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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
10 **FRESNO DIVISION**

11 **VIVEK BAINS,**

12 *Petitioner,*

13 *v.*

14 **KRISTI NOEM**, in her official capacity as
15 Secretary of the Department of Homeland
16 Security; **PAMELA BONDI**, in her official
17 capacity as Attorney General of the United
18 States; **TODD LYONS**, in his official
19 capacity as Acting Director and Senior
20 Official Performing the Duties of the
21 Director of U.S. Immigration and Customs
22 Enforcement; **MARCOS CHARLES**, in his
23 official capacity as Field Office Director
24 for U.S. Immigration and Customs
Enforcement, Enforcement and Removal
Operations; **CHRISTOPHER CHESTNUT**, in
his official capacity as Warden of California
City Correctional Facility,

Respondents.

)
) Case No. 1:25-at-01400
)

) **PETITION FOR WRIT OF**
) **HABEAS CORPUS**
)

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

1. Petitioner, VIVEK BAINS, by and through undersigned counsel, respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing and unlawful civil immigration detention by the United States Department of Homeland Security and its agents. Petitioner is a 31-year-old native and citizen of India, currently detained at the California City ICE Processing Center in California City, California, within the jurisdiction of this Court.
2. Petitioner Vivek Bains entered the United States on or about October 1, 2023, without inspection, admission, or parole. After complying with all immigration reporting requirements while his removal proceedings were pending, on October 16, 2025, ICE detained him during a routine ICE check-in appointment, despite full compliance with all reporting requirements and the absence of any criminal history.
3. On December 2, 2025, the Immigration Judge (“IJ”) indicated that the Immigration Court lacked jurisdiction to conduct a custody redetermination (“bond”) hearing for Petitioner Vivek Bains, concluding—erroneously—that he was subject to mandatory detention under INA § 235(b) based on DHS’s assertion that he was present in the United States without inspection and therefore not eligible for bond. The Immigration Judge relied on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), despite the record reflecting that Petitioner was placed in INA § 240 removal proceedings following a credible fear determination, and despite the fact that Petitioner was administratively detained by ICE on October 16, 2025, during a scheduled ICE check-in appointment after prior compliance.
4. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a). Noncitizens detained under section § 1226(a) are subject to discretionary detention and

1 can request a change in custody redetermination (*i.e.*, bond hearing) with an Immigration
2 Judge.

3 5. However, on July 8, 2025, DHS issued an internal Interim Guidance (“Policy”)¹ that took
4 the baseless position that—contrary to statutory principles and governing case law—
5 noncitizens like Petitioner who entered the United States without authorization or parole
6 are subject to mandatory detention under 8 U.S.C. § 1225(b) rather than discretionary
7 detention under 8 U.S.C. § 1226(a). This baseless policy has resulted in Petitioner's
8 deprivation of the custody determinations to which he is statutorily and constitutionally
9 entitled.
10

11 6. As a result of these jurisdictional issues, Petitioner now faces prolonged and potentially
12 indefinite detention without any meaningful opportunity for individualized custody
13 review. Petitioner is actively pursuing asylum, withholding of removal, and protection
14 under the Convention Against Torture based on fear of persecution in India, including
15 harm based on his political opinion and circumstances giving rise to his credible fear
16 determination.
17

18 7. Petitioner's next hearing is scheduled for February 20, 2026. Despite his ongoing removal
19 proceedings and eligibility for relief, DHS continues to detain him without providing a
20 mechanism for release or a hearing before an Immigration Judge empowered to evaluate
21 danger, flight risk, or alternatives to detention.
22

23 8. Petitioner's continued detention without a proper custody review violates the Fifth
24 Amendment Due Process rights and the Immigration and Nationality Act (“INA”). DHS's
25 policy has upended decades of DHS's own interpretation of bond eligibility under sections
26

27 ¹ The *Maldonado Bautista* Court final judgement reads in part “VACATES the Department of Homeland Security
28 policy described in the July 8, 2025, ‘Interim Guidance Regarding Detention Authority for Applicants for Admission’
under the Administrative Procedure Act as not in accordance with law. 5 U.S.C. § 706(2)(A).”

1 1226(a) and 1225(b). Nearly every district court that has addressed this issue (including at
2 least one in this district) has rejected DHS's unfounded position and granted *habeas* relief.

- 3 9. For the foregoing reasons, the Court should grant *habeas* relief and direct Respondents to
4 release Petitioner, or in the alternative, promptly provide him with a constitutionally
5 adequate bond hearing § 1226(a) within seven days.
6

7 **FACTUAL BACKGROUND**

- 8 8. Petitioner is a 31-year-old native and citizen of India. He fled India after experiencing
9 circumstances giving rise to a credible fear of persecution or torture, which was formally
10 recognized by an asylum officer, resulting in his placement into removal proceedings.
11 Petitioner does not have a criminal record, has no history of violence or dangerous
12 behavior, and has consistently complied with immigration authorities both before and
13 during his detention.
14
15 9. Petitioner last entered the United States on or about October 1, 2023, near Lukeville,
16 Arizona, without inspection, admission, or parole. Following his apprehension, DHS
17 determined that Petitioner demonstrated a credible fear of persecution or torture, vacated
18 the expedited removal order under INA § 235(b)(1), and placed him into full removal
19 proceedings. He remained in compliance with all ICE reporting requirements while out of
20 custody.
21
22 10. After he arrived in the United States, Petitioner was issued a Notice to Appear ("NTA"),
23 and DHS placed him in proceedings under INA § 240, governed by the custody statute at
24 8 U.S.C. § 1226(a). Petitioner is pursuing asylum, withholding of removal, and protection
25 under the Convention Against Torture before the Immigration Court, where his case
26 remains pending.
27
28

1 11. On October 16, 2025, Petitioner was detained by Immigration and Customs Enforcement
2 (“ICE”) during a routine scheduled check-in appointment, despite his perfect compliance
3 with supervision and the absence of any criminal history. Following his administrative
4 arrest, he was taken into DHS custody.

5
6 12. Petitioner has now endured prolonged civil immigration detention despite having no
7 criminal history, demonstrating consistent compliance with immigration authorities, and
8 presenting strong claims for asylum, withholding of removal, and protection under the
9 Convention Against Torture. DHS’s misapplication of the detention statutes has resulted
10 in the unnecessary and unlawful continued detention of Petitioner.

11 **JURISDICTION AND VENUE**
12

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

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

18
19 20. The Court may grant relief under the *habeas corpus* statutes, 28 U.S.C. § 2241, *et seq.*,
20 the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, and the All Writs Act, 28
21 U.S.C. § 1651.

22 21. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens
23 challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–
24 17 (2003) (recognizing *habeas* jurisdiction over immigration detention challenges);
25 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Soberanes v. Comfort*, 388 F.3d
26 1305, 1310 (10th Cir. 2004) (“Challenges to immigration detention are properly
27 brought directly through *habeas*.”).
28

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

3 23. Venue is proper in the United States District Court for the Eastern District of California
4 pursuant to 28 U.S.C. § 1391(e), because Petitioner Vivek Bains is detained within this
5 District at the California City ICE Processing Center in California City, California.
6 Petitioner remains in DHS custody within this District, and the unlawful detention
7 giving rise to this action is occurring here.
8

9 **PARTIES²**

10
11 22. Petitioner is a native and citizen of India, who is currently detained at the California City
12 ICE Processing Center in California City, California. He is held in the custody of the
13 United States Department of Homeland Security. Petitioner brings this habeas petition to
14 challenge the legality of his ongoing civil immigration detention as well as the unlawful
15 statutory basis under which DHS continues to detain him.

16 23. Respondent **Kristi Noem** is sued in her official capacity as the Secretary of the U.S.
17 Department of Homeland Security ("DHS"). In this capacity, Respondent is responsible
18 for the implementation and enforcement of the Immigration and Nationality Act, and
19 oversees U.S. Immigration and Customs Enforcement, the component agency responsible
20 for Petitioners' detention and custody. Respondent is a legal custodian of Petitioner.
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24 ² In *Rumsfeld v. Padilla*, the Supreme Court addressed the identity of the proper respondent to a § 2241 habeas
25 petition filed by a U.S. citizen challenging his detention as an enemy combatant. 542 U.S. 426 (2004). The Court
26 held that the only appropriate respondent for a traditional habeas corpus petition involving a "core challenge" to
27 "present physical confinement" is the individual's "immediate custodian," meaning the person in charge of the facility
28 where the individual is being held *Id.* at 435. In that case, the immediate custodian was the commanding officer in
charge of the naval brig where the petitioner was physically held. *Id.* at 442. The Supreme Court also made it clear
that it would not address who the proper respondent would be for a petition filed by a noncitizen "detained pending
deportation." The Court noted a disagreement among different circuit courts regarding whether the Attorney General
is a proper respondent to a habeas petition in such cases and stated, "Because the issue is not before us today, we
again decline to resolve it" *Id.* at 435 n.8.

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

7 25. Respondent **Todd Lyons** is sued in his official capacity as the Acting Director of U.S.
8 Immigration and Customs Enforcement (ICE) and is responsible for ICE's policies,
9 practices, and procedures, including those relating to the apprehension and detention of
10 noncitizens during their removal proceedings.
11

12 26. Respondent **Marcos Charles**, Field Office Director of the ICE San Francisco Field
13 Office, oversees immigration enforcement functions and supervisory responsibilities
14 relevant to Petitioners' detention because Mesa Verde ICE Processing Center is under that
15 Field Office's jurisdiction. He is included as a respondent in his official capacity.
16

17 27. Respondent, **Christopher Chestnut**, Warden of the California City ICE Processing
18 Center, is the Petitioners' immediate custodian. The Warden exercises direct physical
19 control over Petitioners' confinement and is a proper respondent under the immediate-
20 custodian rule governing habeas corpus petitions.
21

22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
23

24 28. Petitioner has no administrative remedies to exhaust.

25 29. Petitioner has no available administrative remedy, as DHS and the Immigration Court
26 have refused to provide him with access to a custody redetermination under INA § 236(a),
27 despite his eligibility for such review following his administrative detention by ICE on
28

1 October 16, 2025, his placement in INA § 240 removal proceedings, and his lack of any
2 criminal history. As a result, Petitioner remains detained without an avenue for bond
3 proceedings before an Immigration Judge.

4
5 30. Therefore, a *writ of habeas corpus* is the sole avenue through which Petitioner may
6 vindicate his constitutional, statutory, and regulatory rights and seek restoration of his
7 liberty.

8 LEGAL FRAMEWORK

9 31. The INA prescribes three basic forms of detention for noncitizens in removal
10 proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in
11 standard non-expedited removal proceedings before an IJ. *See* 8 § 1226(a); 8 U.S.C. §
12 1229a. Individuals in section 1226(a) detention are entitled to a bond hearing at the
13 outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who
14 have been arrested, charged with, or convicted of certain crimes are subject to
15 mandatory detention, *see* 8 U.S.C. § 1226(c).

16
17 32. Second, the INA provides for mandatory detention of noncitizens subject to expedited
18 removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission
19 referred to under 8 U.S.C. § 1225(b)(2).

20
21 33. Finally, the Act also provides for detention of noncitizens who have been previously
22 ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C.
23 § 1231(a)–(b).

24 34. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the
25 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996,
26 Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583,
27
28

1 3009–585. Section 1226(c) was most recently amended earlier this year by the LRA,
2 Pub. L. No. 119-1, 139 Stat. 3 (2025).

3 35. Following enactment of the IIRIRA, the Executive Office of Immigration Review
4 drafted new regulations explaining that, in general, people who entered the country
5 without inspection were not considered detained under section 1225 and that they were
6 instead detained under section 1226(a). *See* Inspection and Expedited Removal of
7 Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum
8 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed,
9 most noncitizens who entered without inspection—unless they were subject to another
10 form of detention authority—received bond hearings. This practice was also consistent
11 with the practice before the enactment of the IIRIRA, under which noncitizens not
12 deemed “arriving” were entitled to a custody hearing before an IJ or other hearing
13 officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229
14 (1996) (noting that section 1226(a) simply “restates” the detention authority previously
15 found at section 1252(a)).
16

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

An “applicant for admission” is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing (“bond hearing”) before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See <https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission> (last accessed August 4, 2025) (emphasis original).*

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

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

6 **COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION**
7 **AND NATIONALITY ACT (INA) AND IMPLEMENTING REGULATIONS**

8 39. Petitioner re-allege and incorporate by reference the preceding paragraphs as though fully
9 set forth herein.

10 40. The Immigration and Nationality Act authorizes immigration detention only when it
11 serves a legitimate statutory purpose—namely, to ensure an individual’s appearance at
12 future proceedings or to protect public safety. See *Zadvydas v. Davis*, 533 U.S. 678, 690
13 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). Detention that does not advance
14 those purposes, or that becomes arbitrary and indefinite, exceeds the government’s
15 statutory authority.
16

17 41. Petitioner is a native and citizen of India, who entered the United States without
18 inspection seeking protection and was placed in removal proceedings under section 240 of
19 the Immigration and Nationality Act. His asylum, withholding of removal, and
20 Convention Against Torture applications remain pending.
21

22 42. Petitioner has no criminal history, has not engaged in violence or dangerous behavior, and
23 has consistently cooperated with immigration authorities since his apprehension. He has
24 been detained since October 16, 2025, when ICE took him into custody during a routine
25 ICE check-in appointment despite his perfect compliance with supervision.

26 43. The INA does not authorize the indefinite detention of a noncitizen in pending § 240
27 proceedings who poses no danger or flight risk and who has never received a custody
28

1 hearing before a neutral decisionmaker. *See Zadvydas*, 533 U.S. at 690–91; *Clark*, 543
2 U.S. at 380–81.

3
4 44. Petitioner’s continued confinement serves no legitimate statutory purpose. His detention
5 bears no reasonable relation to ensuring appearance or protecting public safety, and it is
6 not tied to any imminent removal while his asylum and protection claims remain pending.

7
8 45. Petitioner’s ongoing detention—without individualized assessment, without lawful
9 statutory justification, and without any ability to seek review—exceeds the narrow
10 detention authority granted by Congress and violates controlling Supreme Court
11 precedent.

12
13 46. Accordingly, Petitioner’s continued detention is unlawful under the Immigration and
14 Nationality Act, its implementing regulations, and governing constitutional principles.
15 Petitioner respectfully requests that this Court order their immediate release, or, in the
16 alternative, require the government to provide a constitutionally adequate custody hearing
17 before an Immigration Judge with authority to order release on bond.

18
19 **COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH**
20 **AMENDMENT TO THE U.S. CONSTITUTION**

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

24 48. The Fifth Amendment to the United States Constitution guarantees that no person shall be
25 deprived of liberty without due process of law. Noncitizens physically present in the
26 United States, even those who entered without inspection, are entitled to the protections of
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1 procedural due process. See *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v.*
2 *Plasencia*, 459 U.S. 21, 32 (1982).

3 49. Petitioner is a native and citizen of India, who entered the United States seeking protection
4 and was placed in removal proceedings under section 240 of the Immigration and
5 Nationality Act.

6 50. Petitioner has no criminal history, has not engaged in violence or dangerous behavior, and
7 has consistently cooperated with immigration authorities since his apprehension.

8 51. Petitioner has been detained continuously since October 16, 2025, when ICE detained him
9 during a routine ICE check-in appointment and confined him at the California City ICE
10 Processing Center in California City, California.

11 52. DHS has taken the position that Petitioner is categorically ineligible for bond under INA §
12 235(b), thereby depriving him of any meaningful access to individualized custody review.

13 53. Immigration detention implicates a fundamental liberty interest. Prolonged detention
14 without a meaningful opportunity to challenge confinement violates core due process
15 guarantees of notice, the right to be heard, and adjudication by a neutral decisionmaker.

16 54. The government's reliance on a categorical jurisdictional bar to deny Petitioner any
17 opportunity for individualized review contravenes these constitutional protections and
18 results in arbitrary, unjustified, and potentially indefinite detention.

19 55. Accordingly, Petitioner's continued incarceration without individualized custody
20 determinations violates the Due Process Clause of the Fifth Amendment. *Habeas* relief is
21 warranted to remedy these constitutional violations by ordering his immediate release or,
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1 in the alternative, requiring prompt and constitutionally adequate bond hearings before
2 neutral adjudicators with authority to grant release.

3 **COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –**
4 **ARBITRARY AND CAPRICIOUS AGENCY ACTION**
5

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

8 57. The Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2), requires courts to hold
9 unlawful and set aside agency actions that are arbitrary, capricious, an abuse of discretion,
10 or otherwise not in accordance with law. Under this standard, an agency must articulate a
11 rational connection between the facts found and the choices made, and it must provide an
12 adequate explanation for its actions consistent with statutory authority. See *Judulang v.*
13 *Holder*, 565 U.S. 42, 55 (2011).
14

15
16 58. The Department of Homeland Security has acted arbitrarily and capriciously in continuing
17 to detain Petitioner without any individualized justification. Petitioner has no criminal
18 history, no record of violence or misconduct, and has consistently cooperated with
19 immigration authorities. Nothing in his record establishes that he presents a danger to the
20 community or a flight risk.
21

22 59. Despite these facts, DHS has maintained Petitioner’s detention for an extended and
23 potentially indefinite period without providing any reasoned explanation or evidence that
24 continued confinement serves a legitimate statutory purpose. DHS has failed to articulate
25 why release under supervision, bond, or other alternatives would be insufficient.
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60. DHS's reliance on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to justify continued detention is arbitrary and contrary to law. *Yajure Hurtado* speaks only to the jurisdiction of Immigration Judges to conduct bond hearings for individuals DHS asserts are subject to detention under INA § 235(b). It does not mandate that DHS detain such individuals indefinitely, nor does it eliminate DHS's longstanding discretionary authority to release noncitizens on parole, recognizance, supervision, or bond.

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

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

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

64. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully request that this Court order his immediate release or, in the alternative, direct DHS to provide a constitutionally adequate and reasoned custody determination consistent with the requirements of the Administrative Procedure Act and the Immigration and Nationality Act.

COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE

FIFTH AMENDMENT

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

3 66. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal
4 protection that applies to all persons within the United States, including noncitizens
5 physically present, regardless of their immigration status. See *Reno v. Flores*, 507 U.S.
6 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982). The government may not
7 selectively apply immigration laws or policies in a manner that discriminates against any
8 particular nationality or class of individuals, absent a rational and legitimate governmental
9 purpose.
10

11 67. Petitioner is placed in removal proceedings under section 240 of the Immigration and
12 Nationality Act, a statutory framework under which noncitizens ordinarily receive an
13 individualized custody determination before an Immigration Judge pursuant to section
14 236(a).
15

16 68. Petitioner Vivek Bains is a native and citizen of India, who entered the United States
17 without inspection, sought protection, and was placed in removal proceedings under INA
18 § 240. He has no criminal history, record of violence, or history of dangerous behavior,
19 and has fully cooperated with immigration authorities.
20

21 69. Despite being similarly situated to other § 240 respondents, Petitioner has been
22 categorically denied access to any bond hearing based solely on DHS's assertion—drawn
23 from disputed factual allegations in the Form I-213—that he was apprehended “shortly
24 after entry,” resulting in his classification under section 235(b).
25

26 70. The government's treatment of Petitioner creates an unjustifiable disparity between them
27 and similarly situated detainees who receive individualized bond hearings. The Fifth
28 Amendment prohibits the government from treating similarly situated persons differently

1 without a rational basis. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000);
2 *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

3 71. DHS's categorical reliance on section 235(b) to foreclose Petitioner's access to custody
4 review—despite his placement in § 240 proceedings following a credible fear
5 determination and his administrative detention during a routine ICE check-in
6 appointment—lacks a rational connection to any legitimate governmental purpose.
7 Disparate treatment based solely on unreviewed assertions regarding manner of entry is
8 arbitrary and not rationally related to the goals of ensuring appearance or protecting public
9 safety. *See Zadvydas*, 533 U.S. at 690 (civil detention must relate to its permissible
10 purposes).
11

12 72. Moreover, the Ninth Circuit has recognized that immigration detention classifications
13 must comport with fundamental fairness and may not be applied in an arbitrary or
14 discriminatory manner. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011)
15 (government must justify detention with individualized evidence); *Rodriguez v. Robbins*,
16 804 F.3d 1060, 1074–76 (9th Cir. 2015) (due process prohibits prolonged detention
17 without meaningful review).
18

19 73. DHS has provided no individualized or rational explanation for why Petitioner, unlike
20 others in the same statutory posture, are denied access to individualized custody
21 determinations. This unequal treatment violates the equal protection component of the
22 Fifth Amendment.
23

24 74. Petitioner's continued incarceration under a discriminatory and arbitrary detention
25 classification violates constitutional guarantees of equal protection and further
26 underscores the unreasonableness and unlawfulness of his confinement.
27
28

1 75. *Habeas* relief is therefore warranted to remedy this unconstitutional disparate treatment by
2 ordering Petitioner's immediate release or, in the alternative, directing DHS to provide
3 him with the same procedural protection and individualized custody review available to
4 similarly situated noncitizens.

5
6 **COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES**

7 **CONSTITUTION**

8 76. Petitioner re-alleges and incorporates by reference all preceding paragraphs as though
9 fully set forth herein.

10 77. The Suspension Clause of the United States Constitution provides that "[t]he Privilege of
11 the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or
12 Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The Clause
13 guarantees the availability of judicial review to challenge the lawfulness of executive
14 detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S.
15 289, 300–05 (2001).

16
17 78. *Habeas corpus* remains available to all persons in the United States who are detained by
18 executive authority, including noncitizens in civil immigration custody. The Supreme
19 Court has made clear that Congress may not eliminate all avenues of meaningful judicial
20 review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06.

21
22 79. Petitioner is detained solely under civil immigration authority and is currently confined at
23 the California City ICE Processing Center in California City, California.. He has neither
24 any criminal convictions, history of violence, nor conduct suggesting dangerousness.
25 Petitioner is pursuing asylum, withholding of removal, and protection under the
26 Convention Against Torture in good faith.

1 80. As a result, no alternative remedy exists outside of *habeas corpus* through which
2 Petitioner may obtain judicial review of the legality of his confinement. Neither the
3 Immigration Courts nor the Board of Immigration Appeals possesses jurisdiction to
4 review custody challenges arising from DHS's detention-classification decisions.

5
6 81. The Suspension Clause forbids the government from implementing a detention scheme
7 that eliminates all meaningful opportunity for detainees to test the legality of their
8 confinement. *Boumediene*, 553 U.S. at 779 ("The writ must be effective."). When no
9 adequate and effective substitute exists, habeas review is constitutionally required. *St. Cyr*,
10 533 U.S. at 305.

11 82. Petitioner's detention—prolonged, indefinite, and arising from his administrative
12 detention by ICE during a routine check-in appointment on October 16, 2025—and
13 wholly insulated from individualized review—implicates the core protections of the
14 Suspension Clause. Without habeas corpus, Petitioner would have no judicial or
15 administrative mechanism to challenge the legality of his civil confinement.

16
17 83. The government's application of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025),
18 to categorically bar all custody review, therefore, violates the Suspension Clause by
19 depriving Petitioner of an effective and constitutionally required means to challenge
20 unlawful detention.

21
22 84. Accordingly, *habeas corpus* relief is required. Petitioner respectfully requests that this
23 Court order his immediate release or, in the alternative, direct Respondents to provide
24 them with a prompt, meaningful, and individualized custody hearing before a neutral
25 adjudicator with authority to grant release.

26 **COUNT VI: VIOLATION OF THE ACCARDI DOCTRINE WITH RESPECT TO 8 C.F.R.**

27 **§ 287.8(C)(2)(I) AND (II)**

1 85. Petitioner repeats and incorporates by reference each allegation contained in the preceding
2 paragraphs as if fully set forth herein.

3 86. The United States has also failed to follow immigration-specific arrest and processing
4 regulations. Regulations governing immigration enforcement require that warrantless
5 arrests comply with the standards outlined in 8 C.F.R. § 287.8(c). Specifically, in any
6 arrest, immigration officers must have reason to believe that an individual has committed
7 an offense against the United States or is present unlawfully. 8 C.F.R. § 287.8(c)(2)(i).
8 And, for a warrantless arrest, officers must also have reason to believe that an individual is
9 “likely to escape before a warrant can be obtained.” 8 C.F.R. § 287.8(c)(2)(ii).
10

11 87. At the time of his administrative arrest by ICE on October 16, 2025, during a routine
12 check-in appointment, and at all times thereafter, Petitioner complied fully with all ICE
13 reporting requirements, attended all scheduled immigration court hearings, maintained a
14 valid pending application for asylum, withholding of removal, and protection under the
15 Convention Against Torture before EOIR, and demonstrated no intent to abscond. He
16 posed no danger to any person or to the community at large. Therefore, Petitioner’s
17 warrantless arrest at the ICE check-in appointment and continued detention contravene the
18 governing regulations and violate the Accardi doctrine.
19

20
21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Petitioners respectfully request this Court to grant the following:

- 23 (1) Assume jurisdiction over this matter;
24 (2) Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing respondents to file a
25 return within three (3) days, absent good cause for a short extension not exceeding ten
26 days, and set the matter for a prompt hearing;
27 (3) Enjoin respondents from transferring Petitioner during the pendency of the instant action;
28

- 1 (4) Declare that petitioner's continued detention violates the Immigration and Nationality Act,
2 8 U.S.C. § 1226(a); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); the Due
3 Process Clause of the Fifth Amendment to the U.S. Constitution; and/or the *Accardi*
4 doctrine;
5
6 (5) Grant the *writ of habeas corpus* and order petitioner's immediate release from ICE
7 custody; in the alternative, order a constitutionally adequate bond hearing at which DHS
8 bears the burden of proving that either petitioner is a danger to the community or a flight
9 risk, and consider reasonable conditions of supervision;
10
11 (6) Award petitioner's his costs and reasonable attorneys' fees pursuant to the Equal Access
12 to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
13
14 (7) Grant any other relief this Court deems just and proper.

15 Dated: December 23, 2025

Respectfully Submitted,

16 /S/ Cynthia Bautista

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EXHIBIT

EXHIBIT A	NOTICE TO APPEAR	02 - 04
EXHIBIT B	IJ BOND ORDER	06 - 07
EXHIBIT C	I-213	09 - 13

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

I represent Petitioner, VIVEK BAINS, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for *Writ of Habeas Corpus* are true and correct to the best of my knowledge.

Dated: December 23, 2025

/S/ Cynthia Bautista

Cynthia Bautista

/S/Luis Angeles

Luis Angeles

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, I filed the foregoing petition for Writ of Habeas Corpus electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: December 23, 2025

/S/ Cynthia Bautista

Cynthia Bautista

/S/Luis Angeles

Luis Angeles