LAXMAN ADHIKARI
ADHIKARI LAW AND ASSOCIATES PC
1390 MARKET STREET, SUITE 200
SAN FRANCISCO, CA 94102
TEL: (650) 483 8614
LAXMAN@ADHIKARILAWUSA.COM
ATTORNEY FOR PETITIONER

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
San Antonio Division

SHANTI K C
[A# [redacted]],

Petitioner,

v.

BOBBY THOMPSON, Warden of South Texas ICE Processing Center; **DAVID J. VENTURELLA,** Acting Director of United States Immigration and Customs Enforcement; **MARKWAYNE MULLIN,** Secretary of the United States Department of Homeland Security; **TODD BLANCHE,** Acting Attorney General of the United States, acting in their official capacities,

Respondents.

Case No.: 5:26-cv-04196

PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

1. Shanti K C ("Petitioner") brings this Habeas Petition respectfully seeking this Court to order her immediate release from custody, as her arrest and current detention are unlawful. Petitioner next asks the Court to order and declare that any

future detention or arrest can only occur pursuant to the procedures and requirements of 8 U.S.C. §1226(a) and the U.S. Constitution.

2. Petitioner respectfully requests that the Court expedite this matter or, in the alternative, order her immediate release. Petitioner is the victim of serious criminal conduct and is expected to assist the Austin Police Department in the investigation and prosecution of the perpetrator. Detective Ramon (Batch no. 8430) is handling this case. Based on the facts presently known, the perpetrator's conduct may constitute, among other offenses, sexual assault, sexual abuse by coercion, physical assault, criminal threats, witness intimidation, retaliation against a crime victim, false reporting to law enforcement, harassment, stalking, and any additional criminal violations that may be uncovered during the course of the investigation. Petitioner submits that her continued detention substantially impairs her ability to cooperate with law enforcement and participate meaningfully in the investigation and prosecution of these offenses. See the ***Declaration of Laxman Adhikari.***

3. **Petitioner respectfully asks the Court to issue an order requiring Respondents to answer and show cause as to why the habeas should not be granted within 5 days.** There are no factual questions in dispute in this case. The legal issue has been repeatedly resolved against the Respondents, both nationwide and within this district. Respondents continue to "benefit" from the unlawful detention of Petitioner and thousands of similarly situated noncitizens.

4. The Fifth Circuit's recent decision in *Buenrostro Mendez v. Bondi*, 166 F.4th 494 (5th Cir. Feb. 6, 2026), does not alter the conclusion that Petitioner's rearrest constitutes a due process violation. The Buenrostro-Mendez panel opinion held that the statute does not entitle noncitizens who entered without inspection to a bond hearing when they are detained pending removal proceedings. ***Id.*** However, the decision does not involve due process claims and, notably, only involves

noncitizens who were arrested once. Petitioner, meanwhile, was arrested, released, and then rearrested, a fact that is significant to due process claims and to statutory and regulatory claims. *See e.g. Guerra-Miranda v. Bondi*, No. EP-26-CV-00028-KC (W.D. Tex. Jan. 21, 2026).

5. Petitioner is an asylum seeker who fled Nepal. She arrived in the United States on November 21, 2023, and entered without inspection near Tecate, CA **(Ex. 2)**. She was encountered and apprehended by U.S. immigration authorities and released on or around November 23, 2023 ***(Id.)***. In her Form I-862, she was ordered to appear before an Immigration Judge on March 31, 2026. Petitioner filed an application for asylum with the court in a timely manner, obtained employment authorization, secured employment, and has complied with all requirements concerning his removal proceedings and presence in the United States **(Ex. 3, Form I-589).**

6. Then, approximately 2 years later, Respondents rearrested and detained the Petitioner on June 19, 2026 **(Ex. 1, Form I-830).**

7. Petitioner currently remains detained at South Texas ICE Processing Center in Pearsall, Texas **(Ex. 1)**.

8. District Courts across the country have, almost uniformly, found Respondents' rearrest and re-detention of noncitizens, where no notice was provided and where there was no change in material circumstances, to be unlawful. This case is no different. *See e.g., Dahal v. Thompson,* No. 5:26-cv-02275-FB, slip op. at __ (W.D. Tex. June 1, 2026); *Ribero-Ardila v. Rodriguez*, No. 5:26-cv-00689-JKP (W.D. Tex. Apr. 2026) (granting § 2241 habeas petition and ordering immediate release because petitioner, previously released under § 1226(a), could not be re-detained under mandatory detention authority of § 1225(b) without due process or individualized justification); *Sosnava Rodriguez v. Bondi*, No. 1:26-cv-002xx (W.D. Tex. Apr. 2026) (granting habeas relief because petitioner's detention under § 1225(b) after long-term presence in Texas and pending removal proceedings

violated the INA and Fifth Amendment due process protections); *Rojas-Rojas v. Warden, T. Don Hutto Detention Center*, No. 1:26-cv-00726 (W.D. Tex. Apr. 2026); *Gonzalez Herrera v. Warden, Karnes County Immigration Processing Center*, No. SA-26-CA-00862-XR (W.D. Tex. Mar. 2026); *Vega-Vega v. Bondi*, No. 5:25-cv-01869-JKP (W.D. Tex. Mar. 2026); *Aguilera Hernandez v. Warden, Dilley Immigration Detention Center*, No. 5:25-cv-01860 (W.D. Tex. Jan. 30, 2026; relied upon repeatedly in Mar.–Apr. 2026 cases); *Unnamed petitioner order*, No. 5:26-cv-00683 (W.D. Tex. Mar./Apr. 2026).

9. Similarly, thousands of cases in this district, this state, and across the country involve facts like Petitioner's, and judges have ordered release from detention after finding such detention unconstitutional. See e.g., *Conejo Arias v. Noem,* 818 F.Supp.3d 864 (W.D. Tex. Jan. 31, 2026); *Ortega-Aguirre v. Noem,* No. 4:25-CV-04332, 2025 U.S. Dist. LEXIS 233142, at *7 (S.D. Tex. 2025*), 2025 WL 3684697;* M.*K. v. Arteta*, 2025 U.S. Dist. LEXIS 265542, **11; (S.D.N.Y. Dec. 23, 2025)(noting over 300 rulings on this issue); Alberto R.C. v. Murray,* No. 1:25-cv-01618-KES-SKO (HC), 2025 LX 513970 (E.D. Cal. Dec. 16, 2025*); Sharan S. v. Chestnut,* No. 1:25-cv-01427-KES-SKO (HC), 2025 LX 524863 (E.D. Cal. Nov. 12, 2025)*; Gagandeep Singh v. Bowen,* No. 5:25-cv-03034-CAS-PD, *2025 LX 590018, at *9 (C.D. Cal. Nov. 21, 2025); Estrada Elias v. Knight,* No. 1:25-CV-00594-BTW, 2025 WT 3228262, at *1 (D. Idaho Nov. 19, 2025) *(collecting cases); see also Tut v. Noem,* No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266, at *9 n.1 (C.D. Cal. Oct. 16, 2025) (collecting cases in this district)*; Doe v. Becerra*, No. 2:25-cv-647-DJC-DMC, 2025 U.S. Dist. LEXIS 37929 at *8 (E.D. Cal. Mar. 3, 2025) (granting temporary restraining order); *López v. Wofford, No. 1:25-cv-01226-KES-SKO (HC), 2025 LX 491132, (E.D. Cal. Oct. 17, 2025)*(requiring release of asylum seeker and a pre-detention bond hearing before re-arrest)*; Rosado v. Figueroa, 2025 U.S. Dist. LEXIS 156344, *34-35* (D. AZ August 11, 2025); *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025 U.S. Dist. LEXIS 127539 at

*4 (N.D. Cal. July 4, 2025) (same), (N.D. Cal. July 24, 2025); The cases finding § 1225(b) to properly apply would seem all to be distinguishable in that they involve noncitizens who were *arrested but once* and do not present the due process or statutory questions involved in rearrest. While there are a few outlying decisions within this District, they seem only to involve cases factually distinguishable from Petitioner's in that these cases involve longtime residents who are detained for the first time. *See e.g., Ordonez v. Frink*, No. 4:25-cv-06386, 2026 U.S. Dist. LEXIS 9827, at *3 (S.D. Tex. Jan. 20, 2026) (finding that 1225(b) applies to long time unlawfully present noncitizens who entered without inspection and were arrested by immigration officials only once while giving "respectful acknowledgement" "to the seven other district court judges in the Houston Division who [found that § 1226(a) governs].")

10. Civil Immigration Detention is generally only permissible for two reasons: to ensure a noncitizen's appearance at immigration hearings and to prevent danger to the community. Petitioner's rearrest, after having been found not to constitute a flight risk or danger, may not be re-detained in the absence of changed circumstances relating to those factors. *Cadena v. El Paso Cnty.*, 946 F.3d 717, 727 (5th Cir. 2020).

11. Petitioner's arrest and detention are causing him and his family ongoing and irreparable harm. The conditions of confinement are punitive, and access to counsel to assist with preparation for his asylum application is limited. Additionally, Petitioner is unable to work, limiting his ability to support himself and afford counsel.

12. The Constitution protects Petitioner—and every other person present in this country—from arbitrary arrest and detention and guarantees him due process of law. While the Executive Branch has broad power over the regulation of noncitizens, those powers are still "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).

13. Petitioner respectfully and urgently seeks a writ of habeas corpus ordering the government to release him from unlawful detention, prohibiting her re-arrest absent a finding that she is a danger to his community or flight risk from a neutral decisionmaker.

II. JURISDICTION AND VENUE

14. 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).

15. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is physically detained within this district. Petitioner is detained at the South Texas ICE Processing Center in Pearsall, Texas.

III. PARTIES

16. Petitioner Shanti K C is a 39-year-old native and citizen of Nepal. She was briefly arrested and then released after entering the United States on or around November 21, 2023, without inspection. She was rearrested on June 19, 2026 (**Ex. 1**, Form I-830E). She remains detained at the South Texas ICE Processing Center in Pearsall, Texas.

17. Respondent **Bobby Thompson** is the warden of the South Texas ICE Processing Center. In this capacity, Respondent is in charge of ICE's enforcement and

removal operations, including detention. Respondent Thompson is the immediate physical custodian of Petitioner. He is sued in his official capacity.

18. Respondent **David J. Venturella** is the Acting Director of ICE. As the Senior Official Performing the Duties of the Director of ICE, he is responsible for the administration and enforcement of the immigration laws of the United States, routinely transacts business in this District, and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Lyons is sued in his official capacity.

19. Respondent **Markwayne Mullin** is the Secretary of Homeland Security and has ultimate authority over DHS. In that capacity and through his agents, Respondent Mullin has broad authority over and responsibility for the operation and enforcement of the immigration laws; routinely transacts business in this District; and is legally responsible for pursuing any effort to detain and remove the Petitioner. Respondent Mullin is sued in his official capacity.

20. Respondent **Todd Blanche** is the Acting Attorney General of the United States and the most senior official at the Department of Justice. In that capacity and through her agents, she is responsible for overseeing the implementation and enforcement of the federal immigration laws. The Attorney General delegates this responsibility to the Executive Office for Immigration Review, which administers the immigration courts and the BIA. Respondent Blanche is sued in his official capacity.

IV. EXHAUSTION

21. There is no requirement to exhaust because no other forum exists in which Petitioner can raise the claims herein. There is no statutory exhaustion requirement before challenging the constitutionality of an arrest or detention, or a policy under the Administrative Procedure Act. Prudential exhaustion is not required here

because it would be futile, 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). Any further exhaustion requirements would be unreasonable.

22. Additionally, *Petitioner has exhausted all available remedies.* EOIR has recently issued guidance to all immigration judges instructing that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (any noncitizen who entered without inspection is subject to § 1225(b)) remains binding in all immigration courts despite orders from various district courts, including in class litigation in the Central District of California.

V. LEGAL BACKGROUND

A. The Constitution prohibits arbitrary arrest and detention of noncitizens

23. The Constitution affords and requires due process rights for "all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are both substantive and procedural.

24. First, "[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).

25. These protections extend to noncitizens as "[i]n 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). Accordingly, "[f]reedom 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.

26. Substantive due process requires that all forms of civil detention—including immigration detention—bear a "reasonable relation" to a non-punitive purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 338 (S.D. Tex. 2020) ("Where the government is holding the detainee in conditions that amount to punishment, and those conditions do not reasonably relate to a 'legitimate, non-punitive governmental objective,' such conditions violate the detainee's due process rights." (quoting *Cadena v. El Paso Cnty.*, 946 F.3d 717, 727 (5th Cir. 2020)); *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

27. Secondly, the Due Process Clause's procedural protections require that even permissible forms of detention only be imposed where procedural safeguards are in place and have been followed. *Lopez v. Heinauer*, 332 F.3d 507, 512 (8th Cir. 2003) ("The Supreme Court has long recognized that deportable aliens are entitled to constitutional protections of due process.").

28. Except in rare situations, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). This is so even in cases where that freedom is lawfully revocable. *See Hurd v. D.C., Gov't*, 864 F.3d at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context).

29. After an initial release from custody on conditions, even a person paroled following a conviction for a criminal offense for which they may lawfully have remained incarcerated has a protected liberty interest in that conditional release. *Morrissey*, 408 U.S. at 482. As the Supreme Court recognized, "[t]he parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." ***Id.*** "By whatever name, the liberty is valuable and must be seen within the protection of the [Constitution]." ***Id.***

30. This reasoning applies with equal or greater force to people released from civil immigration detention. Noncitizens residing in the United States, like Petitioner, have a protected liberty interest in their ongoing freedom from detention. *See Zadvydas*, 533 U.S. at 690. Further, "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).

B. Due Process and the Immigration and Nationality Act Protect Noncitizens from Summary Removal Without a Hearing.

31. Deportation, like detention, constitutes a deprivation of liberty protected by the Due Process Clause. A noncitizen's interest in deportation proceedings "is, without question, a weighty one" because "he stands to lose the right 'to stay and live and work in this land of freedom.'" *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting *Bridges v. Wixon*, 326 U.S. 135, 154 (1945)).

32. Removal proceedings under Section 240 of the Immigration and Nationality Act ("Section 240" proceedings) accordingly provide important substantive and procedural protections. Noncitizens placed in Section 240 proceedings following initial arrest (as was the petitioner in this case) are entitled to full hearings in immigration court before immigration authorities can remove them. 8 U.S.C. § 1229a. Congress has afforded statutory rights and protections, including the right

to be represented by counsel of their choice and the right to present and confront evidence. 8 U.S.C. § 1229a (b)(4). They are also entitled to administrative appellate review at the Board of Immigration Appeals and further judicial review in the federal Courts of Appeals. *See* 8 C.F.R. § 1003.1(b) (Board of Immigration Appeals); 8 U.S.C. § 1252(a)(5) (Courts of Appeals).

C. Detention under the Immigration & Nationality Act: 8 U.S.C. §§ 1225 & 1226

33. Detention of noncitizens who have not been ordered removed is generally governed by one of two sections of the Immigration and Nationality Act: INA §§ 235 & 236 (8 U.S.C. §§ 1225, 1226).

34. Section 235 is titled "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." The statute provides: An alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter an applicant for admission. . .Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title. 8 U.S.C. § 1225(a)(1), (b)(2)(A).

35. An applicant is seeking "admission," as that term is defined by § 1101(a)(13)(A), if he is seeking "lawful entry . . . after inspection" and authorization. *Tovar v. Noem*, No. 5:25-CV-1509-JKP, 2025 U.S. Dist. LEXIS 250408, at *13 (W.D. Tex. 2025).

36. An "[a]rriving alien means an applicant for admission coming or attempting to come into the United States . . . regardless of the means of transport." 8 C.F.R. § 1.2. "Admission" and "admitted" mean "the lawful entry of the alien into the

United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A).

37. Noncitizens subject to mandatory detention under § 235(b) may be released only if they are "paroled 'for urgent humanitarian reasons or significant public benefit.'" *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) (quoting 8 U.S.C. § 1182(d)(5)(A)); *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at *7 (E.D.N.Y. Oct. 6, 2025) (describing mandatory detention under § 235).

38. Section 1226 (INA § 236), titled "Apprehension and detention of aliens," states: "On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—(1) may continue to detain the arrested alien; and (2) may release the alien on—(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole." .8 U.S.C. § 1226(a). INA § 236 therefore creates a "discretionary detention framework" for noncitizens arrested and detained on a warrant issued by the Attorney General. *Gomes*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at *2. It "authorizes the [g]overnment to detain certain aliens already in the country pending the outcome of removal proceedings." J*ennings*, 583 U.S. at 289.

39. The arresting immigration officer has authority to make the initial custody determination. *See Gomes*, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at *2 (citing 8 C.F.R. § 1236.1(c)(8)).

40. The noncitizen then "ha[s] the right to request a custody redetermination (i.e., bond) hearing before an Immigration Judge." *Id.* (citing 8 C.F.R. § 1236.1(c)(8), (d)(1)). "Bond may be denied only if the government 'either (1) prove[s] by clear

and convincing evidence that [the noncitizen] poses a danger to the community or (2) prove[s] by a preponderance of the evidence that [the noncitizen] poses a flight risk.'" *Id.* (alterations in original) (quoting *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021)).

41. INA Section 236(a)(2)(B) also allows release "on an Order of Recognizance, which is a form of conditional parole." *Id.* (citations omitted).

42. Thus, INA § 236(a) requires an individualized custody determination before a noncitizen may remain detained, including the opportunity to seek a bond redetermination hearing before an Immigration Judge. *See Hyppolite*, 2025 U.S. Dist. LEXIS 197628, 2025 WL 2829511, at *8 (citation omitted); *Perez v. Albarran*, No. 1:25-cv-01540, 2025 U.S. Dist. LEXIS 224966, at *7 (E.D. Cal. Nov. 14, 2025); *Salcedo Aceros v. Kaiser*, No. 25-cv-06924-EMC, 2025 U.S. Dist. LEXIS 179594, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025) (citing *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017)). Noncitizens placed in removal proceedings under 8 U.S.C. § 1229a are further entitled to the procedural protections provided under § 1229a(b)(4), including the opportunity to be represented by counsel, to present evidence, and to examine and object to evidence presented by the government.

VI. FACTUAL ALLEGATIONS

A. DHS and EOIR seek to increase arrests and detentions

43. Since early last year (2025), DHS has implemented a series of policies aimed at detaining noncitizens present in the United States without inspection and even those who had previously been released from custody on bond, recognizance, or parole.

44. DHS's policies appear to be motivated by the Administration's imposition of quotas of 3,000 ICE arrests per day. In part as a result of this campaign, ICE's

arrests of noncitizens with no criminal record have increased more than 800% since before January 2025.[1]

45. The government's current campaign marks a significant departure from prior DHS practice, which—consistent with longstanding judicial precedent—generally permitted re-detention of noncitizens previously released from custody only upon a material change in circumstances relating to flight risk or danger to the community. *See e.g., Lorenzo C.P. v. Noem*, No. 1:25-cv-181, 2025 U.S. Dist. LEXIS 264574, at *7–8 (S.D. Tex. 2025); *De Jesús Aguilar v. English*, No. 3:25-CV-898 DRL-SJF, 2025 U.S. Dist. LEXIS 231463, at *15 (N.D. Ind. Nov. 25, 2025); *Salinas v. Woosley*, No. 4:25-cv-121, 2025 U.S. Dist. LEXIS 228539, 2025 WL 3243837, at *2 (W.D. Ky. Nov. 20, 2025); *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) (describing prior agency practice).

B. BIA decision aligns Agency precedent with novel and expanded use of detention to all persons present without having been inspected; Respondents increase pretextual rearrests.

46. For decades, noncitizens who entered without inspection, were arrested in the United States, and were placed into removal proceedings were generally subject to discretionary detention under 8 U.S.C. § 1226(a) (and its predecessor statute). Under that framework, they could be considered for release on bond or conditional parole by the Department of Homeland Security ("DHS") and could receive a bond hearing in immigration court before an IJ, who could order release if found not to pose an undue flight risk or danger that would justify continued detention.

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[1] José Olivares & Will Craft, *ICE Arrests of Migrants with No Criminal History Surging under Trump*, The Guardian, June 14, 2025, https://www.theguardian.com/us-news/2025/jun/14/ice-arrests-migrants-trump-figures.

47. The government upended this long-held policy and understanding of the law in 2025.

48. First, on July 8, 2025, U.S. Immigration and Customs Enforcement ("ICE") issued an interim guidance memo stating that anyone who entered without inspection was ineligible for release on bond and could not challenge their detention at a bond hearing in immigration court, regardless of how long an individual has lived in the United States.

49. As a result, DHS attorneys started arguing, and some IJs started finding, that such individuals were not eligible for bond hearings in immigration court.

50. Then, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision, binding on all IJs, holding that an IJ had no authority to consider bond requests for any person who entered the United States without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

51. Respondents have continued to rearrest and detain noncitizens across the country who entered the U.S. without inspection even where the noncitizen was previously released from custody under INA § 236.

52. Respondents often cite de minimis alleged violations of conditions of prior release as pretext for rearrest.

53. Numerous sources have reported that the alleged violations are not supported in Respondents' records-keeping systems or that noncitizens report the alleged violations are simply not accurate. See *e.g. Ramazan M. v. Andrews*, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at *6 (E.D. Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where Respondents alleged check-in and other electronic monitoring violations, because "[w]hile respondents argue that petitioner is a flight risk, the purpose of a bond hearing is for a neutral decisionmaker to consider and evaluate such an argument to determine whether it

is consistent with the facts and to ensure that noncitizens like petitioner are not deprived of their liberty without justification"), and at *E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ordering immediate release of petitioner and finding that it does not "necessarily follow that Petitioner can be detained for [release conditions] violations without a hearing. That the Government may believe it has a valid reason to detain petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process.").

54. Judges have also found the supposed violations "negligible" or been skeptical of the existence of purported violations. *See e.g. Alas v. Albarran*, 2025 U.S. Dist. LEXIS 207060 *2 FN1(N.D. Cal. Oct. 15, 2025).

C. Petitioner's unlawful arrest and detention

55. Petitioner is a 39-year-old citizen and native of Nepal. **Ex. 2.**

56. Petitioner entered the United States without inspection on November 21, 2023. **Ex. 2.**

57. Petitioner was arrested by Customs and Border Protection inside the United States.

58. Petitioner was then released, on or around November 23, 2023, on her own recognizance (ORR)under Section 236(a). **Ex. 2.**

59. Petitioner was not inspected at the time of entry or initial apprehension.

60. Petitioner was not paroled from custody pursuant to INA §212(d)(5). **Ex. 2.**

61. No credible fear or other interview as to admissibility occurred during initial arrest.

62. Petitioner thereafter timely filed an application for asylum (Form I-589) with

USCIS on June 21, 2024. **Ex. 3.**

63. Petitioner never missed any immigration court hearings or required appointments with Immigration and Customs Enforcement.

64. Petitioner was rearrested on June 19, 2026. **Ex. 1.**

65. Petitioner was falsely accused of criminal trespass at her former workplace by her abuser in retaliation and preventing her from reporting the crimes committed against her to law enforcement. After the criminal trespass charge was dismissed, ICE immediately took Petitioner into custody and rearrested her under the immigration laws.

66. She remains detained and was arrested despite no change in circumstances and no new grounds for finding that She is a flight risk or danger to the community.

67. Respondents were aware that Petitioner's presence in the United States is authorized at the time of the arrest.

68. Petitioner currently remains detained in Respondents' custody. **Ex. 1.**

69. Petitioner is not subject to a final order of removal. Her Master hearing has been scheduled for July 8, 2026. **Ex. 4.**

70. Respondents claim Petitioner is ineligible for bond hearing and is held under 8 USC § 1225(b)(2).

71. Petitioner has fully complied with all requirements to apply for asylum protection and to appear at immigration appointments following her unlawful entry to the U.S. *See* Adhikari Decl. **Ex. 2.**

72. Petitioner has never been determined to be a flight risk or danger to the community; her detention is not related to either of the permissible justifications

for civil immigration detention. Her detention does not further any legitimate government interest.

D. Petitioner is suffering irreparable and ongoing harm as a result of unlawful detention

73. Petitioner is being deprived of his liberty without lawful basis or permissible justification. Petitioner is unable to fully assist counsel to defend him from removal from the United States or in his ongoing claim for asylum protection.

74. Petitioner is unable to work, though holding employment authorization, and is struggling to support himself, his family, and to continue to afford to pay legal fees for attorneys to assist in his case. *See* Adhikari Decl; *Rodriguez-Castellon v. Tate, et al.*, No. 4:25-cv-4270, Doc. 17 at 3 (S.D. Tex. Sept. 24, 2025).

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Substantive Due Process—Detention)

75. Petitioner repeats and realleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

76. 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.

77. 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.*

78. Petitioner is not a flight risk or danger to the community. Respondents have already made this determination, and nothing has changed. 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.

79. Moreover, Petitioner's detention is punitive as it bears no "reasonable relation" to any legitimate government purpose. ***Id.*** (Finding 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"—namely, to meet newly imposed DHS quotas and transfer immigration court venue away from an IJ who refused to facilitate DHS's new expedited removal scheme. *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring); *Cadena v. El Paso Cnty.*, 946 F.3d 717, 727 (5th Cir. 2020).

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment to the United States Constitution

(Procedural Due Process—Detention without pre-deprivation hearing or notice)

80. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

81. Petitioner has a strong liberty interest under the Due Process Clause in not being re-incarcerated after prior release. *Herrera v. Tate,* No. H-25-3364, 2025 U.S. Dist. LEXIS 189999, at *31-32 (S.D. Tex. 2025*); Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972); *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); *Nadia Cristina DA Rocha Rosado v. Fred Figueroa, Warden, Eloy Det. Ctr.*, 2025 U.S. Dist. LEXIS 156344, *35.

82. 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); *Zinermon*, 494 U.S. at 127 (Generally, "the Constitution requires some kind of a hearing before the State deprives a person of liberty or property."). In the immigration context, for such hearings to comply with due process, the government must bear the burden to demonstrate, by clear and convincing evidence, that noncitizens pose 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).

83. Petitioner's re-detention without notices of reasons or a pre-detention hearing violated due process. Years after deciding to release Petitioner from custody, and doing so under Section 1226, Respondents have re-detained Petitioner without prior notice, a hearing, and without any relevant change in circumstances.

84. Petitioner's arrest and continued detention without prior hearing constitute an ongoing violation of Petitioner's constitutional right under the Due Process Clause.

THIRD CLAIM FOR RELIEF

Violation of the Immigration & Nationality Act and implementing regulations

85. Petitioner repeats and re-alleges the allegations contained in the preceding paragraphs of this Petition as if fully set forth herein.

86. Respondent's claim that Petitioner is detained pursuant to 8 U.S.C § 1225(b).

87. Petitioner, who was previously arrested and released under 8 USC § 1226, and then rearrested years later, is not properly subject to § 1225(b) at the time of rearrest.

88. Respondents may only detain noncitizens pursuant to specific authority under U.S. law.

89. No statutory authority exists authorizing Respondents to detain Petitioner in the absence of a permissible basis and a pre-deprivation hearing. Petitioner's continued detention is therefore unlawful.

VIII. VERIFICATION OF PETITION

90. I, Laxman Adhikari, hereby swear and affirm that the contents of this petition are true and correct to the best of my knowledge and understanding, based on direct discussion with Petitioner and review of portions of his "A-file" and Electronic Record of Proceedings ("EROP") maintained by EOIR's Immigration Court, subject to penalty of perjury.

IX. PRAYER FOR RELIEF

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;
3. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment and the Immigration and Nationality Act.
4. Enjoin Respondents from detaining Petitioner under § 1226(a) unless his detention is ordered at a custody hearing before a neutral arbiter in which the government bears the burden of proving, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
5. Order that Respondents may not arrest Petitioner while INA § 1229a

proceedings are ongoing, including during any direct appeal from dismissal of proceedings by the Immigration Judge absent a change in material circumstances;

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

Respectfully submitted this 2nd Day of July 2026,

/s/ Laxman Adhikari
LAXMAN ADHIKARI
ADHIKARI LAW AND ASSOCIATES PC
1390 MARKET STREET, SUITE 200
SAN FRANCISCO, CA 94102
TEL: (650) 483 8614
LAXMAN@ADHIKARILAWUSA.COM
ATTORNEY FOR PETITIONER