

ERIC GRANT
United States Attorney
NISREEN F. ASSAF
Special Assistant United States Attorney
501 I Street, Suite 10-100
Sacramento, CA 95814
Telephone: (916) 554-2700

Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PARDEEP KUMAR,
Petitioner,
v.
WARDEN, *et. al.*,
Respondents.

1:26-cv-05057-KES-EGC

RESPONSE TO SHOW CAUSE

I. INTRODUCTION

Respondents respectfully submit this response to the Court's Order to Show Cause.¹ Petitioner's detention is lawful under 8 U.S.C. §§ 1225 and 1226 due to his manner of entry, repeated Alternative to Detention (ATD) violations, and demonstrated flight-risk indicators. This case is materially distinguishable from recent habeas grants in the Eastern District of California, including *Luis Alberto R.C. v. Murray*, 817 F. Supp. 3d 917 (E.D. Cal. 2025); *Elmer Joel M.C. v. Wofford*, 2025 WL 3501200 (E.D. Cal. Dec. 6, 2025); *W.V.S.M. v. Wofford*, 2025 WL 3236521 (E.D. Cal. Nov. 19, 2025); *Bilal A. v. Wofford*, 2025 WL 3648366 (E.D. Cal. Dec. 16, 2025); and *Marina V.N. v. Robbins*, 2025 WL 3701960 (E.D. Cal. Dec. 21, 2025). In each of those cases, the petitioners had no conduct-based violations, were subjected to prolonged detention without any noncompliance, and demonstrated

¹ Respondent's apologize to the Court and counsel for delay in response. Counsel for Respondent was out on an abrupt leave of absence and returned to work July 7, 2026.

1 consistent engagement with immigration proceedings.

2 By contrast, Petitioner here (1) entered without inspection; (2) delayed seeking relief; (3) was
3 placed on ATD on August 6, 2024; and (4) repeatedly violated ATD supervision over an extended
4 period. ATD is the government's least restrictive alternative to detention. When a noncitizen
5 demonstrates an inability or unwillingness to comply with minimal conditions, DHS is permitted—and
6 required—to reassess custody. These factors place Petitioner squarely outside the factual predicates
7 underlying the E.D. Cal. cases and justify continued detention. Should the Court grant any relief, it
8 should be limited to a bond hearing at which Petitioner must show he is not a danger and not a flight
9 risk.

10 II. BACKGROUND

11 Petitioner is a native and citizen of India that entered without inspection near Mooers, NY on
12 May 28, 2024. *See* Exhibit 1. (Form I-213) Petitioner filed asylum application on December 6, 2024, but
13 nothing more to supplement his request for relief. Petitioner has a pending Los Angeles police
14 department case regarding a robbery where unknown assailants stole all of his identity documents,
15 backpack, and other items. On August 6, 2024, he was placed on ATD. During the course of two years,
16 Petitioner had acquired multiple ATD.

17 III. LEGAL STANDARD

18 Under 28 U.S.C. § 2241, the Court has the authority to determine a Petition for writ of habeas
19 corpus in which the Petitioner asserts he is being held in custody “in violation of the Constitution or
20 laws or treaties of the United States.” “The essence of habeas corpus is an attack by a person in custody
21 upon the legality of that custody, and that the traditional function of the writ is to secure release from
22 illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

23 IV. II. PETITIONER IS MANDATORILY DETAINED UNDER 8 U.S.C. §1225

24 For purposes of preserving this issue for appellate review, Petitioner qualifies as an “applicant
25 for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The statutory text plainly
26 mandates detention of noncitizens who entered without inspection, regardless of the duration of their
27 U.S. residency. This interpretation now in dispute between circuits is still reflected in the Ninth Circuit
28 as potentially read the same. In the Fifth Circuit, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir.

2026), confirmed that § 1225(b)(2)(A) applies broadly to individuals present without admission, even long-term residents, mandating detention without bond. Similarly, the Eighth Circuit in *Herrera Avila v. Bondi*, No. 25-3248 (8th Cir. Mar. 25, 2026), echoed this conclusion, affirming that interior-apprehended noncitizens or persons present with admission or parole (PWAP) remain “applicants for admission” under § 1225(b)(2). Additionally, although the Second Circuit in *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026), took the opposing view holding that interior-apprehended, long-term noncitizens that entered without admission or parole are governed by § 1226(a) and entitled to bond hearings, the acknowledged circuit split does not mean the statutory language is incorrect. Despite the split, the Ninth Circuit has temporarily stayed a class action relief attempt in *Maldonado Bautista v. DHS* pending its appeal, because § 1225(b)(2) detentions are valid by the text expressly stated. To further support this argument, USCIS confirms that parole under INA § 212(d)(5)(A) is not an admission or entry, and that the “paroled alien is treated as an applicant for admission.”²

Congress designed § 1225 as the statutory framework for “applicants for admission,” and the existence of waivers proves these applicants must remain available for adjudication - not released as a matter of right. Petitioner entered the United States without inspection and was subsequently released on his own recognizance subject to explicit conditions of release. Among those conditions was the requirement that he refrain from being arrested for or convicted of any criminal offense, report to DHS upon request for check-in’s and other criteria. During the period of his conditional release, he failed to check in with DHS multiple times and became an ATD absconder. Because Petitioner breached the terms of his recognizance, the Department of Homeland Security acted within its lawful authority in revoking his conditional release and returning him to immigration custody. See 8 C.F.R § 236.1(c)(9). His subsequent detention is therefore proper under the statutory framework governing applicants for admission, including the mandatory detention provisions of § 1225(b)(2). \

V. III. PETITIONER IS MANDATORILY DETAINED UNDER 8 U.S.C. § 1226

Even if the Court finds that Petitioner is detained under section 1226(a) rather than section 1225(b), his detention remains lawful. Section 1226(a) authorizes DHS to detain a noncitizen pending

² USCIS, Parole, USCIS Glossary: Parole (last visited July 6, 2026).

1 removal proceedings or release the individual on bond or conditional parole. The Supreme Court has
2 repeatedly upheld the government's broad authority to detain noncitizens for immigration purposes
3 pending removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-531 (2003); *Carlson v. Landon*,
4 342 U.S. 524, 534-537, (1952); *Reno v. Flores*, 507 U.S. 292, 301-307, (1993).

5 Petitioner was placed on ATD on August 6, 2024. That same day, he reported having been
6 robbed, and LAPD has an open investigative case. However, Petitioner's subsequent conduct
7 demonstrates repeated and prolonged noncompliance with ATD conditions across multiple months.
8 ATD is the least restrictive alternative to physical custody, and DHS relies on participants' demonstrated
9 willingness to comply. Multiple significant violations across nearly two years show a pattern of
10 disregard for immigration supervision requirements. The following facts support DHS's determination
11 of flight risk:

- 12 1. Petitioner entered without inspection, evidencing an initial disregard for lawful processes.
- 13 2. Petitioner delayed filing his asylum application until December 6, 2024, over six months
14 after entry.
- 15 3. He committed multiple ATD violations, including failures to report and failures to comply
16 with monitoring directives.
- 17 4. He did not proactively seek relief or communicate with DHS when issues arose.
- 18 5. Predictive indicators support that individuals who fail ATD requirements are more likely to
19 abscond or become unavailable for future proceedings, as immigration courts and DHS
20 routinely rely on past conduct to assess future compliance.

21 Absconding does not require disappearance; it includes actions that demonstrate a disregard for
22 supervision and an unwillingness to remain available to DHS. Petitioner's repeated failures, despite the
23 ATD program's minimal obligations, show that less restrictive measures are ineffective in ensuring
24 compliance.

25 Under 8 C.F.R. § 236.1(c)(9), DHS is authorized to revoke release when a noncitizen fails to
26 comply with conditions. DHS properly exercised that authority in this case. Because Petitioner has
27 demonstrated repeated noncompliance and provides no reliable indication that he will comply in the
28 future, DHS's decision to detain him is justified under section 1226(a).

1 If the Court determines that Petitioner is entitled to any relief on his TRO request, Respondents
2 respectfully request that the Court limit that relief to a bond hearing before an immigration judge. Given
3 Petitioner's entry without inspection and repeated ATD violations, he must bear the burden of proving
4 that he is not a danger and is not a flight risk. This is consistent with longstanding precedent and with
5 the statutory and regulatory framework governing detention under section 1226(a).

6 **VI. CONCLUSION**

7 For the reasons stated above, Respondents respectfully submit that Petitioner's detention is
8 lawful under both 8 U.S.C. § 1225 and 8 U.S.C. § 1226. Petitioner's repeated ATD violations, failure to
9 comply with minimal reporting requirements, and delayed pursuit of relief establish that he presents a
10 significant flight risk. Respondents therefore request that the Court deny the Petition. In the alternative,
11 any relief granted should be limited to a bond hearing at which Petitioner bears the burden of showing
12 he is neither a danger nor a flight risk.

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15 Dated: July 7, 2026

Respectfully submitted,

16 ERIC GRANT
17 United States Attorney

18 By: /s/ NISREEN F. ASSAF
19 NISREEN F. ASSAF
20 Special Assistant United States Attorney
21 Attorneys for Respondent
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