

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

ABUNDIO MELO MARTINEZ

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

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

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

DEFENDANTS

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

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

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

Attorneys (If Known)

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

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

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

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

Click here for: Nature of Suit Code Descriptions.

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 2241Brief description of cause:
Suit to seek relief from unlawful immigration detention

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
2/23/2026

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

1

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ABUNDIO MELO MARTINEZ

Petitioner

v.

Case No. 26-cv-1156

BOBBY THOMPSON, Warden at South Texas Detention
Center (Pearsall);

MIGUEL VERGARA, San Antonio Field Office
Director, ICE Enforcement and Removal Operations;

TODD LYONS, Acting Director, U.S. Immigration and
Customs Enforcement;

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

PAMELA JO BONDI, Attorney General, U.S.
Department of Justice

Respondents

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

COMES NOW, Petitioner Abundio Melo Martinez, through undersigned counsel, and brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner has been illegally detained in Immigrations and Customs Enforcement (“ICE”) custody since on or around September 22, 2025, in violation of the Constitution. This Court should order his immediate release.

I. INTRODUCTION

1. The Petitioner Mr. Melo Martinez is a 39-year-old native and citizen of Mexico who entered the United States in 2007. He has resided in Texas for more than fifteen (15) years with his Legal Permanent Resident wife Marilu Rivera Trejo and their three (3) U.S Citizen children. [REDACTED] Son DOB: [REDACTED], Niederwald, TX, and [REDACTED] Son DOB [REDACTED] USA Niederwald, TX and [REDACTED] DOB: [REDACTED] Niederwald, TX, who was born while Petitioner is still detained. See Exhibit 1 Petitioner identification documents and Exhibit 2 birth certificates for relatives.

2. On or around September 22, 2025 he was apprehended by ICE after a routinary traffic stop. No criminal or civil violations were charged on him. He was served with a Notice to Appear and Placed in removal proceedings. See Exhibit 3 Notice to appear.

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

Reg. 35,409, 35,412 (July 23, 2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Clark v. Martinez*, 543 U.S. 371 (2005).

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

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

II. JURISDICTION

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

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

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

9. This district court has subject-matter jurisdiction under 28 U.S.C. § 2241 because none of the INA's jurisdiction-stripping provisions bar review of a habeas petition that challenges the legality of civil immigration detention. Section 1252(b)(9) applies only when a noncitizen seeks judicial review of an order of removal, the government's decision to initiate removal proceedings, or the process by which removability will be determined.

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

11. Section 1252(e)(3) also does not bar jurisdiction because it governs only systemic challenges to the validity of expedited-removal regulations or written policies. Courts consistently hold that § 1252(e)(3) is limited to such system-wide claims and does not apply to individualized or as-applied detention challenges. See *Shunaula v. Holder*, 732 F.3d 143, 147 (2d Cir. 2013); *Rodrigues v. McAleenan*, 435 F. Supp. 3d 731, 737 (N.D. Tex. 2020); *Mata Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *6 (W.D.N.Y. July 16, 2025). A habeas petition challenging whether the government has lawful statutory

authority to detain a long-term resident under § 1225 rather than § 1226 is an as-applied challenge to individual custody, not a challenge to the “validity of the system.” Because the petition contests only the statutory basis for detention and seeks no review of removal proceedings, the district court retains full subject-matter jurisdiction to decide the claim.

III. VENUE

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

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

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

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

15. Pursuant to 28 U.S.C. § 2243, Petitioner Mr. Melo Martinez respectfully requests that the Court issue an order to all Respondents requiring them to show cause why the Petitioner's Petition for Writ of Habeas Corpus and Complaint for Declaratory and Injunctive Relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 1331; Article I, § 9, cl. 2 of the United States Constitution; the All Writs Act, 28 U.S.C. § 1651; the Administrative Procedure Act, 5 U.S.C. § 701; and the Declaratory Judgment Act, 28 U.S.C. § 2201 should not be granted and why Respondents should not be ordered to release Petitioner from detention.

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

V. PARTIES

17. Petitioner is currently detained at the South Texas Detention Center, Pearsall, Texas. He was arrested and detained on or around September 2025, by ICE ERO.

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

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

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

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

22. Respondent Pamela Jo Bondi is sued in her official capacity as the Attorney General of the United States Department of Justice. In this capacity, Respondent Bondi is responsible for representing the United States in legal matters, supervise and direct the administration and operation of the Department of Justice's many agencies, which include

the Executive Office of Immigration Appeals (“EOIR”) and the Office of Immigration Litigation (“OIL”). Respondent Bondi’s office is located in the United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, District of Columbia, 20530.

VI. EXHAUSTION OF ADMINISTRATIVE REMEDIES

23. Petitioner Mr. Melo Martinez contends that exhaustion of remedies is not required for this claim, but should it be deemed so, he argues that he has exhausted all available remedies Specifically, Petitioner has:

24. Filed an immigration bond request to be released from detention December 29, 2025, which was denied under allegations of lack of Jurisdiction by the immigration judge. See Exhibit 4 Bond request filed and Exhibit 5 Bond order denied for lack of Jurisdiction

25. Requesting his deportation officer to release him under another grant of parole or any other legal mechanism they see fit.

26. No other adequate remedy is available to Petitioner. The immigration court Practice Manual clearly indicated that they will not normally entertain interlocutory appeals such as the one that would be required for this case limiting interlocutory appeals to instances involving either important jurisdictional questions regarding the administration of the immigration laws or recurring questions in the handling of cases by Immigration Judges. See *Matter of K-*, 20 I&N Dec. 418 (BIA 1991) and EOIR Practice Manual 4.14. Currently, appeals with the Immigration Board of Appeals are taking approximately 6 months to be adjudicated and Respondent is to be set for an Individual hearing on the merits soon, which would make such filing futile.

27. Petitioner Mr. Melo Martinez alternatively contends that exhaustion is not required. Mr. Melo Martinez respectfully submits that the exhaustion of administrative remedies requirement should be waived in this case under well-established Fifth Circuit precedent recognizing exceptions to the exhaustion doctrine. While exhaustion is generally required before seeking habeas relief, the Fifth Circuit has consistently recognized exceptions where administrative remedies are unavailable, inappropriate, or futile.

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

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

30. However, this case falls squarely within the Fifth Circuit's recognition that exceptions to exhaustion are appropriate "where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought." *Hinojosa v. Horn*, 896 F.3d 305. The severe restrictions on interlocutory appeals render this administrative remedy effectively "unavailable" within the meaning established by Fifth Circuit precedent. *Fuller v. Rich*, 11 F.3d 61 (5th Cir. 1994)

31. Even if interlocutory appeals were theoretically available, attempting to exhaust this remedy would be "a patently futile course of action" under Fifth Circuit standards. *Gallegos-Hernandez v. United States*, 688 F.3d 190. Currently, appeals with the Board of Immigration Appeals take approximately six months to be adjudicated. This timeline renders any administrative appeal process meaningless for addressing Petitioner's detention concerns.

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

33. No state remedies are available. Additionally, there is no state relief available to Petitioner because the Immigration Court is not subject to state law as it falls under Federal Law Regulations. This further demonstrates that there is no viable state or administrative remedy that Petitioner can pursue before filing with the Federal Court. The

Fifth Circuit has recognized that exhaustion is not required where administrative remedies are "unavailable." *Hinojosa v. Horn*, 896 F.3d 305. The absence of any state remedy due to federal preemption of immigration matters renders alternative remedies "unavailable" within the meaning of Fifth Circuit precedent. *Gallegos-Hernandez v. United States*, 688 F.3d 190.

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

35. Because immigration courts are administrative bodies, state courts have no jurisdiction to review or disturb their decisions. Congress made this explicit through 8 U.S.C. § 1252(a)(5), which provides that review of removal-related decisions lies solely and exclusively in the federal courts of appeals. That provision not only preempts state jurisdiction but also makes clear that state habeas, state mandamus, or any other state-court mechanism cannot reach or correct an EOIR determination. State courts lack authority to review federal executive custody, cannot compel EOIR to act, and cannot order

the release of a detainee held under federal immigration authority. Because the petitioner's challenge concerns the statutory basis for federal detention and the Immigration Court's refusal to exercise jurisdiction, no state remedy can offer relief, render a decision, or even assert lawful authority over the underlying agency action.

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

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

exhaust such remedies would be patently futile. *Gallegos-Hernandez v. United States*, 688 F.3d 190.

38. Exhaustion would be futile because the Board of Immigration Appeals has already issued binding precedent that categorically forecloses any possibility of administrative relief for noncitizens who entered without inspection. Through *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025) and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the BIA has adopted a uniform and authoritative interpretation holding that Immigration Judges lack jurisdiction to conduct custody redetermination hearings for individuals classified as “present in the United States without admission.” In *Yajure Hurtado*, the BIA declared that the “plain language” of INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), requires mandatory, unreviewable detention for virtually all applicants for admission not placed in expedited removal. *Id.* at 219–220. By construing § 235(b)(2)(A) as a sweeping detention mandate, the BIA effectively displaces § 1226 and eliminates discretionary custody review for nearly all long-term residents who entered without inspection.

39. Because these published decisions articulate the BIA’s definitive construction of the statute, further administrative review would be incapable of providing relief. The BIA has conclusively determined that detention under § 235(b)(2)(A) must continue “until removal proceedings have concluded,” based on its reading of *Jennings v. Rodriguez*, 583 U.S. 281, 299 (2018). *Yajure Hurtado*, 29 I&N Dec. at 225. This binding interpretation is the precise reason the Immigration Judge decline to exercise jurisdiction over Petitioner’s bond request. In light of these precedential determinations, the administrative process offers no mechanism by which Petitioner could

obtain a contrary ruling or secure release. Requiring exhaustion under these circumstances would impose unnecessary delay, prolong unlawful detention, and yield no meaningful opportunity for relief. Accordingly, exhaustion should be excused because the BIA's entrenched and controlling precedent renders any further administrative remedy futile.

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

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

to advance a position that the court had already rejected as unlawful. *See* Exhibit 6 AILA Practice Advisory.

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

43. The court expressly found that the posture of this case had changed because of immigration judges’ uniform noncompliance and the government’s guidance encouraging that result. Those findings undermine any claim that continued denial of bond hearings reflects good-faith disagreement or unresolved legal ambiguity. The court entered final judgment precisely because immigration adjudicators were using the absence of finality as a pretext to disregard its rulings. Continued refusal to grant bond hearings after that clarification cannot be justified on the same grounds the court has already rejected.

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

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

46. Exhaustion of administrative remedies is futile because the agencies responsible for implementing *Maldonado Bautista* have categorically refused to provide the relief that the District Court has declared binding on the entire class. The AILA advisory confirms that DOJ “has instructed Immigration Judges to ignore the Court’s order,” resulting in across-the-board denials of bond hearings and repeated assertions that Immigration Judges lack jurisdiction under *Matter of Yajure Hurtado*. *Id.* See Exhibit 6 AILA Practice Advisory.

47. A remedy is not “available” when the adjudicator refuses to apply the controlling legal standard. The administrative system is therefore structurally incapable of protecting petitioner’s rights: Immigration Judges are rejecting class wide declaratory relief, insisting incorrectly, that the judgment is not binding or final, and continuing to treat class members as mandatorily detained under § 1225(b)(2). Because the agency has taken the position that it will not follow the federal court’s ruling, exhaustion would be a meaningless formality that prolongs unconstitutional detention—an outcome the habeas writ exists to prevent.

48. Even if the petitioner attempted to exhaust administrative remedies, the immigration courts cannot grant the relief sought because they are operating under directives that contradict binding federal law. The AILA advisory explains

that Immigration Judges are grounding their refusals in legally erroneous rationale, including the claims that *Maldonado Bautista* did not provide class wide relief or that the declaratory judgment is not final—positions flatly contradicted by the court’s own language.

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

50. On February 6, 2026, the Fifth Circuit issued its opinion in **Buenrostro-Mendez v. Bondi**, No. 25-20496 (5th Cir. Feb. 6, 2026), holding that noncitizens classified as “applicants for admission” under 8 U.S.C. § 1225(b)(2)(A) may be detained without access to bond pending removal proceedings. The panel concluded that § 1225(b)(2)(A) applies to individuals present in the United States without lawful admission, even where they entered years earlier, and that the statute does not provide for bond once a person is placed within that framework. The court reversed district court habeas grants that had ordered bond hearings and remanded for proceedings consistent with that statutory interpretation.

51. Because the Fifth Circuit has now definitively construed § 1225(b)(2)(A) to foreclose bond eligibility for individuals treated as applicants for admission, the administrative process within EOIR cannot provide the relief Petitioner seeks. Immigration Judges and the Board of Immigration Appeals are bound by circuit precedent and therefore lack authority to grant a custody redetermination hearing in circumstances governed by *Buenrostro-Mendez*. Any attempt to pursue interlocutory review or further administrative appeal would therefore be futile, as the agency is constrained by binding precedent that categorically precludes the requested relief. This decision further confirms that exhaustion would serve no practical purpose under existing Fifth Circuit law.

52. It is precisely because circuit precedent now forecloses statutory bond relief that Petitioner brings this challenge on constitutional grounds. The relief sought here is not merely discretionary release under the statute, but protection of Petitioner's Fifth Amendment due process rights and related constitutional guarantees against prolonged detention without meaningful individualized review. Constitutional claims fall squarely within the historic core of habeas corpus. Where statutory interpretation, as articulated in *Buenrostro-Mendez*, eliminates any possibility of administrative bond review, habeas jurisdiction remains available to assess whether continued detention comports with due process and other constitutional protections. Accordingly, this petition invokes this Court's authority to review the legality of custody under constitutional standards that lie beyond the limited remedial power of the immigration courts.

53. Because the Petitioner Melo Martinez has exhausted his administrative remedies to the extent required by law, his only remedy is by way of this judicial action. Accordingly, the Petitioner has no further recourse within the immigration court

system or the Board of Immigration Appeals. The exhaustion requirement is therefore satisfied. In light of the Immigration court decisions to decline jurisdiction to hear custody redetermination requests, habeas corpus is the only mechanism available to challenge Petitioner's ongoing detention and to vindicate constitutional rights at stake.

VII. STATEMENT OF FACTS

54. The Petitioner Mr. Melo Martinez is a 39-year-old native and citizen of Mexico who entered the United States in 2007. He has resided in Texas for more than fifteen (15) years with his Legal Permanent Resident wife Marilu Rivera Trejo and their three (3) U.S Citizen children. [REDACTED] Son DOB: [REDACTED], Niederwald, TX, and [REDACTED] Son DOB [REDACTED] USA Niederwald, TX and [REDACTED] DOB: [REDACTED] Niederwald, TX, who was born while Petitioner is still detained. See Exhibit 1 Petitioner identification documents and Exhibit 2 birth certificates for relatives.

55. On or around September 22, 2025, Petitioner was pulled over during a routine traffic stop for having tinted lights in the vehicle. No criminal violations were charged on him, but he was transferred to ICE custody by ICE ERO placed in removal proceedings and served with a Notice to Appear. He is currently detained at the South Texas Detention Center. See Exhibit 3 Notice to appear and Exhibit 7 ICE Detainee locator information.

56. On or around July 2024 Petitioner filed a Self-Petition under the Violence Against Women Act (VAWA) pursuant to INA § 204(a)(1), which is currently pending. Petitioner has already complied with administrative requirements, including attending his

scheduled biometrics appointment. See Exhibit 15 Biometrics Appointment Notice for Form I-360.

57. On or about November 17, 2025, Petitioner filed an Application for Cancellation of Removal pursuant to INA § 240A(b)(1), as he is prima facie eligible for relief based on his continuous physical presence, good moral character, and lack of disqualifying convictions. The application is predicated on the exceptional and extremely unusual hardship his removal would cause to his qualifying Legal Permanent Resident (LPR) spouse, his LPR father, and his two U.S. citizen children. Petitioner's spouse suffers from a documented history of severe depression and self-harm, placing her at high risk for postpartum depression following her 2025 pregnancy; additionally, Petitioner provides essential care for his father's chronic diabetes and ensures his children's access to specialized educational opportunities unavailable elsewhere. Despite presenting a well-founded case with clear legal and factual merit, Petitioner's application was denied at his individual hearing on January 13, 2026. This denial occurred notwithstanding the substantial evidence proving that Petitioner's removal would result in the exact type of severe hardship the statute is designed to prevent under 8 U.S.C. § 1229b(b)(1)(D). See Exhibit 8 EOIR 42B Related Documents and Exhibit 9 Final Decision of the Immigration Judge.

58. On or around December 29, 2025 Petitioner filed a request for bond redetermination to the immigration Judge. The immigration Judge denied the request due to lack of Jurisdiction on January 7, 2026. See Exhibit 4 Immigration bond request and Exhibit 5 Bond order.

59. On February 12, 2026, Petitioner timely filed a Notice of Appeal with the Board of Immigration Appeals (BIA) challenging the IJ's denial of relief and the Order of Removal. This appeal remains pending. Currently, the BIA is taking upwards of six months to resolve appeals for detained petitioners. Given that Petitioner has already been in immigration custody for **five (5)** months, the addition of at least six more months for the BIA's adjudication would prolong Petitioner's total detention to approximately **eleven (11)** months. Such an extended and indefinite period of confinement, without an individualized bond hearing, constitutes an unreasonable delay that violates Petitioner's due process rights. See Exhibit 10 Notice of Appeal and Filing Fee Receipt filed on ECAS.

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

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

VIII. LEGAL FRAMEWORK

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.

62. 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.

63. 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.

64. 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 of 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.

65. 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.

66. 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.

67. 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

68. 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.

69. 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.*

70. Petitioner has been detained for approximately five (5) months since September 22, 2025, a sum of 154 days; his case is now in the appellate phase following the Immigration Judge's denial of relief on January 13, 2026, which means that his removal order is not final until it is reviewed and adjudicated by the Board of Immigration Appeals (BIA). Petitioner timely filed his Notice of Appeal with the BIA on February 12, 2026. Currently, immigration appeals for detained petitioners are taking over six (6) months to

be adjudicated, which would prolong Petitioner's detention to a total of at least eleven (11) months. Furthermore, Petitioner has a pending Self-Petition under the Violence Against Women Act (VAWA) pursuant to INA § 204(a)(1), which has been active with USCIS since 2024. Appellate review of cancellation of removal cases, compounded by the adjudication of independent visa petitions like VAWA, are complex and typically require extended proceedings—often lasting one to three years or more, given country-conditions evidence and administrative backlog. Absent any mechanism for individualized review, Petitioner faces a substantial risk of indefinite detention under penal conditions despite having a pending pathway to legal status, no criminal history, no disciplinary infractions, demonstrated compliance, and no individualized finding of danger or flight risk.

71. 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.

72. 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 two 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.

**PRESERVATION OF STATUTORY ARGUMENT FOR EN BANC OR
SUPREME COURT REVIEW**

73. 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:

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

- 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).

74. 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.

75. 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.

76. 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).

77. 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

78. 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).

79. 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 *Skidmore*. *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.

80. 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.

81. 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).

82. 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.

83. 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.

84. 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.

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

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

86. 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).

87. Petitioner, a 39-year-old native and citizen of Mexico who entered the United States in 2007, was placed in removal proceedings following a traffic stop on September 22, 2025. Unlike a typical enforcement case, Petitioner's proceedings have already reached a final decision by the Immigration Judge on January 13, 2026, which is currently under appellate review by the Board of Immigration Appeals (BIA). While Petitioner's application for Cancellation of Removal pursuant to INA § 240A(b)(1) remains a core component of his legal defense, he also has a pending Self-Petition under the

Violence Against Women Act (VAWA) pursuant to INA § 204(a)(1), filed with USCIS in 2024. Given his 18-year residence in the United States, his dual pathways to legal status, his lack of any criminal record, and his deep family ties, including his Legal Permanent Resident wife and three U.S. citizen children. Petitioner has every incentive to remain in compliance with the law and attend all future proceedings. His established history of stability and his multiple pending meritorious claims demonstrate that he poses no flight risk and no danger to the community.

88. 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.

89. Petitioner has been continuously detained in civil immigration custody since September 22, 2025, following a routine traffic stop. He is currently confined at the South Texas Detention Center in Pearsall, Texas. His case is currently pending appellate review; however, the appeal process is currently taking approximately six (6) months to be adjudicated for detained petitioners. This administrative delay will inevitably prolong Petitioner's detention to a total of at least eleven (11) months, further exacerbating the due process concerns regarding his continued confinement.

90. The circumstances of Petitioner's continued detention are particularly egregious and defy basic principles of due process. On January 7, 2026, Immigration Judge McKee R. Reid issued an order explicitly outlining that Petitioner's release is warranted. In a rare and significant move, Judge Reid provided a conditional order stating that, should

jurisdiction be found, Petitioner's request for a change in custody status be GRANTED. See Exhibit 5 Order of the Immigration Judge.

91. The IJ went as far as pre-determine that a monetary bond of \$3,500.00 is the appropriate and sufficient condition to ensure Petitioner's future appearances. This alternative order serves as a definitive judicial finding that Petitioner poses no flight risk and no danger to the community. Consequently, the only barrier to Petitioner's liberty is a jurisdictional technicality, forcing a man whom a Judge has already deemed 'releasable' to remain in penal confinement for what will likely be a total of eleven (11) months. Such a result is not only illogical but constitutionally unsustainable under the Fifth Amendment.

92. 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.

93. 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).

94. 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.

95. 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.

96. In this case, the constitutional injury is further compounded by the fact that an individualized assessment has already occurred yet remains legally unenforceable. While the Immigration Judge conducted a thorough review of Petitioner's custody factors and determined that he poses no danger or flight risk, the Judge found himself stripped of the authority to execute that finding due to the categorical bar imposed by *Yajure-Hurtado*. This legal impasse transforms Petitioner's civil detention into a punitive scheme that serves no legitimate governmental purpose. When a judicial officer has already determined that a Petitioner's release is warranted and safe but is prohibited from granting that release by a jurisdictional technicality, the continued confinement ceases to be a tool for immigration enforcement and becomes an unconstitutional form of indefinite punishment without constitutional justification.

97. 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.

98. 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.

99. 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 under the terms already established by the Immigration Judge; furthermore, this Court should order Respondents to recognize the individualized assessment already conducted, which found that Petitioner is neither a flight risk nor a danger to the community. Because a neutral decisionmaker has already determined that Petitioner's release is appropriate, the current confinement serves no legitimate purpose, and this Court should therefore direct his release without requiring a new hearing or further administrative delay.

**COUNT II: THE WARRANTLESS AND PRETEXTUAL ARREST OF
PETITIONER VIOLATED THE FOURTH AMENDMENT OF THE UNITED
STATES**

100. 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.

101. 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.

102. 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.

103. 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.

104. 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.

105. 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*.

106. 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.

107. 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.

108. 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.

109. 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.

110. *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).

111. 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.

112. 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.

113. 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.

114. *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.

Respondents' reliance on *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103 (2020), is misplaced.

115. 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.

115. 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.

116. 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.

117. 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.

118. 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**

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

120. 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)

121. Petitioner, who entered the United States in 2007, has resided in Texas for over fifteen years. On September 22, 2025, he was pulled over during a routine traffic stop; although no criminal charges were filed, he was transferred to ICE custody and placed in removal proceedings through the issuance of a Notice to Appear (NTA).

122. 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.

123. Petitioner has been continuously detained in civil immigration custody since September 2025, following a routine traffic stop. He is currently in ICE Custody at the South Texas Processing Center.

124. 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.

125. The circumstances of Petitioner's detention are particularly egregious because a neutral adjudicator has already evaluated the justification for his confinement. On January 7, 2026, Immigration Judge McKee R. Reid conducted a meaningful review of Petitioner's custody and determined that his continued detention was not justified by any risk of flight or danger to the community. However, despite this individualized finding, Petitioner remains incarcerated solely because the Immigration Judge found himself barred by the categorical holding in *Yajure-Hurtado* from issuing the very bond he deemed appropriate. Consequently, Petitioner is trapped in a constitutional vacuum: he has successfully demonstrated his eligibility for release before a neutral arbiter, yet he remains deprived of his liberty due to a jurisdictional impasse that renders his individualized hearing functionally meaningless.

126. 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).

127. 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.

128. 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.

129. With a current pending appeal with the BIA, Petitioner’s detention 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, despite an express judicial finding that his detention is not necessary to serve the government’s legitimate interests. The current legal impasse leaves the Immigration Court without the authority to properly execute its own order for release, thereby transforming Petitioner’s confinement into a purely arbitrary deprivation of liberty that lacks any valid regulatory or safety-based justification.

130. The constitutional infirmity here is not merely the length of detention, but the systemic failure of the custody process. Petitioner is detained pursuant to a regime in which:

- An Immigration Judge has already conducted an individualized assessment and expressly found that Petitioner poses no danger to the community and no flight risk, yet remains barred from granting release;
- DHS continues to enforce detention despite a judicial finding that such confinement is unnecessary to serve any legitimate government interest; and
- No neutral decisionmaker is currently empowered to execute the release order already deemed appropriate by the court, due to the categorical restrictions imposed by *Yajure-Hurtado*.

131. This creates an egregious situation where, despite having successfully met his burden before a neutral adjudicator, Petitioner remains incarcerated solely because of administrative directives that override judicial findings

132. 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).

133. The government's continued detention of Petitioner violates substantive due process because it denies him any possibility for release after an individualized assessment already determined that he is not a flight risk or a danger to the community. Detaining a long-standing inhabitant of the United States with no criminal history, no dangerousness, and no flight risk, especially after a neutral adjudicator has already found his release warranted, renders the confinement excessive and punitive in effect. When the government

maintains custody despite a judicial finding that less restrictive alternatives are sufficient, the detention ceases to be a regulatory necessity and becomes an arbitrary deprivation of liberty that shocks the conscience and violates the Fifth Amendment.

134. 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.

135. Accordingly, Petitioner's continued detention without the possibility for release under these circumstances violates the Fifth Amendment as applied to him, and habeas relief is therefore warranted. Petitioner respectfully requests that this Court order his immediate release from ICE custody under the conditions already established by the Immigration Judge; furthermore, Petitioner requests that this Court recognize and give effect to the January 7, 2026, order of Immigration Judge McKee R. Reid, which determined that a monetary bond of \$3,500.00 is sufficient to ensure Petitioner's future appearances and protect the interests of the government.

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

136. 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 nineteen years. 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.

137. 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.

138. 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***

139. 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

140. 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.*

141. 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

142. 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.

143. Detention under the government's interpretation is automatic and mandatory, and 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, such as a bond hearing before a neutral decisionmaker, is therefore substantial, as 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 but not the necessity of continued civil detention; consequently, 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. This case is particularly outrageous because the Immigration Judge has already made a determination that Petitioner should be entitled to a bond, expressly finding that he presents no danger to the community or flight risk. Nevertheless, Petitioner is precluded from benefiting from such a finding due to the current policies and regulations enforced by DHS, which effectively nullify the judicial assessment already performed in this matter.

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

144. 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.

145. 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**

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

147. 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).

148. 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.

149. 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 eighteen (18) years since his arrival in 2007 and developed strong community ties to the country.

150. 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.

151. 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.

152. 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.

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

- Petitioner's lack of dangerousness;
- His demonstrated compliance with immigration authorities;
- His pending protection claims and relief from removal;
- The Immigration Judge's express finding that he presents no danger to the community or flight risk; and
- The availability of less restrictive alternatives to detention.

154. 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.

155. 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.

156. 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.

157. 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

158. 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.

159. 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.

160. 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.

161. 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.

162. 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.

163. 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.

164. 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.

165. 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 11 Office for Immigration Review’s Practice Manual Chapter 8.3

166. 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.

167. 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.

Application to Proceed in Forma Pauperis and Procedural Requests

168. Because Petitioner remains in immigration detention and has no independent access to income or financial resources, and because her 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 her 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 12 Form AO 240

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

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

170. 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).

171. 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.

172. 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.

173. 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 13, 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/>.

174. 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 14 Transactional Records Access Clearinghouse (TRAC), Immigration Bonds Posted by Fiscal available at <https://tracreports.org/reports/738/>

175. 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.

176. 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.

177. 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.

178. 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.

179. 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.

180. 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.

181. 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).

182. 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.

183. 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.

184. 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).

185. 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.

186. 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.

187. 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

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

189. 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).

190. 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.

191. Petitioner is detained solely under civil immigration authority and is currently confined at the South Texas Processing Center since September 2025. He has no pending criminal charges and no history of violence. While his initial removal proceedings concluded with a denial on January 13, 2026, his case remains active and pending on appeal before the Board of Immigration Appeals (BIA) as of February 12, 2026.

192. 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.

193. 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.

194. 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.

195. 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.

196. Petitioner detention is prolonged, non-punitive in name but punitive in effect, and wholly insulated from individualized review; this 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.

197. 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.

198. 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)**

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

200. 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.

201. The Respondents have 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).

202. 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.

203. At the time he was taken into ICE custody on September 22, 2025, and at all times thereafter, Petitioner demonstrated full compliance with legal requirements. Petitioner was taken into ICE custody following a routine traffic stop; notably, no criminal charges were pursued against him. He did not try to avoid or evade arrest and at all times cooperated fully with the authorities. Since his detention, he has remained focused on his legal defense, including his current appeal before the Board of Immigration Appeals (BIA).

204. 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).

205. 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.

206. 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.

207. 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.

208. 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.

209. 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**

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

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

212. 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.

213. 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.”

214. 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).

215. More recently on February 18, 2026, the *Maldonado Bautista* court made clear that once a federal court has declared an agency’s statutory interpretation unlawful and vacated the underlying policy, the executive branch may not continue detaining individuals under the same legal theory simply because it appears in a different form. The court found that DHS and EOIR failed to comply with prior orders by persisting in denying bond hearings based on an interpretation already rejected, resulting in widespread unlawful detention and hundreds of habeas filings nationwide. Emphasizing separation of powers, the court reaffirmed that judicial interpretations of the INA control unless reversed on appeal and that agency regulations or precedential decisions cannot override a binding federal judgment. For that reason, it vacated the conflicting BIA decision and ordered affirmative measures to ensure detainees are informed of their right to seek bond,

reinforcing that individuals subject to this erroneous detention framework are entitled to an individualized custody determination.

216. The reasoning and holding of *Maldonado Bautista* directly protect Respondent because he falls squarely within the class of noncitizens detained under a legally erroneous interpretation of the INA that categorically denies bond hearings. The district court held that executive agencies may not continue to detain individuals under a statutory construction already declared unlawful and emphasized that judicial determinations of law must be obeyed unless reversed through proper appellate process.

217. Here, as in *Maldonado Bautista*, the Government relies on the same discredited interpretation to deny Respondent an individualized custody determination under 8 U.S.C. § 1226(a). Continued detention without a bond hearing replicates the very constitutional and statutory violations identified by the court and disregards its directive that such individuals are entitled to seek release before an Immigration Judge.

218. Accordingly, this Court should recognize Respondent as protected by the judgment's reasoning and order that he be afforded a prompt bond hearing consistent with due process and the governing statutory framework.

219. 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:

- Assume jurisdiction over this habeas corpus action pursuant to 28 U.S.C. §§ 2241 and 1331;
- Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action, absent further order of the Court;
- 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;
- Grant the *writ of habeas corpus* and order Petitioner's immediate release from ICE custody; or in the alternative, order Respondents to allow Petitioner to post the bond previously granted by the Immigration Judge in the bond hearing already conducted on January 7, 2026. This Court should further order that Petitioner be released immediately upon the posting of said bond without the imposition of any additional conditions beyond those expressly set forth by Judge McKee R. Reid or those present prior to his last detention. In the event this Court finds that a new hearing is necessary, it must order Respondents to provide 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.

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

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

Dated: February 23, 2026.

Respectfully submitted,



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COUNSEL'S VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner as their attorney. I have reviewed relevant documentation of the events described in this Petition and Complaint reasonably available to me prior to, and at the time of, filing. On the basis of those documents and discussions with individuals whom Petitioner authorized to speak on his behalf, I hereby verify that the statements made in the foregoing Verified Petition for a Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief.



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TABLE OF EXHIBITS IN SUPPORT OF PETITION

Exhibit	Exhibit Name
1	Petitioner's identification documents
2	Birth certificates for relatives
3	Notice to Appear
4	Bond request filed with the immigration court
5	Bond order
6	AILA Practice Advisory regarding Maldonado Bautista.
7	ICE Detainee locator
8	Form 42B related documents
9	Final Decision of the Immigration Judge
10	Notice of Appeal and Filing Fee Receipt filed on ECAS
11	Office for Immigration Review's Practice Manual Chapter 8.3
12	Form AO 240
13	Transactional Records Access Clearinghouse (TRAC), <i>Immigration Court Bond Hearings and Related Case Outcomes</i> (FOIA-based EOIR data)
14	TRAC, <i>Immigration Bonds Posted by Fiscal</i>
15	Biometrics Appointment Notice for Form I-360, Self-Petition under the Violence Against Women Act (VAWA)