

JUDGE LEON SCHYDLOWER

1 Law Offices of Gita B. Kapur & Associates
2 Gita B. Kapur, Esq. (CA SBN 223754)
3 617 S. Olive St., Suite 311
4 Los Angeles, CA 90014
5 Tel: (213)327-0455 Fax: (213)327-0707
6 Email: gita.kapur@gitakapurlaw.com

7 Attorneys for Petitioner,
8 GURBHEJ SINGH

FILED
FEB 03 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature] DEPUTY CLERK

EP 26CV0313

9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF TEXAS
11 EL PASO DIVISION

12 GURBHEJ SINGH

13 Petitioner,

Case No.

14 v.

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

15
16 MARY DE ANDA-YBARRA, Field
17 Office Director of Enforcement and
18 Removal Operations, El Paso Field
19 Office, Immigration and Customs
20 Enforcement; Warden, ERO El Paso
21 Camp East Montana Detention Facility;
22 KRISTI NOEM, Secretary, U.S.
23 Secretary of Homeland Security;
24 Department of Homeland Security; and
25 PAMELA BONDI, U.S. Attorney
26 General,

27 Respondents.
28

PETITIONER'S DHS NO:

A [Redacted]

INTRODUCTION

1. Petitioner Gurbhej Singh is a 30-year-old asylum seeker from India, with no history of arrests or criminal convictions in the United States, whom the Department of Homeland Security (“DHS”) previously arrested and then affirmatively chose to release on his own recognizance after determining that he was neither a danger to the community nor a threat to national security or public safety. *See Collectively* Exhibit A at 1 (Birth Certificate); *see also* Exhibit D at 6 (Order of Release on Recognizance (Form I-220A)). Since that release, Petitioner has diligently pursued protection in the United States: he timely filed his asylum application, secured counsel, appeared for all scheduled immigration court hearings, and obtained employment authorization pursuant to his pending asylum claim. *See* Exhibit K at 17-30 (Conformed I-589 Filing with Executive Office for Immigration Review (EOIR)). Notwithstanding this unbroken record of compliance and DHS’s own prior custody determination in his favor, Respondents have now re-detained Petitioner at the ERO El Paso Camp East Montana Detention Facility, where he is being held without any constitutionally adequate justification for his continued civil confinement. *See* Exhibit G at 11-12 (ICE’s Online Detainee Locator System Search Result).

JURISDICTION

2. Petitioner is in the physical custody of Respondents. Petitioner is presently detained at the ERO El Paso Camp East Montana, El Paso, Texas. *See* Exhibit G at 11-12 (ICE's Online Detainee Locator System Search Result).

3. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

4. 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.

VENUE

5. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Western District of Texas (El Paso), the judicial district in which Petitioner currently is detained.

6. 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 Western District of Texas (El Paso).

PARTIES

7. Petitioner, Gurbhej Singh, is a citizen of India who has been in immigration detention since January 15, 2026.

8. Respondent, Mary de Anda-Ybarra, is the Field Office Director of the El Paso Field Office of ICE's Enforcement and Removal Operations division. As such, Mary de Anda-Ybarra is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. She is named in his official capacity.

9. Respondent, Kristi Noem, is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees DHS and ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

10. Respondent, Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

11. Respondent, Pamela Bondi, is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

1 12. Respondent, the warden of ERO El Paso Camp East Montana is the
2 official in charge of the facility, which is operated by the private company
3 Acquisition Logistics, LLC under a contract with ICE. Petitioner is detained at
4 this facility. The warden has immediate physical custody of Petitioner and is sued
5 in an official capacity.
6

7 **Habeas Jurisdiction and Purpose of the Writ**

8
9 13. This Court has jurisdiction under 28 U.S.C. § 2241 to review the
10 legality of Petitioner's civil immigration detention because he is "in custody in
11 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §
12 2241(c)(3). The Supreme Court has long recognized that "the essence of habeas
13 corpus is an attack by a person in custody upon the legality of that custody," and
14 "the traditional function of the writ is to secure release from illegal custody."
15 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). Habeas jurisdiction extends to
16 challenges to immigration detention, including challenges to the statutory basis
17 for custody and the procedures (or lack thereof) used to deprive a noncitizen of
18 liberty. *See Zadvydas v. Davis*, 533 U.S. 678, 687–90 (2001); *I.N.S. v. St. Cyr*,
19 533 U.S. 289, 301 (2001).
20
21

22
23 14. Petitioner challenges: (1) DHS's reliance on an inapplicable detention
24 statute, 8 U.S.C. § 1225(b)(2)(A), to detain a long-time interior resident who can
25 only lawfully be detained, if at all, under 8 U.S.C. § 1226(a); and (2) the absence
26
27

1 of constitutionally required procedures—particularly notice and a pre-deprivation
2 hearing before re-detention after almost three years of release. These are classic
3 questions of statutory and constitutional legality within the core of habeas review.
4

5 **Protected Liberty Interest in Continued Release**

6 **After Almost Three Years on Recognizance**

7
8 15. The Fifth Amendment's Due Process Clause protects individuals from
9 arbitrary deprivations of "liberty," including "freedom from imprisonment—from
10 government custody, detention, or other forms of physical restraint." *Zadvydas*,
11 533 U.S. at 690. In *Morrissey v. Brewer*, the Supreme Court held that a parolee
12 enjoys a protected liberty interest in "continued freedom" because even
13 conditional release allows him to live at home, work, be with family and friends,
14 and "form the other enduring attachments of normal life"; revocation of that
15 status "inflicts a grievous loss." *Morrissey v. Brewer*, 408 U.S. 471, 481–84
16 (1972).
17
18

19 16. Drawing on *Morrissey*, courts across the country have held that
20 noncitizens who are released from ICE custody into the community—whether on
21 recognizance, parole, or supervision—acquire a constitutionally protected liberty
22 interest in their continued release. *See, e.g., Pinchi v. Noem*, 792 F. Supp. 3d
23 1025, 1032–35 (N.D. Cal. 2025); *Shoimov v. Chestnut*, No. 1:25-cv-1603-CSK,
24 2026 WL 35624, at *5 (E.D. Cal. Jan. 6, 2026), *Martinez v. Noem*, No. EP-25-
25
26
27
28

1 CV-430-KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025); *Sanchez Alvarez v.*
2 *Noem*, No. 25-CV-1090, 2025 WL 2942648, at *1, 7 (W.D. Mich. Oct. 17,
3 2025); *Chogllo Chafila v. Scott*, Nos. 25-CV-437, 438, 439, 2025 WL 2688541, at
4 *1, 10 (D. Me. Sept. 22, 2025). Accordingly, he possesses a cognizable interest
5 in his freedom from detention that deserves great weight and gravity.
6

7 17. Petitioner's circumstances fit squarely within this line of authority.
8 After his initial apprehension near Tecate, California, and a brief period in
9 custody, DHS conducted its own custody determination on May 17, 2023, as
10 documented in the Notice of Custody Determination. *See* Exhibit E at 7 (Notice
11 of Custody Determination). In that determination, DHS expressly found that
12 Petitioner "did not appear to be a threat to national security or public safety" and
13 accordingly released him from DHS custody on an Order of Recognizance (O.R.)
14 pending his immigration hearing. *See* Exhibit F at 8-10 (Record of
15 Deportable/Inadmissible Alien (Form I-213)). On the same date, Petitioner was
16 issued an Order of Release on Recognizance (Form I-220A), subject only to the
17 conditions that he appear at all scheduled hearings and comply with applicable
18 reporting requirements. *See* Exhibit D at 6 (Order of Release on Recognizance).
19

20 18. Since his release on May 17, 2023, Petitioner has maintained perfect
21 compliance with every condition of his release order. Specifically, he has: (1)
22 maintained a fixed residence at [REDACTED] Tulare, California [REDACTED] (2)
23

1 obtained employment authorization, with USCIS issuing him an Employment
2 Authorization Document (EAD, Form I-766, Category C08) on April 2, 2024,
3 valid through April 1, 2029; (3) secured lawful employment as a truck driver for
4 Bajwa Express, a private employer; (4) maintained legal status by filing his
5 asylum application and continuing to pursue immigration relief pending
6 adjudication; (5) appeared for all scheduled immigration court hearings and
7 maintained regular contact with counsel (Kaur Law); and (6) committed no
8 violations of the release conditions, including by not changing residence without
9 permission, not violating any local, state, or federal laws, and remaining fully
10 compliant with all DHS requirements. *See* Exhibit H at 13-14 (Employment
11 Authorization Document (EAD)); *see also* Exhibit K at 17-30 (Conformed I-589
12 Filing with EOIR).

13
14
15
16
17 19. Critically, Petitioner has no criminal history whatsoever.

18 20. Petitioner thus posed—and continues to pose—neither a security risk
19 nor any risk of absconding. For about three years, he has lived openly in the
20 community, worked lawfully as a truck driver pursuant to valid employment
21 authorization, participated actively in his local Gurdwara, and complied fully
22 with all ICE supervision requirements. *See* Exhibit I at 15 (Letter from
23 Gurudwara Dasmesh Darbar In Support of Petitioner).
24
25
26
27
28

1 21. During this entire period, he has incurred no criminal convictions and
2 has never absconded.

3 22. Accordingly, the conditions of Petitioner's initial release permitted
4 him to form enduring attachments to normal civilian life and to build deep,
5 meaningful ties to the community. That initial release, combined with the
6 substantial period of time he has spent out of custody, has created a
7 constitutionally protected liberty interest in his continued release on
8 recognizance. Petitioner likewise possesses a protected liberty interest in
9 remaining at liberty in the community—an interest that cannot be extinguished
10 by sudden re-detention absent constitutionally adequate process.

14 **Procedural Due Process and *Mathews v. Eldridge*:**

15 **Notice and a Pre-Detention Hearing Are Required Before Re-Detention**

16 23. Having established a liberty interest, the Court must determine what
17 procedures are required before the government may revoke Petitioner's liberty
18 and return him to jail. Courts use the three-factor test from *Mathews v. Eldridge*,
19 424 U.S. 319, 335 (1976): (1) the private interest affected; (2) the risk of
20 erroneous deprivation under existing procedures and the value of additional
21 safeguards; and (3) the government's interest, including any administrative
22 burden.

1 24. First, Petitioner's private interest in remaining free from incarceration
2 is substantial. "Freedom from imprisonment—from government custody,
3 detention, or other forms of physical restraint—lies at the heart of the liberty that
4 [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690. After DHS
5 released him on an Order of Recognizance in May 2023, Petitioner lived in the
6 community for nearly three years: he resided at a stable address, obtained and
7 maintained lawful employment as a truck driver, worshipped freely, and
8 diligently pursued his asylum case with counsel, all without any arrests or
9 criminal conduct. Revoking that settled, law-abiding status and returning him to
10 jail inflicts exactly the "grievous loss" of "continued freedom" the Supreme
11 Court recognized in *Morrissey v. Brewer*, 408 U.S. 471, 481–84 (1972).

12 25. Second, the risk of erroneous deprivation in Petitioner's case is high.
13 When DHS released him on his own recognizance in May 2023, it expressly
14 found that he did not appear to be "a threat to national security or public safety."
15 See Exhibit D at 6(Order of Release on Recognizance (Form I-220A)). He then
16 complied with every condition of release, including keeping his address current,
17 appearing for hearings, maintaining lawful employment, and avoiding any
18 criminal conduct whatsoever. There is nothing in the record to suggest that his
19 conduct or circumstances worsened in the intervening years. Yet, on January 15,
20 2026, ICE officers suddenly arrested Petitioner at a Minnesota truck stop while
21

1 he was off-duty and sleeping in his commercial vehicle, and re-detained him in
2 ICE custody—without any advance notice, written explanation, or
3 pre-deprivation hearing before a neutral decisionmaker to assess whether he had
4 become a danger or flight risk or whether detention was necessary at all.
5

6 26. In these circumstances, the “seize-first, justify-later” approach carries
7 a substantial risk of error because neither the government nor Petitioner had any
8 opportunity, before re-detention, to test whether there was any valid basis to
9 revoke his long-standing conditional liberty. Requiring the government to
10 provide written notice of the grounds for re-detention and a prompt hearing
11 before a neutral adjudicator—at which the government must articulate and
12 substantiate any alleged change in circumstances, and Petitioner can respond with
13 his compliance record, employment history, and lack of criminal conduct—
14 would significantly reduce that risk. Courts considering similar re-detention
15 scenarios have held that, on balance, *Mathews* “demonstrate[s] that [a noncitizen]
16 is entitled to notice and an opportunity to be heard before re-detention,” and have
17 found due process violations where ICE abruptly rearrested noncitizens living
18 peaceably in the community without such safeguards. *Sekhon v. Warden of the*
19 *Golden State Annex Detention Facility, et. al*, No. 1:25-cv-1692, 2026 WL
20 74151, at *4 (E.D. Cal. Jan. 9, 2026)
21
22
23
24
25
26
27
28

1 27. Third, the government unquestionably has a legitimate interest in
2 enforcing the immigration laws, ensuring appearance at proceedings, and
3 protecting public safety. But its incremental interest in re-detaining Petitioner
4 without notice or a pre-deprivation hearing is minimal. DHS already determined
5 in 2023 that Petitioner was neither a danger nor a flight risk, and his subsequent
6 three-year compliance record only strengthens that assessment. Moreover, the
7 government already operates established mechanisms for giving noncitizens bond
8 and custody hearings within the immigration system. Providing Petitioner with
9 written notice of the proposed grounds for revoking his release and a prompt
10 pre-detention hearing before a neutral decisionmaker would impose little
11 additional administrative burden, especially compared to the severe deprivation
12 of liberty at stake.

13 28. Fourth, post-deprivation review cannot cure the absence of a pre-
14 deprivation process in cases of sudden re-detention after prior community
15 release. *See, e.g., Gallardo Brito v. Thompson*, No. SA-26-CA-00079-XR (W.D.
16 Tex. Jan. 22, 2026) (ordering release “under conditions no more restrictive than
17 those in place before the detention at issue in this case” and conditioning any
18 future re-detention on full § 1226 procedures, including a bond hearing); *Sanchez*
19 *Suarez v. Bondi*, No. 5:26-CV-0192-JKP (W.D. Tex. Jan. 22, 2026) (same);
20 *Castillo Cruz v. Noem*, No. 5:26-CV-0209-JKP (W.D. Tex. Jan. 22, 2026)

(same); *Gil v. Warden, Otay Mesa Det. Ctr.*, No. 3:25-cv-03279, 2025 WL 3675153, at *4 (S.D. Cal. Dec. 17, 2025) (ordering release where post-deprivation bond hearing could not remedy lack of individualized assessment before re-detention); *Sekhon v. Warden of Golden State Annex Det. Facility*, No. 1:25-cv-1692, 2026 WL 74151, at *4 (E.D. Cal. Jan. 9, 2026) (immediate release appropriate for due process violations in re-detention without pre-deprivation process); *Alfaro Herrera v. Baltazar*, No. 1:25-cv-04014-CNS, 2026 LX 25042, at *44 (D. Colo. Jan. 13, 2026); *Qasemi v. Francis*, No. 25-cv-10029 (LJL), 2025 LX 560254, at *43 (S.D.N.Y. Dec. 17, 2025) (bond hearing inadequate for sudden arrest violations); *Crespo Tacuri v. Genalo*, No. 25-cv-06896 (NCM), 2026 LX 59191, at *21 (E.D.N.Y. Jan. 6, 2026) (post-deprivation review insufficient).

29. Weighing the *Mathews* factors, Petitioner's substantial liberty interest in remaining out of jail, the high risk of erroneous deprivation under ICE's "arrest-now, explain-later" approach, and the negligible burden of providing basic front-end procedures all point in one direction: the Due Process Clause required ICE to afford Petitioner written notice of the grounds for revoking his recognizance release and a meaningful opportunity to be heard before re-detaining him. Because Respondents failed to provide those procedures,

1 Petitioner's January 15, 2026 re-detention violates the Fifth Amendment and
2 warrants habeas relief.

3 **Statutory Detention Framework: § 1226(a), Not § 1225(b)(2), Governs**
4 **Petitioner's Custody**

5
6 30. The INA prescribes three basic forms of detention for the vast
7 majority of noncitizens in removal proceedings.

8 31. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in
9 standard removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. §
10 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing
11 at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while
12 noncitizens who have been arrested, charged with, or convicted of certain crimes
13 are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
14
15

16 32. Second, the INA provides for mandatory detention of noncitizens
17 subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
18 arrivals seeking admission who fall within the scope of § 1225(b)(2).
19

20 33. Last, the INA also provides for detention of noncitizens who have
21 been ordered removed, including individuals in withholding-only proceedings.
22 *See* 8 U.S.C. § 1231(a)–(b).
23

24 34. This case concerns the detention provisions at §1226(a).

25 35. The detention provisions at §1226(a) and §1225(b)(2) were enacted as
26 part of the Illegal Immigration Reform and Immigrant Responsibility Act
27

1 (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546,
2 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended
3 in 2025 by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).
4

5 36. Following the enactment of the IIRIRA, EOIR drafted new
6 regulations explaining that, in general, people who entered the country without
7 inspection were not considered detained under §1225 and that they were instead
8 detained under §1226(a). *See* Inspection and Expedited Removal of Aliens;
9 Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
10 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
11
12

13 37. Thus, in the decades that followed, most people who entered without
14 inspection and were placed in standard removal proceedings received bond
15 hearings, unless their criminal history rendered them ineligible pursuant to 8
16 U.S.C. § 1226(c). That practice was consistent with many more decades of prior
17 practice, in which noncitizens who were not deemed “arriving” were entitled to a
18 custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a)
19 (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that
20 §1226(a) simply “restates” the detention authority previously found at §1252(a)).
21
22

23 38. On July 8, 2025, ICE, “in coordination with” DOJ, announced a new
24 policy that rejected well-established understanding of the statutory framework
25 and reversed decades of practice.
26
27

1 39. The new policy, entitled “Interim Guidance Regarding Detention
2 Authority for Applicants for Admission,”¹ claims that all persons who entered the
3 United States without inspection shall now be subject to mandatory detention
4 provision under §1225(b)(2)(A). *See* Exhibit M at 33 (ICE Interim Guidance).
5 The policy applies regardless of when a person is apprehended, and affects those
6 who have resided in the United States for months, years, and even decades.
7

8 40. On September 5, 2025, the BIA adopted this same position in a
9 published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).
10 There, the Board held that all noncitizens who entered the United States without
11 admission or parole are subject to detention under § 1225(b)(2)(A) and are
12 ineligible for IJ bond hearings.
13

14 41. Since Respondents adopted their new policies, dozens of federal
15 courts have rejected their new interpretation of the INA’s detention authorities.
16 Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same
17 reading of the statute as ICE.
18

19 42. Even before ICE or the BIA introduced these nationwide policies, IJs
20 in the Tacoma, Washington immigration court stopped providing bond hearings
21 for persons who entered the United States without inspection and who have since
22
23
24
25

26 ¹ Available at [https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
27 [applications-for-admission](https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission).

1 resided here. There, the U.S. District Court in the Western District of Washington
2 found that such a reading of the INA is likely unlawful and that §1226(a), not
3 §1225(b), applies to noncitizens who are not apprehended upon arrival to the
4 United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.
5 2025).

6
7 43. Subsequently, court after court has adopted the same reading of the
8 INA's detention authorities and rejected ICE and EOIR's new interpretation. *See*,
9 *e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July
10 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ---,
11 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-
12 02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report*
13 *and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL
14 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937
15 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No.
16 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025);
17 *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL
18 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025
19 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373
20 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*,
21 No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-*

1 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug.
2 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136
3 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), ---
4 F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v.*
5 *Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug.
6 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL
7 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-
8 02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes*
9 *v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025);
10 *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept.
11 9, 2025); *see also, e.g., Palma Perez v. Berg*, No. 8:25CV494, 2025 WL
12 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree”
13 that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No.
14 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025)
15 (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at
16 *2 (D. Neb. Aug. 14, 2025) (same).

17
18
19
20
21
22 44. Courts have uniformly rejected DHS’s and EOIR’s new interpretation
23 because it defies the INA. As the *Rodriguez Vazquez* court and others have
24 explained, the plain text of the statutory provisions demonstrates that §1226(a),
25 not § 1225(b), applies to people like Petitioner.
26
27

1 45. Critically, as recently interpreted in *Maldonado Bautista v. Santacruz*
2 *Jr., et al.*, Case No. 5:25-cv-01873-SSS-BFM (C.D. Cal. 2025), the plain text of
3 the INA dictates that a noncitizen arrested in the interior after years of residence
4 and long-standing treatment as a §1226(a) respondent is not subject to mandatory
5 detention under §1225(b)(2). *See* Exhibit N at 35 (Practice Alert: EOIR Issues
6 Nationwide Guidance on *Maldonado Bautista*).
7

8
9 46. Section 1226(a) applies by default to all persons “pending a decision
10 on whether the [noncitizen] is to be removed from the United States.” These
11 removal hearings are held under § 1229a, to “decid[e] the inadmissibility or
12 deportability of a[] [noncitizen].”
13

14 47. The text of §1226 also explicitly applies to people charged as being
15 inadmissible, including those who entered without inspection. *See* 8 U.S.C. §
16 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by
17 default, such people are afforded a bond hearing under subsection (a). As the
18 *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific
19 exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions,
20 the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing
21 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400
22 (2010)); *see also* *Gomes*, 2025 WL 1869299, at *7.
23
24
25
26
27

1 associated with [REDACTED] on account of his [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 and he has pursued protection in the United States through an affirmative and
5 then defensive asylum application. *See* Exhibit K at 17-30 (Conformed I-589
6 Filing with EOIR).

7
8 52. On or about May 13, 2023, when Petitioner was 27 years old, he
9 entered the United States at or near Tecate, California, without inspection by an
10 immigration officer. *See* Exhibit B at 2-4 (Notice to Appear). U.S. Border Patrol
11 agents in the San Diego Sector apprehended him shortly after entry, determined
12 that he had entered unlawfully, and prepared a Form I-213 reflecting that he was
13 inadmissible as an alien present in the United States without being admitted or
14 paroled. *See* Exhibit F at 8-10 (Record of Deportable/Inadmissible Alien (Form I-
15 213)).
16
17

18 53. On May 17, 2023, DHS issued a Notice to Appear charging Petitioner
19 under INA § 212(a)(6)(A)(i) as an alien present in the United States without
20 having been admitted or paroled, vacated his prior expedited removal order
21 following a positive credible-fear determination, and placed him in full removal
22 proceedings in the San Francisco Immigration Court. *See* Exhibit B at 2-4
23 (Notice to Appear). On the same date, after a custody determination under INA §
24 236, DHS issued an Order of Release on Recognizance (Form I-220A), releasing
25
26
27
28

1 Petitioner from immigration detention on his own recognizance subject to
2 standard conditions, including appearing for all hearings, not changing address
3 without permission, not violating any laws, and assisting with travel documents if
4 ordered removed. *See* Exhibit D at 6 (Order of Release on Recognizance (Form I-
5 220A)). In its internal narrative, DHS explicitly recorded that Petitioner “did not
6 appear to be a threat to national security, or public safety” and therefore was
7 being processed as NTA/OR “due to lack of bed space.” *See collectively* Exhibit
8 F at 8-10 (Record of Deportable/Inadmissible Alien (Form I-213)); *See also*
9 Exhibit D at 6 (Order of Release on Recognizance (Form I-220A)).
10
11
12

13 54. Following his release in May 2023, Petitioner lived peacefully in the
14 United States for nearly three years, fully complying with all supervision and
15 immigration-court obligations. He established a stable life and maintained
16 updated contact information with DHS and EOIR, and retained immigration
17 counsel, who filed his Form I-589 asylum application with the San Francisco
18 Immigration Court; his next master calendar hearing is presently scheduled for
19 February 5, 2026, before Immigration Judge Jessica K. Miles in El Paso, Texas.
20
21 *See* Exhibit L at 31-32 (Automated Case Information).
22

23 55. During this time, Petitioner obtained lawful employment authorization
24 (Form I-766, category C08), valid from April 2, 2024 through April 1, 2029, and
25 worked as a commercial truck driver, including employment with Bajwa Express
26
27
28

1 beginning in or about February 2025. *See* Exhibit H at 13-14 (Employment
2 Authorization Document (EAD)). He has never been arrested, charged, or
3 convicted of any crime in the United States, and the DHS record reflects “None
4 Known” for criminal history. *See* Exhibit F at 8-10 (Record of
5 Deportable/Inadmissible Alien).
6

7
8 56. Additionally, Petitioner is a person of high moral character and a
9 respected, law-abiding member of his community, as attested to in the supporting
10 declarations. *See collectively* Exhibit J at 16 (Employment Verification); Exhibit
11 O at 36-37 (Letter In Support of Petitioner from Sukhchain Singh); *see also*
12 Exhibit P at 39-40 (Letter In Support of Petitioner from Mona Fnu). His
13 commitment to service and ethical principles is demonstrated through his active
14 participation at Gurdwara Dasmesh Darbar, where he regularly attends religious
15 services and volunteers in the free community kitchen (Langar). *See* Exhibit I at
16 15 (Letter from Gurudwara Dasmesh Darbar).
17
18

19 57. On January 15, 2026, while Petitioner was off-duty and sleeping in his
20 truck at a Travel Centers of America location in Minnesota as part of his work as
21 a long-haul driver, approximately 10–15 ICE officers arrived in three to four
22 vehicles, surrounded his truck, knocked, and requested his driver’s license.
23
24 Petitioner produced a valid Real-ID-compliant state driver’s license, which
25 agents examined and initially told him he could “go ahead”; an officer then
26
27

1 shifted the encounter to an immigration interrogation, demanded that Petitioner
2 produce his work permit, and, after confirming his identity and immigration
3 status, arrested him without presenting a judicial warrant or any new charges,
4 despite his clean criminal record and ongoing compliance with ICE. *See* Exhibit
5 H at 13-14 (EAD).
6

7 58. Petitioner was detained overnight in a facility in the St.
8 Paul/Minneapolis area and then transferred to ICE custody in El Paso, Texas; on
9 or about January 19, 2026, he was moved into the ERO El Paso Camp East
10 Montana Detention Facility, where he has remained detained ever since. *See*
11 Exhibit G at 11-12 (ICE's Online Detainee Locator System Search Result). For
12 the first several days at ERO El Paso Camp East, Petitioner reports that he was
13 not provided a bed or sheets and received inadequate food; although day-to-day
14 conditions later improved, he has continued to suffer the inherent harms of
15 confinement and the disruption of his work and family life.
16
17

18 59. At no point prior to the January 15, 2026 arrest did DHS provide
19 Petitioner with written notice that it intended to revoke his May 2023
20 recognizance release, identify any alleged violation of his release conditions, or
21 assert that he had become a danger to the community or a flight risk. Nor has
22 Petitioner been afforded any pre-deprivation or prompt post-deprivation custody
23 hearing before a neutral adjudicator to assess whether his re-detention is
24
25
26
27
28

1 necessary, even though his detention is civil in nature and he remains a
2 noncitizen in ongoing removal proceedings under an existing NTA charging him
3 under INA § 212(a)(6)(A)(i). *See* Exhibit B at 2-4 (NTA).
4

5 60. Petitioner's present detention is therefore the product of an abrupt,
6 warrantless re-seizure after nearly three years of flawless compliance with an
7 Order of Recognizance, despite DHS's own prior determination that he was
8 neither a danger nor a security risk, and despite the absence of any intervening
9 criminal conduct or material change in his circumstances.
10

11 CLAIMS FOR RELIEF

12 COUNT I-

13 **Unlawful Detention Under Incorrect Statutory Authority** 14 **(8 U.S.C. § 1225(b)(2) vs. § 1226(a))** 15

16 61. Petitioner incorporates by reference the allegations of fact set forth in
17 the preceding paragraphs.
18

19 62. Petitioner is in ordinary removal proceedings under 8 U.S.C. § 1229a
20 based on a May 17, 2023 Notice to Appear charging him under INA §
21 212(a)(6)(A)(i) as an alien present in the United States without being admitted or
22 paroled. *See* Exhibit B at 2-4 (NTA). The statute governing detention of such
23 noncitizens "pending a decision on whether the alien is to be removed" is 8
24 U.S.C. § 1226(a), which provides discretionary arrest and custody authority and
25
26
27
28

1 contemplates release on bond or conditional parole after an individualized
2 custody determination.

3
4 63. DHS exercised that § 1226 authority in May 2023 by issuing an Order
5 of Release on Recognizance (Form I-220A) after determining that Petitioner did
6 not appear to be a threat to national security or public safety and authorizing his
7 release into the community under specified conditions. *See* Exhibit D at 6 (Order
8 of Release on Recognizance (Form I-220A)). Petitioner then lived in the United
9 States for nearly three years, obtained a valid employment authorization
10 document, worked lawfully as a truck driver, maintained a stable residence and
11 contact information, and complied with all immigration-court and supervision
12 obligations, all without any criminal history or violations of his conditions of
13 release. *See* Exhibit H at 13-14 (Employment Authorization Document (EAD)).
14
15

16
17 64. Respondents have now re-detained Petitioner as a civil immigration
18 detainee but have not identified any separate, valid statutory authority that would
19 permit treating him as subject to mandatory, no-bond detention or to detention
20 untethered to § 1226(a)'s procedures and standards. Because Petitioner is a
21 noncitizen in § 1229a proceedings who has already been recognized as suitable
22 for release under § 1226 and has not incurred any disqualifying criminal conduct,
23 continued confinement without invoking and complying with § 1226(a) is ultra
24 vires and unlawful under the INA.
25
26

COUNT II

Violation of the INA and Implementing Regulations Governing Warrantless

Arrests and Parole (8 U.S.C. § 1357(a)(2); 8 C.F.R. §§ 287.8, 212.5)

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

66. Under 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii), immigration officers may effect a civil immigration arrest without a warrant only where they have reason to believe a person is in violation of the immigration laws and reasonably believe that the person “is likely to escape before a warrant can be obtained.” Petitioner, however, had been living for nearly three years under an Order of Recognizance, reporting to immigration authorities, maintaining his address, and fully complying with all conditions, and he was arrested on January 15, 2026 while sleeping in his truck at a commercial truck stop in Minnesota.

67. Those circumstances foreclose any good-faith conclusion that Petitioner was “likely to escape before a warrant can be obtained.” Respondents had every opportunity—over many months of supervised release and in the days leading up to the Minnesota operation—to seek and obtain an administrative arrest warrant if they believed custody was necessary. Instead, ICE officers conducted a warrantless civil immigration arrest in a non-exigent setting, in violation of § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii). Because Petitioner’s

1 current detention flows directly from that unlawful seizure, his continued
2 confinement is likewise unlawful under the INA and implementing regulation.

3
4 **COUNT III**

5 **Fifth Amendment Due Process (Substantive) –**

6 **Prolonged Civil Detention Without Lawful Authority**

7
8 68. Petitioner repeats, re-alleges, and incorporates by reference each and
9 every allegation in the preceding paragraphs as if fully set forth herein.

10 69. Substantive Due Process forbids arbitrary and purposeless
11 confinement where the government lacks a lawful statutory basis or a legitimate
12 regulatory objective commensurate with the loss of liberty. Petitioner has lived in
13 the United States since May 2023, has maintained a stable address and lawful
14 employment, has no criminal record, and has complied with every supervision
15 and court requirement arising from his release on recognizance. *See* Exhibit D at
16 6 (Order of Release on Recognizance (Form I-220A). DHS itself determined in
17 May 2023 that he did not appear to be a threat to national security or public
18 safety and released him accordingly.
19
20
21

22 70. In this posture, re-detaining Petitioner in January 2026 without any
23 intervening criminal conduct, without any individualized finding that he had
24 become a danger or flight risk, and without reliance on a valid detention statute
25 or procedure, bears no reasonable relationship to the INA's regulatory goals of
26
27
28

1 ensuring appearance and protecting the community. Continued confinement
2 under these circumstances is arbitrary, shocks the conscience in light of his
3 almost three-year record of peaceful, compliant residence, and therefore violates
4 the substantive component of the Fifth Amendment's Due Process Clause.
5

6 **COUNT IV**

7 **Fifth Amendment Due Process (Procedural) –**

8 **Re-Detention Without Notice or Pre-Deprivation Hearing**

9
10 71. Petitioner repeats, re-alleges, and incorporates by reference each and
11 every allegation in the preceding paragraphs as if fully set forth herein.
12

13 72. As a noncitizen whom DHS affirmatively released on an Order of
14 Recognizance and allowed to live in the community for nearly three years,
15 Petitioner acquired a substantial liberty interest in his continued release, which
16 cannot be revoked without due process of law. *See* Exhibit D at 6 (Order of
17 Release on Recognizance (Form I-220A)). That interest encompasses the ability to
18 live at home, work, maintain community and family ties, and prepare and pursue
19 his asylum and removal-defense case outside of physical custody.
20
21

22 73. Yet, Respondents provided Petitioner with no written notice that they
23 intended to revoke his May 2023 recognizance release, no statement of alleged
24 violations or changed circumstances, and no pre-deprivation hearing before a
25 neutral decisionmaker to determine whether he had become a danger or flight risk
26
27

1 or whether detention was necessary at all. ICE officers instead executed a
2 warrantless arrest at a Minnesota truck stop on January 15, 2026, and transferred
3 him to the ERO El Paso Camp East Montana Detention Facility, where he
4 remains confined without ever having received an individualized custody
5 redetermination.
6

7
8 74. Applying the *Mathews v. Eldridge* framework, Petitioner's private
9 interest in remaining free from incarceration is weighty; the "seize-first,
10 justify-later" approach employed here creates a high risk of erroneous deprivation
11 by eliminating any front-end assessment; and the government's incremental
12 burden in providing written notice and a prompt, neutral custody hearing is
13 minimal, especially given existing bond-hearing mechanisms under § 1226(a). In
14 analogous cases, courts in the Western District of Texas have granted habeas
15 relief and ordered immediate release, recognizing that abrupt re-detention of
16 long-term, compliant releases without individualized procedures is incompatible
17 with due process. Because Respondents revoked Petitioner's conditional liberty
18 and returned him to jail without those basic procedural safeguards, his continued
19 detention violates the procedural component of the Fifth Amendment.
20
21
22

23 **Count V**

24
25 **Fourth Amendment – Unreasonable Seizure**

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

3
4 76. Petitioner's January 15, 2026 arrest and ensuing confinement
5 constitute a seizure within the meaning of the Fourth Amendment. That seizure
6 was unreasonable because it was carried out without a judicial warrant, without a
7 properly obtained administrative warrant grounded in the correct statutory
8 authority, without exigent circumstances, and without compliance with 8 U.S.C.
9 § 1357(a)(2)'s requirement that officers reasonably believe a noncitizen is "likely
10 to escape before a warrant can be obtained." Petitioner was sleeping in his truck
11 at a commercial truck stop, in the course of his lawful employment, after nearly
12 three years of supervised release during which he had never absconded or
13 violated any conditions.

14
15 77. Civil immigration detention must rest on probable cause and lawful
16 statutory authority. By rearresting Petitioner in a non-exigent setting without a
17 warrant and without later providing a prompt, neutral probable-cause or custody
18 hearing, and by continuing to confine him under circumstances where no valid
19 detention statute has been invoked or satisfied, Respondents have subjected him
20 to an unreasonable seizure in violation of the Fourth Amendment.

21
22
23
24 **PRAYER FOR RELIEF**

25
26 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1 a. Assume jurisdiction over this matter;
- 2 b. Order that Petitioner shall not be transferred outside the Western
3 District of Texas, El Paso Division, while this habeas petition is
4 pending;
- 5 c. Issue an Order to Show Cause ordering Respondents to show cause
6 why this Petition should not be granted within a time set by the Court;
- 7 d. Issue a Writ of Habeas Corpus requiring that Respondents release
8 Petitioner from custody immediately;
- 9 e. Declare that Petitioner is not an "applicant for admission" subject to
10 mandatory detention under 8 U.S.C. § 1225(b);
- 11 f. Enjoin Respondents from re-detaining Petitioner, absent exigent
12 circumstances, without first providing him with written notice and a
13 pre-detention hearing before a neutral adjudicator, at which the
14 government bears the burden, by clear and convincing evidence, to
15 establish that Petitioner poses a danger to the community or a risk of
16 flight and that no less restrictive alternative can reasonably ensure his
17 appearance and community safety.
- 18 g. Award Petitioner attorney's fees and costs under the Equal Access to
19 Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any
20 other basis justified under law; and
21
22
23
24
25
26
27
28

1 h. Grant any other and further relief that this Court deems just and
2 proper.
3

4 DATED: February 2, 2026

Respectfully Submitted,


Gita B. Kapur
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 2, 2026, I served a copy of this Petition for Writ of Habeas Corpus by email to the following individuals:

Mary F. Kruger
Civil Division Chief
U.S. Attorney's Office-Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas
Email: mary.kruger@usdoj.gov

Priscilla Roldan
Assistant U.S. Attorney
El Paso Division
U.S. Attorney's Office
700 E. San Antonio, Suite 200
El Paso, Texas 79901
Email: priscilla.roldan@usdoj.gov



Gita B. Kapur
Attorney for Petitioner