UNITED STATE DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

GAURAV KUMAR,

Petitioner,

-against-

TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement (ICE); MARCOS CHARLES, in his official capacity as Acting Executive Associate Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; ALEJANDRO N. MAYORKAS, Secretary, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; and PAM BONDI, in her official capacity as Attorney General of the United States, the WARDEN of KARNES COUNTY IMMIGRATION PROCESSING CENTER, in their official capacity as custodian of petitioner, THE WARDEN OF THE FACILITY WHERE PETITIONER IS CURRENTLY DETAINED, in his or her official capacity as custodian of Petitioner

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS

Case No.:

PARTIES

1. Petitioner GAURAV KUMAR ("Petitioner") is a citizen of India who entered the United States at or near Sasabe, AZ port of entry (the "Border") on or about January 5, 2024, and timely applied for asylum.

2. Respondent Todd M. Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), an agency of the U.S. Department of Homeland Security ("DHS"). In that capacity, he is responsible for overseeing ICE's operations, including the detention and removal of noncitizens within the United States. He exercises authority over the policies and actions giving rise to Petitioner's detention and is sued in his official capacity.
3. Respondent Marcos Charles is the Acting Executive Associate Director of Enforcement and Removal Operations ("ERO"), the division of ICE responsible for the arrest, detention, and removal of noncitizens. He is charged with implementing ICE detention policies nationwide and is sued in his official capacity.
4. Respondent Alejandro N. Mayorkas is the Secretary of the U.S. Department of Homeland Security ("DHS"), the federal department with ultimate authority over immigration enforcement and the administration of ICE. As the head of DHS, Secretary Mayorkas has ultimate responsibility for the custody and detention of individuals such as the Petitioner and is sued in his official capacity.
5. Respondent Kristi Noem is named in her official capacity as Secretary of the U.S. Department of Homeland Security. To the extent she currently holds or exercises the functions of that office, she is responsible for the policies and actions of DHS and its sub-agencies, including ICE, and is sued in her official capacity.
6. Respondent Pam Bondi is the Attorney General of the United States and head of the U.S. Department of Justice, which includes the Executive Office for Immigration Review ("EOIR") and the nation's immigration courts. The Attorney General is responsible for the

overall administration of immigration proceedings and the enforcement of federal immigration law and is sued in her official capacity.

7. Respondent WARDEN (the "Warden") of KARNES COUNTY IMMIGRATION PROCESSING CENTER (the "Detention Facility"), in their official capacity as custodian of the Petitioner. The Warden is named herein in their official capacity as the Petitioner's custodian.

8. Respondent "the Warden of the Facility Where Petitioner Is Currently Detained" is named in his or her official capacity as Petitioner's immediate physical custodian. Because Petitioner's place of detention may change during the pendency of this action, this designation is intended to encompass any warden or equivalent official who exercises day-to-day custody over Petitioner at the time the Court issues its decision, thereby ensuring that the Court's order may be promptly enforced.

INTRODUCTION/BACKGROUND INFORMATION

Petitioner's Asylum Request and subsequent arrest.

9. As was stated above, the Petitioner entered the US on or about January 5, 2024, and stayed in the US ever since.

10. Upon timely filing for asylum, the Petitioner was released. Upon information and belief, after his release, the Petitioner has continuously and openly resided in Texas.

11. The Petitioner was unjustifiably and indiscriminately apprehended by officers of U.S. Immigration and Customs Enforcement ("ICE") on or about September 22, 2025 during a routine ICE check-in session. At no time following his entry into the United States or after

applying for asylum did the Petitioner engage in any unlawful activity, commit any criminal offense, or violate any condition of release imposed by immigration authorities.

12. Subsequently the Petitioner was transported/transferred to the Detention Facility.

13. As of the date of this petition, the Petitioner remains in the custody of ICE/DHS at the Detention Facility.

JURISDICTION & VENUE

14. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.

15. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

16. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. See, e.g., *Zadvydas*, 533 U.S. at 687.

17. Venue is proper in this district pursuant to 28 U.S.C. § 2241(d) because Petitioner is currently detained in the Detention Facility, within this district, and remains in ICE continuous custody.

STATUTORY AND LEGAL FRAMEWORK, AND ARGUMENT

A. Petitioner Is Entitled to Fifth Amendment Due Process and Habeas Review.

18. The Fifth Amendment's Due Process Clause forbids the Government from depriving any "person" of liberty without due process of law. U.S. CONST. amend. V. Freedom from physical restraint lies at the core of the liberty protected by the Due Process Clause.

Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Government detention therefore violates due process unless it is supported by adequate procedural protections or justified by narrowly defined, exceptional circumstances. United States v. Salerno, 481 U.S. 739, 746 (1987); Kansas v. Hendricks, 521 U.S. 346, 356 (1997).

19. These constitutional protections apply to noncitizens regardless of immigration status. "[T]he Fifth Amendment entitles noncitizens to due process of law … whether their presence here is lawful, unlawful, temporary, or permanent." Velasco Lopez v. Decker, 978 F.3d 842, 850 (2d Cir. 2020). Noncitizens may challenge the legality of their detention through a petition for habeas corpus, including challenges to the lawfulness of detention at its inception. *Id.*; *Zadvydas*, 533 U.S. at 687.

20. Petitioner has continuously resided in the United States since at least January, 2024, following his entry and asylum application. He was released from DHS custody and complied with all conditions of release until his warrantless arrest by ICE in September, 2025. Accordingly, Petitioner is a "person" detained within the United States and is fully entitled to Fifth Amendment due process protections and habeas review.

B. Petitioner's Detention Is Governed by 8 U.S.C. § 1226, and not § 1225.

21. Respondents are detaining Petitioner pursuant to 8 U.S.C. § 1226, which governs arrest and detention of noncitizens pending removal proceedings. Under § 1226(a), DHS has discretion either to detain a noncitizen or to release the individual on bond or conditional parole, subject to an individualized custody determination.

22. Petitioner is not an arriving alien "seeking admission" within the meaning of 8 U.S.C. § 1225(b)(2)(A). He entered the United States on or about January 5, 2024, timely applied for

asylum, was released, and resided openly in Texas for more than a year before his unjustified arrest. Because Petitioner was living in the interior of the United States at the time of his re-detention, § 1226(a), and not § 1225, governs his custody.

23. District courts have held time and again that similarly situated noncitizens detained after residing in the United States are entitled to custody determinations under § 1226(a). See, e.g., Cruz-Hernandez v. Noem, No. CIV-25-1378-D, 2026 U.S. Dist. LEXIS 107, at *8 (W.D. Okla. Jan. 2, 2026); Zhidong Li v. Grant, No. CIV-25-1426-HE, 2026 U.S. Dist. LEXIS 9961, at *4 (W.D. Okla. Jan. 20, 2026); Fadeev v. Lyons, No. SA-25-CA-01758-XR, 2026 U.S. Dist. LEXIS 2781, at *12-13 (W.D. Tex. Jan. 7, 2026); Murzabaev v. Noem, No. EP-25-CV-00647-DB, 2025 U.S. Dist. LEXIS 259491, at *12 (W.D. Tex. Dec. 16, 2025); Parada-Hernandez v. Johnson, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 249952, at *18 (N.D. Tex. Oct. 29, 2025); Diaz Perez v. Thompson, No. 5:25-CV-1664-JKP, 2025 WL 3654333 (W.D. Tex. Dec. 15, 2025); Davila Mercado v. Lyons, No. 5:25-CV-1623-JKP, 2025 WL 3654268 (W.D. Tex. Dec. 11, 2025); Orellana v. U.S. Dep't of Homeland Sec., No. 5:25-CV-1028-JKP, 2025 WL 3471569 (W.D. Tex. Nov. 24, 2025); Gonzalez v. Ortega, No. 5:25-CV-1156-JKP, 2025 WL 3471571 (W.D. Tex. Nov. 24, 2025); Trujillo v. Noem, No. 5:25-CV-1266-JKP, 2025 WL 3471572 (W.D. Tex. Nov. 24, 2025); Granados v. Noem, No. SA-25-CA-01464-XR, 2025 WL 3296314 (W.D. Tex. Nov. 26, 2025).

24. Like the petitioners in those cases, Petitioner had been residing in the United States for an extended period of time, was not seeking admission at the time of arrest, and was re-detained without an individualized bond hearing. Accordingly, § 1226(a) applies, and due process requires an individualized custody determination.

C. Petitioner's Detention Violates Due Process Under the Mathews v. Eldridge Framework.

25. The "fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976). Determining what process is due requires balancing: (1) the private interest affected; (2) the government's interest; and (3) the risk of erroneous deprivation absent additional safeguards. Id. at 335.

26. *First*, Petitioner's interest in freedom from physical detention is fundamental. *Zadvydas*, 533 U.S. at 690. Petitioner had openly lived in Texas for over a year, established residence there, complied with all immigration requirements, and had no criminal history. His sudden, warrantless arrest in September, 2025, and subsequent transfer to the Detention Facility disrupted his life and deprived him of physical liberty. This factor weighs heavily in Petitioner's favor.

27. *Second*, Petitioner poses no flight risk and no danger to the community. He lived openly in Texas for over a year without any incidents or violations of law. In such circumstances, courts have consistently held that the government's interest in immigration enforcement is adequately protected by providing an individualized bond hearing. See Cortina v. Anda-Ybarra, No. EP-25-CV-00523-DB, 2025 U.S. Dist. LEXIS 226367, at *12–13 (W.D. Tex. Nov. 18, 2025); Murzabaev v. Noem, No. EP-25-CV-00647-DB, 2025 U.S. Dist. LEXIS 259491, (W.D. Tex. Dec. 16, 2025).

28. As such, this factor also weighs in Petitioner's favor.

29. *Third*, ICE detained Petitioner without notice, without a custody determination, and without access to a neutral adjudicator. The absence of basic individualized procedures creates a

substantial risk of erroneous detention, particularly where, as here, Petitioner has no criminal history and fully complied with prior release conditions. The government's re-detention of Petitioner more than a year after his initial release exemplifies the danger of arbitrary confinement absent procedural safeguards. This factor likewise weighs in Petitioner's favor.

D. ICE's Failure to Provide an Individualized Custody Determination Violates the Fifth Amendment.

30. Petitioner was re-detained pursuant to an ICE policy or practice that categorically denies individualized custody determinations to noncitizens previously released under § 1226(a). Where detention arises from a systemic policy that forecloses the very process required by statute and the Constitution, exhaustion of administrative remedies is excused. See Beharry v. Ashcroft, 329 F.3d 51, 62 (2d Cir. 2003); Huamani v. Francis, 2025 U.S. Dist. LEXIS 219101, at *20.

31. Because DHS failed to provide Petitioner with an individualized custody hearing as required by § 1226(a) and the Fifth Amendment, his continued detention is unlawful.

E. Burden of Proof at a Bond Hearing.

32. Finally, Courts overwhelmingly hold that, in § 1226(a) custody hearings, the Government bears the burden of proving by clear and convincing evidence that continued detention is justified based on flight risk or danger. See e.g. Cortina v. Anda-Ybarra, No. EP-25-CV-00523-DB, 2025 U.S. Dist. LEXIS 226367, at *14 n.7 (W.D. Tex. Nov. 18, 2025).

33. Petitioner respectfully seeks a prompt bond hearing at which the government must meet that burden.

PRAYER FOR RELIEF

WHEREFORE, the Petitioner respectfully request that this Court:

A. Assumes jurisdiction over this matter;

B. Issues a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and orders Respondents to immediately release Petitioner from ICE's/DHS's custody, and/or release under reasonable conditions of supervision or any less restrictive alternative the Court deems appropriate, or in the alternative, -

C. Order Respondents to provide Petitioner with a bond hearing before an immigration judge no later than a date set shortly after this Court grants the petition, at which the government shall bear the burden of justifying, by clear and convincing evidence, the dangerousness or flight risk posed by Petitioner's continued detention;

D. Declare that Respondents' detention of Petitioner without notice, opportunity to be heard, or individualized determination of flight risk or dangerousness violates Petitioner's Fifth Amendment right to due process;

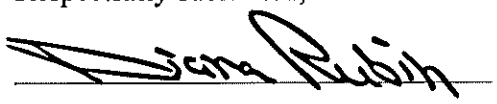
E. Enjoin Respondents from re-detaining Petitioner upon his release from ICE's/DHS's custody without: (a) providing Petitioner with prior written notice of the grounds for detention; (b) affording Petitioner an opportunity to be heard and to present evidence demonstrating that his release would not pose a danger to property or persons and that he is likely to appear for any future proceeding; and (c) making an individualized determination, supported by specific facts and evidence, that Petitioner poses a flight risk or danger to the community;

F. Award Petitioner his reasonable costs and attorneys' fees;

G. Grant such other and further relief as this Court deems just, proper, and equitable.

Dated: January 29, 2026
Port Washington, New York

Respectfully submitted,



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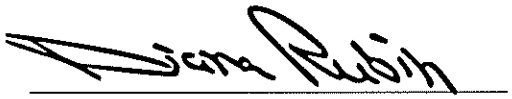
VERIFICATION

I, Diana Rubin, Esq., declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the attorney for Petitioner, GAURAV KUMAR, in this action.
2. Petitioner is currently detained by immigration authorities and, due to the conditions of confinement and practical limitations on access, is unable to sign this verification at this time.
3. I submit this verification on Petitioner's behalf pursuant to 28 U.S.C. § 2242, which permits a habeas petition to be verified "by the person for whose relief it is intended or by someone acting in his behalf."
4. I have reviewed the subject Petition for Writ of Habeas Corpus.
5. The factual statements contained in the Petition are true and correct to the best of my knowledge and belief based on information provided by Petitioner and my investigation.

Executed on this 29th day of January, 2026, in New York.

Dated: January 29, 2026
Port Washington, New York



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