

MARIO PORTUGAL, SBN 337525
Global Law Group San Diego, P.C.
1455 Frazee Road, Suite 500
San Diego, CA 92108
Tel: (858) 833-2020
Fax: (619) 829-3152

Detained

Attorney for Akshat Prajapati

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

In the Matter of:

File No.: **3:26-cv-03727**

PRAJAPATI, AKSHAT



Petitioner,

**First Amended Petition for Writ of
Habeas Corpus, Pursuant To 28
U.S.C. § 2241**

v.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
PATRICK DIVVER, Field Office
Director, San Diego Office of Detention
and Removal, U.S. Immigration and
Customs Enforcement; TODD M.
LYONS, Acting Director, U.S.
Immigration and Customs Enforcement,
U.S. Department of Homeland Security;
and MARKWAYNE MULLIN, Secretary,
U.S. Department of Homeland Security

Respondents.

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

PETITIONER'S PETITION FOR WRIT OF HABEAS
In the Matter of Akshat PRAJAPATI

Page - 1

1
2 Petitioner respectfully petitions this Honorable Court for a writ of habeas corpus to
3 release Petitioner from detention.
4

5 **INTRODUCTION**

6 1. Petitioner was detained by Immigration and Customs Enforcement (“ICE”) at the Otay
7 Mesa Detention Center pending removal proceedings since or about November 30, 2025.

8 2. Petitioner entered the United States at New York (JFK), on or about August 11, 2023,
9 seeking asylum.

10 3. Petitioner is a citizen of India who entered the United States with an F1 student visa,
11 fleeing his home country out of fear for his life.

12 4. Petitioner fled India due to persecution for his political opinion. He was physically
13 attacked by individuals associated with  resulting in injuries that required stitches
14 to his face and head. Petitioner fears being killed or severely harmed if he returns to India due
15 to his political beliefs.
16
17

18 5. On or about January 5, 2024, Petitioner filed an I-589 Application for Asylum and for
19 Withholding of Removal.

20 6. USCIS subsequently referred the application for asylum to the immigration court for
21 consideration as a defensive application after the Department of Homeland Security issued a
22 Notice to Appear.
23

24 7. On or about November 30, 2025, the Petitioner was detained by DHS/ICE following
25 allegations that he failed to maintain his full-time student status.

26 8. Petitioner now challenges his continued detention, which has caused significant
27 hardship, and seeks relief to avoid persecution in India.
28

JURISDICTION

9. Petitioner was detained in the custody of Respondents at Otay Mesa Detention Center.

10. This action arises under the Due Process Clause of the Fifth Amendment of the U.S. Constitution. Jurisdiction is proper under 28 U.S.C. §§ 1331 (federal question), 2241 (habeas corpus); U.S. Const. art. I, § 2; (Suspension Clause); and 5 U.S.C. § 702 (Administrative Procedure Act). The Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the *All Writs Act*, 28 U.S.C. § 1651.

VENUE

11. Venue is proper in this District because this is the district in which Petitioner was confined. *See Doe v. Garland*, 109 F.4th 1188, 1197-99 (9th Cir. 2024).

CUSTODY AND REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

12. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (“OSC”) to the Respondents “forthwith,” unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file return “within three days unless good cause additional time, not exceeding twenty days, is allowed.” *Id.* 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).

13. Petitioner is “in custody” for the purpose of 28 U.S.C. § 2241 because he was arrested by Respondents and remains in their legal and physical custody at Otay Mesa Detention center

1 in San Diego (Otay Mesa), California. He is under the direct control of the Respondents and
2 their agents.

3
4 **STATEMENT OF FACTS**

5 14. Petitioner is a 25-year-old citizen and national of India. Petitioner is a citizen of India
6 who entered the United States through JFK Airport in New York on an F-1 student visa. Mr.
7 Prajapati filed an I-589 asylum application on or about January 5, 2024, citing political opinion
8 as his basis for asylum.

9 15. Petitioner believes he will be harmed or killed if he returns to India due to his political
10 opinion.

11 16. Petitioner is a noncitizen who was detained at Otay Mesa Detention Center pending
12 immigration removal proceedings. Petitioner remains detained at Otay Mesa Detention Center.

13 17. Petitioner was detained in DHS custody since or around November 30, 2025. Petitioner
14 is still in DHS custody and requests release.

15 18. Petitioner poses no danger or flight risk.

16 19. Petitioner has no past criminal history.

17 20. Petitioner has a fear of returning to India, where he may be harmed or killed by
18 individuals associated with [REDACTED]. Petitioner was previously physically attacked by
19 individuals associated with [REDACTED] which resulted in him requiring stitches to his face
20 and head.

21 21. Petitioner left India on or about August 11, 2023. On or about August 11, 2023,
22 Petitioner entered the United States through JFK Airport in New York with a valid F-1 student
23 visa.

22. After admission into the United States, Mr. Prajapati has remained non-detained while applying for asylum until his arrest in November 2025.

23. On or about November 30, 2025, Mr. Prajapati was detained by DHS/ICE following allegations that he failed to maintain his full-time student status. Since Mr. Prajapati's admission, there was no material change of circumstances that warranted the detention.

PARTIES

24. Mr. Prajapati ("Petitioner") is a 25-year-old citizen and national of India. He came to the USA out of fear for his life. He has no criminal convictions. Since the arrest on or about November 30, 2025, Mr. Prajapati has remained in the Respondents' custody.

25. Mr. Prajapati is currently residing in the Respondents' custody at Otay Mesa Detention Center in San Diego, California, as of the time of the filing of this petition.

26. Respondent Christopher LaRose ("LaRose") is the Senior Warden at Otay Mesa Detention Center in San Diego, California, where Mr. Prajapati is detained. LaRose is responsible for the day-to-day operations and confinement of non-citizens detained at that facility. He acts at the direction of Respondents Divver, Lyons, and Noem. LaRose is Mr. Prajapati's custodian and is named in his official capacity.

27. Respondent Patrick Divver ("Divver") is the Field Office Director of ICE in San Diego, California. He acts at the direction of Respondents Lyons and Noem. ICE is responsible for local custody decisions regarding non-citizens charged with removability from the U.S., including arrest, detention, custody status, and removal. The San Diego Field Office's area of responsibility includes San Diego and Imperial Counties in California. Respondent Divver is a custodian of Mr. Prajapati and is named in his official capacity.

1 28. Respondent Todd Lyons (“Lyons”) is the Acting Director of ICE, and he has authority
2 over the actions of Respondents LaRose and Divver. ICE is responsible for local custody
3 decisions relating to non-citizens charged with being removable from the U.S., including the
4 arrest, detention, custody status, and removal of non-citizens. Respondent Lyons is a custodian
5 of Mr. Prajapati and is named in his official capacity.
6

7 29. Respondent Markwayne Mullin (“Mullin”) is the Secretary of DHS and has authority
8 over the actions of all other DHS Respondents in this case, as well as all operations and federal
9 agencies of DHS, including ICE. In her capacity as Secretary of DHS, Respondent Mullin is
10 charged with faithfully administering the immigration and naturalization laws of the United
11 States. 8 U.S.C. § 1103(a). Respondent Mullin is a custodian of Mr. Parajapati and is named in
12 his official capacity.
13

14 30. Respondent ICE is responsible for local custody decisions relating to non-citizens
15 charged with being removable from the U.S., including the arrest, detention, custody status, and
16 removal of non-citizens.
17

18 31. Respondent DHS is the federal agency that has authority over the actions of ICE and all
19 other DHS Respondents.

20 32. This action is commenced against Respondents LaRose, Divver, Lyons, and Mullin
21 (collectively, “Respondents”) all in their official capacities.
22

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 33. The IIRIRA, EOIR drafted regulations explaining that, in general, non-citizens who
25 entered the country with inspection may be subject to detention under § 1226(a). *See id.*

26 34. Petitioner exhausted his administrative remedies.
27
28

1 35. Mr. Prajapati received an NTA on December 1, 2025, which was then filed before the
2 Otag Mesa Immigration Court to initiate his INA section 240 immigration proceedings.

3 36. Mr. Prajapati's continued unlawful detention in the Respondents' custody cannot be
4 challenged by way of bond proceedings before an Immigration Judge. Mr. Prajapati is also
5 challenging the unlawfulness of the Respondents' decision to detain him, independent of any
6 decision made by any Immigration Judge in removal proceedings. Mr. Prajapati has remained in
7 custody throughout his proceedings, having already attended 5 (five) Master Calendar Hearings
8 before the immigration court while detained.
9

10 37. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Prajapati's
11 constitutional, statutory, and regulatory rights and restore his liberty.
12

13 LEGAL ARGUMENT

14 38. Courts have recognized the significance of the habeas statute in protecting individuals
15 from unlawful detention, which affords "a swift and imperative remedy in all cases of illegal
16 restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963); see also *Yong v. INS*, 208
17 F.3d 1116, 1120 (9th Cir. 2000) (noting that habeas statute requires expeditious determination
18 of petitions).
19

20 39. The Court must grant the petition for writ of habeas corpus or issue an order to show
21 cause to Respondents "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243.
22

23 40. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of
24 law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*
25 *Flores*, 507 U.S. 292, 306 (1993)).

26 41. Due process requires "adequate procedural protections" to ensure that the government's
27 asserted justification for physical confinement "outweighs the individual's constitutionally
28

1 protected interest in avoiding physical restraint.” *Zadvydas, v. Davis*, 533 U.S. 678, 690 (2001)
2 (internal quotation marks omitted).

3 42. In the immigration context, the Supreme Court has recognized two valid purposes for
4 civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*;
5 *Demore*, 538 U.S. at 528.

6 43. The test for procedural due process claims, the *Mathews* test balances: (1) the private
7 interest threatened by governmental action; (2) the risk of erroneous deprivation of such interest
8 and the value of additional or substitute safeguards; and (3) the government interest. *Mathews v.*
9 *Eldridge*, 424 U.S. 319, 335 (1976); *see also Sho v. Current or Acting Field Off. Dir.*, No.
10 1:21CV-01812 TLN AC, 2023 WL 4014649, at *3 (E.D. Cal. June 15, 2023), *report and*
11 *recommendation adopted*, No. 1:21-CV-1812-TLN-AC, 2023 WL 4109421 (E.D. Cal. June 21,
12 2023) (using *Mathews* factors to assess a habeas petitioner’s due process claims and collecting
13 cases doing the same). Here, each factor weighs in Mr. Prajapati’s favor, and his release is
14 justified due to his interest in avoiding prolonged or unjustified detention. Petitioner poses no
15 danger to the community, nor is a flight risk.

16 **A TRO staying removal and transfer is necessary to prevent irreparable harm and**
17 **preserve jurisdiction.**

18 44. Petitioner is likely to succeed, or at minimum raises serious questions, on her *Zadvydas*,
19 due process, APA, and regulatory claims. The record shows a final order that could not be
20 executed because Laos declined return, years of release and rehabilitation, and no identified
21 material change.

22 45. Irreparable harm is immediate. Loss of physical liberty is irreparable. Transfer would
23 impair counsel access and evidence gathering. Removal would likely defeat meaningful habeas
24

1 review and deprive this Court of the ability to decide whether detention is lawful before the
2 consequences become irreversible.

3 46. The balance of equities favors Petitioner. She seeks only preservation of the status quo, a
4 lawful custody review, and release or supervision under reasonable conditions. Respondents
5 suffer no cognizable harm from being required to comply with the Constitution and governing
6 regulations.

7
8 47. The public interest favors lawful immigration enforcement, individualized custody
9 decisions, accurate post-order review, preservation of habeas jurisdiction, and release under
10 reasonable conditions when detention is not legally necessary.

11
12 48. The Court should therefore stay removal, prohibit transfer outside the District or to a
13 location that frustrates counsel's access, absent advance notice and Court approval, and require
14 Respondents to show cause within three days.

15 **CAUSES OF ACTION**

16 **COUNT ONE**

17 **Violation of the Fifth Amendment - Re-Detention Without Due Process or Material**
18 **Change of Circumstances**

19 49. Petitioner repeats, realleges, and incorporates by reference each preceding paragraph as
20 if fully set forth herein.

21
22 50. The Fifth Amendment prohibits Respondents from depriving any person of liberty
23 without due process of law.

24 51. The violations will be remedy by releasing or allowing Petitioner to live at liberty after
25 the Government redetention without a material change in circumstances because Respondents
26 created a legitimate expectation that she would remain at liberty absent a material change in
27 circumstances and fair process.
28

52. Respondents violated due process by detaining or continuing to detain her based on stale facts without notice, a neutral hearing, disclosure of evidence, an opportunity to respond, and proof of a material change bearing on danger, flight risk, violation of release conditions, noncooperation, or likelihood of removal.

53. The Court should declare the detention unconstitutional and order release or a constitutionally adequate custody hearing at which the Government bears the burden of proof.

COUNT TWO

Violation of Fifth Amendment Right to Due Process – Substantive and Procedural Due Process, U.S. Const. Amend. V.

54. Petitioner restates, realleges, and incorporates by reference each and every allegation in the paragraphs above as if fully set forth herein.

55. The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal government from depriving any person of “life, liberty, or property, without due process of law.” U.S. Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 693.

56. Due process requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

57. Moreover, Mr. Prajapati has a vital liberty interest in remaining free from DHS custody. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *4 (N.D. Cal. July 24, 2025) (citing *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854 (N.D. Cal. June 14, 2025) (explaining that a non-citizen that ICE released from custody after initial apprehension “has a substantial private interest in remaining out of custody” which includes an interest in “...obtaining necessary medical care, [and] maintaining her relationships in the community...”)).

1 While residing in the community after his admission to the United States on an F-1 student visa,
2 Mr. Prajapati was building his life and connections.

3 58. Even if the initial decision to release a non-citizen from DHS custody is discretionary,
4 “...after that individual is released from custody, he has a protected liberty interest in remaining
5 out of custody.” *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068, at *7
6 (E.D. Cal. Aug. 21, 2025) (quoting *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL
7 2084921, at *3 (N.D. Cal. July 24, 2025)).

8
9 59. Here, Mr. Prajapati was detained in a hasty manner on or about November 30, 2025. He
10 has no prior criminal conviction. He came to the U.S. to seek asylum and to escape the physical
11 attacks and threats he endured in India from individuals associated with the BJP party. See
12 generally *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (requiring notice and an opportunity
13 to be heard before deprivation of a legally protected interest). Nor has the government identified
14 any materially changed circumstances that would warrant detaining Mr. Prajapati.
15

16
17 **COUNT THREE**

18 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance**
19 **with Law and in Excess of Statutory Authority Violation of 8**

20 **C.F.R. § 239.2(c)**

21 60. Petitioner restates, realleges, and incorporates by reference each and every allegation in
22 the paragraphs above as if fully set forth herein.

23 61. Under the APA, a court “shall . . . hold unlawful . . . agency action” that is “not in
24 accordance with law;” “contrary to constitutional right;” “in excess of statutory jurisdiction
25 authority, or limitations;” or “without observance of procedure required by law.” 5 U.S.C. §
26 706(2)(A)-(D).
27
28

62. Once a removal proceeding has been initiated, regulations enumerate the reasons for which proceedings may be dismissed at 8 C.F.R. § 239.2(a). In considering a motion to dismiss, the Immigration Judge must make “an informed adjudication . . . based on an evaluation of the factors underlying the [DHS] motion.” *Matter of G-N-C-*, 22 I&N Dec. 281, 284 (BIA 1998).

63. The initiation of expedited removal proceedings is not an enumerated ground upon which a removal proceeding may be dismissed.

64. It is a well-established administrative principle that “agency action taken without lawful authority is at least voidable, if not void ab initio.” *L.M.-M. v. Cuccinelli*, 442 F. Supp. 3d 1, 35 (D.D.C. 2020), citing *SW General, Inc. v. NLRB*, 796 F.3d 67, 79 (D.C. Cir. 2015); *see also Hooks v. Kitsap Tenant Support Servs., Inc.*, 816 F.3d 550, 555 (9th Cir. 2016) (invalidating agency action because it was taken by an unauthorized official).

65. Under the APA, an agency must provide “reasoned explanation for its action” and “may not depart from a prior policy sub silentio or simply disregard rules that are still on the books.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). On information and belief, Respondents’ intent was to eliminate the due process rights available to Petitioner in removal proceedings under section 240 of the INA, deprive him of his liberty interest despite no evidence of material change in circumstances, or for some other purposes not supported by law. *See Pinchi v. Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) (“Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.”).

66. In deciding to detain Mr. Prajapati, Respondents further violated the APA by “entirely fail[ing] to consider an important aspect of the problem” – namely, the important procedural

1 rights that Petitioner relied on in § 1229a immigration court proceedings. *See Motor Vehicle*
2 *Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see also*
3 *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 24-33 (2020) (holding
4 that rescission of immigration policy without considering “particular reliance interests” is
5 arbitrary and capricious in violation of the APA).

6
7 67. The arbitrary and capricious detention of Mr. Prajapati was not made in furtherance of
8 an enumerated reason set forth in the regulations and causes Mr. Prajapati irreparable harm. For
9 these reasons, the Court should find that the decision to detain Mr. Prajapati is arbitrary,
10 capricious, and unsupported by substantial evidence. *See* 5 U.S.C. § 706(2)(A), (E).

11 COUNT FOUR

12 **Violation of the Administrative Procedure Act – 5 U.S.C. § 706(2)(A) Not in Accordance** 13 **with Law and in Excess of Statutory Authority, Unlawful Detention**

14 68. Petitioner restates, realleges, and incorporates by reference each and every allegation in
15 the paragraphs above as if fully set forth herein.

16
17 69. Under the APA, a court shall “hold unlawful and set aside agency action...” that is
18 “...(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
19 (B) contrary to constitutional right, power, privilege, or immunity...” 5 U.S.C. § 706(2)(A)-(B).

20 70. An action is an abuse of discretion if the agency “entirely failed to consider an important
21 aspect of the problem, offered an explanation for its decision that runs counter to the evidence
22 before the agency, or is so implausible that it could not be ascribed to a difference in view or the
23 product of agency expertise.” *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644,
24 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
25 463 U.S. 29, 43 (1983)).
26
27
28

1 71. To survive an APA challenge, the agency must articulate “a satisfactory explanation” for
2 its action, “including a rational connection between the facts found and the choice made.” *Dep’t*
3 *of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

4 72. In *Y-Z-H-L v Bostock*, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025), the Court
5 explained the process of discretionary release from custody in immigration cases and noted that
6 before revoking the release, the non-citizen must be given written notice of the impending
7 revocation, which must include a cogent description of the reasons. Under the APA, non-
8 citizens are entitled to determinations related to their release revocations that are not arbitrary,
9 capricious, or an abuse of discretion. *See id.* at *10.

10 73. By detaining Mr. Prajapati without notice or consideration of his individualized facts
11 and circumstances, Respondents have violated the INA, implementing regulations, and the
12 APA.

13 74. Respondents have made no finding that Petitioner is a danger to the community.

14 75. Respondents have made no finding that Petitioner is a flight risk.

15 76. On information and belief, by detaining Mr. Prajapati categorically and without notice,
16 Respondents have further abused their discretion because, since the agency made its initial
17 custody determination, on information and belief, there have been no changes to Mr. Prajapati’s
18 specific facts or circumstances that support his detention.

19 **COUNT FIVE**

20 **Violation of the Fourth Amendment of the Constitution**

21 **(Unreasonable Seizure), U.S. Const. amend. IV**

22 77. Petitioner restates, realleges, and incorporates by reference each and every allegation in
23 the paragraphs above as if fully set forth herein.

1 78. The Fourth Amendment protects “[t]he right of the people to be secure in their persons .
2 . . . against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has
3 recognized that immigration arrests and detentions are “seizures” within the meaning of the
4 Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that
5 deportation proceedings are civil, but the Fourth Amendment still applies to the “seizure” of the
6 person).

8 79. The Fourth Amendment requires that arrests entail a neutral, judicial determination of
9 probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). That neutral, judicial
10 determination can occur either before the arrest, in the form of a warrant, or promptly afterward,
11 in the form of a prompt judicial probable cause determination. *See id.* Arrest and detention of a
12 person, including of a noncitizen, absent a neutral judicial determination of probable cause
13 violates the Fourth Amendment of the Constitution. *Id.*; *see also Cnty. of Riverside v.*
14 *McLaughlin*, 500 U.S. 44, 57 (1991). This determination must occur within 48 hours of
15 detention, which includes weekends, unless there is a bona fide emergency or other
16 extraordinary circumstances. *See Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 57 (1991).

19 80. Congress enacted a strong preference that immigration arrests be based on warrants. *See*
20 *Arizona v. United States*, 567 U.S. 387, 407–08 (2012). The Immigration and Nationality Act
21 thus provides immigration officers with only limited authority to conduct warrantless arrests. 8
22 U.S.C. § 1357(a)(2). Federal regulations track the strict limitations on warrantless arrests. *See* 8
23 C.F.R. § 287.8(c)(2)(ii).

25 81. Mr. Prajapati did not receive any judicial determination of probable cause for his arrest
26 on November 30, 2025, or continued detention by the Respondents.
27
28

82. The Government cannot salvage this seizure by invoking generalized immigration enforcement interests. The Fourth Amendment's reasonableness inquiry is fact-specific and demands individualized justification for both the arrest and the extended detention. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 882–84 (1975); *Gerstein*, 420 U.S. at 114. Mr. Prajapati did not pose any danger to any person in the community at large, as he has no criminal history, and in fact, has a fear of returning to India for fear of harm or death from individuals associated with the BJP party.

83. Respondents' arrest of Mr. Prajapati constitutes an unreasonable and unlawful seizure in violation of the Fourth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Issue an Order to Show Cause requiring Respondents to show cause within three days why the writ should not be granted;
- (3) Declare that Petitioner's continued detention violates 8 U.S.C. § 1231(a)(6), *Zadvydas v. Davis*, *Clark v. Martinez*, the *Fifth Amendment*, the APA, and 8 C.F.R. §§ 241.4 and 241.13;
- (4) Declare that Respondents may not detain or re-detain Petitioner based on facts known before release, absent fair process and a material change in circumstances;
- (5) Declare that Respondents must produce reliable evidence of material change of circumstances before continuing detention under § 1231(a)(6);
- (6) Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody under reasonable conditions of supervision;
- (7) In the alternative, order Respondents to provide a prompt constitutionally adequate custody hearing or post-order custody review before a neutral decisionmaker, with the

PETITIONER'S PETITION FOR WRIT OF HABEAS

In the Matter of Akshat PRAJAPATI

Page - 16

1 Government bearing the burden to justify detention by clear and convincing evidence. Set no
2 bond under Rule 65(c), or only nominal bond, because the requested relief protects constitutional
3 rights and imposes no monetary harm on Respondents;

4
5 (8) Order Respondents to produce the full custody file, removal file, travel-document
6 communications, post-order custody-review records, release or supervision records, revocation
7 records, and all evidence relied upon to justify detention;

8 (9) Issue a Temporary Restraining Order staying Petitioner's removal from the United States
9 pending further order of this Court;

10
11 (10) Issue a Stay of Removal Order prohibiting Respondents from transferring Petitioner
12 outside this District, or to any location that would frustrate counsel access or this Court's
13 jurisdiction, without advance notice to counsel and leave of Court;

14 (11) Require Respondents to preserve all custody, removal, travel-document, supervision,
15 criminal-history, release, transfer, and communications records concerning Petitioner;

16
17 (12) Grant such other and further relief as the Court deems just, equitable, and proper.

18
19 Respectfully Submitted,

20 //s// Mario Portugal
21 Mario Portugal, Esq.
22 Attorney for the Petitioner
23
24
25
26
27
28