents will continue—unchecked—to detain him unlawfully under 8 U.S.C. §  
23 1225(b)(1), INA § 235(b)(1), without due process. Mr. Singh appeared before the Otay Mesa  
24 Immigration Court within Otay Mesa Detention Center in San Diego, California.

25 12. For the reasons outlined below, Mr. Singh’s arrest and inability to contest his  
26 arbitrary detention violate his statutory and constitutional rights, including Due Process protections  
27 under the U.S. Constitution. Mr. Singh respectfully requests that this Court should grant the instant  
28 petition for a writ of habeas corpus, without any bond requirement, and for declaratory and  
injunctive relief, to prevent such harms from recurring. Mr. Singh also asks this Court to find that  
Respondents’ attempts to detain, transfer, and deport him are arbitrary and capricious and in  
violation of the law, and to immediately issue an order preventing her transfer out of this district.

**JURISDICTION**

1           13. This action arises under the Constitution of the United States and the Immigration  
2 and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*

3           14. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28  
4 U.S.C. § 1331 (federal question jurisdiction), art. I, § 9, cl. 2 of the United States Constitution  
5 (Suspension Clause), and 28 U.S.C. § 1346 (U.S. as defendant), and 28 U.S.C. § 1651 (All Writs  
6 Act).

7           15. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens  
8 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003)  
9 (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533  
10 U.S. 678, 787 (2001) (same); *Y-Z-L-H v. Bostock*, No. 3:25-CV-965-SI, 2025 WL 1898025, at \*3  
11 (D. Or. July 9, 2025) (same); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL  
12 2420068, at \*7 (E.D. Cal. Aug. 21, 2025) (same).

13           16. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241, *et*  
14 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, the All Writs Act, 28 U.S.C. § 1651,  
15 and the Court’s inherent equitable powers.

**VENUE**

16           17. Venue is proper because Petitioner is in Respondents’ legal and physical custody at  
17 Otay Mesa Detention Center in San Diego, California. Venue is further proper because a substantial  
18 part of the events or omissions giving rise to Petitioner’s claims occurred in this District, where  
19 Petitioner is now in Respondents’ legal and physical custody, including his current and ongoing  
20 detention under the legal and physical custody of Respondent LaRose, warden of Otay Mesa  
21 Detention Center. 28 U.S.C. § 1391(e); *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004) (habeas  
22 petition must be addressed to the federal district court of confinement); *Wairimu v. Dir., Dep’t of*  
23 *Homeland Sec.*, No. 19-CV-174-BTM-MDD, 2019 WL 460561, at \*2 (S.D. Cal. Feb. 5, 2019)  
24 (district of confinement is the preferable forum even if the Court otherwise has personal  
25 jurisdiction). For these same reasons, venue should be found proper under Local Civil Rule HC.1.

**CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243**

26           18. The Court must grant the petition for writ of habeas corpus or issue an order to show  
27 cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. §  
28 2243. If an OSC is issued, the Court must require Respondents to file a return “within three days  
unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

1 19. Courts have long recognized the significance of the habeas statute in protecting  
2 individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most  
3 important writ known to the constitutional law of England, affording as it does a swift and  
4 imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400  
(1963).

5 20. Mr. Singh is “in custody” for the purpose of 28 U.S.C. § 2241 because he was  
6 arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention  
7 Center in San Diego, California. He is under Respondents’ and their agents’ direct control.

8 **PARTIES**

9 21. Mr. Singh (“Petitioner”) is a 24-year-old citizen and national of India. He left India  
10 in August 2024 and came to the USA in August 2025 to seek asylum, withholding of removal, or  
11 protection under the Convention Against Torture after fleeing persecution in India on account of his  
12 religion by Indian government authorities. The persecution he suffered in India included being  
13 detained and threatened by Indian authorities for preaching about the Christian faith and for  
14 reporting the attacks from Petitioner’s Hindu counterparts. He has had no departures since his  
15 arrival. He is not married. He has no children. He has no criminal convictions. Since the arrest on or  
16 about August 8, 2025, Mr. Singh has remained in Respondents’ custody.

17 22. Mr. Singh is currently residing in Respondents’ custody at Otay Mesa Detention  
18 Center in San Diego, California, as of the time of the filing of this petition.

19 23. Respondent Christopher LaRose (“LaRose”) is the Senior Warden at Otay Mesa  
20 Detention Center in San Diego, California, where Mr. Singh is detained. LaRose is responsible for  
21 the day-to-day operations and confinement of non-citizens detained at that facility. He acts at the  
22 direction of Respondents Divver, Lyons, and Noem. LaRose is a custodian of Mr. Singh and is  
23 named in his official capacity.

24 24. Respondent Patrick Divver (“Divver”) is the Field Office Director of ICE in San  
25 Diego, California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for  
26 local custody decisions relating to non-citizens charged with being removable from the U.S.,  
27 including the arrest, detention, custody status, and removal of non-citizens. The San Diego Field  
28 Office’s area of responsibility includes San Diego and Imperial Counties in California. Respondent  
Divver is a custodian of Mr. Singh and is named in his official capacity.

1 25. Respondent Todd Lyons (“Lyons”) is the Acting Director of ICE, and he has  
2 authority over the actions of Respondents LaRose and Divver. ICE is responsible for local custody  
3 decisions relating to non-citizens charged with being removable from the U.S., including the arrest,  
4 detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian of Mr.  
5 Singh and is named in his official capacity.

6 26. Respondent Kristi Noem (“Noem”) is the Secretary of DHS and has authority over  
7 the actions of all other DHS Respondents in this case, as well as all operations and federal agencies  
8 of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Noem is charged with  
9 faithfully administering the immigration and naturalization laws of the United States. 8 U.S.C. §  
10 1103(a). Respondent Noem is a custodian of Mr. Singh and is named in her official capacity.

11 27. Respondent ICE is responsible for local custody decisions relating to non-citizens  
12 charged with being removable from the U.S., including the arrest, detention, custody status, and  
13 removal of non-citizens.

14 28. Respondent DHS is the federal agency that has authority over the actions of ICE and  
15 all other DHS Respondents.

16 29. This action is commenced against Respondents LaRose, Divver, Lyons, and Noem  
17 (collectively, “Respondents”) all in their official capacities.

#### 18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

19 30. Petitioner has no administrative remedies to exhaust.

20 31. Mr. Singh was detained on August 8, 2025, and taken into custody, and proceedings  
21 commenced before the Otoy Mesa Immigration Court to initiate his INA section 240 immigration  
22 proceedings.

23 32. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr.  
24 H.K.’s constitutional, statutory, and regulatory rights and restore his liberty.

#### 25 LEGAL FRAMEWORK

26 33. The Refugee Act of 1980, the cornerstone of the U.S. asylum system, provides a  
27 right to apply for asylum to individuals seeking safe haven in the United States. The purpose of the  
28 Refugee Act is to enforce the “historic policy of the United States to respond to the urgent needs of  
persons subject to persecution in their homelands.” Refugee Act of 1980, § 101(a), Pub. L. No. 96-  
212, 94 Stat. 102 (1980).

1 34. The “motivation for the enactment of the Refugee Act” was the United Nations  
2 Protocol Relating to the Status of Refugees, “to which the United States had been bound since  
3 1968.” *INS v. Cardoza-Fonseca*, 480 U.S. 421, 424, 432-33 (1987). The Refugee Act reflects a  
4 legislative purpose “to give ‘statutory meaning to our national commitment to human rights and  
5 humanitarian concerns.’” *Duran v. INS*, 756 F.2d 1338, 1340 n.2 (9th Cir. 1985).

6 35. The Refugee Act established the right to apply for asylum in the United States and  
7 defined the standards for granting asylum. It is codified in various sections of the INA.

8 36. The INA gives the Attorney General or the Secretary of Homeland Security  
9 discretion to grant asylum to noncitizens who satisfy the definition of “refugee.” Under that  
10 definition, individuals generally are eligible for asylum if they have experienced past persecution or  
11 have a well-founded fear of future persecution on account of race, religion, nationality, membership  
12 in a particular social group, or political opinions, and if they are unable or unwilling to return to and  
13 avail themselves of the protection of their homeland because of that persecution or fear. 8 U.S.C. §  
14 1101(a)(42)(A).

15 37. Although a grant of asylum may be discretionary, the right to apply for asylum is  
16 not. The Refugee Act broadly affords a right to apply for asylum to any noncitizen “who is  
17 physically present in the United States or who arrives in the United States[.]” 8 U.S.C. § 1158(a)(1).

18 38. Because of the life-or-death stakes, the statutory right to apply for asylum is robust.  
19 The right necessarily includes the right to counsel, at no expense to the government, see 8 U.S.C. §§  
20 1229a(b)(4)(A), 1362, the right to notice of the right to counsel, see 8 U.S.C. § 1158(d)(4), and the  
21 right to access information in support of an application, see § 1158(b)(1)(B) (placing the burden on  
22 the applicant to present evidence to establish eligibility.).

23 39. Noncitizens seeking asylum are guaranteed Due Process under the Fifth Amendment  
24 to the U.S. Constitution. *Reno v. Flores*, 507 U.S. 292, 306 (1993).

25 40. Noncitizens who are applicants for asylum are entitled to a full hearing in  
26 immigration court before they can be removed from the United States. 8 U.S.C. § 1229a. Consistent  
27 with due process, noncitizens may seek administrative appellate review before the Board of  
28 Immigration Appeals of removal orders entered against them and judicial review in federal court  
upon a petition for review. 8 U.S.C. § 1252(a) *et seq.*

41. In 1996, Congress created “expedited removal” as a truncated method for rapidly  
removing certain noncitizens from the United States with very few procedural protections. Illegal

1 Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208,  
2 Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585; *see* 8 U.S.C. §  
3 1225(b)(1). Because there are few procedural protections, expedited removal applies narrowly to  
4 only those noncitizens who are inadmissible to the United States because they engaged in fraud or  
5 misrepresentation to procure admission or other immigration benefits, 8 U.S.C. § 1182(a)(6)(C), or  
6 who are applicants for admission without required documentation, 8 U.S.C. § 1182(a)(7). No other  
7 person may be subjected to expedited removal. 8 C.F.R. § 235.3(b)(1), (b)(3).

8 42. Noncitizens subjected to expedited removal are ordered removed by an immigration  
9 officer “without further hearing or review.” 8 U.S.C. § 1225(b)(1)(A)(i). That officer must  
10 determine whether the individual has been continuously present in the United States for less than  
11 two years; is a noncitizen; and is inadmissible because he or she has engaged in certain kinds of  
12 fraud or lacks valid entry documents “at the time of . . . application for admission.” *See* 8 U.S.C.  
13 §1225(b)(1)(A)(i), (iii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)).

14 43. Otherwise, if the officer concludes that the individual is inadmissible under an  
15 applicable ground, the officer “shall,” with simply the concurrence of a supervisor, 8 C.F.R. §  
16 235.3(b)(7), order the individual removed “without further hearing or review unless the alien  
17 indicates either an intention to apply for asylum . . . or a fear of persecution.” 8 U.S.C. §  
18 1225(b)(1)(A)(i).

19 44. Thus, a low-level DHS officer can order the removal of an individual who has been  
20 living in the United States with virtually no administrative process—just the completion of cursory  
21 paperwork—based only on the officer’s own conclusions that the individual has not been admitted  
22 or paroled, that the individual has not adequately shown the requisite continuous physical presence,  
23 and that the individual is inadmissible on one of the two specified grounds. *See* 8 U.S.C. §§  
24 1225(b)(1)-(b)(2).

25 45. Once a determination on inadmissibility is made, removal can occur rapidly, within  
26 twenty-four hours.

27 46. Asylum is not an admission to the United States and an applicant for asylum, while  
28 they must be physically present in the United States to apply, need not apply for or seek admission  
to the United States. *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013).

47. For those who fear return to their countries of origin, the expedited removal statute  
provides a limited additional screening. But the additional screening, to the extent it occurs, does

1 not remotely approach the type of process and the rights available to asylum seekers receive in  
2 regular INA section 240 immigration proceedings.

3 48. An expedited removal order comes with significant consequences beyond removal  
4 itself. Noncitizens who are issued expedited removal orders are subject to a five-year bar on  
5 admission to the United States unless they qualify for a discretionary waiver. 8 U.S.C. §  
6 1182(a)(9)(A)(i); 8 C.F.R. § 212.2. Similarly, noncitizens issued expedited removal orders after  
7 having been found inadmissible based on misrepresentation are subject to a lifetime bar on  
8 admission to the United States unless they are granted a discretionary exception or waiver. 8 U.S.C.  
9 § 1182(a)(6)(C).

10 49. Expedited removal only applies to noncitizens who are inadmissible on one of two  
11 specified grounds: 8 U.S.C. § 1182(a)(6)(C), which applies to those who seek to procure  
12 immigration status or citizenship via fraud or false representations, or § 1182(a)(7), which applies to  
13 noncitizens who, “at the time of application for admission,” fail to satisfy certain documentation  
14 requirements. 8 U.S.C. § 1225(b)(1)(A)(1). If DHS seeks to remove noncitizens based on other  
15 grounds, they must afford the noncitizen a full hearing before an immigration judge. *See* 8 C.F.R. §  
16 235.3(b)(1), (3).

17 50. Moreover, following enactment of the IIRIRA, EOIR drafted regulations explaining  
18 that, in general, non-citizens who entered the country without inspection were not considered  
19 detained under 8 U.S.C. § 1225 or automatically subject to expedited removal. *See* Inspection and  
20 Expedited Removal of Aliens, Detention and Removal of Aliens, Conduct of Removal Proceedings,  
21 Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Rather, such non-citizens were  
22 instead detained under § 1226(a). *See id.*

23 51. Thus, in the decades that followed, most people who entered without inspection—  
24 unless they were subject to some other detention authority—received bond hearings. That practice  
25 was consistent with many more decades of prior practice, in which noncitizens who were not  
26 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8  
27 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a)  
28 simply “restates” the detention authority previously found at § 1252(a)).

52. Immigration detention should not be used as a punishment and should only be used  
when, under an individualized determination, a noncitizen is a flight risk because they are unlikely

1 to appear for immigration court or a danger to the community. *Zadvydas v. Davis*, 533 U.S. 678,  
2 690 (2001).

3 53. On January 20, 2025, President Donald Trump issued several executive actions  
4 relating to immigration, including “Protecting the American People Against Invasion,” an executive  
5 order (EO) setting out a series of interior immigration enforcement actions. The Trump  
6 administration, through this and other actions, has outlined sweeping, executive branch-led changes  
7 to immigration enforcement policy, establishing a formal framework for mass deportation. The  
8 “Protecting the American People Against Invasion” EO instructs the DHS Secretary “to take all  
9 appropriate action to enable” ICE, CBP, and USCIS to prioritize civil immigration enforcement  
10 procedures including through the use of mass detention.

11 54. On January 21, 2025, Acting Deputy Secretary of DHS Benjamin Huffman issued  
12 for public inspection and effective immediately a designation expanding the scope of expedited  
13 removal to apply nationwide and to certain noncitizens who are unable to prove they have been in  
14 the country continuously for two years. On January 24, 2025, DHS published a Notice that  
15 expanded the application of expedited removal. Office of the Secretary, Dep’t of Homeland  
16 Security, Designating Aliens for Expedited Removal, 15 Fed. Reg. 8139 (“January 2025  
17 Designation”). The designation was “effective on” January 21, 2025.

18 55. The January 2025 Designation expands the pool of noncitizens who can be subjected  
19 to the summary removal process substantially to include noncitizens who are apprehended  
20 anywhere in the United States and who have not been in the United States continuously for more  
21 than two years. *Id.* at 8140.

22 56. On information and belief, Mr. Singh alleges that Respondents detained him for the  
23 purpose of divesting him of his due process rights in his properly filed asylum application.

24 57. On information and belief, Respondents did not afford Petitioner due process before  
25 revoking his release from custody, depriving him of his liberty interest, and placing him in detention  
26 within Respondents’ legal and physical custody.

27 58. On information and belief, Respondents are using the immigration detention system,  
28 including extra-territorial transfer and detention, as a means to punish individuals for asserting  
rights under the Refugee Act.

#### **FACTUAL BACKGROUND**

59. Petitioner is 24-year-old citizen and national of India.

1 60. Mr. Singh was persecuted in India on account of his religion; India is a Hindu  
2 country and Petitioner practices Christianity. The persecution he suffered in India included being  
3 [REDACTED] (who carry out violence against  
4 non-Hindus) when Petitioner preached or distributed religious literature; beaten; strangled; and  
5 incarcerated by the police when he attempted to speak out against his aggressors.

6 61. While living in India, militant groups carried out violence against non-Hindus. The  
7 militant group, [REDACTED]  
8 [REDACTED] In March 2024, while walking back from his church, Petitioner was beaten with  
9 baseball bats and strangled until he was unconscious. [REDACTED]  
10 [REDACTED]

11 62. When Petitioner attempted to file a police report against his attackers, the police  
12 officers provided his information to his assailants. Petitioner attempted to relocate within India, but  
13 he was found. The attackers told Petitioner's family, that they will find Mr. Singh "in any corner  
14 of the country and we will kill him." When he tried to escape, Petitioner was kidnapped by police  
15 officers, stripped naked, beaten, and left on the side of the road. After this, he tried to flee to the  
16 United States. Fearing this continued persecution, Petitioner sought help and made it through  
17 Mexico before entering the United States.

18 63. Mr. Singh attended one or more master calendar hearings. In November 2025, he  
19 filed an asylum application with the immigration court.

20 64. The DHS started this removal proceeding on or about August 8, 2025.

21 65. Respondents alleged he was inadmissible to the United States.

22 66. On or about November 10, 2025, Petitioner filed his Form I-589 asylum application.

23 67. On or about August 8, 2025, Petitioner was detained at the Otay Mesa Detention  
24 Center.

25 68. Mr. Singh remains in Respondents' legal and physical custody at Otay Mesa  
26 Detention Center, in San Diego, California.

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**CAUSES OF ACTION**

**COUNT ONE**

**Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.**

69. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

70. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

71. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

72. While asylum is a discretionary benefit, the right to apply is not. 8 U.S.C. § 1158(a)(1). Any noncitizen who is “physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such [noncitizen’s] status, may apply for asylum.” *Id.*

73. Because the denial of the right to apply for asylum can result in serious harm or death, the statutory right to apply is robust and meaningful. It includes the right to legal representation, and notice of that right, *see id.* §§ 1229a(b)(4)(A), 1362, 1158(d)(4); the right to present evidence in support of asylum eligibility, *see id.* § 1158(b)(1)(B); the right to appeal an adverse decision to the Board of Immigration Appeals and to the federal circuit courts, *see id.* §§ 1229a(c)(5), 1252(b); and the right to request reopening or reconsideration of a decision determining removability, *see id.* § 1229a(c)(6)-(7).

74. Expedited removal, in contrast, severely limits the availability of such rights. Interviews occur on an exceedingly fast timeline; review of a negative interview decision by an immigration judge must occur within seven days of the decision. *See* 8 C.F.R. § 1003.42.

75. While there is a right to “consult” with an attorney or another person about the credible fear interview process, *see* 8 U.S.C. § 1225(b)(1)(B)(iv) and 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(i)(B), (ii), the consultation “shall not unreasonably delay the process.” The consultant may be “present” during the interview but may only make a “statement” at the end of the interview

1 if permitted by the asylum officer. 8 C.F.R. § 208.30(d)(4). The immigrant subject to expedited  
2 removal may present evidence “if available”, *id.* —often an impossibility given the fast timeline and  
3 the default of detention during the process. *See generally* Heidi Altman, et. al., *Seeking Safety from*  
4 *Darkness: Recommendations to the Biden Administration to Safeguard Asylum Rights in CBP*  
5 *Custody*, National Immigration Law Center, (Nov. 21, 2024),  
6 [https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/)  
7 [administration-to-safeguard-asylum-rights-in-cbp-custody/](https://www.nilc.org/resources/seeking-safety-from-darkness-recommendations-to-the-biden-administration-to-safeguard-asylum-rights-in-cbp-custody/) (last visited Sept. 13, 2025) (describing  
8 the obstruction of access to counsel for people undergoing credible fear screenings in Customs and  
9 Border Protection custody).

10 76. Review of a negative credible fear decision by an immigration judge is limited. “A  
11 credible fear review is not as exhaustive or in-depth as an asylum hearing in removal proceedings,”  
12 and there is no right to submit evidence, as it may be admitted only at “the discretion of the  
13 immigration judge.” Immigration Court Practice Manual, Chpt. 7.4(d)(4)(E). After denial of a  
14 credible fear interview and affirmance by a judge, removal is a near certainty; the immigrant is  
15 ineligible for other forms of relief from removal.

16 77. In sum, applying for asylum in removal proceedings comes with a panoply of greater  
17 protections when compared with seeking asylum in expedited removal. *See Immigrant Defenders*  
18 *Law Center v. Mayorkas*, 2023 WL 3149243, at \*29 (C.D. Cal. Mar. 15, 2023) (“Individuals in  
19 regular removal proceedings enjoy far more robust due process protections [than those in expedited  
20 removal] because Congress has conferred additional statutory rights on them.”).

21 78. Moreover, Mr. Singh has a vital liberty interest in remaining free from DHS custody.  
22 *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at \*4 (N.D. Cal. July 24, 2025)  
23 (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025)  
24 (explaining that a non-citizen that ICE released from custody after initial apprehension “has a  
25 substantial private interest in remaining out of custody” which includes an interest in “...obtaining  
26 necessary medical care, [and] maintaining her relationships in the community...”). While on release  
27 from DHS custody, Mr. Singh was building his emotional support system which helped him cope  
28 with the emotional trauma he suffered in India.

79. Even if the initial decision to release a non-citizen on from DHS custody is  
discretionary, “...after that individual is released from custody she has a protected liberty interest in  
remaining out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068,

1 at \*7 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL  
2 2084921, at \*3 (N.D. Cal. July 24, 2025)).

3 80. Here, Mr. Singh was not advised by DHS that opening his proceedings may place  
4 him in expedited removal, depriving him of his liberty interest and the bundle of rights associated  
5 with his original pending asylum application in violation of due process. *See generally Mathews v.*  
6 *Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity to be heard before  
7 deprivation of a legally protected interest). Nor has the government identified any materially  
8 changed circumstances that would warrant detaining Mr. Singh after he submitted his Asylum  
Application (Form I-589), declaration, and corroborating evidence to the immigration Court.

9 **COUNT TWO**

10 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with**  
11 **Law and in Excess of Statutory Authority Violation of 8**  
12 **C.F.R. § 239.2(c)**

13 82. Petitioner restates, realleges, and incorporates by reference each and every allegation  
14 in the paragraphs above as if fully set forth herein.

15 82. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in  
16 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction  
17 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §  
18 706(2)(A)-(D).

19 83. Once a removal proceeding has been initiated, regulations enumerate the reasons for  
20 which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the  
21 Immigration Judge must make “an informed adjudication . . . based on an evaluation of the factors  
22 underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

23 84. The initiation of expedited removal proceedings is not an enumerated ground upon  
24 which a removal proceeding may be dismissed.

25 85. It is a well-established administrative principle that “agency action taken without  
26 lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1,  
27 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also*  
28 *Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency  
action because it was taken by unauthorized official).

1 85. Under the APA, an agency must provide “reasoned explanation for its action” and  
2 “may not depart from a prior policy sub silentio or simply disregard rules that are still on the  
3 books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). At the time of his  
4 detention, Mr. Singh had just entered the United States. On information and belief, Respondents’  
5 intent was to eliminate the due process rights available to Petitioner in removal proceedings under  
6 section 240 of the INA, deprive him of his liberty interest despite no evidence of material changed  
7 circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem*, No. 5:25-CV-  
8 05632-PCP, 2025 WL 2084921, at \*5 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to  
9 meet an administrative quota, or because the government has not yet established constitutionally  
10 required pre-detention procedures is not a legitimate government interest.”).

11 87. In deciding to detain Mr. Singh, Respondents further violated the APA by “entirely  
12 fail[ing] to consider an important aspect of the problem” – namely, the important procedural rights  
13 that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle Mfrs. Ass'n of*  
14 *U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also Dep't of Homeland*  
15 *Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding that rescission of  
16 immigration policy without considering “particular reliance interests” is arbitrary and capricious in  
17 violation of the APA).

18 88. The arbitrary and capricious detention of Mr. Singh was not made in furtherance of  
19 an enumerated reason set forth in the regulations and causes Mr. Singh irreparable harm. For these  
20 reasons, the Court should find that the decision to detain Mr. Singh is arbitrary, capricious, and  
21 unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

22 **COUNT THREE**

23 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with**  
24 **Law and in Excess of Statutory Authority, Unlawful Detention**

25 89. Petitioner restates, realleges, and incorporates by reference each and every allegation  
26 in the paragraphs above as if fully set forth herein.

27 90. Under the APA, a court shall “hold unlawful and set aside agency action...” that is  
28 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B)  
contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

91. An action is an abuse of discretion if the agency “entirely failed to consider an  
important aspect of the problem, offered an explanation for its decision that runs counter to the

1 evidence before the agency, or is so implausible that it could not be ascribed to a difference in view  
2 or the product of agency expertise.” *Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,  
3 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463  
4 U.S. 29, 43 (1983)).

5 92. To survive an APA challenge, the agency must articulate “a satisfactory explanation”  
6 for its action, “including a rational connection between the facts found and the choice made.” *Dep’t*  
7 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

8 93. The INA provides that Respondents may release an individual from apprehension or  
9 custody based on an individualized determination of their danger and flight risk. *See* 8 U.S.C. §  
10 1226(a); *Zadvydass*, 533 U.S. at 690; *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). After such a  
11 release decision is made, a revocation of the custody determination may be made only when  
12 warranted by an individual’s specific facts and circumstances. 8 U.S.C. § 1226(b); 8 C.F.R. §  
13 1236.1(c)(9).

14 94. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at \*10-12 (D. Or. July 9, 2025), the Court  
15 explained the process of discretionary release from custody in immigration cases and noted that  
16 before revoking the release, the non-citizen must be given written notice of the impending  
17 revocation, which must include a cogent description of the reasons. Under the APA, non-citizens  
18 are entitled to determinations related to their release revocations that are not arbitrary, capricious or  
19 an abuse of discretion. *See id.* at \*10.

20 95. By categorically revoking Mr. Singh’s release from DHS custody, and detaining him  
21 without notice or consideration of his individualized facts and circumstances, Respondents have  
22 violated the INA, implementing regulations, and the APA.

23 96. Respondents have made no finding that Petitioner is a danger to the community.

24 97. Respondents have made no finding that Petitioner is a flight risk.

25 98. On information and belief, by detaining Mr. Singh categorically and without notice,  
26 Respondents have further abused their discretion because, since the agency made its initial custody  
27 determination, on information and belief, there have been no changes to Mr. Singh’s specific facts  
28 or circumstances that support his detention or the revocation of his release from custody on his own  
recognizance.

99. Respondents have already considered Mr. Singh’s facts and circumstances and  
determined that he was not a flight risk or danger to the community. On information and belief,

1 there have been no changes to the facts of Mr. Singh’s proceedings that justify this revocation of his  
2 release from DHS custody.

3 **COUNT FOUR**

4 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance with  
5 Law and in Excess of Statutory Authority, Violation of 8 U.S.C. § 1225(b)**

6 100. Petitioner restates, realleges, and incorporates by reference each and every allegation  
7 in the paragraphs above as if fully set forth herein.

8 101. Under the APA, a court shall “hold unlawful and set aside agency action...” that is  
9 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B)  
10 contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

11 102. Congress has made it clear that the expedited removal statute does not apply and  
12 may not be applied to individuals who were “paroled” into the United States. 8 U.S.C. § 1225(b). It  
13 further applies to the non-citizens seeking admission. *Id.* § 1225(b)(2).

14 103. Mr. Singh is not amenable to, nor may he be subjected to, expedited removal because  
15 he was immediately placed into INA section 240 proceedings upon encountering DHS officers in  
16 2024, and not into expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II),  
17 1225(b)(2); *see also* 8 C.F.R. 253.3(b)(6) (requiring “reasonable opportunity” to explain a non-  
18 citizen’s status).

19 **COUNT FIVE**

20 **Violation of the Fourth Amendment of the Constitution**

21 104. Petitioner restates, realleges, and incorporates by reference each and every allegation  
22 in the paragraphs above as if fully set forth herein.

23 105. The Fourth Amendment protects “[t]he right of the people to be secure in their  
24 persons . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme  
25 Court has recognized that immigration arrests and detentions are “seizures” within the meaning of  
26 the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that  
27 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the  
28 person).

106. The Fourth Amendment requires that arrests entail a neutral, judicial determination  
of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial  
determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in

1 the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a person,  
2 including of a noncitizen, absent a neutral judicial determination of probable cause violates the  
3 Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v. McLaughlin*, 500 U.S. 44,  
4 57 (1991). This determination must occur within 48 hours of detention, which includes weekends,  
5 unless there is a bona fide emergency or other extraordinary circumstances. *See Cnty. of Riverside*  
6 *v. McLaughlin*, 500 U.S. 44, 57 (1991).

7 107. Congress enacted a strong preference that immigration arrests be based on warrants.  
8 *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act  
9 thus provides immigration officers with only limited authority to conduct warrantless arrests. 8  
10 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8  
11 C.F.R. § 287.8(c)(2)(ii).

12 108. Mr. Singh, at the moment of his arrest and detention by Respondents, did not receive  
13 any judicial determination of probable cause for his arrest or continued detention by Respondents.

14 109. The Government cannot salvage this seizure by invoking generalized immigration  
15 enforcement interests. The Fourth Amendment’s reasonableness inquiry is fact-specific and  
16 demands individualized justification for both the arrest and the extended detention. *See United*  
17 *States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Singh did  
18 not pose any danger to any person in the community at large.

19 110. Respondents’ warrantless arrest of Mr. Singh constitutes an unreasonable and  
20 unlawful seizure in violation of the Fourth Amendment.

### 21 COUNT SIX

#### 22 **Violation of Fifth Amendment Right to Due Process – Procedural Due Process, U.S. Const. 23 Amend. V.**

24 111. Petitioner restates, realleges, and incorporates by reference each and every allegation  
25 in the paragraphs above as if fully set forth herein.

26 112. The government may not deprive a person of life, liberty, or property without due  
27 process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,  
28 detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause  
protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

113. Mr. Singh has a fundamental interest in liberty and being free from official restraint.

114. The government’s detention of Petitioner without a notice or an opportunity to be  
heard before detention violates his right to due process.

1 115. The government’s detention of Petitioner without a meaningful bond and custody  
2 redetermination hearing to determine whether he is a flight risk or danger to others violates his right  
3 to due process.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 6 (1) Assume jurisdiction over this matter;
- 7 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
8 should not be granted within three days;
- 9 (3) Declare that Petitioner’s detention without an individualized determination violates  
10 the Due Process Clause of the Fifth Amendment;
- 11 (4) Declare that refusal to allow Petitioner a meaningful bond and custody  
12 redetermination hearing violates the INA, APA, and Due Process;
- 13 (5) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner from  
14 custody;
- 15 (6) Issue an Order prohibiting the Respondents from transferring Petitioner from this  
16 district without the Court’s approval;
- 17 (7) Issue an Order requiring Respondents to provide a bond and custody redetermination  
18 hearing within 14 days to meaningfully consider his eligibility for release from DHS  
19 custody;
- 20 (8) Award Petitioner’s counsel reasonable attorney’s fees and costs under the Equal  
21 Access to Justice Act, and on any other basis justified under law;
- 22 (9) Grant such further relief as the Court deems just, equitable, and appropriate; and
- 23 (10) Grant any and all other further relief this Court deems just or proper.

24 Dated: January 21, 2026

25 Respectfully submitted,

26 /S/ Mario Portugal

27 \_\_\_\_\_  
28 Mario Portugal  
Attorney for Petitioner Vikramjit Singh