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7 Bar No.: 208563
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9
10 UNITED STATES DISTRICT COURT
11
12 SOUTHERN DISTRICT OF CALIFORNIA
13

14 **MUHAMMAD AMIR NAZIR,** 

Civil Action No. **'26CV1378 RBM DEB**

15 
16 Petitioner,

PETITION FOR WRIT OF HABEAS

17 v.

CORPUS PURSUANT TO 28 U.S.C. § 2241

18 WARDEN, OTAY MESA DETENTION
19 CENTER (CORECIVIC);
20 FIELD OFFICE DIRECTOR, SAN DIEGO
21 FIELD OFFICE, Enforcement and Removal
22 Operations, U.S. Immigration and Customs
23 Enforcement; and
24 SECRETARY, U.S. DEPARTMENT OF
25 HOMELAND SECURITY

26 Respondents,
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28

29
30 Petitioner Muhammad Amir Nazir, by counsel, petitions for a writ of habeas corpus pursuant to
31 28 U.S.C. § 2241 and states as follows: *

32 **INTRODUCTION**

- 33 1. Petitioner Muhammad Amir Nazir  brings this petition for a writ of
34 habeas corpus under 28 U.S.C. § 2241 to challenge his ongoing immigration detention in
35 California without any meaningful process and without a charging document that would
36 allow an Immigration Judge to exercise custody jurisdiction. Petitioner does not seek to
37 litigate the merits of any removal case. He challenges only the lawfulness of his
38

1 continued physical custody and the government's failure to provide timely,
2 constitutionally adequate procedures to justify that custody.

3 2. Petitioner challenges only his present physical custody and the Government's failure to
4 provide timely, meaningful custody process. Petitioner does not seek review of any
5 expedited removal order, removal order, or the merits of any removability determination.
6 To counsel's knowledge, as of the filing of this Petition, Petitioner has not been served
7 with an expedited removal order (Form I-860) or any administratively final order of
8 removal; accordingly, this action is directed solely at unlawful prolonged detention and
9 the absence of constitutionally adequate custody review.

10 3. Petitioner is the beneficiary of an approved employment-based immigrant petition (Form
11 I-140) and has a pending application for adjustment of status (Form I-485), with related
12 filings. He also holds USCIS-issued employment authorization and had an approved
13 travel document (Advance Parole) at the time of his attempted return. These equities
14 underscore that Petitioner is not a flight risk or danger, and that his detention must be
15 supported by lawful authority and adequate process.

16 4. On or about December 25, 2025, Petitioner attempted to enter the United States via the
17 southern border after presenting a copy of his approved Advance Parole. CBP refused to
18 parole him into the United States. When Petitioner attempted to return to Mexico, he was
19 prevented from leaving and was taken into custody. Petitioner has now been detained for
20 more than 60 days.

21 5. Despite Petitioner's prolonged detention, the government has not served him with a
22 Notice to Appear or other charging document that would initiate proceedings before the
23 Immigration Court and allow an Immigration Judge to consider custody and bond. When
24 counsel attempted to seek bond, the Immigration Judge stated there was no custody
25 jurisdiction because no charging document had been issued. Petitioner remains in a
26 procedural limbo where he is physically confined but cannot access the ordinary
27 mechanisms Congress and the Constitution contemplate for reviewing and justifying civil
28 detention.

1 6. Petitioner's detention has caused severe and ongoing harm. His wife and children are in
2 the United States; at least one child has medical needs requiring Petitioner's presence;
3 Petitioner's own health has worsened in custody; and his inability to manage his
4 businesses has inflicted serious financial injury.

5 7. The Due Process Clause does not permit the government to detain a noncitizen
6 indefinitely or for a prolonged period without a prompt and meaningful opportunity to
7 challenge the factual and legal basis for confinement before a neutral decisionmaker.
8 Because the government has detained Petitioner for a prolonged period without providing
9 any adequate custody process, this Court should grant the writ and order Petitioner's
10 immediate release, or in the alternative, order the government to provide prompt custody
11 process sufficient to satisfy due process within a short, Court-ordered deadline.

12 8. Petitioner respectfully requests expedited consideration given the ongoing unlawful
13 restraint, the absence of meaningful custody process, and the continuing family, medical,
14 and financial harms caused by each additional day of detention.

15 16 JURISDICTION AND VENUE

17 9. This Court has subject-matter jurisdiction over this habeas action under 28 U.S.C. § 2241
18 because Petitioner is in federal custody within this District and challenges the legality of
19 that custody and the constitutionality of the process, or lack of process, used to justify it.
20 Petitioner seeks release from unlawful detention, or in the alternative prompt custody
21 process sufficient to satisfy due process.

22 10. This Court also has jurisdiction under 28 U.S.C. § 1331 because Petitioner's claims arise
23 under the Constitution and laws of the United States, including the Due Process Clause of
24 the Fifth Amendment, and because Petitioner challenges a present and continuing
25 restraint on liberty that is independently reviewable in habeas.

26 11. This petition does not ask this Court to review the merits of any removal order or to
27 decide removability, eligibility for immigration relief, or any other issue reserved to the
28 immigration courts or the courts of appeals. Petitioner challenges only his ongoing

1 detention and the Government's failure to provide timely, meaningful custody process.
2 Accordingly, the jurisdiction-channeling provisions of 8 U.S.C. §§ 1252(b)(9) and
3 1252(g) do not bar this Court's review of Petitioner's custody-only claims.

4 12. Venue is proper in this District under 28 U.S.C. § 2241(a) and the general venue statute
5 because Petitioner is detained at Otay Mesa Detention Center in San Diego, California,
6 within this District, and because the immediate custodian and relevant federal officers
7 responsible for Petitioner's detention are located in, or may be found in, this District.

8 13. This Court has authority to grant the relief requested, including ordering Petitioner's
9 release, or alternatively ordering the Government to provide prompt custody procedures
10 and a reasoned custody determination by a neutral decisionmaker within a Court-ordered
11 deadline.

12 **PARTIES**

13 14. Petitioner Muhammad Amir Nazir  is a noncitizen currently detained by
14 the Department of Homeland Security at Otay Mesa Detention Center in San Diego,
15 California.

16 15. Respondent Warden, Otay Mesa Detention Center (CoreCivic), is Petitioner's immediate
17 custodian and has day-to-day control over Petitioner's physical custody. The Warden is a
18 proper respondent in a petition for writ of habeas corpus under 28 U.S.C. § 2241.

19 16. Respondent Field Office Director, San Diego Field Office, Enforcement and Removal
20 Operations, U.S. Immigration and Customs Enforcement, is responsible for the
21 supervision and administration of immigration detention decisions affecting Petitioner in
22 this District and has authority over Petitioner's custody status and release conditions.

23 17. Respondent Secretary, U.S. Department of Homeland Security, is responsible for the
24 administration and enforcement of the immigration laws and, through DHS and its
25 components, is responsible for Petitioner's continued detention and has authority to
26 effectuate Petitioner's release.

27 **FACTUAL BACKGROUND**

28

1 18. Petitioner Muhammad Amir Nazir [REDACTED] is currently detained by the
2 Department of Homeland Security at Otay Mesa Detention Center in San Diego,
3 California.

4 19. Petitioner is the beneficiary of an approved employment-based immigrant petition (Form
5 I-140) and has a pending application to adjust status to lawful permanent resident (Form
6 I-485). Petitioner also filed the associated employment portability filing (Form I-485
7 Supplement J). He previously held E-2 nonimmigrant status, which is no longer valid as
8 of 2024.

9 20. In connection with his pending adjustment application, USCIS approved Petitioner's
10 Form I-765 (employment authorization), issued in the adjustment-based category, valid
11 from January 22, 2024 to January 21, 2029.

12 21. USCIS also approved Petitioner's Form I-131 (Advance Parole) in connection with his
13 pending Form I-485, valid from July 12, 2024 through July 11, 2029.

14 22. On or about December 25, 2025, Petitioner attempted to enter the United States via the
15 southern border after presenting CBP a copy of his approved Advance Parole. CBP
16 refused to parole Petitioner into the United States.

17 23. After CBP refused to parole him, Petitioner attempted to return to Mexico. Petitioner was
18 not permitted to leave and was taken into custody by DHS. Petitioner entered with a
19 relative who is a United States citizen; that relative was permitted to proceed, while
20 Petitioner was detained.

21 24. Since December 25, 2025, Petitioner has remained detained. As of the filing of this
22 petition, Petitioner has been detained for more than sixty days.

23 25. During Petitioner's detention, DHS has not served him with a Notice to Appear or other
24 charging document initiating proceedings in Immigration Court. Because no charging
25 document has been issued, Petitioner has been deprived of access to the ordinary
26 Immigration Court custody review mechanisms.

27 26. On or about February 6, 2026, counsel attempted to seek bond for Petitioner before the
28 Immigration Court. The Immigration Judge stated that the court lacked jurisdiction to

1 consider bond because no Notice to Appear or charge sheet had been issued. No custody
2 determination on the merits was entered.

3 27. Petitioner has been advised that he is in expedited proceedings. Despite the passage of
4 time, Petitioner has not received a charging document that would permit meaningful
5 review of the legal and factual basis for his continued confinement.

6 28. Petitioner's continued detention has caused severe hardship. Petitioner's wife and
7 children are in the United States. One of Petitioner's children has medical issues that
8 require Petitioner's full-time presence and assistance.

9 29. Petitioner's detention is also causing significant financial harm. Petitioner owns and
10 operates businesses in the United States and abroad, pays U.S. taxes, and employs
11 individuals within the United States. Because he is detained, Petitioner cannot manage his
12 businesses, leading to ongoing financial injury.

13 30. Petitioner has no criminal record and is of good moral character.

14 31. Petitioner also has health issues that have worsened while he has been detained, further
15 underscoring the urgency of prompt custody review and relief.

16
17 **STATUTORY DETENTION FRAMEWORK**

18 32. Petitioner's custody is civil immigration detention by the Department of Homeland
19 Security. Based on the information currently available, Petitioner is not detained pursuant
20 to the post-final-order detention statute, 8 U.S.C. § 1231, because there is no known
21 administratively final order of removal governing his custody at this time. Instead,
22 Petitioner is being held during the Government's attempted initiation and processing of
23 removal or expedited proceedings following his attempted entry on or about December
24 25, 2025.

25 33. For many noncitizens detained pending removal proceedings, the general detention
26 authority is 8 U.S.C. § 1226(a), which authorizes DHS to detain a person "pending a
27 decision on whether the alien is to be removed," or to release the person on bond or
28 conditional parole.

1 34. In ordinary § 1226(a) cases, Congress and the implementing regulations provide a
2 mechanism for custody review before a neutral decisionmaker. Specifically, the
3 regulations authorize a request for an Immigration Judge custody redetermination. See 8
4 C.F.R. § 1236.1(d); 8 C.F.R. § 1003.19.

5 35. Petitioner has been denied access to that process. When counsel attempted to seek bond,
6 the Immigration Judge stated that the Immigration Court lacked custody jurisdiction
7 because DHS had not issued a Notice to Appear or other charging document initiating
8 proceedings. As a result, Petitioner is detained in a procedural limbo where he is confined
9 by the Executive Branch but cannot access the ordinary custody review procedures that
10 accompany civil immigration detention.

11 36. Even if DHS asserts that Petitioner is being processed under expedited removal or
12 another summary mechanism, the Constitution still requires a meaningful opportunity to
13 challenge prolonged civil detention. The government may not hold a person for a
14 prolonged period without providing timely, meaningful custody process that justifies
15 continued confinement and considers release conditions.

16 37. Accordingly, regardless of the precise statutory label DHS assigns to Petitioner's
17 custody, this petition challenges the legality of Petitioner's ongoing detention without
18 meaningful process and seeks release, or at minimum prompt custody procedures before
19 a neutral decisionmaker sufficient to satisfy due process
20

21 **LEGAL STANDARD**

22 38. The Fifth Amendment prohibits the federal government from depriving any person of
23 liberty without due process of law. Freedom from imprisonment lies at the heart of the
24 liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690
25 (2001).

26 39. Immigration detention is civil and regulatory, not punitive. Accordingly, detention must
27 remain reasonably related to legitimate governmental purposes such as ensuring
28 appearance and protecting the community, and it cannot be maintained by executive

1 default without meaningful procedural safeguards. *Zadvydas*, 533 U.S. at 690; see also
2 *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (confirming detention authority is a matter of
3 statute, while constitutional challenges remain available); *Demore v. Kim*, 538 U.S. 510,
4 527-28 (2003) (upholding brief detention in a different context while emphasizing the
5 limited duration assumed by the Court).

6 40. Even where Congress authorizes civil detention, due process requires an adequate
7 procedure to test the legal and factual basis for confinement. At minimum, prolonged
8 civil detention requires a meaningful opportunity for individualized review by a neutral
9 decisionmaker to determine whether continued detention is justified or whether release
10 with conditions will reasonably mitigate any asserted risk. See *Zadvydas*, 533 U.S. at
11 690; see also *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (due process balances
12 private interest, risk of erroneous deprivation through the procedures used, and
13 government interest).

14 41. Where the statutory or regulatory scheme contemplates individualized custody
15 determinations, due process requires that the person actually be afforded a meaningful
16 opportunity to obtain such a determination. Denial of any hearing at all creates an
17 unacceptably high risk of erroneous deprivation of liberty and renders detention arbitrary.

18 42. Habeas corpus under 28 U.S.C. § 2241 is the traditional and appropriate vehicle to
19 challenge unlawful executive detention. When a person is held in civil custody without
20 meaningful process, a federal court may order release, or at minimum order prompt
21 procedures that satisfy due process and allow a neutral adjudicator to determine whether
22 continued detention is lawful.

23 24 ARGUMENT

25 **I. Petitioner's prolonged detention without any meaningful custody process violates the** 26 **Fifth Amendment.**

27 43. Petitioner is in civil immigration detention. Civil detention is constitutional only when it
28 remains reasonably related to legitimate regulatory purposes and is accompanied by

1 procedures that meaningfully reduce the risk of erroneous deprivation of liberty.

2 44. The private interest at stake is fundamental. Petitioner is physically confined in a
3 detention facility, separated from his family, and experiencing escalating medical,
4 financial, and family hardship as a result of continued confinement.

5 45. The risk of erroneous deprivation here is extreme because Petitioner has received no
6 meaningful custody review by a neutral decisionmaker at all. In the ordinary course, civil
7 immigration detention is paired with an individualized determination of whether
8 continued detention is necessary to reasonably assure appearance and protect the
9 community, and whether conditions of release could address any asserted risk.

10 46. Here, Petitioner is detained in a procedural vacuum. DHS has not served a Notice to
11 Appear or other charging document that would vest the Immigration Court with
12 jurisdiction to conduct a custody redetermination. When counsel attempted to seek bond,
13 the Immigration Judge stated the court lacked jurisdiction because DHS had not issued a
14 charge sheet. Petitioner therefore has no functioning administrative pathway to obtain a
15 custody hearing, a bond amount, or any neutral determination that his continued
16 confinement is justified.

17 47. Under *Mathews v. Eldridge*, due process requires a procedure that balances (1) the
18 private interest affected, (2) the risk of erroneous deprivation through the procedures used
19 and the probable value of additional safeguards, and (3) the government's interests. Each
20 factor favors relief here. Petitioner's liberty interest is at its apex; the risk of erroneous
21 detention is unacceptably high because no neutral review has occurred; and the
22 government's legitimate interests can be served by prompt individualized custody review
23 and, where appropriate, conditions of release.

24 48. Due process does not permit the Executive Branch to hold a person in civil custody for a
25 prolonged period by administrative inertia, without a timely and meaningful opportunity
26 to challenge the basis for confinement. When the government detains someone but
27 withholds or fails to provide the very process that would test whether detention is
28 necessary, detention becomes arbitrary.

1 49. The Constitution requires, at minimum, a prompt individualized custody hearing before a
2 neutral decisionmaker, at which the government must justify continued detention and the
3 decisionmaker must consider release and alternatives to detention.

4 **II. Petitioner has been denied the custody review mechanisms that ordinarily accompany**
5 **civil immigration detention.**

6 50. Respondents may assert that Petitioner is detained under one of several statutory
7 provisions depending on how DHS is characterizing his status following his attempted
8 entry on December 25, 2025. Petitioner challenges only present custody and the absence
9 of constitutionally adequate process.

10 51. In many cases, detention pending removal proceedings is governed by 8 U.S.C. §
11 1226(a), which authorizes DHS to detain a noncitizen or to release the person on bond or
12 conditional parole. The regulations implementing that framework contemplate access to
13 an Immigration Judge custody redetermination process once proceedings are initiated.

14 52. Petitioner has been denied access to that statutory and regulatory structure. Because DHS
15 has not issued a charging document, Petitioner cannot obtain an Immigration Judge bond
16 hearing, cannot obtain a custody redetermination, and cannot obtain any bond amount.
17 The Immigration Judge expressly recognized the lack of jurisdiction due to DHS's failure
18 to issue the charging document.

19 53. Even if Respondents contend Petitioner is detained under 8 U.S.C. § 1225(b) (arriving
20 alien / expedited removal processing) or another authority, prolonged detention still
21 requires meaningful individualized custody review. Regardless of label, civil detention
22 cannot persist for a prolonged period without a neutral determination of necessity,
23 particularly where the person's detention is not tied to any timely, functioning
24 adjudicatory process.

25 54. This case illustrates why due process requires an actual hearing, not merely a theoretical
26 statutory authority. Petitioner is detained, yet no adjudicator has determined he is a flight
27 risk or a danger, no adjudicator has considered conditions of release, and no adjudicator
28 has set bond. Detention is continuing solely because the Executive Branch has not

1 provided the procedural gateway that would allow custody review.

2 **III. Petitioner's equities further demonstrate that continued detention without**
3 **individualized review is unreasonable and arbitrary.**

4 55. Petitioner has no criminal record and is of good moral character.

5 56. Petitioner is the beneficiary of an approved employment-based immigrant petition and
6 has a pending adjustment of status application. He holds USCIS-issued employment
7 authorization and had an approved travel document at the time of his attempted return.
8 These facts reflect substantial ties to lawful immigration processes and demonstrate that
9 detention is not justified by any presumption of dangerousness.

10 57. Petitioner's family resides in the United States, including his spouse and children. One
11 child has medical needs requiring Petitioner's presence. Petitioner's own health has
12 worsened in custody.

13 58. Petitioner also suffers significant financial harm due to his detention. He operates
14 businesses, pays U.S. taxes, and employs individuals. Detention prevents him from
15 managing these obligations, causing compounding harm that cannot be remedied later.

16 59. These equities underscore the necessity of prompt individualized custody review and the
17 availability of less restrictive alternatives to detention that would reasonably assure
18 appearance and protect the community.

19 **IV. Habeas relief is appropriate and narrowly tailored to custody.**

20 60. Petitioner does not ask this Court to decide removability, eligibility for adjustment of
21 status, admissibility, or any other merits issue in any removal or expedited proceeding.
22 Petitioner challenges only the lawfulness of his continued detention and the complete
23 absence of meaningful custody process.

24 61. This Court has authority under 28 U.S.C. §§ 2241 and 2243 to grant relief that cures
25 unconstitutional custody, including ordering Petitioner's immediate release, or
26 alternatively ordering Respondents to provide a prompt custody hearing before a neutral
27 decisionmaker within a Court-ordered deadline.

28 62. The relief requested is narrowly tailored to ensure that civil detention is supported by

1 lawful authority and constitutionally adequate process, and it does not intrude on the
2 adjudication of any underlying immigration case.

3 **V. Exhaustion is satisfied or excused because administrative remedies are unavailable and**
4 **further exhaustion would be futile.**

5 63. Petitioner attempted to access the administrative custody process by seeking bond before
6 the Immigration Court. The Immigration Judge stated the court lacked jurisdiction to
7 consider bond because DHS had not issued a charging document. Petitioner therefore
8 cannot obtain a custody redetermination through the ordinary administrative pathway.

9 64. Where the government's own failure to initiate proceedings prevents access to the only
10 meaningful custody review mechanism, administrative remedies are unavailable and
11 exhaustion is excused. Requiring further exhaustion would be futile because Petitioner
12 cannot compel the issuance of a charging document through administrative bond
13 procedures that the Immigration Court has said it lacks jurisdiction to provide.

14 65. Petitioner respectfully requests that the Court grant the writ and order immediate release,
15 or in the alternative order Respondents to provide a prompt, constitutionally adequate
16 custody hearing within a short deadline and release Petitioner if such process is not
17 provided.

18
19 **REQUEST TO PRESERVE JURISDICTION AND PREVENT TRANSFER**

20 66. Petitioner is detained in this District at Otay Mesa Detention Center in San Diego,
21 California. This Court has jurisdiction over this habeas action because Petitioner's
22 immediate custodian is located within this District and Petitioner is currently confined
23 here.

24 67. Transfer outside this District during the pendency of this action can impair Petitioner's
25 access to counsel, disrupt preparation and litigation of this petition, and risk undermining
26 this Court's ability to provide effective relief in a time-sensitive custody case.

27 68. Petitioner therefore respectfully requests an order directing Respondents to provide
28 advance notice of any proposed transfer and enjoining any transfer of Petitioner outside

1 the Southern District of California absent prior authorization from this Court while this
2 Petition is pending, except for emergency medical transfers or temporary transport
3 required for court proceedings.

4 **REQUEST FOR RELIEF**

5 **WHEREFORE**, Petitioner respectfully requests that this Court:

- 6 A. Issue an Order to Show Cause under 28 U.S.C. § 2243 and set an expedited schedule;
7 B. Declare that Petitioner's prolonged detention without any meaningful individualized
8 custody review by a neutral decisionmaker violates the Constitution and laws of the
9 United States;
10 C. Order Respondents to immediately release Petitioner under reasonable conditions of
11 supervision; or, in the alternative,
12 D. Order Respondents to provide Petitioner with a prompt custody hearing within seven (7)
13 days before a neutral decisionmaker with authority to order release, at which:
14 a. The government bears the burden of proof;
15 b. The government must establish by clear and convincing evidence that continued
16 detention is necessary to prevent flight or protect the community;
17 c. The adjudicator must issue an individualized determination supported by specific
18 findings and a reasoned explanation;
19 E. Order that the adjudicator must consider alternatives to detention and impose the least
20 restrictive conditions that would reasonably assure Petitioner's appearance and
21 community safety;
22 F. Order that Petitioner shall not be transferred outside the Southern District of California
23 during the pendency of this Petition absent further order of this Court;
24 G. Grant such other and further relief as this Court deems just and proper.

25
26 Dated: March 4, 2026
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1 Respectfully submitted,

2

3 /s/ John Burt

4 John Burt, Esq.

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VERIFICATION
(28 U.S.C. § 2242)

I, John Burt, Esq., am an attorney licensed to practice before this Court and counsel of record for Petitioner MUHAMMAD AMIR NAZIR.

I DECLARE UNDER PENALTY OF PERJURY THAT I HAVE REVIEWED THE FOREGOING PETITION FOR WRIT OF HABEAS CORPUS AND THAT THE FACTUAL STATEMENTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, BASED ON COMMUNICATIONS WITH PETITIONER, HIS FAMILY MEMBERS, AND RECORDS REVIEWED IN THE COURSE OF REPRESENTATION.

EXECUTED THIS 4TH DAY OF MARCH 2026.

/s/ John Burt

JOHN BURT, ESQ.
ATTORNEY FOR PETITIONER