

THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

SIMRANJOT SINGH,

Petitioner,

v.

Kristi NOEM, Secretary of U.S. Department
of Homeland Security;
Pamela BONDI, United States Attorney
General;
Todd LYONS, Acting Director, U.S.
Immigration and Customs Enforcements;
Laura HERMOSILLO, Acting Seattle Field
Office Director, Immigration and Customs
Enforcement;
Bruce SCOTT, Warden, Northwest ICE
Processing Center;

Respondents.

Case No. 2:26-cv-00766-TLF

**PETITIONER'S TRAVERSE IN
RESPONSE TO FEDERAL
RESPONDENTS' RETURN**

I. INTRODUCTION

This case presents a straightforward constitutional violation. For more than six years, Petitioner lived in the United States under a grant of liberty authorized by the Government itself. He complied with every condition imposed upon him. He committed no crimes. He remained in the community for more than six years while pursuing relief in his removal proceedings. Then,

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1 without constitutionally adequate notice and without any hearing at which the Government was
2 required to justify its actions, that liberty was revoked.

3 The Government does not dispute these facts. Instead, it attempts to justify Petitioner's re-
4 detention after the fact by invoking a statutory framework inconsistent with its own record. At the
5 moment it deprived Petitioner of his liberty, DHS acted pursuant to its discretionary detention
6 authority under 8 U.S.C. § 1226, yet now seeks to recast that same detention as mandatory under
7 § 1225(b) to avoid constitutional scrutiny. The law does not permit such post hoc
8 recharacterization.

9 This is not a prolonged detention case. It is not a challenge to the general statutory scheme.
10 And it does not turn on whether the Government might ultimately prove that detention is warranted.
11 The question is narrower and more fundamental: whether the Government may deprive a person
12 of physical liberty first, and only later attempt to justify that deprivation through litigation.

13 Under the Fifth Amendment, it may not.

14 When the Government seeks to revoke an individual's established liberty interest,
15 particularly after years of compliant release, it must provide, at a minimum, notice and an
16 opportunity to be heard before a neutral decisionmaker, and it must carry the burden of justifying
17 that detention. Here, it did neither. Instead, Petitioner was re-detained based on a unilateral
18 executive determination, and the only hearing he received required him, not the Government, to
19 prove that he deserved his freedom.

20 That is not due process. That is the absence of process.

21 Because the constitutional violation occurred at the moment of re-detention and continues
22 each day Petitioner remains confined, the only adequate remedy is immediate release.

23
24 **II. RESPONDENTS' § 1225(b) "MANDATORY DETENTION" THEORY FAILS**
25 **AS APPLIED TO SIMRANJOT SINGH**

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1 Respondents' central argument that Mr. Singh's detention is lawful simply because he
2 received a bond hearing under 8 U.S.C. § 1226(a) where he bore the burden of proof fails both
3 legally and factually.

4 ***A. Mr. Singh Was Not Re-Detained Pursuant to § 1225(b)***

5 Unlike individuals subject to mandatory detention under § 1225(b), Respondents concede
6 that Mr. Singh entered the United States on April 10, 2019. Following a determination that he
7 established a credible fear of persecution, he was released from DHS custody on a \$20,000 bond
8 on July 16, 2019. He remained in the community for over six years, in full compliance with all
9 conditions of his release, before his re-detention on January 12, 2026.

10 Because Mr. Singh was already placed into Section 240 removal proceedings in 2019,
11 proceedings which Respondents admit remain pending before the Board of Immigration Appeals,
12 he is not an "applicant for admission" subject to the more restrictive inspection and detention
13 regimes of § 1225. The statutory scheme does not permit DHS to revert an individual already
14 placed in § 240 proceedings back into § 1225 inspection status years later based on a single
15 encounter at a port of entry. Once removal proceedings were initiated in 2019 and remained
16 pending, Petitioner's custody was governed exclusively by § 1226. Any attempt to reclassify him
17 as an "arriving alien" in 2026 is not supported by the statute and reflects a post hoc litigation
18 position rather than the legal authority actually exercised at the time of detention. Instead,
19 Respondents' own evidence, the Warrant for Arrest of Alien, admits that his detention is based
20 upon "the pendency of ongoing removal proceedings." Critically, Respondents' own declaration
21 confirms that DHS issued the January 12, 2026 arrest warrant pursuant to its authority under
22 Sections 236 and 287 of the INA, provisions that govern discretionary detention under § 1226, not
23 mandatory detention under § 1225. Having invoked § 1226 authority to re-detain Petitioner,
24 Respondents cannot now retroactively recharacterize that same custody as arising under § 1225(b)
25 to avoid constitutional scrutiny. The Government is bound by the legal basis it actually used to
26 deprive Petitioner of his liberty. That conclusion is reinforced by the underlying procedural record.

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1 After the expedited removal order was vacated, DHS served Petitioner with a Notice to Appear in
2 section 240 proceedings on June 18, 2019, and he was later released on bond on July 16, 2019. His
3 BIA appeal was filed on June 22, 2021, and remains pending. Respondents' own records therefore
4 confirm that Petitioner was not being newly inspected for admission in January 2026; he was an
5 individual already in ongoing removal proceedings whose liberty had previously been restored.
6 Having exercised discretionary custody authority under § 1226(a) for the past six years,
7 Respondents cannot now argue that the minimal procedural protections provided upon his re-
8 detention satisfy the Due Process Clause by improperly shifting the burden of proof to the
9 Petitioner.

10 8 U.S.C. § 1225(b) applies to "applicants for admission" to the United States, who are
11 defined as an "alien present in the United States who has not been admitted or who arrives in the
12 United States" 8 U.S.C. § 1225(a)(1).

13 Having processed Mr. Singh under § 240 proceedings and acknowledged the pendency of
14 those proceedings in his 2026 arrest warrant, detention authority flows from § 1226, not § 1225.
15 Allowing DHS to invoke the restrictive standards of a mandatory detention regime for an
16 individual who has lived in the community for over six years would render § 1226 meaningless
17 and permit executive overreach without judicial oversight.

18 Respondents' position is internally contradictory. They rely on the Petitioner's ongoing
19 removal proceedings, including a pending BIA appeal, to justify continued detention, while
20 simultaneously claiming he is an "applicant for admission" subject to a statutory scheme that
21 applies prior to the initiation of those very proceedings. These positions cannot be reconciled. If
22 removal proceedings are ongoing, detention authority flows from § 1226. If § 1225 applied, there
23 would be no pending § 240 proceedings to rely upon. The Government cannot invoke both
24 frameworks simultaneously to its advantage.

25 ***B. Buenrostro-Mendez Does Not Authorize Revocation of Liberty Without Due Process***
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1 Respondents rely heavily on recent theories similar to those in *Buenrostro-Mendez v. Bondi*
 2 to argue that the Government may satisfy due process while placing the burden of proof on the
 3 detainee. That reliance is misplaced. First, the Fifth Circuit's reasoning is not binding on this Court.
 4 This case arises in the Ninth Circuit, where district courts, including this one, have repeatedly
 5 applied the *Mathews v. Eldridge* framework to the detention of noncitizens with established
 6 community ties.

7 Second, *Buenrostro-Mendez* addressed a question of statutory interpretation and did not
 8 hold that the Fifth Amendment permits the deprivation of an established liberty interest without a
 9 hearing where the Government carries the burden. It did not analyze the *Mathews v. Eldridge*
 10 balancing framework governing procedural due process in the context of an individual like Mr.
 11 Singh, who has lived freely in the community for over six years since his 2019 release on bond
 12 and pursued immigration relief through a pending asylum application and BIA appeal.

13 Finally, such theories do not disturb this District's line of decisions in *E.A.T.-B.*, *Ramirez*
 14 *Tesara*, *Kumar*, and *Ledesma Gonzalez*, which hold that due process requires the Government to
 15 justify continued detention by clear and convincing evidence. Accordingly, the Government's cited
 16 authority does not resolve the constitutional question presented here.

17 And unlike the record in *Buenrostro-Mendez*, Respondents here issued an I-200 expressly
 18 invoking sections 236 and 287 and expressly relying on the pendency of ongoing removal
 19 proceedings. Their own detention instrument therefore undercuts any attempt to treat this case as
 20 a pure § 1225 custody case.

21 ***C. Even Assuming § 1225(b) Applied, Due Process Still Required a Pre-Deprivation***
 22 ***Hearing***

23 Even if Respondents could properly invoke more restrictive statutory labels, those labels
 24 do not eliminate constitutional due process. This Court has already held that when DHS seeks to
 25 detain an individual who was previously living in the community, due process independently
 26

1 requires a neutral decisionmaker to conduct a hearing where the Government justifies the
2 incarceration.

3 Respondents' reliance on *Johnson v. Arteaga-Martinez* is misplaced. That decision
4 addressed whether courts may impose specific *statutory* bond-hearing requirements; it did not
5 authorize the Government to deprive an individual of physical liberty without a constitutionally
6 sufficient process. Nothing in *Arteaga-Martinez* permits ICE to detain a previously admitted
7 individual like Mr. Singh through a hearing that lacks the fundamental safeguard of requiring the
8 Government to meet a clear and convincing evidentiary standard. Because the February 17, 2026,
9 hearing failed to provide this safeguard, Mr. Singh's continued detention is unconstitutional.

10 **III. RESPONDENTS MISAPPLY THE MATHEWS v. ELDRIDGE FRAMEWORK**
11 **TO MR. SINGH**

12 Respondents concede that the *Mathews v. Eldridge* test governs the due process analysis.
13 Respondents' reliance on *Rodriguez Diaz v. Garland* is misplaced and does not control this case.
14 Rodriguez Diaz addressed a facial challenge to the general § 1226(a) framework and did not
15 involve a detainee who had been living freely in the community for an extended period following
16 lawful admission before being subjected to physical detention. Critically, Rodriguez Diaz did not
17 address the situation presented here, where an individual with an established liberty interest is
18 deprived of that liberty through a process that lacks meaningful procedural safeguards, including
19 the Government's obligation to justify detention by clear and convincing evidence. Nor did
20 Rodriguez Diaz involve a record such as this one, where the Immigration Judge made no
21 individualized factual findings and the Government relied on speculative factors rather than
22 evidence. Accordingly, Rodriguez Diaz does not resolve the as-applied constitutional violation
23 before this Court.

24 Applied to Mr. Singh's actual circumstances, every factor weighs decisively in favor of
25 requiring a constitutionally adequate hearing where the Government bears the burden of proof.

26 ***A. Mr. Singh's Liberty Interest Is Exceptionally Strong***

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Mr. Singh was not a newly arrived individual at the time of his re-detention. He has been physically present in the United States since April 10, 2019, and, following a determination by an Immigration Judge, was released from DHS custody on a \$20,000 bond on July 16, 2019. He lived freely in the community for over six years before his re-detention on January 12, 2026. During this time, he consistently pursued immigration relief by filing an application for asylum and maintaining his ongoing removal proceedings through a pending appeal before the Board of Immigration Appeals. His liberty interest in not being detained “is the most elemental of liberty interests[.]” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Since his release on bond in 2019, Petitioner established deep community ties and lived in the United States for over six years without a single violation of his release conditions. Respondents’ attempt to diminish this interest by re-characterizing him as an “arriving alien” subject to mandatory detention is contrary to Supreme Court and Ninth Circuit precedent recognizing that freedom from physical detention lies at the core of the Due Process Clause, regardless of immigration status.

B. The Risk of Erroneous Deprivation Was Especially High in Mr. Singh’s Case

ICE detained Mr. Singh and has justified his continued incarceration based on:

- Proximity to the border at the time of arrest.
- A legal theory that he is subject to mandatory detention under § 1225(b).
- The summary revocation of his six-year grant of liberty without an individualized hearing before a neutral decision-maker.

Respondents’ assertion that Petitioner considered withdrawing his BIA appeal further highlights the lack of procedural safeguards. Any such statement was made while Petitioner was detained and without the benefit of a constitutionally adequate custody determination. The Government cannot rely on statements made under conditions of confinement to justify continued detention, particularly where that confinement itself is constitutionally defective.

Notably, Respondents’ own exhibits confirm that the decision to re-detain was based solely on his presence at the Blaine Port of Entry and a speculative interpretation of his intent. There is

1 no indication that the Government considered his six-year track record of perfect compliance with
2 DHS supervision or presented any individualized analysis demonstrating that Petitioner posed a
3 genuine risk of flight.

4 This evidentiary void significantly increases the risk of erroneous deprivation under
5 *Mathews* and underscores why the current process is constitutionally deficient. Mr. Singh has no
6 criminal convictions in the United States or any other country. Even if the Government believes
7 his presence near the border suggests a flight risk, due process does not permit a unilateral
8 executive determination to revoke his liberty after six years of compliance. The issue is not whether
9 ICE suspects a risk, but whether Petitioner was afforded a constitutionally adequate process before
10 his liberty was restricted.

11 Without a hearing where the Government carries the burden by clear and convincing
12 evidence, ICE maintains a deprivation of liberty based on proximity, a factor that does not
13 inherently prove an intent to abscond. Importantly, the Government's own records show that
14 Petitioner has a pending asylum claim and an ongoing appeal before the Board of Immigration
15 Appeals.

16 The administrative warrant for arrest and the custody determination were signed by
17 executive officers, not a judicial officer. No judge reviewed the initial decision to re-detain Mr.
18 Singh. A constitutionally adequate hearing would have allowed a neutral decisionmaker to assess
19 whether detention was truly necessary or whether less restrictive alternatives, such as the bond and
20 supervision conditions Petitioner successfully maintained for over six years, could suffice.

21 ***C. The Government's Interest Does Not Outweigh the Required Safeguards***

22 Providing Mr. Singh with a constitutionally adequate bond hearing, specifically one where
23 the Government bears the burden of proof by clear and convincing evidence, would impose a
24 minimal administrative burden on the Respondents. ICE and the Department of Justice already
25 possess the infrastructure to conduct such hearings; requiring the Government to meet a heightened
26

1 evidentiary standard before continuing to deprive a previously released individual of liberty does
2 not meaningfully impair the Government's interests in immigration enforcement.

3 Respondents rely on the discretionary detention authority under 8 U.S.C. § 1226(a) and the
4 associated regulations to argue that the current procedures, which place the burden on the
5 Petitioner, are sufficient. However, statutory or regulatory language permitting discretionary
6 detention does not override the fundamental requirements of constitutional due process.
7 Administrative convenience or the existence of a standard regulatory framework cannot eliminate
8 Fifth Amendment protections for an individual with an established liberty interest who has
9 maintained deep ties in the community over more than six years of compliant release.

10 Even if detention authority exists under the statute, the Constitution governs the *manner* in
11 which that authority is exercised. See *Mathews v. Eldridge*, 424 U.S. 319 (1976). The question
12 before this Court is not whether the Government has the initial power to detain Mr. Singh, but
13 whether it may continue to do so following a hearing that failed to provide the most basic
14 procedural safeguard: requiring the Government to justify the incarceration.

15 As this Court has repeatedly held in cases like *E.A.T.-B. v. Wamsley* and *Kumar v.*
16 *Wamsley*, the Government's interest in detention does not outweigh the substantial risk of
17 erroneous deprivation of liberty when the Government is not required to meet a "clear and
18 convincing" standard. This is especially true where, as here, the Petitioner has no criminal history
19 and has pursued his legal rights through a pending asylum application.

20 Under the *Mathews v. Eldridge* framework, all three factors favor the Petitioner. Mr.
21 Singh's interest in continued physical liberty after nearly six years of living in the community
22 following a lawful admission is substantial. The risk of erroneous deprivation remains high
23 because the February 17, 2026, hearing allowed for continued incarceration based on a "Flight
24 Risk" finding that was never tested against the Government's burden of proof. Finally, the
25 Government's administrative burden in conducting a new hearing with the correct legal standard
26 is minimal compared to the ongoing constitutional harm of Mr. Singh's incarceration. The

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1 Constitution requires more than the hollow procedure that has occurred to date. Even accepting
2 Respondents' allegations as true, they are constitutionally insufficient to justify detention because
3 they were never tested through a process that required the Government to meet its burden. Due
4 process does not turn on whether the Government might ultimately prevail, it turns on whether the
5 Government followed the Constitution before depriving a person of liberty.

6 **IV. MR. SINGH'S SIX-YEAR HISTORY OF COMPLIANCE AND THE**
7 **CIRCUMSTANCES OF HIS ARREST DO NOT JUSTIFY CONTINUED DETENTION**
8 **WITHOUT CONSTITUTIONALLY ADEQUATE PROCESS**

9 Respondents rely on the circumstances of Mr. Singh's return at the Blaine Port of Entry
10 and their theory of mandatory detention to justify his continued incarceration. The Government's
11 own evidence confirms that its flight risk theory is speculative. The Canadian documents do not
12 show that Petitioner absconded from U.S. proceedings or violated any DHS reporting requirement.
13 They show only that Canada deemed his refugee claim ineligible under the Safe Third Country
14 Agreement and issued a Canadian exclusion order. That does not substitute for an individualized
15 U.S. custody determination made under constitutionally adequate procedures. The record reflects
16 only that Petitioner was returned to the United States after asserting an asylum claim in Canada
17 that was deemed ineligible under the Safe Third Country Agreement, not that he absconded from
18 U.S. proceedings or failed to comply with any prior obligation. No neutral adjudicator has ever
19 found that Petitioner poses a flight risk under any evidentiary standard. Viewed in isolation from
20 six years of perfect compliance, the Government's reliance on this single untested event cannot
21 constitutionally justify incarceration. The Government's reliance on a single ambiguous event,
22 never tested in an adversarial proceeding, cannot constitutionally justify incarceration. Instead,
23 Respondents rely solely on Petitioner's presence at a Port of Entry, an inherently ambiguous fact
24 that does not establish intent to abscond from U.S. removal proceedings, proceedings he has
25 actively litigated through a pending BIA appeal. The absence of any individualized determination
26 by a neutral adjudicator before revoking his long-standing liberty is dispositive. Without factual

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1 findings by a judge, there is no record demonstrating that detention was justified under any
2 standard, let alone by clear and convincing evidence. A detention decision unsupported by findings
3 cannot withstand constitutional scrutiny because it precludes meaningful review and confirms that
4 the deprivation of liberty was arbitrary. This deprivation was not based on individualized evidence,
5 but rather on untested assumptions. Due process does not permit the Government to re-incarcerate
6 a person based on speculation, particularly where less restrictive alternatives, which Petitioner
7 successfully utilized for six years, were never meaningfully considered. That reliance is legally
8 and constitutionally insufficient to bypass the requirements of the Fifth Amendment.

9 First, Respondents concede that Mr. Singh has no criminal convictions in the United States
10 or any other country and was not charged with any crime following his arrest on January 12, 2026.
11 Second, no neutral adjudicator has found, under the requisite "clear and convincing" standard, that
12 Mr. Singh poses a flight risk that necessitates physical incarceration. Third, Respondents have
13 failed to demonstrate that less restrictive alternatives, such as the bond and supervision conditions
14 Petitioner adhered to for over six years, would be insufficient to ensure his appearance at future
15 proceedings, especially given his pending asylum application and BIA appeal.

16 This Court has repeatedly required individualized procedural safeguards before permitting
17 the continued deprivation of liberty. See *E.A.T.-B. v. Wamsley*; *Ramirez Tesara v. Wamsley*;
18 *Kumar v. Wamsley*. In those cases, the Court emphasized that once an individual has established a
19 life in the community, due process requires the Government to justify detention through adequate
20 procedures and a heightened burden of proof. The mere fact of presence near a border does not
21 eliminate the constitutional requirement that the Government justify detention through a hearing
22 that comports with the Fifth Amendment. The absence of any criminal conduct in Mr. Singh's
23 case, combined with his six-year history of compliance, further underscores that his continued
24 detention is arbitrary and fails to meet the constitutional threshold demanded by the Fifth
25 Amendment.

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**V. POST-DEPRIVATION PROCESS CANNOT CURE THE VIOLATION
SUFFERED BY MR. SINGH**

Respondents' reliance on the Banda "prolonged detention" framework is misplaced because Petitioner's claim does not arise from the length of detention, it arises from the absence of constitutionally required process at the moment his liberty was revoked. This case presents a pre-deprivation due process violation, not a prolonged detention challenge. The constitutional injury occurred on January 12, 2026, when DHS re-detained Petitioner without notice, without a hearing, and without requiring the Government to justify that deprivation before a neutral decisionmaker. The duration of detention is therefore irrelevant to the existence of the violation.

Respondents argue that the custody redetermination hearing provided to Mr. Singh on February 17, 2026, satisfies the requirements of the Fifth Amendment. Respondents' repeated emphasis on the "brief" duration of detention is legally irrelevant. The Constitution does not permit the Government to imprison first and justify later, even for a single day. A deprivation of liberty imposed without the required procedural safeguards is unconstitutional at its inception, regardless of how long the Government chooses to maintain that detention. That argument misses the mark because it ignores the structural and constitutional inadequacy of the hearing itself. While a hearing was provided, it was a hollow procedure that improperly shifted the burden of proof to Mr. Singh to demonstrate he was not a flight risk, rather than requiring the Government to justify his continued incarceration by clear and convincing evidence.

The availability of a flawed hearing cannot cure the unconstitutional manner in which Mr. Singh's liberty is currently being restricted. As this Court has held in cases like *E.A.T.-B. v. Wamsley*, the mere provision of a hearing is insufficient if that hearing fails to provide the robust procedural safeguards required when fundamental physical liberty is at stake. Because the Immigration Judge denied bond under a legal standard that did not require the Government to justify detention by clear and convincing evidence, the proceeding was constitutionally deficient.

1 Mr. Singh's claim is not merely about the fact that a hearing occurred; it is about the
2 unlawful standard under which he continues to be detained. Due process requires that when the
3 Government seeks to deprive an individual of a long-standing, established liberty interest, such as
4 Mr. Singh's six-year period of compliant release, it must carry the burden of proof. Because the
5 Government has yet to be held to this standard, any suggestion that the February 17 hearing "cured"
6 the due process concerns is illusory. Nor is the availability of administrative appeal an adequate
7 substitute for constitutionally required process. Due process requires that the Government satisfy
8 its burden before depriving a person of liberty, not that the detainee attempt to correct an unlawful
9 detention after the fact through administrative review. Post hoc remedies do not cure a
10 constitutionally deficient deprivation of liberty.

11 12 VI. RELIEF

13 The Constitution does not permit the Government to detain first and justify later.
14 Respondents deprived Petitioner of his liberty based on speculation, without constitutionally
15 adequate notice, and without requiring the Government to carry its burden before a neutral
16 decisionmaker. They now attempt to defend that unlawful deprivation by invoking statutory
17 labels inconsistent with their own record. Because the violation occurred at the moment of re-
18 detention and continues each day Petitioner remains confined, the only adequate remedy is
19 immediate release. If this detention is permitted to stand, then no prior grant of liberty, no matter
20 how long honored, has any constitutional meaning. The Government could revoke freedom first
21 and supply justification later, without ever being required to prove that detention was warranted
22 at the outset. The Petition should be granted.

23
24 DATED this 24th day of March, 2026.

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