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ATTORNEYS FOR PETITIONER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
MILAN, NM

Vijay Kumar

Petitioner

Mary De Anda-Ybarra, Field Office
Director of Enforcement and Removal
Operations, **ERO** El Paso Field Office,
Immigration and Customs Enforcement;
Kristi Noem, Secretary, U.S. Department of
Homeland Security; **Todd M. Lyons**, Acting
Director of the United States Immigration and
Customs Enforcement; **Pamela Bondi**, U.S.
Attorney General; Executive Office for
Immigration Review, **George Dedos**, Cibola
County Correctional Center
Respondents

Alien No.:



Case No.:

**PETITION FOR WRIT OF HABEAS
CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

- 1
2 1. Petitioner, Vijay Kumar ("Mr. Kumar"), by and through undersigned counsel, Jasmine
3 Pandher, Gahra of Gahra & Goswami, respectfully petitions this Honorable Court for
4 a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing and
5 unlawful civil immigration detention by the United States Department of Homeland
6 Security and its agents. Petitioner is currently confined at the Cibola County
7 Correctional in Milan, New Mexico, in custody of the facility's Warden.
- 8
9 2. On November 17, 2025, Immigration and Customs Enforcement ("ICE") officers took
10 the Petitioner into custody when he was asked to report at their Manhattan (Federal
11 Plaza) office.
- 12
13 3. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a).
14 Noncitizens detained under section 1226(a) are subject to discretionary detention and
15 can request a change in custody redetermination (i.e., bond hearing) with an
16 Immigration Judge. However, on July 8, 2025, DHS issued an internal Interim
17 Guidance ("Policy") that took the baseless position that—contrary to statutory
18 principles and governing case law—noncitizens like Petitioner who entered the United
19 States without permission or parole are subject to mandatory detention under 8 U.S.C.
20 § 1225(b) instead of discretionary detention under section 1226(a). On September 5,
21 2025, the Board of Immigration Appeals ("BIA") issued a decision in *Matter of Yajure*
22 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS' position.
- 23
24
25 4. Petitioner seeks immediate release as Respondents have not provided him with a
26 constitutionally adequate bond hearing before a neutral decisionmaker. The
27 Immigration judge has denied his bond hearing request and has allowed ICE to continue
28

1 to detain him. As referred to above, Immigration Judges are relying on the *Matter of*
2 *Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), to hold that petitioners are ineligible for bond,
3 despite evidence disputing the underlying factual assumptions regarding their
4 apprehension and processing. Futility is an exception to the prudential exhaustion
5 requirement under the law. Petitioner has been subject to *Matter of Yajure Hurtado*
6 where the Board held that all noncitizens who entered the United States without
7 admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible
8 for IJ bond hearings. Petitioner has also been subjected to the aforementioned Policy
9 instructing all ICE employees to consider anyone arrested within the United States and
10 charged with being inadmissible under § 1182(a)(6)(A)(i) to be an “applicant for
11 admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory
12 detention. The Policy itself states that it was issued “in coordination with the
13 Department of Justice (DOJ).” Given these facts, any appeals to the Board to resolve
14 this matter, would be futile and lead to further delays.
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18 5. Hence, as a result of this jurisdictional denial, Petitioner now faces prolonged and
19 potentially indefinite detention without any meaningful opportunity for an
20 individualized custody review. He is actively pursuing asylum, withholding removal,
21 and protection under the Convention Against Torture before the Immigration Court.
22 Despite his ongoing litigation and eligibility for relief, DHS continues to detain him
23 without providing a mechanism for release or a hearing before an Immigration Judge
24 empowered to evaluate danger, flight risk, or alternatives to detention.
25

26 6. Petitioner’s continued detention without a bond hearing violates Petitioner’s Fifth
27 Amendment Due Process rights and the Immigration and Nationality Act (“INA”).
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1 DHS' Policy has upended decades of DHS' own interpretation of bond eligibility under
2 sections 1226(a) and 1225(b). Nearly every district court that has addressed this issue
3 has rejected DHS' unfounded position and granted habeas relief. For the foregoing
4 reasons, the Court should grant habeas relief and direct Respondents to release
5 Petitioner, or in the alternative promptly provide him with a constitutionally adequate
6 bond hearing § 1226(a) within seven days.
7

8 **FACTUAL BACKGROUND**

- 9
- 10 1. Petitioner, Mr. Kumar is a 29-year-old male and a citizen and national of India. He fled
11 the political persecution in India. Then made the dangerous journey to the United States
12 to seek safety and protection. Petitioner does not have a criminal record, has no history
13 of violence or dangerous behavior, and has consistently demonstrated compliance with
14 immigration authorities throughout his detention (as to the best of the undersigned
15 knowledge).
16
 - 17 2. Petitioner last entered the United States by crossing at or near Champlain, NY on or
18 about May 3, 2025. After entry, he was encountered by U.S. Border Patrol. After being
19 processed, Petitioner was placed in immigration proceedings under Section 240 of the
20 Immigration and Nationality Act and was released under an "Order of Release on
21 Recognizance" (the "Order") by DHS for the purpose of continuing his removal
22 proceedings. Since his release, the Petitioner fulfilled the conditions of his release, filed
23 an application for asylum and withholding of removal and protection under the
24 Convention Against Torture before the Immigration Court.
25
 - 26 3. It is further pertinent to note that the Petitioner was released on his own recognizance
27 under the aforementioned Order, which expressly states that he was being released on
28

1 his own recognizance under Section 236 of the Immigration and Nationality Act.
2 Following this, Petitioner was placed in Section 240 removal proceedings, thereby
3 rendering him subject to discretionary detention under Section 236, not mandatory
4 detention under Section 235(b). Section 236 does not mandate detention and expressly
5 permits release on bond or conditional parole.
6

7 4. Despite Petitioners' compliance while released, including attending his court hearings
8 in his removal proceedings, he was abruptly and unlawfully re-detained by the
9 Department of Homeland Security (DHS) on November 17, 2025, at his ICE check-in,
10 officers took the Petitioner into custody at their Manhattan (Federal Plaza) office.
11

12 5. Prior to re-detaining the Petitioner, Respondents did not provide any written notice
13 explaining the basis for the revocation of his earlier release. Like
14

15 6. wise, Respondents did not assess whether the Petitioner presented a flight risk or danger
16 to the community prior to his re-arrest. Nor did Respondents provide a hearing before
17 a neutral decisionmaker, where ICE was required to justify the basis for re-detention or
18 to explain why the Petitioner is now a flight risk or danger to the community. As this
19 Court has held in multiple cases, due process demands a hearing prior to the
20 government's decision to terminate a person's liberty.
21

22 7. Petitioner was taken into the custody of U.S. Immigration and Customs Enforcement
23 and is currently detained at the Cibola County Correctional in Milan, New Mexico.

24 8. Petitioner has no criminal history, no disciplinary infractions during his detention, and
25 no evidence suggesting he poses a danger to the community. He has demonstrated
26 consistent cooperation with immigration authorities and was pursuing his asylum,
27 withholding of removal, and Convention Against Torture claims in good faith.
28

1 9. Petitioner now faces prolonged and potentially indefinite detention without any
2 mechanism for individualized custody review. He remains confined under restrictive,
3 penal-like conditions, despite having no criminal background, no history of
4 absconding, and a viable application for humanitarian protection.

5
6 10. Petitioner’s ongoing detention—based solely on a contested jurisdictional
7 classification and without any opportunity for an individualized determination of his
8 eligibility for release—violates the Immigration and Nationality Act, the Due Process
9 Clause of the Fifth Amendment, and fundamental constitutional protections against
10 arbitrary and indefinite detention. Petitioner therefore seeks immediate judicial
11 intervention to secure his release or, in the alternative, a constitutionally adequate bond
12 hearing before an Immigration Judge with authority to consider all relevant factors and
13 grant his release.
14

15 **JURISDICTION AND VENUE**

16
17 11. This action arises under the Constitution of the United States and the Immigration and
18 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

19 12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
20 28U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
21 Constitution (Suspension Clause)

22
23 13. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq.*,
24 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act,
25 28U.S.C. § 1651.

26 14. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
27 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–
28

1 17 (2003) (recognizing habeas jurisdiction over immigration detention challenges);
2 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Soberanes v. Comfort*, 388
3 F.3d1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly
4 brought directly through habeas.”).

5
6 15. No petition for a writ of habeas corpus has previously been filed in any court regarding
7 Petitioner.

8 16. Venue is proper because Petitioner is detained at Cibola County Correctional Center in
9 Milan, New Mexico, which is within the jurisdiction of this District. Venue is also
10 proper in this District because Respondents are officers, employees, or agencies of the
11 United States. *See* 28 U.S.C. §§ 1391(b) and (e)(1) *see also United States v. Scott*, 803
12 F.2d 1095, 1096 (10th Cir. 1986) (“A § 2241 petition for a writ of habeas corpus must
13 be addressed to the federal district court in the district where the prisoner is confined.”).

14
15 **PARTIES**

16
17 17. Petitioner **Mr. Kumar** is a citizen and national of India who is currently detained at
18 the Cibola County Correctional Center in Milan, New Mexico. He is held in the custody
19 of the United States Department of Homeland Security and brings this habeas petition
20 to challenge the legality of her ongoing civil immigration detention.

21
22 18. Respondent **Kristi Noem** is sued in her official capacity as the Secretary of the U.S.
23 Department of Homeland Security (“DHS”). In this capacity, Respondent is
24 responsible for the implementation and enforcement of the Immigration and
25 Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the
26 component agency responsible for Petitioner’s detention and custody. Respondent is a
27 legal custodian of Petitioner.
28

1 19. Respondent **Pamela Bondi** is sued in her official capacity as the Attorney General of
2 the United States and the senior official of the U.S. Department of Justice (DOJ). In
3 that capacity, she has the authority to adjudicate removal cases and to oversee the
4 Executive Office for Immigration Review (EOIR), which administers the immigration
5 courts and the BIA. Respondent is a legal custodian of Petitioner.
6

7 20. Respondent **Todd Lyons** is sued in his official capacity as the Acting Director of the
8 U.S. Immigration and Customs Enforcement. Respondent is a legal custodian of
9 Petitioner and has authority to release him.
10

11 21. Respondent **Jesse Mendez**, Field Office Director of the USCIS Albuquerque, NM,
12 issued in his official capacity. These official exercises supervisory responsibility over
13 immigration functions relevant to Petitioner's detention and the processing of matters
14 that affect her custody and immigration status.
15

16 22. Respondent, **George Dedos, Warden**, Cibola County Correctional Center, is
17 Petitioner's immediate custodian. The Warden maintains direct physical custody of
18 Petitioner pursuant to the facility's contract with U.S. Immigration and Customs
19 Enforcement ("ICE") to detain noncitizens and is a legal custodian of Petitioner.
20 Respondent is a legal custodian of Petitioner.
21

22 EXHAUSTION OF ADMINISTRATIVE REMEDIES

23 23. Petitioner has no administrative remedies to exhaust. Petitioner's continued detention
24 in ICE custody cannot be challenged by way of bond proceedings before the
25 Immigration Judge as Immigration Judges continue to rely on *Matter of Q. Li*, 29 I. &
26 N. Dec. 66 (BIA 2025) as well as *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
27 2025). Futility is an exception to the prudential exhaustion requirement. Therefore, a
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1 writ of habeas corpus is the sole avenue to vindicate his constitutional, statutory, and
2 regulatory rights and restore his liberty.

3 **LEGAL FRAMEWORK**

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

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

16
17 26. Finally, the Act also provides for detention of noncitizens who have been previously
18 ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. §
19 1231(a)–(b).

20
21 27. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the
22 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996,
23 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583,
24 3009–585. Section 1226(c) was most recently amended earlier this year by the LRA,
25 Pub. L. No.119-1, 139 Stat. 3 (2025).

26
27 28. Following enactment of the IIRIRA, the Executive Office of Immigration Review
28 drafted new regulations explaining that, in general, people who entered the country

1 without inspection were not considered detained under section 1225 and that they were
2 instead detained under section 1226(a). *See* Inspection and Expedited Removal of
3 Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
4 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed,
5 most noncitizens who entered without inspection—unless they were subject to some
6 other detention authority—received bond hearings. This practice was also consistent
7 with the practice prior the enactment of the IIRIRA, in which noncitizens who were not
8 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing
9 officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229
10 (1996) (noting that section 1226(a) simply “restates” the detention authority previously
11 found at section 1252(a)).
12

13
14 29. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs
15 Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in
16 coordination with the Department of Justice (DOJ), has revisited its legal position on
17 detention and release authorities. DHS has determined that section 235 of the
18 Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8
19 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for
20 admission. The following interim guidance is intended to ensure immediate and
21 consistent application of the Department’s legal interpretation while additional
22 operational guidance is developed.”
23

24
25 30. As a result, DHS now considers *all* noncitizens who have entered the United States
26 without inspection and are subject to the grounds of inadmissibility, including longtime
27 U.S. residents to be subject to mandatory detention under section § 1225(b) and
28

1 ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible
2 for a custody determination and release on recognizance, bond, or other conditions
3 under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens
4 admitted to the United States and chargeable with deportability under INA § 237, with
5 the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. §
6 1226(c)].” *Id.*

7
8 31. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure*
9 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of 8
10 U.S.C. § 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to
11 noncitizens who are present in the United States without admission.
12

13
14 **COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION**
15 **AND NATIONALITY ACT (INA) AND IMPLEMENTING**
16 **REGULATIONS**
17

18 32. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
19 fully set forth herein.

20 33. The Immigration and Nationality Act authorizes immigration detention only when it
21 serves a legitimate statutory purpose—namely, to ensure an individual’s appearance at
22 future proceedings or to protect public safety. See *Zadvydas v. Davis*, 533 U.S. 678,
23 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Detention that does not
24 advance those purposes, or that becomes arbitrary and indefinite, exceeds the
25 government’s statutory authority.
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1 34. Petitioner is a citizen and national of India who entered the United States seeking
2 protection and was subsequently placed in removal proceedings under section 240 of
3 the Immigration and Nationality Act.

4 35. Petitioner has no criminal history, no record of violence, and has never exhibited
5 conduct suggesting danger to the community or risk of flight. Nothing in his
6 immigration file indicates that he poses a threat to public safety or that he would fail to
7 appear for his hearings if released.

8 36. The jurisdictional denial by Immigration Judges currently in effect leaves Petitioner
9 with no administrative mechanism for custody review, effectively subjecting him to
10 prolonged and potentially indefinite detention without any statutory pathway to request
11 release.

12 37. The INA does not authorize indefinite detention of a noncitizen who has no final order
13 of removal, who poses no danger or flight risk, and who has not been afforded an
14 opportunity to present evidence regarding custody.

15 38. Petitioner's continued detention—without individualized assessment, without statutory
16 justification, and without any realistic prospect of removal in the reasonably
17 foreseeable future—exceeds the narrow detention authority granted by the INA and
18 violates controlling Supreme Court precedent limiting civil immigration detention to
19 purposes expressly authorized by Congress.

20 39. Accordingly, Petitioner's ongoing detention is unlawful under the Immigration and
21 Nationality Act, its implementing regulations, and established constitutional principles.
22 Petitioner respectfully requests that this Court order his immediate release.

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27 **COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH**

AMENDMENT TO THE U.S. CONSTITUTION

1
2 40. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
3 fully set forth herein.

4
5 41. ICE’s power to arrest a noncitizen who is at liberty is constrained by the demands of
6 due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the
7 government’s discretion to incarcerate non-citizens is always constrained by the
8 requirements of due process”). “It is well established that the Fifth Amendment entitles
9 [noncitizens] to due process of law in deportation proceedings.” *Demore v. Kim*, 538
10 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). “Freedom
11 from imprisonment—from government custody, detention, or other forms of physical
12 restraint—lies at the heart of the liberty” that the Due Process Clause protects.
13 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J.,
14 dissenting) (“Liberty under the Due Process Clause includes protection against
15 unlawful or arbitrary personal restraint or detention.”).

16
17
18 42. Petitioner is a citizen and national of India who entered the United States seeking
19 protection and was placed in removal proceedings under section 240 of the Immigration
20 and Nationality Act.

21
22 43. Petitioner has no criminal history, has not engaged in violence or dangerous behavior,
23 and has consistently cooperated with immigration authorities since his apprehension.
24 His detention has now become prolonged, with no statutory or administrative
25 mechanism available for individualized custody review. He faces ongoing
26 incarceration under penal-like conditions despite having no criminal background and
27 pursuing his asylum claims in good faith.

1 44. Petitioner’s liberty from immigration custody and his weighty interest in avoiding
2 incarceration is protected by the Due Process Clause. See *Zadvydas*, 533 U.S. at 690
3 (“Freedom from imprisonment...lies at the heart of the liberty” that the Due Process
4 Clause protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a
5 parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520
6 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

8 45. Immigration detention implicates a fundamental liberty interest. Prolonged detention
9 without a meaningful opportunity to challenge confinement violates the core due
10 process guarantees of notice, the right to be heard, and adjudication by a neutral
11 decisionmaker.

13 46. Accordingly, Petitioner’s continued incarceration without an individualized custody
14 determination violates the Due Process Clause of the Fifth Amendment. Habeas relief
15 is warranted to remedy these constitutional violations by ordering his immediate release
16 or, in the alternative, requiring a prompt and constitutionally adequate bond hearing
17 before a neutral adjudicator with authority to grant release.

19 **COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –**
20 **ARBITRARY AND CAPRICIOUS AGENCY ACTION**

21 47. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
22 fully set forth herein.

24 48. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2), requires courts to hold
25 unlawful and set aside agency actions that are arbitrary, capricious, an abuse of
26 discretion, or otherwise not in accordance with law. Under this standard, an agency
27 must articulate a rational connection between the facts found and the choices made,
28

1 and it must provide an adequate explanation for its actions consistent with statutory
2 authority. See *Judulang v. Holder*, 565 U.S. 42, 55 (2011).

3 49. The Department of Homeland Security and ICE acted arbitrarily and capriciously in
4 continuing to detain Petitioner without any individualized justification and failed to
5 consider the totality of his immigration history. Petitioner has no criminal history, no
6 record of violence or misconduct, and has consistently cooperated with immigration
7 authorities. Nothing in his record establishes that he presents a danger to the community
8 or a flight risk.

9 50. Despite these facts, DHS has maintained Petitioner's detention for an extended and
10 potentially indefinite period without providing any reasoned explanation or evidence
11 that continued confinement serves a legitimate statutory purpose. DHS has failed to
12 articulate why release under supervision, bond, or other alternatives would be
13 insufficient.

14 51. DHS's reliance on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), to justify continued
15 detention is arbitrary and contrary to law. *Q. Li* addresses the jurisdiction of
16 Immigration Judges to conduct bond hearings for individuals allegedly apprehended
17 shortly after entry. It does not compel DHS to detain such individuals indefinitely, nor
18 does it eliminate DHS's longstanding discretionary authority to release noncitizens on
19 parole, recognizance, supervision, or bond.

20 52. By treating *Q. Li* as an absolute bar to any form of custody review or discretionary
21 release, DHS has effectively adopted a blanket detention policy that substitutes
22 categorical rules for the individualized determinations required under the Immigration
23 and Nationality Act.

1 53. DHS has not conducted any meaningful custody assessment of Petitioner, nor has it
2 provided a rational explanation for refusing to exercise discretion in his case. Its failure
3 to consider Petitioner's lack of criminal history, his cooperation with authorities, his
4 pursuit of asylum, or his eligibility for alternatives to detention constitutes arbitrary and
5 capricious decision-making.
6

7 54. DHS's actions are inconsistent with the statutory purpose of civil immigration
8 detention, which is limited to ensuring appearance at future proceedings and protecting
9 public safety. Petitioner's continued confinement does not advance either purpose.
10

11 55. DHS has therefore acted in a manner that is arbitrary, capricious, an abuse of discretion,
12 and not in accordance with law. Its continued detention of Petitioner must be set aside
13 under 5 U.S.C. § 706(2)(A).
14

15 56. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner
16 respectfully requests that this Court order his immediate release or, in the alternative
17 direct DHS to provide a constitutionally adequate and reasonable custody
18 determination consistent with the requirements of the Administrative Procedure Act
19 and the Immigration and Nationality Act.
20

21 **COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE**
22 **FIFTH AMENDMENT**

23 57. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
24 fully set forth herein.

25 58. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of
26 equal protection that applies to all persons within the United States, including
27 noncitizens physically present, regardless of their immigration status. See *Reno v.*
28

1 *Flores*, 507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The
2 government may not selectively apply immigration laws or policies in a manner that
3 discriminates against a particular nationality or class of individuals without a rational
4 and legitimate governmental purpose.

5
6 59. Petitioner is placed in removal proceedings under section 240 of the Immigration and
7 Nationality Act, a statutory framework under which noncitizens ordinarily receive an
8 individualized custody determination before an Immigration Judge pursuant to section
9 236(a).

10
11 60. Petitioner is a citizen and national of India who fled his country seeking protection. He
12 has no criminal history, no record of violence or dangerous behavior, and has
13 cooperated fully with immigration authorities since entering the United States.

14 61. The government's treatment of Petitioner creates an unjustifiable disparity between
15 him and similarly situated detainees who receive individualized bond hearings. The
16 Fifth Amendment prohibits the government from treating similarly situated persons
17 differently without a rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564
18 (2000); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

19
20 62. DHS's categorical reliance on section 235(b) to foreclose Petitioner's access to custody
21 review—despite his placement in § 240 proceedings—lacks a rational connection to
22 any legitimate governmental purpose. Disparate treatment based solely on disputed and
23 unreviewed facts regarding manner of entry is arbitrary and not rationally related to the
24 goals of ensuring appearance or protecting public safety. See *Zadvydas*, 533 U.S. at
25 690 (civil detention must relate to its permissible purposes).
26
27
28

1 63. Moreover, the Ninth Circuit has recognized that immigration detention classifications
2 must comport with basic fairness and may not be applied in an arbitrary or
3 discriminatory manner. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011)
4 (government must justify detention with individualized evidence); *Rodriguez v.*
5 *Robbins*, 804 F.3d 1060, 1074–76 (9th Cir. 2015) (due process prohibits prolonged
6 detention without meaningful review).
7

8 64. DHS has provided no individualized or rational explanation for why Petitioner, unlike
9 others in the same statutory posture, is denied access to an individualized custody
10 determination. This unequal treatment violates the equal protection component of the
11 Fifth Amendment.
12

13 65. Petitioner’s continued incarceration under a discriminatory and arbitrary detention
14 classification violates constitutional guarantees of equal protection and further
15 underscores the unreasonableness and unlawfulness of his confinement.
16

17 66. Habeas relief is therefore warranted to remedy this unconstitutional disparate treatment
18 by ordering Petitioner’s immediate release or, in the alternative, directing DHS to
19 provide him with the same procedural protection and individualized custody review
20 available to similarly situated noncitizens.
21

22 **COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES**
23 **CONSTITUTION**

24 67. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though
25 fully set forth herein.

26 68. The Suspension Clause of the United States Constitution provides that “[t]he Privilege
27 of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion
28

1 or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. The Clause
2 guarantees the availability of judicial review to challenge the lawfulness of executive
3 detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S.
4 289, 300–05 (2001).

5
6 69. Habeas corpus remains available to all persons in the United States who are detained
7 by executive authority, including noncitizens in civil immigration custody. The
8 Supreme Court has made clear that Congress may not eliminate all avenues of
9 meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06.

10
11 70. Petitioner is detained solely pursuant to civil immigration authority. He has no criminal
12 history, no record of violence, and is pursuing his asylum, withholding, and Convention
13 Against Torture claims in good faith.

14 71. ICE has provided no discretionary parole review or case-specific custody assessment.

15
16 72. As elucidated above, no alternative remedy exists outside of habeas corpus through
17 which Petitioner may obtain judicial review of the legality of his ongoing confinement.
18 Neither the Immigration Courts nor the Board of Immigration Appeals possess
19 jurisdiction to review custody challenges arising from DHS’s mandatory-detention
20 classification.

21
22 73. The Suspension Clause forbids the government from creating a detention scheme that
23 eliminates all meaningful opportunity for detainees to test the legality of their
24 confinement. *Boumediene*, 553 U.S. at 779 (“The writ must be effective.”). Where no
25 adequate substitute exists, habeas review is constitutionally required. *St. Cyr*, 533 U.S.
26 at 305.

1 74. Petitioner’s detention, which is prolonged, indefinite, and wholly insulated from
2 individualized review, triggers the core protections of the Suspension Clause. Without
3 access to habeas relief, Petitioner would have no mechanism—judicial or
4 administrative— to contest the legality of her civil confinement.
5

6 75. The government’s application of *Matter of Q. Li* to categorically bar all custody review
7 violates the Suspension Clause by depriving Petitioner of an effective and
8 constitutionally required means to challenge unlawful detention.

9 76. Accordingly, habeas corpus relief is required. Petitioner respectfully requests that this
10 Court order his immediate release.
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

- 14 (1) Assume jurisdiction over this matter;
- 15 (2) Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to
16 file a return within three (3) days, absent good cause for a short extension not exceeding
17 ten days, and set the matter for a prompt hearing;
- 18 (3) Enjoin Respondents from transferring Petitioner during the pendency of the instant
19 action;
- 20 (4) Declare that Petitioner’s continued detention violates the Immigration and Nationality
21 Act, 8 U.S.C. § 1226(a); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);
22 and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 23 (5) Grant the writ of habeas corpus and order Petitioner’s immediate release from ICE
24 custody;
25
26
27
28

1 (6) Award Petitioner his costs and reasonable attorneys' fees pursuant to the Equal Access
2 to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

3 (7) Grant any other further relief this Court deems just and proper.
4

5
6 Dated: February 5, 2026

Respectfully Submitted,

7 **/S/ Jasmine Pandher**
8 **Jasmine Pandher, Esq.**
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PROOF OF SERVICE:

I, the undersigned, declare that my office is in Pleasanton, CA. I am over the age of eighteen (18) years and not a party to the action within. On February 5, 2026, I served the following documents: **PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C.** by mailing a true and correct copy to each addressed as follows:

Mary De Anda-Ybarra
Field Office Director, El Paso Field Office,
Attn: U.S. Immigration and Customs Enforcement,
Office of the Principal Legal Advisor,
500 12th St. SW,
Mail Stop 5900,
Washington, DC 20536-5900

Todd M. Lyons
U.S. Immigration and Customs Enforcement
500 12th Street SW
Washington, DC 20536

Kristi Noem
U.S. Department of Homeland Security
2801 Nebraska Avenue NW
Washington, D.C. 20528

Pamela Jo Bondi
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Civil Process Clerk
U.S. Attorney's Office
District of New Mexico
201 3rd Street NW, Suite 900
Albuquerque, New Mexico 87102

George Dedos, Warden,
Cibola County Correctional Center
2000 Cibola Loop,
Milan, NM 87021, USA

By mail. I am readily familiar with the business for collection and processing of correspondence for mailing and that this document will be sent on this date in the ordinary course of business.

1 I declare under the penalty of perjury that the foregoing is true and correct. Executed on
2 February 5, 2026, at Pleasanton, CA.

3
4
5 s/ Jasmine Pandher
6 JASMINE PANDHER, ESQ.
7 GAHRA and GOSWAMI
8 P.O. BOX 11717
9 PLEASANTON, CA 94588
10 ATTORNEY FOR PETITIONER
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