

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Miguel Barriga Reyes,

A#

Petitioner,

V.

KRISTI NOEM, Secretary of the United States

Department of Homeland Security;

PAMELA BONDI, United States Attorney

General;

MIGUEL VERGARA, San Antonio Field Office

Director for Enforcement and Removal, U.S.

Immigration and Customs Enforcement,

Department of Homeland Security;

BOBBY THOMPSON, Warden, South Texas

Detention Complex, Pearsall, Texas;

UNITED STATES DEPARTMENT OF

HOMELAND SECURITY;

UNITED STATES IMMIGRATION AND

CUSTOMS ENFORCEMENT;

EXECUTIVE OFFICE FOR IMMIGRATION

REVIEW;

Respondents.

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

I. INTRODUCTION

1. Petitioner respectfully amends his petition for a writ of habeas corpus in light of the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026). Under FRCP 15(a)(1), a party may amend its pleading once as a matter of course 21 days after service of a responsive pleading. Here, Respondents filed their response on February 11, 2026.

2. Petitioner respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 to challenge his ongoing unlawful civil immigration detention without any individualized custody determination.

3. Although the Fifth Circuit's recent decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), forecloses a purely statutory entitlement to a bond hearing under 8 U.S.C. § 1226(a), that decision does not resolve Petitioner's independent constitutional and administrative-law claims. Petitioner's prolonged detention without any meaningful individualized review violates the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, the Suspension Clause, and binding agency regulations.

4. Petitioner entered the United States as an infant in 2002 and has resided continuously here for over 23 years. He was paroled into the United States on September 18, 2024, pursuant to a valid advance parole document tied to his pending VAWA self-petition and adjustment of status application. He has a U.S. citizen wife, three U.S. citizen sisters, parents pursuing lawful status, and only one minor criminal matter (a 2021 DWI reduced to obstruction of a highway passageway). His equities are overwhelming, and his removal proceedings are expected to last many months or years given the pending humanitarian relief. His continued

categorical detention without any neutral decisionmaker assessing danger, flight risk, or alternatives to detention is unconstitutional and unlawful as applied to him.

II. JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331. Petitioner is in custody within the Western District of Texas. Claims raise federal constitutional, statutory, and regulatory questions.

6. Venue is proper because Petitioner is detained at the South Texas ICE Processing Center in Pearsall, Texas (San Antonio Division).

7. The Supreme Court has long recognized that federal courts retain *habeas* jurisdiction to review the statutory and constitutional bases of immigration detention notwithstanding jurisdiction-stripping provisions, as such review lies at the core of the Great Writ. See *Demore v. Kim*, 538 U.S. at 516–17; *Zadvydas v. Davis*, 533 U.S. at 687–88.

III. PARTIES

8. Petitioner, Miguel Barriga Reyes, is a Mexican citizen, A# detained at the South Texas ICE Processing Center, in Pearsall, Texas.

9. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

10. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates is a component agency. She is sued in her official capacity.

11. Respondent Miguel Vergara is the Director of the San Antonio Field Office of ICE's Enforcement and Removal Operations division; however, on information and belief, the DHS is rotating its Field Office Director without publishing a schedule of rotation. As such, Miguel Vergara or his unknown, unannounced provisional replacement is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He or his acting counterpart is named in his or her official capacity.

12. Respondent, Bobby Thompson, or his counterpart, the Warden of the South Texas Detention Center, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at South Texas Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

13. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

14. Respondent Immigration and Customs Enforcement is the federal agency, branch of DHS, responsible for the enforcement of the INA, apprehension of non-citizens in the U.S., and detention and removal of noncitizens.

15. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. There is no statutory exhaustion requirement for habeas corpus petitions under 28 U.S.C. § 2241.

17. There are no administrative remedies available to the Petitioner under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In this precedential decision issued on September 5, 2025, the Board of Immigration Appeals (BIA) held that, based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1225(b)(2)(A), immigration judges lack authority to hear bond requests or grant bond to noncitizens who are present in the United States without admission or parole (as DHS has charged the Petitioner despite being paroled the last time he entered the U.S.) These individuals are classified as "applicants for admission," subjecting them to mandatory detention during removal proceedings, regardless of how long they have resided in the country. This interpretation was upheld in *Buenrostro-Mendez v. Bondi*, No. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026).

18. Petitioner already tried a bond request with the IJ, presenting evidence that he was paroled on September 18, 2024, his last entry to the U.S. The IJ denied his custody redetermination request, ruling that IJ lacked jurisdiction because Petitioner returned to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A), when his parole expired, citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As a result, the IJ lacks jurisdiction to hear Petitioner's request for a bond redetermination hearing, and there are no other remedies available.

19. We anticipate that the Respondents will argue that the Petitioner must first seek relief with the BIA by appealing the bond decision. But this would be futile. The BIA issued *Matter of Yajure Hurtado*, which puts the Petitioner as an applicant for admission. This view was upheld in *Buenrostro*. Therefore, there are no administrative remedies available. An appeal will be dismissed under this case law. Petitioner is unable to seek a custody redetermination request, with a neutral decision-maker, based on these decisions.

20. The only remedy available to address the Petitioner's unconstitutional detention is through this habeas corpus petition. This Petition raises due process and Fifth Amendment rights claims.

V. FACTUAL BACKGROUND

21. Petitioner Miguel Barriga Reyes is a citizen of Mexico, born  He first entered the United States without inspection in 2002 at approximately 8 months old, crossing the river with his mother. He has resided continuously in the United States since that time—over 23 years—and this was his only unauthorized entry. He had DACA status approximately from 2016 to 2021. In 2022, he married a U.S. citizen. He has three U.S. citizen sisters, and his parents are in the process of obtaining lawful status.

22. On April 17, 2023, Petitioner filed a concurrent I-360 VAWA self-petition and I-485 adjustment of status application, both of which remain pending with USCIS. Based on the pending AOS, he received an Employment Authorization Document (EAD) on December 18, 2023, which included an I-512 advance parole endorsement. The EAD is valid until December 17, 2028.

23. On September 4, 2024, Petitioner traveled to Mexico for two weeks—the only time he has left the U.S. since 2002. He returned by air through Dallas on September 18, 2024, was inspected by CBP officers, and was paroled into the United States pursuant to the advance parole document due to his pending AOS. The parole was valid until September 18, 2025. The VAWA and AOS applications remain pending.

24. On June 9, 2025, Petitioner received a Prima Facie Determination notice from USCIS, indicating that “The above petition has been reviewed and found to establish a prima facie case for classification under the self-petitioning provisions of the Violence Against Women

Act.” Although this does not confer status, the notice reflects that USCIS made an initial review and the Petitioner addressed all the eligibility requirements.¹

25. Petitioner has no life outside the United States; all his family ties, residence, and equities are here. His only criminal history is a 2021 DWI charge in Bexar County, Texas, reduced to obstruction of highway passageway (no other arrests).

26. On December 19, 2025, Petitioner was detained by ICE as a passenger during a traffic stop (his father was driving). He has been in ICE custody since then. ICE placed him in removal proceedings via NTA, as an applicant present without admission or parole, charging him under INA § 212(a)(6)(A)(i), and detained him at the South Texas ICE Processing Center in Pearsall, Texas. On January 13, 2026, ICE amended the NTA via Form I-261 and indicated the Petitioner last entered with a parole but remained in the U.S. after expiration of the parole, charging him under INA § 212(a)(7)(A)(i)(I).

27. The Notice to Appear (NTA) issued by ICE, and its subsequent amendment, rest on defective and legally insufficient charges that fail to establish Petitioner’s removability. The amended NTA charges Petitioner under INA § 212(a)(7)(A)(i)(I), alleging that he last entered the United States with parole on September 18, 2024, but remained after the expiration of that parole in September 2025. These charges are fundamentally flawed and should not support removal proceedings. The parole granted by CBP upon Petitioner’s return was expressly issued “for purposes of adjustment of status” in connection with his pending Form I-485, which was filed concurrently with his VAWA self-petition on April 17, 2023, and remains pending before USCIS.

¹ USCIS Policy Manual, Volume 3, Part D, Chapter 5:

<https://www.uscis.gov/policy-manual/volume-3-part-d-chapter-5>

“The NPFC does not confer immigration status or a benefit, and a self-petitioner may not apply solely for an NPFC. A PFC determination is a “first look” determination that the self-petitioner seems to have addressed each of the eligibility requirements. This is not a determination that the self-petitioner established eligibility or that the self-petitioner has met his or her burden of proof. USCIS’ decision to issue or not issue an NPFC is not a consideration in the adjudication of the underlying self-petition, and a prima facie determination, whether favorable or adverse, is not a final adjudication of the self-petition.”

As long as the I-485 is pending and unadjudicated, Petitioner is in a “period of stay authorized by the Secretary of Homeland Security” under INA § 212(a)(9)(B)(ii), 8 U.S.C. § 1182(a)(9)(B)(ii). This authorized stay continues beyond the expiration date shown on the parole stamp issued at reentry. See USCIS Policy Manual, Volume 7, Part B, Chapter 3 (“Those in a period of stay authorized are protected from accruing unlawful presence. For example, an alien whose adjustment of status application is pending is in a period of stay authorized and does not accrue unlawful presence.”); see also *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771 (BIA 2012) (recognizing that advance parole reentry in connection with a pending AOS does not trigger departure-related bars and treats the presence as authorized)². The mere expiration of the administrative parole document does not terminate this ongoing authorization or render Petitioner removable under the charged ground. ICE’s charges ignore the pending AOS (and the accompanying VAWA prima facie determination) and misapply the parole framework to an applicant who has a viable, pending path to lawful permanent residence. The NTA therefore fails to allege a valid basis for removability, providing strong grounds for termination of the proceedings.

28. On January 15, 2026, Immigration Judge Justin Adams denied his custody redetermination request, ruling that IJ lacked jurisdiction because Petitioner returned to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A), when his parole expired, citing *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) (attached order).

29. Petitioner’s first immigration hearing was held on January 20, 2026, more than one month after initial detention. The next master calendar hearing is scheduled for March 12,

² “In short, an undocumented alien’s departure under a grant of advance parole is qualitatively different from other departures, because it presupposes both that he will be permitted to return to the United States thereafter and that he will, upon return, continue to pursue the adjustment of status application he filed before departing.” *Id.*

2026.³ That is almost three months after initial detention, and that is not the final hearing; the case is set to continue and be resolved in years, as explained below in Count I.

30. Petitioner's detention causes ongoing irreparable harm. Petitioner has significant positive equities: over 23 years of U.S. residence; all of his family lives in the U.S.; consistent tax filings; stable employment; minimal criminal history; pending VAWA and AOS with USCIS with a prima facie determination; EAD; approved advance parole with multiple entries allowed, and a viable path to lawful status through the pending cases with USCIS. The only negative equities are the initial entry without inspection when he was only 8 months old, and a DWI reduced to obstruction.

VI. LEGAL FRAMEWORK AND ACKNOWLEDGMENT OF *BUENROSTRO-MENDEZ*

31. The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi* (Feb. 6, 2026) holds that noncitizens present in the United States without admission are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are not statutorily entitled to a bond hearing under § 1226(a). This Court is bound by that holding on the pure statutory question.

32. However, *Buenrostro-Mendez* addressed only the statutory interpretation issue and expressly did not reach constitutional, APA, or other independent claims. As the Supreme Court made clear in *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018), the absence of a statutory bond entitlement does not eliminate constitutional constraints on detention.

33. Petitioner therefore concedes that he has no statutory right to a bond hearing under § 1226(a) due to *Buenrostro*, but maintains that his continued detention without any individualized custody determination violates the Constitution and the APA.

VII. CONSTITUTIONAL AND STATUTORY VIOLATIONS

³ Automated case information, last accessed on February 13, 2026. <https://acis.eoir.justice.gov/es/caseInformation>

COUNT I: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT (As Applied)

34. Even assuming that 8 U.S.C. § 1225(b)(2)(A) governs Petitioner's detention following the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), his ongoing and foreseeably prolonged detention without any individualized custody determination violates both procedural and substantive due process as applied to him.

35. Civil immigration detention must be reasonably related to the government's legitimate, non-punitive purposes of ensuring appearance at proceedings and protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). When mandatory detention becomes indefinite or prolonged, due process requires an individualized bond hearing before a neutral decisionmaker at which the government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary and that no reasonable conditions of release will serve the government's interests. *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018) (leaving constitutional claims open); *Demore*, 538 U.S. at 532–33 (Kennedy, J., concurring).

36. The Western District of Texas has granted habeas petitions under procedural due process grounds. See *Cumbe Lema v. Noem*, No. 3:26-cv-00249-KC (W.D. Tex. February 9, 2026); *Lala Barros v. Noem*, No. 3:25-cv-488-KC, 2025 (W.D. Tex. Nov. 10, 2025); *Erazo Rojas v. Noem*, No. 3:25-cv-443-KC (W.D. Tex. Oct. 30, 2025); *Martinez v. Noem*, No. 3:25-cv-430-KC (W.D. Tex. Oct. 21, 2025); *Santiago v. Noem*, No. 3:25-cv-361-KC, 2025 (W.D. Tex. Oct. 2, 2025); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-337-KC (W.D. Tex. Sept. 22, 2025).

37. Petitioner has been detained since December 19, 2025—almost two months—without any neutral adjudicator ever considering whether he poses a danger to the community, a risk of flight, or whether less restrictive alternatives would suffice. The Immigration Judge lacks jurisdiction to address any custody factors under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as the IJ stated on his January 15, 2026, order.

38. The first Master Calendar Hearing of the Petition was more than one month after initial detention on January 20, 2026, and his next scheduled master hearing is on March 12, 2026. By that time, he will have almost three months of continued unconstitutional detention.

39. This detention is foreseeably prolonged and indefinite. Recent TRAC data shows that even in the Pearsall Immigration Court (the detained docket where the petitioner's case is pending), the average wait time from filing to an asylum hearing is **121 days**—approximately four months (Exhibit C). This figure represents only the time until the hearing itself; it does not include the additional weeks or months for the Immigration Judge to issue a written decision, nor the time required for any appeal to the Board of Immigration Appeals, which routinely takes six months or longer. Given that Petitioner is seeking Special Rule Cancellation of Removal and Adjustment of Status, and will later be eligible for AOS based on his approvable VAWA Self-Petition, his case will require a full evidentiary hearing, a decision, and—given the government's vigorous opposition—almost certain appellate review. As a result, Petitioner faces the realistic prospect of 12 to 18 months or more of detention without any individualized custody review.

40. The constitutional stakes are particularly high in this case because Petitioner is not a recent border arrival. Heightened liberty interest: long-term resident (entered when he was only 8 months old), strong community/family ties, paroled on last entry, pending VAWA and AOS

with USCIS, prima facie determination received, EAD approved, advance parole approved, no unlawful presence since last entry, no flight risk/danger, and a viable lawful pathway to lawful permanent residence. Detention is arbitrary and punitive in effect. He has lived continuously and openly in the United States since 2002. Petitioner has a viable pathway to lawful status through the pending VAWA and AOS. He has a minimal criminal record, and no history of violence. These factors create a substantial liberty interest that cannot be extinguished through indefinite detention without any opportunity for individualized review.

41. Petitioner's continued categorical detention—without any neutral assessment of danger, flight risk, or alternatives to detention—is arbitrary and punitive in effect. The length of detention, combined with the irreparable harm it is causing to his family, renders the detention unconstitutional as applied to him.

42. Accordingly, Petitioner's prolonged mandatory detention without individualized review violates the Due Process Clause of the Fifth Amendment. This Court should grant habeas relief by ordering his immediate release, or, in the alternative, ordering Respondents to provide Petitioner a prompt individualized bond hearing before a neutral decisionmaker, at which the government bears the burden of proving by clear and convincing evidence that no conditions of release will reasonably assure Petitioner's appearance and the safety of the community.

COUNT II: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT ("INA") AND IMPLEMENTING REGULATIONS

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

44. The Immigration and Nationality Act authorizes immigration detention only to the extent it serves legitimate, non-punitive statutory purposes—namely, to ensure an individual's

appearance at future proceedings or to protect public safety. Detention that does not advance those purposes, or that becomes arbitrary and indefinite, exceeds the government's statutory authority. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

45. Petitioner has been in the United States since 2002, he is a long-term resident (entered when he was only 8 months old), he has strong community/family ties, paroled on last entry, pending VAWA and AOS with USCIS, prima facie determination received, EAD approved, advance parole approved, no unlawful presence since last entry, no flight risk/danger, minimal criminal record, and a viable lawful pathway to lawful permanent residence. Nothing in his immigration file indicates that he poses a threat to public safety or that he would fail to appear for his hearings if released. On the contrary, he has strong incentives to appear and gain lawful permanent residence through his pending VAWA and AOS.

46. Petitioner has been continuously detained in civil immigration custody since December 19, 2025, and is currently confined at the South Texas ICE Processing Center in Pearsall, Texas. The Immigration Court lacks jurisdiction to hear custody redetermination solely on jurisdictional grounds, relying on *Matter of Yajure Hurtado*, I&N Dec. 216 (BIA 2025).

47. The Immigration Judge will never consider any individualized custody factors and will not evaluate Petitioner's lack of criminal history, his non-dangerousness, his cooperation with immigration authorities, or the feasibility of alternatives to detention. Because the Immigration Judge lacks jurisdiction, Petitioner now has no administrative mechanism for custody review, effectively subjecting him to prolonged and potentially indefinite detention without statutory authority or procedural safeguards, despite having a strong claim to lawful permanent residency through his pending VAWA and AOS.

48. Petitioner acknowledges that, under the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), he does not possess a purely statutory entitlement to a bond hearing before an immigration judge under 8 U.S.C. § 1226(a). However, neither *Buenrostro-Mendez* nor *Matter of Yajure Hurtado* authorizes unlimited, unreviewable civil detention untethered from the INA's non-punitive purposes. The INA does not permit detention to operate as punishment, deterrence, or coercion, nor does it authorize prolonged confinement absent a meaningful mechanism to assess whether continued detention is necessary to serve its legitimate aims. *Zadvydas*, 533 U.S. at 690–91; *Clark*, 543 U.S. at 380–81.

49. Even where detention is initially authorized under INA § 235(b)(2)(A), the statute must be applied consistently with its limited purpose and in conjunction with the INA's broader detention framework, including DHS's continuing discretionary authority to release noncitizens through parole, supervision, or other conditions where detention no longer serves a legitimate statutory objective. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

50. DHS has not conducted any individualized assessment of whether Petitioner's continued detention is necessary to ensure appearance or protect public safety, nor has it articulated any reasoned basis for rejecting less restrictive alternatives to detention. The categorical reliance on *Yajure Hurtado* as a blanket bar to custody review effectively transforms a civil detention scheme into one of indefinite confinement without statutory justification.

51. Petitioner's continued detention bears no reasonable relationship to the purposes of the INA. It is not tied to imminent removal, is not supported by any individualized finding of danger or flight risk, and persists solely as a result of a categorical legal interpretation that eliminates all meaningful custody review.

52. Detention under these circumstances exceeds the detention authority Congress conferred in the INA and contravenes the statute's non-punitive design, its implementing regulations, and controlling Supreme Court precedent limiting civil immigration detention to what is reasonably necessary to achieve its lawful purposes.

53. Accordingly, Petitioner's continued detention is unlawful under the Immigration and Nationality Act and its implementing regulations. Petitioner respectfully requests that this Court grant habeas relief by ordering his immediate release, or, in the alternative, ordering Respondents to provide a prompt, lawful, and meaningful individualized custody determination consistent with the INA and governing law.

COUNT III: UNLAWFUL DETENTION BASED ON A DEFECTIVE NOTICE TO APPEAR AND FAILURE TO ALLEGE ANY VALID GROUND OF REMOVABILITY

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

55. The Notice to Appear (NTA) issued by ICE on or about December 19, 2025, and its amendment via Form I-261 on January 13, 2026, fail to allege a valid ground of removability and are therefore legally insufficient to support removal proceedings or Petitioner's detention.

56. The amended NTA charges Petitioner with removability under INA § 212(a)(7)(A)(i)(I) as an immigrant who was paroled into the United States but remained after the expiration of that parole. This charge is fundamentally defective as a matter of law.

57. Petitioner's last entry on September 18, 2024, was pursuant to a valid advance parole document issued by USCIS expressly "for purposes of adjustment of status" in connection with his concurrently filed Form I-485 (and VAWA self-petition), both of which remain pending before USCIS. Upon that reentry, CBP paroled him for the purpose of pursuing adjustment.

58. As long as a Form I-485 adjustment of status application remains pending and unadjudicated, the applicant is in a “period of stay authorized by the Secretary of Homeland Security” within the meaning of INA § 212(a)(9)(B)(ii), 8 U.S.C. § 1182(a)(9)(B)(ii). This authorized stay continues beyond the expiration date shown on the parole stamp issued at reentry. See USCIS Policy Manual, Volume 7, Part B, Chapter 3 (“Those in a period of stay authorized are protected from accruing unlawful presence. For example, an alien whose adjustment of status application is pending is in a period of stay authorized and does not accrue unlawful presence.”); see also *Matter of Arrabally & Yerrabelly*, 25 I&N Dec. 771 (BIA 2012) (recognizing that advance parole reentry in connection with a pending AOS does not trigger departure-related bars and treats the presence as authorized)⁴.

59. The mere expiration of the one-year parole document does not terminate this ongoing authorization or render Petitioner removable. ICE’s charge completely ignores the pending I-485 (and the accompanying VAWA prima facie determination) and misapplies the parole framework to an applicant who has a viable, pending path to lawful permanent residence.

60. Because the NTA fails to allege any valid ground of removability, the immigration court lacks a proper basis to exercise jurisdiction over removal proceedings against Petitioner, and ICE lacks statutory authority to detain him in connection with those proceedings. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (detention must be reasonably related to a legitimate statutory purpose); *Clark v. Martinez*, 543 U.S. 371, 380–81 (2005) (civil detention authority is limited).

⁴ “In short, an undocumented alien’s departure under a grant of advance parole is qualitatively different from other departures, because it presupposes both that he will be permitted to return to the United States thereafter and that he will, upon return, continue to pursue the adjustment of status application he filed before departing.” *Id.*

61. Petitioner's continued detention predicated on this defective and insufficient NTA is therefore unlawful under the Immigration and Nationality Act and violates the Due Process Clause of the Fifth Amendment.

62. Accordingly, Petitioner respectfully requests that this Court grant habeas relief by ordering his immediate release from custody; or in the alternative, ordering Respondents to provide Petitioner a prompt individualized bond hearing before a neutral decisionmaker.

**COUNT IV: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –
ARBITRARY AND CAPRICIOUS AGENCY ACTION**

63. DHS's July 2025 policy memorandum abruptly reversed nearly three decades of consistent administrative practice without notice-and-comment rulemaking or reasoned explanation. This policy shift, implemented through an internal memo and enforced via *Yajure Hurtado*, is arbitrary, capricious, and contrary to law under 5 U.S.C. § 706(2)(A).

64. The abrupt change from treating long-term interior residents under § 1226(a) to blanket mandatory detention under § 1225(b)(2) lacks reasoned decision-making and fails to address reliance interests created by decades of contrary practice.

**COUNT V: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE
FIFTH AMENDMENT**

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

66. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal protection that prohibits the federal government from treating similarly situated individuals differently without a rational and legitimate governmental purpose. *Reno v. Flores*,

507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

67. Petitioner is in removal proceedings under section 240 of the Immigration and Nationality Act—the same adjudicatory framework that governs millions of noncitizens nationwide, whose cases proceed before immigration judges and whose liberty interests are assessed through individualized custody determinations.

68. Petitioner is similarly situated, for custody purposes, to other noncitizens in § 240 proceedings who have minimal criminal convictions and no record of violence or dangerous behavior. He has cooperated fully with immigration authorities since entering the U.S. and ICE custody (DACA status then pending VAWA and AOS). Yet Petitioner alone is categorically denied access to any individualized custody review.

69. Petitioner's disparate treatment rests solely on DHS's *post-hoc* classification of him as an "applicant for admission" under INA § 235(b), based on disputed and unreviewed allegations regarding the manner and timing of his entry—facts never adjudicated in a custody hearing and never tested before a neutral decisionmaker.

70. The Immigration Judge lacks jurisdiction to hear Petitioner's request for a custody redetermination solely on jurisdictional grounds, under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As a result, Petitioner will never have an individualized consideration of danger, flight risk, community ties, or alternatives to detention.

71. This categorical denial creates an unjustifiable disparity between Petitioner and other similarly situated § 240 respondents who receive individualized custody determinations—even where those individuals entered without inspection, were apprehended long after entry, and present identical risk profiles.

72. Equal protection requires that detention classifications bear a rational relationship to a legitimate governmental purpose. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Civil immigration detention is permissible only insofar as it serves the non-punitive purposes of ensuring appearance at proceedings or protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

73. DHS's classification scheme fails rational-basis review as applied to Petitioner. The government has never alleged—let alone established—that Petitioner poses a danger or flight risk, nor has it explained how denying him any custody review advances detention's legitimate purposes.

74. Instead, DHS relies on a categorical rule that treats similarly situated individuals differently based solely on entry-related labels that bear no rational relationship to present-day custody concerns. Such arbitrary line-drawing is constitutionally impermissible even under deferential review. *See Zadvydas*, 533 U.S. at 690; *Plyler*, 457 U.S. at 216.

75. Moreover, federal courts have recognized that immigration detention classifications must comport with fundamental fairness and may not be applied arbitrarily or discriminatorily. *See, e.g., Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (government must justify detention with individualized evidence); *Rodriguez v. Robbins*, 804 F.3d 1060, 1074–76 (9th Cir. 2015) (due process prohibits prolonged detention without meaningful review).

76. The irrationality of this classification is heightened by the government's own prior practice. For nearly three decades, DHS and EOIR treated noncitizens in Petitioner's posture as eligible for individualized custody determinations. DHS's abrupt departure from that settled practice—without individualized justification—underscores the arbitrariness of the disparate treatment imposed here.

77. By denying Petitioner any opportunity to obtain an individualized custody determination while granting such a process to similarly situated noncitizens, DHS has violated the equal protection component of the Fifth Amendment.

78. *Habeas* relief is therefore warranted to remedy this unconstitutional disparate treatment. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct Respondents to provide him with a prompt and meaningful individualized custody determination under constitutionally adequate standards.

COUNT VI: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES CONSTITUTION

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

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

81. *Habeas corpus* remains available to all persons in the United States who are detained by executive authority, including noncitizens in civil immigration custody. The Supreme Court has repeatedly held that Congress—and a fortiori the Executive—may not eliminate all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06; *Boumediene*, 553 U.S. at 779.

82. Petitioner is detained solely under civil immigration authority and is currently confined at the South Texas ICE Processing Center in Pearsall, Texas. He has strong equities,

minimal criminal record, no history of violence, pending VAWA and AOS, EAD, advance parole, a pathway to lawful permanent residence, and his removal proceedings remain pending before an immigration judge.

83. The Immigration Judge will never consider bond or conduct any individualized custody determination, based on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This classification—based on disputed and unreviewed allegations regarding the manner and timing of Petitioner’s entry—foreclosed access to the custody redetermination process available to other § 240 respondents.

84. Because the Immigration Judge lacks jurisdiction to hear a custody redetermination request, Petitioner has no administrative pathway to challenge the legality, duration, or necessity of his detention. The Board of Immigration Appeals likewise lacks jurisdiction to review custody determinations in which no bond hearing can be held. ICE has also declined to provide any individualized parole or custody assessment.

85. As a result, no adequate or effective substitute for habeas corpus exists through which Petitioner may obtain judicial review of the legality of his confinement. Neither the Immigration Courts nor the Board of Immigration Appeals possesses jurisdiction to review custody challenges arising from DHS’s classification decisions.

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

87. Petitioner's detention—prolonged, non-punitive in name but punitive in effect, and wholly insulated from individualized review—implicates the core protections of the Suspension Clause. Without *habeas corpus*, Petitioner has no judicial or administrative forum in which to contest the legality of his ongoing confinement.

88. The government's application of *Matter of Yajure Hurtado* to categorically bar all custody review, combined with DHS's refusal to conduct any individualized discretionary assessment, results in a detention regime that violates the Suspension Clause by eliminating any effective means to challenge unlawful detention.

89. Accordingly, *habeas corpus* relief is constitutionally required. Petitioner respectfully requests that this Court grant the writ and order Petitioner's immediate release from ICE custody or, in the alternative, direct Respondents to provide a prompt, meaningful, and individualized custody determination before a neutral decisionmaker with authority to order release.

COUNT VII: VIOLATION OF THE ACCARDI DOCTRINE WITH RESPECT TO 8 C.F.R. § 287.8(C)(2)(I) AND (II)

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

91. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders the resulting agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). This principle applies with full force in immigration proceedings and is enforceable through *habeas corpus* where regulatory violations result in unlawful detention.

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

93. These regulatory requirements are mandatory, not discretionary. They impose substantive limitations on ICE’s authority to conduct warrantless arrests in the interior of the United States and are designed to protect against arbitrary deprivations of liberty.

94. At the time he was taken into ICE custody on December 19, 2025, and at all times thereafter, Petitioner had complied with all immigration requirements (pending VAWA and AOS; advance parole entry; no unlawful presence since last entry; EAD), including appearing for his immigration proceedings and remaining available to immigration authorities. Petitioner was taken into ICE custody without a judicial warrant.

95. Petitioner was not evading law enforcement, was not subject to any criminal investigation, posed no danger to any person or to the community, and presented no risk of flight. There was no factual basis to conclude that Petitioner was “likely to escape before a warrant could be obtained,” as required by 8 C.F.R. § 287.8(c)(2)(ii). ICE officers, therefore, failed to comply with a mandatory regulatory prerequisite to a lawful warrantless arrest. This violation of DHS’s own binding regulations renders Petitioner’s arrest unlawful under the *Accardi* doctrine.

96. The consequences of this regulatory violation are not limited to the moment of arrest. Petitioner’s ongoing detention flows directly from—and is predicated upon—the unlawful

warrantless arrest conducted in violation of 8 C.F.R. § 287.8(c). Continued detention based on an arrest that contravenes binding regulations is itself unlawful.

97. Federal courts have repeatedly recognized that habeas corpus is an appropriate vehicle to remedy detention that results from an agency's failure to follow its own regulations, particularly where those regulations are designed to protect individual liberty. *See Accardi*, 347 U.S. at 267–68; *St. Cyr*, 533 U.S. at 301–05.

98. By arresting Petitioner without a warrant and without satisfying the regulatory requirements governing such arrests, DHS violated the *Accardi* doctrine and deprived Petitioner of liberty in a manner not authorized by law.

99. *Habeas* relief is therefore warranted. Petitioner respectfully requests that this Court grant the writ and order his immediate release from ICE custody or, in the alternative, provide appropriate relief to remedy the unlawful detention resulting from DHS's regulatory violations.

COUNT VIII: PRESERVATION OF STATUTORY ARGUMENT FOR EN BANC OR SUPREME COURT REVIEW

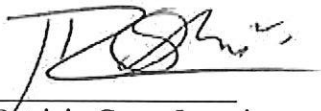
100. To preserve the issue, Petitioner respectfully maintains that *Buenrostro-Mendez* was wrongly decided under traditional tools of statutory construction, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and the overwhelming weight of pre-2026 district court authority (over 350 decisions). Those arguments stated in the original Petition are preserved for en banc review by the Fifth Circuit or certiorari to the Supreme Court.

VIII. PRAYER FOR RELIEF

101. Petitioner respectfully requests that the Court:

- a. Order the Respondents to show cause within three days on why this Petition should not be granted;
- b. Issue a writ of habeas corpus ordering Petitioner's immediate release from custody;
- c. In the alternative, order Respondents to provide Petitioner a prompt, individualized custody determination before a neutral decisionmaker, with the government bearing the burden of proof by clear and convincing evidence that continued detention is necessary;
- d. Declare that Petitioner's continued detention without individualized review violates the Fifth Amendment, the Due Process Clause, and the APA;
- e. Grant such other and further relief as the Court deems just and proper, including attorney's fees and costs under the Equal Access to Justice Act.

Respectfully submitted, February 13, 2026.



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TX SBN 24087568

INDEX OF DOCUMENTS

Exhibit	
A	IJ Decision denying bond under <i>Matter of Yajure Hurtado</i>
B	Petitioner's passport with parole stamp and entries to Mexico Petitioner's EAD card, category c09 (Pending AOS application)
C	Petitioner's USCIS notices, including: - I-360 Prima Facie Determination - I-360 Receipt notice - I-485 Receipt Notice - I-765 Approval Notice - I-131 Approval Notice
D	Criminal Record (only one DWI reduced to Obstruction)
E	DACA Approval Notices
F	-Screenshot from the Transactional Records Access Clearinghouse (TRAC), Syracuse University https://tracreports.org/phptools/immigration/asylumbl/

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **AMENDED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, and all the attached documents described in the index above, were served to the following by the CM/ECF system:

1. KRISTI NOEM, Secretary of the United States Department of Homeland Security;
2. PAMELA BONDI, United States Attorney General;
3. MIGUEL VERGARA, San Antonio Field Office Director for Enforcement and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security;
4. BOBBY THOMPSON, Warden, South Texas Detention Complex, Pearsall, Texas
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On February 13, 2026


Patricio Garza Izaguirre
Attorney for the Petitioner

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