

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

- 1. GANGATHERI VIKASH,)
Petitioner,)
- v.) Case No.
- 1. SCARLET GRANT, Warden of)
Cimarron Corrections Center, in)
her official capacity;)
- 2. TODD LYONS, Acting Director)
of United States Immigration and)
Customs Enforcement, in his official)
capacity;)
- 3. KRISTI NOEM, Secretary of the)
United States Department of)
Homeland Security, in her official)
capacity;)
- 4. PAMELA BONDI, Attorney)
General of the United States, in her)
official capacity;)

PETITION FOR WRIT OF
HABEAS CORPUS

Respondents.

I. INTRODUCTION

1. Gangatheri Vikash (“Petitioner”) was unlawfully arrested and remains detained by Respondents. Petitioner asks this Court to **order his immediate release from custody** as his arrest, and current detention, violates the Constitution and applicable statutes. Petitioner next asks the Court to order and declare that any future detention or arrest can only occur pursuant to the requirements of 8 U.S.C. 1226(a) and the Constitution of the United States. A bond hearing before an Immigration Judge is an inadequate remedy (see ¶¶ 71-80).

- 1 **2. Petitioner respectfully asks the Court to issue an order requiring**
2 **Respondents to answer and show cause as to why the habeas should not be**
3 **granted within 5 days.** There are no factual questions in this case. The legal
4 issues are familiar to the Court and to the parties and have been resolved nearly
5 unanimously, across the country, in favor of Petitioner and similarly situated
6 persons.
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- 8
9 **3. Affording lengthy response time serves no purpose as Respondents will submit**
10 **the same arguments they have in other cases. They may advise the Court of the**
11 **existence of pending appellate litigation though there is no pending case that**
12 **necessarily will decide the issues here, nor is there any intervening controlling**
13 **precedent. Respondents should not be allowed to continue to be ‘rewarded’ for**
14 **their unlawful acts.**
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17 **4. Petitioner is an asylum seeker who fled India. Petitioner arrived in the U.S. on**
18 **November 28, 2021. He entered without visa or inspection and was**
19 **encountered and apprehended by Customs and Border Protection inside**
20 **the United States.**
21
- 22 **5. Petitioner was released from custody on January 7, 2022, pursuant to grant**
23 **of parole. Then, almost 4-years later, while complying with all the rules**
24 **imposed by Respondents, and U.S. law, he was rearrested despite no change**
25 **in material circumstances, and without pre-deprivation hearing. He has no**
26 **criminal record and has not violated any conditions of release from initial**
27 **custody.**
28

- 1 6. Respondents now claim Petitioner is lawfully detained under § 1225(b) and
2 ineligible for bond hearing or release from custody.
3
- 4 7. Petitioner is being detained at Cimarron Correctional Facility in Cushing,
5 Oklahoma.
6
- 7 8. District Courts across the country have, nearly unanimously, found
8 Respondents' detention, without prior hearing and/or refusal to hold bond
9 hearings, unlawful in identical or similar circumstances. *Urbina Garcia v. Holt*,
10 No. CIV-25-1225-J, 2025 WL 3516071, at *4 (W.D. Okla. Dec. 8, 2025); *Colin*
11 *v. Holt*, No. CIV-25-1189-D, 2025 U.S. Dist. LEXIS 259644, 2025 WL 3645176
12 (W.D. Okla. Dec. 16, 2025); *Lopez v. Corecivic Cimarron Corr. Facility*, No.
13 CIV-25-1175-SLP, 2026 LX 69018 (W.D. Okla. Jan. 21, 2026). *Diallo v.*
14 *Baltazar*, Civil Action No. 1:25-cv-3548-SKC, 2026 U.S. Dist. LEXIS 17341,
15 at *7 (D. Colo. Jan. 29, 2026); *Marin v. Baltazar*, Civil Action No. 25-cv-03697-
16 PAB, 2025 U.S. Dist. LEXIS 261962, at *11 (D. Colo. Dec. 18, 2025) *Puerto v.*
17 *Leeper*, No. 26-CV-405, 2026 U.S. Dist. LEXIS 14909, at *3 (E.D.N.Y. Jan. 27,
18 2026) (noting "hundreds" of Courts in agreement); *Echevarria v. Bondi*, No.
19 CV-25-03252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025); *Doe v. Becerra*, No.
20 2:25-cv-647-DJC-DMC, 2025 U.S. Dist. LEXIS 37929 at *8 (E.D. Cal. Mar. 3,
21 2025) (granting temporary restraining order); *Sharan S. v. Chestnut*, No. 1:25-
22 cv-01427-KES-SKO (HC), 2025 LX 524863 (E.D. Cal. Nov. 12, 2025); *Lopez*
23 *v. Wofford*, No. 1:25-cv-01226-KES-SKO (HC), 2025 LX 491132, (E.D. Cal.
24 Oct. 17, 2025) (requiring release of asylum seeker and a pre-detention bond
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1 hearing before re-arrest); *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025 U.S.
2 Dist. LEXIS 127539 at *4 (N.D. Cal. July 4, 2025) (same), (N.D. Cal. July 24,
3 2025);
4

5 9. Civil Immigration Detention is generally only permissible for only two reasons:
6 to ensure a noncitizen's appearance at immigration hearings and to prevent
7 danger to the community. *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL,
8 2025 U.S. Dist. LEXIS 190934, 2025 WL 2741654, at *10 (N.D. Cal. Sept. 26,
9 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001))
10

11 10. Petitioner's arrest and detention are causing him and his family ongoing and
12 irreparable harm. The conditions of confinement are punitive in nature and
13 access to counsel to assist in preparation of his application for asylum is limited.
14 Additionally, petitioner is unable to work limiting his ability to support himself
15 and afford counsel.
16
17

18 11. The Constitution protects Petitioner—and every other person present in this
19 country—from arbitrary arrest and detention and guarantees him due process of
20 law. While the Executive Branch has broad power over the regulation of
21 noncitizens, those powers are still “subject to important constitutional
22 limitations.” *Zadvydas*, 533 U.S. at 695. “Freedom from bodily restraint has
23 always been at the core of the liberty protected by the Due Process Clause from
24 arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
25
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1 12. Petitioner respectfully seeks a writ of habeas corpus ordering the government to
2 release him from unlawful detention, prohibiting his re-arrest absent a finding
3 that he is a danger to his community or a flight risk from a neutral decisionmaker.
4

5 **II. JURISDICTION AND VENUE**

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7 13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
8 question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory
9 Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S.
10 Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the
11 U.S. Constitution, and 5 U.S.C. §§ 701-706 (Administrative Procedure Act).
12

13 14. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and
14 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained
15 within this district.
16

17 **III. PARTIES**

18
19 15. Petitioner, Gangatheri Vikash, is a 24-year-old native and citizen of India. He is
20 presently in physical custody of Immigration and Customs Enforcement (ICE)
21 in Cushing Oklahoma.
22

23 16. Respondent Scarlet Grant is the Warden of Cimarron Correctional Facility,
24 where Petitioner is being detained. As such, she is Petitioner's immediate
25 custodian. She is sued in her official capacity.
26

27 17. Respondent Todd M. Lyons is the Acting Director of ICE. As the Senior Official
28 Performing the Duties of the Director of ICE, he is responsible for the

1 administration and enforcement of the immigration laws of the United States,
2 routinely transacts business in this District, and is legally responsible for
3 pursuing any effort to detain and remove the Petitioner. Respondent Lyons is
4 sued in his official capacity.
5

6
7 18. Respondent Kristi Noem is the Secretary of Homeland Security and has ultimate
8 authority over DHS. In that capacity and through her agents, Respondent Noem
9 has broad authority over and responsibility for the operation and enforcement of
10 the immigration laws; routinely transacts business in this District; and is legally
11 responsible for pursuing any effort to detain and remove the Petitioner.
12 Respondent Noem is sued in her official capacity.
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14
15 19. Respondent Pamela Bondi is the Attorney General of the United States and the
16 most senior official at the Department of Justice. In that capacity and through
17 her agents, she is responsible for overseeing the implementation and
18 enforcement of the federal immigration laws. The Attorney General delegates
19 this responsibility to the Executive Office for Immigration Review, which
20 administers the immigration courts and the BIA. Respondent Bondi is sued in
21 her official capacity.
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23

24
25 **IV. EXHAUSTION**

26 20. There is no requirement to exhaust because no other forum exists in which
27
28 Petitioner can raise the claims herein. There is no statutory exhaustion

1 requirement prior to challenging the constitutionality of an arrest or detention or
2 challenging a policy under the Administrative Procedure Act. Prudential
3 exhaustion is not required here because it would be futile, and Petitioner will
4 “suffer irreparable harm if unable to secure immediate judicial consideration of
5 [their] claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Any further
6 exhaustion requirements would be unreasonable.
7

8
9 21. EOIR has recently issued guidance to all immigration judges instructing that
10 *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (any noncitizen who
11 entered without inspection is subject to § 1225(b)) remains binding in all
12 immigration courts despite orders from various district courts including in class
13 litigation in the Central District of California.
14
15

16 17 **V. LEGAL BACKGROUND**

18 19 **A. The Constitution prohibits arbitrary arrest and detention of 20 noncitizens**

21 22. The Constitution affords and requires due process rights for “all ‘persons’ within
22 the United States, including [noncitizens], whether their presence here is lawful,
23 unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990
24 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights
25 are both substantive and procedural.
26

27
28 23. First, “[t]he touchstone of due process is protection of the individual against

1 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974),
2 including “the exercise of power without any reasonable justification in the
3 service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523
4 U.S. 833, 846 (1998).

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

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

24 26. Secondly, the Due Process Clause’s procedural protections require that even
25 permissible forms of detention only be imposed where procedural safeguards are
26 in place and have been followed. *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir.
27 2003) (“The Supreme Court has long recognized that deportable aliens are
28

1 entitled to constitutional protections of due process.")

2
3 27. Except in rare situations, "the Constitution requires some kind of a hearing
4 before the State deprives a person of liberty or property." *Zinerman v. Burch*, 494
5 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully
6 revocable. *See Hurd v. District of Columbia*, 431 U.S. App. D.C. 83, 864 F.3d
7 671 (2017) (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after
8 pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v.*
9 *Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v.*
10 *Brewer*, 408 U.S. 471 (1972) (same, in parole context).

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12
13
14 28. After an initial release from custody on conditions, even a person paroled
15 following a conviction for a criminal offense for which they may lawfully have
16 remained incarcerated has a protected liberty interest in that conditional release.
17 *Morrissey*, 408 U.S. at 482. As the Supreme Court recognized, "[t]he parolee has
18 relied on at least an implicit promise that parole will be revoked only if he fails
19 to live up to the parole conditions." *Id.* "By whatever name, the liberty is valuable
20 and must be seen within the protection of the [Constitution]." *Id.*

21
22
23 29. This reasoning applies with equal or greater force to people released from civil
24 immigration detention. Noncitizens residing in the United States, like Petitioner,
25 have a protected liberty interest in their ongoing freedom from detention. *See*
26 *Zadvydas*, 533 U.S. at 690. Further, "[g]iven the civil context [of immigration
27 detention], [the] liberty interest [of noncitizens released from custody] is
28

1 arguably greater than the interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp.
2 3d 963, 970 (N.D. Cal. 2019).

3
4 **B. Due Process and the Immigration and Nationality Act Protect Noncitizens**
5 **from Summary Removal Without a Hearing.**

6 30. Deportation, like detention, constitutes a deprivation of liberty protected by the
7 Due Process Clause. A noncitizen’s interest in deportation proceedings “is,
8 without question, a weighty one” because “he stands to lose the right ‘to stay
9 and live and work in this land of freedom.’” *Landon v. Plasencia*, 459 U.S. 21,
10 34 (1982) (quoting *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)).

11
12
13 31. Removal proceedings under Section 240 of the Immigration and Nationality Act
14 (“Section 240” proceedings) accordingly provide important substantive and
15 procedural protections. Noncitizens placed in Section 240 proceedings following
16 initial arrest (as was the petitioner in this case) are entitled to full hearings in
17 immigration court before immigration authorities can remove them. 8 U.S.C. §
18 1229a. Congress has afforded statutory rights and protections including the right
19 to be represented by counsel of their choice, and the right to present and confront
20 evidence. 8 U.S.C. § 1229(a)(4). They are also entitled to administrative
21 appellate review at the Board of Immigration Appeals and further judicial review
22 in the federal Courts of Appeals. *See* 8 C.F.R. § 1003.1(b) (Board of Immigration
23 Appeals); 8 U.S.C. § 1252(a)(5) (Courts of Appeals).

1 **C. Detention under the Immigration & Nationality Act: 8 U.S.C. §§ 1225 &**
2 **1226**

3
4 32. Detention of noncitizens who have not been ordered removed is generally
5 governed by one of two sections of the Immigration and Nationality Act: INA
6 §§ 235 & 236 (8 U.S.C. §§ 1225, 1226).

7
8 33. Section 1225 is titled "Inspection by immigration officers; expedited removal of
9 inadmissible arriving aliens; referral for hearing." The statute provides:

10
11 An alien present in the United States who has not been admitted or
12 who arrives in the United States . . . shall be deemed for purposes of
13 this chapter an applicant for admission. Subject to subparagraphs (B)
14 and (C), in the case of an alien who is an applicant for admission, if
15 the examining immigration officer determines that an alien seeking
16 admission is not clearly and beyond a doubt entitled to be admitted,
17 the alien shall be detained for a proceeding under section 1229a of this
18 title.

19 8 U.S.C. § 1225(a)(1), (b)(2)(A).

20 34. An applicant is seeking "admission," as that term is defined by § 1101(a)(13)(A),
21 if he is seeking "lawful entry . . . after inspection" and authorization. *Montoya v.*
22 *Holt*, No. CIV-25-01231-JD, 2025 LX 560736 (W.D. Okla. Dec. 26, 2025);
23 *Tovar v. Noem*, No. 5:25-CV-1509-JKP, 2025 U.S. Dist. LEXIS 250408, at *13
24 (W.D. Tex. 2025).

25 35. An "[a]rriving alien means an applicant for admission coming or attempting to
26 come into the United States . . . regardless of the means of transport." 8 C.F.R. §
27 1.2. "Admission" and "admitted" mean "the lawful entry of the alien into the
28

1 United States after inspection and authorization by an immigration officer." 8
2 U.S.C. § 1101(a)(13)(A).
3

4 36. Noncitizens subject to mandatory detention under § 1225(b) may be released
5 only if they are "paroled 'for urgent humanitarian reasons or significant public
6 benefit.'" *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS
7 128085, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (quoting 8 U.S.C. §
8 1182(d)(5)(A)); *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025
9 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at *7 (E.D.N.Y. Oct. 6, 2025)
10 (describing mandatory detention under § 1225).
11

12
13 37. Section 1226 titled "Apprehension and detention of aliens," states:
14

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

- 19 (1) may continue to detain the arrested alien; and
20 (2) may release the alien on—
21 (A) bond of at least \$1,500 with security approved by, and
22 containing conditions prescribed by, the Attorney
23 General; or
24 (B) conditional parole . . .

25 8 U.S.C. § 1226(a).
26

27 38. 8 U.S.C. § 1226(a) therefore creates a "discretionary detention framework" for
28 noncitizens arrested and detained on a warrant issued by the Attorney General.
Gomes, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at *2. It "authorizes

1 the [g]overnment to detain certain aliens already in the country pending the
2 outcome of removal proceedings." *Jennings*, 583 U.S. at 289.
3

4 39. The arresting immigration officer has authority to make the initial custody
5 determination. *See Gomes*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299,
6 at *2 (citing 8 C.F.R. § 1236.1(c)(8)).
7

8 40. The noncitizen then "ha[s] the right to request a custody redetermination (i.e.,
9 bond) hearing before an Immigration Judge." *Id.* (citing 8 C.F.R. § 1236.1(c)(8),
10 (d)(1)). "Bond may be denied only if the government 'either (1) prove[s] by clear
11 and convincing evidence that [the noncitizen] poses a danger to the community
12 or (2) prove[s] by a preponderance of the evidence that [the noncitizen] poses a
13 flight risk.'" *Id.* (alterations in original) (quoting *Hernandez-Lara v. Lyons*, 10
14 F.4th 19, 41 (1st Cir. 2021)).
15
16
17

18 41. Section 1226(a)(2)(B) also allows release "on an Order of Recognizance, which
19 is a form of conditional parole." *Id.* (citations omitted).
20

21 42. § 1226(a) requires an individualized bond determination before a noncitizen may
22 be taken into custody. *Artiga v. Genalo*, No. 25 CV 5208 (OEM), 2025 U.S.
23 Dist. LEXIS 196847, 2025 WL 2829434, at *8 (E.D.N.Y. Oct. 5, 2025);
24 *Rodriguez v. Bostock*, No. 25 CV 05240 (TMC), 2025 WL 2782499, at *16-26
25 (W.D. Wash. Sep. 30, 2025); *Salcedo Aceros v. Kaiser*, No. 25 CV 06924
26 (EMC), 2025 U.S. Dist. LEXIS 179594, 2025 WL 2637503, at *6-13 (N.D. Cal.
27
28

1 Sep. 12, 2025); *Belsai D.S. v. Bondi*, No. 25 CV 3682, 2025 U.S. Dist. LEXIS
2 194262, 2025 WL 2802947, at *5 (D. Minn. Oct. 1, 2025) (collecting cases).
3

4 VI. FACTUAL ALLEGATIONS

5 A. DHS and EOIR seek to increase arrests and detentions

6
7 43. Since early last year, DHS has implemented a series of policies aimed at detaining
8 noncitizens present in the United States without inspection and even those who
9 had previously been released from custody on bond, recognizance, or on parole.
10

11 44. DHS's policies appear to be motivated by the Administration's imposition of
12 quotas of 3,000 ICE arrests per day. In part as a result of this campaign, ICE's
13 arrests of noncitizens with no criminal record have increased more than 800%
14 since before January 2025.¹
15

16
17 45. The government's new campaign is also a significant shift from previous DHS
18 practice, guided by clear judicial precedent, of only re-detaining noncitizens
19 previously released only upon a material change in circumstances. *See e.g.*
20 *Lorenzo C.P. v. Noem*, No. 1:25-cv-181, 2025 U.S. Dist. LEXIS 264574, at *7-
21 8 (S.D. Tex. 2025); *De Jesús_Aguilar v. English*, No. 3:25-CV-898 DRL-SJF,
22 2025 U.S. Dist. LEXIS 231463, at *15 (N.D. Ind. Nov. 25, 2025) *Salinas v.*
23
24

25
26
27 ¹ José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging*
28 *under Trump*, The Guardian, June 14, 2025, [https://www.theguardian.com/us-
news/2025/jun/14/ice-arrests-migrants-trump-figures](https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures).

1 *Woosley*, No. 4:25 Civ. 121, 2025 U.S. Dist. LEXIS 228539, 2025 WL 3243837,
2 at *2 (W.D. Ky. Nov. 20, 2025); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197
3 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137
4 (9th Cir. 2018) (describing prior practice);
5

6
7 **B. BIA decision aligns Agency precedent with novel and expanded use**
8 **of detention to all people present without having been inspected;**
9 **Respondents increase pretextual rearrests.**

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

19
20 47. The government upended this long-held policy and understanding of the law in
21 2025.

22
23 48. First, on July 8, 2025, U.S. Immigration and Customs Enforcement (“ICE”)
24 issued an interim guidance memo stating that anyone who entered without
25 inspection was ineligible for release on bond and could not challenge their
26 detention at a bond hearing in immigration court, regardless of how long an
27 individual has lived in the United States.
28

1 49. As a result, DHS attorneys started arguing, and some IJs started finding, that
2 such individuals were not eligible for bond hearings in immigration court.
3

4 50. Then, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued
5 a precedential decision, binding on all IJs, holding that an IJ had no authority to
6 consider bond requests for any person who entered the United States without
7 inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
8

9
10 51. Respondents have continued to rearrest and detain noncitizens across the
11 country who entered the U.S. without inspection even where the noncitizen was
12 previously released from custody under INA § 1226(a).
13

14 52. Respondents often cite to de minimis alleged violations of conditions of prior
15 release as pretext for rearrest.
16

17 53. Numerous sources have reported that the alleged violations are not supported in
18 Respondents’ records keeping systems or that noncitizens report the alleged
19 violations are simply not accurate. *See e.g. Ramazan M. v. Andrews*, No. 1:25-
20 cv-01356-KES-SKO (HC), 2025 WL 3145562, at *6 (E.D. Cal. Nov. 10, 2025)
21 (ordering pre-deprivation hearing where Respondents alleged check-in and other
22 electronic monitoring violations, because “[w]hile respondents argue that
23 petitioner is a flight risk, the purpose of a bond hearing is for a neutral
24 decisionmaker to consider and evaluate such an argument to determine whether
25 it is consistent with the facts and to ensure that noncitizens like petitioner are not
26
27
28

1 deprived of their liberty without justification”), and at *E.A. T.B. v. Wamsley*, No.
2 C25-1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025)
3 (ordering immediate release of petitioner and finding that it does not “necessarily
4 follow that Petitioner can be detained for [release conditions] violations without
5 a hearing. That the Government may believe it has a valid reason to detain
6 petitioner does not eliminate its obligation to effectuate the detention in a manner
7 that comports with due process.”).

10
11 54. Judges have also found the supposed violations “negligible” or been skeptical of
12 existence of purported violations. *See e.g. Alas v. Albarran*, 2025 U.S. Dist.
13 LEXIS 207060 *2 FN1 (ND Cal. Oct. 15, 2025).

14
15 **C. Petitioner’s unlawful arrest and detention**

16 55. Petitioner is a 24-year-old citizen and native of India.

17
18 56. Petitioner entered the United States without inspection on November 28, 2021.

19 57. Petitioner was arrested by Customs Border Protection inside the United States
20 on or about that same date.

21 58. Petitioner was released on January 7, 2022 on ‘parole.’

22 59. Petitioner may have been paroled under § 1182(d)(5) or 1226(a)(2)(B).

23 60. Petitioner was found to have a credible fear of persecution.

24
25 61. On January 6, 2022, USCIS issued a Notice to Appear in § 1229a Removal
26 Proceedings.

27
28 62. Petitioner thereafter filed an application for asylum with the Immigration Court.

1 63. Petitioner applied for temporary work authorization and his application was
2 approved.

3
4 64. Almost four years later, Respondents rearrested Petitioner though no material
5 change in circumstances occurred, no warrant was issued, his parole was not
6 revoked on notice, and no pre-detention hearing was held.

7
8 65. Petitioner was not deemed to be a danger to the community or a flight risk.

9 66. The Notice to Appear does not allege Petitioner is an 'arriving alien,' though
10 containing box to designate this information.

11
12 67. Petitioner has never been arrested or missed any appointments with
13 Immigration Customs Enforcement, or any other agency, and has complied
14 with all terms of his conditional parole.

15
16 68. Petitioner remains detained in Respondents' custody at this time.

17 **D. Bond hearing before an Immigration Judge is an inadequate remedy**

18 69. Petitioner is unlikely to receive a fair bond hearing before an immigration
19 judge.

20
21 70. Scores of judges have been fired, resigned, or retired in the wake of
22 unprecedented interference with their independence and quasi-judicial
23 function.

24
25 71. Respondents have issued directives to immigration judges encouraging and,
26 effectively ordering, that most bond requests should be denied on 'flight-risk'
27 grounds.

28 72. Even where bond hearings are granted, they are conducted in rushed and grossly

1 unfair settings. Noncitizens often have difficulties hearing judges or translators
2 through video conferences from detention centers, have limited access to counsel
3 to prepare, and hearings are conducted rapidly without full consideration of
4 evidence or testimony.
5

6 73. Immigration Judges often do not even permit testimony from noncitizens or their
7 witnesses before entering a judgment.
8

9 74. Immigration Judges do not have time to review filings submitted in support of
10 request for release on bond prior to hearings.
11

12 75. Immigration Judges are not given the time or resources to adequately conduct fair
13 bond or merits hearings in the detained or non-detained setting.
14

15 76. Immigration Judges often cite little or no reasoning in determining that noncitizens
16 are a flight risk.
17

18 77. Appeals from Bond decisions take more than 6 months and are unlikely to result in
19 reversal of a judge's finding.
20

21 78. Counsel is unaware of any bond denial being reversed by the BIA in the last 13
22 months, despite conversing with scores of practitioners regularly about this and
23 related issues.
24

25 **E. Petitioner is not a flight risk**
26

27 79. Petitioner has fully complied with all requirements to apply for asylum
28 protection, to appear at immigration appointments following his unlawful entry
to the U.S.

80. Petitioner retained counsel, secured employment, and has not engaged in any

1 behavior suggestive of flight-risk.

2 81. Petitioner has never been determined to be a flight risk or danger to the
3 community, his detention is not related to either of the permissible justifications
4 for civil immigration detention.
5

6
7 **F. Petitioner is suffering irreparable and ongoing harm as a result of unlawful
detention**

8 81. Petitioner is being deprived of his liberty without lawful basis or permissible
9 justification. Petitioner is unable to fully participate and assist in preparation of
10 his case to present to the immigration court.
11

12
13 82. Petitioner is unable to work, though having been granted employment
14 authorization by Respondents, and is struggling to support himself and to
15 continue to afford to pay legal fees for attorneys to assist in his case.
16

17 **VII. CLAIMS FOR RELIEF**

18 **FIRST CLAIM FOR RELIEF**

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

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

21 82. Petitioner repeats and realleges the allegations contained in the preceding
22 paragraphs of this Petition as if fully set forth herein.
23

24 83. The Due Process Clause of the Fifth Amendment protects all “person[s]” from
25 deprivation of liberty “without due process of law.” U.S. Const. amend. V.
26 “Freedom from imprisonment—from government custody, detention, or other
27 forms of physical restraint—lies at the heart of the liberty that [the Due Process]
28

1 Clause protects.” *Zadvydas*, 533 U.S. at 690.

2
3 84. Immigration detention is constitutionally permissible only when it furthers the
4 government’s legitimate goals of ensuring the noncitizen’s appearance during
5 removal proceedings and preventing danger to the community. *See id.*

6
7 85. Petitioner is not a flight risk or danger to the community. Respondents already
8 made this determination and nothing has changed. Respondents’ detention of
9 Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being
10 detained in violation of the Due Process Clause of the Fifth Amendment.

11
12 86. Moreover, Petitioner’s detention is punitive as it bears no “reasonable relation”
13 to any legitimate government purpose. *Id.* (finding immigration detention is civil
14 and thus ostensibly “nonpunitive in purpose and effect”). Here, the purpose of
15 Petitioner’s detention appears to be “not to facilitate deportation, or to protect
16 against risk of flight or dangerousness, but to incarcerate for other reasons”—
17 namely, to meet newly-imposed DHS quotas and transfer immigration court
18 venue away from an IJ who refused to facilitate DHS’s new expedited removal
19 scheme. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

20
21
22 **SECOND CLAIM FOR RELIEF**

23
24 **Violation of the Fifth Amendment to the United States Constitution**

25 **(Procedural Due Process—Detention without pre-custodial hearing or notice)**

26 87. Petitioner repeats and re-alleges the allegations contained in the preceding
27 paragraphs of this Petition as if fully set forth herein.
28

1 88. Petitioner has a strong liberty interest under the Due Process Clause in not being
2 re-incarcerated after prior release. *See Young v. Harper*, 520 U.S. 143, 146–47
3 (1997); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *see also Ortega*, 415
4 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest
5 in remaining out of custody following an IJ’s bond determination); *Rosado v.*
6 *Figuroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 LX 322246 (D. Ariz. Aug.
7 13, 2025).
8

9
10
11 89. Accordingly, “[i]n the context of immigration detention, it is well-settled that due
12 process requires adequate procedural protections to ensure that the government’s
13 asserted justification for physical confinement outweighs the individual’s
14 constitutionally protected interest in avoiding physical restraint.” *Hernandez*,
15 872 F.3d at 990 (cleaned up); *Zinerman*, 494 U.S. at 127 (Generally, “the
16 Constitution requires some kind of a hearing before the State deprives a person
17 of liberty or property.”). In the immigration context, for such hearings to comply
18 with due process, the government must bear the burden to demonstrate, by clear
19 and convincing evidence, that the noncitizen poses a flight risk or danger to the
20 community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); *see also*
21 *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).
22
23

24
25 90. Petitioner’s re-detention without notice of reasons or a pre-detention hearing
26 violated due process. Over a year after deciding to release Petitioner from
27 custody and doing so under Section 1226(a)(B)(2), Respondents have re-
28

1 detained Petitioner without prior notice, a hearing, and without any relevant
2 change in circumstances.

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

6
7 **THIRD CLAIM FOR RELIEF**

8 **Violation of the Immigration & Nationality Act**

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

11
12 93. Respondent's claim that Petitioner is detained pursuant to 8 U.S.C 1225(b).

13 94. Petitioner was paroled into the United States and was not subject to § 1225(b) at
14 time of rearrest.

15
16 95. Petitioner's parole was never terminated or revoked.

17 96. Respondents may only detain noncitizens pursuant to specific authority under
18 U.S. law.

19
20 97. No statutory authority exists authorizing Petitioner's Continued detention under
21 this section is therefore unlawful.

22 **IX. PRAYER FOR RELIEF**

23
24 Petitioner respectfully requests that this Court:

- 25 1. Assume jurisdiction over this matter;
- 26 2. Issue a writ of habeas corpus ordering Respondents **to immediately**
27 **release** Petitioner from custody under no more restrictive conditions
28 than existed at the time immediately before his unlawful rearrest;

- 1 3. Declare that Petitioner’s arrest and detention violate the Due Process
2 Clause of the Fifth Amendment and the Immigration and Nationality
3 Act.
4
- 5 4. Enjoin Respondents from detaining Petitioner under § 1226(a) unless
6 his detention is ordered at a custody hearing before a neutral arbiter
7 in which the government bears the burden of proving, by clear and
8 convincing evidence, that Petitioner is a flight risk or danger to the
9 community;
10
- 11 5. Order that Respondents may not arrest Petitioner while INA § 1229a
12 proceedings are ongoing, including during any direct appeal from
13 dismissal of proceedings by the Immigration Judge absent a material
14 change in circumstances;
15
- 16 6. Award Petitioner costs and reasonable attorneys’ fees in this action as
17 provided for by the Equal Access to Justice Act and 28 U.S.C. §
18 2412 (upon motion and evidence); and
19
- 20 7. Grant such further relief as the Court deems just and proper.
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25 Respectfully submitted this 9th day of February, 2026.
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s/ Elissa Stiles
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VERIFICATION

I, Ben Loveman, hereby swear and affirm subject to penalty of perjury, that the contents of this petition are true and correct to the best of my knowledge and based on discussion with Petitioner and review of his electronic record of proceedings maintained by the Immigration Court (EROP).

/s Ben Loveman
Ben Loveman