UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

MARTIN LOPEZ CRUZ Petitioner v. **CHARLOTTE COLLINS,** Warden at T. Don Hutto Detention Center; **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-299**

PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO HABEAS CORPUS RELIEF

NOW COMES Petitioner, Martin Lopez Cruz by and through his undersigned counsel, and files this Reply to the Respondents' Opposition filed on February 13, 2026.

THE FIFTH CIRCUIT'S FEBRUARY 6, 2026 DECISION IN BUENROSTRO-MENDEZ v. BONDI FORECLOSES PETITIONER'S PURELY STATUTORY CLAIM TO A BOND HEARING UNDER 8 U.S.C. § 1226(a) BUT DOES NOT PRECLUDE HABEAS RELIEF ON CONSTITUTIONAL AND OTHER GROUNDS

Buenrostro-Mendez forecloses Petitioner's purely statutory entitlement theory under § 1226(a), but it does not deprive this Court of Habeas jurisdiction or resolve Petitioner's independent constitutional and other claims.

1. On February 6, 2026, a panel of the United States Court of Appeals for the Fifth Circuit issued its published opinion in Buenrostro-Mendez v. Bondi, Nos. 25 20496 & 25-40701 (5th Cir. Feb. 6, 2026). The panel held that noncitizens who are present in the United States without having been admitted or paroled—including those apprehended years after entry— are "applicants for admission" under 8 U.S.C. § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A) pending removal proceedings under § 1229a. The panel further held that such individuals are not eligible for discretionary release on bond under § 1226(a) and that immigration judges lack jurisdiction to conduct bond hearings in their cases. The panel endorsed the Board of Immigration Appeals' precedential decision in Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025), and reversed two district court orders that had granted habeas relief on statutory grounds.

2. This Court is bound by the Fifth Circuit's holding on the purely statutory question of whether § 1225(b)(2)(A) or § 1226(a) governs Petitioner's detention and whether he has a statutory entitlement to a bond hearing before an immigration judge. Petitioner

respectfully acknowledges that, under Buenrostro-Mendez, Petitioner has no statutory right to such a hearing.

3. However, the Fifth Circuit's decision does not resolve—and expressly did not reach—the independent constitutional and other claims raised in this Petition. The panel in Buenrostro- Mendez addressed only the statutory interpretation dispute and reversed the district courts solely because they had granted bond hearings as a matter of statutory entitlement under § 1226(a). The panel had no occasion to consider due process challenges to prolonged or indefinite mandatory detention without any individualized hearing, nor did it address claims under the Administrative Procedure Act, the equal protection component of the Fifth Amendment, the Suspension Clause, or the Accardi doctrine.

4. The Supreme Court in Jennings v. Rodriguez, 583 U.S. 281 (2018), similarly held that there is no statutory right to periodic bond hearings under §§ 1225(b), 1226(a), or 1226(c), but it explicitly remanded for the lower courts to consider constitutional arguments in the first instance. Id. at 302–03. The Fifth Circuit's statutory holding in Buenrostro-Mendez leaves those constitutional questions open, just as Jennings did.

Habeas jurisdiction remains available to test the legality of detention and the constitutionality of detention procedures; § 1226(e) does not bar review of legal and constitutional claims.

5. Nothing in Buenrostro-Mendez strips this Court of jurisdiction under 28 U.S.C. § 2241 to adjudicate constitutional challenges to immigration detention or to review whether the Executive's custody scheme violates governing law. Jennings itself distinguishes

unreviewable discretionary custody judgments from reviewable questions of law and constitutional claims. Likewise, Zadvydas v. Davis, 533 U.S. 678 (2001), and Demore v. Kim, 538 U.S. 510 (2003), both proceeded through § 2241 habeas and underscore that civil immigration detention must remain tethered to lawful purposes and must satisfy due process.

6. Petitioner does not ask this Court to second-guess a discretionary bond determination. He challenges DHS's asserted authority to hold him in prolonged civil detention without any meaningful individualized custody determination by a neutral decisionmaker empowered to order release, and he challenges the lawfulness of the government's detention process as applied to him.

AS-APPLIED DUE PROCESS VIOLATION FROM PROLONGED OR INDEFINITE DETENTION WITHOUT INDIVIDUALIZED HEARING

7. Even accepting the Fifth Circuit's interpretation that § 1225(b)(2)(A) mandates detention and provides no statutory bond hearing, Petitioner's ongoing and potentially indefinite detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment as applied to him.

8. Civil immigration detention is permissible only to the extent it serves the statutory purposes of ensuring appearance at proceedings and protecting the community from danger. Zadvydas v. Davis, 533 U.S. 678, 690 (2001); Demore v. Kim, 538 U.S. 510, 527–28 (2003). When detention becomes prolonged or indefinite and is no longer tied to those purposes, it becomes punitive and unconstitutional. Id.

9. Although Petitioner's detention is currently approximately four months old, since January 27, 2026, his pending applications for cancellation of removal protection are

complex and typically require extended proceedings—often lasting one to three years or more, given country- conditions evidence and backlog. Absent any mechanism for individualized review, Petitioner faces a substantial risk of indefinite detention under penal conditions despite having no criminal history, no disciplinary infractions, demonstrated compliance, and no individualized finding of danger or flight risk.

10. Numerous district courts, including within the Fifth Circuit, have held post-Jennings that due process requires an individualized bond hearing, with the government bearing the burden of proof by clear and convincing evidence, when mandatory detention under §§ 1225(b) or 1226(c) becomes prolonged. While the Fifth Circuit has not adopted a bright- line rule, district courts in this Circuit and others commonly find six months presumptively unreasonable absent individualized justification. See, e.g., practice advisories and district court orders cited in post-Jennings litigation, collecting cases requiring hearings after 6– 12 months under analogous mandatory detention provisions.

11. The constitutional concerns are heightened here because the government's new interpretation—upheld in Buenrostro-Mendez—extends mandatory detention without bond or hearing to noncitizens who have lived openly in the United States for significant periods, here over thirty-seven years, accrued equities, and were not detained at the time of initial processing. Traditional "arriving alien" detention under § 1225(b) historically applied to those apprehended at or near the border or port of entry, where detention was typically brief pending expedited processing. Extending it to individuals in full § 1229a proceedings with meritorious relief claims raises far graver liberty interests than the brief detention upheld in *Demore* or contemplated for true arriving aliens.

12. Petitioner is a Mexican National with no history of violence, and strong humanitarian claims. Continued categorical mandatory detention without any hearing—where the government never has to justify his confinement by evidence—serves no legitimate purpose and is punitive in effect.

PRESERVATION OF STATUTORY ARGUMENT FOR EN BANC OR SUPREME COURT REVIEW

13. To preserve the issue for possible en banc review or certiorari, Petitioner respectfully submits that the panel in Buenrostro-Mendez erred in its statutory interpretation for the following reasons, which align with the overwhelming majority of district court decisions nationwide prior to February 6, 2026:

a) The phrase "an alien seeking admission" in § 1225(b)(2)(A) is in the present tense and applies only to those actively seeking admission at the time of apprehension (e.g., at a port of entry or in active inspection), not to individuals living quietly in the interior years later.

b) The government's and panel's reading renders § 1226(a)'s bond provisions largely superfluous for the vast majority of noncitizens in removal proceedings who entered without inspection.

c) It contradicts three decades of consistent administrative practice (1997–2025), including EOIR regulations and DHS guidance treating such individuals as detained under § 1226(a).

d) It reverses the congressional intent behind IIRIRA, which sought to eliminate incentives for evading inspection but did not contemplate mandatory indefinite detention for long-present residents.

e) Over 350 district courts nationwide rejected the government's position in 2025–early 2026 habeas cases, finding the text, structure, and history compel application of § 1226(a).

14. These preserved arguments do not request this Court to disregard binding Fifth Circuit precedent on the statutory issue; they are included solely to preserve further review.

15. The APA claim remains viable because DHS's abrupt 2025 policy reversal—announced via internal memo without notice-and-comment or reasoned explanation for departing from 28 years of practice—is arbitrary and capricious under 5 U.S.C. § 706(2)(A). Buenrostro- Mendez did not address this administrative law challenge.

16. Because Buenrostro-Mendez resolved only the statutory interpretation question, it does not preclude (a) equal protection challenges to arbitrary detention classifications and disparate treatment without a rational basis, (b) Suspension Clause claims where the government's scheme eliminates any meaningful mechanism—other than habeas—to test the legality of detention, and (c) Accardi claims requiring the agency to follow its own binding arrest and processing regulations. See 8 C.F.R. § 287.8(c)(2)(i)–(ii).

17. For all these reasons, this Court may—and should—grant habeas relief on non-statutory grounds by ordering Respondents to order his immediate release under reasonable conditions of supervision or, in the alternative, provide Petitioner a prompt, individualized bond hearing before a neutral decisionmaker with the government bearing the burden to justify continued detention by clear and convincing evidence.

THE FIFTH CIRCUIT PANEL'S DECISION IN BUENROSTRO-MENDEZ v. BONDI IS INCONSISTENT WITH LOPER BRIGHT ENTERPRISES v. RAIMONDO

18. To further preserve the statutory issue for potential en banc review by the Fifth Circuit or certiorari to the Supreme Court, Petitioner respectfully submits that the panel's decision in Buenrostro-Mendez v. Bondi, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), is inconsistent with the Supreme Court's controlling precedent in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), which overruled Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

19. In Loper Bright, the Supreme Court held that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and may no longer defer to an agency's interpretation of an ambiguous statute under Chevron. Id. At 374. While agencies' views may still be entitled to respectful consideration under Skidmorv. Swift & Co., 323 U.S. 134 (1944)—with persuasive force depending on factors such as the thoroughness of the agency's reasoning, the consistency of its position over time, and its expertise—courts must independently determine the best reading of the statute using traditional tools of statutory construction. Loper Bright, 603 U.S. at 402.

20. The panel in Buenrostro-Mendez did not adhere to this mandate. Although the panel conducted a textual analysis, its reasoning effectively accorded dispositive weight to the Board of Immigration Appeals' recent interpretation in Matter of Yajure Hurtado, 29 I. &

N. Dec. 216 (BIA 2025)—a 2025 decision that abruptly reversed nearly three decades of consistent administrative practice (1997–2025) treating unadmitted noncitizens apprehended in the interior as subject to discretionary detention and bond eligibility under § 1226(a). The panel adopted the BIA's new position wholesale, without acknowledging or applying the Skidmore factors that, post-Loper Bright, should have diminished the persuasive value of an inconsistent, late-breaking agency reversal.

21. Under Skidmore and Loper Bright, longstanding agency interpretations are entitled to greater weight precisely because consistency and reliance interests bolster their persuasiveness. Here, the opposite occurred: for 28 years, multiple administrations, EOIR regulations, and DHS guidance uniformly applied § 1226(a) to individuals in Petitioner's position. See, e.g., Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). The BIA's 2025 reversal—prompted by a policy shift announced in a July 2025 DHS memo—lacks the hallmarks of thorough, consistent reasoning that could earn persuasive force. Yet the panel endorsed it without critically examining this inconsistency or independently weighing the superior reading supported by historical practice, statutory structure, and the overwhelming majority of pre-2026 district court decisions (over 350 nationwide).

22. This approach mirrors the deference prohibited by Loper Bright, as the panel appeared to treat the agency's new litigating position and BIA precedent as authoritative rather than exercising fully independent judgment. The panel dismissed the decades of contrary practice as irrelevant ("The text says what it says, regardless of the decisions of prior administrations"), effectively insulating the agency's reversal from meaningful

judicial scrutiny—the very dynamic Loper Bright rejected. As the dissent in Buenrostro-Mendez recognized, the majority's reading amounts to "rubber stamp[ing]" the government's "proposed legislation by executive fiat," a concern heightened in the post-Chevron era where courts must not abdicate their interpretive role.

23. The panel's failure to grapple with Loper Bright's implications is particularly striking given that the BIA itself invoked Loper Bright in Yajure Hurtado to assert that the statute is "clear and unambiguous," thereby attempting to preempt deference questions. But where reasonable minds differ—as evidenced by the hundreds of district courts rejecting the government's position, the dissent's detailed critique, and the statutory tensions (e.g., surplusage in § 1226(a), present-tense "seeking admission")—Loper Bright requires courts to resolve ambiguity independently, not to defer to an agency's self-serving declaration of clarity after decades of interpreting the statute differently.

24. For these reasons, the panel's statutory holding warrants reconsideration en banc, as it conflicts with Loper Bright's command that courts, not agencies, hold the ultimate responsibility for statutory meaning. This Court, while bound by the panel's result on the pure statutory claim in this Circuit, may note this tension in support of granting relief on the independent constitutional and APA grounds asserted herein.

IN THE ALTERNATIVE, BINDING NATIONWIDE DECLARATORY JUDGMENT ESTABLISHES PETITIONER'S ENTITLEMENT TO BOND CONSIDERATION UNDER 8 U.S.C. § 1226(a), NOT MANDATORY DETENTION UNDER § 1225(b)

25. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

26. On December 18, 2025, the district court issued an order clarifying that the November 20 and November 25 orders are binding, final judgments on Defendants-Respondents. *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3713982, at *5–6 (C.D. Cal. Dec. 18, 2025); *see also Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025), Dkt. No. 93 (amended order consolidating prior orders on motion for partial summary judgment, class certification, and application for reconsideration or clarification).

27. That same day, the district court entered final judgment, declaring that the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025).

28. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly

refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

29. After apprehending Petitioner on January 27, 2026, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a, charging him as inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i). This new proceeding was initiated despite the fact that Petitioner's prior removal proceedings had been successfully concluded with a Final Order of Dismissal issued on June 12, 2024

30. The Court should expeditiously grant this petition.

31. Immigration judges have been instructed by agency leadership that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).[1]

32. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that, within one day, Respondent DHS must release Petitioner.

33. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

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

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

35. 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).

36. Petitioner who entered the United States on or about 2000, was previously placed in removal proceedings under INA § 240, which were concluded on June 12, 2024, when the Immigration Court issued a Final Order of Dismissal. Following his recent transfer to ICE custody in January 2026, Petitioner was placed in new removal proceedings which remain ongoing. Currently, Petitioner has a pending application for Cancellation of Removal for Non-Permanent Residents (42B) pursuant to INA § 240A(b)(1). Given his 20-year residence in the United States and his established eligibility to seek this relief, Petitioner has every incentive to attend all future hearings and poses no flight risk.

37. Petitioner has 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.

38. Petitioner has been continuously detained in civil immigration custody since January 2026, following an ICE enforcement transfer from Lampasas County after a dismissed case. He is currently confined at the T. Don Hutto Residential Center.

39. The Immigration Judge has not considered any individualized custody factors and has not evaluated Petitioner's lack of criminal history, his non-dangerousness, his cooperation with immigration authorities, or the feasibility of alternatives to detention.

40. Because of the Immigration Judges determination that they lack 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.

41. 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).

42. 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.

43. Even where detention is initially authorized under INA § 235(b)(2)(A), the statute must be applied consistent 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 limited conditions where detention no longer serves a legitimate statutory objective and where it is justified. See 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

44. 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.

45. 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.

46. 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.

47. 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 II: THE WARRANTLESS AND PRETEXTUAL ARREST OF PETITIONER VIOLATED THE FOURTH AMENDMENT OF THE UNITED STATES

48. The Fourth Amendment of the United States Constitution provides that "[t]he right of the people to be secure in their persons… against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." U.S. Const.

amend. IV. The Supreme Court has repeatedly made clear that the "ultimate touchstone" of the Fourth Amendment is reasonableness. Riley v. California, 573 U.S. 373 (2014). A seizure of a person, including an arrest, must therefore be justified at its inception and reasonable in scope.

49. Under Terry v. Ohio, 392 U.S. 1 (1968), every seizure is evaluated under a two-part inquiry: (1) whether the officer's action was justified at its inception, and (2) whether the intrusion was reasonably related in scope to the circumstances that justified the interference. Even where probable cause is not required, law enforcement must at minimum possess reasonable suspicion supported by specific and articulable facts. A seizure undertaken without any objective justification fails at the first step of the Terry analysis and is unconstitutional.

50. The Supreme Court has consistently emphasized that the fundamental command of the Fourth Amendment is reasonableness. N.J. v. T.L.O., 469 U.S. 325 (1985). While probable cause is a significant component of reasonableness, even in contexts where the Court has recognized flexibility, the search or seizure must still be justified at its inception and reasonably related in scope to the circumstances justifying the intrusion. Where, as here, the arrest was not supported by probable cause or even reasonable suspicion, and was instead executed pursuant to a coordinated enforcement action designed solely to effectuate immigration detention, it cannot satisfy the constitutional requirement of reasonableness.

51. Moreover, the Supreme Court has repeatedly reaffirmed that warrantless seizures are presumptively unreasonable. City of Ontario v. Quon, 560 U.S. 746 (2010). Exceptions to the warrant requirement are limited and must be specifically established and justified. Riley, 573 U.S. 373. The government bears the burden of demonstrating that a recognized

exception applies. No such exception exists here. The arrest was not incident to a lawful warrant, not supported by exigent circumstances, and not justified by any independent criminal investigation.

52. The Court has also underscored that a warrant may not issue absent properly established probable cause and that the scope of governmental intrusion must be clearly defined. Kentucky v. King, 563 U.S. 452 (2011). In this case, there was no warrant at all, much less one supported by probable cause and particularized findings. The absence of a warrant, coupled with the absence of individualized suspicion, renders the seizure presumptively unconstitutional.

53. To the extent officers entered a home to effectuate the arrest, the constitutional violation is even more pronounced. In Payton v. New York, 445 U.S. 573 (1980), the Supreme Court held that warrantless and nonconsensual entry into a suspect's home to make a routine felony arrest is presumptively unreasonable. The Fourth Amendment draws a firm line at the entrance to the home. That line may not be crossed without a warrant absent exigent circumstances. If law enforcement crossed that threshold here without a judicial warrant, the arrest was unconstitutional under Payton.

54. Taken together, these decisions establish a clear constitutional framework: seizures must be reasonable; reasonableness requires justification at inception; warrantless arrests are presumptively invalid; and exceptions must be specifically justified. A coordinated operation designed solely to detain Petitioner for immigration purposes, absent probable cause, reasonable suspicion, or a judicial warrant, falls outside any recognized Fourth Amendment exception.

55. Accordingly, Petitioner's arrest constituted an unreasonable seizure in violation of the Fourth Amendment, and the resulting immigration detention rests on a constitutionally defective foundation.

Because the arrest was Unlawful, the resulting Detention and all derivative evidence are tainted.

56. Even if the Court were to examine the legality of Petitioner's continued detention independently, Supreme Court precedent makes clear that an unlawful arrest infects what follows. Where a seizure violates the Fourth Amendment, the government may not rely on the fruits of that illegality to justify continued custody or to introduce evidence obtained as a result of that detention.

57. In Dunaway v. New York, 442 U.S. 200 (1979), the Supreme Court held that when law enforcement effects an arrest without probable cause, the subsequent detention and any evidence obtained during that detention are subject to suppression as fruits of the unlawful arrest. The Court rejected the notion that simply characterizing the detention as investigatory could cure the constitutional defect. Instead, it emphasized that the exclusionary rule applies unless the government can demonstrate that the connection between the unlawful arrest and the evidence has become sufficiently attenuated.

58. Dunaway reaffirmed the framework articulated in Brown v. Illinois, 422 U.S. 590 (1975), which held that statements obtained following an illegal arrest are inadmissible unless intervening circumstances purge the primary taint. The Court explained that the inquiry focuses on whether the evidence was "sufficiently an act of free will to purge the

primary taint." In evaluating attenuation, courts consider factors such as the temporal proximity between the arrest and the acquisition of evidence, the presence of intervening circumstances, and particularly the purpose and flagrancy of the official misconduct. Id.; see also Taylor v. Alabama, 457 U.S. 687 (1982) (reaffirming that where the causal chain remains unbroken, the taint of an illegal arrest is not dissipated).

59. Here, Petitioner was arrested without probable cause and for the sole purpose of placing him into immigration custody pursuant to a coordinated enforcement operation. His detention flowed directly and immediately from that unlawful seizure. There were no intervening circumstances, no judicial warrant, and no independent lawful basis that could purge the taint. Under Brown and Taylor, the close temporal connection between the arrest and detention, combined with the deliberate and coordinated nature of the operation, weighs heavily against any finding of attenuation.

60. The Supreme Court has further clarified that the exclusionary rule applies not only to direct products of a Fourth Amendment violation, but also to its indirect fruits. In United States v. Crews, 445 U.S. 463 (1980), the Court explained that evidence obtained by exploitation of an illegal arrest is inadmissible, even though the prosecution itself is not barred. The constitutional violation does not immunize an individual from proceedings, but it does restrict the government from benefiting from evidence derived from unlawful conduct.

61. Accordingly, if Petitioner's arrest violated the Fourth Amendment, the resulting detention cannot stand on an independent constitutional footing. The detention is the direct product of the unlawful seizure. Any statements, records, admissions, or other evidence obtained as a consequence of that arrest are likewise tainted unless the government can

meet its burden of proving sufficient attenuation under the standards articulated in Dunaway, Brown, and Taylor. Absent such a showing, both the continued detention and the use of derivative evidence are constitutionally infirm.

Thuraissigiam Does Not Foreclose Petitioner's Substantive Due Process Challenge. The Supreme Court's narrow, as-applied holding in the expedited removal context does not control where Petitioner was not apprehended at the border and challenges the constitutionality of detention itself.

62. Respondents' reliance on Department of Homeland Security v. Thuraissigiam, 591 U.S. 103 (2020), is misplaced. That decision does not foreclose Petitioner's substantive due process challenge, nor does it control the present case. Thuraissigiam was a narrow, as-applied decision arising in the specific context of expedited removal under 8 U.S.C. § 1225(b)(1) and the limited habeas review permitted under 8 U.S.C. § 1252(e)(2). The Supreme Court addressed whether Congress violated the Suspension Clause or procedural due process by restricting judicial review of a credible-fear determination for a noncitizen apprehended approximately 25 yards from the border immediately after unlawful entry. The Court did not announce a categorical rule eliminating constitutional protections for all noncitizens labeled "applicants for admission," nor did it address prolonged detention or arbitrary executive restraint of liberty under a substantive due process framework.

63. The Court's due process analysis in Thuraissigiam was expressly procedural. The question presented was whether the procedures Congress provided—namely, a credible-fear interview with review by a supervising officer and an Immigration Judge—were

constitutionally sufficient for a noncitizen seeking initial entry. The Court reasoned that, for individuals apprehended immediately upon unlawful entry and treated as applicants for admission, the procedures authorized by Congress constitute due process of law. 591 U.S. at 137–39. The Court did not analyze whether detention itself, particularly prolonged or categorical detention without individualized review, could violate the Fifth Amendment's protection against arbitrary deprivations of liberty. Substantive due process concerns the permissibility of the government's action itself, not merely the adequacy of procedures. That question was not before the Court.

64. Moreover, Thuraissigiam's reasoning was anchored in the petitioner's posture as a recent border entrant who had not "effected an entry." The Court repeatedly emphasized that he was apprehended near the border shortly after crossing and was therefore treated as an applicant seeking initial admission. Id. at 134–36. That premise is absent here. Petitioner was not apprehended at the border, was not stopped immediately upon entry, and is not in the posture of seeking initial admission in the manner described in Thuraissigiam. The decision's reliance on the "entry fiction" doctrine was explicitly tied to that factual context. It does not extend to individuals who have established physical presence within the United States beyond the immediate border apprehension scenario addressed by the Court.

65. In addition, Thuraissigiam concerned a petitioner who sought additional administrative review of his asylum claim and, ultimately, authorization to remain in the United States. The Court emphasized that the writ of habeas corpus historically functioned as a means to secure release from unlawful detention, not to obtain further review of claims to enter or remain in the country. Id. at 124–25. Petitioner here challenges the legality and constitutional permissibility of his detention itself. That liberty interest lies at the core of

the Fifth Amendment. Nothing in Thuraissigiam holds that Congress may authorize detention regimes free from substantive constitutional limits, nor does it suggest that executive detention is immune from review where it becomes arbitrary or divorced from legitimate governmental purposes.

66. Finally, the Supreme Court framed its holding in expressly as-applied terms. The Court concluded only that § 1252(e)(2) did not violate the Suspension Clause or the Due Process Clause "as applied in this case." Id. at 140. The decision does not purport to resolve the constitutionality of detention in materially different factual circumstances. Because Petitioner was not apprehended at the border, is not seeking initial admission, and challenges the constitutionality of detention itself rather than the scope of asylum review, Thuraissigiam does not control. The Fifth Amendment continues to protect persons within the United States from arbitrary executive deprivation of liberty, and nothing in that decision precludes this Court from adjudicating Petitioner's substantive due process claim.

COUNT III VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

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

68. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Noncitizens physically present in the United States—including those who entered without inspection—are "persons" within the meaning of the Fifth Amendment and entitled to full procedural due process protections. Zadvydas v. Davis, 533 U.S. 678, 693 (2001); Landon v. Plasencia, 459 U.S. 21, 32 (1982)

69. Petitioner, who entered the United States in 2000, and was previously placed in removal proceedings, which were concluded when the Immigration Court issued a Final Order of Dismissal on June 12, 2024. However, following his transfer from Lampasas County in January 2026—based on charges that were promptly dismissed—Petitioner was again placed into removal proceedings through the issuance of a new Notice to Appear (NTA).

70. Petitioner has no record of violence, and no pending criminal charges, and has never exhibited conduct suggesting danger to the community or risk of flight and has consistently cooperated with immigration authorities since his apprehension.

71. Petitioner has been continuously detained in civil immigration custody since January 2026, following an ICE enforcement transfer from Lampasas County after a case that was promptly dismissed. He is currently confined at the T. Don Hutto Residential Center.

72. The immigration court current policy effectively precludes Petitioner from an individualized bond hearing to assess whether he is a danger to the community or a flight risk.

73. As a result, Petitioner has been categorically barred from receiving any hearing before a neutral adjudicator to determine whether his detention is justified. He has been denied the opportunity to present evidence, contest the government's assertions, or obtain a meaningful review of his custody.

74. Immigration detention implicates a fundamental liberty interest. While Congress may authorize civil detention in the immigration context, such detention must remain reasonably related to its non-punitive purposes—ensuring appearance at proceedings and

protecting public safety—and must comport with basic procedural due process. Zadvydas, 533 U.S. at 690; Demore v. Kim, 538 U.S. 510, 527–28 (2003).

75. Even accepting the Fifth Circuit's statutory interpretation in Buenrostro-Mendez v. Bondi, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), which forecloses a purely statutory entitlement to a bond hearing under 8 U.S.C. § 1226(a), that decision does not authorize prolonged or potentially indefinite civil detention without any individualized custody hearing and does not resolve the constitutional question presented here.

76. The Supreme Court has made clear that the absence of a statutory right to a bond hearing does not foreclose as-applied constitutional challenges to immigration detention. In Jennings v. Rodriguez, 583 U.S. 281 (2018), the Court rejected a statutory bond-hearing requirement but expressly remanded for consideration of constitutional due process claims. Id. at 302–03.

77. Petitioner, is likely to continue for many additional months or years. Absent any mechanism for individualized review, Petitioner faces a substantial risk of prolonged or indefinite detention under penal-like conditions without any finding that his confinement is necessary to serve the government's legitimate interests.

78. The constitutional infirmity here is not merely the length of detention, but the complete absence of any meaningful custody process. Petitioner is detained pursuant to a regime in which:

A. No immigration judge may conduct a bond hearing;

B. DHS is not required to justify continued detention with evidence; and

C. No neutral decisionmaker is empowered to order release, regardless of the Petitioner's lack of danger or flight risk.

79. This categorical denial of any individualized custody determination violates procedural due process. Fundamental fairness requires, at a minimum, a meaningful opportunity to be heard before a neutral adjudicator when the government restrains physical liberty for a prolonged period. Zadvydas, 533 U.S. at 690; Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

80. The government's detention of Petitioner without any individualized assessment also violates substantive due process. Detaining a long-standing habitant of the United States with no criminal history, no dangerousness, and no flight risk—without requiring the government to justify detention or consider less restrictive alternatives—renders the confinement excessive and punitive in effect.

81. Because the Immigration Judge has disclaimed jurisdiction and DHS has provided no alternative constitutionally adequate custody process, habeas corpus is the only effective mechanism by which Petitioner may test the legality of his confinement. Continued detention under these circumstances offends the core protections of the Due Process Clause.

82. Accordingly, Petitioner's continued detention without an individualized custody determination violates the Fifth Amendment as applied to him. Habeas relief is warranted. Petitioner respectfully requests that this Court order his immediate release from ICE custody; or in the alternative, order Respondents to provide a prompt, constitutionally adequate individualized custody hearing before a neutral decisionmaker with authority to grant release, at which the government bears the burden of justifying continued detention.

Longstanding Residence and Substantial Ties Place Petitioner Within the Protection of the Fifth Amendment.

83. The Fifth Amendment provides that no "person" shall be deprived of liberty without due process of law. The Supreme Court has made clear that the Due Process Clause applies to all persons within the United States, including noncitizens, regardless of whether their presence is lawful, unlawful, temporary, or permanent. Zadvydas v. Davis, 533 U.S. 678, 693 (2001); Mathews v. Diaz, 426 U.S. 67, 77 (1976). Even individuals who entered unlawfully, once physically present, may be expelled only through proceedings consistent with traditional standards of fairness. Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206, 212 (1953). Here, Petitioner has lived in the United States for over thirty-seven years. He has never been arrested or charged with any criminal offense. He has built a life rooted in this country, including three United States citizen children, longstanding employment, extended family relationships, friendships, and a strong community support system. Under the Supreme Court's framework, he is unquestionably a "person" within the United States entitled to constitutional protection.

84. The Court's jurisprudence further confirms that constitutional protections do not turn solely on the statutory label "applicant for admission," but on physical presence and the development of substantial connections with this country. United States v. Verdugo-Urquidez, 494 U.S. 259, 271 (1990); Landon v. Plasencia, 459 U.S. 21, 32 (1982). The Supreme Court has described a "generous and ascending scale of rights" as a noncitizen increases his identity with American society. Johnson v. Eisentrager, 339 U.S. 763, 770 (1950). Petitioner's thirty-seven years of uninterrupted residence, clean record, consistent employment, and deep family and community ties demonstrate precisely the type of

substantial connections that give rise to a protected liberty interest. That liberty interest cannot be extinguished by a formal classification as an "applicant for admission," where the constitutional inquiry centers on presence, roots, and the fairness required before liberty is curtailed.

85. Due process, at minimum, requires a meaningful opportunity to be heard before deprivation of liberty. Mathews v. Eldridge, 424 U.S. 319, 333 (1976). In the immigration context, the Supreme Court has repeatedly recognized that removal proceedings must satisfy constitutional standards of fairness and that the government bears a heightened burden of proof. Woodby v. INS, 385 U.S. 276, 286 (1966). The Court has also emphasized that noncitizens within the United States are protected by due process in the detention context, and that constitutional limits constrain the government's authority where liberty is at stake. Zadvydas, 533 U.S. at 690–92; Demore v. Kim, 538 U.S. 510, 527–29 (2003); Jennings v. Rodriguez, 583 U.S. 281, 288–97 (2018). Even in Department of Homeland Security v. Thuraissigiam, 591 U.S. 103, 139 (2020), the Court distinguished individuals at the threshold of entry from those who have established connections in the United States, expressly recognizing that due process protections attach to the latter. Petitioner is not at the threshold of entry; he is a decades-long resident with profound ties and a spotless record. Under the Fifth Amendment and controlling precedent, he is entitled to meaningful constitutional protections notwithstanding any statutory characterization as an "applicant for admission."

Detention Without Individualized Review Violates Procedural Due Process Under Mathews v. Eldridge

86. The government's position improperly collapses the procedural due process analysis into a categorical assertion that 8 U.S.C. § 1225(b)(1) or § 1225(b)(2) (INA § 235(a)(1)) is constitutional on its face and therefore constitutional as applied, relying almost exclusively on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020). That approach misstates the governing framework for procedural due process claims. The question is not whether Congress omitted a bond hearing from the statute, but whether the procedures actually afforded are constitutionally sufficient in light of the liberty interest at stake, the risk of erroneous deprivation, and the government's asserted interests. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). As explained in *Lopez-Arevelo*, 2025 WL 2691828, the constitutional inquiry must be conducted under the three-part *Mathews* balancing test, even where detention arises under § 1225(b)(1) or § 1225(b)(2). The government's argument effectively reads *Mathews* out of the analysis, despite courts within this circuit expressly applying it to applicants for admission detained under § 1225(b)(1) or §1225(b)(2).

1. The Private Liberty Interest at Stake Is Substantial

87. Contrary to the government's suggestion that Petitioner is entitled only to whatever process Congress elected to provide, *Lopez-Arevelo* squarely rejected the premise that applicants for admission lack a protected liberty interest in freedom from physical restraint. Relying on *Mathews v. Diaz*, 426 U.S. 67, 77 (1976), and *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the court held that "even if their presence is unlawful, aliens living within the United States have a constitutionally-protected interest in their own liberty." *Lopez-Arevelo*, 2025 WL 2691828, at *10. Freedom from physical restraint was described as "the most elemental of liberty interests," warranting the strictest procedural safeguards. Id.

88. The government's attempt to analogize Petitioner to the noncitizen in *Thuraissigiam* ignores a critical distinction. Petitioner is physically present in the United States and subject to ongoing civil detention. His liberty is not hypothetical; it is presently restrained. As *Lopez-Arevelo* makes clear, that liberty interest exists independent of statutory labels and cannot be extinguished by invoking the "threshold of entry" doctrine.

2. The Risk of Erroneous Deprivation Is High Without Individualized Review

89. Under the second *Mathews* factor, courts assess the risk of erroneous deprivation and the probable value of additional procedural safeguards. 424 U.S. at 335. The government argues that removal proceedings under § 1229a provide sufficient process because Petitioner receives notice, may retain counsel at his own expense, and will receive a hearing on removability. But *Lopez-Arevelo* directly addressed and rejected that position, explaining that the government's interpretation of § 1225(b) "offers few—if any—procedural protections" regarding detention itself.

90. Detention under the government's interpretation is automatic and mandatory. It is imposed without notice specific to custody, without a hearing, and without any opportunity for Petitioner to contest whether continued confinement is justified. The value of an additional safeguard—a bond hearing before a neutral decisionmaker—is therefore substantial. Due process requires the opportunity to be heard "at a meaningful time and in a meaningful manner." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). Removal proceedings address removability, not the necessity of continued civil detention. They do not mitigate the distinct liberty interest implicated by prolonged confinement or reduce the significant risk that detention will continue erroneously absent individualized review.

3. The Government's Interests Do Not Outweigh the Need for Additional Process

91. Under the third *Mathews* factor, the Court weighs the government's asserted interests against the burden of additional procedural safeguards. Courts within this circuit have identified flaws in the government's interpretation of § 1225(b)(1) in materially similar cases and concluded that detention without a bond hearing does not meaningfully advance enforcement objectives. As *Lopez-Arevelo* observed, the government routinely provided bond hearings to similarly situated noncitizens until recent agency decisions altered that practice. The historical availability of such hearings demonstrates that additional safeguards are administratively feasible and consistent with effective immigration enforcement.

92. Providing an individualized bond hearing does not undermine the government's authority to detain or remove. It simply ensures that continued detention is justified in the individual case. The government's interests therefore do not outweigh Petitioner's substantial liberty interest or justify detention without any opportunity for neutral review.

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

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

94. The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), requires courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of

discretion, or otherwise not in accordance with law. An agency acts arbitrarily and capriciously when it fails to examine relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress has not so provided. Judulang v. Holder, 565 U.S. 42, 53–55 (2011).

95. Petitioner does not challenge the Fifth Circuit's statutory holding in Buenrostro-Mendez v. Bondi, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), regarding immigration-judge bond jurisdiction. Rather, Petitioner challenges DHS's independent-agency action in implementing and applying a blanket detention policy that treats Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), as eliminating all meaningful individualized custody discretion and review.

96. The Department of Homeland Security has acted arbitrarily and capriciously by continuing to detain Petitioner without any individualized custody assessment or reasoned explanation. Petitioner has no criminal convictions, has no pending criminal charges, has not engaged in violence or dangerous behavior, and has consistently cooperated with immigration authorities since his transfer into ICE custody. He has also lived in the United States for over 25 years and developed strong community ties to the country.

97. Despite these facts, DHS has maintained Petitioner's detention for an extended and potentially indefinite period without providing any reasoned explanation or evidence that continued confinement serves a legitimate statutory purpose. DHS has failed to articulate why release under supervision, bond, or other alternatives would be insufficient.

98. DHS's reliance on Matter of Yajure Hurtado to justify continued detention is arbitrary and contrary to law. Yajure Hurtado addresses the jurisdiction of Immigration

Judges to conduct bond hearings. It does not compel DHS to detain noncitizens indefinitely, nor does it eliminate DHS's longstanding discretionary authority to release noncitizens on parole, recognizance, supervision, or bond.

99. By treating Yajure Hurtado as an absolute bar to any form of individualized custody consideration, DHS has unlawfully transformed a discretionary detention framework into a blanket detention rule, substituting categorical inaction for the case-by-case decision-making required by the INA and the APA.

100. DHS has failed to consider relevant factors in Petitioner's case, including but not limited to:

a) Petitioner's non-dangerousness;

b) His demonstrated compliance with immigration authorities;

c) His pending protection claims and relief from removal;

d) The absence of any individualized flight-risk finding; and

e) The availability of less restrictive alternatives to detention.

101. DHS has also failed to provide a reasoned explanation for its abrupt departure from decades of settled administrative practice (1997–2025), during which noncitizens in Petitioner's posture routinely received individualized custody determinations and were considered for release under supervision or bond. Such an unexplained reversal of course is arbitrary and capricious under the APA. Judulang, 565 U.S. at 55.

102. Civil immigration detention is statutorily limited to non-punitive purposes—ensuring appearance at proceedings and protecting public safety. DHS's continued detention of Petitioner, without individualized justification and without consideration of

alternatives, does not advance either purpose and therefore exceeds lawful agency discretion.

103. DHS's actions are arbitrary, capricious, an abuse of discretion, and not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A). The agency has effectively nullified its own discretionary authority through categorical non-exercise, which the APA prohibits.

104. Habeas relief is warranted to remedy this unlawful agency's conduct. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to conduct a prompt, individualized, and reasoned custody determination consistent with the Administrative Procedure Act, the Immigration and Nationality Act, and governing constitutional principles

APA Violations Resulting in Unlawful Detention Are Properly Reviewable in Habeas, and a Bond Denial Constitutes Final Agency Action Determining Liberty

108. Respondents argue that Petitioners may not assert violations of the Administrative Procedure Act within a habeas proceeding and that no final agency action exists. That position is inconsistent with controlling Fifth Circuit authority, the text of the relevant statutes, and the nature of the custody determination being challenged.

109. First, it is incorrect that APA violations are categorically barred from habeas review. Under 28 U.S.C. § 2241, federal courts have jurisdiction to grant habeas relief where custody violates "the Constitution or laws or treaties of the United States." Where detention results from an unlawful application or interpretation of governing law by an

agency, that custody is subject to review under § 2241. The statute does not restrict habeas review solely to constitutional claims; it expressly encompasses violations of federal law.

110. The Fifth Circuit has long recognized the interplay between habeas corpus and the Administrative Procedure Act in the immigration context. In Estrada v. Ahrens, 296 F.2d 690, the court addressed the relationship between the Immigration and Nationality Act of 1952 and the APA, explaining that the 1952 Act expanded judicial review of immigration decisions and did not foreclose APA-based challenges absent explicit statutory language to that effect. Estrada emphasized that the APA permits judicial review of administrative immigration actions through habeas corpus or declaratory judgment actions unless Congress has expressly barred such review. Nothing in the present statutory scheme strips this Court of jurisdiction under § 2241 to review whether Petitioners' detention results from agency action that is arbitrary, capricious, or contrary to law.

111. Similarly, Sabino v. Reno, 8 F. Supp. 2d 622, expressly recognized that habeas corpus remains a form of proceeding contemplated by the APA pursuant to 5 U.S.C. § 703. Sabino explained that the Immigration and Nationality Act of 1952 removed earlier statutory barriers to APA review and allowed immigration determinations to be reviewed under APA standards. Thus, habeas and APA review are not mutually exclusive remedies; rather, habeas is one procedural vehicle through which unlawful agency action affecting custody may be tested.

112. The APA itself confirms this framework. Section 702 provides a right of judicial review to persons aggrieved by agency action and authorizes relief other than money damages. Section 706 directs courts to set aside agency action that is arbitrary, capricious, or otherwise not in accordance with law. When the agency action at issue directly results

in physical detention, § 2241 supplies the jurisdictional basis, and §§ 702 and 706 supply the governing standards of review. There is no statutory language precluding the application of APA standards within a habeas proceeding challenging detention that allegedly stems from unlawful agency action.

113. Respondents' reliance on the distinction between "civil APA claims" and habeas proceedings overlooks this statutory and precedential structure. Petitioners are not seeking abstract review of agency policy divorced from custody. They challenge the legality of their present detention, and the agency action producing that detention is alleged to be contrary to law. Under § 2241, this Court has jurisdiction to review whether that custody violates federal law, including the APA.

114. Respondents' argument that no "final agency action" exists is equally unavailing. The bond denial or custody determination at issue marks the consummation of the agency's decisionmaking process with respect to detention. It is a discrete adjudicative determination that fixes the individual's present legal status in custody and determines whether liberty will be restored. From that decision flow immediate and concrete legal consequences: continued physical confinement. By definition, a decision that results in ongoing detention is one from which rights and legal consequences flow.

115. Moreover, removal proceedings and custody proceedings are procedurally distinct. Custody determinations are conducted under separate dockets, through separate hearings, and are maintained in separate electronic records of proceeding. The Executive Office for Immigration Review's Practice Manual Chapter 8.3 reflects that bond and custody redetermination proceedings are handled independently from removal merits proceedings and are not consolidated. An Immigration Judge may preside over both matters, but they

remain legally and procedurally separate adjudications. The existence of ongoing removal proceedings does not render the custody determination "intermediate" or non-final. The custody decision is final as to the question of detention, even if removability remains pending in a separate case. Available at https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-8-3 See Exhibit 1 Office for Immigration Review's Practice Manual Chapter 8.3

116. The fact that other forms of discretionary relief may theoretically exist does not negate finality. A decision need not resolve every conceivable future issue to be final for purposes of review. The bond denial conclusively determines the present custody status. No further internal administrative step remains with respect to that detention determination unless and until a new request is initiated. In that sense, the agency's decision making process regarding custody has been consummated.

117. In sum, under 28 U.S.C. § 2241, this Court has jurisdiction to review detention alleged to violate federal law. Estrada v. Ahrens and Sabino v. Reno confirm that habeas proceedings may incorporate APA standards of review in the immigration context. Sections 702 and 706 of Title 5 require courts to set aside unlawful agency action, and where that action results in detention, habeas is the appropriate procedural vehicle. The custody determination at issue is a final agency action as to liberty and is therefore subject to judicial review. Respondents' categorical attempt to sever APA review from habeas jurisdiction is inconsistent with the governing statutes and binding precedent.

118. Because Petitioner remains in immigration detention and has no independent access to income or financial resources, and because his family is experiencing financial hardship as a direct result of his continued confinement, Petitioner respectfully

submits an Application to Proceed in District Court Without Prepaying Fees or Costs (Form AO 240). Neither Petitioner nor his family has the ability to pay the required filing fee. Petitioner therefore requests that the Court grant leave to proceed in forma pauperis and waive the fee. In the alternative, and only if the Court determines that any claim must proceed outside the habeas framework, Petitioner respectfully requests that such causes of action be severed rather than dismissed. Further, to the extent the Court finds that related claims are proceeding under separate procedural vehicles, Petitioner respectfully moves for consolidation pursuant to Rule 42 of the Federal Rules of Civil Procedure, as the claims arise from the same operative facts, challenge the same detention, and involve common questions of law and fact. See Exhibit 4 Form AO 240

COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE FIFTH AMENDMENT

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

106. 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).

107. 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.

108. For at least the past two decades, noncitizens in removal proceedings — including individuals who entered without inspection and those classified as applicants for admission — have routinely received bond hearings before an Immigration Judge, and substantial numbers have been granted bond and released from custody. Publicly available government data confirm that bond adjudication has long been an integral and functioning component of the immigration detention system.

109. According to data compiled by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University — based on records obtained from the Executive Office for Immigration Review (EOIR) through the Freedom of Information Act — Immigration Judges conducted tens of thousands of bond hearings annually over the past twenty years. In Fiscal Year 2006 alone, Immigration Judges conducted 27,117 custody hearings and granted bond in 10,658 cases. By Fiscal Year 2012, Immigration Judges conducted 68,014 custody hearings and granted bond in 31,688 cases. In Fiscal Year 2015, Immigration Judges granted bond in 28,637 cases. See Exhibit 2, Transactional Records Access Clearinghouse (TRAC), Immigration Court Bond Hearings and Related Case Outcomes (FOIA-based EOIR data) available at https://tracreports.org/phptools/immigration/bond/.

110. Separate data obtained by TRAC from Immigration and Customs Enforcement (ICE) show that tens of thousands of immigration bonds were actually posted in recent years — meaning that individuals were released from detention upon payment of bond. For example, ICE records reflect that 44,682 bonds were posted in Fiscal Year 2017; 55,862 in Fiscal Year 2018; and 58,763 in Fiscal Year 2019. Even in Fiscal Year 2022, 28,943 bonds

were posted. See Exhibit 3, Transactional Records Access Clearinghouse (TRAC), Immigration Bonds Posted by Fiscal available at https://tracreports.org/reports/738/

111. These figures reflect not isolated or exceptional cases, but a systemic and longstanding practice: immigration detention has historically included access to bond hearings and release upon a finding that the noncitizen does not present a danger or flight risk. Tens of thousands of individuals — including those who entered without inspection or were treated as applicants for admission — were afforded bond proceedings and released upon satisfaction of bond conditions.

112. Against this backdrop, the sudden categorical denial of bond hearings to all applicants for admission or all individuals who entered without inspection represents a sharp departure from longstanding nationwide practice. Where an agency reverses a settled and widespread practice affecting thousands of individuals annually, it must at minimum acknowledge the change and provide a reasoned explanation for abandoning prior policy. The data demonstrate that bond adjudications were not rare, discretionary anomalies, but a central and heavily utilized component of the detention framework for nearly two decades.

113. The government cannot plausibly characterize bond eligibility for similarly situated individuals as novel or unprecedented when its own records show tens of thousands of bond grants and releases year after year. The abrupt elimination of bond access for this entire class of detainees — without reasoned explanation and in disregard of the reliance interests created by longstanding adjudicatory practice — underscores the arbitrary nature of the policy shift.

114. 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 entering ICE custody. Yet Petitioner alone is categorically denied access to any individualized custody review.

115. 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.

116. This 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.

117. 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).

118. 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.

119. 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.

120. 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).

121. 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.

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

123. 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

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

125. 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).

126. 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.

127. Petitioner is detained solely under civil immigration authority and is currently confined at the T. Don Hutto Detention Center since January 2026. He has no pending criminal charges, no history of violence, and his removal proceedings remain pending before an immigration judge.

128. The Immigration Judges are categorically denying jurisdiction to consider bond or conduct any individualized custody determination, relying exclusively 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.

129. Because the Immigration Judge are concluding that they lack jurisdiction, 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.

130. 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.

131. 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.

132. 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.

133. 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.

134. 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 (III)

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

136. Under the Accardi doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders 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.

137. 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).

138. 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.

139. At the time he was taken into ICE custody on January 2026, and at all times thereafter. Petitioner was taken into ICE custody following a transfer from Lampasas County. However, that case was promptly dismissed in its entirety on January 5, 2026. He did not try to avoid or evade arrest and all times cooperated with the authorities.

140. Petitioner was not evading law enforcement, 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).

141. 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.

142. 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.

143. 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.

144. 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.

145. 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. VIOLATION OF THE INA: REQUEST FOR RELIEF UNDER MALDONADO BAUTISTA

146. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

147. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

148. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

149. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole."

150. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

151. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista.*

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this habeas corpus action pursuant to 28 U.S.C. §§ 2241 and 1331;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action, absent further order of the Court;
3. Declare that Petitioner's continued detention violates the Constitution and laws of the United States, including but not limited to the Due Process Clause of the Fifth Amendment; the equal protection component of the Fifth Amendment, The Fourth Amendment of the Constitution; the Suspension Clause of Article I, Section 9 of the United States Constitution; the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and the Accardi doctrine, based on Respondents' failure to comply with binding immigration arrest regulations;
4. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody; OR in the alternative, order Respondents to provide Petitioner with a prompt, constitutionally adequate, and individualized custody

determination before a neutral decisionmaker with actual authority to order release, at which the government bears the burden of proving—by clear and convincing evidence—that continued detention is necessary to serve a legitimate governmental purpose and that no less restrictive conditions of supervision would suffice;

5. Award Petitioner her costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and

6. Grant any other further relief this Court deems just and proper.

Dated: February 17, 2026.

Respectfully submitted,

Jeffrey A. Peek
ATTORNEY
24027727
Peek Law Group
512 474 4445
Federal@peeklawgroup.com
1406 Waller St Austin Texas 78702

CERTIFICATE OF SERVICE

I hereby certify that on this **16th day of February, 2026**, a true and correct copy of the foregoing **PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO HABEAS CORPUS RELIEF** was served electronically through the Court's CM/ECF system, which will provide notice and a copy to all counsel of record, including the United States Attorney's Office for the Western District of Texas.

Dated: February 17, 2026.

Respectfully submitted,

Jeffrey A. Peek
ATTORNEY
24027727
Peek Law Group
512 474 4445
Federal@peeklawgroup.com
1406 Waller St Austin Texas 78702

TABLE OF EXHIBITS IN SUPPORT OF PETITION

Exhibit	Exhibit Name
1	The Executive Office for Immigration Review's Practice Manual Chapter 8.3
2	Transactional Records Access Clearinghouse (TRAC), Immigration Court Bond Hearings and Related Case Outcomes (FOIA-based EOIR data)
3	Transactional Records Access Clearinghouse (TRAC), Immigration Bonds Posted by Fiscal
4	Form AO 240

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☰ TRAC Immigration

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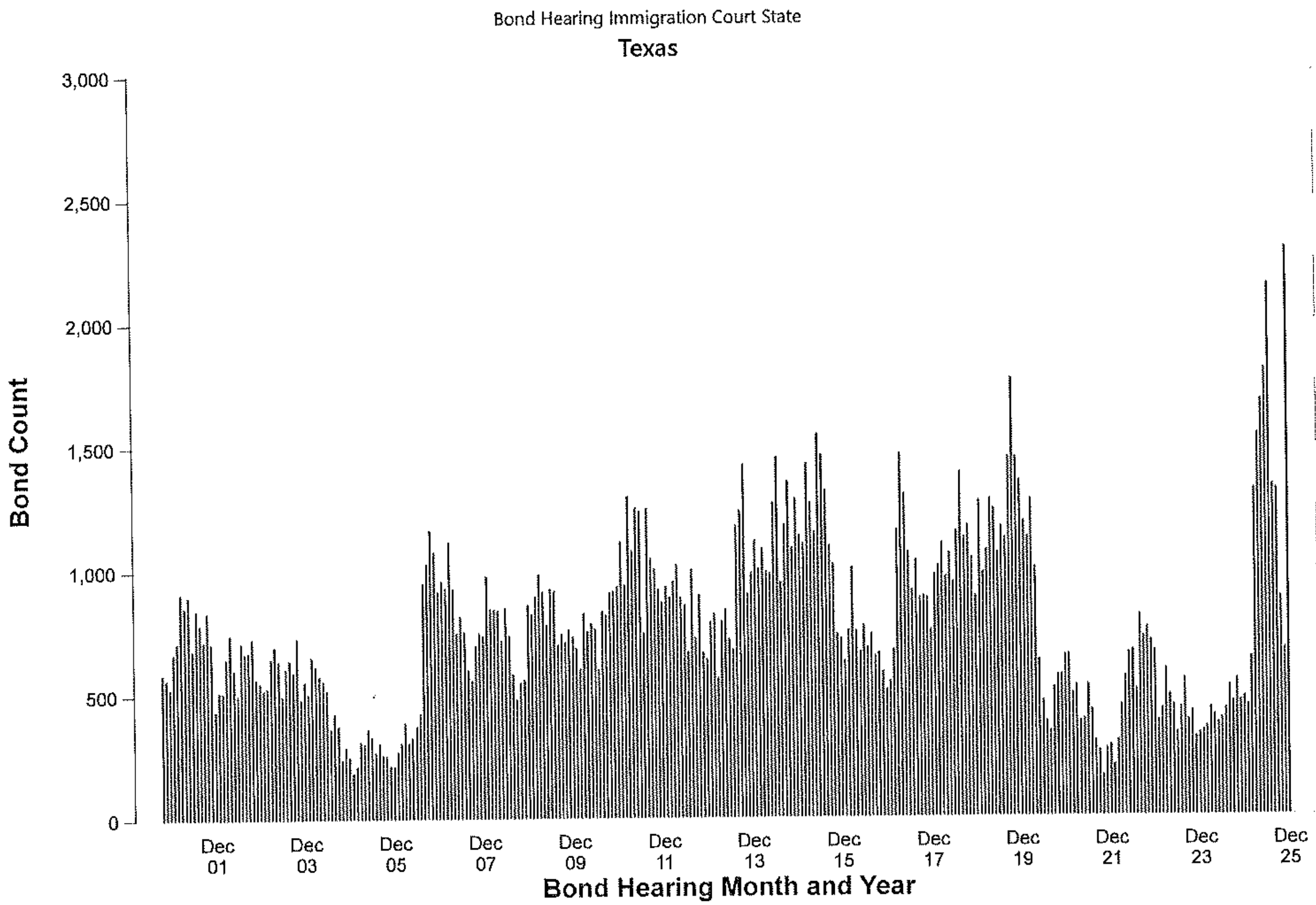
Immigration Court Bond Hearings and Related Case Decisions

through
December 2025
About the Data
Using The Tool

Bond Hearing | Case Outcome after Bond Granted | Advanced



Measure

- (●) Bond Count
- ( ) Median Bond Granted

Graph

- (●) by Month and Year
- ( ) by Fiscal Year

Time Series

- (●) Number
- ( ) Percent

Bond Hearing Immigration Court State | Nationality | Bond Hearing Outcome

All	1,107,452	All-Texas	235,719	All-Texas, Mexico	76,041
Texas	235,719	Mexico	76,041	Not Granted	37,297
California	152,770	El Salvador	35,959	Granted	37,124
Arizona	110,481	Honduras	28,591	Withdraw	1,620
Louisiana	79,567	Guatemala	21,253		
New Jersey	77,013	China	7,084		
Florida	65,080	Ecuador	6,832		
Colorado	45,924	India	6,522		
New York	42,721	Unknown Nationality	5,918		
Georgia	42,282	Brazil	5,595		
Washington	42,068	Nicaragua	5,443		
Illinois	36,639	Cuba	4,004		
Massachusetts	25,155	Colombia	2,638		
Michigan	21,685	Dominican Republic	2,490		
Virginia	16,926	Turkey	2,377		
Minnesota	16,180	Venezuela	2,304		
Nebraska	15,189	Bangladesh	1,980		

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Immigrants Pay $2 Billion in ICE Bonds Since FY 2017

Published Feb 8, 2024

Immigration and Customs Enforcement (ICE) often requires immigrants to pay a bond before releasing them from immigrant detention centers. In addition to Alternatives to Detention (ATD) monitoring, ICE uses bonds as a way of ensuring that immigrants attend their immigration court hearings and follow additional requirements set by ICE. Once a bond is posted, detained immigrants are typically released.

Based on new data obtained by TRAC through Freedom of Information Act requests, between the start of FY 2017 (October 2016) and the end of December 2023, immigrants and their obligors[1] have posted more than a quarter of a million bonds (258,438) and paid Immigration and Customs Enforcement (ICE) just over $2 billion in bond money.[2]

Figure 1 shows the total number of bonds posted each month. Most of the bonds in this study (94.0 percent) are "delivery bonds", which require the obligor to return the individual to ICE. A smaller number of these bonds (5.6 percent) are known as "voluntary departure bonds", which require the individual to prove that they have left the country.[3]

Total Number of Immigration Bonds Posted Each Month

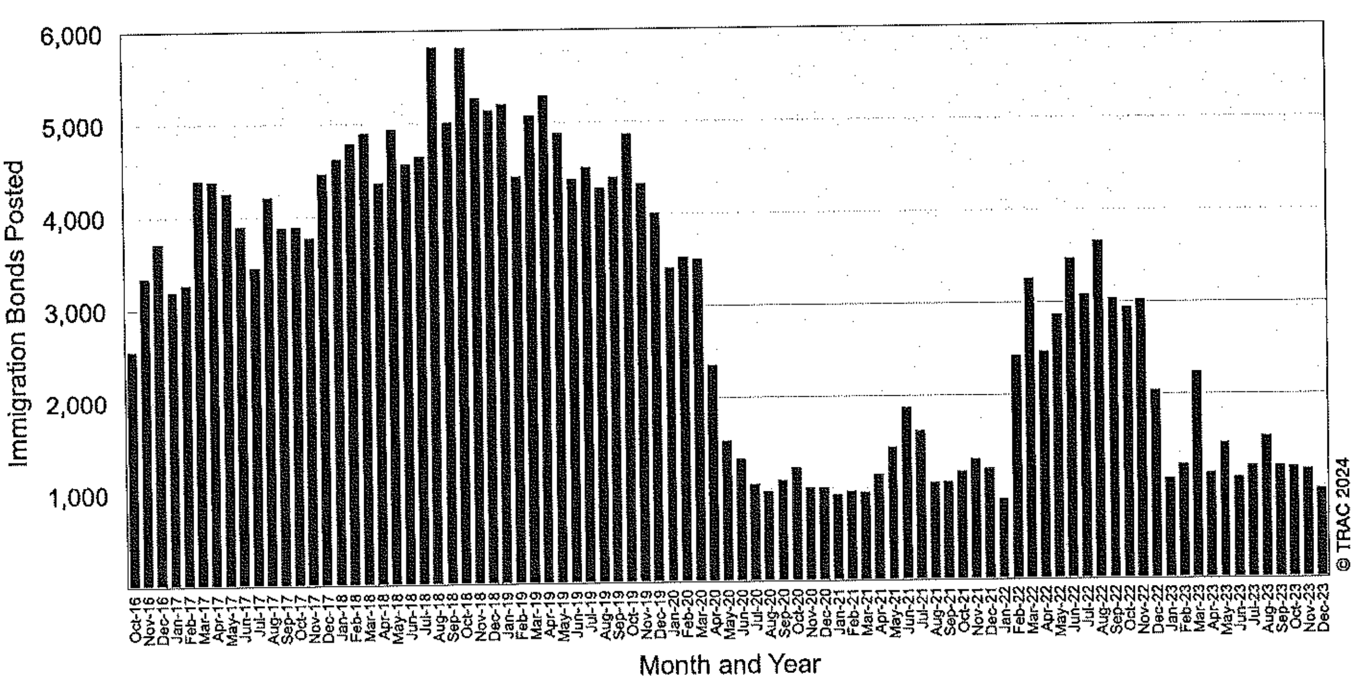

Figure 1. Total Number of Immigration Bonds Posted Each Month

The effects of the COVID-19 pandemic are clear starting in early FY 2020. The pandemic led to a decline in detention numbers overall, and therefore logically appears to have also led to a decline in the number of people who might be eligible for bond.

Notably, however, the total number of people in detention was not the only factor driving bond numbers. The total bonds posted remained mostly low until February 2022 when they began to increase from around 1,000 per month to over 2,000 per month and reached as high as 3,662 in August 2022 before declining again by January. Over this period, ICE's detained population increased, but not three-fold to mirror the growth of bonds posted. In mid-February 2022, ICE reported detaining 19,948 people. This number increased to 24,127 in mid-August—a relatively modest increase compared to the growth of bond numbers. By the start of 2023, the total bond numbers dropped again to just over 1,000 per month where, except for March, they remained until the end of 2023. Total posted bonds remained low even though ICE's detained population increased throughout 2023, from 20,892 in mid-January to 36,263 in mid-December.[4]

These findings suggest that while the total detained population certainly contributed to the number of bonds posted, other factors, including policy decisions of the administration at the time, also influenced how many people were granted bond and ultimately posted bond.

Bond Amounts

Table 1 below shows the total number of bonds posted each fiscal year since 2017, as well as the median bond amounts for each year and the total amount of all bonds posted in each fiscal year.

Of the $2 billion posted for immigration bonds over seven full fiscal years and the first three months of FY 2024, about one-fourth– or $525,130,102 – was posted in FY 2019 alone. In that year, 58,763 bonds were posted, the highest number over this limited period of time, with a median bond amount of $7,500.

The total number of bonds and the aggregate bond amounts increased from FY 2017 to FY 2019, the first three years of the Trump administration, a time when detention numbers were also on the rise and reached 55,654 in August 2019 according to ICE's detention data releases. The median immigration bond overall was $6,000, with the highest annual median of $8,000 in 2020 and the lowest annual median of $3,000 in 2022.

Table 1. ICE Bonds Posted by Fiscal Year

Fiscal Year	Bonds Posted	Median Bond	Total Bond Amount Posted
FY 2017	44,682	$7,500	$378,454,445

Fiscal Year	Bonds Posted	Median Bond	Total Bond Amount Posted
FY 2018	55,862	$6,000	$442,230,740
FY 2019	58,763	$7,500	$525,130,102
FY 2020	32,087	$8,000	$307,447,775
FY 2021	14,398	$5,000	$90,950,625
FY 2022	28,943	$3,000	$144,967,900
FY 2023	20,329	$4,000	$112,189,050
FY 2024*	3,374	$5,000	$21,132,300
Total	258,438	$6,000	$2,022,502,937

*Data through nearly the end of Q1 FY 2024 (through December 27, 2023).

Bonds by Location

Immigration bonds typically have to be posted at one of ICE's field offices.[5] Figure 2 shows the top 10 locations where immigration bonds were posted based on the total number of bonds over the period of these data and Table 2 provides a list of the top 25 locations for posting bond. The location with the most detention bonds posted is ICE's detention facility in Eloy, Arizona where over 22,500 bonds have been posted since FY 2017 for a total of nearly $185 million—although the median bond amount was relatively low at $3,000 compared to other locations.

The ICE office in Adelanto, California—the same location as ICE's Adelanto detention facility, which may be close to shutting down[6] —received over 10,000 bonds in total. This was on par with other facilities in Miami, Oakdale, and Florence, but what made Adelanto stand out was the median bond amount of $15,000—far higher than the other top facilities listed here.

Top Ten Locations by Total Number of Posted Immigration Bonds

FY 2017 to Q1 FY 2024

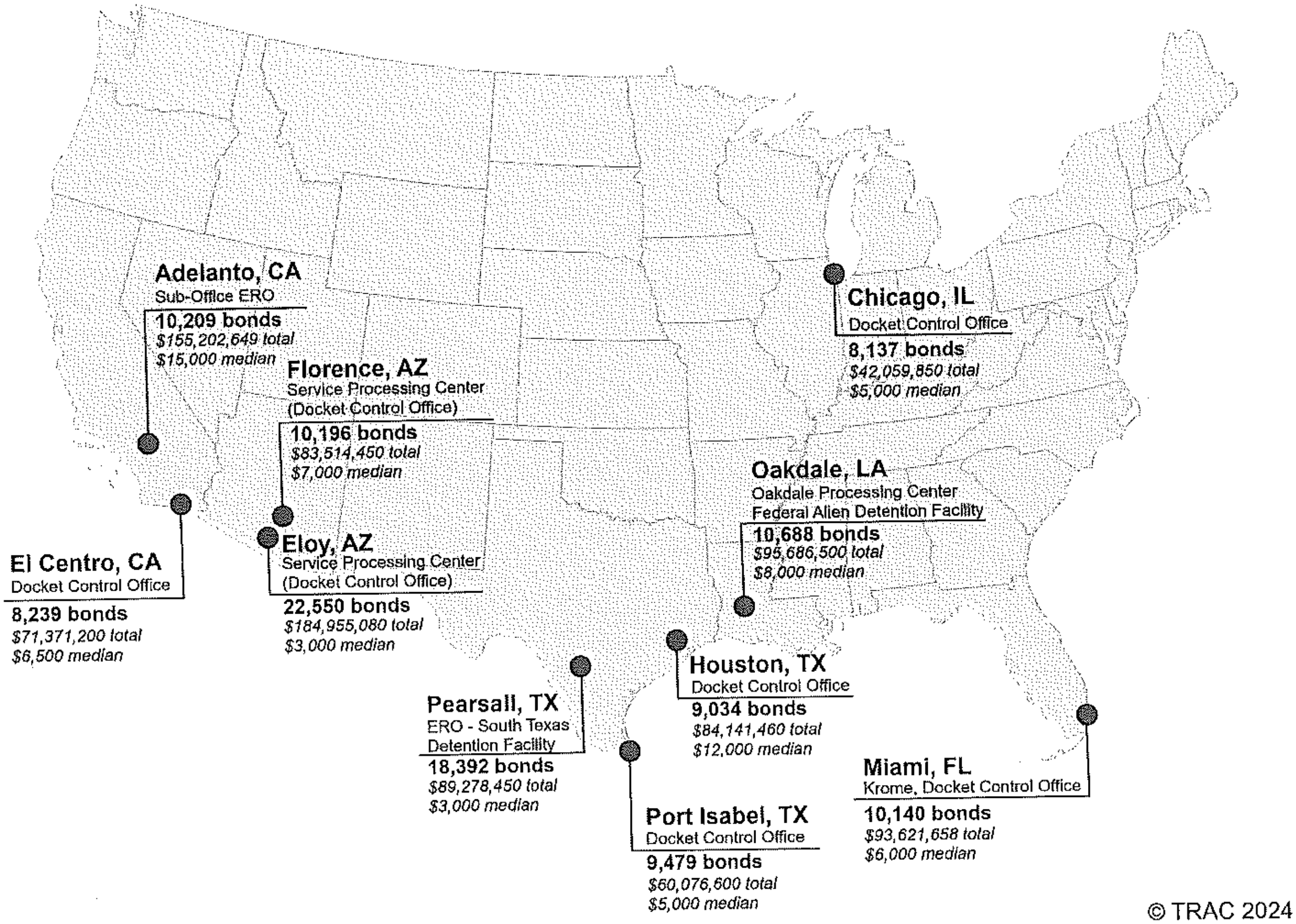

Figure 2. Map of Top 10 Sites by Total Numbers of Bonds Posted, FY 2017 to Q1 FY 2024.

Table 2. Top 25 Sites by Total Numbers of Bonds Posted, FY 2017 to Q1 FY 2024.

Bond Posted Site	Bonds Posted	Total Amount Posted	Median Bond Posted
Eloy, AZ	22,550	$184,955,080	$3,000
South Texas, TX	18,392	$89,278,450	$3,000
Oakdale Processing Center, LA	10,688	$95,686,500	$8,000
Adelanto, CA	10,209	$155,202,649	$15,000
Florence, AZ	10,196	$83,514,450	$7,000
Krome, Miami, FL	10,140	$93,621,658	$6,000
Port Isabel, TX	9,479	$60,076,600	$5,000
Houston, TX	9,034	$84,141,460	$12,000
El Centro, CA	8,239	$71,371,200	$6,500
Chicago, IL	8,137	$42,059,850	$5,000
Prairieland Detention Facility, Alvarado, TX	7,864	$50,482,700	$5,000
Atlanta, GA	6,294	$66,287,950	$12,000
Stewart, GA	6,278	$59,858,900	$7,500

Bond Posted Site	Bonds Posted	Total Amount Posted	Median Bond Posted
CDF Denver, CO	6,106	$29,659,750	$4,000
Tacoma, WA	5,689	$76,858,900	$10,000
Hutto, TX	5,481	$25,496,900	$2,500
El Paso, TX	5,100	$29,759,250	$5,000
Washington, DC	4,624	$29,594,012	$5,000
Newark, NJ	4,454	$39,006,350	$7,500
Laredo, TX	3,964	$25,036,200	$5,000
York, PA	3,936	$31,747,750	$7,000
Montgomery County, TX	3,803	$37,172,500	$10,000
Las Vegas, NV	3,798	$20,367,650	$5,000
Batavia, NY	3,583	$37,256,300	$10,000
Jena, LA	3,461	$47,956,525	$15,000

Footnotes

[1]^ Although bonds are issued for immigrants, who are described as the "principle" of a bond, the "obligor" is the person who actually pays the bond at a local ICE office.

[2]^ Like any bond system, much of the $2 billion paid into immigration bonds is, in principle, returned to obligors once the requirements of the bond have been satisfied and the bond is "canceled." When immigrants (and their obligors) do not meet the requirements of a bond, that bond is considered "breached" and the money may be forfeited (with incremental financial penalties for delayed compliance). Unlike criminal bonds, immigration bonds are required to be paid in full.

[3]^ The remaining bond types which are both less than 1.0 percent of the total, are order of supervision bonds, which are issued for immigrants after receiving a removal order, and public charge bonds, which are issued when an immigrant is deemed at risk of becoming a public charge. There were only 898 orders of supervision bonds and 2 public charge bonds recorded as issued in these data.

[4]^ Data on the total numbers of people held in detention are taken from ICE's detention data releases. Although ICE does not maintain a public repository of past data, TRAC maintains these data online here: https://tracreports.org/immigration/detentionstats/pop_agen_table.html.

[5]^ In 2023 ICE announced the Cash Electronic Bonds Online (CeBONDS) system that allows obligors to register and pay bonds online using electronic payments. The data provided to TRAC does not provide any indication about which bonds, if any, were posted using the new online system.

[6]^ See reporting from the L.A. Times here: "One of California's largest ICE detention centers could close. Staff urge Biden to keep it open."

TRAC is a nonpartisan, nonprofit data research project founded in 1989. Its public website has moved from trac.syr.edu to tracreports.org. For more information, contact info@tracreports.org.

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3

Executive Office for Immigration Review
U.S. Department of Justice

EOIR POLICY MANUAL

Part II - OCIJ Immigration Court Practice Manual

8.3 - Bond Proceedings

(a) In General

In certain circumstances, an alien detained by the Department of Homeland Security (DHS) can be released from custody upon the payment of bond.

Initially, the bond is set by DHS. Upon the alien's request, an Immigration Judge may conduct a "bond hearing," in which the Immigration Judge has the authority to redetermine the amount of bond set by DHS.

Bond proceedings are separate from removal proceedings. For guidance on entering an appearance in bond proceedings, see Part I, Chapter 5.3(a)(2) (Scope of Representation); see also generally 8 C.F.R. §§ 1003.17(a), 1003.19, 1236.1.

(b) Jurisdiction

Except as provided in subsections (1) through (3), below, an Immigration Judge generally has jurisdiction to conduct a bond hearing if the alien is in DHS's custody. The Immigration Judge also has jurisdiction to conduct a bond hearing if the alien is released from DHS custody upon payment of a bond and, within seven (7) days of release, files a request for a bond redetermination with the Immigration Court.

An Immigration Judge has jurisdiction over such cases even if a charging document has not been filed. In addition, an Immigration Judge has jurisdiction to rule on whether he or she has jurisdiction to conduct a bond hearing.

(1) No jurisdiction by regulation - By regulation, an Immigration Judge does not have jurisdiction to conduct bond hearings involving:

- aliens in exclusion proceedings;

- arriving aliens, as defined in 8 C.F.R. § 1001.1(g), in removal proceedings;
- aliens ineligible for release on security or related grounds; and
- aliens ineligible for release on certain criminal grounds.

8 C.F.R. § 1003.19(h)(2)(i).

(2) No jurisdiction by mootness - A bond becomes moot, and the Immigration Judge loses jurisdiction to conduct a bond hearing, when an alien:

- departs from the United States, whether voluntarily or involuntarily;
- is granted relief from removal by the Immigration Judge, and DHS does not appeal;
- is granted relief from removal by the Board of Immigration Appeals (Board);
- is denied relief from removal by the Immigration Judge, and the alien does not appeal; or
- is denied relief from removal by the Board.

(3) Other - Immigration Judges do not have bond jurisdiction in certain limited proceedings. See generally Chapter 6 (Other Common Proceedings before Immigration Judges).

(c) Requesting a Bond Hearing

A request for a bond hearing is ordinarily made in writing. In addition, except as provided in subsection (3), below, a request for a bond hearing may be made orally. If available, a copy of the Notice to Appear (Form I-862) should be provided.

(1) Contents - A request for a bond hearing should state:

- the full name and alien registration number ("A number") of the alien;
- the bond amount set by the DHS; and
- if the alien is detained, the location of the detention facility.

(2) No fee - There is no filing fee to request a bond hearing.

(3) Where to request - A request for a bond hearing is made, in order of preference, to:

- if the alien is detained, the immigration court having jurisdiction over the alien's place of detention;
- the immigration court with administrative control over the case; or
- the Office of the Chief Immigration Judge for designation of an appropriate Immigration Court.

8 C.F.R. § 1003.19(c). See Chapter 2.1(a)(1) (Administrative control courts).

(4) Multiple requests - If an Immigration Judge or the Board has previously ruled in bond proceedings involving an alien, a subsequent request for a bond hearing must be in writing, and the alien must show that his or her circumstances have changed materially since the last decision. In addition, the request must comply with the requirements listed in subsection (c)(1), above. 8 C.F.R. § 1003.19(e).

(d) Scheduling a Hearing

In general, after receiving a request for a bond hearing, the immigration court schedules the hearing for the earliest possible date and notifies the alien and DHS.

In limited circumstances, an Immigration Judge may rule on a bond redetermination request without holding a hearing.

If an alien requests a bond hearing during another type of hearing (for example, during a master calendar hearing in removal proceedings), the Immigration Judge may:

- stop the other hearing and conduct a bond hearing on that date;
- complete the other hearing and conduct a bond hearing on that date;
- complete the other hearing and schedule a bond hearing for a later date; or
- stop the other hearing and schedule a bond hearing for a later date.

(e) Bond Hearings

In a bond hearing, the Immigration Judge determines whether the alien is eligible for bond. If the alien is eligible for bond, the Immigration Judge considers whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for further immigration proceedings, and whether the alien is a threat to national security. In general, bond hearings are less formal than hearings in removal proceedings.

(1) Location - Generally, a bond hearing is held at the immigration court where the request for bond redetermination is filed.

(2) Representation - In a bond hearing, the alien may be represented by a practitioner of record at no expense to the government.

(3) Generally not recorded - Bond hearings are generally not recorded.

(4) Record of Proceedings - The Immigration Judge creates a record, which is kept separate from the Records of Proceedings for other Immigration Court proceedings involving the alien.

(5) Evidence - Documents for the Immigration Judge to consider are filed in open court or, if the request for a bond hearing was made in writing, together with the request. Since the

Record of Proceedings in a bond proceeding is kept separate and apart from other Records of Proceedings, documents already filed in removal proceedings must be resubmitted if the filing party wishes them to be considered in the bond proceeding.

If documents are filed in advance of the hearing, the documents should be filed together with the request for a bond hearing. If a document is filed in advance of the hearing but separate from the request for a bond hearing, it should be filed with a cover page labeled "BOND PROCEEDINGS." See Appendix D (Cover Pages).

Unless otherwise directed by the Immigration Judge, the deadlines and requirements for filings in Chapter 2 (Filing with the Immigration Court) do not apply in bond proceedings.

(6) Conduct of hearing -While the Immigration Judge decides how each hearing is conducted, parties should submit relevant evidence and:

- the DHS should state whether a bond has been set and, if a bond has been set, the amount of the bond and the DHS justification for that amount; and
- the alien or the alien's practitioner of record should make an oral statement (an "offer of proof" or "proffer") addressing whether the alien's release would pose a danger to property or persons, whether the alien is likely to appear for future immigration proceedings, and whether the alien poses a danger to national security.

At the Immigration Judge's discretion, witnesses may be placed under oath and testimony taken. However, parties should be mindful that bond hearings are generally briefer and less formal than hearings in removal proceedings.

(7) Decision -The Immigration Judge's decision is based on any information that is available to the Immigration Judge or that is presented by the parties. See 8 C.F.R. § 1003.19(d).

Usually, the Immigration Judge's decision is rendered orally. If either party appeals, the Immigration Judge prepares a written decision based on notes from the hearing, however the record will not be transcribed.

(f) Appeals

Either party may appeal the Immigration Judge's decision to the Board. If the alien appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending. If DHS appeals, the Immigration Judge's bond decision remains in effect while the appeal is pending unless the Board issues an emergency stay or the decision is automatically stayed by regulation. See 8 C.F.R. §§ 1003.6(c), 1003.19(i).

For detailed guidance on when Immigration Judges' decisions in bond proceedings are stayed, parties should consult Part III of this manual, which is available on the Executive Office for Immigration Review website.

< 8.2 - Detained Juveniles

8.4 - Detention Review >

Executive Office for Immigration Review

4

UNITED STATES DISTRICT COURT

for the

Western District of Texas

Martin Lopez Cruz *Plaintiff/Petitioner* v. KRISTI NOEM, et al. *Defendant/Respondent*	)))))	Civil Action No. 26-cv-299

APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Short Form)

I am a plaintiff or petitioner in this case and declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief requested.

In support of this application, I answer the following questions under penalty of perjury:

1. *If incarcerated.* I am being held at: T. Don Hutto Detention Center. If employed there, or have an account in the institution, I have attached to this document a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months for any institutional account in my name. I am also submitting a similar statement from any other institution where I was incarcerated during the last six months.

2. *If not incarcerated.* If I am employed, my employer's name and address are:
N/A

My gross pay or wages are: $ __________, and my take-home pay or wages are: $ __________ per *(specify pay period)* N/A.

3. *Other Income.* In the past 12 months, I have received income from the following sources *(check all that apply)*:

(a) Business, profession, or other self-employment	☑ Yes	☐ No
(b) Rent payments, interest, or dividends	☑ Yes	☐ No
(c) Pension, annuity, or life insurance payments	☐ Yes	☑ No
(d) Disability, or worker's compensation payments	☐ Yes	☑ No
(e) Gifts, or inheritances	☐ Yes	☑ No
(f) Any other sources	☐ Yes	☑ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

I am self-employed and typically earns between $12,000 and $15,000 monthly from his business. Additionally, I receive $1,400 monthly in rental income ($600 and $800 respectively) from two units in a multi-family complex. However, since my detention in January 2026, my business income has ceased entirely ($0.00). While rental income may continue, those funds are currently being redirected to pay the ongoing mortgages and property taxes for the same properties.

4. Amount of money that I have in cash or in a checking or savings account: $ [redacted].

5. Any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value that I own, including any item of value held in someone else's name *(describe the property and its approximate value)*:

[redacted]

6. Any housing, transportation, utilities, or loan payments, or other regular monthly expenses *(describe and provide the amount of the monthly expense)*:

N/A

7. Names (or, if under 18, initials only) of all persons who are dependent on me for support, my relationship with each person, and how much I contribute to their support:

I am the sole financial supporter for my Wife and four U.S. citizen children, [redacted] DOB: [redacted] Temple, TX. [redacted], DOB: [redacted] Temple, TX. [redacted], DOB: [redacted] Temple, TX and [redacted], DOB: [redacted] Temple, TX

8. Any debts or financial obligations *(describe the amounts owed and to whom they are payable)*:

N/A

Declaration: I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Date: 02/16/2026

Applicant's signature

Jeffrey A. Peek

Printed name