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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RAJESH LNU

Petitioner,

v.

MARK BOWEN, Acting-Warden of the Adelanto
Detention Center; TODD LYONS, Acting
Director of Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of the
U.S. Department of Homeland Security; PAMELA
BONDI, Attorney General of the United States

Respondents.

Civil Action No.

**VERIFIED PETITION FOR
HABEAS CORPUS**

INTRODUCTION

1. Petitioner, is being unlawfully detained by Respondents and deprived of release on bond. Petitioner was born in India and entered the United States on April 20, 2023. He entered the U.S. without inspection and was briefly detained by Department of Homeland Security ("DHS"). Petitioner was released by DHS on Order of Release on Recognizance ("ROR"). The conditions of release required Petitioner to be placed on Alternative to Detention ("ATD") monitoring and mandated that Petitioner check in with Immigration and Customs Enforcement ("ICE") every month.

2. DHS served Petitioner with a Notice to Appear ("NTA") which designated him as "an

1 alien present in the United States who has not been admitted or paroled” and charged him with
2 removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act as an “alien
3 present in the United States without being admitted or paroled, or who arrived in the United States at
4 any time or place other than as designated by the Attorney General.”

5
6 3. Following his release from detention, Petitioner timely filed a Form I-589, Application
7 for Asylum with the immigration court. Petitioner also obtained gainful employment and complied all
8 the conditions of his Release conditions. Petitioner has no criminal history. Nonetheless, ICE detained
9 Petitioner at his regularly scheduled ICE check in appointment.

10
11 4. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a).
12 Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a
13 change in custody redetermination (i.e. bond hearing) with an Immigration Judge (“IJ”). However, on
14 July 8, 2025, DHS issued an internal Interim Guidance (“Policy”) that took the baseless position that—
15 contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the
16 United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b)
17 instead of discretionary detention under section 1226(a). On September 5, 2025, the Board of
18 Immigration Appeals (“BIA”) issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
19 2025) that sided with DHS’ position.

20
21 5. DHS’ contention that Petitioner is subject to mandatory detention under 8 U.S.C. §
22 1225(b) is without merit. DHS’ Policy has upended decades of DHS’ own interpretation of bond
23 eligibility under sections 1226(a) and 1225(b). The vast majority of district courts across the country
24 that has addressed this issue have rejected DHS’ arguments and found that it violates the INA and
25 noncitizens’ due process rights.
26

27 6. For the foregoing reasons, the Court should grant habeas relief and direct Respondents
28

1 to release Petitioner.

2 **JURISDICTION**

3 7. This action arises under the Constitution of the United States and the INA, 8 U.S.C.
4 § 1101 *et seq.*

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

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

11 **VENUE**

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

16 **PARTIES**

17 11. Respondent Mark Bowen is sued in his official capacity as Acting-Warden of the
18 Adelanto Detention Facility. Respondent Bowen is the physical custodian of Petitioner.
19

20 12. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S.
21 Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority
22 to release him.

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

28 14. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United

1 States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to
2 adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which
3 administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

4 **STATEMENT OF FACTS**

5 15. Petitioner is a native and citizen of India. He entered the United States on April 20, 2023 and
6 expressed a credible fear of return. He was served with a Notice to Appear and placed into removal proceedings.
7 See Exhibits A.

8 16. Petitioner has no criminal history, no history of violence, and no factors indicating
9 danger or flight risk.
10

11 17. ICE previously considered Petitioner on ROR but nonetheless denied release despite
12 Petitioner meeting the applicable parole criteria. See Ex. A ROR.
13

14 18. Petitioner has now been detained for an excessive and constitutionally significant
15 period, far beyond what courts in the Ninth Circuit have deemed permissible without a bond hearing.
16 Petitioner's detention has therefore become prolonged and punitive in nature.

17 19. Petitioner's continued detention at Adelanto ICE Processing Center—one of the most
18 heavily criticized detention facilities in the Ninth Circuit—has caused significant hardship and
19 constitutes irreparable harm.
20

- 21
- 22 1. Petitioner is a native and citizen of India. See *Exhibit A*.
 - 23 2. Petitioner entered the United States on or about April 20, 2023, and expressed a credible fear of
24 persecution. See *Ex. A*.
 - 25 3. Petitioner was issued a Notice to Appear initiating removal proceedings.
 - 26 4. Petitioner requested and was eligible for parole; however, ICE denied release. See *Exhibit A*,
27 *ROR*.
 - 28 5. Petitioner has no criminal history, no danger to the community, and poses no flight risk.
 6. Petitioner's detention has now become prolonged and unconstitutional, lacking adequate
procedural protections.
 7. Following his release from detention, Petitioner timely filed a Form I-589, Application for
Asylum, with the immigration court. He subsequently obtained stable employment and fully

1 complied with all conditions of his release on recognizance (ROR). Petitioner has no criminal
2 history.

3 **STATUTORY FRAMEWORK**

4 20. The INA prescribes three basic forms of detention for noncitizens in removal
5 proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited
6 removal proceedings before an IJ. *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals in section
7 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
8 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain
9 crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).
10

11 21. Second, the INA provides for mandatory detention of noncitizens subject to expedited
12 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under
13 8 U.S.C. § 1225(b)(2).
14

15 22. Finally, the INA also provides for detention of noncitizens who are subject to final
16 orders of removal, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).
17 The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal
18 Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div.
19 C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most
20 recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3
21 (2025).
22

23 23. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that,
24 in general, people who entered the country without inspection were not considered detained under
25 section 1225 and that they were instead detained under section 1226(a). *See* Inspection and Expedited
26 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
27 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens
28

1 who entered without inspection—unless they were subject to some other detention authority—received
2 bond hearings. This practice was also consistent with the practice prior to the enactment of the IIRIRA,
3 in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ
4 or other hearing officer. See 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229
5 (1996) (noting that section 1226(a) simply “restates” the detention authority previously found at section
6 1252(a)).

7
8 24. On July 8, 2025, DHS issued a memo to all employees of ICE stating that “[t]his
9 message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited
10 its legal position on detention and release authorities. DHS has determined that section 235 of the
11 Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226],
12 is the applicable immigration detention authority for all applicants for admission. The following interim
13 guidance is intended to ensure immediate and consistent application of the Department’s legal
14 interpretation while additional operational guidance is developed.” The memo further stated DHS’ new
15 position with regard to custody determinations as follows:
16

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18 An “applicant for admission” is an alien present in the United States who has not been admitted
19 or who arrives in the United States, whether or not at a designated port of arrival. INA §
20 235(a)(1) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such**
21 **aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)] and may not be**
22 **released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible
23 for a custody redetermination hearing (“bond hearing”) before an immigration judge and may
24 not be released for the duration of their removal proceedings absent a parole by DHS. For
25 custody purposes, these aliens are now treated in the same manner that “arriving aliens” have
26 historically been treated. **The only aliens eligible for a custody determination and release**
27 **on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during**
28 **removal proceedings are aliens admitted to the United States and chargeable with**
deportability under INA § 237, with the exception of those subject to mandatory detention
under INA § 236(c) [8 U.S.C. § 1226(c)].

26 Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants
27 for admission because Form I-286 applies by its terms only to custody determinations under
28 INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception
for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will

1 individually advise, if Enforcement and Removal Operations (ERO) previously conducted a
2 custody determination for an applicant for admission still detained in ICE custody, ERO will
affirmatively cancel the Form I-286.

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

5 25. As a result, DHS now considers all noncitizens who have entered the United States
6 without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents,
7 to be subject to mandatory detention under section 1225(b) and ineligible for release on bond.
8 Conversely, according to DHS “[t]he only aliens eligible for a custody determination and release on
9 recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal
10 proceedings are aliens admitted to the United States and chargeable with deportability under INA §
11 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. §
12 1226(c)].” *Id.*

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14
15 26. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N
16 Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack
17 authority to hear bond requests or to grant bond to aliens who are present in the United States without
18 admission.

19 **CLAIMS FOR RELIEF**

20 **COUNT ONE**

21 **Violation of Fifth Amendment Right to Substantive Due Process**

22
23 27. The allegations in the above paragraphs are realleged and incorporated herein.

24
25 28. Petitioner is challenging DHS’ unlawful custody determination that Petitioner is subject
26 to detention under 8 U.S.C. § 1225(b) and is ineligible for bond and his continued detention under the
27 automatic stay provision at 8 C.F.R. § 1003.19(i)(2), which violates Petitioner’s right to substantive
28 due process of law afforded him through the Fifth Amendment to the United States Constitution.

1 29. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived of
2 life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. "Freedom from
3 imprisonment—from government custody, detention, or other forms of physical restraint—lies at the
4 heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

5 30. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release
6 on bond. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b). Respondents have
7 violated Petitioner's due process rights under the Fifth Amendment by detaining him without the
8 possibility of release on bond.
9

10 31. As a remedy, the Court should order him released from detention, or alternatively direct
11 that an IJ hold a constitutionally adequate bond hearing.
12

13 COUNT TWO

14 **Violation of Petitioner's Procedural Due Process Rights**

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

16 33. In *Mathews v. Eldridge*, the U.S. Supreme Court set forth the factors to consider in
17 determining if government action deprives an individual's Fifth Amendment right to procedural due
18 process or whether the government process is constitutionally adequate. 424 U.S. 319 (1976) The
19 *Mathews* factors are as follows: First, the private interest that will be affected by the official action;
20 [Second, the risk of an erroneous deprivation of such interest through the procedures used, and the
21 probable value, if any, of additional or substitute procedural safeguards; [Third], the Government's
22 interest, including the function involved and the fiscal and administrative burdens that the additional
23 or substitute procedural requirement would entail. *Id.* at 335.
24

25 34. As to the private interest factor, it is the "most elemental of liberty interests." *Hamdi v.*
26 *Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner has perhaps the most acute private interest known to
27
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1 personkind short of life itself: bodily freedom.

2 35. With respect to the second factor, erroneous deprivation of Petitioner's liberty is at risk.
3 Petitioner is not subject to detention under 8 U.S.C. § 1225(b) as DHS claims. As to the third factor,
4 there is no significant governmental interest in continuing to hold Petitioner in custody, particularly
5 because an IJ has already found that Petitioner has satisfied his burden that he is not a danger to the
6 community or risk of flight when it released him on ROR, and he has no criminal history or violations
7 of the conditions of his release.
8

9 **COUNT THREE**

10 **Violation of the Immigration and Nationality Act**

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

12 37. Application of 8 U.S.C. § 1225(b) to Petitioner is a violation of the INA because he is
13 instead subject to discretionary detention under 8 U.S.C. § 1226(a). This deprives noncitizens like
14 Petitioner of the right to a bond hearing that they are statutorily eligible for and eliminates the authority
15 of the IJ to determine who can be released on bond.
16
17

18 **PRAYER FOR RELIEF**

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

- 20 1. Assume jurisdiction over this matter;
21 2. Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
22 3. Declare that Petitioner's continued detention violates the Immigration and Nationality Act,
23 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;
24 4. Order Immediate release from ICE custody; or
25 5. In the alternative, an individualized bond hearing before a neutral adjudicator within 7 days,
26 with the government bearing the burden of proof by clear and convincing evidence;
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1 6. Grant Equal Access to Justice Act ("EAJA") fees and costs; and

2 7. Grant any other further relief this Court deems just and proper.

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4 Respectfully,

5 Gurpreet Kaur, Esq.

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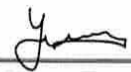
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12 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

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

17
18
19 Dated this 15th day of December, 2025.

20
21 
22 _____
23 Gurpreet Kaur, Esq.