UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ZUHAIR SAAD CHAYAN AL-SUDANI,

Petitioner,

v.

PAMELA BONDI, in their official capacity as Attorney General of the United States;
KRISTI NOEM, in her capacity as Secretary of the United States Department of Homeland Security;
TODD M. LYONS, in his official capacity as Acting Director of the United States Immigration and Customs Enforcement;
MARY DE ANDA-YBARRA, in her official capacity as Acting Director, El Paso Field Office, U.S. Immigration and Customs Enforcement; and
DORA CASTRO, in her official capacity as Warden, Otero County Processing Center;

Respondents.

Case No. 2:26-cv- 317

Verified Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241

INTRODUCTION

1. This case seeks the immediate release of ZUHAIR SAAD CHAYAN AL-SUDANI ("Petitioner") -- a lawfully present refugee admitted to the United States on April 4, 2023 ("Admission Date")—from unlawful detention by the Department of Homeland Security's ("DHS") U.S. Immigration and Customs Enforcement ("ICE"). ICE unlawfully detained Zuhair on January 30, 2026 ("Detention Date"), in violation of his constitutional, statutory, and regulatory rights. As of this filing, it is believed that Zuhair is being detained by ICE in New Mexico. He has

not been placed in removal proceedings or charged with any ground for removability and therefore cannot be lawfully detained.

2. On January 9, 2026, the Department of Homeland Security launched so-called "OPERATION PARRIS" which in its words were to "target fraudulent refugee applications in Minnesota." The announcement also states that the "initial focus is on Minnesota's 5,600 refugees who have not yet been given lawful permanent resident status (Green Cards)." Following this announcement, DHS officials proceeded to arrest and detain dozens of lawfully present refugees without charge and send them in shackles to detention centers thousands of miles away from home. Although a federal district court in Minnesota has temporarily restrained DHS and ICE from detaining refugees and ordered their release, see *U.H.A et. al. v. Bondi, et. al.*, Case No. 26-417 (JRT/DLM), ECF No. 41 (D. Minn. Jan. 28, 2026), DHS appears to be taking similar action against lawfully present refugees far outside Minnesota.

3. Zuhair brings this habeas action, first, for an order that Respondents immediately release him. Respondents' sudden arrest violates the Due Process Clause of the Fifth Amendment to the U.S. Constitution, the Fourth Amendment to the U.S. Constitution, the Immigration and Nationality Act ("INA") and implementing regulations, and the Administrative Procedure Act ("APA").

4. Zuhair is a lawfully present refugee from Iraq who has followed all of the required processes and procedures that govern refugee admission in the INA, from the considerable vetting applied prior to his arrival in the United States to the regulations and procedures required of him after arrival. On the Detention Date, Zuhair was stopped at a Customs and Border Patrol ("CBP") checkpoint in El Paso, Texas, where he was asked if he was a citizen of the United States. He responded in the negative and presented the officers with an Employment Authorization Document

("EAD"), which was expired along with a receipt notice for his pending application for adjustment of status to lawful permanent resident. He was then taken into CBP custody. He remained detained at the El Paso checkpoint until approximately midnight and was subsequently moved to an unknown detention center. Zuhair was then transferred two more times, first to a detention center in Houston and then to Otero County Processing Center in New Mexico, where he is currently detained.

5. Ten days have passed with no charges brought against him or any reason for ICE or DHS to believe they have probable cause to detain him. To Zuhair's knowledge, he has violated neither the immigration statutes nor any criminal statute. ICE and DHS have no legal authority to abruptly take away his freedom without explanation, process, notice, or charge.

6. In light of this information and with the knowledge that ICE has moved other petitioners to detention centers far from Minnesota after they filed petitions for writs of habeas corpus in the District of Minnesota, this petition also requests that the Court specifically enjoin Respondents from moving or transferring Zuhair outside of the District of New Mexico in the Order to Show Cause.

PARTIES

7. Zuhair has lived in the United States since the Admission Date, when he was admitted to the United States as a refugee pursuant to section 207 of the INA, 8 U.S.C. §1157. He has not been charged with or convicted of any crimes. He is not in removal proceedings of any kind, has never been issued a removal order of any kind, and to date has not been charged with any ground for removal. Prior to Zuhair's detention, he was residing in Houston, Texas with his family and gainfully employed as a delivery driver. He is currently detained by ICE in New

Mexico. Zuhair's last known whereabouts were at Otero County Processing Center, NM as of 8:30 am on February 7, 2026.

8. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. Attorney General Bondi is responsible for continuing a custody case against a noncitizen and as such is Petitioner's legal custodian.

9. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security. DHS is a department of the executive branch of the U.S. government that is tasked with administering and enforcing the federal immigration laws. Secretary Noem is ultimately responsible for ICE's actions; specifically, she is responsible for the administration and enforcement of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a). Secretary Noem is legally responsible for any effort to detain and as such is Petitioner's legal custodian.

10. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of the United States Immigration and Customs Enforcement. ICE is the agency within DHS that is specifically responsible for managing all aspects of the immigration enforcement process, including immigration detention. ICE is responsible for apprehension, incarceration, and removal of noncitizens from the United States, and as such Acting Director Lyons is Petitioner's legal custodian.

11. Respondent Mary De Anda-Ybarra is named in her official capacity as the Acting Director for the ICE El Paso Field Office. Director De Anda-Yabarra is responsible for the enforcement of the immigration laws within this district, and for ensuring that ICE officials follow the agency's policies and procedures.

12. Respondent Dora Castro is sued in her official capacity as Warden, Otero County Processing Center. Respondent Castro is the immediate legal custodian of Petitioner.

JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. Nothing in 8 U.S.C. § 1252 deprives this Court of jurisdiction. To Zuhair's knowledge, Respondents have not commenced removal proceedings of any sort at this time and there is no extant removal order of any sort relating to him.

15. Instead, on information and belief, and based on arguments made in similar unlawful detentions that a district court has restrained in Minnesota, the Government is claiming its authority to detain Zuhair flows from 8 U.S.C. § 1159(a)(1)(C)'s provision regarding adjustment of status interview for Refugees. That provision states that refugees, like Zuhair, after one year of physical presence in the United States "shall return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant." There is no dispute that Zuhair has submitted his application for adjustment of status and thus complied with the requirements of 8 U.S.C. § 1159 to submit to inspection and examination for a second admission, this time as a lawful permanent resident.

16. The phrase "return to custody" does not authorize immigration authorities to detain Zuhair for ten days and counting, when he has never been previously detained, and thus cannot be returned to this apparently indefinite confinement. *U.H.A et. al. v. Bondi, et. al.*, Case No. 26-417 (JRT/DLM), ECF No. 41 at 18-19 (D. Minn. Jan. 28, 2026).

17. There is no dispute this challenge does not implicate ICE's discretionary decisions to commence removal nor its decision to detain Zuhair during removal proceedings. That is because the government has not commenced removal proceedings, nor does it have any grounds to do so. Likewise, 8 U.S.C. § 1252(b)(9), which channels all legal questions arising from an "action taken or proceeding brought to remove an alien from the United States" into a Petition for Review of a final order of removal is not implicated here, as, again, the Government has not commenced removal proceedings of any kind, let alone secured a final order of removal. *See id.*

18. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, the Suspension Clause, and the Court's inherent equitable powers.

19. Venue lies in the U.S. District Court for the District of New Mexico because it is the judicial district in which Zuhair was and is currently believed to be detained. Venue is also proper in this Court under 28 U.S.C. § 1391(e)(1) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this district.

REQUIREMENTS OF 28 U.S.C. § 2243

20. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.* Moreover, a hearing is to be set within five days of the return on writ, and "[u]nless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained." *Id.*

21. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (citation omitted). "[T]he writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time." *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (quoting *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978)).

22. Due to the nature of this proceeding, Zuhair asks this Court to expedite proceedings in this case as necessary and practicable for justice. He also seeks as part of this Court's Show Cause Order an order to prevent (1) his transfer out of the district (or his return to the district) and (2) his removal from the United States while these proceedings are ongoing.

LEGAL FRAMEWORK

Refugee Admission

23. The United States Refugee Admissions Program ("USRAP") is a federal program established pursuant to the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended at 8 U.S.C. § 1157), and is administered jointly by the Department of State, the Department of Homeland Security through U.S. Citizenship and Immigration Services ("USCIS"), and the Department of Health and Human Services.

24. Under 8 U.S.C. § 1101(a)(42), a "refugee" is defined as any person who is outside their country of nationality and is unable or unwilling to return to that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The President, in consultation with Congress, determines the maximum number of refugees who may be admitted to the United States each fiscal year. 8 U.S.C. § 1157(a).

25. To be considered for refugee resettlement to the United States, an individual must first be referred to USRAP by the United Nations High Commissioner for Refugees ("UNHCR"), a U.S. Embassy, or a designated non-governmental organization. The overwhelming majority of refugee applicants are referred by UNHCR based on its determination that they meet the international definition of refugee and require resettlement as a durable solution. Of the more than 30 million refugees worldwide, UNHCR refers fewer than 1% for resettlement to any country in any given year.

26. After receiving a referral, refugee applicants undergo the most extensive security vetting of any category of travelers to the United States. The security screening process typically takes 18 to 24 months or longer and involves multiple federal agencies, including the National Counterterrorism Center, the FBI's Terrorist Screening Center, the Department of Defense, and multiple DHS components. Applicants' biographic information is screened against numerous databases, including the Consular Lookout and Support System, the Treasury Enforcement Communications System, the National Crime Information Center, and classified databases.

27. Following initial security screening, refugee applicants are interviewed under oath by a specially trained USCIS Refugee Officer who assesses the applicant's eligibility for refugee status and evaluates the credibility of the applicant's claim. The Refugee Officer has the authority to approve or deny the refugee application based on whether the applicant meets the statutory definition of refugee and does not fall within any of the bars to refugee status under 8 U.S.C. § 1157(c), including those who have participated in persecution, those who pose a danger to U.S. security, and those who have provided material support to terrorist organizations.

28. Applicants who are conditionally approved by USCIS must undergo a medical examination by physicians designated by the Department of State and complete a cultural

orientation program. Prior to travel, all applicants undergo additional recurrent security checks to ensure no new derogatory information has emerged.

29. Refugees are matched with a local resettlement agency in the United States that will provide initial reception and placement services. Upon arrival, refugees are inspected by U.S. Customs and Border Protection officers at the port of entry and are allowed an admission into the United States.

30. Under the Board of Immigration Appeals precedent, refugees who are admitted into the United States have effectuated an "admission" under 8 U.S.C. 1101(a)(13). *Matter of D-K-*, 25 I&N Dec. 761 (BIA 2012); *see* 8 U.S.C. 1157.

31. Upon admission to the United States, refugees are authorized to work immediately incident to status—even without a valid EAD—and are eligible for certain federal benefits and services to assist with initial resettlement, including cash and medical assistance through programs administered by HHS's Office of Refugee Resettlement.

Refugee Adjustment

32. Admitted refugees are allowed to adjust their status to that of lawful permanent residents. The statutory framework for refugee adjustment is set out in 8 U.S.C. § 1159(a) and (c). Under that statute, refugees are eligible for adjustment of status once they have "been physically present in the United States for at least one year." 8 U.S.C. § 1159(a).

33. Refugees are given notification that they must file their application for adjustment of status one year after entry. Under the regulation the language is presented as "Upon admission to the United States, every refugee entrant will be notified of the requirement to submit an application for permanent residence one year after entry." 8 C.F.R. § 209.1(b).

34. Once the adjustment application was filed and the refugee had met the requirements, under 8 U.S.C. 1159, such as having been physically present in the United States,

applied for adjustment, still a refugee or a spouse of child of a refugee, and has not been firmly resettled and is not inadmissible under INA 212 the refugees is admitted as a permanent resident. The statute under 8 U.S.C. 1159(c) exempts refugees from inadmissibility grounds found under 1182(a)(4), (5), (7)(A) and provides a humanitarian waiver for a number of other inadmissibility grounds.

Removal of Unadjusted Refugees

35. Refugee status is an indefinite status that has no expiration date.

36. Those admitted as refugees have lawful status and are protected from removal unless and until the Department of Homeland Security ("DHS") proves their deportability in removal proceedings under 8 U.S.C. § 1229a and a final order of removal is entered against them.

37. To secure a removal order against a refugee pursuant to removal proceedings under 8 U.S.C. § 1229a, DHS must establish by clear and convincing evidence that one more grounds of deportability under 8 U.S.C. § 1227 apply to the refugee. *See* 8 U.S.C. § 1227 (applying to those "admitted" to the United States); *Matter of D-K,* 25 I&N Dec. 761 (BIA 2012) ("Thus, we conclude that under the language of the Act and regulations, and also in view of the context and structure of the provisions at issue, an alien admitted to the United States as a refugee has been "admitted" for purposes of section 101(a)(13)(A) of the Act." And as such, "the respondent is present in the United States pursuant to a prior admission as a refugee, and any charges in the notice to appear must be based on the grounds of deportability under section 237 of the Act."). Being a refugee who has not yet adjusted their status to permanent resident is not a ground of deportability under 8 U.S.C. § 1227.

Detention of Refugees

38. There are several detention statutes that can authorize the detention of noncitizens depending on their procedural circumstance. See 8 U.S.C. § 1225(b)(1) (applying to noncitizen subjected to expedited removal); 8 U.S.C. § 1225(b)(2)(A) (applying to certain inadmissible noncitizens detained while seeking admission at the border); 8 U.S.C. § 1231(a) (applying to noncitizens with final removal orders); 8 U.S.C. § 1226(a) (discretionary detention authority for those in removal proceedings); 8 U.S.C. § 1226(c) (applying to noncitizens in removal proceedings with certain criminal history).

39. The only possible statutory authority for a refugee admitted to the United States who lacks any criminal history and has never been subjected to any prior removal process is 8 U.S.C. § 1226(a). That statute allows DHS to detain a noncitizen "[o]n a warrant issued by the Attorney General . . . pending a decision on whether the alien is to be removed from the United States." But this statute only applies to those whom DHS places into removal proceedings under 8 § U.S.C. 1229a pursuant to a charge that the noncitizen has triggered a ground of removal. For an admitted noncitizen such as a refugee, DHS may only commence removal proceedings, and thus justify 1226(a) detention, if they are alleged to have triggered one or more grounds of deportability under 8 U.S.C. 1227.

8 U.S.C. § 1159(a)(1)(C) Does Not Authorize Detention

The Statutory Language Does Not Allow for Arrest or Detention

40. Further, 8 U.S.C. § 1159(a)(1)(C) (which is sometimes referred to as Immigration & Nationality Act ("INA") § 209) does not provide any authority to arrest or detain Petitioner. Neither word appears in the statute. To the contrary, § 1159(a)(1)(C), entitled "Adjustment of status of refugees," says that refugees who were admitted over one year ago, but who have not yet

obtained the status of Lawful Permanent Resident ("unadjusted refugees") "shall return or be returned to the custody for inspection and examination…" This statute merely requires the refugee to return to the control of the agency for a determination of their eligibility for adjustment of status, such as through an interview. It does not authorize, much less mandate, arrest followed by detention. As a matter of plain meaning and as specifically used throughout the immigration statutes, "custody" is not synonymous with "detention." And *neither* "custody" nor "detention" is synonymous with unfettered authority to conduct warrantless arrests.

41. The word "custody" is not synonymous with "detention." *See* Black's Law Dictionary, (12th Ed. 2024) (defining custody as "[t]he care and control of a thing or person for inspection, preservation, or security"). The Supreme Court has explicitly rejected the argument that a reference to "custody" in the INA necessarily authorizes detention. *See Clark v. Martinez*, 543 U.S. 371, 385–86 (2005). In *Clark*, the Government argued that the nearly identical language "returned to the custody from which he was paroled" in 8 U.S.C. § 1182(d)(5)(A) authorized detention of individuals to whom the provision applied. The Supreme Court rejected this argument: "we find nothing in this text that affirmatively authorizes detention, much less indefinite detention." *Id*. The Court explained that any detention to which such a parolee would be subjected is based not on the "returned to the custody" language but rather from general detention statutes in the immigration laws—in that case, the Court pointed to 8 U.S.C. § 1231(a)(6), which governs limited detention beyond the statutory removal period. *Id*. at 386. The use of an identical or nearly identical term or phrase in a statute should be read to have the same or similar meaning. *Nat'l Postal Pol'y Council v. Postal Regul. Comm'n*, 17 F.4th 1184, 1191 (D.C. Cir. 2021) ("[a] standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning.") (citation omitted).

42. Courts frequently distinguish between "legal custody" and "physical custody." Child custody cases are replete with references to one party having "legal custody" and another having "physical custody." Indeed, some immigration statutes reference the distinction by, for example, requiring certain children to be in both "the legal and physical custody of the citizen parent" in order to obtain citizenship themselves. See 8 U.S.C. § 1431.

43. Given that the term "custody" when it is unmodified by either "legal" or "physical" can be ambiguous, the Court must look to the remainder of the statutory language to determine what is meant by the term "custody" in the context of § 1159 Importantly, the words "detention" or "detain" (which clearly pertain to physical custody) appear nowhere in § 1159. When Congress intends to authorize physical confinement in the INA, it does so through explicit use of the words "detention" or "detain" within the authorizing provision. See, e.g., 8 U.S.C. §§ 1225, 1226, 1231, 1536–37.

44. The statutory language of §1159 is not an oversight; it reflects Congress's deliberate choice *not* to authorize physical detention in the refugee adjustment context. *See Bittner v. United States*, 598 U.S. 85, 94 (2023) ("When Congress includes particular language in one section of a statute but omits it from a neighbor, we normally understand that difference in language to convey a difference in meaning (*expressio unius est exclusio alterius*).").

45. Not only does § 1159 lack any reference to detention, it contains an explicit directive that refugees "*return or* be returned to the custody of DHS" for the purpose of adjudicating adjustment. 8 U.S.C. § 1159(a)(1)(C) (emphasis added). This evinces a clear intent to have refugees present themselves rather than have them be forcibly arrested and held against their will. If custody meant physical custody, there would be no meaningful sense in which a refugee could "return" themselves to that state; they would always have to "be returned." This is

another indication that § 1159 does not contemplate physical detention. C*f.* 8 U.S.C. § 1226 (explicitly referring to "detention of aliens," and authorizing the Attorney General to "*take into* custody" certain noncitizens charged with or convicted of specified crimes (emphasis added)).

46. Also informative here is the complete absence of any discussion of arresting refugees in the statute where Congress explicitly details the powers of immigration officers and employees in 8 U.S.C. § 1357. Under 8 U.S.C. § 1357(a), officers are allowed to arrest noncitizens without a warrant only if they believe they are in the United States in violation of the immigration laws and present a flight risk, or for criminal offenses in certain circumstances. *See Gamez Lira v. Noem, et al.*, No. 1:25-cv-00855-WJ-KK, 2025 WL 2581710, at *3 (D.N.M. Sept. 5, 2025). None of these situations applies to Zuhair. Further, 8 U.S.C. § 1226(a) allows DHS to detain a noncitizen only "[o]n a warrant issued by the Attorney General . . . pending a decision on whether the alien is to be removed from the United States."[1] Zuhair has also not been placed in removal proceedings. In light of all these circumstances, there is no authority for Respondents to have arrested him, a clear indication that § 1159 does not contemplate either arrest or detention.

47. In *U.H.A. v. Bondi*, Judge Tremaine agreed, stating the term "custody" in §1159 "contemplates that a refugee be returned, temporarily, to the control of DHS" for the purposes of "inspection for admission to the United States as an immigrant…rather than prolonged detention." *U.H.A et. al. v. Bondi, et. al.*, Case No. 26-417 (JRT/DLM), ECF No. 41 at 18 (D. Minn. Jan. 28, 2026). Any prolonged detention of a lawfully admitted refugee must be specifically authorized under 8 U.S.C. §§1225, 1229a, or 1231. *Id.* at 19.

[1] This statute only applies to those whom DHS places into removal proceedings under 8 U.S.C. § 1229a pursuant to a charge that the noncitizen has triggered a ground of removal. Agency regulations do not allow for either arrests of people who are not removable from the United States or warrantless arrests absent probable cause of flight risk. 8 C.F.R. § 287.8(c)(2)(i), (ii).

Agency Regulations and Policy Confirm that Failure to Adjust or Apply for Adjustment is Not Grounds for Detention.

48. Agency regulations and agency policies further confirm Zuhair's understanding. The DHS regulation regarding adjustment of status of refugees requires refugees to submit an application and potentially submit to a medical examination but provides that the necessity of an interview will be decided on a case-by-case basis. 8 C.F.R. § 209.1. Additionally, the USCIS Policy Manual confirms that USCIS may decide not to require an interview when the application does not present any issues of concern regarding admissibility. USCIS Policy Manual Vol. 7 Part L Ch. 5. Even when an interview is required, no agency rule or policy contemplates the detention of refugees, nor have they as far back as the passage of the Refugee Act in 1980. *See* Aliens and Nationality; Refugee and Asylum Procedures, 46 FR 45116-01 (1981) ("Section 209 contains the procedures for adjustment to lawful permanent resident alien status by refugees and asylees. Notice will be sent to all refugees after one year to report for an interview.").

49. Further, in a 2010 policy, ICE Policy No. 11039.1, ICE specifically disavowed having any detention authority under section 1159.[2] The 2010 policy states that an unadjusted refugee can be detained only if there is a basis for detention under other, separate provisions of the INA. In February 2026, Defendants revealed that they had secretly rescinded the 2010 policy in a one-sentence memorandum issued in December 2025, without any assessment of legality or the impact on refugees.

50. This is a radical departure from how the statute has been interpreted and implemented throughout the 45 years the Refugee Act has been in place. The United States has never before engaged in the mass incarceration of unadjusted refugees at the one-year mark.

[2] *See* Detention of Refugees Admitted Under INA § 207 Who Have Failed to Adjust to Lawful Permanent Resident Status (May 2010), *available at* https://www.ice.gov/doclib/foia/policy/directive11039.1.pdf.

Indeed, doing so, as noted in *U.H.A, et. al.*, is illogical as 8 U.S.C. § 1159(a) "makes refugees ineligible for adjustment until one year after entry" thus this interpretation would subject every refugee to detention. *U.H.A et. al. v. Bondi, et. al.*, Case No. 26-417 (JRT/DLM), ECF No. 41 at 19 (D. Minn. Jan. 28, 2026) (emphasis added in original). Refugee status is intended to serve as a precursor to status as a lawful permanent resident, not as a one-year prelude to indefinite incarceration. Spelling out the realities of Respondents' position reveals its absurdity: for 365 days after arrival, refugees are not subject to detention and are unable to adjust their status, but on the 366th day they become eligible to adjust their status and become Lawful Permanent Residents, but they are also subject to violent arrest, mandatory detention, sudden involuntary transfer out of state, and being cut off from family, community and counsel for failure to adjust their status.

Detention Is Also Inconsistent with United States Obligations Under International Law

51. The United States acceded to the 1967 Protocol in 1968, see Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223; 606 U.N.T.S. 267 ("1967 Protocol"), thereby binding itself to Articles 2 through 34 of the 1951 Refugee Convention. See 1967 Protocol art. 1, ¶¶ 1–2; Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 ("1951 Refugee Convention"). Congress enacted the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, to bring United States refugee law into conformance with the 1967 Protocol. See *INS v. Cardoza- Fonseca*, 480 U.S. 421, 436–37 (1987) ("If one thing is clear from the legislative history of [the Refugee Act of 1980], it is that one of Congress's primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees.").

52. Under international law, once someone has been recognized as a refugee, as Zuhair has, limits on their freedom of movement may not be imposed beyond those limits which apply

"to aliens generally in the same circumstances." 1951 Refugee Convention at Arts. 26, 31(2). Allowing for detention, however, would do violence to this clear legislative purpose and directive. Further, in interpreting a statute, the Court must assume Congress intended to follow international law and should avoid any interpretation that would violate any international law or treaty. *See F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004) (citing *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208 (1804)); *see also Cardoza-Fonseca*, 480 U.S. at 436–37 (a primary purpose of the Refugee Act "was to bring United States refugee law into conformance with the 1967 United Nations Protocol Relating to the Status of Refugees," to which the United States is a party). An interpretation of Section 1159 that permits arrest and detention would violate the 1951 Refugee Convention, which protects the freedom of movement for refugees. See 1951 Refugee Convention Art. 26. Such an interpretation is also contrary to the International Covenant on Civil and Political Rights ("ICCPR"), which protects against unreasonable detention for individuals recognized as refugees. International Convention on Civil and Political Rights Art. 9, Mar. 23, 1973, 999 U.N.T.S. 171.

53. As stated above, once someone has been recognized as a refugee, as Zuhair has, limits on their freedom of movement may not be imposed beyond those limits which apply "to aliens generally in the same circumstances." 1951 Refugee Convention at Arts. 26, 31(2). The 1951 Convention speaks to the need for countries to facilitate naturalization of refugees and offers continuing protection against any threat of refoulement. Id. at Art 33–34.

54. The ICCPR, which the United States ratified in 1992, likewise protects the right of refugees not to be arbitrarily detained. The United Nations Human Rights Committee has affirmed that this principle applies to all migrants, refugees and asylum-seekers, and that detention by immigration authorities must be reasonable, necessary and proportionate in the light of the

circumstances. See U.N. Human Rights Committee, General Comment No. 35 ¶18, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014).

55. In short, the 1951 Convention, the "ultimate source of the language Congress placed in the [Refugee] Act," *Cardoza-Fonseca*, 480 U.S. at 462 n. 4 (1987) (Powell, J. dissenting), prohibits the present detention of Zuhair, given that he was admitted under INA § 207(c)(2). The ICCPR and its interpretation by the United Nations Human Rights Committee furthers this point. Given its legislative history in the United States, Section 209 must be read in a manner consistent with these international law obligations, and the Respondent's interpretation should be rejected on that basis. *Schooner Charming Betsy*, 2 Cranch 64, 118, 2 L.Ed. 208.[3]

FACTUAL BACKGROUND

56. Zuhair is a 34-year-old refugee from Iraq.

57. He, his wife, and his son were admitted as refugees to the United States on the Admission Date.

58. Zuhair and his wife fled [redacted] Zuhair and his wife fled to Turkey in 2014 where

[3] As further evidence that Congress did not intend § 1159 to authorize detentions of refugees, it is noteworthy that Congress has never appropriated funds for § 1159 detentions. Every appropriation made by Congress for immigration detentions explicitly ties those funds to removal, deportation, and/or enforcement against removable aliens. For example, the DHS budget for Fiscal Year 2026 describes detention as serving a single purpose: to facilitate removal. It specifically links the funding for 50,000 detention beds to "1,000,000 removals per year" and funds transportation specifically for "international removals for aliens with final orders of removal." U.S. Immigration and Customs Enforcement Budget Overview, Dep't Homeland Sec. at 7 (June 2025) https://www.dhs.gov/sites/default/files/2025-06/25_0613_ice_fy26-congressional-budget-justificatin.pdf (emphasis added).

they immediately applied for refugee status. In Turkey, they waited for nine years before being approved for refugee resettlement to the United States in 2023.

59. Zuhair has resided in the state of Texas since the Admission Date. He lives with his wife and ten-year-old son, who were also lawfully admitted as refugees.

60. Zuhair owns his own business delivering packages and is the main financial earner in his family.

61. He submitted an application for adjustment of status around March 2025. This application remains pending with USCIS, almost one year later.

62. On the Detention Date, Zuhair was stopped at a checkpoint near El Paso, Texas. When asked by immigration agents whether he was a U.S. citizen, he responded in the negative. He presented documentation of his lawful refugee status including an EAD and the receipt notice of his pending adjustment of status application. On information and belief, Zuhair's documents, including evidence of his pending adjustment of status application, are currently in the possession of ICE at the Otero County Processing Center.

63. After reviewing Zuhair's documents, immigration agents detained him at the checkpoint where he was held until about midnight. He was then shackled and moved to an unknown detention center. On information and belief, he was subsequently moved to an unknown detention center near Houston, Texas.

64. He was then moved and is currently detained at the Otero County Processing Center in Chapparal, New Mexico.

65. He was not given an opportunity to contact his family or an attorney for two days. Zuhair's wife did not know his whereabouts until he called her two days after his arrest and detention.

66. On information and belief, when Zuhair requested information about his detention and ICE's plans for continued detention or release, a detention center official grabbed Zuhair and threw him to the ground.

67. Zuhair's psychological and emotional state has been deteriorating since his detention due to his separation from his wife and child. His sudden arrest and detention also forces him to relive the kidnapping and beating he suffered in Iraq causing him further psychological distress.

68. His detention has placed a severe emotional burden on Zuhair's family. His son is distressed; the shock of his father's sudden disappearance has caused him anxiety and nervous attacks. His psychological distress is so severe that he is unable to attend school. Zuhair's wife has been unable to go to work because she needs to care for her son.

69. The loss of Zuhair's income, and Zuhair's wife's inability to attend work have placed a serious financial burden on their family. If Zuhair's detention continues, his family will be unable to afford their basic necessities.

70. Zuhair has not been charged with or convicted of any crimes.

71. Zuhair is not in removal proceedings of any kind. ICE officials have represented that he may have an upcoming hearing with an immigration judge. However, as of the date of filing he has not been served a Notice to Appear ("NTA"), and he does not have any hearings scheduled with the immigration court.

72. Zuhair has never been issued a removal order of any kind.

CLAIMS FOR RELIEF

COUNT I
Ultra Vires - Detention Without Statutory Authority

73. Zuhair realleges all paragraphs above as if fully set forth here.

74. He was admitted as a refugee and is in refugee status.

75. He is not in removal proceedings of any kind.

76. He has never been issued a removal order of any kind.

77. DHS has no statutory detention authority over Zuhair.

COUNT II
Substantive Due Process

78. Zuhair realleges all paragraphs above as if fully set forth here. When Respondents arrested him, he was a lawfully admitted refugee who had properly filed an application for adjustment of status with USCIS. No law, facts or other circumstances warranted Zuhair's arrest and detention.

79. His detention does not bear a reasonable relationship to either of the lawful purposes of immigration detention: preventing danger to the community or flight prior to removal. *See Zadvydas*, 533 U.S. at 690-92 (discussing constitutional limitations on civil detention); *see also Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective); *Gamez Lira v. Noem, et al.*, No. 1:25-cv-00855-WJ-KK, 2025 WL 2581710, at *2 (D.N.M. Sept. 5, 2025).

80. Zuhair possesses a strong liberty interest in his release as lawfully admitted refugee under United States and international law.

81. Because Respondents had no legitimate, non-punitive objective in arresting Zuhair, his detention violates substantive due process under the Fifth Amendment to the U.S. Constitution.

COUNT III
Violation of the Fifth Amendment of the U.S. Constitution
Procedural Due Process

82. Zuhair realleges all paragraphs above as if fully set forth here.

83. The Fifth Amendment's Due Process Clause prohibits the federal government from

depriving any person of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

84. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), instructs courts to balance three factors to determine whether procedural due process is satisfied: (1) the private interest at issue; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional procedural safeguards; and, (3) the government's interest, including fiscal and administrative burdens that additional or substitute procedural requirements entail.

85. The first factor, the private interest at issue, favors Zuhair. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth Amendment] protects." *Zadvydas*, 533 U.S. at 690. This is especially true given (1) Zuhair's admission into the United States, (2) his lawful status as a refugee, and (3) his pending application for adjustment of status to lawful permanent resident. First, because he was admitted into the United States not subject to continued government monitoring, he possesses a weighty interest in continued liberty. *See Alvarez Varela v. Dedos*, No. 1:25-cv-01085-DHU-KK, ECF No. 11 at *6 (D.N.M. Nov. 11, 2025); *Garcia Domingo v. Castro*, No. 1:25-cv-00979-DHU-GJF, 2025 WL 2941217, at *2 (D.N.M. Oct. 15, 2025). Second, to be approved for refugee status, Zuhair had to undergo the most stringent application process known to the United States immigration/refugee admission law. In turn, he was promised a meaningful path to lawful permanent resident status. That came with the expectation that he could build a life here without risking arbitrary arrest, detention, and removal that would strip him of the very permanency United States refugee law guarantees.

86. The second factor, the risk of erroneous deprivation of liberty and the probable value of procedural safeguards, favors Zuhair. There simply was no process in place that allowed

for the possibility that his detention could be found to be unwarranted or unnecessary prior to the actual detention. The Respondents have not satisfied any of the normal requirements or standards before taking a person in custody such as establishing probable cause to arrest and detain, nor reasonable suspicion that any of Zuhair's circumstances have changed since he was granted refugee status. His detention is the direct result of insufficient safeguards and lack of procedure.

87. The third factor, the government's interest, also favors Zuhair. The detention of refugees who are neither removable nor a danger to the community is a tremendous waste of resources. This waste drags down the efficiency of the entire immigration system. And because the government must also spend resources defending against a habeas corpus petition in federal court to compel Respondents to comply with law, requiring Respondents to base any detention on actual findings of either removability or dangerousness or flight risk is required.

88. For these reasons, arresting and detaining Zuhair without providing any explanation, notice or meaningful opportunity to respond violated procedural due process under the Fifth Amendment to the U.S. Constitution.

COUNT IV
Violation of Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (B), & (D)

89. Zuhair realleges all paragraphs above as if fully set forth here.

90. Under the APA, a court shall "hold unlawful and set aside agency action . . . found to be . . . not in accordance with law" or "contrary to constitutional right, power, privilege, or immunity." 5 U.S.C. § 706(2)(A), (B). The APA also requires a court to set aside and hold unlawful agency action that is "without observance of procedure required by law." *Id.* § 706(2)(D).

91. The APA's reference to "law" in the phrase "not in accordance with law," "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering." *FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original).

92. Respondents' detention of Zuhair while he is lawfully admitted as a refugee and after he had properly filed an application for adjustment of status is contrary to the agency's constitutional power under the Fifth Amendment's Due Process Clause, as explained above.

93. His detention was also not in accordance with the INA and implementing regulations governing detention insofar as none of the statutes that authorize Respondents to detain non-citizens are implicated by the facts and circumstances of Zuhair's case.

94. An agency decision that "runs counter to the evidence before the agency" is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983). Respondents' decision to detain Zuhair ran counter to the evidence before the agency that he was a lawfully admitted refugee who had applied for adjustment of status to become a lawful permanent resident of the United States.

95. Respondents' decision to detain Zuhair and the secret rescission of the agency's policy directive holding that unadjusted refugees cannot be detained is further arbitrary and capricious because it represents an unexplained departure from a long-standing prior policy. Respondents cannot "depart from a prior policy *sub silentio;*" rather, Respondents "must show that there are good reasons for the new policy" and consider reliance interests. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

96. Accordingly, Zuhair's detention should be held unlawful and set aside because it was (1) arbitrary, capricious, and not otherwise in accordance with law, *see* 5 U.S.C. § 706(2)(A); (2) contrary to the agency's constitutional authority, *see id.* § 706(2)(B); and (3) not in accordance with the INA and implementing regulations, *see id.* § 706(2)(D).

COUNT V
Violation of the Fourth Amendment to the U.S. Constitution and 8 U.S.C. § 1357(a)(2)
Unlawful Arrest

97. Zuhair realleges all paragraphs above as if fully set forth here.

98. The Fourth Amendment protects "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures." U.S. Const. Amend. IV. Immigration arrests and detentions are 'seizures' within the meaning of the Fourth Amendment. *Gamez Lira*, 2025 WL 2581710, at *4.

99. Respondents' conduct violates the Fourth Amendment in that it constitutes an unreasonable search and seizure.

100. Immigration arrests and detentions are seizures within the meaning of the Fourth Amendment. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1044 (1984) (acknowledging that deportation proceedings are civil, but the Fourth Amendment still applies to the "seizure" of the person).

101. The Fourth Amendment requires that all arrests entail a neutral, judicial determination of probable cause. *See Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). "Probable cause requires a 'substantial probability; based on facts related to the individual." *Ramirez Ovando v. Noem*, No. 1:25-CV-03183-RBJ, 2025 WL 3293467, at *15 (D. Colo. Nov. 25, 2025) (*quoting Storey v. Taylor*, 696 F.3d 987, 992 (10th Cir. 2012) (finding probable cause for immigration arrests lacking). That determination can occur either before the arrest, in the form of a warrant, or promptly afterward, in the form of a prompt judicial probable cause determination. *See id*.

102. Additionally, there is a strong preference that immigration arrests be based on warrants. *See Arizona v. U.S.*, 567 U.S. 387, 407–08 (2012). The INA thus provides immigration agents with only limited authority to conduct warrantless arrests. 8 U.S.C.§ 1357(a)(2). Immigration agents may arrest aliens if they have "reason to believe that the alien so arrested is in

the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest." *Id*. *See also, Ramirez Ovando*, 2025 WL 3293467, at *2; *Gamez Lira*, 2025 WL 2581710 at *3.

103. Zuhair was arrested without a warrant and without probable cause. He presented documentation of lawful refugee status; he gave them an expired EAD and a receipt notice for a pending application for adjustment of status when asked for information at a checkpoint. An expired EAD does not provide probable cause that a refugee has lost his or her refugee status. Further, refugee status does not expire and refugees are authorized to work incident to status. These are facts that immigration enforcement officials are expected to know and understand in applying their enforcement powers.

104. Accordingly, Zuhair's arrest was unconstitutional pursuant to the Fourth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Zuhair requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin Zuhair's removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. If Zuhair has been transferred from this jurisdiction, to order Zuhair's return to this Court's jurisdiction;

d. Declare that Zuhair's detention violates the Due Process Clause of the Fifth Amendment, the Fourth Amendment, the INA, and the APA;

e. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Zuhair from custody;

f. Enjoin Zuhair's removal from the United States during the pendency of this action:

g. Award Zuhair attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant any other and further relief that this Court deems just and proper.

DATED: February 8, 2026
Las Cruces, New Mexico

Respectfully Submitted,

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

I am submitting this verification on behalf of Petition because Petitioner's current detention makes Petitioner unable to submit one on Petitioner's own behalf. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED: February 8, 2026
Las Cruces, New Mexico

Respectfully Submitted,

/s/ Marisa A. Ong

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