

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Juan Carlos Orduna Martinez, §
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; §

CHARLOTTE COLLINS, Warden, T. Don Hutto §
Detention Center, Taylor, Texas; §

UNITED STATES DEPARTMENT OF §
HOMELAND SECURITY; §

UNITED STATES IMMIGRATION AND §
CUSTOMS ENFORCEMENT; §

EXECUTIVE OFFICE FOR IMMIGRATION §
REVIEW; §

Civil Case No. 1:26-cv-00280-RP

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 after serving it. Here, Respondents were served electronically on February 10, 2026, per the Court Order (Dkt 3). They have not filed their response (due February 13, 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 has strong equities, including over 18 years of continuous residence, a U.S. citizen wife with serious heart disease, two U.S. citizen minor children, and only one resolved misdemeanor DWI. His continued categorical detention without any opportunity for a neutral decisionmaker to assess danger, flight risk, or alternatives to detention (including reinstatement of the prior bond) is unconstitutional 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, and his claims raise federal questions of constitutional and statutory law.

6. Venue is proper in the Austin Division because Petitioner is physically detained at the T. Don Hutto Detention Center in Taylor, Texas.

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, Juan Carlos Orduna Martinez, A# , is a Mexican citizen currently in ICE Custody at the T. Don Hutto Detention Center.

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, Charlotte Collins, is employed by the private, for-profit detention corporation contracted by the Government as an agent to confine immigrants at T. Don Hutto Detention Center, where Petitioner is detained. She has immediate physical custody of Petitioner. She is sued in her 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). Both DHS and DOJ claim the Petitioner is an

applicant for admission subject to mandatory detention. 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. 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. As a result, the IJ lacks jurisdiction to hear Petitioner's request for a bond redetermination hearing.

18. A neutral decision-maker will never assess whether the Petition is a danger to the community or a flight risk. Furthermore, DHS refuses to honor the immigration bond previously granted to Petitioner in February 2021.

19. The only remedy available to address the Petitioner's detention is through this habeas corpus petition.

V. FACTUAL BACKGROUND

20. Petitioner, a citizen of Mexico born , first entered the United States without inspection in September 2007. He has resided continuously in the United States for over 18 years and has never departed since entry.

21. Petitioner has been married to a U.S. citizen since April 2011. They have two U.S. citizen children, currently ages 14 and 15. Petitioner's wife suffers from a serious heart disease.

22. On September 26, 2022, Petitioner's U.S. citizen wife filed an I-130 petition on his behalf, which was approved on August 14, 2023. Petitioner qualifies for an I-601A

provisional unlawful presence waiver. Counsel's office was preparing the I-601A application when Petitioner was detained.

23. Petitioner also has a strong claim to cancellation of removal under 8 U.S.C. § 1229b(b) due to the extreme and unusual hardship his removal would cause to his U.S. citizen wife (due to her heart disease and emotional/financial dependence) and his two U.S. citizen minor children.

24. In December 2020, Petitioner was arrested in Hays County, Texas, for DWI. He was convicted but received a suspended sentence and successfully completed 18 months of probation, which was discharged on April 10, 2024.

25. Following the late-2020 arrest, Petitioner was detained by ICE for approximately one month and released on immigration bond in February 2021. On January 5, 2021, ICE issued a Notice to Appear and placed him in removal proceedings. Petitioner filed for cancellation of removal. On September 28, 2023, the Immigration Judge dismissed the proceedings without prejudice.

26. On February 3, 2026, at approximately 7:00 a.m., Petitioner was pulled over by Texas State Troopers while driving to work. ICE agents took him into custody at the scene. He has been detained since that date at the T. Don Hutto Residential Center in Taylor, Texas.

27. ICE has classified Petitioner as an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and has refused to afford him a bond hearing, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Respondents are also refusing to honor the prior immigration bond granted in February 2021.

28. Petitioner is therefore ineligible for a bond redetermination hearing before the IJ or BIA. There are no administrative remedies available.

29. Petitioner's detention causes ongoing irreparable harm: separation from his U.S. citizen wife with serious heart disease, separation from his two U.S. citizen minor children, interruption of the I-601A process, inability to pursue cancellation of removal, and loss of income and family stability. His only negative factor is the initial entry without inspection nearly two decades ago.

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

30. 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.

31. 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.

32. 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

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

33. 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.

34. 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 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).

35. Petitioner has been detained since February 3, 2026, 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 for a custody redetermination, and no IJ may address any custody factors under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

36. This detention is foreseeably prolonged. 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 B). 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 cancellation of removal and adjustment of status, 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.

37. The constitutional stakes are particularly high in this case because Petitioner is not a recent border arrival. He has lived continuously and openly in the United States for more than eighteen years since his entry in 2007. He possesses strong equities, including a U.S. citizen wife with serious heart disease, and two U.S. citizen children; employed; consistent tax compliance; minimal criminal record (DWI discharged after completing community supervision), 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.

38. 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 wife and children, renders the detention unconstitutional as applied to him.

39. 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 under reasonable conditions of supervision, or, in the alternative, ordering Respondents to provide Petitioner a prompt individualized bond hearing before a neutral decisionmaker within fourteen (14) days, 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

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

41. 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).

42. Petitioner entered the United States more than 18 years ago, has significant equities (U.S. citizen wife and U.S. citizen children), employment, a taxpayer, minimal criminal record (DWI discharged after community supervision), and no record of violence, and has never exhibited conduct suggesting danger to the community or risk of flight. 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.

43. Petitioner has been continuously detained in civil immigration custody since February 3, 2026, and is currently confined at the T. Don Hutto Detention Center in Taylor, 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).

44. The Immigration Judge will never consider any individualized custody factors and will not evaluate Petitioner's minimal 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.

45. Furthermore, in February 2021, the Petitioner had been granted an immigration bond by an IJ despite having a pending DWI. Thus, an IJ had already determined that he posed no danger to the community or a flight risk. As stated, the DWI was resolved on April 10, 2024, releasing the Petitioner from community supervision. So, stronger grounds for no danger and no flight risk exist at this time than in 2021 (criminal record resolved, attended all criminal hearings and completed community supervision, I-130 approved, employment, taxpayer, U.S. citizen children). The Respondents are failing to honor the previous IJ decision, and the bond grant in 2021 is not being honored, despite having stronger claims for release.

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT –
ARBITRARY AND CAPRICIOUS AGENCY ACTION**

52. 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).

53. 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 IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE
FIFTH AMENDMENT**

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

55. 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).

56. 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.

57. Petitioner is similarly situated, for custody purposes, to other noncitizens in § 240 proceedings who have no criminal convictions and no record of violence or dangerous behavior. He has cooperated fully with immigration authorities since first entering ICE custody in 2021 and attended his removal proceedings until they were dismissed. An IJ granted an immigration bond in 2021, and the Respondents are failing to honor that decision. Petitioner alone is categorically denied access to any individualized custody review.

58. 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.

59. 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.

60. 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.

61. 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).

62. 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.

63. 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.

64. 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).

65. 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.

66. 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.

67. *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 V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES CONSTITUTION

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

69. 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).

70. *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.

71. Petitioner is detained solely under civil immigration authority and is currently confined at the T. Don Hutto Detention Center in Taylor, Texas. He has strong equities, a minimal criminal record, no history of violence, and his removal proceedings remain pending before an immigration judge.

72. 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.

73. 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. And the Respondents are failing to honor the February 2021 IJ decision granting an immigration bond.

74. 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.

75. 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.

76. 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.

77. 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.

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

§ 287.8(C)(2)(I) AND (II)

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

80. 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.

81. 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).

82. 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.

83. At the time he was taken into ICE custody on February 3, 2026, and at all times thereafter, Petitioner had complied with all immigration requirements, including filing an I-130, preparing an I-601A waiver, appearing for his immigration proceedings until they were

dismissed, and remaining available to immigration authorities. Petitioner was taken into ICE custody after a traffic stop with Texas State Troopers, without a judicial warrant.

84. 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.

85. 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.

86. 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.

87. 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.

88. *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.

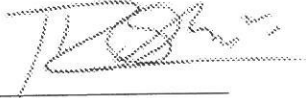
COUNT VII: PRESERVATION OF STATUTORY ARGUMENT FOR EN BANC OR SUPREME COURT REVIEW

89. 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

90. Petitioner respectfully requests that the Court:
- a. Issue a writ of habeas corpus ordering Petitioner's immediate release from custody under reasonable conditions of supervision;
 - b. 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;
 - c. Declare that Petitioner's continued detention without individualized review violates the Fifth Amendment, the Due Process Clause, and the APA;
 - d. 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 11, 2026.

A handwritten signature in black ink, appearing to read 'Patricio Garza Izaguirre', written over a horizontal line.

Patricio Garza Izaguirre
Attorney for the Petitioner
Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752
TX SBN 24087568

INDEX OF DOCUMENTS

Exhibit	
A	Previous NTA issued on 01/05/2021 IJ Dismissal Order
B	I-130 approval notice
C	Invoice Provisional Waiver
D	-Screenshot from the Transactional Records Access Clearinghouse (TRAC), Syracuse University https://tracreports.org/phptools/immigration/asylumbl/
E	Bond Proceedings held in February 2021, which was granted

CERTIFICATE OF SERVICE

I, Patricio Garza Izaguirre, certify that on this date a true and correct copy of this **EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**, 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. CHARLOTTE COLLINS, Warden, T. Don Hutto Detention Center, Taylor, Texas;
5. UNITED STATES DEPARTMENT OF HOMELAND SECURITY;
6. UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT;
7. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

On February 11, 2026


Patricio Garza Izaguirre
Attorney for the Petitioner

Garza & Narvaez, PLLC
7600 Chevy Chase Dr - STE 118
Austin, TX 78752

TX SBN 24087568