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**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEW MEXICO**

KAUR, KAWALJEET,

Petitioner-Plaintiff,

v.

Warden, Otero County Processing Center, Chaparral, New Mexico;

Director, Enforcement and Removal Operations, El Paso, Texas ICE Field Office;

Todd M. LYONS, Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Daren K. Margolin, Director, Executive Office for Immigration Review;

Kristi NOEM, Secretary, U.S. Department of Homeland Security;

Pam BONDI, Attorney General of the United States;

Respondents-Defendants

Case No.: _____

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

Challenge to Unlawful Incarceration Under Color of Immigration Detention Statutes; Request for Declaratory and Injunctive Relief

Agency File No.: [redacted]

Petitioner KAUR, KAWALJEET petitions this court for a writ of Habeas Corpus under 28 USC § 2241 to remedy Respondents detaining her unlawfully, and states as follows:

**INTRODUCTION**

1. Petitioner KAUR, KAWALJEET ("Kaur" or "Petitioner"), is an Indian Asylum seeker currently detained at the Otero County Processing Center, 26 McGregor Range Road, Chaparral, New Mexico 88081. Petitioner, by and through this undersigned counsel, hereby files this petition for writ of habeas corpus and complaint for declaratory and injunctive relief to compel her immediate release from the immigration detention where she has been held by the United States Department of Homeland Security (DHS) since being unlawfully detained on January 5, 2026. Petitioner was detained without being provided with a due process hearing to determine whether her detention was justified. Petitioner was previously released on conditional parole following her arrival in the U.S. at or near Lukeville AZ, on or about June 10, 2023. Petitioner thereafter applied for asylum, withholding of removal and protection under Convention Against Torture. The immigration court issued a decision on October 10, 2025, denying Petitioner's asylum application on grounds that are currently on appeal before the Board of Immigration Appeals (BIA). At the time of her arrest, Petitioner's appeal before the BIA remains pending.

2. Petitioner further submits this habeas petition under 28 U.S.C. § 2241 for a judicial check on Respondents' administrative decisions to detain her under 8 U.S.C. §1225(b)(2), INA § 235(b)(2), despite the lack of authority to do so, in that Petitioner is not an applicant for admission nor is she seeking admission. And because the government purports to hold her under § 1225(b)(2), it has not provided her with an individualized bond hearing to challenge her detention under 8 U.S.C. § 1226(a), INA § 236(a), contravening her rights under the Immigration and Nationality Act and the Fifth Amendment's Due Process Clause.

3. Similarly, DHS lacks statutory authority to detain the petitioner pursuant to INA § 241(a)(1) because the Petitioner's asylum application is under appeal before the BIA and no final order of removal has been entered against her. Therefore, Petitioner's continued detention is without statutory authority contravening her rights under the Immigration and Nationality Act and the 5th Amendment's Due Process Clause.

4. Petitioner seeks declaratory and injunctive relief to compel her immediate release from the immigration detention where she has been held unlawfully by the DHS since being unlawfully detained on January 5, 2026.

5. Absent review in this Court, no other neutral adjudicator will examine Petitioner's plight: Respondents will continue to detain her in violation of the law essentially indefinitely. Petitioner thus urges this Court to review the lawfulness of her detention; declare that her detention under 8 U.S.C. § 1225(b)(2) is unlawful; and order her immediate release.

6. Petitioner must be released from custody unless and until DHS proves to a neutral adjudicator, by clear and convincing evidence, material changed circumstances (including that she is a flight risk and/or a danger to the community) that would justify re-detaining a petitioner who was previously released on conditional parole pursuant to INA § 236 (8 U.S.C. § 1226) and whose application for Asylum, Withholding of Removal and Protection under the Convention Against Torture is under appeal before the BIA.

7. The Due Process clause of the Fifth Amendment, as well as statutory and regulatory authorities, require the government to provide noncitizens with notice and a hearing prior to detention or re-detention. Here, Petitioner's rights were violated and continue to be violated each day she is detained.

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**STATEMENT OF FACTS**

8. Ms. Kaur is a native and citizen of India, born in Ucha Gaon, Patiala, in the Punjab state of India. She fled India because she was [redacted] Fearing an imminent threat to her life, Petitioner fled India and arrived in the United States and sought asylum.

9. Petitioner arrived in U.S. on or about June 10, 2023 at or near the border in Lukeville, Arizona.

10. The Notice to Appear ("NTA") issued by DHS to Petitioner states in relevant part that Petitioner was an "alien present in the United States without being admitted or paroled" or one who arrived in the US "at any time or place other than as designated by the Attorney General."

11. Upon arrival in the U.S., Petitioner was briefly detained and was subsequently released from ICE custody on conditional parole under INA section 236 (8 U.S.C. § 1226) with conditions of complying with ICE check-in and reporting to court hearings. Petitioner was thereafter placed in removal proceedings before the El Paso Immigration Court.

12. During the pendency of Petitioner's removal proceedings before the El, Paso Immigration Court, Petitioner sought relief in the form of Asylum, Withholding, and Protection under Convention Against Torture. Petitioner thereafter filed her Form I-589 asylum application as well as supplemental evidence in support of the asylum application with the immigration court.

13. On record with the immigration court proceedings is Petitioner's psychosocial evaluation report dated February 4, 2025. In Petitioner's psychosocial evaluation, a licensed counselor in Albuquerque, New Mexico evaluated Petitioner and determined that Petitioner has a significant history of depression and anxiety resulting from the violent attacks she experienced in India, as well as physical, emotional, and sexual abuse she endured from her husband while living in Europe. Consequently, Petitioner is currently suffering trauma and her mental health is significantly affected as a result of the violent attacks in India as well as the domestic violence she experienced. Prior to her re-detention, Petitioner was taking prescription medication for her mental condition. Petitioner's mental condition persists and continues to deteriorate as a result of her re-detention and without the medical assistance necessary to treat her condition.

14. Notwithstanding the evidence presented by Petitioner during her removal proceedings, the immigration judge denied Petitioner's asylum on October 10, 2025. Petitioner thereafter filed a timely appeal before the BIA. The appeal remains pending to date.

15. At all times, Petitioner has complied with her conditions of release, timely filed her application for asylum, complied with the Intensive Supervision Appearance Program ("ISAP"), and obeyed all applicable federal and state laws.

16. When the petitioner went to report for her scheduled ICE check-in, pursuant to her Intensive Supervision Appearance Program (ISAP) at the ICE office in El Paso, Texas on January 5, 2026, ICE personnel arrested and detained Petitioner unlawfully, nakedly alleging

that Petitioner had violations. However, ICE has not clarified the violations that Petitioner allegedly violated.

17. Since the unlawful arrest on January 5, 2026, Petitioner remains detained in ICE Custody at the Otero County Processing Center, 26 McGregor Range Rd, Chaparral, NM 88081.

18. At the time ICE re-detained Petitioner, Petition had a pending appeal before the BIA for the immigration court decision on her asylum application. Her appeal before the BIA remains pending as of the date of the filing of this petition.

19. Since Petitioner's previous release from ICE custody on conditional parole, Petitioner has no criminal record and there has been no change of circumstances to justify Petitioner's re-detention.

20. Since her prior release from ICE custody, Petitioner has continuously lived in the United States for more than two years, complied with all requirements of her release, obeyed all laws of the United States and California and has developed extensive community ties in the United States.

21. Petitioner was re-detained by ICE officers in the absence of any changed circumstances and without showing any justification on why Petitioner's previous release on conditional parole is no longer valid. Following that arbitrary detention, Petitioner has been hauled into the Otero County Processing Center, 26 McGregor Range Rd, Chaparral, NM 88081, where she is forced to live under total deprivation of her constitutionally guaranteed liberty.

**CUSTODY AND BOND HEARING**

22. Petitioner is currently in Respondent's legal and physical custody. They are detaining her at the Otero County Processing Center, 26 McGregor Range Rd, Chaparral, NM

88081and is under the direct control of Respondents and their agents since being unlawfully detained on January 5, 2026.

23. On January 15, 2026, Petition requested a hearing for her custody redetermination before the immigration court.

24. On January 22, 2026, the immigration judge determined and ordered that the immigration court had no jurisdiction over Petitioner's custody, thereby subjecting Petitioner to mandatory custody.

25. Subsequent to her arrest and prior to her re-detention Petitioner has still not been provided with a constitutionally and statutorily compliant bond hearing.

**JURISDICTION**

26. This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution; and 28 U.S.C. § 1331, as Petitioner is presently in Respondents' custody under the United States' color of authority, and such custody violates the United States Constitution, laws, or treaties. Its jurisdiction is not limited by a petitioner's nationality, status as an immigrant, or any other classification. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008). This Court may grant relief under U.S. CONST. art. I, § 9, cl. 2; U.S. CONST. amendments. V and VIII; 28 U.S.C. §§ 1361 (mandamus), 1651 (All Writs Act), 2241 (habeas corpus).

27. Specifically, this Court has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's re-detention without being provided an individualized bail hearing prior to her re-detention and before a neutral adjudicator under § 1226(a), as well as Petitioner's challenge to being subjected to mandatory detention under Section 1225(b)(2). Federal district courts possess broad authority to issue writs of habeas corpus when a person is held "in custody in violation of the Constitution or laws or treaties of the United States" (28 U.S.C. § 2241(c)(3)), and this

authority extends to immigration detention challenges that survived the REAL ID Act's jurisdictional restrictions.

28. Because Petitioner seeks the traditional habeas remedy of release from allegedly unlawful detention rather than additional administrative review of her underlying claims, her petition presents precisely the type of threshold legality-of-detention question that § 2241 was designed to address. *See INS v. St. Cyr*, 533 U.S. 289, 301 (2001). And no court has ruled on the legality of Petitioner's detention.

**REQUIREMENTS OF 28 U.S.C. § 2243**

29. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to Respondents "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return certifying the true case of the detention "within *three days* unless for good cause additional time, *not exceeding twenty days*, is allowed." *Id.* (emphasis added).

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

*31.* Habeas corpus must remain a swift remedy. Importantly, "the statute itself directs courts to give petitions for habeas corpus 'special, preferential consideration to insure expeditious hearing and determination.'" *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (internal citations omitted). The Ninth Circuit warned against any action creating the perception "that courts are more concerned with efficient trial management than with the vindication of constitutional rights." *Id.*

**VENUE**

32. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents are employees or officers of the United States, acting in their official capacity; because a substantial part of the events or omissions giving rise to the claim occur in Otero County in the District Court of New Mexico where Petitioner is currently detained, and because there is no real property involved in this action. The Warden of the Otero County Processing Center, 26 McGregor Range Road, Chaparral, New Mexico 88081and Director of El Paso ICE Field Office have legal custody of the Petitioner.

**INTRADISTRICT ASSIGNMENT**

33. The decision to re-arrest and re-detain Petitioner was made by the El Paso field office of ICE, and until she was unlawfully re-detained by ICE, her asylum case had a pending appeal before the Board of Immigration Appeals (BIA). After her arrest, she was hauled into the Otero County Processing Center located at 26 McGregor Range Road, Chaparral, New Mexico 88081.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

34. In habeas claims, a court may waive the prudential exhaustion requirement if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Id.* (*quoting Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation and quotation marks omitted)). Petitioner asserts that exhaustion should be waived because administrative remedies are (1) futile and (2) her continued detention results in irreparable harm.

35. Pursuant to the BIA's recent precedential decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), an immigration judge would not take jurisdiction over any custody redetermination hearing. Per

those decisions, contravening decades of law and practice by Respondents, Petitioner is erroneously deemed an applicant for admission ineligible for a bond hearing before an immigration judge (IJ).

36. Exhausting administrative remedies here is futile because Respondents contend Petitioner is subject to mandatory detention. As such, no parole request to release Petitioner from custody would be considered by ICE. Moreover, in contravention to the INA and long-standing precedent and practice, the Board of Immigration Appeals and Attorney General have deemed no noncitizen eligible for bond before an immigration judge (with the exception of noncitizens who entered the U.S. on a visa). As such, any attempts to exhaust administrative remedies would be entirely futile.

37. More importantly, every day that Petitioner remains detained causes her harm that cannot be repaired. Her continued detention puts her physical and mental health at greater risk, further warranting a finding of irreparable harm and the waiver of the prudential exhaustion requirement. As set forth above, Petitioner was recently diagnosed with trauma and significant mental condition resulting from violent attacks and domestic violence for which she requires treatment and medication. The Court must consider this in its irreparable harm analysis of the effects on Petitioner as her detention continues.

**PARTIES**

38. Petitioner Kaur, Kawaljeet is an Indian asylum seeker. She fled India due to being persecuted and tortured on account of her religion and political opinion. She is presently seeking asylum in the United States. The decision by the Immigration Court is currently under appeal before the BIA.

39. Petitioner is currently in Respondents' legal and physical custody at the Otero County Processing Center in Otero County, New Mexico.

40. Respondent Warden of the Otero County Processing Center, located at 26 McGregor Range Road, Chaparral, New Mexico 88081, is the legal custodian of the Petitioner, and is sued in his official capacity.

41. Respondent Director of Enforcement and Removal Operations of El Paso, Texas ICE Field Office and in his official capacity, is the legal custodian of the Petitioner.

42. Respondent Todd M. LYONS is the Director of ICE and is named in his official capacity. Among other things, ICE is responsible for the administration and enforcement of the immigration laws, including the removal of noncitizens. In his official capacity as head of ICE, he is the legal custodian of Petitioner.

43. Respondent Daren K. MARGOLIN is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including bond hearings. Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including custody redeterminations in bond hearings. He is sued in his official capacity.

44. Respondent Kristi NOEM is the Secretary of the DHS and is named in her official capacity. DHS is the federal agency encompassing ICE, which is responsible for the administration and enforcement of the INA and all other laws relating to the immigration of noncitizens. In her capacity as Secretary, Respondent Noem has responsibility for the administration and enforcement of the immigration and naturalization laws pursuant to section 402 of the Homeland Security Act of 2002, 107 Pub. L. No. 296, 116 Stat. 2135 (Nov. 25, 2002); *see also* 8 U.S.C. § 1103(a). Respondent Noem is the ultimate legal custodian of Petitioner.

45. Respondent Pam BONDI is the Attorney General of the United States and the most senior official in the U.S. Department of Justice (DOJ) and is named in her official capacity. She has the authority to interpret the immigration laws and adjudicate removal cases. The Attorney General delegates this responsibility to the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA.

## LEGAL FRAMEWORK AND ANALYSIS

### Statutory Framework Regarding Re-Detention

46. The Due Process clause of the Constitution, Congress' statutes and implementing regulations as well as precedential decisions narrow DHS's authority to unilaterally revoke any noncitizen's immigration bond or release on conditional parole and re-arrest the noncitizen at any time, 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9).

47. ICE can release a noncitizen from custody after the noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons" and that the noncitizen is "likely to appear for any future proceeding." § 1236.1(c)(8).3 Release [therefore] reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.

48. Petitioner was previously released from ICE custody on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that she was neither a danger to the community nor a flight risk.

49. Respondents now purport to hold Petitioner under 8 U.S.C. § 1225(b)(2) since January 5. 2026, despite lacking authority to hold her under § 1225(b)(2), and without giving her an individualized bail hearing before a neutral adjudicator under § 1226(a). That violates Petitioner's rights under the INA, the APA and the Fifth Amendment's Due Process Clause.

50. Petitioner was arrested and is detained despite the fact that Respondents failed to provide her notice and a pre-deprivation hearing before a neutral arbiter demonstrating materially changed circumstances justifying her re-detention, and despite the fact that she is not an applicant for admission seeking admission to the United States as required by Section 1225(b)(2). Instead, Petitioner has been residing in the U.S. for more than two years and as such, is subject to Section 1226(a).

**Materially Changed Circumstances – Right to a Hearing Prior to Re-incarceration.**

51. The Board of Immigration Appeals has clearly identified limits to DHS's authority to re-detain noncitizens: "where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance," a position adopted by the Ninth Circuit. *Matter of Sugay*,17 I. & N. Dec. 637, 640 (BIA 1981.

52. The government has further clarified in litigation that the showing of changed circumstances applies "both where the prior bond determination was made by an immigration judge *and* where the previous release decision was made by a DHS officer." *Saravia v. Barr*, 280 F. Supp. 3d at 1197 (emphasis added).

53. Further, DHS has in practice limited its authority and "generally only re-arrests[noncitizens] pursuant to § 1226(b) after a *material* change in circumstances," not just any changed circumstances. *Id.* (quoting Defs.' Second Supp. Br. at 1, Dkt. No. 90) (emphasis added).

54. Guidance from *Matter of Sugay* and DHS practice alone —that ICE should not re-arrest a noncitizen absent changed circumstances— are insufficient to protect Petitioner's weighty interest in her freedom from detention. Federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or ***parole*** require a pre-deprivation hearing for a noncitizen on bond,

like Petitioner, before ICE re-detains her, to comport with the Due Process clause of the Constitution.

55. It follows that prior to re-detaining Petitioner pursuant to 8 U.S.C. § 1226(b) who had previously been released DHS should have provided her with a pre-detention hearing and notice of such hearing at which DHS had the burden of proving that Petitioner's conditional parole should be canceled.

56. Instead, Respondents unlawfully re-arrested and re-detained Petitioner without having an immigration judge or a neutral adjudicator assess whether circumstances have materially changed since her previous release on conditional parole pursuant to INA section 236 (8 U.S.C. § 1226) after a determination that she was not a danger to the community.

**Petitioner's Due Process Rights**

57. The government cannot deprive any person of "life, liberty, or property, without due process of law[.]" U.S. Const. Amend. V. Due process extends to "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

**A. Petitioner's Liberty Interest is protected**

58. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

59. A continued liberty interest also exists where an individual was detained and is subsequently released, even if conditionally released and even when an initial decision to detain or release the individual is discretionary. *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972). "[S]ubject to the conditions of her parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at

482. The parolee relies "on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482; *see also Young v. Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process).

60. As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also*, *e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

61. The protected liberty interest is even more substantial when balancing the nonpunitive purpose of immigration detention against the irreparable harms imposed on anyone subject to immigration detention including subpar medical and psychiatric care in ICE detention facilities and the economic burdens imposed on detainees.

62. [R]elease from ICE custody constitute[s] an 'implied promise' that [the noncitizen's] liberty would not be revoked unless she 'fail[s] to live up to the conditions of her release.' The regulatory framework makes clear that those conditions [a]re that [the noncitizen] remain[s] neither a danger to the community nor a flight risk. *Pinchi v. Noem*, —— F. Supp. 3d ––, ——, No. 5:25-cv-05632-PCP, 2025 WL 2084921, at *8 (N.D. Cal. July 24, 2025) (citing *Morrissey*, 408 U.S. at 482).

63. Petitioner has a substantial liberty interest in not being detained. She has been living in the United States for over three years and has developed extensive community ties.

**B. Petitioner's Liberty Interest Mandated a Hearing Before any Re-Arrest and Revocation of Parole**

64. Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the[government's] interest in the efficient administration of" its immigration laws in order to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id*. at 1357.

65. The three-factor *Mathews* test helps the Court assess adequate safeguards: "[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

66. The Due Process Clause typically requires a hearing of some sort before the government may deprive a person of liberty. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). Post-deprivation remedies may satisfy the requirements of due process only in a "special case" where they are "the only remedies the State could be expected to provide" and where "one of the variables in the *Mathews* equation—the value of post deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing post deprivation process." *Zinermon*, 494 U.S. at 985.

**1. Petitioner has a substantial liberty interest in staying out of detention**

67. An individual's interest in not being detained is "the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S. Ct. 2633, 159 L.Ed.2d 578 (2004). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). The longer the individual has been released, the more important his liberty interest grows. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

**2. There is a risk of erroneous deprivation that the additional procedural safeguard of a pre-detention hearing would help protect against.**

68. ICE was required to provide Petitioner with notice and a hearing *prior* to any re-incarceration and revocation of her conditional parole. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be

recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which ICE failed to provide.

69. Further, immigration detention is civil (as opposed to criminal), and its primary purpose is to ensure a noncitizen's appearance during removal proceedings and protect against danger to the community; it cannot be punitive. *Zadvydas v. Davis*, 533 U.S. 678, 690, 697 (2001). Due process thus also requires consideration of alternatives to detention at any custody redetermination hearing that may occur, and where alternatives to detention that could mitigate risk of flight exist, detention is not warranted. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979).

**3. The government's interest in detaining Petitioner is minimal, and in fact the procedural requirements of a hearing would promote judicial and administrative efficiency given the government's limited resources**

70. The efficient allocation of the government's limited fiscal resources further supports holding a hearing prior to re-detaining noncitizens. The "fiscal and administrative burdens" as a result of the due process safeguard are nonexistent. *See Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976).

71. ICE's new policy to make a minimum number of arrests each day under the new administration[1] does not constitute a material change in circumstances and cannot stand to replace regulations enacted by Congress that allow the release of noncitizens in the first place. It is "arbitrary, capricious [and] an abuse of discretion" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

72. Consequently, the government's interest in keeping Petitioner in detention without a due process hearing is outweighed by Petitioner's significant private interest in her

[1] *See* "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (November 9. 2025), available at: https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/.

liberty. The scale tips sharply in favor of releasing Petitioner from custody unless and until the government demonstrates by clear and convincing evidence that she is a flight risk or danger to the community. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process Petitioner seeks—release from custody pending notice and a hearing regarding whether her conditional parole should be revoked and, if so, whether a bond amount should be set—is a standard course of action for the government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to detained individuals like Petitioner.

**Statutory Framework Regarding Detention – 8 U.S.C. §§ 1225, 1226**

73. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

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

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

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

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

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

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

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

81. On May 15, 2025, the BIA issued *Matter of Q Li*, 29 I&N Dec. 66 (BIA 2025) stating that an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under 8 U.S.C. § 1226(a).

82. Consequently, on July 8, 2025, DHS issued a notice titled "Interim Guidance Regarding Detention Authority for Applicants for Admission" ("Interim Guidance Notice") requiring, in general, that anyone arrested in the United States and charged with being inadmissible to be considered an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and not subject to detention under 8 U.S.C. § 1226(a)

83. On September 5, 2025, the BIA issued a precedent decision in *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025), finding that noncitizens who entered the United States without inspection were ineligible for bond redetermination hearings because they were seeking admission, and fell within 8 U.S.C. § 1225(b)(2)(A).

84. This legal theory espoused by the BIA's decisions in *Matter of Q Li* and *Matter of Yajure Hurtado* that noncitizens who entered the United States without admission or parole are ineligible for bond hearings has been universally rejected by the district courts. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *9 (E.D. Cal. Sept. 9, 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025); *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025); *Maldonado Bautista v. Santacruz,* 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v.*

*Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) *Rodriguez v. Bostock,* 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

85. The Board's interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

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

87. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

88. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

89. Further, in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the Central District of California declared the July 8, 2025 Interim Guidance Notice issued by DHS unlawful under the Administrative Procedures Act but did not issue a final judgment. On December 18, 2025, however, the *Bautista* court entered final judgment accordingly. *Bautista*, ECF No. 94.

90. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people like Petitioner who are alleged to have entered the United States without admission or parole.

**FIRST CLAIM FOR RELIEF**

**Due Process**
**U.S. Const. amend. V**

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

92. The Supreme Court has long recognized that the Fifth and Fourteenth Amendments refer to all "persons," not just "citizens." Aliens, even inadmissible or removable aliens, must be afforded due process protection. *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) ("The Fourteenth Amendment to the Constitution is not confined to the protection of citizens."). As stated by the Court, the provisions of the Fourteenth Amendment "are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality" Id. (emphasis added).

93. The Supreme Court has held that "even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection [of the Due Process Clauses of the Fifth and Fourteenth Amendments]" *Mathews v. Diaz*., 426 U.S. 67, 75 n.7 (1976); see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982) ("Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896) ("Persons within the territory of the United States... even aliens... [may not]... be deprived of life, liberty or property without due process of law.").

94. Petitioner's continued detention without any bond hearing violates her right to due process under the Fifth Amendment.

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

96. Petitioner has a vested liberty interest in her conditional release. Due Process does not permit the government to strip her of that liberty without a hearing before this Court. *See Morrissey v. Brewer*, 408 U.S. 471, 487-88 (1972).

97. Petitioner's re-arrest without a hearing violated the Constitution both substantively, because Respondents have no valid interest in detaining her since circumstances have not changed, and procedurally, because she was not provided with a pre-detention hearing.

98. Petitioner poses no risk of flight and no danger to the community. She has no criminal history, has demonstrated compliance with all prior immigration requirements, and has community support in the United States.

## SECOND CLAIM FOR RELIEF

**Petitioner's Detention Violates the Administrative Procedure Act, 5 U.S.C. § 706(2) Unlawful Denial of Bond**

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

100. Under the Administrative Procedures Act ("APA"), an agency must act in a manner that is not arbitrary or capricious. See 5 U.S.C. § 706(2)(A) (directing courts to "hold unlawful and set aside agency action" that is arbitrary and capricious); *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (requiring an agency to articulate a "satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made").

101. A court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

102. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States who are subject to the grounds of inadmissibility because they originally entered the United States without inspection or parole. Such noncitizens are detained under § 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

103. The application of § 1225(b)(2) to bar Petitioner from receiving a bond redetermination hearing before an immigration judge is arbitrary, capricious, and not in accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2).

## THIRD CLAIM FOR RELIEF

**Statutory Violation – Petitioner's Detention is in Violation of 8 U.S.C. § 1226(a)-(b)**

104. Petitioner re-alleges and incorporates by reference, as if fully set forth herein, the allegations in the paragraphs above.

105. Respondents lack statutory authority to detain Petitioner under 8 U.S.C. §1225(b)(2), because that statute requires that the individual be an applicant for admission and seeking admission to the U.S.

106. As Petitioner does not meet these criteria, her detention must be governed by 8 U.S.C. § 1226(a) which provides discretionary detention authority and requires ICE to make an individualized custody determination.

107. Under § 1226(a), individuals may be detained as a matter of discretion, released on their own recognizance, or released on bond of at least $1,500.

108. Respondents' failure to apply the correct statutory framework violates the INA and exceeds the government's detention authority.

109. Thus, Petitioner respectfully requests that this Court order her release from detention under 8 U.S.C. § 1226(a), INA § 236(a), for the duration of her [appeal] proceedings under 8 U.S.C. § 1229a, INA § 240.

**PRAYER FOR RELIEF**

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

(1) Assume jurisdiction over this matter;

(2) Issue the writ of habeas corpus and order Respondents to show cause, within three days of Petitioner's filing this petition, why the relief she seeks should not be granted; and set a hearing on this matter within five days of Respondents' return on the order to show cause (*see* 28 U.S.C. §2243);

(3) Enjoin Respondents from transferring Petitioner outside the jurisdiction of the District of New Mexico pending the resolution of this case;

(4) Issue a Writ of Habeas Corpus requiring Respondents to release Petitioner on the conditions of her prior release conditional parole;

(5) Alternatively conduct an immediate bond hearing before this Court where DHS bears the burden of justifying Petitioner's continued detention by clear and convincing evidence and the Court takes into consideration alternatives to detention and Petitioner's ability to pay a bond;

(6) Award reasonable costs and attorney fees under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;

(7) Grant such further relief as the Court deems just and proper.

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Dated: February 5, 2026

Respectfully submitted,

/s/ Jonathan C. Navarro
Jonathan C. Navarro, Esq.
Attorney for Petitioner

**VERIFICATION PURSUANT TO 28 U.S.C. 2242**

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in the Petition and reviewed Petitioner's immigration file. Based on said review and those discussions, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Executed on this February 5, 2026, in Orange, California.

/s/ Jonathan C. Navarro
Jonathan C. Navarro, Esq.
Attorney for Petitioner