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ATTORNEYS FOR PETITIONER

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
CHAPARRAL, NM

Akashdeep Singh

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, **Dora Castro**, Otero
County Processing 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, Akashdeep Singh ("Mr. Singh"), by and through undersigned counsel,
3 Jasmine Pandher, Gahra of Gahra & Goswami, respectfully petitions this Honorable
4 Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing
5 and unlawful civil immigration detention by the United States Department of
6 Homeland Security and its agents. Petitioner is currently confined at the Otero County
7 Processing Center, New Mexico, in custody of the facility's Warden.
- 8
9 2. On December 1, 2025, Immigration and Customs Enforcement ("ICE") officers took
10 the Petitioner into custody when he was asked to report at their New York office.
- 11
12 3. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a).
13 Noncitizens detained under section 1226(a) are subject to discretionary detention and
14 can request a change in custody redetermination (i.e., bond hearing) with an
15 Immigration Judge. However, on July 8, 2025, DHS issued an internal Interim
16 Guidance ("Policy") that took the baseless position that—contrary to statutory
17 principles and governing case law—noncitizens like Petitioner who entered the United
18 States without permission or parole are subject to mandatory detention under 8 U.S.C.
19 § 1225(b) instead of discretionary detention under section 1226(a). On September 5,
20 2025, the Board of Immigration Appeals ("BIA") issued a decision in *Matter of Yajure*
21 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS' position.
- 22
23 4. Petitioner seeks immediate release as Respondents have not provided him with a
24 constitutionally adequate hearing before a neutral decisionmaker as to why his
25 detention is necessary. As referred to above, Immigration Judges are relying on the
26 *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), to hold that petitioners are ineligible
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1 for bond, despite evidence disputing the underlying factual assumptions regarding their
2 apprehension and processing. Futility is an exception to the prudential exhaustion
3 requirement under the law. Petitioner has been subject to *Matter of Yajure Hurtado*
4 where the Board held that all noncitizens who entered the United States without
5 admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible
6 for IJ bond hearings. Petitioner has also been subjected to the aforementioned Policy
7 instructing all ICE employees to consider anyone arrested within the United States and
8 charged with being inadmissible under § 1182(a)(6)(A)(i) to be an “applicant for
9 admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory
10 detention. The Policy itself states that it was issued “in coordination with the
11 Department of Justice (DOJ).” Given these facts, a request for a bond hearing or any
12 appeals to the Board to resolve this matter, would be futile and lead to further delays.

15 5. Hence, as a result of this jurisdictional denial, Petitioner now faces prolonged and
16 potentially indefinite detention without any meaningful opportunity for an
17 individualized custody review. He is actively pursuing asylum, withholding removal,
18 and protection under the Convention Against Torture before the Immigration Court.
19 Despite his ongoing litigation and eligibility for relief, DHS continues to detain him
20 without providing a mechanism for release or a hearing before an Immigration Judge
21 empowered to evaluate danger, flight risk, or alternatives to detention.

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

5 **FACTUAL BACKGROUND**

- 6 1. Petitioner, Mr. Singh is a 24-year-old male and a citizen and national of India. He fled
7 the political persecution in India. Then made the dangerous journey to the United States
8 to seek safety and protection. Petitioner does not have a criminal record, has no history
9 of violence or dangerous behavior, and has consistently demonstrated compliance with
10 immigration authorities throughout his detention (as to the best of the undersigned
11 knowledge).
12
- 13 2. Petitioner last entered the United States by crossing at or near San Luis, AZ on or about
14 November 21, 2021. After entry, he was encountered by U.S. Border Patrol. After being
15 processed, Petitioner was placed in immigration proceedings under Section 240 of the
16 Immigration and Nationality Act and was released under an “Order of Release on
17 Recognizance” (the “Order”) by DHS for the purpose of continuing his removal
18 proceedings. Since his release, the Petitioner fulfilled the conditions of his release, filed
19 an application for asylum and withholding of removal and protection under the
20 Convention Against Torture before the Immigration Court.
21
- 22 3. It is further pertinent to note that the Petitioner was released on his own recognizance
23 under the aforementioned Order, which expressly states that he was being released on
24 his own recognizance under Section 236 of the Immigration and Nationality Act.
25 Following this, Petitioner was placed in Section 240 removal proceedings, thereby
26 rendering him subject to discretionary detention under Section 236, not mandatory
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1 detention under Section 235(b). Section 236 does not mandate detention and expressly
2 permits release on bond or conditional parole.

3 4. Despite Petitioners' compliance while released, including attending his court hearings
4 in his removal proceedings, he was abruptly and unlawfully re-detained by the
5 Department of Homeland Security (DHS) on December 1, 2025, at his ICE check-in.
6 officers took the Petitioner into custody at their New York office.
7

8 5. Prior to re-detaining the Petitioner, Respondents did not provide any written notice
9 explaining the basis for the revocation of his earlier release. Likewise, Respondents did
10 not assess whether the Petitioner presented a flight risk or danger to the community
11 prior to his re-arrest. Nor did Respondents provide a hearing before a neutral
12 decisionmaker, where ICE was required to justify the basis for re-detention or to
13 explain why the Petitioner is now a flight risk or danger to the community. As this
14 Court has held in multiple cases, due process demands a hearing prior to the
15 government's decision to terminate a person's liberty.
16

17 6. Petitioner was taken into the custody of U.S. Immigration and Customs Enforcement
18 and is currently detained at the Otero County Processing Center in Chaparral, New
19 Mexico.
20

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

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

- 3
4 9. Petitioner’s ongoing detention—based solely on a contested jurisdictional
5 classification and without any opportunity for an individualized determination of his
6 eligibility for release—violates the Immigration and Nationality Act, the Due Process
7 Clause of the Fifth Amendment, and fundamental constitutional protections against
8 arbitrary and indefinite detention. Petitioner therefore seeks immediate judicial
9 intervention to secure his release.

10
11 **JURISDICTION AND VENUE**

- 12 10. This action arises under the Constitution of the United States and the Immigration and
13 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*
- 14 11. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus),
15 28U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States
16 Constitution (Suspension Clause)
- 17 12. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*,
18 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act,
19 28U.S.C. § 1651.
- 20
21 13. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
22 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–
23 17 (2003) (recognizing habeas jurisdiction over immigration detention challenges);
24 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Soberanes v. Comfort*, 388
25 F.3d1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly
26 brought directly through habeas.”).
- 27
28

1 14. No petition for a writ of habeas corpus has previously been filed in any court regarding
2 Petitioner.

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

10 **PARTIES**

11
12 16. Petitioner **Mr. Singh** is a citizen and national of India who is currently detained at the
13 Otero County Processing Center in Chaparral, New Mexico. He is held in the custody
14 of the United States Department of Homeland Security and brings this habeas petition
15 to challenge the legality of her ongoing civil immigration detention.

16
17 17. Respondent **Kristi Noem** is sued in her official capacity as the Secretary of the U.S.
18 Department of Homeland Security (“DHS”). In this capacity, Respondent is
19 responsible for the implementation and enforcement of the Immigration and
20 Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the
21 component agency responsible for Petitioner’s detention and custody. Respondent is a
22 legal custodian of Petitioner.

23
24 18. Respondent **Pamela Bondi** is sued in her official capacity as the Attorney General of
25 the United States and the senior official of the U.S. Department of Justice (DOJ). In
26 that capacity, she has the authority to adjudicate removal cases and to oversee the
27

1 Executive Office for Immigration Review (EOIR), which administers the immigration
2 courts and the BIA. Respondent is a legal custodian of Petitioner.

3 19. Respondent **Todd Lyons** is sued in his official capacity as the Acting Director of the
4 U.S. Immigration and Customs Enforcement. Respondent is a legal custodian of
5 Petitioner and has authority to release him.
6

7 20. Respondent **Mary De Anda-Ybarra**, Field Office Director of the USCIS
8 Albuquerque, NM, issued in his official capacity. These official exercises supervisory
9 responsibility over immigration functions relevant to Petitioner’s detention and the
10 processing of matters that affect her custody and immigration status.
11

12 21. Respondent, **Dora Castro, Warden**, Otero County Processing Center, is Petitioner’s
13 immediate custodian. The Warden maintains direct physical custody of Petitioner
14 pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement
15 (“ICE”) to detain noncitizens and is a legal custodian of Petitioner. Respondent is a
16 legal custodian of Petitioner.
17

18 EXHAUSTION OF ADMINISTRATIVE REMEDIES

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

27 LEGAL FRAMEWORK

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

9 24. Second, the INA provides for mandatory detention of noncitizens subject to expedited
10 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
11 referred to under 8 U.S.C. § 1225(b)(2).

13 25. Finally, the Act also provides for detention of noncitizens who have been previously
14 ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. §
15 1231(a)–(b).

16 26. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the
17 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996,
18 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583,
19 3009–585. Section 1226(c) was most recently amended earlier this year by the LRA,
20 Pub. L. No.119-1, 139 Stat. 3 (2025).

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

10
11 28. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs
12 Enforcement (“ICE”) stating that “[t]his message serves as notice that DHS, in
13 coordination with the Department of Justice (DOJ), has revisited its legal position on
14 detention and release authorities. DHS has determined that section 235 of the
15 Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8
16 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for
17 admission. The following interim guidance is intended to ensure immediate and
18 consistent application of the Department’s legal interpretation while additional
19 operational guidance is developed.”
20

21
22 29. As a result, DHS now considers *all* noncitizens who have entered the United States
23 without inspection and are subject to the grounds of inadmissibility, including longtime
24 U.S. residents to be subject to mandatory detention under section § 1225(b) and
25 ineligible for release on bond. Conversely, according to DHS “[t]he only aliens eligible
26 for a custody determination and release on recognizance, bond, or other conditions
27 under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens
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1 admitted to the United States and chargeable with deportability under INA § 237, with
2 the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. §
3 1226(c)].” *Id.*

4
5 30. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure*
6 *Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of 8
7 U.S.C. § 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to
8 noncitizens who are present in the United States without admission.

9
10 **COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION**
11 **AND NATIONALITY ACT (INA) AND IMPLEMENTING**
12 **REGULATIONS**

13 31. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
14 fully set forth herein.

15 32. The Immigration and Nationality Act authorizes immigration detention only when it
16 serves a legitimate statutory purpose—namely, to ensure an individual’s appearance at
17 future proceedings or to protect public safety. See *Zadvydas v. Davis*, 533 U.S. 678,
18 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Detention that does not
19 advance those purposes, or that becomes arbitrary and indefinite, exceeds the
20 government’s statutory authority.

21
22 33. Petitioner is a citizen and national of India who entered the United States seeking
23 protection and was subsequently placed in removal proceedings under section 240 of
24 the Immigration and Nationality Act.

25
26 34. Petitioner has no criminal history, no record of violence, and has never exhibited
27 conduct suggesting danger to the community or risk of flight. Nothing in his
28

1 immigration file indicates that he poses a threat to public safety or that he would fail to
2 appear for his hearings if released.

3 35. The jurisdictional denial by Immigration Judges currently in effect leaves Petitioner
4 with no administrative mechanism for custody review, effectively subjecting him to
5 prolonged and potentially indefinite detention without any statutory pathway to request
6 release.
7

8 36. The INA does not authorize indefinite detention of a noncitizen who has no final order
9 of removal, who poses no danger or flight risk, and who has not been afforded an
10 opportunity to present evidence regarding custody.
11

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

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

22 **COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH**
23 **AMENDMENT TO THE U.S. CONSTITUTION**

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

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

10
11
12 41. Petitioner is a citizen and national of India who entered the United States seeking
13 protection and was placed in removal proceedings under section 240 of the Immigration
14 and Nationality Act.

15
16 42. Petitioner has no criminal history, has not engaged in violence or dangerous behavior,
17 and has consistently cooperated with immigration authorities since his apprehension.
18 His detention has now become prolonged, with no statutory or administrative
19 mechanism available for individualized custody review. He faces ongoing
20 incarceration under penal-like conditions despite having no criminal background and
21 pursuing his asylum claims in good faith.

22
23 43. Petitioner’s liberty from immigration custody and his weighty interest in avoiding
24 incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690
25 (“Freedom from imprisonment...lies at the heart of the liberty” that the Due Process
26 Clause protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a
27
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1 parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520
2 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

3 44. Immigration detention implicates a fundamental liberty interest. Prolonged detention
4 without a meaningful opportunity to challenge confinement violates the core due
5 process guarantees of notice, the right to be heard, and adjudication by a neutral
6 decisionmaker.
7

8 45. Accordingly, Petitioner’s continued incarceration without an individualized custody
9 determination violates the Due Process Clause of the Fifth Amendment. Habeas relief
10 is warranted to remedy these constitutional violations by ordering his immediate
11 release.
12

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

15 46. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
16 fully set forth herein.
17

18 47. The Administrative Procedure Act (APA), 5 U.S.C. § 706(2), requires courts to hold
19 unlawful and set aside agency actions that are arbitrary, capricious, an abuse of
20 discretion, or otherwise not in accordance with law. Under this standard, an agency
21 must articulate a rational connection between the facts found and the choices made,
22 and it must provide an adequate explanation for its actions consistent with statutory
23 authority. See *Judulang v. Holder*, 565 U.S. 42, 55 (2011).
24

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

4
5 49. Despite these facts, DHS has maintained Petitioner's detention for an extended and
6 potentially indefinite period without providing any reasoned explanation or evidence
7 that continued confinement serves a legitimate statutory purpose. DHS has failed to
8 articulate why release under supervision, bond, or other alternatives would be
9 insufficient.

10
11 50. DHS's reliance on *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), to justify continued
12 detention is arbitrary and contrary to law. *Q. Li* addresses the jurisdiction of
13 Immigration Judges to conduct bond hearings for individuals allegedly apprehended
14 shortly after entry. It does not compel DHS to detain such individuals indefinitely, nor
15 does it eliminate DHS's longstanding discretionary authority to release noncitizens on
16 parole, recognizance, supervision, or bond.

17
18 51. By treating *Q. Li* as an absolute bar to any form of custody review or discretionary
19 release, DHS has effectively adopted a blanket detention policy that substitutes
20 categorical rules for the individualized determinations required under the Immigration
21 and Nationality Act.

22
23 52. DHS has not conducted any meaningful custody assessment of Petitioner, nor has it
24 provided a rational explanation for refusing to exercise discretion in his case. Its failure
25 to consider Petitioner's lack of criminal history, his cooperation with authorities, his
26 pursuit of asylum, or his eligibility for alternatives to detention constitutes arbitrary and
27 capricious decision-making.

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

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

7 55. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner
8 respectfully requests that this Court order his immediate release or, in the alternative
9 direct DHS to provide a constitutionally adequate and reasonable custody
10 determination consistent with the requirements of the Administrative Procedure Act
11 and the Immigration and Nationality Act.
12
13

14 **COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE**
15 **FIFTH AMENDMENT**

16 56. Petitioner re-alleges and incorporates by reference the preceding paragraphs as though
17 fully set forth herein.

18 57. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of
19 equal protection that applies to all persons within the United States, including
20 noncitizens physically present, regardless of their immigration status. See *Reno v.*
21 *Flores*, 507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The
22 government may not selectively apply immigration laws or policies in a manner that
23 discriminates against a particular nationality or class of individuals without a rational
24 and legitimate governmental purpose.
25
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1 58. Petitioner is placed in removal proceedings under section 240 of the Immigration and
2 Nationality Act, a statutory framework under which noncitizens ordinarily receive an
3 individualized custody determination before an Immigration Judge pursuant to section
4 236(a).

5
6 59. Petitioner is a citizen and national of India who fled his country seeking protection. He
7 has no criminal history, no record of violence or dangerous behavior, and has
8 cooperated fully with immigration authorities since entering the United States.

9
10 60. The government's treatment of Petitioner creates an unjustifiable disparity between
11 him and similarly situated detainees who receive individualized bond hearings. The
12 Fifth Amendment prohibits the government from treating similarly situated persons
13 differently without a rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564
14 (2000); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

15
16 61. DHS's categorical reliance on section 235(b) to foreclose Petitioner's access to custody
17 review—despite his placement in § 240 proceedings—lacks a rational connection to
18 any legitimate governmental purpose. Disparate treatment based solely on disputed and
19 unreviewed facts regarding manner of entry is arbitrary and not rationally related to the
20 goals of ensuring appearance or protecting public safety. See *Zadvydas*, 533 U.S. at
21 690 (civil detention must relate to its permissible purposes).

22
23 62. Moreover, the Ninth Circuit has recognized that immigration detention classifications
24 must comport with basic fairness and may not be applied in an arbitrary or
25 discriminatory manner. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011)
26 (government must justify detention with individualized evidence); *Rodriguez v.*
27

1 *Robbins*, 804 F.3d 1060, 1074–76 (9th Cir. 2015) (due process prohibits prolonged
2 detention without meaningful review).

3 63. DHS has provided no individualized or rational explanation for why Petitioner, unlike
4 others in the same statutory posture, is denied access to an individualized custody
5 determination. This unequal treatment violates the equal protection component of the
6 Fifth Amendment.

7
8 64. Petitioner’s continued incarceration under a discriminatory and arbitrary detention
9 classification violates constitutional guarantees of equal protection and further
10 underscores the unreasonableness and unlawfulness of his confinement.

11
12 65. Habeas relief is therefore warranted to remedy this unconstitutional disparate treatment
13 by ordering Petitioner’s immediate release or, in the alternative, directing DHS to
14 provide him with the same procedural protection and individualized custody review
15 available to similarly situated noncitizens.

16
17 **COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES**
18 **CONSTITUTION**

19 66. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though
20 fully set forth herein.

21 67. The Suspension Clause of the United States Constitution provides that “[t]he Privilege
22 of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion
23 or Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. The Clause
24 guarantees the availability of judicial review to challenge the lawfulness of executive
25 detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S.
26 289, 300–05 (2001).

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

5
6 69. Petitioner is detained solely pursuant to civil immigration authority. He has no criminal
7 history, no record of violence, and is pursuing his asylum, withholding, and Convention
8 Against Torture claims in good faith.

9 70. ICE has provided no discretionary parole review or case-specific custody assessment.

10 71. As elucidated above, no alternative remedy exists outside of habeas corpus through
11 which Petitioner may obtain judicial review of the legality of his ongoing confinement.
12 Neither the Immigration Courts nor the Board of Immigration Appeals possess
13 jurisdiction to review custody challenges arising from DHS’s mandatory-detention
14 classification.
15

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

22 73. Petitioner’s detention, which is prolonged, indefinite, and wholly insulated from
23 individualized review, triggers the core protections of the Suspension Clause. Without
24 access to habeas relief, Petitioner would have no mechanism—judicial or
25 administrative— to contest the legality of her civil confinement.
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1 74. The government’s application of *Matter of Q. Li* to categorically bar all custody review
2 violates the Suspension Clause by depriving Petitioner of an effective and
3 constitutionally required means to challenge unlawful detention.

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5 75. Accordingly, habeas corpus relief is required. Petitioner respectfully requests that this
6 Court order his immediate release.

7 **PRAYER FOR RELIEF**

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

- 9 (1) Assume jurisdiction over this matter;
- 10 (2) Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to
11 file a return within three (3) days, absent good cause for a short extension not exceeding
12 ten days, and set the matter for a prompt hearing;
- 13 (3) Enjoin Respondents from transferring Petitioner during the pendency of the instant
14 action;
- 15 (4) Declare that Petitioner’s continued detention violates the Immigration and Nationality
16 Act, 8 U.S.C. § 1226(a); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A);
17 and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- 18 (5) Grant the writ of habeas corpus and order Petitioner’s immediate release from ICE
19 custody;
- 20 (6) Award Petitioner his costs and reasonable attorneys’ fees pursuant to the Equal Access
21 to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
- 22 (7) Grant any other further relief this Court deems just and proper.
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27 Dated: February 6, 2026

Respectfully Submitted,

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