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UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLORADO

ISMAEL SOLIS-GUTIERREZ,

Petitioner

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security,

TODD LYONS, in his official capacity as Acting Director of Immigration and Customs Enforcement,

GEORGE VALDEZ, in his official capacity as ICE Field Officer Director,

JUAN BALTAZAR, in his official capacity as the warden of the Aurora Immigration Detention Facility,

Respondents

Case No. _____

VERIFIED PETITION FOR HABEAS CORPUS

IMMIGRATION HABEAS CASE

INTRODUCTION

ISMAEL SOLIS-GUTIERREZ ("Petitioner"), by and through undersigned counsel, petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

Petitioner is a native and citizen of Mexico. He entered the United States without inspection on or about April 1, 2011. (Exhibit 1). The Department of Homeland Security ("DHS") subsequently apprehended him and initiated removal proceedings under section 240 of the Immigration and Nationality Act ("INA"). (Exhibit 1). Petitioner is currently detained by Immigration and Customs Enforcement ("ICE") at the Denver Contract Detention Facility in Aurora, Colorado. He has been detained since January 12, 2026, when ICE took him into custody pursuant to a Warrant for Arrest of Alien (Exhibit 2). He is not subject to mandatory detention under 8 U.S.C. § 1226(c), and nothing in the record supports a finding that he poses a danger to the community.

On March 13, 2026, Petitioner requested a bond redetermination hearing before the Immigration Court. The Immigration Judge concluded that the court lacked jurisdiction to conduct a bond hearing and the request was withdrawn (Exhibit 3). The lack of jurisdiction was based on the agency's position that Petitioner is detained under 8 U.S.C. § 1225(b) as an applicant for admission and is therefore not eligible for bond under 8 U.S.C. § 1226(a), as articulated in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025).

As a result of that ruling, Petitioner remains detained without any individualized determination as to flight risk or danger. His continued detention rests solely on a categorical jurisdictional determination, not on any finding related to the purposes of civil immigration detention.

That position is inconsistent with the governing statute. Under 8 U.S.C. § 1226(a), noncitizens apprehended within the United States and placed in removal proceedings are subject to discretionary detention, including the possibility of release on bond following review by an immigration judge. See 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). The statute and implementing regulations distinguish such individuals from "arriving aliens," who are subject to a separate parole framework. See 8 U.S.C. § 1182(d)(5); 8 C.F.R. § 1.2.

Petitioner was apprehended within the interior of the United States and placed in removal proceedings under INA § 240. He is therefore properly detained, if at all, under § 1226(a). The agency's position-derived from *Matter of Q. Li*-treats individuals who entered without inspection as applicants for admission subject to § 1225(b), thereby eliminating access to bond review. That interpretation collapses the statutory distinction between interior arrests and arriving aliens and removes the bond procedures Congress provided under § 1226(a).

Petitioner is also pursuing withholding of removal and protection under the Convention Against Torture. Those claims require full adjudication and preclude removal while pending. His detention is therefore not tied to any reasonably foreseeable removal and has become prolonged.

Civil immigration detention must bear a reasonable relation to its purpose and must include adequate procedural safeguards. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 532 (2003); *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018). Where detention becomes prolonged and no meaningful opportunity exists to obtain release, continued confinement raises serious due process concerns.

Finally, under *Loper Bright Enters. v. Raimondo*, 603 U.S. ___, 144 S. Ct. 2244 (2024), this Court must exercise independent judgment in interpreting the INA and is not required to defer to agency interpretations that depart from the statutory text.

Petitioner's continued detention without access to a bond hearing is not authorized by statute and violates the Due Process Clause of the Fifth Amendment. Habeas relief is warranted.

JURISDICTION AND VENUE

This court has jurisdiction over the present action pursuant to 28 U.S.C. § 1331, general federal question jurisdiction; 5 U.S.C. § 701 et seq., the Due Process Clause of the United States Constitution and the Immigration Naturalization Act (INA). This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et seq., and All Writs Act, 28 U.S.C. § 1651.

Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of conduct perpetuated by DHS and DOJ. Federal courts are not stripped of jurisdiction under 8 U.S.C. § 1252; *see Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

Venue is proper pursuant to 28 U.S.C. § 1391(e) because Respondents are agencies of the United States or officers or employees thereof acting in their official capacity or under color of legal authority. Petitioner is also in the custody of the Denver Contract Detention Facility in Aurora, Colorado, which is in the jurisdiction of the Colorado District Court and there is no real property involved in this action.

Petitioner has exhausted available administrative remedies. Petitioner requested a bond redetermination hearing, which was denied on March 13, 2026, for lack of

jurisdiction. No further administrative review is available to obtain the relief sought, namely, an individualized bond hearing before an immigration judge.

REQUIREMENTS OF 28 U.S.C. §§ 2241, 2243

The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents forthwith, unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an OSC is issued, the Court must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention – particularly detention that is prolonged and absent avenues for relief. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Faye v. Noia*, 372 U.S. 391, 400 (1963).

Petitioner is "in custody" for applicability determination of 28 U.S.C. § 2241 because Petitioner is arrested and detained by Respondents.

PARTIES

PETITIONER

Petitioner, Ismael Solis Gutierrez, is a Mexican citizen who is currently in the custody of the Department of Homeland Security in Aurora, Colorado.

RESPONDENTS

Respondent Markwayne Mullin ("Secretary Mullin") is the Secretary of the Department of Homeland Security, the parent agency of Immigration and Customs Enforcement, which is currently engaging in the prolonged and unlawful detention of the Petitioner. Respondent Markwayne Mullin is sued in his official capacity as an agent of the United States Government.

Respondent Todd Lyons is the acting director of the United States Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and is sued in his official capacity as an agent of the United States Government

Respondent George Valdez is the Field Office Director of Immigration and Customs Enforcement. He is in charge of the custody of all Immigration and Customs Enforcement detainees currently pending removal proceedings and determinations in the Colorado District Court. Respondent George Valdez is sued in his official capacity as an agent of the United States Government.

Respondent Juan Baltazar is the warden of the Aurora Detention Center and thus has custody over the Petitioner. Respondent Juan Baltazar is sued in his official capacity as an agent of the United States.

PROCEDURAL AND FACTUAL BACKGROUND

Upon information and belief, Petitioner entered the United States on or about April 1, 2011, without parole or inspection. (Exhibit 1). Petitioner is a native and citizen of Mexico. (Exhibit 1). Petitioner does not appear to have any significant criminal history, aside from a non-violent misdemeanor offense resulting in probation and minimal fines. (Exhibit 2).

Petitioner was detained by Immigration and Customs Enforcement ("ICE") and served with a Warrant for Arrest of Alien on January 12, 2026, and was taken into custody on that same date. (Exhibit 2).

Petitioner's first master calendar hearing was held on February 13, 2026. Petitioner is currently pursuing withholding of removal and protection under the Convention Against Torture, and his application for withholding of removal was filed on February 12, 2026. Petitioner fears serious harm if returned to Mexico, and his pursuit of relief reflects a strong incentive to appear for all future proceedings.

On March 13, 2026, Petitioner requested a bond redetermination hearing. The Immigration Judge concluded that the court lacked jurisdiction to conduct a bond hearing based on the agency's position that Petitioner is detained under 8 U.S.C. § 1225(b) and is therefore not eligible for bond under 8 U.S.C. § 1226(a), as articulated in *Matter of Q. Li*. The request was withdrawn to preserve the right for bond.

As a result, Petitioner remains detained without any individualized determination as to flight risk or danger.

LEGAL FRAMEWORK

I. Petitioner's Detention Pursuant to 8 U.S.C. § 1225 or § 1226

8 U.S.C. § 1225(a) provides that "[a]n alien present in the United States who has not been admitted or who arrives in the United States . . . shall be deemed for the purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). See *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Noncitizens detained under § 1225(b) are generally subject to detention during the pendency of their removal proceedings, while those detained under 1226(a) are entitled to a bond hearing before an

Immigration Judge at any time before the entry of a final removal order. See Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1247 (W.D. Wash. 2025).

Petitioner's presence in the United States for a period of over a decade indicates that his status was no longer that of an "arriving alien" under § 1225(b)(2), but rather an "alien present in the United States" and therefore subject to § 1226(a). In *Jennings*, the Court explained that § 1225(b) governs "aliens seeking admission into the country" whereas § 1226(a) governs "aliens already in the country" who are subject to removal proceedings. 583 U.S. at 289. For those who have already entered into the interior of the United States, "the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (citation omitted).

Congress did not intend § 1225(b)(2) to apply to persons like the Petitioner who was detained after being present in the United States for nearly over a decade, who is not subject to mandatory detention under § 1226(c). Petitioner requested a bond redetermination hearing on March 13, 2026, which was denied on the ground that the Immigration Judge lacked jurisdiction based on the agency's position that Petitioner is detained under § 1225(b), as articulated in *Matter of Q. Li*. That determination improperly deprives Petitioner of the bond procedures available under § 1226(a).

II. Petitioner's Detention Violates the Due Process Clause

The Fifth Amendment to the United States Constitution provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. To determine whether civil detention violates a detainee's Fifth Amendment procedural due process rights, courts apply the familiar three-part test articulated in Mathews v. Eldridge, 424 U.S. 319 (1976). Mathews requires courts to weigh three factors:

(1) "The private interest that will be affected by the official action"; (2) "The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and, (3) "the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id. at 335-36.

A. Petitioner Has a Legitimate Private Interest in Remaining Free from Physical Detention

"The interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Petitioner, asserts that the government has violated his due process rights by detaining him without providing any meaningful opportunity to obtain release on bond. Releasing Petitioner does not preclude the government from moving forward with its removal proceedings at the appropriate time. Moreover, his liberty interest is not so diminished because of his immigration status that he should be summarily denied a bond hearing.

B. There is a Significant Risk of Erroneous Deprivation of Petitioner's Due Process Rights

Petitioner has not received the basic amount of process due to him regarding his detention status. As discussed above, Petitioner requested a bond hearing, which was denied on jurisdictional grounds. As a result, no Immigration Judge has made any individualized determination regarding flight risk or danger. The second Mathews factor weighs heavily in his favor as he is presently and erroneously detained under the mandatory detention provisions of § 1225 without an opportunity for a bond hearing.

C. The Government Must Show a Compelling Interest in Detaining Petitioner Without Holding a Bond Hearing

Undoubtedly, the current administration, Congress, and public opinion consider immigration enforcement to be a vital public interest. However, it is also in the public interest that the due process rights of individuals subject to this enforcement are adequately protected by an individualized determination of an immigration judge as to whether said individuals are to be incarcerated for the entirety of their removal proceedings. Releasing Petitioner on bond, pursuant to an Immigration Judge's determination, does not preclude the government from moving forward with its removal proceedings. Moreover, if appropriate, the judge may deny bond in a hearing.

All three Mathews factors weigh in Petitioner's favor. A finding of lack of jurisdiction for a bond redetermination under Matter of Q Li. is a violation of his due process rights under the Fifth Amendment.

III. Administrative Exhaustion

The exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although the Tenth Circuit recognizes that the statute itself does not expressly contain such a requirement. *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (citing *Williams v. O'Brien*, 792 F.2d 986, 987 (10th Cir. 1986) (per curiam)). Here, Petitioner has exhausted available administrative remedies. Petitioner requested a bond redetermination hearing, which was denied on March 13, 2026 for lack of jurisdiction. Because the Immigration Court determined that it lacked authority to conduct a bond hearing, no further administrative remedy exists through which Petitioner can obtain the relief sought.

CAUSES OF ACTION

FIRST CAUSE OF ACTION: Violation of Fifth Amendment Right to Due Process

Petitioner incorporates and references the above allegations herein.

The Due Process Clause of the Fifth Amendment to the United States Constitution prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Due Process protects "all 'persons' within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. These protections extend to Petitioner, particularly in light of the prolonged unlawful detention being perpetuated by the Department of Justice and Department of Homeland Security- very agents of the federal government the Fifth Amendment seeks to protect against.

Here, the Petitioner is being deprived of due process under the Fifth Amendment to the United States Constitution because DHS and the DOJ have determined unilaterally that

Petitioner is statutorily ineligible for bond, despite his placement in removal proceedings and the absence of any statutory bar to custody review.

Under the INA, noncitizens in §1226(a) proceedings are entitled to an individual bond determination before a neutral adjudicator, and the United States Supreme Court has emphasized that civil immigration detention must include adequate procedural safeguards to satisfy the Fifth Amendment. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 302-03 (2018).

Nevertheless, DHS has classified Petitioner as an "applicant for admission" under Matter of Q. Li., solely because he entered without inspection, notwithstanding his apprehension within the interior of the United States over a decade after his entry. The DOJ has further adopted the position that immigration judges therefore lack jurisdiction to

review Petitioner's custody, depriving Petitioner of any meaningful opportunity to obtain release through a bond hearing.

As a result, Petitioner is being held unlawfully, despite meeting the plain eligibility requirements under the INA for bond.

SECOND CAUSE OF ACTION: Violation of the Immigration and Nationality Act

Petitioner incorporates and references the above allegations herein.

The Immigration and Nationality Act (INA) sets forth specific circumstances under which the federal government may detain noncitizens. Under 8 U.S.C. §1225(b)(1), arriving aliens may be detained pending a determination of admissibility. Under 8 U.S.C. §1226(a), the Attorney General may take into custody aliens who are already in removal proceedings. Furthermore, 8 U.S.C. §1226(c) mandates detention for certain criminal aliens during removal proceedings (none of which are applicable to Petitioner, as Petitioner is not subject to mandatory detention).

At issue is the agency's application of the detention framework in *Matter of Q. Li* to individuals apprehended within the interior of the United States.

The INA intentionally and expressly distinguishes between individuals seeking admission at the border ("arriving aliens") and those apprehended inside the United States, assigning the former to the §1225(b) detention framework and the latter to the discretionary custody-and-bond provisions of §1226(a). The INA's specification and distinction reflects a specific intent by the INA to ensure that noncitizens are properly classified, providing avenues for relief where such are warranted, and thereby preventing unlawful deprivation of relief.

D. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable law.

E. Enter all necessary relief, injunctions, and orders as justice and equity as appropriate to remedy the harms to Petitioner.

F. Grant such further relief as this Court deems just and proper.

DATED this 26th day of March 2026.

Respectfully submitted,

/s/Jonathon Bell

Jonathon Bell

Attorney for Petitioner

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

I am submitting this verification on behalf of Petitioner because I am one of Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 26th day of March, 2026.

Respectfully Submitted,

/s/ Jonathon Bell

Jonathon Bell