JS 44 (Rev. 04/21)

CIVIL COVER SHEET 690

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

JOSE PEDRO TREJO-VERDE

(b) County of Residence of First Listed Plaintiff Frio County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Jeffrey A. Peek. 1406 Waller St. Austin, TX 78702.
512- 474-4445

DEFENDANTS

KRISTI NOEM, Secretary, U.S. Department of Homeland Security; et al

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

U.S. Attorney's Office of the Western District of Texas

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane	☐ 365 Personal Injury - Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 315 Airplane Product Liability	☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 330 Federal Employers' Liability	PERSONAL PROPERTY	LABOR	☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 340 Marine	☐ 370 Other Fraud	☐ 710 Fair Labor Standards Act	☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 720 Labor/Management Relations	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 740 Railway Labor Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 751 Family and Medical Leave Act	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 360 Other Personal Injury		☐ 790 Other Labor Litigation	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability	☐ 362 Personal Injury - Medical Malpractice		☐ 791 Employee Retirement Income Security Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise				☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/ Exchange
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
☐ 210 Land Condemnation	☐ 440 Other Civil Rights	Habeas Corpus:	☐ 462 Naturalization Application	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 220 Foreclosure	☐ 441 Voting	☒ 463 Alien Detainee	☐ 465 Other Immigration Actions	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 230 Rent Lease & Ejectment	☐ 442 Employment	☐ 510 Motions to Vacate Sentence		☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 240 Torts to Land	☐ 443 Housing/ Accommodations	☐ 530 General		☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment	☐ 535 Death Penalty			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other	Other:			☐ 950 Constitutionality of State Statutes
	☐ 448 Education	☐ 540 Mandamus & Other			
		☐ 550 Civil Rights			
		☐ 555 Prison Condition			
		☐ 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC 2241

Brief description of cause:
Suit to seek relief from unlawful immigration detention

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE
02/04/2026

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.)**

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOSE PEDRO TREJO-VERDE Petitioner v. **BOBBY THOMPSON,** Warden at South Texas Detention Center (Pearsall); **MIGUEL VERGARA,** San Antonio Field Office Director, ICE Enforcement and Removal Operations; **TODD LYONS,** Acting Director, U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary, U.S. Department of Homeland Security; **PAMELA JO BONDI,** Attorney General, U.S. Department of Justice. Respondents	**Case No. 26-cv-690**

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR AN ORDER TO SHOW CAUSE

COMES NOW, Petitioner, Jose Pedro Trejo-Verde, through undersigned counsel, and brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner has been illegally detained in Immigrations and Customs Enforcement ("ICE") custody since on or around December 24, 2025, in violation of the Constitution. This Court should order his immediate release.

I. INTRODUCTION

1. The Petitioner Mr. Trejo-Verde is a 48-year-old native and citizen of Mexico who entered the United States on or around 1997. He has resided in Texas for more than tewnty eigth (28) years with his wife Maria Merino Ramos and their 4 U.S Citizen children: [redacted] Trejo DOB [redacted] Trejo DOB [redacted] Trejo DOB: [redacted] and [redacted] Trejo DOB [redacted] See Exhibit 1 Petitioner's Identification documents and Exhibit 2 Brith certificates of relatives.

2. On or around December 24, 2025 he was apprehended by ICE while on his way to work. The vehicle was stopped without any apparent traffic violation or legal justification. No criminal or civil violations were charged on him. He was served with a Notice to Appear and Placed in removal proceedings. See Exhibit 3 Notice to appear.

3. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's position that noncitizens "present in the United States without admission" are subject to mandatory detention under INA § 235(b)(2)(A) and that immigration judges lack bond jurisdiction even when ICE has placed the case in § 240 proceedings. This new precedent is unlawful and cannot justify Petitioner's ongoing confinement: it misreads the statute, conflicts with binding regulations that limit expedited-removal custody to classes designated by Federal Register notice, and raises grave constitutional concerns the avoidance canon requires courts to steer away from. *See* INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); 8 C.F.R. § 235.3(b)(1)-(2); 62 Fed. Reg. 10,312, 10,314, 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880-81 (Aug. 11, 2004); 84 Fed. Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).

4. Despite detaining Petitioner Mr. Trejo-Verde, ICE has not demonstrated any significant likelihood that Petitioner will be removed in the reasonably foreseeable future. Petitioner's ongoing detention violates the pre-removal-period detention statute, 8 U.S.C. § 1226, the post-removal-period detention statute, 8 U.S.C. § 1231(a)(6), and the Due Process clause of the Fifth Amendment to the U.S. Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (finding that prolonged detention of someone who could not be removed would violate due process).

5. Petitioner therefore seeks a writ of habeas corpus directing his immediate release.

II. JURISDICTION

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

7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 2241 et. seq. (declaratory action), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 et. seq., the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq., the Administrative Procedure Act, 5 U.S.C. § 701, et. seq., and the All Writs Act, 28 § U.S.C. § 1651.

9. This district court has subject-matter jurisdiction under 28 U.S.C. § 2241 because none of the INA's jurisdiction-stripping provisions bar review of a habeas petition that challenges the legality of civil immigration detention. Section 1252(b)(9) applies only when a noncitizen

seeks judicial review of an order of removal, the government's decision to initiate removal proceedings, or the process by which removability will be determined.

10. The Supreme Court has made clear that § 1252(b)(9) does not bar federal jurisdiction where, as here, the petitioner is not asking for review of a removal order or any step in the removal-adjudication process. See Nielsen v. Preap, 586 U.S. 392, 402 (2019); Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 591 U.S. 1, 19 (2020). For the same reason, § 1252(b)(4) is irrelevant because it governs only the standards and limits for reviewing a final order of removal, which the petitioner does not challenge. Section 1252(g) likewise offers no jurisdictional bar because it applies only to three discrete actions by the Executive: commencing proceedings, adjudicating cases, or executing removal orders. See Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999). A challenge to the legality of ongoing detention is not one of those three actions and therefore remains subject to habeas review.

11. Section 1252(e)(3) also does not bar jurisdiction because it governs only systemic challenges to the validity of expedited-removal regulations or written policies. Courts consistently hold that § 1252(e)(3) is limited to such system-wide claims and does not apply to individualized or as-applied detention challenges. See Shunaula v. Holder, 732 F.3d 143, 147 (2d Cir. 2013); Rodrigues v. McAleenan, 435 F. Supp. 3d 731, 737 (N.D. Tex. 2020); Mata Velasquez v. Kurzdorfer, 2025 WL 1953796, at *6 (W.D.N.Y. July 16, 2025). A habeas petition challenging whether the government has lawful statutory authority to detain a long-term resident under § 1225 rather than § 1226 is an as-applied challenge to individual custody, not a challenge to the "validity of the system." Because the petition contests only the statutory basis for detention and seeks no review of removal proceedings, the district court retains full subject-matter jurisdiction to decide the claim.

III. VENUE

12. Venue is proper because Petitioner Mr. Trejo-Verde is detained at the South Texas Detention Center, which is within the jurisdiction of this District.

13. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States reside and a substantial part of the events or omissions giving rise to his claims occurred in this District. No real property is involved in this action. 28 U.S.C. § 1391(e).

IV. REQUIREMENTS OF 28 U.S.C. § 2243 AND APPLICATION FOR AN ORDER TO SHOW CAUSE

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. 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." *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

15. Pursuant to 28 U.S.C. § 2243, Petitioner Mr. Trejo-Verde respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the

Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

16. Pending adjudication of these claims, Petitioner Mr. Trejo-Verde asks for an order enjoining Respondents from transferring Petitioner from the jurisdiction of the Houston Field Office of the Immigration & Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") and this District and from ultimately resolving the removal proceedings until this case is resolved.

V. PARTIES

17. Petitioner Trejo-Verde is currently detained at the South Texas Detention Center (Pearsall), Texas. He was arrested and detained on or around December 24, 2025, by ICE ERO.

18. Respondent Bobby Thompson is the Warden of South Texas Detention Center (Pearsall). He has immediate physical custody of Petitioner pursuant to the facility's contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent Thompson is the legal custodian of Petitioner. Respondent Thompson's office is located at 566 Veterans Dr, Pearsall, TX 78061

19. Respondent Miguel Vergara is the Field Office Director of the San Antonio Field Office, Immigration and Custom's Enforcement, which has jurisdiction over San Antonio and surrounding areas ICE Enforcement and Removal Operations (ERO). Respondent Vergara is a legal custodian of Petitioner and has authority to release him. Respondent Guevara's office is located at 1777 NE Loop 410, Suite 1500, San Antonio, TX 78217.

20. Respondent Todd Lyons, Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him. Respondent Lyons' office is located at 500 12th St. SW, Washington, DC 20536.

21. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, Respondent Noem is responsible for the implementation and enforcement of the Immigration and Nationality Act ("INA") pursuant to 8 U.S.C. § 1103(a); oversees U.S. Immigration and Customs Enforcement ("ICE"), the component agency responsible for Petitioner's arrest and detention; supervises other Respondents; and she is legally responsible for the pursuit of Petitioner's detention and removal. As such, Respondent Noem is a legal custodian of Petitioner. Respondent Noem's office is located in the United States Department of Homeland Security, Washington, District of Columbia, 20528.

22. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States Department of Justice. In this capacity, Respondent Bondi is responsible for representing the United States in legal matters, supervise and direct the administration and operation of the Department of Justice's many agencies, which include the Executive Office of Immigration Appeals ("EOIR") and the Office of Immigration Litigation ("OIL"). Respondent Bondi's office is located in the United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, District of Columbia, 20530.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

23. Petitioner Mr. Trejo-Verde contends that exhaustion is not required. Mr. Trejo-Verde respectfully submits that the exhaustion of administrative remedies requirement should be waived in this case under well-established Fifth Circuit precedent recognizing exceptions to the

exhaustion doctrine. While exhaustion is generally required before seeking habeas relief, the Fifth Circuit has consistently recognized exceptions where administrative remedies are unavailable, inappropriate, or futile.

24. The Fifth Circuit has established that "a federal prisoner filing a § 2241 petition must first pursue all available administrative remedies." *Gallegos-Hernandez v. United States*, 688 F.3d 190. However, the court has consistently recognized that "[e]xceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action." *Gallegos-Hernandez v. United States*, 688 F.3d 190, *Hinojosa v. Horn*, 896 F.3d 305. These exceptions apply in "extraordinary circumstances," and the petitioner bears the burden of demonstrating the futility of administrative review. *Fuller v. Rich, 11 F.3d 61 (5th Cir. 1994)*

25. The administrative remedies theoretically available to Petitioner are inadequate and effectively unavailable under Fifth Circuit standards. The Immigration Court Practice Manual and Matter of K-, 20 I&N Dec. 418 (BIA 1991), explicitly limit interlocutory appeals to rare circumstances involving either "important jurisdictional questions regarding the administration of the immigration laws or recurring questions in the handling of cases by Immigration Judges." This limitation is further confirmed by the EOIR Practice Manual Section 4.14.

26. However, this case falls squarely within the Fifth Circuit's recognition that exceptions to exhaustion are appropriate "where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought." *Hinojosa v. Horn*, 896 F.3d 305. The severe restrictions on interlocutory appeals render this administrative remedy effectively

"unavailable" within the meaning established by Fifth Circuit precedent. *Fuller v. Rich, 11 F.3d 61 (5th Cir. 1994)*

27. Even if interlocutory appeals were theoretically available, attempting to exhaust this remedy would be "a patently futile course of action" under Fifth Circuit standards. G*allegos-Hernandez v. United States, 688 F.3d 190*. Currently, appeals with the Board of Immigration Appeals take approximately six months to be adjudicated, while Petitioner's Master Hearing is set for February 26, 2026, less than two months from today. This timeline renders any administrative appeal process meaningless for addressing Petitioner's detention concerns.

28. The Fifth Circuit has explicitly recognized that exceptions to exhaustion apply where "the attempt to exhaust such remedies would itself be a patently futile course of action." Gallegos-Hernandez v. United States, 688 F.3d 190. The extraordinary delay between the current Board of Immigration Appeals processing time and Petitioner's scheduled merits hearing creates precisely the type of futility that the Fifth Circuit has recognized as justifying an exception to the exhaustion requirement. Fuller v. Rich, 11 F.3d 61 (5th Cir. 1994).

29. No state remedies are available. Additionally, there is no state relief available to Petitioner because the Immigration Court is not subject to state law as it falls under Federal Law Regulations. This further demonstrates that there is no viable state or administrative remedy that Petitioner can pursue before filing with the Federal Court. The Fifth Circuit has recognized that exhaustion is not required where administrative remedies are "unavailable." *Hinojosa v. Horn, 896 F.3d 305*. The absence of any state remedy due to federal preemption of immigration matters renders alternative remedies "unavailable" within the meaning of Fifth Circuit precedent. *Gallegos-Hernandez v. United States, 688 F.3d 190.*

30. State remedies cannot provide any avenue of relief for a detained noncitizen challenging an Immigration Court's refusal to exercise jurisdiction because immigration adjudication is an exclusively federal executive function, not a state judicial matter. Under the Immigration and Nationality Act, Congress vested all authority over removal proceedings and detention determinations in the Attorney General, who conducts these proceedings through the Executive Office for Immigration Review (EOIR). See 8 U.S.C. § 1103(g). Immigration Judges are "attorneys appointed by the Attorney General," 8 U.S.C. § 1101(b)(4), and function as administrative adjudicators under federal personnel statutes, not Article III judges or state judicial officers. Because EOIR is part of the Department of Justice, every decision made by an Immigration Judge is an act of the Executive Branch, not of any judicial tribunal subject to state supervision.

31. Because immigration courts are administrative bodies, state courts have no jurisdiction to review or disturb their decisions. Congress made this explicit through 8 U.S.C. § 1252(a)(5), which provides that review of removal-related decisions lies solely and exclusively in the federal courts of appeals. That provision not only preempts state jurisdiction but also makes clear that state habeas, state mandamus, or any other state-court mechanism cannot reach or correct an EOIR determination. State courts lack authority to review federal executive custody, cannot compel EOIR to act, and cannot order the release of a detainee held under federal immigration authority. Because the petitioner's challenge concerns the statutory basis for federal detention and the Immigration Court's refusal to exercise jurisdiction, no state remedy can offer relief, render a decision, or even assert lawful authority over the underlying agency action.

32. In this context, exhaustion of state remedies is impossible as a matter of law. The petitioner is held solely under federal authority, detained in a federal immigration facility, and

subjected to custody decisions that arise exclusively under federal statutes—specifically 8 U.S.C. §§ 1225 and 1226. A state court cannot review those determinations and cannot order the federal government to release a detainee. The Fifth Circuit recognizes that exhaustion may be excused where administrative or other remedies are unavailable, inadequate, or futile. Here, state remedies are categorically unavailable because no state court possesses jurisdiction to adjudicate or intervene in an EOIR custody decision. As a result, federal habeas corpus is the only meaningful mechanism for addressing the legality of the detention and the Immigration Court's refusal to act. Accordingly, the Court should find that state remedies are neither adequate nor available and proceed to review the merits of the petitioner's habeas claim.

33. The combination of severely limited interlocutory appeal rights, the six-month BIA processing time versus a February 2026 hearing, and the absence of any state remedy creates the "extraordinary circumstances" that the Fifth Circuit has recognized as justifying an exception to the exhaustion requirement. *Fuller v. Rich, 11 F.3d 61 (5th Cir. 1994).* Petitioner has met the burden of demonstrating that administrative remedies are unavailable, wholly inappropriate to the relief sought, and that attempting to exhaust such remedies would be patently futile. *Gallegos-Hernandez v. United States, 688 F.3d 190.*

34. Exhaustion would be futile because the Board of Immigration Appeals has already issued binding precedent that categorically forecloses any possibility of administrative relief for noncitizens who entered without inspection. Through Matter of *Q. Li, 29 I&N Dec. 66 (BIA 2025) and Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025)*, the BIA has adopted a uniform and authoritative interpretation holding that Immigration Judges lack jurisdiction to conduct custody redetermination hearings for individuals classified as "present in the United States without admission." In Yajure Hurtado, the BIA declared that the "plain language" of INA § 235(b)(2)(A),

8 U.S.C. § 1225(b)(2)(A), requires mandatory, unreviewable detention for virtually all applicants for admission not placed in expedited removal. Id. at 219–220. By construing § 235(b)(2)(A) as a sweeping detention mandate, the BIA effectively displaces § 1226 and eliminates discretionary custody review for nearly all long-term residents who entered without inspection.

35. Because these published decisions articulate the BIA's definitive construction of the statute, further administrative review would be incapable of providing relief. The BIA has conclusively determined that detention under § 235(b)(2)(A) must continue "until removal proceedings have concluded," based on its reading of *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). *Yajure Hurtado, 29 I&N Dec. at 225*. This binding interpretation is the precise reason the Immigration Judge would decline to exercise jurisdiction over Petitioner's bond request. In light of these precedential determinations, the administrative process offers no mechanism by which Petitioner could obtain a contrary ruling or secure release. Requiring exhaustion under these circumstances would impose unnecessary delay, prolong unlawful detention, and yield no meaningful opportunity for relief. Accordingly, exhaustion should be excused because the BIA's entrenched and controlling precedent renders any further administrative remedy futile.

36. In *Maldonado Bautista v. Santacruz*, the U.S. District Court for the Central District of California certified a nationwide class of individuals who entered without inspection and were being unlawfully subjected to mandatory, no-bond detention under the government's 2025 policy shift. The court held that these individuals are detained under 8 U.S.C. § 1226(a)—not § 1225(b)—and therefore entitled to individualized bond hearings. The court expressly extended this declaratory relief to the entire Bond Eligible Class, including those who were not apprehended upon arrival and were later arrested in the interior. *Maldonado Bautista*, 2025 WL 3288403, at *9*

37. Despite this binding ruling, the AILA practice advisory documents widespread noncompliance by Department of Justice and the Executive Office for Immigration Review: immigration judges have been instructed not to honor the court's order, continue to deny jurisdiction to hold bond hearings, and persist in applying *Matter of Yajure Hurtado* in direct disregard of the declaratory judgment. Furthermore, even after the district court expressly clarified the scope, binding effect, and finality of its rulings in Maldonado Bautista, immigration judges have continued to deny bond hearings to class members in direct contravention of that order. The court anticipated and addressed precisely this problem. It recognized that immigration judges were refusing to follow its prior rulings not because of genuine legal uncertainty, but because DHS and DOJ continued to advance a position that the court had already rejected as unlawful. See Exhibit 4 AILA Practice Advisory.

38. The clarification order was issued to "eliminate any doubt regarding Respondents' legal obligations and ensure compliance." Yet the conduct documented in the record shows that immigration courts persist in treating Yajure Hurtado as controlling and in disregarding the district court's determination that class members are not subject to mandatory detention under § 1225 and are entitled to bond hearings. This refusal is not a permissible exercise of adjudicatory discretion. It is a direct failure to give effect to a binding federal court judgment that has now been reduced to final judgment.

39. The court expressly found that the posture of this case had changed because of immigration judges' uniform noncompliance and the government's guidance encouraging that result. Those findings undermine any claim that continued denial of bond hearings reflects good-faith disagreement or unresolved legal ambiguity. The court entered final judgment precisely because immigration adjudicators were using the absence of finality as a pretext to disregard its

rulings. Continued refusal to grant bond hearings after that clarification cannot be justified on the same grounds the court has already rejected.

40. In short, the federal court has spoken clearly. It has clarified its intent, confirmed the unlawfulness of the detention policy, granted class wide relief, and entered final judgment to compel compliance. Immigration judges' ongoing refusal to follow that order reflects not uncertainty, but disregard. That disregard deprives class members of the process the court has held they are entitled to receive and places the immigration courts in direct conflict with controlling federal judicial authority.

41. This systemic refusal to follow federal law forms the essential backdrop demonstrating the futility of administrative exhaustion for detained class members seeking enforcement of their statutory right to a bond hearing and further support the need to file the present request, as the only mechanism for relief Petitioner of this unlawful detention.

42. Exhaustion of administrative remedies is futile because the agencies responsible for implementing *Maldonado Bautista* have categorically refused to provide the relief that the District Court has declared binding on the entire class. The AILA advisory confirms that DOJ "has instructed Immigration Judges to ignore the Court's order," resulting in across-the-board denials of bond hearings and repeated assertions that Immigration Judges lack jurisdiction under *Matter of Yajure Hurtado Id.* See Exhibit 4 AILA Practice Advisory.

43. A remedy is not "available" when the adjudicator refuses to apply the controlling legal standard. The administrative system is therefore structurally incapable of protecting petitioner's rights: Immigration Judges are rejecting class wide declaratory relief, insisting incorrectly, that the judgment is not binding or final, and continuing to treat class members as mandatorily detained under § 1225(b)(2). Because the agency has taken the position that it will

not follow the federal court's ruling, exhaustion would be a meaningless formality that prolongs unconstitutional detention—an outcome the habeas writ exists to prevent.

44. Even if the petitioner attempted to exhaust administrative remedies, the immigration courts cannot grant the relief sought because they are operating under directives that contradict binding federal law. The AILA advisory explains that Immigration Judges are grounding their refusals in legally erroneous rationale, including the claims that *Maldonado Bautista* did not provide class wide relief or that the declaratory judgment is not final—positions flatly contradicted by the court's own language.

45. Federal habeas law excuses exhaustion where state or administrative remedies are "unavailable" or "ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B). Here, the administrative body has disclaimed both jurisdiction and authority to apply the very relief the District Court ordered. Because the government refuses to comply with the declaratory judgment and continues to detain class members under an unlawful mandatory-detention framework, any attempt to exhaust administrative remedies would leave the petitioner without a functioning avenue for relief. In this posture, exhaustion is not only futile—it is impossible, and federal habeas review is both proper and necessary to enforce the petitioner's statutory and constitutional rights.

46. Because the Petitioner has exhausted his administrative remedies to the extent required by law, his only remedy is by way of this judicial action. Accordingly, the Petitioner has no further recourse within the immigration court system or the Board of Immigration Appeals. The exhaustion requirement is therefore satisfied. In light of the Immigration court decisions to decline jurisdiction to hear custody redetermination requests, habeas corpus is the only mechanism

available to challenge Respondent's ongoing detention and to vindicate constitutional rights at stake.

VII. STATEMENT OF FACTS

47. The Petitioner Mr. Trejo-Verde is a 48-year-old native and citizen of Mexico who entered the United States on or around 1997. He has resided in Texas for more than twenty eight (28) years with his wife Maria Merino Ramos and their 4 U.S Citizen children: [redacted] Trejo DOB [redacted] Trejo DOB [redacted] Trejo DOB: [redacted] and [redacted] Trejo DOB [redacted] See Exhibit 1 Petitioner's Identification documents and Exhibit 2 Brith certificates of relatives.

48. On or around December 24, 2025 he was apprehended by ICE while on his way to work. The vehicle was stopped without any apparent traffic violation or legal justification. No criminal or civil violations were charged on him. He was served with a Notice to Appear and Placed in removal proceedings. He is currently detained at the South Texas Detention Center. See Exhibit 3 Notice to appear and Exhibit 5 ICE Detainee Locator.

49. Petitioner Mr. Trejo-Verde is set to appear before the immigration court on February 26, 2026 for a master calendar hearing. See Exhibit 6 EOIR Case Status Online System.

50. The Petitioner's role within his family unit is indispensable, as he serves as the fundamental pillar of support for his U.S. citizen minor children. His commitment to their upbringing is evidenced by his status as their sole financial provider; every necessity in their lives from housing and nutrition to healthcare is met through his tireless efforts. Beyond the financial aspect, the emotional dependence of his children on his presence is profound. His absence due to

continued detention has already begun to cause significant distress, as he is the primary figure responsible for their guidance, daily care, and overall development.

51. Petitioner Mr. Trejo-Verde remains detained solely because the immigration judge improperly refuses to exercise jurisdiction over his detention. He now seeks habeas relief because continued detention under 8 C.F.R. § 1003.19(i)(2) exceeds statutory authority and violates the Fifth Amendment.

52. The BIA decided *Matter of Yajure Hurtado*, which holds that the Immigration Judge lacks bond authority ab initio and that Petitioner Mr. Trejo-Verde must remain detained under § 235(b)(2)(A) while his removal proceeding is pending. But its reading is contrary to the statutory framework and the governing regulations that channel non-expedited-removal arrests into § 240 with custody governed by § 236(a) and Immigration Judge bond jurisdiction. See 8 C.F.R. §§ 1236.1(d)(1), 1003.19(a), 1003.19(h); 8 C.F.R. § 235.3(b)(1)3(2); 62 Fed. Reg. at 10,314, 10,318; 69 Fed. Reg. at 48,880381; 84 Fed. Reg. at 35,412.

VIII. LEGAL FRAMEWORK

a) Mandatory detention violates Petitioners Constitutional and due process rights.

53. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or

permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law"). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 678.

54. The Supreme Court, thus, "has repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); see also *Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

55. For decades, the immigration system has implemented this balance through a network of three mutually exclusive detention statutes.

56. First, at the border, individuals "seeking admission" into the United States" who are placed into removal proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2)[1] See *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). Section 1225(b)(2) is the statute that Respondents have suddenly decided is applicable to people like Petitioner.

[1] Separately, there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). See *Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

57. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1)(A)(i).

58. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

59. This case concerns the detention provisions at 8 U.S.C §§ 1226(a) and 1225(b)(2)

60. This system—in which people arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings—has existed essentially in its current form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587 (codified at 8 U.S.C. § 1226). According to IIRIRA's legislative history, § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." See *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). It also reflected nearly a century of law in the United States of allowing people inside the country to seek release while the government decided whether or not to deport them. *See* 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

61. This eligibility for a bond hearing and potential release has applied to people arrested in the United States, regardless of whether they initially entered the country with permission. Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization

Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

62. Thus, in the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

63. However, around late 2022, the Immigration Court in Tacoma, Washington began misclassifying § 1226 detainees arrested inside the United States as mandatory detainees under § 1225(b)(2), solely because they initially entered the country without permission. See Rodriguez, 779 F. Supp. 3d at 1244. The U.S. District Court for the Western District of Washington ruled that this practice was likely illegal in April 2025 and ordered a bond hearing for a wrongfully detained litigant. *See id.* at 1263.

64. Nevertheless, three months later, on July 8, 2025, DHS, "in coordination with" the DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under

§ 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

65. As previously noted, the BIA and the Immigration Courts are entities within EOIR, which is part of DOJ. On September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. &. N. Dec. 216 (B.I.A. 2025), the BIA issued a precedential decision that purports to require all Immigration Judges to misclassify people in this manner.

66. Since Respondents adopted their new policies, dozens of federal courts have uniformly rejected their newly invented misclassification as illegal and because it defies the INA's detention authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE, ruling that the BIA's decision is not entitled to any deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024).[2]

[2] See, e.g., *Alejandro v. Olson*, No. 1:25-cv-02027-JPH-MKK (S.D. Ind. Oct. 11, 2025); *B.D.V.S. v. Forestal*, No. 1:25-cv-01968-SEB-TAB (S.D. Ind. Oct. 8, 2025); *Campos Leon v. Forestal*, No. 1:25-cv-01774-SEB-MJD, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Ochoa Ochoa v. Noem*, No. 25 C 10865, 2025 WL 2938779 (N.D. Ill. Oct. 16, 2025) (Jenkins, J.), *H.G.V.U. v. Smith*, No. 25 C 10931, 2025 WL 2962610 (N.D. Ill. Oct. 20, 2020) (Coleman, J.), *Mariano Miguel v. Noem*, No. 25 C 11137, 2025 WL 2976480 (N.D. Ill. Oct. 21, 2025) (Alonso, J.), and *G.Z.T. v. Smith*, No. 25 C 12802 (N.D. Ill. Oct. 21, 2025) (Ellis, J.), *Corona Diaz v. Olson, et al.*, No. 25-cv-12141 (N.D. Illinois 2025), *Belsai v. Bondi, et al.*, No. 25-cv-3862 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. C25-4048-LTS-MAR, --- F.Supp.3d ---, 2025 WL 2712417 (N.D. Iowa Sept. 23, 2025); *Salazar v. Dedos*, No. 1:25- cv-00835-DHU-JMR, 2025 WL 2676729 (D. N.M. Sept. 17, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25- cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025).

67. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that 8 U.S.C § 1226(a), not § 1225(b), applies to people like Petitioner.

68. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

69. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

70. By contrast, 8 U.S.C § 1225 applies to people arriving at U.S. ports of entry or who recently entered the United States. That statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A) or an alien "who is arriving in the United States" 8 U.S.C. § 1225(b)(1)(A)(i). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a [] [noncitizen] seeking to enter the country is admissible." *Jenning v. Rodriguez*, 583 U.S. 281, 287 (2018).

71. Accordingly, the mandatory detention provisions of § 1225(b)(2)(A) or § 1225(b)(1)(A)(i) do not apply to people like Petitioner, who already entered and was residing in the United States at the time they were apprehended.

IX. CLAIMS FOR RELIEF

Count I – The Regulation is *Ultra Vires*

72. Petitioner Mr. Trejo-Verde incorporates by reference the allegations of fact set forth in preceding paragraphs.

73. The Immigration and Nationality Act, 8 U.S.C. § 1226(a), authorizes discretionary detention subject to an Immigration Judge's bond decision; it does not authorize Immigration and Customs Enforcement (ICE) to nullify that judicial decision by administrative fiat.

74. By turning discretionary custody into *de facto* mandatory detention for detainees not subject to 8 U.S.C. § 1226(c), § 1003.19(i)(2) exceeds the statutory power Congress delegated.

75. Detention premised solely on this *ultra vires* regulation is capricious under 5 U.S.C. § 706(2), entitling Petitioner Mr. Trejo-Verde to immediate release.

76. Respondent's presumed reliance on *Matter of Yajure Hurtado* collapses the statute's two-track system. Section 8 U.S.C. § 1225 (INA § 235) governs the inspection setting ports of entry and those stopped soon after crossing or who is in the process of arriving into the US—with a fast-track screening and detention regime that Congress and the Supreme Court have treated as a distinct, inspection-stage context. 8 U.S.C. § 1226 (INA § 236), by contrast, governs interior arrests and vests Immigration Judges with bond authority in INA § 240 cases. Reading 8

U.S.C. § 1225 (INA § 235) to control whenever a person was never "admitted" converts the border screen into a universal no-bond rule and all but writes 8 U.S.C. § 1226 (INA § 236) out of existence. That interpretation is irreconcilable with the implementing rules, which limit expedited-removal processing—and its custody—to published Federal Register designations (now capped at two years of presence), and with the case law up to *Yajure Hurtado* that kept INA §§ 235 and 236 on separate footing. *See* 8 C.F.R. § 235.3(b)(1)3(2); 62 Fed. Reg. 10,312, 10,314, 10,318 (Mar. 6, 1997); 69 Fed. Reg. 48,877, 48,880381 (Aug. 11, 2004); 84 Fed. Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281, 287399 (2018); *DHS v. Thuraissigiam*, 591 U.S. 103, 119321 (2020).

Count II - Violation of Right to Procedural Due Process

77. Petitioner Mr. Trejo-Verde incorporates by reference the allegations of fact set forth in preceding paragraphs.

78. The Fifth Amendment forbids a deprivation of liberty without notice and a meaningful opportunity to be heard before a neutral decision-maker.

79. Read as Respondents will urge, *Yajure Hurtado* would categorically deny any bond hearing to noncitizens arrested in the interior who are outside the published expedited-removal designations—people whom Congress and the regulations routed into 8 U.S.C. § 1229 and 8 U.S.C. § 1226 custody. That construction raises serious due-process and Suspension Clause questions: it authorizes prolonged civil detention with no neutral decision-maker weighing flight risk or danger, despite settled law that civil detention must remain closely tied to its purposes. See *Zadvydas*, 533 U.S. at 690-701. Under the constitutional-avoidance canon, where a statute is

susceptible of more than one construction, courts must prefer the reading that avoids grave constitutional problems. See *Clark*, 543 U.S. at 381382. The far better (and textually faithful) reading is that U.S.C § 1225 governs the inspection track and the classes designated for expedited removal, while everyone else is detained—if at all—under U.S.C § 1226 with Immigration Judge bond review. See *Jennings*, 583 U.S. at 287-99.

80. Given the Petitioner's Mr. Trejo-Verde rights and interests, the Government's interests, and the cost and availability of alternate means of protecting the Government's objectives, the procedures employed by the Government violated the Due Process clause of the Fifth Amendment.

Count III – Violation of Right to Substantive Due Process

81. Petitioner Mr. Trejo-Verde incorporates by reference the allegations of fact set forth in preceding paragraphs.

82. All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment.

83. The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be...deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Freedom from bodily restraint is at the core of the liberty protected by the Due Process Clause. This vital liberty interest is at stake when an individual is subject to detention by the federal government.

84. Under the civil-detention framework set out in *Zadvydas v. Davis*, 533 U.S. 678 (2001), and its progeny, the Government may deprive a non-citizen of physical liberty only when

the confinement serves a legitimate purpose—such as ensuring appearance or protecting the community—and is reasonably related to, and not excessive in relation to, that purpose. The Government's refusal to recognize Petitioner as eligible for bond is inconsistent with the constitutional limits governing civil immigration detention. When the Government categorically deems a detainee ineligible bond, it forecloses any individualized assessment of whether continued detention is necessary to serve a legitimate regulatory purpose. As a result, there is no forum in which Petitioner can submit evidence demonstrating that he is not a danger to the community and not a flight risk, and no mechanism for testing whether confinement is actually justified in his case. Detention that proceeds without any consideration of these factors cannot be meaningfully tied to ensuring appearance or protecting the public and instead operates as an arbitrary restraint on liberty, exceeding what due process permits in a civil detention scheme.

85. Continuing to jail Petitioner Trejo-Verde by invoking *Yajure Hurtado*—bears no reasonable relation to any legitimate purpose and is arbitrary in violation of substantive due process. See *Zadvydas*, 533 U.S. at 690. The BIA's new interpretation would convert a definitional label ("applicant for admission") in the "inspection" statute into a perpetual, interior no-bond regime untethered to Congress's two-track structure and the Federal Register limits that cabin expedited-removal custody. If 8 U.S.C § 1225 (INA § 235) could be stretched that far, the Court should reject that construction under constitutional avoidance; if accepted, it would invite precisely the kind of unreviewable, prolonged civil detention the Constitution forbids. See *Clark*, 543 U.S. at 381-82; *Jennings*, 583 U.S. at 300-01.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioner Mr. Trejo-Verde prays that this Honorable Court:

1. Assume jurisdiction over the matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within 3 days.
3. Declare that Petitioner's mandatory detention is unlawful;
4. Enjoin Respondents from transferring the Petitioner outside the jurisdiction of the Western District of Texas or to resolve the removal proceedings pending the resolution of this case;
5. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from custody, under the same conditions that existed prior to his current detention, without the imposition of additional restrictive measures;
6. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, 8 U.S.C. § 2412, and on any other basis justified under law; and
7. Grant any further relief this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Dated: February 4, 2026

Respectfully submitted,

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