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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

HARKAMAL SINGH,

Petitioner,

v.

Scott Frauenheim, Warden, Central Valley
Annex; David J. Venturella, Acting Director,
U.S. Immigration and Customs Enforcement;
Sergio Albarran, Acting Field Office Director,
San Francisco Field Office, Enforcement and
Removal Operations, U.S. Immigration and
Customs Enforcement; Markwayne Mullin,
Secretary of the U.S. Department of Homeland
Security; and Todd Blanche, Attorney General
of the United States, in their official capacities,

Respondents.

Civil Action No. _____

PETITION FOR WRIT OF
HABEAS CORPUS

INTRODUCTION

1. Petitioner, Harkamal Singh, by and through undersigned counsel, respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his

ongoing and unlawful civil immigration detention by the United States Department of Homeland Security (“DHS”) and its agents.

2. Petitioner is a 25-year-old native and citizen of India detained by DHS at Central Valley Annex, 254 Taylor Avenue, McFarland, CA 93250.
3. Petitioner entered the United States on January 22, 2024, was briefly detained, then released by Immigration and Customs Enforcement (“ICE”) agents. He was subsequently placed into removal proceedings under section 240 of the Immigration and Nationality Act (“INA”) and timely filed applications for asylum, withholding of removal, and protection under the Convention Against Torture with the immigration court.
4. Prior to Petitioner’s current, ongoing detention, Petitioner lived in Sunnyvale, California. Respondents, Department of Homeland Security (DHS), and its component agencies, including ICE, Customs and Border Patrol (CBP), and U.S. Citizenship and Immigration Services (USCIS), knew about Petitioner. Respondents had previously encountered Petitioner and had chosen to release Petitioner.
5. Since Respondents’ prior release of Petitioner and determination that he was neither dangerous nor a flight risk, there has been no material change in Petitioner’s individual circumstances. Petitioner lived a law-abiding life in the United States and diligently pursued his immigration claims before the immigration court.
6. On April 14, 2026, ICE took custody of Petitioner during a routine commercial truck inspection and placed him in immigration detention while his removal proceedings are ongoing.
7. Despite the lack of materially changed circumstances as to Petitioner’s dangerousness or flight risk, Respondents re-arrested Petitioner. Substantive due process thus requires that all

forms of civil detention—including immigration detention—bear a “reasonable relation” to a non-punitive purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)

8. Immigration detention is civil. It is permissible for only two reasons: to ensure a noncitizen’s appearance at immigration hearings, and to prevent danger to the community. See *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).
9. Petitioner’s arrest cannot be explained by either justification.
10. On June 8, 2026, Petitioner filed a motion for a custody redetermination hearing with the Adelanto court. That same day, the Court issued an order denying the motion, stating that “based on its independent assessment of relevant law, regulations, statutes, and caselaw, as part of the Executive Office for Immigration Review, Department of Justice, determines that it lacks jurisdiction over the request for custody redetermination.”
11. As a result of this categorical denial of custody review, Petitioner now faces prolonged and potentially indefinite civil detention without any meaningful opportunity for an individualized determination of whether his continued confinement is necessary or lawful.
12. Petitioner has lived in the United States for two and half years. While working with valid employment authorization and a commercial driving license, government agents arrested him without a warrant, without a pre-deprivation hearing, without any finding of changed circumstances, and without prior notice. These agents terminated his protected liberty interest arbitrarily and without respect for due process of law.
13. Neither DHS nor the EOIR have conducted any neutral, individualized assessment of Petitioner’s danger to the community, risk of flight, or suitability for less restrictive alternatives to detention.

14. Petitioner has no criminal convictions, no history of violence, no pending criminal charges, and has complied with all obligations under immigration law. His continued detention is not based on any individualized finding that confinement is necessary to serve a legitimate governmental purpose.
15. The Constitution protects Petitioner, like all noncitizens, from arbitrary deprivations of liberty. The Constitution also guarantees Petitioner due process of law. The government's power over immigration is broad, but it "is subject to important constitutional limitations." *Zadvydas v. Davis*, 533 U.S. 678, 695 (2001). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).
16. The Fourth Amendment prohibits the re-arrest of immigrants without a "material change in circumstance." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). For a re-arrest to comport with the Fourth Amendment, the government must have new probable cause separate from the probable cause that supported a person's initial arrest. *Id.* To the extent that Petitioner was re-arrested, the re-arrest violated the Fourth Amendment because it was not supported by a new probable cause.
17. Furthermore, Petitioner may be a member of the certified class in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025). That litigation challenges DHS's new policy of redetaining class members despite no change in their individual circumstances as to their dangerousness or flight. *Garro Pinchi* found that DHS adopted that new re-detention policy in or around May 2025, and held the policy is likely unlawful under the Administrative Procedure Act (APA). *Id.* at 995–96, 1036. The court granted "Plaintiffs' motion to stay

DHS's re-detention policy pending final resolution of their APA claims," and "postpone[d] the effective date of the re-detention policy within ICE's San Francisco Area of Responsibility until the entry of a final judgment in this action." *Id.* at 1040.

18. The Petitioner advances three independent grounds for relief:

- a. *Procedural due process*, the deprivation of a protected liberty interest without notice or hearing. Respondents arrested and detained Petitioner without a pre-deprivation hearing, despite his protected liberty interest arising over his two years of residence in the United States, his pending asylum application before the court, and his valid employment authorization. The government cannot arbitrarily end years of freedom without notice nor a hearing.
- b. *Substantive due process and violation of 8 U.S.C. § 1226(a)'s warrant requirement*. Respondents detained the Petitioner without a warrant and without any individualized finding of flight risk or danger. This arrest was in direct violation of the plain text of 8 U.S.C. § 1226(a), which permits detention only "[o]n a warrant issued by the Attorney General." Because the statute requires a warrant as a precondition to any arrest or detention under § 1226(a), and because no exigent circumstances justified bypassing that requirement, Petitioner's warrantless arrest and subsequent detention are unlawful. The warrant issued after Petitioner was in custody does not constitute a pre-arrest warrant.
- c. *Statutory right to custody redetermination under 8 U.S.C. § 1226(a)(2)*: Mr. Singh's detention without an opportunity for a meaningful individualized custody determination is unlawful on statutory grounds in addition to constitutional due process grounds. Mr. Singh has committed no criminal offense and should not be

arbitrarily subjected to mandatory detention. He was detained in the interior of the United States after having resided here for years. When he first arrived in the United States, he was immediately issued an I-862 Notice to Appear and released from ICE custody. His I-862 does not indicate that any Section 235(b)(1) order was vacated, meaning he was not subjected to expedited removal procedures when initially apprehended. The immigration court, nonetheless, found it lacks jurisdiction to redetermine Mr. Singh's custody status.

19. The Petitioner has been detained for two months, and he faces indefinite detention if he is not released pursuant to the procedures available through this court. Every additional day Petitioner spends unlawfully detained subjects them to compounding harm.
20. Petitioner's release is not reasonably foreseeable in the near future without the intervention of this tribunal. Because Petitioner had a protected liberty interest in remaining free after years of residence in the United States, because he was denied any notice or hearing before being taken into custody, and because he has had no individualized assessment of his custody status, his continued detention is arbitrary and unlawful.
21. Petitioner is entitled to immediate release.
22. Petitioner respectfully requests a writ of habeas corpus ordering the government to immediately release him from his unlawful detention.
23. To preserve this Court's jurisdiction, Petitioner further requests an order prohibiting Respondents from transferring him outside the District or deporting them for the duration of this habeas proceeding.

JURISDICTION AND VENUE

24. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), 28 U.S.C. § 2241 (habeas corpus), Article I, § 9, cl. 2 of the U.S. Constitution (the Suspension Clause), the Fourth and Fifth Amendments to the U.S. Constitution, and 5 U.S.C. §§ 701–706 (Administrative Procedure Act), and 8 U.S.C. § 1101 et seq. (Immigration and Nationality Act).
25. This 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.
26. Venue is proper in this District because Petitioner is detained at the Central Valley Annex in McFarland California, which lies within the Eastern District of California. 28 U.S.C. § 2241(a); 28 U.S.C. § 1391(b)(2).

PARTIES

27. Petitioner is a 25-year-old native and citizen of India. He is currently detained at Central Valley Annex, 254 Taylor Avenue, McFarland, CA 93250.
28. Respondent Scott Frauenheim, Warden of Central Valley Annex, is the immediate physical custodian of Petitioner and is sued in his official capacity. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004).
29. Respondent David J. Venturella is the Current Acting Director of U.S. Customs and Enforcement. He is responsible for national policies and practices governing immigration detention, including the detention authority asserted against Petitioner. He is sued in his official capacity.

30. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security. He oversees the administration and enforcement of the Immigration and Nationality Act and is sued in his official capacity.
31. Respondent Sergio Albarran is the Acting Director of the San Francisco Field Office of Immigration and Customs Enforcement (ICE). As such, Mr. Albarran is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.
32. Respondent Todd Blanche is the Acting Attorney General of the United States, responsible for the administration of immigration laws and the conduct of immigration proceedings before the Executive Office for Immigration Review (EOIR). He is sued in his official Capacity.

EXHAUSTION

33. Petitioner has exhausted his administrative remedies to the extent required by law.
34. He has fully cooperated with Respondents and has not delayed nor obstructed his detention.
35. Petitioner filed a motion for redetermination of custody status with the EOIR, and EOIR found it lacked jurisdiction to consider such request.
36. Thus, Petitioner's only remedy is by way of this judicial action.
37. Furthermore, there is no statutory exhaustion requirement for habeas corpus petitions under 28 U.S.C. § 2241. *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001). At most, exhaustion is a prudential requirement that may be waived. *Laing v. Ashcroft*, 370 F.3d 994, 997-98 (9th Cir. 2004).
38. Here, exhaustion is not required because no other forum exists in which Petitioner can raise their claims, exhaustion would be futile, there is no requirement to exhaust before challenging the constitutionality of an arrest or detention, and Petitioner will "suffer irreparable harm if

unable to secure immediate judicial consideration of [their] claim.” *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992).

39. Even if prudential exhaustion were required, it should be waived for three reasons.

- a. First, the BIA lacks jurisdiction and competence to adjudicate Petitioner’s constitutional claims. Petitioner asserts violations of the Fifth Amendment (procedural and substantive due process). Constitutional challenges to immigration laws and procedures are exempt from exhaustion because the BIA has no jurisdiction to review such claims. *Szilagyi v. INS*, 131 F.3d 148 (9th Cir. 1997) (“Due process claims may be exempted from the exhaustion requirement if they involve more than a mere procedural error that the administrative tribunal can remedy.”); *Akinwunmi v. INS*, 194 F.3d 1340, 1341 (10th Cir. 1999) (“Courts have carved out an exception to the exhaustion requirement for constitutional challenges to the immigration laws, because the BIA has no jurisdiction to review such claims.”); see also *Bagues-Valles v. INS*, 779 F.2d 483, 484 (9th Cir. 1985) (exempting due process challenge from exhaustion).
- b. Second, Petitioner need not exhaust administrative remedies where the administrative remedy “will not provide relief commensurate with the claim.” *Boz v. United States*, 248 F.3d 1299, 1304–05 (11th Cir. 2001). Here, the BIA’s remedy (a post-deprivation bond hearing) is not commensurate with the relief Petitioner seeks, which is immediate release for multiple constitutional violations. Requiring exhaustion would be a pointless formality that serves only to prolong Petitioner’s unlawful detention.

c. Third, requiring exhaustion would cause irreparable harm. Petitioner has been detained since April 14, 2026. Each day of unlawful detention inflicts injury on his liberty interest. See *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017) (“It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.”). The BIA’s appeals process takes months, during which Petitioner would remain in custody without any opportunity for release. See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1253-54 (W.D. Wash. 2025) (waiving exhaustion where BIA appeal would cause prolonged detention and irreparable harm).

STATEMENT OF FACTS

40. The Immigration and Nationality Act and implementing regulations govern Respondents’ authority to detain or release noncitizens pending removal proceedings. Release is available only after an immigration agent or immigration judge (IJ) first determines that a noncitizen is neither a flight risk nor a danger to the community. See, e.g., 8 C.F.R. §§ 212.5(b), 236.1(c)(8), 1236.1(c)(8); 8 U.S.C. § 1226(c)(4); *Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).
41. Moreover, the authority to arrest is always subject to the Fourth Amendment’s requirement of probable cause. For more than four decades, Respondents’ practice was to arrest and detain noncitizens who had been released or whom Respondents had previously allowed to live in the community only *after* making an individualized determination that the noncitizen’s circumstances had materially changed, such that the noncitizen posed a flight risk or danger to the public. See generally *Garro Pinchi*, 813 F. Supp. 3d at 994–95.

42. In the second Trump administration, that changed. Respondents began arresting and detaining noncitizens who had been previously released or whom Respondents had previously permitted to live in the community, without first making any individualized determination of changed circumstances. Many of these arrests occurred without notice, after noncitizens appeared for removal proceedings at immigration courthouses, check-ins with ICE or ICE's Intensive Supervision Appearance Program (ISAP), or scheduled immigration-related interviews. *See generally Garro Pinchi*, 813 F. Supp. 3d at 996.
43. Dozens, if not hundreds, of federal courts in California have found these arrests and detentions are, or likely are, unconstitutional. *See, e.g., R.A.N.O. v. Wofford*, 820 F. Supp. 3d 1094, 1105 (E.D. Cal. 2026) (E.D. Cal. Jan. 6, 2026); *Huang v. Albarran*, 818 F. Supp. 3d 1154, 1166 (E.D. Cal. 2026); *Meneses v. Santacruz*, 811 F. Supp. 3d 1158, 1163 (C.D. Cal. 2025); *Kharitonova v. Albarran*, No. 3:26-CV-01362-JSC, 2026 WL 531441, at *4 (N.D. Cal. Feb. 25, 2026); *E.E.O.H. v. Noem*, No. 1:26-CV-01266-JLT-SAB, 2026 WL 850363, at *5 (E.D. Cal. Mar. 26, 2026), report and recommendation adopted, No. 1:26-CV-01266 JLT SAB, 2026 WL 967670 (E.D. Cal. Apr. 9, 2026).
44. This district has been flooded with such challenges, and judges have overwhelmingly concluded that Respondents' new practice of arresting and detaining individuals without an individualized determination of materially changed circumstances violates the Constitution and the law. *See, e.g., Luis Alberto R.C. v. Murray*, 817 F. Supp. 3d 917 (E.D. Cal. 2025), *Elmer Joel M. C. v. Wofford*, No. 1:25-CV-01622-KES-CDB (HC), 2025 WL 3501200 (E.D. Cal. Dec. 6, 2025), *Bilal A. v. Wofford*, No. 1:25-CV-01715-KES-HBK (HC), 2025 WL 3648366 (E.D. Cal. Dec. 16, 2025), *W.V.S.M. v. Wofford*, No. 1:25-CV-01489-KES-HBK

(HC), 2025 WL 3236521 (E.D. Cal. Nov. 19, 2025), and *Marina V.N. v. Robbins*, No. 1:25-CV-01845-KES-SKO (HC), 2025 WL 3701960 (E.D. Cal. Dec. 21, 2025).

45. Petitioner was born in Uttarakhand, India  and is a member of the Sikh religious minority.

46. Fearing for his life, Mr. Singh fled India to come to the United States, where he entered without inspection near Tecate, California on January 22, 2024. After a brief detention, on January 23, 2024, Mr. Singh was served with an I-862 Notice to Appear in immigration court charging him as removable under INA Section 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled. *See* Ex. A, I-862 Notice to Appear (“NTA”).

47. Respondents knew Petitioner was present in the United States and allowed Petitioner to remain at liberty.

48. Petitioner resided in California and filed an asylum application with the Court on February 12, 2024. *See* Ex. B, I-589 Cover Page Stamped by Court February 12, 2024. He then obtained employment authorization on August 12, 2024. *See* Ex. C, I-797C Notice of Action Approving Application for Employment Authorization on August 13, 2024.

49. Petitioner secured a commercial driving license from the state of California worked as a commercial truck driver for his brother’s company. *See* Ex. D, California Commercial Driving License Issued March 11, 2025.

50. Petitioner complied with all traffic regulations and attending to his obligations to the Court and to ICE.

51. On November 24, 2024, the San Francisco immigration court scheduled Petitioner’s case for an individual hearing to be held on July 15, 2027. *See* Ex. E, EOIR Notice of Hearing.

52. On April 14, 2026, while driving his truck through a weigh station in Shamrock, Texas, Mr. Singh's identification was checked, and a warrant was then issued by the U.S. Department of Homeland Security to detain him because he "either lacks immigration status or notwithstanding such status is removable under U.S. immigration law." *See* Ex. F, I-830 Notice to EOIR Showing Detention April 14, 2026. *See* Ex. G, I-200 Warrant Issued April 14, 2026 *after* Respondent Was Detained, and with No New Finding of Probable Cause to Detain After Service of I-862 and Release.
53. At the time of his detention, Petitioner had valid employment authorization and a valid commercial driving license at the time of his detention. *See* Ex. C, D. He had committed no criminal law nor traffic law violation, and had lived in the United States for two (2) years.
54. On April 17, 2026, ICE moved Petitioner to Eden Detention Center. *See* Ex. H, I-830 Notice to EOIR Showing Detainee Transfer. On May 20, 2026, he again moved to Central Valley Annex detention facility in McFarland, California, where he remains detained. *See* Ex. I, I-830 Notice to EOIR Showing Detainee Transfer.
55. Petitioner filed a motion for a custody redetermination hearing with the Adelanto court on June 8, 2026, and the same day, the Court issued an order denying the motion, stating that "based on its independent assessment of relevant law, regulations, statutes, and caselaw, as part of the Executive Office for Immigration Review, Department of Justice, determines that it lacks jurisdiction over the request for custody redetermination." *See* Ex. J, Immigration Judge Order dated June 8, 2026 Finding Court Lacks Jurisdiction to Hold Bond Hearing.
56. On April 17, 2026, two months after being detained, the Adelanto Immigration Court scheduled his asylum case for a hearing on the detained docket, an individual hearing on

August 11, 2026. *See* Ex. K, EOIR Notice of Hearing Issued June 17, 2026 Scheduling Individual Hearing on August 11, 2026.

57. Thus, absent the intervention of this tribunal, the Respondent has no means to challenge the legality of his detention nor request an individualized assessment of the same. He has been detained over two months and faces many more while his asylum case proceeds in court.
58. Petitioner's immigration Counsel has provided a signed statement authenticating the above facts and documents as true and correct to the best of her knowledge. *See* Ex. L, Declaration of Hillary H. Peldner, Esq., Petitioner's Immigration Counsel, Authenticating Exhibits.
59. Accordingly, to vindicate Petitioner's statutory, constitutional, and regulatory rights, this Court should grant the instant petition for a writ of habeas corpus and order the Petitioner's immediate release.
60. Furthermore, Petitioner brings to the Court's attention that he may be a member of the provisionally certified class in *Garro Pinchi v. Noem*, 813 F. Supp. 3d 973 (N.D. Cal. 2025).
61. In October 2025, three plaintiffs filed a complaint under the Administrative Procedure Act (APA) challenging DHS's new policy of re-detaining previously released noncitizens without materially changed circumstances as to dangerousness or flight risk. *Garro Pinchi*, No. 5:25-cv-05632-PCP, Dkt. No. 38 (Class Action Complaint and Amended Petition for Writ of Habeas Corpus) (N.D. Cal. filed Oct. 10, 2025). The plaintiffs filed a motion to "stay" the challenged policy pending final judgment on their claims and a motion for provisional class certification. *Id.* at Dkt. No. 48 (Notice of Motion and Motion to Stay Effective Date of Agency Action or Preserve Status or Rights) (N.D. Cal. filed Oct. 16, 2025).

62. On December 19, 2025, the *Garro Pinchi* court issued an order granting the plaintiffs' motions to provisionally grant class certification and stay agency action. *Garro Pinchi*, 813 F. Supp. 3d at 1039–40.
63. *Garro Pinchi* certified the following class: "All noncitizens in the jurisdiction of the San Francisco ICE Field Office who (1) entered or will enter the United States without inspection; (2) have been or will be charged with inadmissibility under 8 U.S.C. § 1182 and have been or will be released from DHS custody; and who (3) are in removal proceedings under 8 U.S.C. § 1229a, including any § 1229a proceedings that have been dismissed where the dismissal is not administratively final; and (4) are not subject to detention under 8 U.S.C. § 1226(c)." *Garro Pinchi*, 813 F. Supp. 3d at 1010–11.
64. Relevant to the class definition, the jurisdiction of the San Francisco ICE Field Office covers California from the Oregon border to (and including) Kern County, the country within which the Petitioner is detained.
65. *Garro Pinchi* certified one subclass: "All members of the Class whose release from DHS custody was or will be on bond, conditional parole, or their own recognizance under 8 U.S.C. § 1226(a) and/or 8 C.F.R. § 236.1(c)(8)." *Garro Pinchi*, 813 F. Supp. 3d at 1010–11.
66. On the merits, *Garro Pinchi* held that the new re-detention policy is likely arbitrary and capricious because, based on the preliminary record: Respondents failed to provide a reasoned explanation for their new policy at the time of its implementation; any post hoc rationalization Respondents provided for the new policy was based on legal error; Respondents failed to consider released noncitizens' serious reliance interests when implementing the new policy; and Respondents failed to adequately consider noncitizens' protected liberty interests when implementing the new policy. *Garro Pinchi*, 813 F. Supp. 3d at 1027.

67. *Garro Pinchi* held that DHS's new interpretation of 8 U.S.C. § 1225(b)(2) did not justify the agency's adoption of the new policy. *Garro Pinchi*, 813 F. Supp. 3d at 1028–33. The court held that the new policy was likely unlawful regardless of whether the underlying statutory authority for re-detention was 8 U.S.C. § 1225(b)(2) or § 1226(a), and stayed the policy from applying to any class member detained under color of either statute. *Id.* at 1037.
68. *Garro Pinchi* further concluded that class members would suffer irreparable harm without preliminary relief, and that the balance of equities and public interest favored such relief. *Garro Pinchi*, 813 F. Supp. 3d at 1018.
69. Accordingly, *Garro Pinchi* granted preliminary relief and stayed Respondents' new re-detention policy, effective immediately. *Garro Pinchi*, 813 F. Supp. 3d at 1040. The order has the effect of requiring Respondents to revert to their longstanding prior policy of not re-arresting and re-detaining class members without an individualized determination that there are materially changed circumstances as to the class member's dangerousness or flight risk. See *Paulsen v. Daniels*, 413 F.3d 999, 1008 (9th Cir. 2005) ("The effect of invalidating an agency rule is to reinstate the rule previously in force.").
70. Petitioner's arrest and detention are causing them ongoing irreparable harm.
71. Respondents previously released Petitioner, and/or previously encountered Petitioner and allowed them to live in the community, necessarily entailing a determination that Petitioner was neither a danger to the community nor a flight risk to warrant detention. No material change in circumstances warranted departing from that previous determination.
72. Petitioner is being irreparably harmed each day he is detained, as he is separated from his family, unable to work and support himself, unable to visit his Gurdwara and serve his

religious beliefs, and causing his brother and other family members financial and psychological hardship.

LEGAL FRAMEWORK

A. REQUIREMENTS PURSUANT TO 28 U.S.C. § 2243

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

74. 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). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation modified).

B. PETITIONER’S PROTECTED LIBERTY INTEREST

75. The Due Process Clause of the Fifth Amendment protects all persons within the United States, including noncitizens, from deprivation of liberty without due process of law. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (“The Fifth Amendment entitles [noncitizens] to due process of law in the context of removal proceedings.”) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint –

lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

76. The Constitution establishes due process rights for “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or

77. permanent.” *Hernandez*, 872 F.3d at 990 (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural. These rights protect Petitioner from arbitrary arrest and detention.

78. The Supreme Court has long recognized that individuals who have been released from custody have a protected liberty interest in their continued freedom. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (parolee has liberty interest); *Young v. Harper*, 520 U.S. 143, 150 (1997) (pre-parole release); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (probationer). “[G]iven the civil context [of immigration detention], [their] liberty interest is arguably greater than the interest of parolees.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); see also *Vilela v. Robbins*, No. 1:25-cv-01393-KES-HBK (HC), 2025 WL 3101334, at *6 n.5 (E.D. Cal. Nov. 6, 2025)

79. In the immigration context, courts have held that “even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) (collecting cases); see also *Meneses v. Santacruz*, 811 F. Supp. 3d 1158, 1162 (C.D. Cal. 2025) (same).

80. Several courts in this district have held that the Due Process Clause protects both those who have been released from physical custody as well as those whom the government has knowingly permitted to remain at liberty for an extended period through its affirmative

actions. See *Abdeltawab v. Armant*, No. 5:26-cv-01520-MWF-DTB, Dkt. 9 at 3-4 (C.D. Cal. Apr. 13, 2026) (Fitzgerald, J.) (order granting preliminary injunction and immediate release) (“Petitioner has a vested liberty interest in remaining free from detention as he has lived for the last almost seven years” after administrative closure); *Kharitonova v. Albarran*, No. 3:26-cv-01362-JSC, slip op. at 2-3 (N.D. Cal. Feb. 25, 2026) (Corley, J.) (“The government’s insistence Petitioner lacks a liberty interest because it never before sought to detain her is specious...Although the government did not detain and then release her, it made a decision not to detain her in the first place; Petitioner thus has the same liberty interest in her continued freedom as an individual initially detained.”); *A.B.J.C. v. Hermosillo*, No. 2:26-cv-00185-JNW, slip op. at 5 (W.D. Wash. Feb. 23, 2026) (“A.B.J.C.’s reliance on his freedom created a constitutionally protected liberty interest that cannot be extinguished without due process.”); *Kalkan v. Chestnut*, No. 1:26-cv-02028-DAD-EFB, slip op. at 2 (E.D. Cal. Mar. 20, 2026) (Drozd, J.) (same).

81. In *Njafuh v. Andrews*, Judge Drozd granted habeas relief and ordered immediate release for a noncitizen whose asylum application had been pending for over a year, but whom Respondents had not detained during that time, finding that the decision not to detain created a protected liberty interest. No. 1:26-cv-03436-DAD-AC (HC), slip op. at 2 (E.D. Cal. May 14, 2026) (Drozd, J.) (“Respondent did not detain petitioner at that time, thus providing him with a liberty interest such that due process entitles him to a pre-deprivation hearing prior to any re-detention.”); see also *Mayank v. Robbins*, No. 1:26-cv-02059-DAD-AC (HC), slip op. at 2 (E.D. Cal. Mar. 20, 2026) (Drozd, J.) (“Respondents concede that petitioner had filed his affirmative applications for asylum and withholding of removal in 2024”).

82. A pending asylum application, particularly one filed long before any detention, is a significant factor in finding a protected liberty interest. *E.E.O.H. v. Noem*, No. 1:26-cv-01266-JLT-SAB-HC, slip op. at 5 (E.D. Cal. Mar. 26, 2026) (F&R) (finding protected liberty interest where petitioner had pending asylum application filed before detention).

C. PETITIONER'S DETENTION WITHOUT A PRE-DEPRIVATION HEARING

83. Generally, “the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990).

84. Once a protected liberty interest is established, the question becomes what process is due before the government may deprive a person of that interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Courts balance three factors: (1) the private interest affected; (2) the risk of erroneous deprivation under existing procedures and the probable value of additional safeguards; and (3) the government’s interest, including fiscal and administrative burdens.

- a. *Private interest*: Freedom from physical restraint is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). A noncitizen who has been permitted to remain at liberty for an extended period has a “weighty” interest in remaining free. *Padilla v. Bowen*, No. CV 25-10780-CAS (SK), 2025 WL 3251368, at *6 (C.D. Cal. Nov. 21, 2025) (“That Petitioner is deprived of his right to live with his family and to work underscores Petitioner’s ‘weighty’ liberty interest in remaining out of custody.”).
- b. *Risk of erroneous deprivation*: Without a pre-deprivation hearing, the government can re-detain based solely on cold administrative files or a bare allegation of removability, without any contemporaneous assessment of flight risk or danger. “Civil immigration detention is permissible only to prevent flight or protect against

danger to the community.” *Pinchi*, 792 F. Supp. 3d at 1035. A pre-deprivation hearing before a neutral immigration judge would significantly reduce the risk of erroneous detention. *Abdeltawab*, Dkt. 9 at 4. (“The risk is especially pronounced here, where there is no reason to believe that Petitioner is or has been previously determined to be a flight risk or a danger to the community.”).

- c. *Government interest*: The government’s interest in dispensing with a pre-deprivation hearing is “low” where it has already permitted the noncitizen to remain free for years and alleges no changed circumstances. *Padilla*, 2025 WL 3251368, at *7; *Kharitonova*, slip op. at 3 (N.D. Cal. Feb. 25, 2026). Bond hearings are routine and impose a “minimal cost.” *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025).

85. On balance, due process requires a pre-deprivation hearing before a neutral immigration judge, at which the government bears the burden of proving by clear and convincing evidence that the noncitizen is a flight risk or a danger to the community. *Abdeltawab*, Dkt. 9 at 4-5; *Njafuh*, slip op. at 2; *Kalkan*, slip op. at 2-3; *Mayank*, slip op. at 2.

86. Post-deprivation bond hearings cannot cure the absence of a pre-deprivation hearing. The constitutional violation occurs at the moment of seizure. *Abdeltawab*, Dkt. 9 at 6 (quoting *Martinez Cruz*, 2025 WL 4051129, at *5).

87. Because re-detention without a pre-deprivation hearing violates the Fifth Amendment’s Due Process Clause, the remedy is **immediate release**, not a new bond hearing. *Amro*, Dkt. 9 at 6; *Njafuh*, slip op. at 2; *Kalkan*, slip op. at 2; *Mayank*, slip op. at 2.

D. **SUBSTANTIVE DUE PROCESS PROHIBITS ARBITRARY RE-DETENTION
ABSENT CHANGED CIRCUMSTANCES**

88. Substantive due process forbids the government from depriving a person of liberty without a legitimate regulatory purpose. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). Civil immigration detention is permissible only to ensure appearance at removal proceedings or prevent danger to the community. *Zadvydas*, 533 U.S. at 690-92; *S.L. v. Wofford*, No. 1:26-cv-00522-TLN-EFB, slip op. at 3 (E.D. Cal. Feb. 5, 2026) (holding that detention of individuals who do not pose a danger or flight risk violates substantive due process).
89. “[T]he touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government Objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).
90. The government may not re-arrest a noncitizen previously released “merely because he is subject to removal proceedings”; it must show materially changed circumstances. *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).
91. The Fourth Amendment prohibits law enforcement, including immigration officers, from re-arresting people who have been previously arrested absent a new intervening cause. *Saravia*, 280 F. Supp. at 1196. Immigration authorities may not conduct re-arrests without new probable cause so as to avoid “harassment by continual rearrests.” *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting re-arrest without change in circumstances in criminal context); see also *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to “limit” scope of immigration agents’ seizure authority); *Gonzalez v. ICE*, 975 F.3d 788, 817 (9th Cir. 2020)

(Fourth Amendment limits apply equally to seizures in criminal and civil immigration context).

92. Re-detention based solely on the same facts that existed at the time the noncitizen was permitted to remain free, without any new allegation of flight risk, danger, or changed conduct, is arbitrary and violates substantive due process. *Saravia*, 280 F. Supp. 3d at 1176; S.L., slip op. at 3 (“[T]he Court has already found persuasive Petitioner’s argument that his detention is not justified by a legitimate purpose, as he is neither a danger nor a flight risk.”). The remedy is immediate release.

E. THE PRE-ARREST WARRANT REQUIREMENT OF 8 U.S.C. § 1226(A)

93. Section 8 U.S.C. § 1226(a) provides the discretionary detention authority for noncitizens who are present in the United States and eligible for removal. Unlike mandatory detention statutes, § 1226(a) gives the government discretion to release a noncitizen on bond. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022).
94. However, Congress imposed a clear, non-discretionary prerequisite to any arrest or detention under § 1226(a). The statute states: “*On a warrant* issued by the Attorney General, a [noncitizen] may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a) (emphasis added).
95. The statute’s structure confirms the warrant requirement is a *precondition*, not an afterthought. By placing “On a warrant issued by the Attorney General” at the very beginning of the sentence, which is a grammatical construction known as a “fronted prepositional phrase,” Congress made that phrase an absolute precondition to any arrest or subsequent detention. If the government could arrest without a warrant, the phrase would have no logical placement; it would be a dangling modifier. Congress does not write dangling modifiers.

96. “Generally, the warrant must be issued before the noncitizen’s arrest. See § 1226(a); *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018) (Section 1226(a) ‘authorizes detention only [o]n a warrant issued’ leading to the [noncitizen’s] arrest...Without a warrant, federal immigration officers ‘have more limited authority’ to arrest a noncitizen”); see also *Matovu v. Mullin*, No. CIV-26-630-SLP, slip op. at 6-8 (W.D. Okla. May 18, 2026) (magistrate judge recommendation) (holding that arrest without a warrant under § 1226(a) is unlawful and that the government may not rely on § 1357(a)(2) to circumvent the plain text of the statute).
97. Moreover, the statute uses the past participle “issued,” not “to be issued” or “subsequently obtained.” The plain meaning requires the warrant to exist before the arrest. A post-arrest warrant cannot retroactively validate an arrest that occurred without a warrant. See *Yociris P. v. Bondi*, 2026 WL 327937, at *3 (D. Minn. Feb. 8, 2026) (“Where the record shows Respondents have not identified a valid statutory basis for detention in the first place, the remedy is not to supply one through further proceedings.”)
98. District courts within this circuit and beyond have enforced this warrant requirement by ordering release from custody where the government failed to obtain a pre-arrest warrant. See, e.g., *V.M. v. Albarran*, No. 1:26-cv-01280-TLN-DMC, slip op. at 4-5 (E.D. Cal. Mar. 5, 2026) (Chief Judge Nunley) (finding arrest and detention under section 1226(a) to be improper where government did not obtain a pre-arrest warrant), *J.A.C.P. v. Wofford*, 1:25-cv-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (“issuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)”); *Chogullo Chaffa v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025) (same).
99. Even if Petitioner’s arrest without a warrant could somehow be justified under 8 U.S.C. § 1357(a)(2) (the narrow exception for warrantless arrests when the officer has reason to believe

the person is likely to escape), that would not satisfy the separate statutory requirement for detention under § 1226(a). Section 1226(a) is the specific statute governing detention pending removal proceedings. It states without exception: “On a warrant issued by the Attorney General, a [noncitizen] may be arrested and detained.” The warrant requirement applies to both arrest and detention. Lawful arrest does not automatically authorize detention; the two are legally distinct. See *J.A.C.P.*, 2025 WL 3013328, at *8 (“detention is improper because there is no evidence ... that [petitioner was] arrested pursuant to a warrant”).

CLAIMS FOR RELIEF

COUNT I

Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process—Arbitrary Detention)

100. Petitioner alleges and incorporates by reference all preceding paragraphs.
101. Petitioners’ detention violates his right to substantive and procedural due process guaranteed by the Fifth Amendment to the U.S. Constitution.
102. As part of the liberty protected by the Due Process Clause, Petitioner has a weighty interest in avoiding re-incarceration after Respondents released them from custody and/or encountered them and allowed them to live in the community. See *Young*, 520 U.S. at 146–47; *Gagnon*, 411 U.S. at 781–82; *Morrissey*, 408 U.S. at 482–83; see also *Ortega*, 415 F. Supp. 3d at 969–70 (holding that a noncitizen has a protected liberty interest in remaining out of custody following an IJ’s bond determination).
103. Substantive due process forbids the government from detaining a person without a legitimate regulatory purpose. *Foucha*, 504 U.S. at 80. Civil immigration detention is permissible only to ensure appearance at removal proceedings or to prevent danger to the community. *Zadvydas*, 533 U.S. at 690-92.

104. By releasing the Petitioner within days of his entry to the United States, and permitting over two years of freedom with valid employment authorization, DHS necessarily determined that Petitioner posed no danger or flight risk.
105. Accordingly, “[i]n the context of immigration detention, it is well-settled that due process requires adequate procedural protections to ensure that the government’s asserted justification for physical confinement outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinerman*, 494 U.S. at 127 (explaining that generally, “the Constitution requires some kind of a hearing before the State deprives a person of liberty or property.”).
106. In the immigration context, for such hearings to comply with due process, the government bears the burden to demonstrate, by clear and convincing evidence, that the noncitizen poses a flight risk or danger to the community. See *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011); see also *Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).
107. Petitioner’s detention without a pre-deprivation hearing violated due process.
108. After deciding to release Petitioner from custody after initially encountering Petitioner, and allowing him to live in the community because custody was not required to protect against flight risk or dangerousness, Respondents detained Petitioner with no notice, no explanation of the justification of their detention, and no opportunity to contest their detention before a neutral adjudicator before being taken into custody.
109. On April 14, 2026, Petitioner was detained at a routine commercial truck inspection station, and once in their custody, ICE made the decision to detain him despite any change in the circumstances of his case.

110. Petitioner has been detained since April 14, 2026, solely on the basis of the same charges already alleged, and conceded, in his NTA.
111. Prior to taking him into custody, Respondents never alleged that Petitioner posed a flight risk or danger to the community and have not alleged the same since taking him into custody.
112. Under the Mathews balancing test, the private interest in liberty is fundamental, the risk of erroneous deprivation is high when no pre-deprivation hearing is provided, and the government's interest in dispensing with a hearing is low, especially given Petitioner's years of residence, lack of criminal history that renders him inadmissible, and prior compliance with immigration authorities. *Mathews*, 424 U.S. at 335; see also *Kharitonova*, 2026 WL 23531441, at *3; *Abdeltawab*, Dkt. 9 at 4-5; *Kalkan*, slip op. at 2-3.
113. Due process therefore required a pre-deprivation hearing before a neutral decisionmaker, where the government would bear the burden of proving by clear and convincing evidence that Petitioner poses a flight risk or danger to the community. See *Abdeltawab*, Dkt. 9 at 4-5; *Njafuh*, slip op. at 2; *Mayank*, slip op. at 2; *Kalkan*, slip op. at 2-3. No such hearing was provided.
114. Post-deprivation hearings cannot cure the lack of notice and pre-deprivation hearings. *Abdeltawab*, Dkt. 9 at 6 (quoting *Martinez Cruz*, 2025 WL 4051129, at *5).
115. Respondents have violated Petitioner's right to procedural due process under the Fifth Amendment. The appropriate remedy is immediate release to the status quo ante—the liberty he enjoyed before his arrest, without conditions. *Abdeltawab*, Dkt. 9 at 6.

COUNT II

Violation of the Fifth Amendment to the United States Constitution (Substantive Due Process—Arbitrary Detention)

116. Petitioner alleges and incorporates by reference all preceding paragraphs.
117. Petitioner's continued detention violates the Immigration and Nationality Act and the The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "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 [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.
118. Immigration detention is constitutionally permissible only when it furthers the government's legitimate goals of ensuring the noncitizen's appearance during removal proceedings and preventing danger to the community. *See Id.*
119. Petitioner is neither a flight risk nor a danger to the community. Respondents' detention of Petitioner is therefore unjustified and unlawful. Accordingly, Petitioner is being detained in violation of the Due Process Clause of the Fifth Amendment.
120. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. *Id.* (immigration detention is civil and thus ostensibly "nonpunitive in purpose and effect"). Here, the purpose of Petitioner's detention appears to be "not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons," *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring)—namely, to effectuate Respondents' unlawful new policy of detaining individuals previously released and/or encountered and permitted to live in the community, without any materially changed circumstances to justify detention.
121. A blanket determination of flight risk based on immigration status alone, without individualized findings, does not serve a legitimate regulatory purpose. Detention under

these circumstances is arbitrary and violates substantive due process. See *S.L. v. Wofford*, slip op. at 3 (holding that detention of non-dangerous, non-flight-risk individuals serves no legitimate government interest).

122. Respondents have violated Petitioner's right to substantive due process under the Fifth Amendment. **Petitioner is entitled to immediate release.**

COUNT III

Violation of the Fourth Amendment to the United States Constitution (Petitioner's Re-Arrest Constitutes an Unreasonable Seizure)

123. Only to the extent that Petitioner was re-arrested, Petitioner re-alleges and incorporates by reference the paragraphs above and brings this Claim.
124. The Fourth Amendment protects the right of all persons present in the United States to be free from unreasonable seizures by government officials. Petitioner therefore has the right to be free from unreasonable seizures.
125. As a corollary to that right, the Fourth Amendment prohibits re-arrest on the same charge without a material change in circumstances. Petitioner was re-arrested on the same charge without a material change in circumstances.
126. Petitioner's re-arrest violated the Fourth Amendment.

COUNT IV

Violation of 8 U.S.C. § 1226(a) – No Pre-Arrest Warrant, No Lawful Detention

127. Petitioner incorporates by reference all preceding paragraphs.
128. Petitioner was arrested on April 14, 2025, by ICE agents at a routine commercial truck inspection.
129. Respondents have never produced a pre-arrest warrant issued by the Attorney General. The warrant provided after his arrest is insufficient to meet the legal standards for a warrant.

130. Under 8 U.S.C. § 1226(a), a noncitizen may be arrested and detained pending removal proceedings only “on a warrant issued by the Attorney General.” The warrant requirement is an absolute precondition to any arrest or subsequent detention under § 1226(a). See Legal Background § A.
131. Because no warrant was issued *before* Petitioner’s arrest, the government lacks statutory authority to detain him. No other provision of the INA authorizes his detention: § 1226(c) (criminal mandatory detention) does not apply (no criminal convictions); § 1225(b)(2) does not apply as Petitioner is not an applicant for admission; and § 1231 does not apply (no final removal order).
132. Detention without a pre-arrest warrant (one dated prior to August 7, 2025) violates §1226(a) and requires immediate release. See J.A.C.P., 2025 WL 3013328, at *8.
133. Respondents may argue that Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2)(A) as an “applicant for admission.” This Court has squarely rejected that interpretation, holding that § 1225(b) applies only to noncitizens seeking admission at the border and not to long-term interior residents like Petitioner. *Maldonado Bautista v. Noem*, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025); see also *Castañon-Nava v. U.S. Dep’t of Homeland Sec.*, F.4th , 2025 WL 6581942, at *5-7 (7th Cir. Dec. 2, 2025) (holding that “applicants for admission” under § 1225(b) are those seeking entry at the border, not noncitizens who have resided in the United States for years); *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026) (same); *Lopez-Campos v. Raycraft*, No. 25-1965 (6th Cir. May 11, 2026) (same).

134. Under the correct statutory framework, Petitioner's detention is governed by § 1226(a), which requires a pre-arrest warrant and an individualized determination of flight risk or danger.
135. Because Respondents have produced no warrant, his detention is unlawful.
136. Accordingly, Respondents have violated Petitioner's statutory rights under the INA.
137. Petitioner is thus entitled to immediate release from custody.

COUNT V

**Violation of the Administrative Procedure Act/ Unlawful Application of Stayed Policy:
(Request for Relief Pursuant to *Garro Pinchi v. Noem*)**

138. **Only to the extent that Petitioner is a *Garro Pinchi v. Noem* class member**, Petitioner re-alleges and incorporates by reference the paragraphs above and brings this Claim.
139. In *Garro Pinchi v. Noem*, 813 F. Supp. 3d at 973, the court issued an order on December 19, 2025 granting preliminary relief pending final adjudication of the class's claims. The court held that Respondents' new policy of re-detaining people without an individualized determination of materially changed circumstances is likely unlawful as arbitrary and capricious. The order stayed the new policy, prohibiting Respondents from re-arresting and redetaining previously released noncitizens without an individualized determination that materially changed circumstances as to flight risk or dangerousness warrant re-detention.
140. Respondents re-arrested and re-detained Petitioner even though Petitioner had no materially changed circumstances as to flight risk or dangerousness to warrant re-detention.
141. As Petitioner is a member of the certified class in *Garro Pinchi*, Petitioner's ongoing detention is unlawful and Petitioner is entitled to immediate release.

142. Every moment that Respondents continue to detain Petitioner and deprive him of his liberty, Respondents violate the Administrative Procedure Act and the court's binding order in *Garro Pinchi*.

PRAYERS FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- 1) Assume jurisdiction over this matter;
- 2) Issue a writ of habeas corpus ordering Respondents to IMMEDIATELY RELEASE Petitioner from custody on the same conditions that governed their liberty prior to Petitioner's current detention;
- 3) Declare that Petitioner's arrest and ongoing detention violate the Due Process Clause of the Fifth Amendment;
- 4) Only to the extent that Petitioner was re-arrested, declare that Petitioner's rearrest violates the Fourth Amendment;
- 5) Only to the extent that Petitioner is a *Garro Pinchi* class member, declare that Petitioner's arrest and ongoing detention violate the order granting preliminary relief to the *Garro Pinchi* class;
- 6) Enjoin Respondents from re-detaining Petitioner absent further order of this Court; or, in the alternative, unless Respondents provide at least 14 days' notice to Petitioner that they will seek a pre-deprivation bond hearing before a neutral arbiter at which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
- 7) Order Respondents to return all of Petitioner's property confiscated during their arrest and processing into detention, including but not limited to personal identification, driving

- license, employment authorization document, medical insurance cards, money, documents related to any legal proceedings, and personal effects;
- 8) Enjoin Respondents from transferring Petitioner outside this District or deporting Petitioner pending these proceedings;
- 9) Award Petitioner his costs and reasonable attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or any other applicable law; and
- 10) Grant such further relief as the Court deems just and proper.

Dated: 7/2/2026

Respectfully submitted,

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

Pursuant to 28 U.S.C. §§ 2242 and 1746, I declare under penalty of perjury that the facts stated in the foregoing Petition for a Writ of Habeas Corpus are true and correct.

Dated: 7/2/2026

Respectfully submitted,

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