UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Harmanpreet Singh, *Petitioners*, v. Warden or Acting Warden of the Metropolitan Detention Center, Brooklyn, New York, LaDeon FRANCIS, Acting Field Office Director of New York, Immigration and Customs Enforcement; Kristi NOEM, Secretary of Homeland Security; Pam BONDI, Atttorney General of the United States; and Todd M. LYONS, Acting Director of Immigration and Customs Enforcement. *Respondents*.	**Case No.** **FIRST AMENDED[1] VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

Petitioner Harmanpreet Singh ("Mr. Singh") brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. The court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). Petitioner alleges in support of his petition:

PRELIMINARY STATEMENT

1. This is a case about the prolonged immigration detention of an asylum seeker who continues to be detained by the Respondents without ever being afforded a proper bond hearing. This

[1] Petitioner did not name the Warden of MDC in the original complaint, as he was still endeavoring to determine who that individual is. Despite several calls to the facility and other inquiries, Petitioner has still not been able to determine the name of the warden, and so names him or her here by title. Naming the warden as a respondent is the only substantive change between the initial and amended petition. This is a first amended petition, filed before service, and thus by right under Fed. R. Civ. P. 15(a)(1)(A).

violates the Petitioner's constitutional protections guaranteed to all people in the United States regardless of immigration status.

2. Mr. Singh was detained at a check-in with Immigration and Custom Enforcement's ("ICE") under 8 U.S.C. § 1226(a). He has been detained for over twenty months, first at the Orange County Correctional Facility ("Orange County Jail" or "OCJ") in Goshen, New York, and now at the Metropolitan Detention Center ("MDC"), in Brooklyn, New York.
3. At no time during his now over twenty-month detention has Mr. Singh received a constitutionally adequate bond hearing. At a scheduled bond hearing, an immigration judge ("IJ") wrongly placed the burden on Mr. Singh of proving that he was neither a danger nor a flight risk.
4. Since Mr. Singh was placed in immigration detention, the government has rolled out its policy of subjecting people like Mr. Singh's who entered without inspection to mandatory detention under 8 U.S.C. § 1225(b)(2). This policy has been rejected by courts around the country.
5. Both the burden inversion in his bond hearing and the potential misclassification Mr. Singh's detention statute fundamentally violate his due process rights, as well as the Immigration and Naturalization Act's ("INA") and Immigration and Custom Enforcement's ("ICE") own regulations. The severity of the impingement on Mr. Singh's liberty rights increases with each day his unjustified nineteen-month long detention persists, with no end in sight.
6. As a survivor of political persecution, Mr. Singh is eligible to seek asylum, withholding of removal and protection under the Convention Against Torture ("CAT"). He now languishes in a facility with conditions indistinguishable from criminal confinement.

7. Mr. Singh seeks immediate release. In the alternative, Mr. Singh seeks a constitutionally adequate bond hearing before this Court in which Defendants bear the burden of proving by clear and convincing evidence that he is a danger to the community or a flight risk. At minimum, Mr. Singh seeks a constitutionally adequate bond hearing before an IJ.

PARTIES

8. Petitioner, HARMANPREET SINGH, is an Indian citizen who came to the United States around December 3, 2017—a little over 8 years ago—after fleeing political persecution in India.
9. Respondent Warden or Acting Warden is named in his/her official capacity as the warden or acting warden of the Metropolitan Detention Center in Brooklyn, New York.
10. Respondent LADEON FRANCIS is named in his official capacity as the Field Office Director for ICE's New York Field Office. He is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.
11. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ.
12. Respondent KRISTI NOEM is named in her official capacity as the Secretary of DHS. She directs each of the component agencies within DHS, including ICE.
13. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

JURISDICTION AND VENUE

14. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); and 28 U.S.C. § 1651 (All Writs Act).

15. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the lawfulness of their detention by DHS. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Mr. Singh is incarcerated at MDC, within this District; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

EXHAUSTION

17. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern rather than a statutory requirement. *Artiga v. Genalo*, No. 25 CV 5208 (OEM), 2025 WL 2829434, at *3 (E.D.N.Y. Oct. 5, 2025) (citing *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021)).

18. Mr. Singh appealed the denial of his request for bond to the Board of Immigration Appeals ("BIA" or "Board"), and the Board denied the bond appeal on September 9, 2025. Petitioner was unable to raise the dismissal of his bond appeal to a higher court for judicial review because federal circuit courts only have jurisdiction over final orders of removal. *See* 8 USC § 1252. Therefore, petitioner has exhausted his options to seek release.

STATEMENT OF FACTS

19. From the region of Punjab, India, Mr. Singh became politically active as a young man, joining the [redacted] In the summer of 2017, Mr. Singh was brutally attacked on two separate occasions by workers from the party in control of Punjab, the [redacted], which has a history of tensions with the Sikh community. When he sought to bring a complaint to the police, the police refused to take down a complaint and threatened to bring false charges against him. Afraid for his safety, Mr. Singh made the decision to flee his home. He came to the United States around December 3, 2017, and applied for asylum within the one-year filing deadline.

20. Mr. Singh was arrested twice on non-violent charges over a six-month period, between February of 2023 and August of 2023. Neither arrest resulted in a conviction: the charges from August of 2023 were dismissed against Mr. Singh, and the charges from February of 2023 remain pending due to Mr. Singh's inability to appear in court while in ICE custody.

21. Around early April of 2024, Mr. Singh attended an ICE check-in in New York, where he was detained. He was first detained at OCJ in Goshen, New York, where he remained until he was transferred to MDC in Brooklyn, New York, on or around November 5, 2025. Having never been convicted of a crime, Mr. Singh has now been in ICE custody for more than twenty months.

22. During his detention, Mr. Singh was ordered removed a first time when his former counsel failed to meet a judge-imposed deadline for a declaration in support of the asylum application, resulting in a denial of his application without an adjudication on the merits. He diligently obtained new counsel and filed an appeal and a motion to remand his case. The

BIA remanded the case based on ineffective assistance of counsel to the IJ without considering the merits of the case.

23. After his case was remanded, Mr. Singh requested a bond hearing on March 21, 2025. During the bond hearing, the IJ impermissibly placed the burden of proof on Mr. Singh to prove that he was not a danger to the community or a flight risk. On March 21, 2025, after the first and only custody redetermination review afforded to Mr. Singh during almost 12-months of detention, the IJ found that Mr. Singh had failed to prove he was not a danger to the community and then denied bond. Mr. Singh appealed the bond denial. On September 9, 2025, the BIA dismissed Mr. Singh's appeal of the IJ's denial of bond. In doing so, the Board erroneously re-asserted that the burden of proof was Mr. Singh's to show he merited released on bond.

24. On April 24, 2025, the IJ denied Mr. Singh's applications for relief and ordered him removed. The IJ said he would be issuing a written decision unless the appeal was waived. Through counsel, Mr. Singh reserved his right to appeal at the hearing. The IJ did not issue a decision until July 18, 2025. While the opinion found Mr. Singh generally credible, the opinion mischaracterized the evidence presented in Mr. Singh's case and ultimately denied the asylum. Mr. Singh filed his notice of appeal on July 31, 2025, within thirty days of the IJ's written decision.

25. After filing the notice of appeal, Mr. Singh's counsel waited for the BIA to issue a briefing schedule and regularly monitored Mr. Singh's case on the Electronic Court & Appeals System (ECAS).[2] On December 17, 2025, counsel received a notification via email that a

[2] The Executive Office for Immigration Review uses ECAS as an online filing system. *See* https://portal.eoir.justice.gov/Disclaimer.

briefing schedule had been uploaded to ECAS. The briefing schedule was backdated to October 10, 2025, and set a briefing schedule for November 10, 2025. Counsel attempted to resolve the issue by calling the BIA clerk's office to no avail. Through counsel, Mr. Singh then filed a Motion for a Briefing Schedule with the BIA, which included exhibits demonstrating the error and requesting a new briefing schedule.

26. On January 13, 2026, the BIA summarily dismissed Mr. Singh's appeal on the grounds that he had not filed a brief and simultaneously rejected the Motion for a Briefing Schedule on the grounds that the appeal has been dismissed. Mr. Singh timely filed a petition for review and a motion to stay removal with the Second Circuit. *See Singh v. Bondi*, No. 26-73 (2nd Cir., Jan. 13, 2026).

27. Mr. Singh has now been immigration custody for more than twenty months. His asylum application has never been reviewed or considered by any appellate body on the merits.

LEGAL BACKGROUND

I. Immigration Detention Statutory Scheme and Forbearance

28. The American immigration detention system is comprised of a network of three mutually exclusive detention statutes. *See* 8 U.S.C. § 1225(b)(2); 8 U.S.C. § 1226; 8 U.S.C. § 1231.

29. First, at the border, applicants for admission who are "seeking admission" are placed into expedited removal proceedings and subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

30. Second, noncitizens in standard removal proceedings before an IJ ("IJ") who are arrested inside the United States are detained under 8 U.S.C. § 1226. *See* 8 U.S.C. § 1229(a);

Jennings, 583 U.S. at 288-89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"). In removal proceedings, an IJ—and later potentially the BIA and a U.S. Court of Appeals—will decide whether or not the person should be deported. During removal proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal and adjustment of status. This process can take months or even years. Most of these individuals held under § 1226(a). However, noncitizens who have been arrested, charged with or convicted of certain crimes are subject to mandatory detention and ineligible for custody redetermination hearings. *See* 8 U.S.C. § 1226(c).

31. Third, the INA provides for detention of noncitizens who are subject to final orders of removal. *See* 8 U.S.C. § 1231(a)–(b). Specifically, this mandatory detention statute applies "[d]uring the removal period," a 90-day period set off by one of three triggering events listed in the statute. 8 U.SC. § 1231(a). As relevant here, where the removal order is judicially reviewed and the removal is stayed, the date of the reviewing court's final order triggers the beginning of the 90-day removal period. 8 U.S.C. § 1231(a)(1)(B)(ii).

32. In the Second Circuit, the government's forbearance policy in effect stays removal during the pendency of the adjudication of a stay motion filed alongside a petition for review. *In re Immigr. Petitions for Rev. Pending in U.S. Ct. of Appeals for Second Cir.*, 702 F.3d 160, 162 (2d Cir. 2012) (recognizing the government's forbearance policy which assures removal will not occur during tolling period). Thus, where a noncitizen files a petition for review of a BIA decision and a motion to stay removal with the Second Circuit, the removal period has not yet started and the noncitizen is, therefore, not subject to mandatory detention under § 1231.

33. Having petitioned for review of the BIA's improper summary dismissal of his appeal and filed a stay motion with the Second Circuit, Mr. Singh's removal is in effect stayed under the government's forbearance policy. *See* Motion for Stay of Removal, *Singh v. Bondi*, 26-73 (2nd Cir., Jan. 15, 2026).

34. He is, therefore, not subject to § 1231 mandatory detention, but rather § 1226(a) discretionary detention.

II. Unconstitutional Burden of Proof in EOIR Bond Hearings

35. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

36. Noncitizens, like Petitioner, who are detained under 8 U.S.C. § 1226(a) are not subject to mandatory detention and are thus detained pursuant to ICE discretion. 8 C.F.R. § 236.1(d)(1). In addition, the noncitizen may request review of ICE's detention determination at a bond hearing in immigration court. *Id.*

37. Neither the statute nor the relevant regulations dictate the burden of proof in such proceedings. *See* 8 U.S.C. § 1226(a); 8 C.F.R. § 236.1.

38. In 1976, the BIA held that a noncitizen "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk." *Matter of Patel*, 15 I&N Dec. 666, 666 (BIA 1976) (internal citations omitted). Subsequent agency decisions held that "an assessment of the [noncitizen's] danger to property or persons is a relevant consideration" in determining whether release on bond is appropriate. *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1103 (BIA 1999).

39. The BIA currently places the burden on noncitizens in DHS custody under § 1226(a) to "establish to the satisfaction of the Immigration Judge" that they are not a danger, flight risk,

or threat to national security for bond to be set. *Matter of Guerra*, 24 I. & N. Dec. 37, 37-38 (BIA 2006).

40. The Supreme Court has consistently held that when the government seeks to hold individuals in civil detention, it must justify their detention by clear and convincing evidence. *See, e.g.*, *United States v. Comstock*, 560 U.S. 126, 129–31 (2010); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 432–43 (1979).

41. The Court's cases have applied that standard to hearings regarding initial detention. *See Addington*, 441 U.S. at 432–43 (applying clear and convincing standard to initial civil commitment hearing); *Salerno*, 481 U.S. at 751(1987) (approving initial pretrial detention determination where justified by clear and convincing standard).

42. Given the gravity of the liberty deprivation even in the civil context, due process requires the jailers to bear the burden of proof to justify detention. *See e.g.*, *Salerno*, 481 U.S. at 751 (affirming legality of pre-trial detention where burden of proof was on the government); *Foucha*, 504 U.S. at 81-82, 86 (holding unconstitutional a state civil commitment "statute that place[d] the burden on the detainee to prove that he is not dangerous"). It is improper to ask an individual to "share equally with society the risk of error" where the individual's interest is of "such weight and gravity." *Addington*, 441 U.S. at 427.

43. Although the Supreme Court in *Jennings* held that the statutory test of § 1226(a) does not require that DHS "prove by clear and convincing evidence that . . . continued detention is necessary" in immigration bond hearings, it left open the question of what procedural protections are constitutionally mandated. 583 U.S. at 306.

44. The Second Circuit addresses this question in *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020). The *Velasco* court summarized the BIA's position as "the Government need not

show anything to justify incarceration for the pendency of removal proceedings, no matter the length of those proceedings." *Id.* at 849. In evaluating whether this was sufficient to protect a detained noncitizen's liberty interests under the Fifth Amendment, the Circuit applied the three-part balancing test in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), weighing (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Velasco Lopez*, 978 F.3d at 851. The Court in *Velasco Lopez* found that all three factors weighed heavily in favor of the petitioner. *Id.* at 852, 854, 855.

45. In this District, there is consensus that due process requires Respondents to bear the burden of proof by clear and convincing evidence regardless of the length of immigration detention. *Zhi Ye v. Raul Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298 (E.D.N.Y. Dec. 8, 2025) (ordering DHS to bear the burden of proof in any future bond hearing for noncitizen detained under § 1226(a)); *O.F.B. v. Maldonado*, No. 25-CV-6336 (HG), 2025 WL 3277677 (E.D.N.Y. Nov. 25, 2025) (same); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (same).

46. In Petitioner's case, each of the *Mathews* factors weigh in favor of reversing the current burden allocation in § 1226(a) bond hearings.

47. First the "importance and fundamental nature" of an individual's liberty interest is well-established, and weighs in favor of individuals detained during the pendency of their removal proceedings, like Mr. Singh. *See Salerno*, 481 U.S. at 750. Conditions at MDC only

exacerbate the deprivation of Mr. Singh's liberty. "Federal judges across the city have decried the conditions at MDC as 'barbaric' and 'inhumane' and its staff as 'contemptuous of human life and dignity' . . . ." *See* John Annese, *ICE detainees now being held in 'horrific' MDC Brooklyn federal jail*, N.Y. Daily News (June 25, 2025), available at https://www.nydailynews.com/2025/06/25/ice-detainees-held-horrific-mdc-brooklyn-federal-jail/; *see also United States v. Chavez*, 710 F. Supp. 3d 227, 234-35 (S.D.N.Y. 2024) (detailing particularly dreadful conditions of MDC detention including "the inordinate amount of time in lockdown," "the notoriously and, in some instances, egregiously slow [provision of] necessary medical and mental health treatment," and issues with the physical conditions of the building); *United States v. Espinal*, No. 11-CR-537 (JMA) (CLP) (E.D.N.Y. Oct. 17, 2016), ECF No. 39 (collecting "letters relating to the conditions at the Metropolitan Detention Center," which reported visible mold on walls and ceilings, contaminated drinking water, vermin infestation, mouse droppings falling through HVAC vents, and roaches and flies in showers).

48. Second, "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards" also weighs heavily in Mr. Singh's favor. *Velasco Lopez*, 978 F.3d at 851. A bond hearing in which the government does not bear the burden of proof significantly raises the risk of an erroneous deprivation of liberty. Because he was unable to prove a negative to the satisfaction of the IJ, Mr. Singh has been erroneously detained for more than twenty months.

49. Finally, as in *Velasco Lopez*, the third factor—the government interest—weighs in favor of Mr. Singh. Because "the Government has not articulated an interest in the prolonged detention of noncitizens who are neither dangerous nor a risk of flight," the detention of

individuals like Mr. Singh, who are neither, is not in the government's interest at all. *Id.*, 978 F.3d at 854. In fact, additional procedures requiring DHS to justify Mr. Singh's detention, would promote "the Government's interest—one we believe to be paramount—in minimizing the enormous impact of incarceration in cases where it serves no purpose." *Id.*

III. Burden of Proof in EOIR Bond Hearings Violate INA and APA

50. Reading § 1226 as a whole, and in the context of its enactment, it is clear that Congress did not intend for § 1226(a) detainees to bear the burden of proving a negative.

51. Where Congress intended such a burden, it knew how to say so. *See* 8 U.S.C. § 1226(c)(4) ("The Attorney General may release [a noncitizen]" subject to mandatory detention only if, *inter alia*, "*the [noncitizen] satisfies the Attorney General* that the [noncitizen] will not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding") (emphasis added); *see also Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."). Congress could have placed the burden on the noncitizen detained under § 1226(a) but chose not to.

52. Additionally, when Congress enacted § 1226(a), it replaced former 8 U.S.C. § 1252(a)(1) without any meaningful changes to the language of the original statute. Thus, Congress is presumed to have adopted the BIA's decision in *Patel*, which interpreted the former statute as requiring that noncitizen "generally . . . not be detained or required to post bond except on a finding that he is a threat to the national security . . . or that he is a poor bail risk." 15 I. & N. Dec. at 666; see *Lorillard v. Pons*, 434 U.S. 575, 580 (1978) ("Congress is presumed to be

aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change."). In enacting § 1226(a), Congress saw no reason to alter the status quo, thereby adopting *Patel*'s presumption in favor of liberty and ratifying the requirement that the government prove the need for detention.

53. Accordingly, placing the burden on Mr. Singh to justify his detention runs contrary to Congressional intent in passing the INA.

54. Furthermore, the practice laid out in *Matter of Guerra* requiring immigrants detained under 1226(a) to carry the burden of proof in bond hearings violates the Administrative Procedures ACT ("APA"). 24 I. & N. Dec. at 37-38. This practice is a result of the BIA's decision in *Matter of Adeniji*, 22 I. & N. Dec. 1102 (BIA 1999), the precedential decision cited to in *Matter of Guerra,* 24 I. & N. Dec. at 37-38.

55. First, the BIA in *Adeniji* analyzed and applied the wrong federal statute to decide what standards should govern Mr. Adeniji's bond hearing. *Adeniji* cited 8 C.F.R. § 236.1(c)(8), which places the burden on the noncitizen to show to the satisfaction of an immigration officer, that they would not pose a danger or a flight risk if released. Section 236.1(c)(8), however, discusses ICE's exercise of discretion. The applicable regulation to IJs appears just below, conveniently labeled "Application to immigration judge" and says nothing about the appropriate burden of proof. *See* 8 C.F.R. § 236.1(d)(1). The Board's decision in *Adeniji* is therefore arbitrary and capricious as it was not the result of reasoned decision making, ignored § 236.1(d)(1), and applied a regulation that is entirely irrelevant to custody hearings before an IJ. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decision.").

56. Second, *Adeniji* was an unacknowledged departure from the presumption of liberty established by *Patel*, 15 I. & N. Dec. at 666. The decision only mentions *Patel* once and does not purport to overrule it. *Adeniji*, 22 I. & N. Dec. at 1103. However, it effected a sea change in immigration law without so much as an acknowledgment that it was defying its past precedent. Because "[a]n agency may not . . . depart from prior policy sub silentio," this was arbitrary and capricious. *F.C.C. v. Fox Television Stations*, 556 U.S. 502, 515 (2009).

57. Finally, *Adeniji* crafted an anomalous solution for an anomalous situation. Due to his aggravated felony conviction, Mr. Adeniji would today be subject to mandatory detention under 8 U.S.C. § 1226(c). *Adeniji*, 22 I &N Dec. at 1109. However, Mr. Adeniji was not then subject to the new statute, nor did he fall under the transitional rules at the time. *Id.* Thus, his unusual circumstances "seem[ed] to [ ] warrant[ ]" a rule that required him to show more than what is required in a bond hearing pursuant to § 1226(a). *Id.* at 1112. Mr. Adeniji's situation was so unusual that the parties agreed that placing the burden on Mr. Adeniji was a sensible solution considering the unique circumstances of his case. *See id.* at 1111-12. Accordingly, reliance on that case as precedent for § 1226(a) detainees like Mr. Singh is arbitrary and capricious.

58. Applying *Matter of Guerra*, a case based on the BIA's decision in *Matter of Adeniji,* to noncitizens who, like Mr. Singh, are subject to § 1226(a), the BIA never engaged in substantive analysis about the implications or rationale for the burden shift. *See Guerra*, 24 I. & N. Dec. 37. Thus, reliance on the Board's decision in *Matter of Guerra* to place the burden on Mr. Singh is arbitrary and capricious in violation of the APA.

IV. Dismissed, Unsubstantiated Criminal Allegations

59. The reliance on dismissed or unsubstantiated criminal charges as a basis to deny bond violates due process.

60. The fact of an arrest alone does not warrant a presumption of guilt. To the contrary: "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978) (quoting *Coffin v. United States*, 156 U.S. 432, 453 (1895)). As the Supreme Court has emphasized, the "beyond a reasonable doubt" standard applied to criminal allegations plays a "vital role" in American criminal procedure as it is a "prime instrument for reducing the risk of convictions resting on factual error." *In re Winship*, 397 U.S. 358, 363 (1970). Indeed, the standard "provides concrete substance for the presumption of innocence—that bedrock 'axiomatic and elementary' principle whose 'enforcement lies at the foundation of the administration of our criminal law.' . . . 'a person accused of a crime would be at a severe disadvantage, a disadvantage amounting to a lack of fundamental fairness, if he could be adjudged guilty and imprisoned for years on the strength of the same evidence as would suffice in a civil case.'" *Id.* (quotation omitted).

61. Giving undue weight to unproven criminal allegations is therefore fundamentally unfair, regardless of who carries the burden of proof in immigration bond proceedings. *See, e.g.*, *Padmore v. Holder*, 609 F.3d 62, 69-70 (2d Cir. 2010) (EOIR may not base its denial of a case "upon the assumption that the facts contained in [charging] documents are true"); *Matter of Arreguin De Rodriguez*, 21 I&N Dec. 38, 42 (BIA 1995) ("Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are

hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein."); *Rojas v. Attorney General*, 728 F.3d 203, 220 (3d Cir 2013) ("[T]he police criminal complaint here implicates the Supreme Court's recent admonitions to be wary of attempts to relitigate prior convictions based on documents 'the meaning of [which] will often be uncertain,' or when 'the statements of fact in them may be downright wrong.'") (citing *Descamps*, 133 S.Ct. at 2289); *James v. Mukasey*, 522 F.3d 250, 257 (2d Cir. 2008) (admonishing the agency for crediting a factual allegation in a charging instrument connected with charges that were dismissed); *see also United States v. Juwa*, 508 F.3d 694, 700-01 (2d Cir. 2007) (calling it "axiomatic" that a charging document is not evidence of guilt and is not intended to serve a "evidentiary function").

V. Government's Novel Use of the Border Detention Statute

62. On July 8, 2025, ICE announced a new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[3] claiming that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225 (b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months or even years.

63. On September 25, 2025, the Board adopted this same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings before an IJ.

[3] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-forapplications-for-admission.

64. Since Respondents adopted their new policies, hundreds of federal courts have rejected ICE's new interpretation of the INA's detention statutes and the BIA's decision in *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE. *See Hyppolite*, 2025 WL 2829511, at *7, 12 (finding that the government cannot point to an Article III court that has adopted the government's expansive construction of § 1225(b)(2)); *Artiga*, 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025) (same).

65. The mandatory detention provision at § 1225(b)(2) does not apply to noncitizens who previously entered the country and have been residing in the United States. A reading of § 1225(b)(2) to apply to all noncitizens already residing in the United States who were not previously admitted is incorrect, as it renders superfluous other mandatory detention provisions in § 1226. *See* 8 U.S.C. § 1226(c)(1)(E) (carving out mandatory discretion for people in removal proceedings who entered without admission or parole and who have a certain criminal profile, thus suggesting that people in removal proceedings who entered without admission or parole are generally subjected to § 1226(a) discretionary detention); *see also Bilski v. Kappos*, 561 U.S. 593, 607-08 (2010) (holding that an interpretation of a provision is incorrect when it renders another provision superfluous).

66. To the extent that Respondents may argue that Petitioner is being held under § 1225(b)(2)(A), this argument is based on an incorrect interpretation of the INA.

VI. Prolonged Immigration Detention

67. Even if Mr. Singh's initial bond hearing were constitutionally sufficient, his detention for over six months without requiring ICE to ever demonstrate that he is a danger or a flight risk deprives him of liberty without due process of law.

68. Noncitizens who have been detained for an unreasonably prolonged amount of time under § 1226(a) are entitled to a bond hearing in which the government must justify their continued detention *Velasco Lopez*, 978 F.3d at 846.

69. If ICE contends that Mr. Singh is subject to mandatory detention under § 1225(b)(2), the government should still have to justify his ongoing detention at a bond hearing. Under Second Circuit law, unreasonably prolonged detention under the statute requiring mandatory detention for noncitizens with certain criminal convictions violates due process. *Black v. Decker*, 103 F.4th 133, 143 (2d Cir. 2024). The same logic applied by the Second Circuit to mandatory detainees based on certain criminal convictions would apply to § 1225(b)(2). Numerous district courts around the country have concluded that prolonged detention without a bond hearing, even in the context of § 1225 detainees, violates due process. *See Al-Thuraya v. Warden*, No. 25-CV-2582 (AS), 2025 WL 2858422 (S.D.N.Y. Oct. 9, 2025) (collecting cases where courts have found § 1225(b) detainees have the right to a bond hearing and applying *Black v. Decker* to Petitioner detained under that statute).

70. Accordingly, it is clear that whether Mr. Singh is detained under § 1226(a) or 1225(b)(2), his detention has become unconstitutionally prolonged and the government must justify his detention by clear and convincing evidence.

71. As noted above, all *Mathews* factors weigh in favor of Mr. Singh. *See* Part I, *supra*. The length of his detention is now three times that of the six-month period declared presumptively unreasonable in the post-removal order context, the liberty interest weighs even stronger in Mr. Singh's favor. *See Zadvydas* 533 U.S. at 701. Mr. Singh's amount of time in detention is also significantly longer than the length of detention that the court emphasized as reasonable in *Demore*. 538 U.S. at 529 (a month and a half in 85% of cases,

and an average of four months in cases where a noncitizen appeals). *Velasco Lopez* relied on both of these timelines in finding that the Petitioner's detention had become unreasonably prolonged. 978 F.3d at 852; *see also Black*, 103 F.4th at 137 (Petitioner's 7-month detention was unconstitutionally prolonged).

72. Mr. Singh's detention also has no end in sight. "Absent release on bond, detention lasts throughout the initial removal determination proceedings (which themselves can take months or years) and all inter-agency and federal court appeals." *Velasco Lopez*, 978 F.3d at 852. Having filed a petition for review with the Second Circuit, Mr. Singh is facing incarceration that could last months or even years while his appeal is heard.

73. Because the *Mathews* factors weigh in Mr. Singh's favor, his continuing detention, whether under § 1225(b)(2) or § 1226(a), violates his right to due process of law.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

VIOLATION OF DUE PROCESS

U.S. Const. amend V

74. Petitioner repeats and realleges the preceding paragraphs of this Petition.

75. Because Petitioner's bond hearing placed the burden on him to prove a negative—that he is neither a danger nor a flight risk—it is not a constitutionally adequate procedure to safeguard him from unwarranted civil detention. *Foucha*, 504 U.S. at 80. Thus, it violates his right to due process.

76. Furthermore, because Petitioner has been incarcerated for more than twenty months—a clearly unreasonable amount of time—without requiring DHS to justify why his continued

detention is necessary, he has been denied due process of law. *See Velasco Lopez*, 978 F.3d at 846; *Black*, 103 F.4th at 159.

77. Finally, the reliance on dismissed and unsubstantiated criminal records to deny bond violates Mr. Singh's due process rights. *See Juwa*, 508 F.3d at 700-01; *Padmore*, 609 F.3d at 69-70; *Matter of Arreguin De Rodriguez*, 21 I&N Dec. at 42; *Rojas*, 728 F.3d at 220; *James*, 522 F.3d at 257.

SECOND CAUSE OF ACTION:

VIOLATION OF THE INA

8 U.S.C. § 1226

78. Petitioner repeats and realleges the preceding paragraphs of this Petition.

79. Because Petitioner's bond hearing absolved DHS of its burden to justify his continued detention, it violated Congress's intentional choice in drafting 8 U.S.C. § 1226(a) not to place the burden of proof on the respondent.

80. Furthermore, should Respondents argue that Petition is held under 8 U.S.C. § 1225(b)(2), this interpretation violates the INA, as it renders superfluous other mandatory detention provisions in § 1226(c). *See Bilski*, 561 U.S. at 607-08 (holding that an interpretation of a provision is incorrect when it renders another provision superfluous).

THIRD CAUSE OF ACTION:

VIOLATION OF THE APA

5 U.S.C. § 706(2)(A)

81. Petitioner repeats and realleges the preceding paragraphs of this Petition.

82. The bond hearing afforded to Petitioner was arbitrary and capricious because it followed the BIA precedent in *Adeniji*, 22 I. & N. Dec. 1102, which itself was arbitrarily and capriciously decided and has since been erroneously applied.

83. Respondent's failure to provide Petitioner with a bond hearing in which DHS bears the burden of proof reflects and arbitrary and capricious interpretation of 8 C.F.R. § 236.1.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring Mr. Singh outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[4]

3. Issue a writ of habeas corpus directing Respondents to immediately release Mr. Singh from custody without any additional restraints on his liberty;

4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen days. In the alternative, if Respondents are ordered to carry out such a hearing, the Court should direct that at that hearing:

a. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;

b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and

[4] *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction").

c. The adjudicator must meaningfully consider Mr. Singh's ability to pay if setting a monetary bond.

5. Award Mr. Singh his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

6. Grant such further relief as the Court deems just and proper.

Date: January

/s/ Tosca Giustini
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VERIFICATION

I am submitting this verification on behalf of the Petitioner. We, or our partners, gathered with the Petitioner the events described in this Petition. On the basis of those discussions, on information and belief, I hereby verify that the factual statements made in the attached Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 22nd of January 2026.
New York, NY

Respectfully Submitted,

By: /s/ Tosca Giustini
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