

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

1. Varun SALARIA,

Petitioner,

v.

Case No.

1. SCARLET GRANT, Warden of  
Cimarron Correctional Facility;

2. JOSHUA JOHNSON, Field Office  
Director of Enforcement and Removal  
Operations, ICE Dallas Field Office;

3. TODD LYONS, in his official  
capacity as Acting Director of U.S.  
Immigration and Customs  
Enforcement;

4. KRISTI NOEM, in her official  
capacity as U.S. Secretary of Homeland  
Security;

5. PAMELA BONDI, in her official  
capacity as U.S. Attorney General,

Respondents.

**PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C. § 2241**

**PRELIMINARY STATEMENT**

1. This case challenges the unlawful and indefinite re-detention under a new and erroneous interpretation of the Immigration and Nationality Act ("INA"). Petitioner Varun Salaria is detained without the possibility of bond solely because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have chosen to treat him as if he were an "arriving" alien and present at the border, even though they had already processed him pursuant to 8 U.S.C. § 1226(a) at his initial encounter. Immigration and Customs Enforcement (ICE)'s misapplication of 8 U.S.C. § 1225(b)(2)(A) and the Board of Immigration Appeals' (BIA's) recent decision in *Matter of Yajure Hurtado* have stripped Petitioner — and thousands of similarly situated individuals — of the bond hearings guaranteed by § 1226(a).

**INTRODUCTION**

2. Petitioner Varun Salaria is in the physical custody of Respondents at the Cimarron Correctional Facility in Cushing, Oklahoma. He now faces unlawful detention because the DHS and the EOIR have concluded Petitioner is subject to mandatory detention upon his re-detention

in the interior on November 10, 2025.

3. Petitioner is charged with, *inter alia*, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on this allegation in Petitioner's 240 removal proceedings pursuant to 8 U.S.C. § 1229(a), DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all ICE employees to consider anyone inadmissible under § 1182(a)(6)(A)(i), those who entered the United States without admission or parole, to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and now residing in the

United States. These individuals are instead subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

8. Accordingly, Petitioner seeks a writ of habeas corpus requiring that he be released unless Respondents provide a bond hearing under § 1226(a) within seven (7) days.

#### JURISDICTION AND VENUE

9. Petitioner is presently in custody under or by color of the authority of the United States, and he challenges his custody as in violation of the Constitution, laws, or treaties of the United States.

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

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28

U.S.C. § 1651.

12. Petitioner is detained at the Cimarron Correctional Facility in Cushing, Oklahoma, at the time of filing. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue therefore lies in the United States District Court for the Western District of Oklahoma, the judicial district in which Petitioner currently is detained.

13. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the United States District Court for Western District of Oklahoma.

#### REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law... affording as it does a *swift* and imperative remedy in

all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. INS.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

#### PARTIES

16. Petitioner, Varun Salaria, is alleged to be a citizen of India who has been in immigration detention since November 10, 2025. After arresting Petitioner, ICE did not set bond and Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

17. Respondent Scarlet Grant is employed by Core Civic as Warden of the Cimarron Correctional Facility, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her official capacity.

18. Respondent Joshua Johnson is the Acting Field Office Director of the Dallas Field Office of ICE's Enforcement and Removal Operations division. ICE Enforcement and Removal Operations for Oklahoma is under the jurisdiction of the Dallas Field Office. As such, Acting Field Office Director Joshua Johnson is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official

capacity.

19. Respondent Todd Lyons is the Acting Director of ICE. He is responsible for the administration of ICE and the implementation and enforcement of immigration laws, including detention. He is a legal custodian of Petitioner. He is sued in his official capacity.

20. Respondent Kristi Noem is the U.S. Secretary of the Department of Homeland Security and is responsible for the administration of DHS. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner. She is sued in her official capacity.

21. Respondent Pamela Bondi is the U.S. Attorney General and is responsible for the Executive Office of Immigration Review, including the Immigration Courts. Ms. Bondi is sued in her official capacity.

#### LEGAL FRAMEWORK

22. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

23. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in

standard removal proceedings before an Immigration Judge (“IJ”), *see* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.l(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

25. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)-(b).

26. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

27. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, Div. C, §§ 302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

28. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

29. In the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

30. On July 8, 2025, ICE, "in coordination with" the Department of Justice, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.

31. The new policy, entitled "Interim Guidance Regarding Detention

Authority for Applicants for Admission,"<sup>1</sup> claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

32. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

33. Since Respondents adopted their new policies, dozens of federal courts have rejected their new interpretation of the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

34. Court after court has adopted the same reading of the INA's detention authorities and rejected ICE and EOIR's new interpretation, including our sister courts in the Tenth Circuit. *See Garcia Cortes v. Noem*,

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<sup>1</sup> Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); and *Gamez Lira v. Noem*, No. 1:25-cv-00855 (D.N.M. Sept. 24, 2025).

35. Other District Courts across the country have also rejected ICE's erroneous interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, ••• F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 26 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. Q:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No.

25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. s:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

36. Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington immigration court had stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here. There, in *Rodriguez Vazquez v. Bostock*, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United

States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025).

37. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

38. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229(a), to "decid[e] the inadmissibility or deportability of a0 [noncitizen]."

39. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Section 1226 Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies."

*Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at \*7.

40. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

41. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

42. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

#### STATEMENT OF FACTS

43. Petitioner, Varun Salaria, is a twenty-five-year-old alleged citizen of India. He entered the United States on or about May 30, 2022, at or near San Luis, Arizona. At entry, the DHS processed Petitioner and issued a Notice to Appear (NTA) commencing removal proceedings pursuant to INA § 240 (8 U.S.C. § 1229(a)).

44. The NTA dated May 31, 2022, charged Petitioner as a noncitizen who was not admitted or paroled pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) and ordered him to appear before the Immigration Court at 1 Federal Drive, Suite 1850, Fort Snelling, Minnesota 55111, on December 13, 2022, at 9:00a.m.

45. On or about May 31, 2022, DHS conducted a danger and flight risk assessment pursuant to 8 U.S.C. § 1226(a) and released Petitioner on his own recognizance, necessarily determining that he did not pose a danger to the community or a risk of flight.

46. Following his release, Petitioner complied with all conditions imposed by DHS, including reporting requirements to the Non-Detained Unit as directed. Petitioner filed an Application for Aylum and for Withholding of Removal (Form I-589) in removal proceedings. USCIS thereafter issued a biometrics appointment notice scheduling Petitioner to appear at the USCIS Application Support Center in Jamaica, New York on December 8, 2022, at 12:00p.m.

47. Petitioner also applied for employment authorization, and USCIS issued a Form I-765 receipt notice dated May 16, 2025, under eligibility category (c)(8). Petitioner has remained in compliance with all immigration requirements, including appearing at all scheduled DHS and USCIS appointments.

48. On a date subsequent to his release, or approximately November 10, 2025, Petitioner was re-detained by DHS despite having violated no condition of his

prior release and despite his consistent compliance with DHS and Immigration Court requirements. Petitioner currently remains in DHS custody at Cimarron Correctional Facility, located at 3700 S. Kings Highway, Cushing, Oklahoma 74023.

49. ICE re-detained Petitioner without providing notice, a hearing, or an individualized determination justifying the revocation of his release. Upon entry, Petitioner was released on recognizance under 8 U.S.C. § 1226(a). If Respondents classify Petitioner's initial release under 8 U.S.C. § 1226(a), his re-detention violates 8 U.S.C. § 1226(b), which permits revocation of bond or parole only through a reasoned exercise of discretion. *See* 8 C.F.R. § 236.1(c)(9) (authorizing revocation by designated ICE officials in their discretion).

50. In *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals stripped immigration judges of jurisdiction to conduct custody redeterminations for noncitizens who entered without inspection, as in Petitioner's case, leaving habeas corpus as his only avenue for relief. To the extent *Yajure-Hurtado* eliminates all review mechanisms, it violates due process under *Zadvydas v. Davis*, 533 U.S. 677 (2001).

51. Even if Respondents reclassify Petitioner as an "arriving alien" under 8 U.S.C. § 1225(b)(2)(A), his detention remains unlawful. Under § 1225(b)(2)(A), custody redetermination is unavailable (8 C.F.R. § 1003.19(h)(2)(i)), leaving DHS's discretionary parole authority as the sole mechanism for release (8 C.F.R. §

235.3(b)(5)). DHS's failure to provide notice, a hearing, or a reasoned explanation for re-detention, particularly after nearly two years of compliance with ICE supervision and reporting, renders its action arbitrary and capricious, violating the Fifth Amendment to the U.S. Constitution and 5 U.S.C. § 706(2)(A). *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020) (requiring reasoned agency action).

52. Petitioner was re-detained by DHS despite having violated no condition of his prior release and despite his consistent compliance with DHS, ICE, and Immigration Court requirements.

53. ICE detained Petitioner without bond, asserting that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) based on the Board of Immigration Appeals' decision in *Matter of Yajure Hurtado*, notwithstanding Petitioner's initial custody determination under § 1226(a), his compliance with ATD, and his placement in standard removal proceedings under § 1229a, where § 1226(a) is the default detention rule.

54. Without intervention from this Court, Petitioner faces the prospect of indefinite detention lasting months or even years, separated from his family and community.

## WRIT OF HABEAS CORPUS

55. The Constitution guarantees the right of writ of habeas corpus to every individual detained within the United States, including immigration-related detention. *See Zadvydas v. Davis*, 533 U.S. 677 (2001), at 687. A writ of habeas corpus must be granted if the person is in custody in violation of the Constitution or federal law. *See* 28 U.S.C. § 2241(c)(3).

56. The Court must grant the petition for writ of habeas corpus or issue an Order to Show Cause (OSC) to the Respondents forthwith, unless the petitioner is not entitled to relief. *See* 28 U.S.C. § 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.*

57. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

58. Immigration detention is a form of civil confinement that “constitutes a significant deprivation of liberty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). Noncitizens in immigration proceedings are entitled to Due Process under the Fifth Amendment of the U.S. Constitution. *See Reno v. Flores*, 507 U.S. 292

(1993). 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 to appear for immigration court or a danger to the community. *See Zadvydas*, 533 U.S. at 690.

59. Respondents' position that Petitioner is subject to mandatory detention by recategorizing him as an arriving alien or an applicant for admission deprives him of the opportunity to challenge his detention through any other avenue outside of habeas corpus proceedings.

a. Violation of Fifth Amendment Right to Due Process

60. 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; *accord Flores*, 507 U.S. 292. Due process requires that government action be rational and non-arbitrary. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018).

61. Petitioner's detention violates his substantial due process rights under

the Fifth Amendment of the U.S. Constitution, which guarantees that no person shall be deprived of liberty without due process of law. Arbitrary civil detention is categorically unconstitutional. The Due Process Clause requires that any deprivation of Petitioner's liberty serve, at minimum, a legitimate purpose. *See Flores*, 507 U.S. at 302 (explaining that infringements on fundamental liberty rights violate due process unless they are "narrowly tailored to serve a compelling state interest").

62. Petitioner's detention violates his procedural and substantive due process rights under the three-part test set forth in *Mathews b. Eldridge*, 424 U.S. 319 (1976), at 335, to wit:

- (1) the private interest that will be affected by the official action;
- (2) the risk of an erroneous deprivation of such interest through the procedures used, and probably value, if any, of additional procedural safeguards; and
- (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.

63. First, Petitioner's liberty interest is substantial. His over three years of compliance with ICE supervision, USCIS appointments, and removal proceedings, and application for valid Employment Authorization Document (EAD), demonstrate a

protected interest in remaining free from detention. *See Zadvydas*, 533 U.S. at 690.

64. Second, the risk of erroneous deprivation is high due to DHS's failure to provide notice, a hearing, or an individualized determination of flight risk or danger before re-detaining him.

65. Third, the government's interest in detaining Petitioner is minimal compared to his substantial liberty interest. The goal of ensuring compliance with removal proceedings is satisfied by Petitioner's consistent appearance at ICE supervision and adherence to all requirements over three years. *See Jennings v. Rodriguez*, 583 U.S. 281 (2018) (detention must serve a legitimate purpose). Alternatives such as electronic monitoring could address any enforcement concerns at minimal cost, rendering detention unnecessary.

66. Here, Respondents have chosen to revoke Petitioner's release in an arbitrary manner and not based on a rational and individualized determination of whether he is a safety or flight risk, in violation of due process. Because no individualized custody revocation has been made and no circumstances have changed to make Petitioner a flight risk or a danger to the community, Respondents' revocation of Petitioner's release violates his right to procedural due process.

67. If Petitioner's initial release was pursuant to 8 U.S.C. § 1226(a),

which authorizes release on bond or conditional parole pending removal proceedings, his re-detention violates due process. Section 1226(b) provides that “(t)he Attorney General at any time may revoke a bond or parole authorized under subsection (a), rearrest the alien under the original warrant, and detain the alien.” 8 U.S.C. § 1226(b). This authority, implemented by 8 C.F.R. § 236.1(c)(9), requires a reasoned exercise of discretion by designated ICE officials. DHS’s failure to provide notice of revocation or an individualized determination of flight risk or danger to the community renders the re-detention arbitrary and unconstitutional. *See Matthews*, 424 U.S. 319 (requiring procedural safeguards to protect liberty interests); *see also Zadvydas*, 533 U.S. at 690 (prohibiting arbitrary detention).

68. Even if classified as an arriving alien, the petitioner is entitled to due process under *Clark v. Martinez*, 543 U.S. 371, 380-81 (2005) (extending due process protections to all noncitizens). Re-detaining a compliant individual after three years without notice or a hearing is arbitrary and violates the Fifth Amendment. *See Jennings*, 583 U.S. 281 (acknowledging due process limits on immigration detention).

69. 8 U.S.C. § 1226(b) and 8 C.F.R. § 236.1(c)(9) grant ICE discretion to revoke release. Petitioner is subject to § 1226(a), not 1226(b). However, even were Petitioner subject to 1226(b), the discretion it grants to

revoke release is not unfettered and must comport with due process. *See Zadvydas*, 533 U.S. at 690. Re-detaining a compliant individual without notice or a hearing is arbitrary, particularly given Petitioner’s three years’ liberty interest. *See Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 95r1 (9<sup>th</sup> Cir. 2008) (due process requires and individualized determination of flight risk or danger to the community).

70. Under the APA, the Court must set aside DHS’s decision to re-detain Petitioner as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). An action is arbitrary if it fails to consider relevant factors or lacks a rational connection to the facts. *See Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

71. DHS’s decision to re-detain Petitioner lacks a rational basis, as DHS provided no evidence of changed circumstances or individualized findings of flight risk or danger. Petitioner’s three years of compliance with ICE supervision, USCIS appointments, and removal proceedings, and application for valid Employment Authorization Document (EAD), establish a liberty interest that DHS failed to consider. *See Zadvydas*, 533 U.S. at 690. Alternatives to detention, such as electronic monitoring, could achieve enforcement goals

without depriving Petitioner of liberty, underscoring DHS's abuse of discretion. *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007). Respondents may argue that Petitioner is subject to 8 U.S.C. 1226(b) or § 1225(b)(2)A) and per these Sections ICE discretion is unreviewable. However, under *Zadvydas*, agency action must be rational and comport with due process. *See Zadvydas*, 533 U.S. at 690.

#### CLAIMS FOR RELIEF

#### FIRST COUNT

#### Violation of the INA

72. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

73. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country, have been residing in the United States, and were apprehended in the interior. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. DHS has treated Petitioner as detained pursuant to § 1226(a).

74. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

### SECOND COUNT

#### Violation of Due Process

75. Petitioner repeats, re-alleges, and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

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

77. Petitioner has a fundamental interest in liberty and being free from official restraint.

78. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

#### PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief.

25

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

- a. Assume jurisdiction over this matter;
- b. Order that Petitioner shall not be transferred outside the Western District of Oklahoma while this habeas petition is pending;
- c. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days, per 28 U.S.C. § 2243;
- d. Declare that Petitioner's three years of compliance with ICE supervision, USCIS appointments, and removal proceedings, and application for a valid EAD, establish a substantial liberty interest protected by the Fifth Amendment to the U.S. Constitution;
- e. Declare that Petitioner's re-detention without notice, a hearing, or individualized findings violates the Fifth Amendment and 5 U.S.C. § 706(2)(A);
- f. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;
- g. Declare that Petitioner's detention is unlawful;
- h. Award Petitioner attorney's fees and costs under the Equal

Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412,  
and on any other basis justified under law; and

- i. Grant any other and further relief that this Court deems just and proper.

DATED this 27<sup>th</sup> day of January, 2026. Respectfully submitted,

/S/ Elissa Stiles  
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*Pro hac vice admission forthcoming*

VERIFICATION OF COUNSEL

I, Elissa Stiles, hereby certify that I am familiar with the case of the named Petitioner and that the facts as stated above are true and correct to the best of my knowledge and belief.

/S/ Elissa Stiles  
Elissa Stiles