

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

KHAN WALI SAYED

Court File No. 3:26-cv-00275

Petitioner,

v.

KRISTI NOEM, in her official capacity
as Secretary of the United States
Department of Homeland Security,
PAMELA BONDI, in her official
capacity as Attorney General of the
United States, TODD LYONS, in his
official capacity as Acting Director,
United States Immigration and Customs
Enforcement, JOEL GARCIA, in his
official capacity as Director of the ICE El
Paso Field Office, and JOHN DOE, in his
official capacity as the Warden of the El
Paso Camp East Montana, Texas,

**AMENDED EMERGENCY
PETITION FOR WRIT OF HABEAS
CORPUS**

Expedited Handling Requested

Respondents.

INTRODUCTION

1. Petitioner Khan Wali Sayed was detained by officers of Respondents on January 15, 2025, in Bloomington, Minnesota. Respondents provided no reason for Petitioner's detention. Petitioner was thereafter immediately transferred to this District without the ability to meet with counsel.

2. Petitioner's detention is unlawful under the Fourth Amendment, the Fifth Amendment, the Immigration and Nationality Act, the Administrative Procedure Act, and applicable law. Because Respondents violated Petitioner's constitutional and statutory

rights, this Court should grant this Petition, immediately release Petitioner during the pendency of this proceeding, and, in three days or less, order Respondents to show cause as to why this Court should not order Petitioner's permanent release.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); U.S. Const. art. I, § 9, cl. 2 (the Suspension Clause); 5 U.S.C. § 701 *et seq.* (the Administrative Procedure Act), and 5 U.S.C. § 702 (waiver of sovereign immunity).

4. Further, an actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and this Court has authority to grant declaratory and injunctive relief. *Id.* §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.

5. Federal district courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness or constitutionality of their detention by the Department of Homeland Security ("DHS"). 28 U.S.C. § 2241; *see also Demore v. Kim*, 538 U.S. 510 516-17 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 291–95(2018); and *Nielsen v. Preap*, 139 S. Ct. 954, 961-63 (2019).

6. Venue is proper in this district pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Respondents are holding Petitioner at the Camp East Montana detention facility at Fort Bliss in El Paso, Texas ("Camp East Montana"), which is within the jurisdiction of this District.

THE PARTIES

7. Petitioner Khan Wali Sayed is a citizen of Afghanistan. He entered the United States in or around December 22, 2023. He currently has a pending asylum application before the Immigration Court. Petitioner is currently detained and in the custody of Respondents at Camp East Montana.

8. Respondent Kristi Noem is sued in her official capacity as the Secretary of DHS. In this capacity, Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq. She oversees Immigration and Customs Enforcement (“ICE”) and Customs and Border Protection (“CBP”), the component agencies responsible for Petitioner’s arrest, detention, and custody. Noem is a legal custodian of Petitioner and has authority to release him.

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

10. Respondent Daren Margolin is sued in his official capacity as Acting Director of the EOIR. Margolin is a legal custodian of Petitioner and has authority to release him.

11. Respondent Todd Lyons is sued in his official capacity as Acting Director of ICE. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

12. Respondent John Doe is the Warden of Camp East Montana who has immediate physical custody of Petitioner pursuant to the facility's contract with ICE to detain noncitizens and is a legal custodian of Petitioner. Respondent Doe is a legal custodian of Petitioner.

STATEMENT OF FACTS

13. Petitioner was an officer in the Afghanistan National Directorate of Security ("NDS") from approximately 2011 until the fall of the Afghan government to the [REDACTED] in August 2021.

14. The last and highest position Petitioner held [REDACTED]

[REDACTED] In that role, Petitioner, among other things, [REDACTED] throughout Afghanistan. Petitioner was known to the [REDACTED] due to [REDACTED]

15. In August 2021, Petitioner defended the [REDACTED] against attacks from [REDACTED] and was injured by shrapnel to his head, ears, and foot. After [REDACTED] fearing that he would be tracked down and killed, Petitioner went into hiding. In the coming year, he made attempts to escape. He ultimately fled to the United States with the belief that, as [REDACTED] the United States would be a place of refuge for him.

16. Petitioner entered the United States on or around December 22, 2023. He was detained by CBP on or around December 23, 2023, and sent to the Otay Mesa Detention Center in San Diego, California. At the time of his detention, Petitioner had his passport, which was confiscated by CBP.

17. On January 31, 2024, an asylum officer conducted a credible fear interview and determined that Petitioner had a credible fear of future persecution.

18. Thereafter, Petitioner was paroled to the United States on February 20, 2024, and received an Interim Notice Authorizing Parole pursuant to INA Section 212(d)(5)(A) for humanitarian and public interest reasons. *See* Ex. A. The Interim Notice Authorizing Parole stated that it was issued in lieu of a Form I-94. *Id.*

19. Petitioner received a Notice to Appear on February 26, 2024. *See* Ex. B (indicating that Petitioner is not an “arriving alien” but “an alien present in the United States who has not been admitted or paroled”).

20. Petitioner received a Notification to Grant Parole dated March 21, 2024. *See* Ex. C.

21. On June 3, 2024, the San Diego Immigration Court granted Petitioner’s request to change venue moving the venue for Petitioner’s removal proceedings to Fort Snelling Immigration Court in Minnesota.

22. Petitioner’s removal proceedings were thereafter transferred to Fort Snelling Immigration Court in Minneapolis, Minnesota.

23. Petitioner filed an asylum application in August 2024 and, after retaining pro bono counsel and with the help of an interpreter, filed an amended asylum application in December 2024.

24. Petitioner's asylum application remains pending.

25. Petitioner received employment authorization on March 12, 2025.

26. Until Respondents unlawfully arrested and detained Petitioner, he worked at a local grocery store in Bloomington, Minnesota.

27. Petitioner has lived in Saint Louis Park, Minnesota, since 2024 and has established a community there.

28. Petitioner has no criminal record. He is a husband and has five children.

29. On January 15, 2026, ICE arrested and detained Petitioner in Bloomington, Minnesota. Petitioner was at a mechanic shop where he encountered ICE officers and was arrested.

30. At the time of his detention, Respondents did not provide any reason for Petitioner's detention.

31. Petitioner told Respondents that he feared political persecution and that he had a pending asylum claim.

32. In response, Respondents acknowledged Petitioner had a pending asylum claim but detained him anyway. Respondents' statements demonstrate that Respondents understood they did not have a basis to detain Petitioner.

33. At the time of his detention, Respondents also had no warrant to detain Petitioner. At the time of his arrest, Petitioner was not presented with any warrant or any other documentation indicating the basis for his detention.

34. Petitioner was taken to the Whipple Federal Building in Minneapolis the afternoon of January 15, 2026.

35. That same day, Petitioner was transported to the Minneapolis airport, put on an airplane, and transferred to Texas along with others who were detained by ICE. Ultimately, he was sent to Camp East Montana where he has remained detained ever since.

36. Respondents do not have legal authority to deport Petitioner because he has not been ordered removable by any immigration court. No removal order exists, Petitioner's asylum application is pending, and no basis has been provided for his detention.

LEGAL FRAMEWORK

Due Process

37. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. A petitioner may seek a writ of habeas corpus when their custody violates the U.S. Constitution or federal law. 28 U.S.C. § 2241.

38. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including [immigrants], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citation omitted).

39. Immigration detention is civil and must “bear[] a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and

effect.” *Zadvydas*, 533 U.S. at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.* at 683; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017). “Retribution and deterrence are not legitimate nonpunitive governmental objectives.” *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979).

Asylum and Immigration Detention Framework

40. Congress created asylum as a domestic protection remedy. By statute, only a noncitizen who is “physically present in the United States or who arrives in the United States ... irrespective of such alien’s status” may apply. 8 U.S.C. § 1158(a)(1). There is no statutory mechanism for a person who remains outside the United States to file an affirmative asylum application with USCIS or to invoke the jurisdiction of an immigration court. A person fleeing persecution cannot apply for asylum at a United States consulate.

41. The INA therefore reflects a deliberate congressional design: individuals who fear persecution may reach the United States or its border—even *without prior authorization*—to invoke the asylum process. The statute does not require lawful entry as a prerequisite. To the contrary, it expressly provides that eligibility exists “irrespective of status.” 8 U.S.C. § 1158(a)(1).

42. Section 1226 applies to the detention of noncitizens who are already in the country pending the outcome of removal proceedings. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018).¹ It is the “default rule” applicable to noncitizens already in the country.

¹ The holding in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330 (5th Cir. Feb. 6, 2026) did not concern an individual who had been paroled into the United States,

Id. at 288. Under this default rule, an immigration officer initially determines to either detain or release the noncitizen. If detained, the noncitizen may request a bond hearing before an immigration judge. 8 C.F.R. § 1236.1(c)(8), (d)(1). It is the rule that applies to individuals who are in the country, and apply for asylum.

43. In contrast, Section 1225 applies to non-citizens upon entry or individuals present without admission. Under Section 1225(b)(2), detention is considered mandatory and detained individuals are not entitled to a bond hearing unless they are paroled “‘for urgent humanitarian reasons or significant public benefit’ pursuant to 8 U.S.C. § 1182(d)(5)(A).” *Lepe v. Andrews*, 801 F. Supp.3d 1104, 1111 (E.D. Cal. 2025) (alteration in original) (citing *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025). “Other than this limited exception[,],...detention under § 1225(b)(2) is considered mandatory...[and] [i]ndividuals detained under § 1225 are not entitled to a bond hearing.” *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 484, (S.D.N.Y. 2025).

44. When immigrants are authorized to enter pursuant to 8 U.S.C. § 1182(d)(5)(A), they may enter and remain in the United States as a statutory exception to Section 1225 and its mandatory detention regime. Section 1182(d)(5)(A) provides that “[t]he Secretary of Homeland Security may... in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for

like the Petitioner here, but instead concerned non-paroled “applicants for admission”. *See id.* The Fifth Circuit expressly noted that parole is a distinct statutory mechanism not before the court. *See id.* at 5 n.3. Nothing in the majority’s statutory analysis addresses how section 1225(b)(2)(A) applies, if at all, to individuals, like the Petitioner here, whom the government has already inspected and affirmatively paroled into the country.

urgent humanitarian reasons or significant public benefit any [non-citizen] applying for admission to the United States.” *Id.* Parole under this provision may only be granted where the non-citizen “present[s] neither a security risk nor a risk of absconding.” 8 C.F.R. § 212.5(b).

45. When individuals are allowed entry under parole, it is not a formal “admission,” and the individuals therefore remain “applicants for admission” within the meaning of 8 U.S.C. §§ 1225(a)(1) and 1182(d)(5)(A). Because these individuals have already arrived, were inspected, paroled, physically entered the country, and remain in the country, they cannot be “arriving aliens” for the purposes of Section 1225(b). *Lopez v. Noem*, 2026 WL 194853, at *3 (N.D. Tex. Jan. 26, 2026) (rejecting argument that § 1225(b) applied to individual released on parole but thereafter detained by ICE concluding § 1226 applied to subsequent detention) (citing *Castanon-Nava v. U.S. Dep’t Homeland Sec.*, 161 F. 4th 1048, 1061 (7th Cir. 2025) (holding ICE and DHS were “not likely to succeed on the merits of their argument that those individuals, whom ICE arrested in Chicago without a warrant, are subject to mandatory detention under § 1225(b)”).

46. Such facts are not altered by the legal fiction that parole is not an “admission” within the meaning of 8 U.S.C. § 1225(a). *See Gonzales v. Ortega*, No. 25-CV-1156-JKP, 2025 WL 3471571, at *1, n.1 (W.D. Tex. Nov. 24, 2025) (“The Court recognizes ... while the phrase ‘mandatory detention’ is often used to describe detention under 8 U.S.C. § 1225(b), the phrase is somewhat of a misnomer...”); *see also Ivonin v. Rhoney*, 2026 WL 199283, at *4 (W.D.N.Y. Jan. 26, 2026) (“But even more fundamentally, this Court agrees with other courts who have looked at this issue and concluded that in instances, as here,

where a petitioner's re-arrest was *not* a continuation of the initial border encounter, but an independent decision to detain the individual after the expiration of his parole, the detention pursuant to that re-arrest arises under 1226.") (emphasis in original).

47. Although the INA does not define the phrase "arriving aliens," courts addressing this precise issue have held that "arriving aliens" refers to the discrete act of reaching the border or port of entry—not a perpetual legal status that follows a noncitizen long after entry. See *Qasemi v. Francis*, No. 25-CV-10029-LJL, 2025 WL 3654098, at *8 (S.D.N.Y. Dec. 17, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065-NJC, 2025 WL 3314420, at *19–21 (E.D.N.Y. Nov. 28, 2025); *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872-JMC, 2025 WL 2192986, at *27–28 (D.D.C. Aug. 1, 2025). Ordinary usage confirms this understanding: to "arrive" means "to reach a destination" or "to come to the end of a journey." *Qasemi*, 2025 WL 3654098, at *8 (citing *Coal. for Humane Immigrant Rts.*, 2025 WL 2192986, at *28). Nothing in Section 1225 suggests Congress intended "arriving" to function as an indefinite status rather than a moment in time. *Id.* Thus, "Arriving alien" describes a temporary condition tied to the act of entry, while "applicant for admission" is a legal status that must persist until legal admission occurs. An asylum applicant may fall into the latter category but plainly does not fall into the former.

48. Courts in this District and across the country have concluded that in situations like this—where an individual is arrested without notice after living in the country and engaging in the asylum process—8 U.S.C. § 1226(a) applies, and a bond hearing or release is required. See, e.g., *Brito v. Thompson*, 2026 WL 195761, at *2 (W.D.

Tex. Jan. 22, 2026) (“Courts across the country, including this one, have rejected Respondents’ broad interpretation of Section 1225(b), relying on several rationales, from statutory language and context to legislative history and longstanding agency practice.”); *see also Pineda v. Noem*, 2025 WL 3471418, at *6 (W.D. Tex. Dec. 2, 2025) (granting release concluding that neither Section 1225(b)(1) or 1225(b)(2) provided basis for mandatory detention).

CLAIMS FOR RELIEF

COUNT ONE

Fifth Amendment to the United States Constitution – Due Process

Respondents are Confining Petitioner without A Valid Legal Basis or any Semblance of Due Process.

49. Petitioner realleges and incorporates by reference each and every allegation contained above.

50. The Constitution establishes due process rights for all “persons” within the United States, including noncitizens, whether their presence is lawful, unlawful, temporary, or permanent. *Zadvydas*, 533 U.S. at 693.

51. Even if this Court were to conclude that Petitioner is subject to mandatory detention under Section 1225, the inquiry does not end there. The Due Process Clause applies regardless of whether a noncitizen’s presence is lawful, unlawful, temporary, or permanent—and regardless of whether detention is purportedly authorized by Sections 1225 or 1226. *Id.*; *Hernandez*, 872 F.3d at 990 (“[I]t is well-established that the Due Process Clause stands as a significant constraint on the manner in which the political branches may exercise their plenary authority.”). A noncitizen’s interest in freedom from

physical restraint is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

52. Where, as here, a noncitizen is initially released on parole and later re-detained, several Courts have repeatedly recognized that such individuals possess a protected liberty interest in remaining out of custody. *See Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 687 (W.D. Tex. 2025) (“[T]he Court finds that detaining [petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.”); *Hassen v. Noem*, Case No. EP-26-CV-00048-DB, slip op. at 3 (W.D. Tex. Feb. 9, 2026) (“Because the Government released Petitioner and permitted him to live in the United States for over a year, they cannot revoke that liberty without an individualized determination of the need to do so.”); *see also Pinchi v. Noem*, 792 F. Supp. 3d 1015, 1025, 1032–33 (N.D. Cal. 2025) (collecting cases); *Tesara v. Wamsley*, No. C25-1723-KKE-TLF, 2025 WL 3288295, at *4 (W.D. Wash. Nov. 25, 2025) (holding that mandatory detention under § 1225(b), without consideration of noncitizens’ deep financial, community, and familial ties, raises serious constitutional concerns) (citing *Salgado v. Mattos*, No. 2:25-cv-01872-RJB-EJY, 2025 WL 3205356, at *20 (D. Nev. Nov. 17, 2025)); *Arias v. Larose*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *4 (S.D. Cal. Nov. 25, 2025) (explaining that where re-detention violates due process, the choice between Sections 1225 and 1226 is not before the court because detention is improper regardless of which statute applies).

53. Federal courts use the three-part test in *Matthews v. Eldridge* to determine whether civil detention violates a detainee's due process rights. 424 U.S. 319, 334–35 (1976). The elements of this test are: (1) the private interest that the official action affects; (2) the risk that the procedures used will result in an erroneous deprivation of the private interest, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest in following the existing procedures, both in achieving their objectives and in the potential burdens of an alternate procedure. *Id.*

54. Under this balancing framework, Petitioner's due process rights are violated by his summary re-detention.

55. First, Petitioner has a significant private interest at stake—the right to be free from physical confinement—that is weighty in the extreme. *Zadvydas*, 533 U.S. at 690; *Hamdi*, 542 U.S. at 529 (noting this interest is “the most elemental of liberty interests”). Petitioner's wrongful confinement directly attacks this interest. Petitioner's liberty interest is particularly acute. Petitioner was affirmatively paroled into the United States after an asylum officer determined he had a credible fear of future persecution. Since that time, he has lived in the United States for over a year—he moved to Minnesota, was granted employment authorization, obtained employment, and has established a community. Under these circumstances, Petitioner plainly possesses a constitutionally protected interest in remaining free from arbitrary confinement.

56. Second, the risk of erroneous deprivation is extraordinarily high. Petitioner was re-detained without notice and without justification. No rationale was provided for his detention, and he was immediately transferred to Texas without any ability to consult or

meet with his counsel. Respondents did not have a warrant to arrest Petitioner. Furthermore, they provided no justification for his detention. Petitioner has no criminal record, poses no danger to the community, and is not a flight risk. Courts have recognized that such regime creates an intolerable risk that people who pose no danger and no flight risk will be needlessly incarcerated. *See Tesara*, 2025 WL 3288295, at *4; *Pinchi*, 792 F. Supp. 3d at 1032–33.

57. Third, Respondents’ interest in continued civil detention is minimal. Petitioner is already in removal proceedings, subject to the Immigration Court’s jurisdiction, and fully available for supervision through less restrictive means. Respondents previously concluded that Petitioner could safely remain at liberty; they did so, in part, due to their assessment that he has a credible fear of future persecution and (therefore) a likelihood of succeeding on his asylum claim. His asylum claim remains pending. No facts have changed and Respondents have presented no justification for Petitioner’s detention. Re-detaining Petitioner without individualized justification does not meaningfully advance any legitimate governmental objective; it merely imposes confinement for confinement’s sake.

58. Accordingly, even assuming *arguendo* that Section 1225 governs², Petitioner’s continued detention without individualized process violates the Due Process

² The holding in *Buenrostro-Mendez* regarding the application of Section 1225 was purely statutory, did not address the constitutional claims raised in the habeas petitions before it, and does not impact Petitioner’s constitutional claims. *See, e.g., Hassen v. Noem*, Case No. EP-26-CV-00048-DB, slip op. at 4 n. 1 (W.D. Tex. Feb. 9, 2026) (“*Buenrostro-Mendez* does not change this case’s outcome on procedural due process grounds.”).

Clause. Mandatory detention cannot be wielded as a blunt instrument to extinguish liberty where the Constitution demands reasoned, person-specific justification.

59. Petitioner's detention also violates his right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

60. Respondents can present no justification for Petitioner's detention on these bases. Petitioner poses no flight risk—prior to his detention, Petitioner had an established life in Minnesota, appeared at all scheduled immigration hearings, and was preparing his asylum claims to be heard by the Court. Petitioner poses no danger to the community: he has not violated any law or been convicted of any crime. There is no legitimate purpose for his immigration detention.

61. Moreover, Petitioner's detention is punitive because it bears no “reasonable relation” to any legitimate government purpose. *Id.* at 690 (finding immigration detention is civil and thus ostensibly “nonpunitive in purpose and effect”).

62. Due process demands, at a minimum, a lawful basis for detaining and continuing to detain any person. Because Respondents have no basis to continue to detain Petitioner, his continued detention violates the Fifth Amendment, and he should be released.

COUNT TWO

Fifth Amendment Substantive Due Process

Petitioner's Ongoing Detention Violates His Fifth Amendment Rights to Substantive Due Process

63. Petitioner realleges and incorporates by reference each and every allegation contained above.

64. To comply with the Due Process Clause, detention must always bear “some reasonable relation to the purpose for which the individual was committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *Brown v. Taylor*, 911 F.3d 235, 243 (5th Cir. 2018).

65. Petitioner's detention violates his substantive right to due process because it does not further the two legitimate purposes for immigration detention. *Zadvydas*, 533 U.S. at 690.

66. The only legitimate purposes, consistent with due process, for federal civil immigration detention is to prevent flight risk and ensure the detained person's attendance for a legal hearing adjudicating their status or potential removal, or to otherwise ensure the safety of the community. *Id.* at 690–91 (finding that immigration detention is justified in two scenarios: (1) ensuring a noncitizen's appearance during removal proceedings and (2) preventing danger to the community).

67. Here, there is no legitimate purpose for Petitioner's detention. First, Petitioner poses no flight risk because there is no reason to believe that Petitioner would not attend immigration proceedings, or otherwise comply with requirements related to his release. He has always done so. Second, Petitioner poses no safety threat to the community. Petitioner has never been convicted of a crime and has no criminal record.

68. Petitioner's continued detention is unrelated to the purposes justifying it as a constitutional matter, and therefore contravenes the fundamental Due Process protections in the Fifth Amendment of the Constitution and is causing Petitioner substantial and irreparable harm.

COUNT THREE

Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B), & (D)

Detaining Petitioner Pursuant to an Unlawful Interpretation of 8 U.S.C. § 1225 violates the Administrative Procedure Act

69. Petitioner realleges and incorporates by reference each and every allegation contained above.

70. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

71. The APA provides that a "reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

72. Respondents' detention of Petitioner while he is lawfully admitted and properly filed his application for asylum is contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

73. Respondents' detention of Petitioner is also not in accordance with the INA and implementing regulations governing detention insofar as none of the statutes that authorize Respondents to detain non-citizens are implicated by the facts and circumstances of Petitioner's case.

74. An agency decision that “runs counter to the evidence before the agency” is arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Respondents’ decision to detain Petitioner ran counter to the evidence before the agency that Petitioner was a lawfully admitted person who had timely applied for asylum.

75. Accordingly, Petitioner’s detention should be held unlawful and set aside because it was (1) arbitrary, capricious, and not otherwise in accordance with law, *see* 5 U.S.C. § 706(2)(A); (2) contrary to the agency’s constitutional authority, *see id.* § 706(2)(B); and (3) not in accordance with the INA and implementing regulations, *see id.* § 706(2)(D).

COUNT FOUR

Immigration and Nationality Act, 8 U.S.C. § 1225(b)

Petitioner’s Ongoing Detention Pursuant to 8 U.S.C. § 1225(b) is Unlawful

76. Petitioner realleges and incorporates by reference each and every allegation contained above.

77. Respondents violate the Immigration and Nationality Act by attempting to apply mandatory detention through 8 U.S.C. § 1225(b), to Petitioner.

78. Section 1225 governs the threshold act of inspection—what happens at the border before a non-citizen is permitted to enter. Section 1226 governs custody *inside* the United States, after entry has occurred and removal proceedings are underway.

79. Petitioner was detained in December 2023 by CBP after which time he was formally paroled into the United States, and has lived in the country for over two years.

Under these circumstances, any re-detention is governed by Section 1226, not Section 1225.

80. Respondents' theory converts the meaning of "arriving alien" from a description of a moment in time to some form of a permanent legal identity. The INA does not permit that transformation. "Arriving" is an event, not a lifelong condition. Once DHS exercised its discretion to parole Petitioner into the United States, the border-processing function of Section 1225 was complete. There is no statutory mechanism for "un-arriving" a person who has already crossed the threshold and entered the country.

81. Additionally, the Notice to Appear, which was filled out by Respondents, does not identify Petitioner as an arriving alien. *See* Ex. B (indicating that Petitioner is not an "arriving alien" but "an alien present in the United States who has not been admitted or paroled").

82. Parol is not a hollow gesture. It is a substantive statutory determination that the individual may enter and remain in the United States and that the person presents neither a security risk nor a risk of flight. Those findings are fundamentally incompatible with the premise of mandatory detention. Respondents cannot conclude that Petitioner is appropriate for parole and later assert that Congress commands his automatic detention as if he were still standing at the border. Such an approach would render parole under Section 1182(d)(5)(A) meaningless—granting presence one day while reserving the power to resurrect border detention at any time, long after entry. That result is incompatible with the INA's design, which contemplates a sequence: border processing under Section 1225;

discretionary parole under Section 1182(d)(5)(A); and, once inside the country, custody governed by Section 1226 during Section 240 proceedings.

83. Petitioner is no longer “arriving” in any ordinary or statutory sense, Section 1225(b)’s mandatory detention regime has no application here. Respondents’ attempt to impose it is ultra vires and violates the Immigration and Nationality Act.

84. Because Petitioner’s continued detention violates his statutory rights, this Habeas petition should be granted and Petitioner immediately released.

COUNT FIVE
Fourth Amendment

Respondents Arrested Petitioner and Continue to Detain Him without a Valid Legal Basis in Violation of Petitioner’s Fourth Amendment Rights

85. Petitioner realleges and incorporates by reference each and every allegation contained above.

86. An immigration officer’s authority to make a warrantless arrest of a noncitizen is limited. 8 U.S.C. § 1357(a); *Arizona v. United States*, 567 U.S. 387, 408 (2012). An immigration officer may only make a warrantless arrest when the officer “‘has reason to believe that the individual ‘is in the United States in violation of [the immigration laws]’ and ‘is likely to escape before a warrant can be obtained for his arrest.’” *Ramirez Ovando v. Noem*, --- F. Supp. 3d ---, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025) (citing 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii)). “[R]eason to believe” is “the equivalent of the constitutional requirement of probable cause.” *Id.* (collecting cases).

87. “The Fourth Amendment requires that immigration stops must be based on reasonable suspicion of illegal presence, stops must be brief, arrests must be based on

probable cause, and officers must not employ excessive force.” *Trump v. Illinois*, 146 S.Ct. 432, 436 n. 4 (2025) (Kavanaugh, J., concurring). “Moreover, the officers must not make interior immigration stops or arrests based on race or ethnicity.” *Id.*

88. Petitioner’s detention violates his Fourth Amendment rights because the officers arresting him had no reasonable suspicion of illegal presence or probable cause for his arrest at the time. The officers also did not have a warrant for his arrest.

89. An arrest in violation of the Fourth Amendment is grounds for habeas relief. *See Garrison G., v. Bondi, et al.*, No. 26-CV-172 (JMB/DJF), 2026 WL 157677, at *4 (D. Minn. Jan. 17, 2026).

90. Because Petitioner’s arrest and detention was made in violation of his Fourth Amendment rights, he must be released immediately.

REMEDY

91. An available remedy for Respondents’ unlawful conduct as outlined in this complaint is for Petitioner to be released.

92. Immigration detention is civil in nature, and as a result Congress must have expressly authorized it by statute, and the detention must be reasonably related to its statutory purpose. *Zadvydas*, 533 U.S. at 687, 690 (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Detention here serves no statutory purpose, and there is no indication that Petitioner’s detention was based on any facts that might indicate that Petitioner should be in custody for some reason.

93. As set forth above, Section 1225 does not apply to noncitizens who are in Petitioner’s situation—those who are not currently present at the border seeking physical

entry at the time of detention, who have been released on their own recognizance, and who are residing within the United States while seeking asylum—as opposed to those who are detained while in the process of physically entering the United States.

94. When a habeas petitioner’s detention is without legal basis, the typical remedy is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (describing release as the “typical remedy” for “unlawful executive detention”); *see also, e.g., Camacho-Gutierrez v. Thompson*, 2026 WL 195758, at *5 (W.D. Tex. Jan. 16, 2026) (ordering release from custody where immigrant detained improperly under § 1225(b) and was instead subject to detention, if at all, under 8 U.S.C. § 1226); *Pineda*, 2025 WL 3471418, at *6 (same).

95. Further, detention under § 1226(a) would require a warrant issued by the Attorney General. *See* 8 U.S.C. § 1226(a). Upon information and belief, Respondents had no such warrant.

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court:

1. Assume jurisdiction over this matter;
2. Order Respondents to release Petitioner immediately during the pendency of these proceedings so that he does not have to await for this relief while in custody;
2. In the alternative, immediately enjoin and restrain Respondents from transferring or removing Petitioner from the jurisdiction of this District pending these proceedings;
3. Issue an Order to Show Cause requiring Respondents to show cause as to why Petitioner should not be released within three days;

3. Declare that Petitioner's detention violates the Fourth Amendment, the Fifth Amendment, the Administrative Procedure Act § 706(2)(A), (B), & (D), and 8 U.S.C. § 1225(b);

4. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner;

5. Award Petitioner reasonable attorneys' fees and costs under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412, *see Daley v. Ceja*, 158 F.4th 1152, 1162 (10th Cir. 2025), and on any other basis justified under law; and

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

Respectfully Submitted,

Dated: February 10, 2026

/s/ Robert Painter

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Pro Bono Attorneys for Petitioner

CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant, the undersigned certifies and states that the true and correct copies of this Petition for Writ of Habeas Corpus, with Exhibits will be served upon all counsels of record via the online CM/ECF system, on or before February 10, 2026.

/s/ Robert Painter
Robert Painter
TX Bar No.24150717
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Texas Immigration Law Council