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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**NASIM CHOWDHURY,**  
*Petitioner,*

v.

**DORA CASTRO,**  
Warden of the Otero County Processing  
Center;

**MARY DE ANDA-YBARRA,** Field Office  
Director of Enforcement and Removal  
Operations, El Paso Field Office,  
Immigration and Customs Enforcement;

**TODD LYONS,** Acting Director  
Immigration and Customs Enforcement;

**KRISTI NOEM,** Secretary, U.S. Department  
of Homeland Security; and

**PAMELA BONDI,** U.S. Attorney General

*Respondents.*

Case No. 2:26-cv-00300 KWR-KK

**AMENDED PETITION FOR WRIT OF  
HABEAS CORPUS UNDER 28 U.S.C. §  
2241 AND APPLICATION FOR ORDER  
TO SHOW CAUSE**

## I. INTRODUCTION

1. Petitioner Nasim Chowdhury is a native and citizen of Bangladesh who is presently in removal proceedings under section 240 of the Immigration and Nationality Act. DHS's Notice to Appear dated July 19, 2024, alleges that Mr. Chowdhury entered the United States at or near unknown place on or about unknown date without being admitted or paroled and charges him as inadmissible under INA § 212(a)(6)(A)(i). Mr. Chowdhury filed Form I-589, Application for Asylum and for Withholding of Removal with the Immigration Court on October 2, 2024.

2. Despite his pending application for protection and his ongoing removal proceedings, on December 13, 2025, Mr. Chowdhury was taken into immigration custody by the Department of Homeland Security and is currently detained at the Otero County Processing Center in Chaparral, New Mexico, as confirmed by ICE's "Notice to EOIR: Alien Address" dated December 18, 2025.

3. Petitioner respectfully requests that this Court find Mr. Chowdhury's continued detention unlawful and order his immediate release under appropriate conditions. His ongoing detention without a meaningful hearing on flight risk and danger to the community violates the United States Constitution and applicable federal law.

## II. JURISDICTION

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

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241 (*habeas corpus*), 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution (the Suspension Clause).

6. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*; the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; and 28 U.S.C. § 1651.


### III. VENUE

7. Venue is proper in this Court because Petitioner is detained at the Otero County Processing Center in Chaparral, New Mexico, which lies within the jurisdiction of the District of New Mexico.

### IV. REQUIREMENTS OF 28 U.S.C. § 2243

8. Under 28 U.S.C. § 2243, the Court must grant the petition for a writ of habeas corpus or issue an order to show cause to the respondent forthwith, unless it appears from the petition that the petitioner is not entitled to relief. If an order to show cause is issued, the Court must require respondent to file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

### V. PARTIES

9. Petitioner Nasim Chowdhury is a native and citizen of Bangladesh (A-number  Petitioner is currently detained by the Department of Homeland Security, U.S. Immigration and Customs Enforcement (“ICE”), at the Otero County Processing Center in Chaparral, New Mexico, as reflected in ICE’s “Notice to EOIR: Alien Address” dated December 18, 2025. Petitioner is in custody and under the direct control of Respondents and their agents.

10. Respondent Dora Castro is sued in her official capacity as the Warden of the Otero County Processing Center. In this capacity, Respondent Castro is the immediate and legal custodian of Petitioner, exercises day-to-day authority over his detention, and has the power to effectuate Petitioner’s release from custody pursuant to a lawful court order.

11. Respondent Mary De Anda-Ybarra is sued in her official capacity as the Field Office Director for Enforcement and Removal Operations (“ERO”), El Paso Field Office, U.S.

Immigration and Customs Enforcement (“ICE”). In this capacity, Respondent De Anda-Ybarra is responsible for the oversight, management, and supervision of immigration detention and removal operations within the El Paso Field Office jurisdiction, which includes the Otero County Processing Center where Petitioner is detained. Respondent De Anda-Ybarra exercises legal authority over Petitioner’s detention and custody, including authority to make determinations regarding continued detention or release, and is therefore a proper respondent.

12. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement (“ICE”), a component agency of the U.S. Department of Homeland Security. In this capacity, Respondent Lyons is responsible for the overall administration, supervision, and direction of ICE’s enforcement, detention, and removal operations nationwide. Respondent Lyons exercises supervisory authority over ICE officers and Field Office Directors, including those responsible for Petitioner’s detention, and has legal authority over the policies and practices governing Petitioner’s custody. Respondent Lyons is therefore a proper respondent.

13. Respondent Kristi Noem, Secretary of the U.S. Department of Homeland Security (“DHS”), is sued in her official capacity. In this capacity, Secretary Noem is responsible for the administration and enforcement of the Immigration and Nationality Act and exercises supervisory authority over U.S. Immigration and Customs Enforcement (“ICE”), the agency responsible for Petitioner’s detention and custody. Secretary Noem has the legal authority to direct Petitioner’s detention and release and is therefore a proper respondent.

14. Respondent Pam Bondi, Attorney General of the United States, is sued in her official capacity as the head of the U.S. Department of Justice (“DOJ”). In this capacity, Attorney General Bondi exercises ultimate supervisory authority over the Executive Office for Immigration Review (“EOIR”), including the immigration courts and the Board of Immigration Appeals, and

is responsible for the interpretation, administration, and enforcement of the immigration laws governing removal proceedings. Attorney General Bondi exercises legal authority over Petitioner's detention pursuant to federal immigration law and is therefore a proper respondent.

## VI. STATEMENT OF FACTS

15. Petitioner Nasim Chowdhury is a 35-year-old native and citizen of Bangladesh, born on [REDACTED] Petitioner is currently in removal proceedings and seeks protection in the United States based on persecution he suffered on account of his political opinion.

16. Prior to his detention, Petitioner resided at [REDACTED]

17. Petitioner has filed Form I-589, Application for Asylum and for Withholding of Removal, seeking asylum and related protection, including withholding of removal and relief under the Convention Against Torture ("CAT"), based on past persecution and a well-founded fear of future persecution in Bangladesh on account of his political opinion, and he is actively pursuing this protection-based relief in ongoing removal proceedings.

18. The Department of Homeland Security initiated removal proceedings against Petitioner by issuing a Notice to Appear ("NTA") under section 240 of the Immigration and Nationality Act, dated July 19, 2024. The NTA alleges that Mr. Chowdhury entered the United States at or near unknown place on or about unknown date without being admitted or paroled and charges him as inadmissible under INA § 212(a)(6)(A)(i). DHS charges Petitioner as inadmissible under INA § 212(a)(6)(A)(i).

19. On July 19, 2024, Petitioner was ordered released from custody on his own recognizance pursuant to a DHS Order of Release on Recognizance.

20. Despite full compliance with the conditions of this Order, on December 12, 2025, Petitioner was arrested by ICE during a scheduled check-in at ICE ERO, 26 Federal Plaza, New York, NY 10278, and transferred to the Cibola County Correctional Facility, 2000 Cibola Loop, Milan, New Mexico 87021, as reflected in Notice to EOIR: Alien Address dated December 13, 2025.

21. On December 13, 2025, Petitioner was transferred to Otero County Processing Center in Chaparral, New Mexico, as reflected in Notice to EOIR: Alien Address dated December 18, 2025.

22. Under the Immigration and Nationality Act, civil immigration detention is permissible only where necessary to ensure an individual's appearance at future proceedings or to protect the community from danger. See 8 U.S.C. § 1226(a); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). Contrary to *Matter of Guerra*, Petitioner was not arrested while committing any crime or engaging in unlawful activity. DHS and ICE provided no explanation, evidence, or justification at the time of his arrest, or thereafter, as to why his detention was necessary under statutory standards. The absence of such justification renders Petitioner's confinement arbitrary, unlawful, and contrary to due process.

23. Moreover, under INA § 208(a)(1), 8 U.S.C. § 1158(a)(1), any noncitizen who is physically present in the United States may apply for asylum, irrespective of immigration status. Federal law further provides that "no period of time during which a bona fide asylum application is pending shall be counted" toward unlawful presence for purposes of INA § 212(a)(9)(B). 8 U.S.C. § 1182(a)(9)(B)(iii)(II). Petitioner timely filed Form I-589, Application for Asylum and for Withholding of Removal with the Immigration Court on October 2, 2024, and is actively pursuing protection-based relief in his ongoing removal proceedings, demonstrating his strong incentive to comply with all immigration court requirements and appear at future hearings.

24. On December 16, 2025, Petitioner filed a Motion for Bond with the Immigration Court. The motion was supported by documentary evidence, including proof of identity, evidence of employment authorization, financial documentation, and multiple affidavits of support demonstrating community ties and the availability of a suitable sponsor.

25. On December 29, 2025, the Immigration Judge denied the bond because Petitioner entered the United States without inspection in 2024, and that his case was governed by *Matter of Yajure Hurtado*, which the court concluded limited its jurisdiction. The immigration judge's order also states: "Alternatively, if jurisdiction were found to be proper in the present case, the court would find the Respondent to be a flight risk due to his manner of entry, speculative relief, and lack of U.S. ties".

26. The Immigration Judge's alternative statement underscores the constitutional violation: Petitioner never received a meaningful bond hearing governed by § 1226(a), with the government bearing the burden and evidence evaluated under *Matter of Guerra*. Instead, the court issued a speculative, conditional remark that cannot substitute for a lawful custody redetermination conducted pursuant to 8 U.S.C. § 1226(a) and *Matter of Guerra*.

27. Petitioner's ongoing detention is arbitrary, unlawful, and unconstitutional. It serves neither to protect the community, given his lack of any criminal history and strong community ties, nor to ensure his appearance at future proceedings, as he has a demonstrated history of compliance with immigration requirements and significant equities binding him to his community. Petitioner remains in ICE custody under the direct control of Respondents and their agents. His continued civil detention without meaningful individualized findings that detention is necessary to prevent flight or danger is unlawful, arbitrary, and contrary to due process.

28. Petitioner respectfully requests that this Court order his release under appropriate conditions, as his ongoing detention is not justified under the governing standards for civil

immigration detention and imposes severe hardship while his removal proceedings and protection claims remain pending.

29. Absent judicial intervention, Petitioner will remain indefinitely detained at taxpayer expense.

## VII. LEGAL FRAMEWORK

30. The Great Writ of Habeas Corpus, codified at 28 U.S.C. § 2241, authorizes federal courts to review the legality of immigration detention and to grant relief where custody is not authorized by statute or violates the Constitution. The Supreme Court has recognized habeas corpus as a fundamental safeguard against unlawful restraint. See *Boumediene v. Bush*, 553 U.S. 723, 739 (2008) (“*The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty.*”).

31. Civil immigration detention pending removal proceedings is governed principally by two statutory provisions: 8 U.S.C. § 1226(a) and 8 U.S.C. § 1225(b). Section 1226(a) governs detention of noncitizens who are already present in the United States, and it authorizes discretionary detention or release on bond or conditional parole pending a decision in removal proceedings. 8 U.S.C. § 1226(a)(2)(A)-(B); see *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018) (explaining that § 1226(a) establishes detention guidelines for noncitizens “already present in the United States”). By contrast, § 1225(b) mandates detention of certain “applicants for admission” and generally does not provide for a bond hearing, aside from limited parole authority under 8 U.S.C. § 1182(d)(5)(A). See *Jennings*, 583 U.S. at 300.

32. Individuals detained under 8 U.S.C. § 1226(a) are entitled to an individualized custody determination, and federal regulations provide for custody redetermination (bond) proceedings before an Immigration Judge. See *Jennings*, 583 U.S. at 306 (citing 8 C.F.R. §§ 236.1(d)(1) and 1236.1(d)(1)). These regulations reflect longstanding agency practice that, absent

mandatory detention under § 1226(c), a detained respondent may seek an Immigration Judge's review of custody and request release on bond.

33. Recent litigation has addressed DHS's position, reflected in a July 8, 2025 ICE policy memorandum and the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), that respondents charged under 8 U.S.C. § 1182(a)(6)(A)(i) must be treated as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and categorically denied bond. District courts, including courts within the District of New Mexico, have overwhelmingly rejected that approach for individuals who are present in the United States and placed in full removal proceedings under INA § 240, holding instead that § 1226(a) governs and that a bond hearing is required. See, e.g., *Cortez-Gonzalez v. Noem*, 2025 WL 3485771 (D.N.M. Dec. 4, 2025); *Velasquez Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Pu Sacvin v. De Anda-Ybarra*, 2025 WL 3187432 (D.N.M. Nov. 14, 2025); *Melchor-Rios v. Ortiz*, No. 2:25-cv-01055-WJ-GJF (D.N.M. Dec. 30, 2025) (ordering individualized bond hearing under § 1226(a) and preserving jurisdiction).

34. The Due Process Clause of the Fifth Amendment applies to "all persons" within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Due process forbids arbitrary civil detention and requires that immigration custody serve legitimate regulatory purposes, primarily ensuring appearance at proceedings and protecting the community, rather than functioning as punishment. See *Jennings*, 583 U.S. at 303-06; *Zadvydas*, 533 U.S. at 690-93. Where DHS detains a noncitizen without providing the process required by the governing detention statute and regulations, continued custody becomes unlawful.

35. Petitioner has not been charged with or convicted of any crime, nor has he violated any regulation that would warrant punitive confinement. Petitioner is not subject to mandatory

detention under § 1226(c), and because his detention is governed by § 1226(a), he is entitled to an individualized bond hearing.

36. Detention must be reasonably related to its purpose and cannot continue indefinitely where removal is not reasonably foreseeable. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

## VIII. CLAIMS FOR RELIEF

### COUNT ONE

37. Petitioner repeats and realleges paragraphs 1 through 32 as if fully set forth herein and incorporates them by reference.

38. Petitioner is currently detained by the Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) without lawful justification and in violation of his rights under the Fifth Amendment’s Due Process Clause.

39. DHS initiated removal proceedings by issuing a Notice to Appear charging Mr. Chowdhury as inadmissible under INA § 212(a)(6)(A)(i), alleging that he is “an alien present in the United States who has not been admitted or paroled.”

40. Where detention is governed by 8 U.S.C. § 1226(a), the statute authorizes detention pending removal proceedings but also permits release on bond or conditional parole. See 8 U.S.C. § 1226(a)(2)(A)-(B). The implementing regulations provide that individuals detained under § 1226(a) may seek custody redetermination (bond) before an Immigration Judge. See 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1); *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (recognizing that individuals detained under § 1226(a) generally receive bond hearings).

41. Accordingly, once Mr. Chowdhury is properly classified as a § 1226(a) detainee, the legal consequence is clear: he must receive an individualized bond hearing before a neutral Immigration Judge to determine whether detention is necessary to address flight risk or danger to

the community, and whether less restrictive alternatives (including bond conditions) are sufficient.

42. In *Melchor-Rios v. Ortiz* (D.N.M. Dec. 30, 2025), the court addressed the same posture presented here: DHS charged the petitioner under § 212(a)(6)(A)(i) and attempted to deny bond based on the July 8, 2025 ICE memorandum and *Matter of Yajure Hurtado*. The court held that § 1226(a), not § 1225(b), governs detention of a noncitizen already present in the United States and ordered an individualized bond hearing. The court expressly joined the “overwhelming majority” of district courts rejecting DHS’s attempt to impose mandatory § 1225(b) detention in these circumstances.

43. The District of New Mexico has consistently reached the same conclusion in other cases involving § 212(a)(6)(A)(i) charges. See, e.g., *Cortez-Gonzalez v. Noem* (D.N.M. Dec. 4, 2025); *Velasquez Salazar v. Dedos* (D.N.M. Sept. 17, 2025); *Pu Sacvin v. De Anda-Ybarra* (D.N.M. Nov. 14, 2025).

44. Accordingly, Respondents cannot lawfully invoke or rely on *Matter of Yajure Hurtado* to deny Mr. Chowdhury a bond hearing. Where, as here, DHS alleges that Mr. Chowdhury is present in the United States, his detention is governed by 8 U.S.C. § 1226(a), and he is therefore entitled to an individualized bond hearing under that statute.

45. The Fifth Amendment’s Due Process Clause protects “all persons” within the United States, including noncitizens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Civil immigration detention must serve legitimate regulatory purposes, ensuring appearance and protecting the community, and may not be arbitrary or punitive. Where DHS detains an individual without the process required by the governing statute and regulations, continued detention becomes unlawful.

46. Because § 1226(a) governs and Mr. Chowdhury is legally entitled to an individualized custody redetermination, habeas relief is warranted. The Court should order Respondents to provide a § 1226(a) bond hearing within a short, court-imposed deadline, and further order that if the government fails to provide such a hearing, Mr. Chowdhury must be released unless and until continued detention is lawfully justified under § 1226(a).

47. For these reasons, Mr. Chowdhury's continued detention violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner respectfully requests that this Court:

- i. Assume jurisdiction over this matter.
- ii. Issue an Order to Show Cause requiring Respondents to explain why this Petition should not be granted within three days, as required by 28 U.S.C. § 2243;
- iii. Declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § 1226(a), and 8 C.F.R. § 1236.1(d);
- iv. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately under reasonable conditions of supervision, or in the alternative, to provide a bond hearing before an Immigration Judge with appropriate procedural safeguards, including the Government's burden to justify continued detention, or such other standards the Court deems proper;
- v. Grant such further relief as this Court deems just and proper.

Dated: February 17, 2026  
New York, NY

**RESPECTFULLY SUBMITTED,**

/s/ Vano I. Haroutunian  
Vano I. Haroutunian, Esq.

*Attorney for Petitioner*

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

I, Vano I. Haroutunian, do depose and state:

I represent Petitioner Nasim Chowdhury in these habeas corpus proceedings. Mr. Chowdhury is currently being held in detention at the Otero County Processing Center and cannot appear in my office to sign this Verification. I hereby verify that the factual statements made in the foregoing Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge and belief.

Dated: February 17, 2026

New York, New York

**RESPECTFULLY SUBMITTED,**

/s/ Vano I. Haroutunian

Vano I. Haroutunian, Esq.  
*Counsel for Petitioner*