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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

SOMVIR SOMVIR

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver
Contract Detention Facility; TODD LYONS,
Acting Director of Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of the
U.S. Department of Homeland Security; PAMELA
BONDI, Attorney General of the United States

Respondents.

Civil Action No.

**VERIFIED PETITION FOR
HABEAS CORPUS**

INTRODUCTION

1. Petitioner Somvir is a native and citizen of India who entered the United States without inspection on April 15, 2023. Shortly after entry, the Department of Homeland Security (“DHS”) briefly detained him pursuant to a Form I-200 Warrant for Arrest of Alien and subsequently released him on an Order of Release on Recognizance (“ROR”), subject to supervision through Alternatives to Detention (“ATD”) and regular reporting to Immigration and Customs Enforcement (“ICE”).

2. On April 17, 2023, DHS served Petitioner with a Notice to Appear charging removability solely under INA § 212(a)(6)(A)(i). Petitioner has no criminal history. His removal

1 proceedings remain pending, and no final order of removal has been entered.

2 3. From the date of his release through February 16, 2026, Petitioner fully complied with
3 every condition imposed by DHS. He maintained perfect ATD compliance, attended all ICE check-ins,
4 and was never accused of violating any supervision condition or posing a danger to the community or
5 a flight risk.

6 4. On February 16, 2026, while lawfully working as a commercial truck driver transporting
7 goods across state lines pursuant to contract, Petitioner experienced mechanical difficulty with his
8 trailer and safely pulled onto the shoulder of the highway. A county sheriff approached to inquire about
9 the situation. During that interaction, the sheriff questioned Petitioner regarding his immigration status
10 and contacted ICE.

11 5. ICE officers subsequently arrived and detained Petitioner. No criminal charges were
12 filed. No judicial warrant was presented to Petitioner, and no individualized custody determination was
13 conducted prior to his transfer into ICE custody.

14 6. Following his re-detention, DHS asserted that Petitioner is subject to mandatory
15 detention under 8 U.S.C. § 1225(b), relying on DHS's July 8, 2025 Interim Guidance and the Board of
16 Immigration Appeals' September 5, 2025 decision in Matter of Yajure Hurtado. Based on that position,
17 DHS has denied Petitioner access to a bond hearing.

18 7. Petitioner is a pre-final order noncitizen whose detention is governed by 8 U.S.C. §
19 1226(a). Noncitizens detained under § 1226(a) are entitled to seek custody redetermination before an
20 Immigration Judge. DHS's reclassification of Petitioner as subject to mandatory detention under §
21 1225(b)—after releasing him into the interior and supervising him for nearly three years—deprives him
22 of that statutory protection.

23 8. Petitioner therefore seeks habeas relief under 28 U.S.C. § 2241 ordering Respondents
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1 to provide a prompt bond hearing before an Immigration Judge or, in the alternative, to release him
2 from custody.

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4 **JURISDICTION**

5 9. This action arises under the Constitution of the United States and the INA, 8 U.S.C.
6 § 1101 *et seq.*

7 10. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
8 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension
9 Clause).

10 11. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*,
11 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.
12

13 **VENUE**

14 12. Venue is proper because Petitioner is detained in Denver Contract Detention Facility,
15 which is within the jurisdiction of this District. Venue is also proper in this District because
16 Respondents are officers, employees, or agencies of the United States. *See* 28 U.S.C. § 1391(e).
17

18 **PARTIES**

19 13. Respondent Juan Baltasar is sued in his official capacity as Warden of the Denver
20 Contract Detention Facility. Respondent Baltasar is the physical custodian of Petitioner.
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22 14. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S.
23 Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has
24 authority to release him.

25 15. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S.
26 Department of Homeland Security. In this capacity, Respondent Noem is responsible for the
27 implementation and enforcement of the INA, and oversees ICE, the component agency responsible for
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1 Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

2 16. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the
3 United States and the senior official of the U.S. Department of Justice. In that capacity, she has the
4 authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review
5 ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal
6 custodian of Petitioner.
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8 **STATEMENT OF FACTS**

9 17. Petitioner Somvir is a native and citizen of India who entered the United States without
10 inspection on April 15, 2023.

11 18. Shortly after entry, DHS briefly detained Petitioner pursuant to a Form I-200 Warrant
12 for Arrest of Alien.
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14 19. DHS subsequently released Petitioner on an Order of Release on Recognizance subject
15 to enrollment in Alternatives to Detention ("ATD") monitoring and regular reporting to ICE.

16 20. On April 17, 2023, DHS served Petitioner with a Notice to Appear charging
17 removability solely under INA § 212(a)(6)(A)(i).
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19 21. Petitioner has no criminal history.

20 22. From April 2023 through February 16, 2026, Petitioner remained continuously
21 supervised in the community. He complied fully with all ATD conditions and ICE reporting
22 requirements. He never missed a check-in, never violated a supervision condition, and was never
23 accused of absconding or posing a danger.
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25 23. Petitioner has been pursuing an application for asylum before the Immigration Court.
26 His removal proceedings remain pending, and no final order has been entered.

27 24. On February 16, 2026, while working as a commercial truck driver, Petitioner
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1 experienced mechanical trouble with his trailer and pulled safely onto the shoulder of the highway.

2 25. A county sheriff approached Petitioner regarding the roadside situation. During that
3 interaction, the sheriff inquired about Petitioner's immigration status and contacted ICE.

4 26. ICE officers arrived and detained Petitioner. No criminal charges were filed. No judicial
5 warrant was presented. ICE did not conduct an individualized custody determination before taking
6 Petitioner into custody.

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8 27. Following his detention, DHS asserted that Petitioner is subject to mandatory detention
9 under 8 U.S.C. § 1225(b) pursuant to DHS's July 8, 2025 Interim Guidance and Matter of Yajure
10 Hurtado.

11 28. Based on that position, DHS has denied Petitioner access to a bond hearing, and he
12 remains detained without custody redetermination under 8 U.S.C. § 1226(a).

13
14 **STATUTORY FRAMEWORK**

15 29. The INA prescribes three basic forms of detention for noncitizens in removal
16 proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited
17 removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section
18 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
19 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain
20 crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

21
22 30. Second, the INA provides for mandatory detention of noncitizens subject to expedited
23 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under
24 8 U.S.C. § 1225(b)(2).

25
26 31. Finally, the INA also provides for detention of noncitizens who are subject to final
27 orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
28

1 The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal
2 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div.
3 C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most
4 recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3
5 (2025).

6
7 32. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that,
8 in general, people who entered the country without inspection were not considered detained under
9 section 1225 and that they were instead detained under section 1226(a). *See* Inspection and Expedited
10 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
11 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens
12 who entered without inspection—unless they were subject to some other detention authority—received
13 bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA,
14 in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ
15 or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229
16 (1996) (noting that section 1226(a) simply “restates” the detention authority previously found at section
17 1252(a)).
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20 33. On July 8, 2025, DHS issued a memo to all employees of ICE stating that “[t]his
21 message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited
22 its legal position on detention and release authorities. DHS has determined that section 235 of the
23 Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226],
24 is the applicable immigration detention authority for all applicants for admission. The following interim
25 guidance is intended to ensure immediate and consistent application of the Department’s legal
26 interpretation while additional operational guidance is developed.” The memo further stated DHS’ new
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1 position with regard to custody determinations as follows:

2 An “applicant for admission” is an alien present in the United States who has not been admitted
3 or who arrives in the United States, whether or not at a designated port of arrival. INA §
4 235(a)(1) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such**
5 **aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be**
6 **released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible
7 for a custody redetermination hearing (“bond hearing”) before an immigration judge and may
8 not be released for the duration of their removal proceedings absent a parole by DHS. For
9 custody purposes, these aliens are now treated in the same manner that “arriving aliens” have
10 historically been treated. **The only aliens eligible for a custody determination and release**
11 **on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during**
12 **removal proceedings are aliens admitted to the United States and chargeable with**
13 **deportability under INA § 237, with the exception of those subject to mandatory detention**
14 **under INA § 236(c) [8 U.S.C. § 1226(c)].**

15 Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants
16 for admission because Form I-286 applies by its terms only to custody determinations under
17 INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception
18 for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will
19 individually advise, if Enforcement and Removal Operations (ERO) previously conducted a
20 custody determination for an applicant for admission still detained in ICE custody, ERO will
21 affirmatively cancel the Form I-286.

22 *See* [https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission)
23 [applications-for-admission](https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission) (last accessed October 18, 2025) (emphasis original).

24 34. As a result, DHS now considers all noncitizens who have entered the United States
25 without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents,
26 to be subject to mandatory detention under section 1225(b) and ineligible for release on bond.
27 Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on
28 recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal
proceedings are aliens admitted to the United States and chargeable with deportability under INA §
237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. §
1226(c)].” *Id.*

29 35. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N
30 Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack

1 authority to hear bond requests or to grant bond to aliens who are present in the United States without
2 admission.

3 36. Subsequent Colorado District Court and other federal court authority has rejected DHS's
4 interpretation and confirmed that individuals in Petitioner's position remain eligible for bond under §
5 1226(a). In *Bautista-Maldonado v. DHS*, the district court held that DHS may not reclassify noncitizens
6 who are already placed in removal proceedings and detained pre-final order as subject to mandatory
7 detention under § 1225(b). The court concluded that such detention contravenes the statutory scheme
8 and unlawfully deprives noncitizens of their right to a bond hearing. Under *Bautista-Maldonado*,
9 noncitizens like Petitioner—who are in removal proceedings and lack a final order of removal—are
10 properly detained, if at all, pursuant to § 1226(a) and must be afforded an individualized bond hearing
11 before an IJ. Accordingly, Petitioner's continued detention without access to bond violates the INA and
12 the Due Process Clause, and Petitioner is statutorily and constitutionally eligible for release on bond
13 pending the resolution of his removal proceedings.
14

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16 37. Petitioner further qualifies as a member of the certified class (or, at minimum, the
17 proposed and protected class) in *Bautista-Maldonado v. DHS*. Petitioner is a noncitizen who entered
18 the United States without inspection, is currently in pre-final order removal proceedings, and is being
19 detained by DHS pursuant to its post-July 8, 2025 policy asserting mandatory detention under 8 U.S.C.
20 § 1225(b). DHS has relied on that policy to deny Petitioner access to a bond hearing. These facts place
21 Petitioner squarely within the class of individuals for whom the *Bautista-Maldonado* court held that
22 detention must proceed, if at all, under 8 U.S.C. § 1226(a) with the attendant right to an individualized
23 bond hearing before an Immigration Judge. As a class member, Petitioner is entitled to the relief ordered
24 in *Bautista-Maldonado*, including restoration of bond eligibility and protection from unlawful
25 mandatory detention.
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CLAIMS FOR RELIEF

COUNT ONE

Violation of Fifth Amendment Right to Substantive Due Process

38. The allegations in the above paragraphs are realleged and incorporated herein.

39. Petitioner is challenging DHS' unlawful custody determination that Petitioner is subject to detention under 8 U.S.C. § 1225(b) and is ineligible for bond and his continued detention under the automatic stay provision at 8 C.F.R. § 1003.19(i)(2), which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

40. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived 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 Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

41. By detaining Petitioner indefinitely without the possibility of release on bond and without an individualized custody determination before a neutral adjudicator, Respondents have imposed arbitrary and excessive detention in violation of substantive due process.

42. As a remedy, this Court should declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a), enjoin Respondents from applying § 1225(b) to Petitioner, and order his immediate release or, at minimum, direct that he be provided a prompt and constitutionally adequate bond hearing before an Immigration Judge.

COUNT TWO

Violation of Petitioner's Procedural Due Process Rights

43. The allegations in the above paragraphs are realleged and incorporated herein.

44. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in

1 determining if government action deprives an individual's Fifth Amendment right to procedural due
2 process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The
3 *Mathews* factors are as follows: First, the private interest that will be affected by the official action;
4 [S]econd, the risk of an erroneous deprivation of such interest through the procedures used, and the
5 probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's
6 interest, including the function involved and the fiscal and administrative burdens that the additional
7 or substitute procedural requirement would entail. *Id.* at 335.

9 45. Petitioner's perfect ATD compliance heightens the constitutional violation. DHS
10 imposed monitoring, reporting, and supervision conditions, all of which Petitioner satisfied for nearly
11 three years. This compliance created settled reliance interests protected by the Due Process Clause. The
12 risk of erroneous deprivation is extreme where liberty is revoked despite complete compliance with
13 ATD and without notice or process. The probable value of additional safeguards—at minimum an
14 individualized bond hearing—is substantial, while the Government's interest is minimal because DHS
15 already determined Petitioner could safely remain at liberty.
16

17 46. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v.*
18 *Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner has perhaps the most acute private interest known to
19 personkind short of life itself: bodily freedom.
20

21 47. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk.
22 Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims. As to the third factor,
23 there is no significant governmental interest in continuing to hold Petitioner in custody, particularly
24 because DHS itself repeatedly determined—through continued release on ROR and ATD
25 supervision—that Petitioner posed no danger to the community and no risk of flight
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27 **COUNT THREE**
28

Violation of the Immigration and Nationality Act

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2 48. The allegations in the above paragraphs are realleged and incorporated herein.

3 49. Petitioner's detention under 8 U.S.C. § 1225(b) is unlawful because, as a matter of
4 statutory interpretation, his custody is governed by 8 U.S.C. § 1226(a). Section 1226(a) is the default
5 detention authority for noncitizens present in the United States and placed in removal proceedings
6 under § 1229a.

7
8 50. DHS's application of § 1225(b) to Petitioner—who was released into the interior,
9 remained compliant with supervision, and is in pre-final order proceedings—contravenes the structure
10 and text of the INA. As recognized by the District of Colorado in *Bautista-Maldonado v. DHS*, DHS
11 may not reclassify such individuals as subject to mandatory detention under § 1225(b) in order to
12 eliminate bond eligibility.
13

14 51. By applying the wrong statutory detention provision and denying Petitioner access to a
15 bond hearing authorized under § 1226(a), Respondents have acted contrary to law and in excess of their
16 statutory authority.
17

18 52. Petitioner is therefore entitled to habeas relief declaring that his detention is governed
19 by § 1226(a) and ordering Respondents to provide a bond hearing before an Immigration Judge or
20 release him from custody.
21

COUNT I

**Violation of the Immigration and Nationality Act
(Improper Application of 8 U.S.C. § 1225(b))**

22
23 53. Petitioner realleges and incorporates by reference all preceding paragraphs.

24 54. Petitioner is in pre-final order removal proceedings under INA § 240 and has been
25 continuously present in the interior of the United States since April 15, 2023.
26

27 55. Shortly after entry, DHS exercised discretionary authority to release Petitioner on an
28 Order of Release on Recognizance subject to ATD monitoring and regular ICE reporting.

1 56. Petitioner was served with a Notice to Appear on April 17, 2023 charging removability
2 solely under INA § 212(a)(6)(A)(i). He is not subject to expedited removal and has not been treated as
3 an arriving alien in expedited proceedings.

4 57. The Immigration and Nationality Act establishes distinct detention authorities.

5 58. Section 1225(b) governs applicants for admission at the threshold of entry.

6 59. Section 1226(a) governs detention of noncitizens in pending removal proceedings inside
7 the United States prior to a final order of removal.

8 60. Petitioner's detention, if authorized at all, falls under 8 U.S.C. § 1226(a), which provides
9 for discretionary detention and eligibility for a custody redetermination hearing before an Immigration
10 Judge.
11

12 61. Following his re-detention on February 16, 2026, DHS asserted that Petitioner is subject
13 to mandatory detention under 8 U.S.C. § 1225(b), relying on DHS's July 8, 2025 Interim Guidance and
14 the Board's decision in Matter of Yajure Hurtado.
15

16 62. Application of § 1225(b) to Petitioner conflicts with the statutory structure of the INA
17 and unlawfully eliminates his statutory eligibility for bond under § 1226(a).
18

19 63. By detaining Petitioner under § 1225(b) and denying him access to a bond hearing,
20 Respondents have acted in excess of their statutory authority.

21 64. Petitioner is therefore entitled to habeas relief directing that his detention be governed
22 by § 1226(a) and that he be afforded a prompt custody redetermination hearing.
23

24 **PRAYER FOR RELIEF**

25 Wherefore, Petitioner requests this Court to grant the following:

- 26 1. Assume jurisdiction over this matter;
27 2. Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
28

3. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;
4. Order Petitioner released from detention;
5. Grant Equal Access to Justice Act ("EAJA") fees and costs; and
6. Grant any other further relief this Court deems just and proper.

Respectfully,

/s/Gurpreet Kaur

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained at the Denver Contract Detention Facility and immediate relief is sought, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 19th day of February, 2026.

/s/Gurpreet Kaur

Gurpreet Kaur, Esq.