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7  
8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 **KIRANDEEP SINGH**

11 Petitioner,

12 v.

13 **CHRISTOPHER LAROSE**, Warden Otay  
14 Mesa Detention Center; **PATRICK**  
15 **DIVVER**, Field Officer Director, San Diego  
16 Field Office; **TODD LYONS**, Acting  
17 Director of United States Immigration and  
18 Customs Enforcement; **KRISTI NOEM**,  
19 Secretary of the United States Department  
20 of Homeland Security, **PAMELA BONDI**,  
21 Attorney General of the United States,  
22 acting in their official capacities,  
23 Respondents.

Case No. '26CV556 JES VET

**PETITION FOR WRIT OF**  
**HABEAS CORPUS**  
**(28 U.S.C. § 2241)**

24 **I. INTRODUCTION**

- 25 1. Kirandeep Singh ("Petitioner") respectfully asks this Court to order Respondents to  
26 immediately release him and further order that he may not be redetained absent a  
27 showing, before a neutral arbiter, that he poses a flight risk or specific danger to the  
28 community. Respondents claim Petitioner is detained pursuant to 8 U.S.C. 1225(b)  
and is ineligible for a bond hearing. However, because he is not properly subject to  
that statute, his detention is unlawful. Separately, his rearrest following prior release  
on conditional parole constitutes a violation of his Due Process rights.
2. Petitioner is an asylum seeker who fled India. He arrived in the U.S. on or about  
September 5, 2024 and was encountered and apprehended by Customs and Border

- 1 Protection inside the United States. He was released on his own recognizance on that  
2 same date and removal proceedings under 8 U.S.C. 1229a were initiated against him.
- 3 3. Petitioner participated in removal proceedings, submitting his application for asylum  
4 and evidence in support of his claim. He attended all required hearings, retained  
5 counsel, and followed all Court orders.
- 6 4. However, on May 30, 2025, Immigration Judge Meghan Heesch, on motion from  
7 DHS counsel, dismissed removal proceedings over Petitioner's objection. DHS  
8 indicated that it no longer wished to pursue § 1229a proceedings and, instead,  
9 intended to pursue expedited removal proceedings against the Petitioner pursuant to §  
10 1225(b)(1).
- 11 5. Petitioner was detained by ICE agents on that same date and has remained detained  
12 through this date.
- 13 6. Petitioner initially asks this Court to issue order requiring his release from custody  
14 because his re-arrest following initial detention and release, without change in  
15 circumstance, violates his statutory and Constitutional rights. Additionally, Petitioner  
16 requests an injunctive and declaratory relief requiring that any detention of Petitioner,  
17 until and unless he is subject of a final order of removal, is pursuant to 8 U.S.C. 1226  
18 and that he is not subject to mandatory detention under Section 1225(b) and may not  
19 be redetained absent a showing that he is a danger or flight risk before a neutral  
20 arbiter.
- 21 7. As a statutory matter, 1225(b) does not apply to a noncitizen who has been released  
22 through conditional parole under 1226(a) and then, after living in the U.S. for an  
23 extended period, is rearrested.
- 24 8. Additionally, the 5<sup>th</sup> Amendment forbids rearrest of a paroled noncitizen without a  
25 predeprivation hearing, particularly in the absence of materially changed  
26 circumstances.
- 27 9. Civil Immigration Detention is generally only permissible for only two reasons: to  
28 ensure a noncitizen's appearance at immigration hearings and to prevent danger to the  
community. But DHS did not arrest and detain Petitioner—who demonstrably poses

1 no risk of absconding or danger to the community—for either of these reasons.  
2 Instead, as part of its broader enforcement campaign, DHS detained Petitioner to strip  
3 him of his procedural rights and seeking to pressure Petitioner into giving up his claim  
4 for protection or to process his case without his ability to fully assist in preparing  
5 evidence in support of his claim.

6 10. Petitioner’s arrest and detention are causing him and his family ongoing physical and  
7 psychological harm. Petitioner’s income is crucial to his ability to afford legal  
8 counsel, to support himself, and to provide support to his loved ones.

9 11. The Constitution protects Petitioner—and every other person present in this country—  
10 from arbitrary arrest and detention and guarantees him due process of law. While the  
11 Executive Branch has broad power over the regulation of noncitizens, those powers are  
12 still “subject to important constitutional limitations.” Zadvydas v. Davis, 533 U.S.  
13 678, 695 (2001). “Freedom from bodily restraint has always been at the core of the  
14 liberty protected by the Due Process Clause from arbitrary governmental action.”  
15 Foucha v. Louisiana, 504 U.S. 71, 80 (1992).

16 12. Petitioner respectfully, and urgently, seeks a writ of habeas corpus ordering the  
17 government to release him from unlawful detention, prohibiting his re-arrest absent a  
18 finding that he is a danger to his community or a flight risk from a neutral  
19 decisionmaker.

## 20 II. JURISDICTION AND VENUE

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

26 14. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28  
27 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this  
28 district. Petitioner is detained at Mes OTAY MESA DETENTION CENTER 748

1 CALZADA DE LA FUENTE, SAN DIEGO, CA 92154.

2 **III. PARTIES**

- 3
- 4 15. Petitioner, Kirandeep Singh, is a 20-year-old native and citizen of India. Prior to his  
5 detention, he resided and worked in the San Diego, California.
- 6 16. Respondent Christopher Larose, is the Warden Otay Mesa Detention Center. In this  
7 role he serves as Petitioner's immediate physical custodian. He is sued in his official  
8 capacity.
- 9 17. Patrick Divver is the Field Officer Director, ICE's San Diego Enforcement and  
10 Removals Operations Field Office. He is responsible for oversight of all ICE ERO  
11 operations including the Otay Mesa Detention Center. He is sued in her official  
12 capacity.
- 13 18. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official  
14 Performing the Duties of the Director of ICE, he is responsible for the administration  
15 and enforcement of the immigration laws of the United States, routinely transacts  
16 business in this District, and is legally responsible for pursuing any effort to detain and  
17 remove the Petitioner. Respondent Lyons is sued in his official capacity.
- 18 19. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate  
19 authority over DHS. In that capacity and through her agents, Respondent Noem has  
20 broad authority over and responsibility for the operation and enforcement of the  
21 immigration laws; routinely transacts business in this District; and is legally  
22 responsible for pursuing any effort to detain and remove the Petitioner. Respondent  
23 Noem is sued in her official capacity.
- 24 20. Respondent Pamela Bondi is the Attorney General of the United States and the most  
25 senior official at the Department of Justice. In that capacity and through her agents,  
26 she is responsible for overseeing the implementation and enforcement of the federal  
27 immigration laws. The Attorney General delegates this responsibility to the Executive  
28 Office for Immigration Review, which administers the immigration courts and the

1 BIA. Respondent Bondi is sued in her official capacity.

2 **IV. EXHAUSTION**

3  
4 21. There is no requirement to exhaust because no other forum exists in which Petitioner  
5 can raise the claims herein. In cases like this the "exhaustion requirement is  
6 prudential, rather than jurisdictional," and therefore may be waived "if 'administrative  
7 remedies are inadequate or not efficacious, pursuit of administrative remedies would  
8 be a futile gesture, irreparable injury will result, or the administrative proceedings  
9 would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir.  
10 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)). Prudential  
11 exhaustion is not required here because it would be futile, and Petitioner will "suffer  
12 irreparable harm if unable to secure immediate judicial consideration of [their] claim."  
13 *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

14 22. Additionally, pursuit of administrative remedies would almost certainly be futile given  
15 the BIA's recent holding that all noncitizens present in the United States without  
16 admission are "seeking admission" for purposes of 8 U.S.C. § 1225(b)(2)(A) and must  
17 be detained. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

18 **V. LEGAL BACKGROUND**

19 **A. The Constitution prohibits arbitrary arrest and detention of noncitizens**

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

25 24. First, "[t]he touchstone of due process is protection of the individual against arbitrary  
26 action of government," *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including "the  
27 exercise of power without any reasonable justification in the service of a legitimate  
28 government objective," *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

1 25. These protections extend to noncitizens as “[i]n our society liberty is the norm, and  
2 detention prior to trial or without trial is the carefully limited exception.” United  
3 States v. Salerno, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from  
4 imprisonment—from government custody, detention, or other forms of physical  
5 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”  
6 Zadvydas, 533 U.S. at 690.

7 26. Substantive due process requires that all forms of civil detention—including  
8 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See*  
9 Jackson v. Indiana, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only  
10 two permissible non-punitive purposes for immigration detention: ensuring a  
11 noncitizen’s appearance at immigration proceedings and preventing danger to the  
12 community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at  
13 519–20, 527–28, 31 (2003).

14 27. Secondly, the Due Process Clause’s procedural protections require that even  
15 permissible forms of detention only be imposed where procedural safeguards are in  
16 place and have been followed. *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir.  
17 2003) (“The Supreme Court has long recognized that deportable aliens are entitled to  
18 constitutional protections of due process.”)  
19

20 28. Except in rare situations, “the Constitution requires some kind of a hearing before the  
21 State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127  
22 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v.*  
23 *D.C., Gov’t*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-  
24 detention after pre-parole conditional supervision requires pre-deprivation hearing));  
25 *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey*  
26 *v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

27 29. After an initial release from custody on conditions, even a person paroled following a  
28 conviction for a criminal offense for which they may lawfully have remained

1 incarcerated has a protected liberty interest in that conditional release. *Morrissey*, 408  
2 U.S. at 482. As the Supreme Court recognized, “[t]he parolee has relied on at least an  
3 implicit promise that parole will be revoked only if he fails to live up to the parole  
4 conditions.” *Id.* “By whatever name, the liberty is valuable and must be seen within  
5 the protection of the [Constitution].” *Id.*

6 30. This reasoning applies with equal or greater force to people released from civil  
7 immigration detention. Noncitizens residing in the United States, like Petitioner, have  
8 a protected liberty interest in their ongoing freedom from detention. *See Zadvydas*,  
9 533 U.S. at 690. Further, “[g]iven the civil context [of immigration detention], [the]  
10 liberty interest [of noncitizens released from custody] is arguably greater than the  
11 interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

12  
13 **B. Detention under the Immigration & Nationality Act: 8 U.S.C. §§ 1225 &  
14 1226**

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

18 32. Section 235 is titled “Inspection by immigration officers; expedited removal of  
19 inadmissible arriving aliens; referral for hearing.” The statute provides:

20 An alien present in the United States who has not been admitted or who  
21 arrives in the United States . . . shall be deemed for purposes of this chapter  
22 an applicant for admission. Subject to subparagraphs (B) and (C), in the  
23 case of an alien who is an applicant for admission, if the examining  
24 immigration officer determines that an alien seeking admission is not  
25 clearly and beyond a doubt entitled to be admitted, the alien shall be  
26 detained for a proceeding under section 1229a of this title. 8 U.S.C. §  
27 1225(a)(1), (b)(2)(A).

28 33. An applicant is seeking “admission,” as that term is defined by § 1101(a)(13)(A), if he  
is seeking “lawful entry . . . after inspection” and authorization. *Tovar v. Noem*, No.

1 5:25-CV-1509-JKP, 2025 U.S. Dist. LEXIS 250408, at \*13 (W.D. Tex. 2025)

2 34. An "[a]rriving alien means an applicant for admission coming or attempting to come  
3 into the United States . . . regardless of the means of transport." 8 C.F.R. § 1.2.  
4 "Admission" and "admitted" mean "the lawful entry of the alien into the United States  
5 after inspection and authorization by an immigration officer." 8 U.S.C. §  
6 1101(a)(13)(A).

7 35. Noncitizens subject to mandatory detention under § 235(b) may be released only if  
8 they are "paroled 'for urgent humanitarian reasons or significant public benefit.'" Gomes v. Hyde, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL  
9 1869299, at \*2 (D. Mass. July 7, 2025) (quoting 8 U.S.C. § 1182(d)(5)(A)); *see also*  
10 Hyppolite v. Noem, No. 25-CV-4304 (NRM), 2025 U.S. Dist. LEXIS 197628, 2025  
11 WL 2829511, at \*7 (E.D.N.Y. Oct. 6, 2025) (describing mandatory detention under §  
12 235).  
13

14 36. Section 1226 (INA 236), titled "Apprehension and detention of aliens," states:

15 On a warrant issued by the Attorney General, an alien may be arrested  
16 and detained pending a decision on whether the alien is to be removed from  
17 the United States. Except as provided in subsection (c) and pending such  
18 decision, the Attorney General—

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

20 (2) may release the alien on—

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

23 (B) conditional parole . . . .

24 8 U.S.C. § 1226(a).

25 36. Section §1226 therefore creates a "discretionary detention framework" for  
26 noncitizens arrested and detained on a warrant issued by the Attorney General. Gomes,  
27 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at \*2. It "authorizes the  
28 [g]overnment to detain certain aliens already in the country pending the outcome of  
removal proceedings." Jennings, 583 U.S. at 289.

37. . The arresting immigration officer has authority to make the initial custody  
determination. *See Gomes*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at \*2

1 (citing 8 C.F.R. § 1236.1(c)(8)).

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

9 39. Section 1226(a)(2)(B) also allows release "on an Order of Recognizance, which is a  
10 form of conditional parole." *Id.* (citations omitted).

11 40. Thus, § 1226(a) requires "an individualized bond determination before a noncitizen  
12 may be taken into custody." *Hyppolite*, 2025 U.S. Dist. LEXIS 197628, 2025 WL  
13 2829511, at \*8 (citation omitted).

## 14 VI. FACTUAL ALLEGATIONS

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

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

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

23 42. The government's new campaign is also a significant shift from previous DHS  
24 practice, guided by clear judicial precedent, of only re-detaining noncitizens  
25

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26  
27 <sup>1</sup> José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*,  
28 *The Guardian*, June 14, 2025, <https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures>.

1 previously released only upon a material change in circumstances. *See e.g. Lorenzo*  
2 *C.P. v. Noem*, No. 1:25-cv-181, 2025 U.S. Dist. LEXIS 264574, at \*7-8 (S.D. Tex.  
3 2025); *De Jesús Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 U.S. Dist.  
4 *LEXIS 231463*, at \*15 (N.D. Ind. Nov. 25, 2025); *Salinas v. Woosley*, No. 4:25 Civ.  
5 121, 2025 U.S. Dist. LEXIS 228539, 2025 WL 3243837, at \*2 (W.D. Ky. Nov. 20,  
6 2025); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub*  
7 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018) (describing prior  
8 practice);

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

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

19 44. The government upended this long-held policy and understanding of the law in 2025.  
20 First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”) issued an  
21 interim guidance memo stating that anyone who entered without inspection was  
22 ineligible for release on bond and could not challenge their detention at a bond  
23 hearing in immigration court, regardless of how long an individual has lived in the  
24 United States.

25 45. As a result, DHS attorneys started arguing, and some Immigration Judges started  
26 finding, that such individuals were not eligible for bond hearings in immigration  
27 court.

28 46. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a  
precedential decision, binding on all Immigration Judges, holding that a judge had no

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

3 47. 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  
5 released or paroled from custody under § 1226 or paroled from custody under  
6 1225(b).

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

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

24 49. Judges have also found the supposed violations "negligible" or been skeptical of  
25 existence of purported violations. See e.g. *Alas v. Albarran*, 2025 U.S. Dist. LEXIS  
26 207060 \*2 FN1(N.D. Cal. Oct. 15, 2025).

27 **C. Petitioner's unlawful arrest and detention**

28 50. Petitioner is a 20-year-old citizen and native of India.

- 1 51. Petitioner entered the United States without inspection on September 5, 2024.
- 2 52. Petitioner was arrested by U.S. Customs and Border Protection inside the United
- 3 States.
- 4 53. Petitioner was released on September 5, 2024.
- 5 54. It does not appear that he was paroled pursuant to INA § 212(d)(5) or that he was
- 6 treated as an applicant for admission or afforded a credible fear interview.
- 7 55. Instead, it appears that Petitioner was released on ‘conditional parole: under 8 U.S.C.
- 8 1226(a)(2)(B).
- 9 56. Petitioner was served with a form I-862, Notice to Appear in Section 1229a removal
- 10 proceedings.
- 11 57. Petitioner was not formally inspected or admitted into the United States at the time of
- 12 entry.
- 13 58. Respondents issued a Notice to Appear alleging that Petitioner entered the country
- 14 without inspection, permission, or proper entry document and was therefore
- 15 inadmissible.
- 16 59. The NTA, though containing a field for such designation, does not indicate that
- 17 Petitioner is an ‘arriving alien.’
- 18 60. Instead, the NTA indicates Petitioner is a person present in the United States who has
- 19 not been admitted or paroled.
- 20 61. Petitioner thereafter filed an application for asylum with the immigration court.
- 21 62. Petitioner remains detained in Respondents’ custody at this time.
- 22 63. Petitioner has fully complied with all requirements to apply for asylum protection, to
- 23 appear at immigration appointments when requested and to comply with the laws of the
- 24 United States following his unlawful entry to the U.S.
- 25 64. Petitioner appeared for hearing in immigration court on May 30, 2025.
- 26 65. DHS counsel made an oral motion in immigration court asking the judge to dismiss
- 27 proceedings as DHS no longer wished to pursue § 1229a proceedings against respondent.
- 28 66. Instead, DHS indicated it wished to place Petitioner in expedited removal proceedings
- where Petitioner would have an opportunity to establish a credible fear of persecution.

1 67. Immigration Judge Meghan Heesch, on motion from DHS counsel, dismissed removal  
2 proceedings over Petitioner's objection.

3 68. However, Petitioner has appealed the decision to terminate his removal proceedings  
4 and thus he remains in § 1229a proceedings as his appeal awaits adjudication at the  
5 Board of Immigration Appeals.

6 69. Petitioner's appeal has now been pending with the Board of Immigration Appeals for  
7 over six-months. A decision on appeal will generally not issue until after a 'briefing  
8 schedule' is issued and both sides have had opportunity to brief the issues on appeal.  
9 No briefing schedule has been issued in this case.

10 70. Even were proceedings concluded through dismissal of appeal, Petitioner would then  
11 have right to a credible fear interview in "expedited" removal proceedings followed  
12 by review from an immigration judge if there was a negative determination *or*, if a  
13 Petitioner is found to have a credible fear, he would be placed back into § 1229a  
14 removal proceedings to resume, more or less, where the case left off in May of 2025.  
15 *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279-DMS-VET, 2025 U.S. Dist.  
16 LEXIS 261196, at \*3 (S.D. Cal. Dec. 17, 2025)(discussing this byzantine process)

17 71. Petitioner has no criminal history.

18 72. Petitioner has never been determined to be a flight risk or danger to the community,  
19 and his detention is not related to either of the permissible justifications for civil  
20 immigration detention.

21 73. His detention does not further any legitimate government interest and is instead a  
22 punitive measure meant to coerce Petitioner into abandoning his claim for protection  
23 from persecution.

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

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

1 75. Petitioner is unable to work to earn income to support himself, his family, and to afford  
2 legal counsel crucial to his ability to present his asylum claim. Petitioner is unable to  
3 assist with gathering evidence and has difficulty communicating with counsel due to  
4 limited communications timeframes for confidential communications.

5  
6 **VII. CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

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

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

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

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

17  
18 78. Immigration detention is constitutionally permissible only when it furthers the  
19 government’s legitimate goals of ensuring the noncitizen’s appearance during removal  
20 proceedings and preventing danger to the community. *See id.*

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

24 80. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation” to any  
25 legitimate government purpose. *Id.* (finding immigration detention is civil and thus  
26 ostensibly “nonpunitive in purpose and effect”). Here, the purpose of Petitioner’s  
27 detention appears to be “not to facilitate deportation, or to protect against risk of flight  
28 or dangerousness, but to incarcerate for other reasons”—namely, to meet newly-

1 imposed DHS quotas and to pressure Petitioner into abandoning his claim for  
2 protection through punitive incarceration. *Demore*, 538 U.S. at 532–33 (Kennedy, J.,  
3 concurring).

4 **SECOND CLAIM FOR RELIEF**

5 **Violation of the Fifth Amendment to the United States Constitution**  
6 **(Procedural Due Process—Detention)**

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

9 82. Petitioner has a strong liberty interest under the Due Process Clause in not being re-  
10 incarcerated after prior release. *See Young v. Harper*, 520 U.S. 143, 146–47 (1997);  
11 *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S.  
12 471, 482–83 (1972); *see also Ortega*, 415 F. Supp. 3d at 969–70 (holding that a  
13 noncitizen has a protected liberty interest in remaining out of custody following an  
14 IJ’s bond determination); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB),  
15 2025 LX 303800, at \*35 (D. Ariz. Aug. 11, 2025)

16 83. Accordingly, “[i]n the context of immigration detention, it is well-settled that due  
17 process requires adequate procedural protections to ensure that the government’s  
18 asserted justification for physical confinement outweighs the individual’s  
19 constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872 F.3d  
20 at 990 (cleaned up); *Zinermon*, 494 U.S. at 127 (Generally, “the Constitution requires  
21 some kind of a hearing before the State deprives a person of liberty or property.”). In  
22 the immigration context, for such hearings to comply with due process, the  
23 government must bear the burden to demonstrate, by clear and convincing evidence,  
24 that the noncitizen poses a flight risk or danger to the community. *See Singh v. Holder*,  
25 638 F.3d 1196, 1203 (9th Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785,  
26 786 (9th Cir. 2024).

27 84. Petitioner’s re-detention without a pre-deprivation hearing violated due process.  
28 Nearly a year after deciding to release Petitioner from custody on parole, Respondents  
have re-detained Petitioner without prior notice, hearing, change in circumstances, and

1 have inexplicably claimed that he is now subject to detention under Section 1225(b).

2 85. Petitioner's continued detention without prior hearing constitutes an ongoing violation  
3 of petitioner's Constitutional right to under the Due Process Clause.  
4

5 **THIRD CLAIM**

6 **Violation of Immigration & Nationality Act**

7 86. Petitioner repeats and re-alleges the allegations contained in the preceding  
8 paragraphs of this Petition as if fully set forth herein.  
9

10 87. Respondent assert Petitioner is detained pursuant to 8 U.S.C. 1235(b) but Petitioner  
11 was previously paroled and is no longer subject to that section. *See e.g. Gergawi v.*  
12 *LaRose, No. 3:25-cv-3352-JES-MMP, 2025 U.S. Dist. LEXIS 265412, at \*5 (S.D. Cal.*  
13 *Dec. 23, 2025)*

14 88. Respondents claim no other statutory authority for Petitioner's ongoing detention  
15 and, absent a predeprivation hearing or, at a minimum, a showing of materially changed  
16 circumstances, have no lawful authority to detain Petitioner under 1226(a) (or any other  
17 law). *See Panosyan v. Mayorkas, 854 F. App'x 787, 788 (9th Cir. 2021)* ("Thus, absent  
18 changed circumstances ... ICE cannot redetain Panosyan."); *Matter of Sugay, 17 I&N*  
19 *Dec. 647, 640 (B.I.A. 1981)*. Additionally, any change in circumstances must be  
20 "material." *Saravia v. Barr, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), aff'd sub*  
21 *nom. Saravia for A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018)*.  
22

23 89. Petitioner is therefore detained unlawfully in violation of INA §§1225(b), 1226(a),  
24 and the Immigration & Nationality Act  
25

26 **VIII. VERIFICATION OF PETITION**

27 90. The factual allegations made here are true and correct based on counsel's review of  
28 the record of proceedings from the Agency and based on counsel's communications

1 with the Petitioner. I hereby swear the above allegations are true and correct subject to  
2 penalty of perjury.

3 **IX. PRAYER FOR RELIEF**

4 Petitioner respectfully requests that this Court:

- 5
- 6 1. Assume jurisdiction over this matter;
  - 7 2. Issue a writ of habeas corpus ordering Respondents to immediately release  
8 Petitioner from custody and not subject him to any conditions of release that  
9 were not in existence at the time immediately prior to his arrest in May of  
10 2025;
  - 11 3. Declare that Petitioner's arrest and detention violate the Due Process Clause  
12 of the Fifth Amendment, and the Immigration and Nationality Act
  - 13 4. Enjoin Respondents from re-detaining Petitioner unless his re-detention is  
14 ordered at a custody hearing before a neutral arbiter in which the  
15 government bears the burden of proving, by clear and convincing evidence,  
16 that Petitioner is a flight risk or danger to the
  - 17 5. Award Petitioner costs and reasonable attorneys' fees in this action as provided  
18 for by the Equal Access to Justice Act and 28 U.S.C. § 2412; and
  - 19 6. Grant such further relief as the Court deems just and proper.

20 Respectfully submitted this 28<sup>th</sup> Day of January 2026,

21 /s/ Daljit Ghuman  
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