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

JOSE CRUZ GARCIA-GUEVARA	§	Civ. No. 5:26-cv-04166
	§	
Petitioner,	§	
	§	DHS File Number: [redacted]
vs.	§	
	§	
TODD BLANCHE, Acting United States Attorney General;	§	**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241**
	§	
MARKWAYNE MULLIN, Secretary of the United States Department of Homeland Security;	§	
	§	
DAVID VENTURELLA, Acting Director of United States Immigration and Customs Enforcement;	§	
	§	
SYLVESTER ORTEGA, Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement;	§	
	§	
BOBBY THOMPSON, Warden, South Texas Detention Facility	§	
	§	
Respondents.	§	

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I. INTRODUCTION

1. This petition challenges the unlawful detention of Petitioner Jose Cruz Garcia-Guevara, A# [redacted], a native and citizen of Mexico who has lived in the United States for more than two decades. Petitioner has been confined in civil immigration custody at the South Texas Detention Facility, 566 Veterans Drive, Pearsall, Texas 78061, and is being held without any meaningful opportunity to seek release. *See* Exhibit 1 (ICE Locator Results).

2. Petitioner was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") on or about June 29, 2026, shortly after 7:00 AM, as he left a Home Depot store in Austin, Texas on his way to work. ICE officers, who had been waiting in a vehicle near the exit of the store's lot, followed his vehicle and executed a traffic stop. The officers identified themselves as ICE officers, asked Petitioner to produce documents establishing his lawful status in the United States, and, when he could not, took him into civil immigration custody without any warrant, judicial or administrative. Petitioner was processed and transported to the South Texas Detention Facility in Pearsall, Texas, where he remains detained. He has been placed in removal proceedings before the Pearsall Immigration Court, before Immigration Judge Segovia, with an initial master calendar hearing scheduled for July 14, 2026. *See* Exhibit 2 (Automated Case Information Results).

3. The human consequences of Petitioner's detention are immediate and severe. Petitioner has lived in the United States since 1999. He resides in Del Valle, Texas with his spouse and his eighteen-year-old son, a United States citizen, and he has maintained the same fixed residence in Del Valle for approximately six years. His daughter, a recipient of Deferred Action for Childhood Arrivals ("DACA"), lives and works in Austin, Texas, where she is employed at a compounding pharmacy. Petitioner himself is gainfully employed in

construction and has dutifully paid his federal income taxes. His detention has abruptly removed his income and his daily presence from the household.

4. Petitioner's criminal history consists of a single offense: a 2013 conviction for driving while intoxicated in Travis County, Texas, for which he was sentenced to five years' probation and from which he was successfully discharged on July 31, 2019. *See* Exhibit 4 (Case Summary). He has no other criminal history. Following the 2013 arrest, DHS placed Petitioner in removal proceedings. Petitioner was released on May 13, 2013 upon payment of a $7,000 bond, *see* Exhibit 5 (Immigration Bond), and appeared at every scheduled hearing between 2013 and 2022, and the proceedings were ultimately dismissed on December 6, 2022 upon DHS's own motion, *see* Exhibit 6 (Automated Case Information Results, Prior Removal Proceedings), further establishing that Petitioner poses no flight risk and is not a priority for detention or removal. He is statutorily eligible to apply for cancellation of removal for certain nonpermanent residents before the Immigration Court, and, as the prior victim of an aggravated assault, he may also be eligible to pursue U-nonimmigrant status, thereby acquiring lawful status for himself and his spouse. He has every incentive to appear at his hearings, presents no flight risk, and poses no danger to the community.

5. Petitioner is precluded from seeking an individualized custody determination before the Immigration Court. Under the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), Immigration Judges in this Circuit lack jurisdiction to conduct custody redeterminations for noncitizens whom the Department of Homeland Security ("DHS") classifies under 8 U.S.C. § 1225(b)(2)(A). Any request for a bond hearing would be futile. As a result, no Immigration Judge can consider any individualized custody factor—

including danger to the community, risk of flight, community ties, or alternatives to detention.

6. The Fifth Circuit's interpretation is now the minority view among the courts of appeals. The Second, Sixth, Tenth, and Eleventh Circuits have all rejected it, holding that noncitizens arrested in the interior after entry without inspection are detained under 8 U.S.C. § 1226(a) and are entitled to individualized bond hearings. *See Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026) (directing bond hearing or release within seven days); *Lopez-Campos v. Raycraft*, No. 25-1965, 2026 WL 1283891 (6th Cir. May 11, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14075, 2026 WL 1243395 (11th Cir. May 6, 2026); *Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026). Petitioner expressly preserves the statutory claim adopted by those courts, *see infra* Count I, and independently seeks relief on the constitutional, administrative-law, and regulatory grounds that *Buenrostro-Mendez* left open.

7. Courts in this District, including in this Division, have repeatedly granted habeas relief on precisely these facts. In *Longoria Mendoza v. Noem*, ___ F. Supp. 3d ___, No. 5:26-CV-0728-JKP, 2026 WL 809441 (W.D. Tex. Feb. 26, 2026), and in numerous subsequent decisions, the court held that the categorical denial of any individualized custody determination to a noncitizen with a significant presence in the United States, who poses no danger and no flight risk, violates procedural due process and warrants release under 28 U.S.C. § 2241. Petitioner's circumstances fall squarely within that reasoning.

8. Petitioner seeks habeas relief ordering his immediate release from ICE custody or, in the alternative, an order directing Respondents to provide him with a prompt, constitutionally adequate, and individualized custody determination before a neutral decisionmaker with

authority to order release. For the reasons set forth below, the Court should grant the writ and restore Petitioner's liberty.

II. JURISDICTION

9. Petitioner is in the physical custody of Respondents. He is currently detained in civil immigration custody at the South Texas Detention Facility, 566 Veterans Drive, Pearsall, Texas 78061. *See* Exhibit 1 (ICE Locator Results).

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the United States Constitution (the Suspension Clause).

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

12. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the United States District Court for the Western District of Texas, the judicial district in which Petitioner has been confined. Petitioner has been detained at the South Texas Detention Facility in Pearsall, Texas, which is located in Frio County and within the Western District of Texas, San Antonio Division. *See* 28 U.S.C. § 124(d)(4). *See* Exhibit 1.

13. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are officers, employees, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Western District of Texas, including Petitioner's arrest near Austin, Texas and his ongoing detention at the South Texas Detention Facility in Pearsall, Texas, both within this judicial district.

IV. REQUIREMENTS OF 28 U.S.C. § 2243

14. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

15. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

V. PARTIES

16. Petitioner Jose Cruz Garcia-Guevara (A# [redacted]) is a native and citizen of Mexico, born on [redacted] in the State of Zacatecas, Mexico. *See* Exhibit 3 (Petitioner's Passport). Petitioner first entered the United States in 1999 and, apart from a single departure in 2009 pursuant to a grant of voluntary departure, after which he returned. He has resided in the United States for more than two decades. Petitioner is currently in removal proceedings before the Pearsall Immigration Court, before Immigration Judge Segovia. *See* Exhibit 2 (Automated Case Information Results).

17. Respondent Todd Blanche is the Acting Attorney General of the United States. He leads the Department of Justice, which includes the Executive Office for Immigration Review and the immigration courts. He is sued in his official capacity.

18. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act and oversees ICE, which is responsible for Petitioner's detention. He has ultimate custodial authority over Petitioner and is sued in his official capacity.

19. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. In that role, he is responsible for ICE's immigration enforcement and detention operations and is a legal custodian of Petitioner. He is sued in his official capacity.

20. Respondent Sylvester Ortega is the Field Office Director for Detention and Removal for the San Antonio Field Office of U.S. Immigration and Customs Enforcement. He is responsible for enforcement of the immigration laws within this district and for overseeing ICE officials' compliance with agency policies and procedures. He is a legal custodian of Petitioner and is sued in his official capacity.

21. Respondent Bobby Thompson is named in his official capacity as the Warden of the South Texas Detention Facility in Pearsall, Texas. He is the immediate physical custodian of Petitioner pursuant to a contract or agreement between The GEO Group, Inc. and ICE to detain noncitizens. *See* Exhibit 1 (ICE Locator Results).

VI. FACTS

22. Petitioner is a fifty-three-year-old native and citizen of Mexico, born in the State of Zacatecas on [redacted]. *See* Exhibit 3 (Petitioner's Passport).

23. Petitioner first entered the United States in 1999 and has made his home in the Austin, Texas area ever since. In 2009, Petitioner was detained while driving to work and departed the United States pursuant to a grant of voluntary departure. He returned thereafter and has been

continuously present in the United States ever since, a period of approximately seventeen years of uninterrupted presence and more than two decades in total.

24. Petitioner has deep family ties in the United States. He resides in Del Valle, Texas with his spouse and their eighteen-year-old son, who was born in the United States and is a United States citizen. Petitioner has maintained the same fixed residence in Del Valle for approximately six years and has lived in the Austin area since 1999. His daughter, a recipient of Deferred Action for Childhood Arrivals ("DACA"), lives and works in Austin, Texas, where she is employed at a compounding pharmacy.

25. Petitioner is gainfully employed in construction and is a provider for his household. He has dutifully filed and paid taxes in the United States. Since his detention, his family has been left without his income, his physical help, and his daily presence.

26. Petitioner's sole criminal history is a 2013 arrest and conviction for driving while intoxicated in Travis County, Texas, Cause No. D-1-DC-13-202620, an offense to which he pled and for which he was sentenced to five years' probation. Petitioner successfully completed his term and was discharged from probation on July 31, 2019. *See* Exhibit 4 (Case Summary). Following his 2013 arrest, DHS placed Petitioner in removal proceedings. On May 13, 2013, Petitioner was released from immigration custody upon payment of a $7,000 bond, which was posted and accepted that day. *See* Exhibit 5 (Immigration Bond). Petitioner appeared at every scheduled hearing in those proceedings between 2013 and 2022, and on December 6, 2022 the proceedings were dismissed upon motion by the Department of Homeland Security itself. *See* Exhibit 6 (Automated Case Information Results, Prior Removal Proceedings). DHS thus initiated proceedings against Petitioner more than a decade ago, saw him appear faithfully for nine years while at liberty on bond, and affirmatively elected not to pursue his

removal, further establishing that he is not a priority for detention or removal and that release assures his appearance. In the seven years since his discharge, and in the thirteen years since the offense, Petitioner has had no further contact with the criminal justice system. His record of rehabilitation, his fixed residence, his steady employment, and his family ties demonstrate that he presents no flight risk and poses no danger to the community.

27. Petitioner has substantial avenues for relief from removal. He is statutorily eligible to apply for cancellation of removal for certain nonpermanent residents under 8 U.S.C. § 1229b(b) before the Immigration Court, and he intends to pursue that relief. Separately, Petitioner was once the victim of an aggravated assault and may be eligible to pursue U nonimmigrant status as the victim of a qualifying crime. His eligibility for relief gives him every incentive to appear at each of his hearings.

28. On or about June 29, 2026, shortly after 7:00 AM, Petitioner was taken into civil immigration custody by ICE as he left a Home Depot store in Austin, Texas on his way to work. ICE officers had been waiting near the exit of the store's lot and began following Petitioner's vehicle. The officers executed a traffic stop and identified themselves as ICE officers. They asked Petitioner to produce documents establishing his lawful status in the United States, and when he could not, they detained him and took him into ICE custody without any warrant. Petitioner was processed and then transported to the South Texas Detention Facility in Pearsall, Texas, where he remains detained.

29. DHS has placed Petitioner in removal proceedings under section 240 of the Immigration and Nationality Act ("INA") and, on information and belief, charges him with removability as a noncitizen present in the United States without admission or parole under INA § 212(a)(6)(A)(i). His initial master calendar hearing is scheduled for July 14, 2026 before

Immigration Judge Segovia at the Pearsall Immigration Court. *See* Exhibit 2 (Automated Case Information Results).

30. Notwithstanding his extensive ties to the community, DHS has classified Petitioner as subject to mandatory detention under 8 U.S.C. § 1225(b), based on the charge that he is an applicant for admission present without admission or parole, and has refused to provide a custody hearing before an Immigration Judge under 8 U.S.C. § 1226(a). As a result, Petitioner is being held without any individualized determination of whether his continued detention is necessary to prevent flight or protect the community.

31. No administrative mechanism exists through which Petitioner can challenge the legality, duration, or necessity of his detention. Under the Fifth Circuit's decision in *Buenrostro-Mendez*, Immigration Judges in this Circuit lack jurisdiction to conduct custody redeterminations for noncitizens classified under 8 U.S.C. § 1225(b)(2)(A), and the Board of Immigration Appeals cannot review a custody determination where no bond hearing may be held. Immigration judges have been instructed to treat the Board's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as binding precedent. Under these circumstances, no administrative body within the Executive Office for Immigration Review has authority to provide the relief sought.

32. DHS's discretionary parole authority does not constitute an available or adequate administrative remedy that must be exhausted prior to habeas review. Parole decisions are committed to agency discretion, are not subject to neutral adjudication, and provide no mechanism for Petitioner to challenge the legality of his detention. Courts have consistently held that discretionary parole is not an exhaustion prerequisite to habeas corpus relief.

33. Petitioner has been categorically denied access to any administrative custody review, and no adequate alternative remedy exists; exhaustion is either satisfied or excused as futile. A writ of habeas corpus is the sole avenue to vindicate Petitioner's constitutional, statutory, and regulatory rights and to restore his liberty. Absent relief from this Court, he faces the prospect of months or even years in immigration custody based solely on Respondents' reclassification of his custody status under § 1225(b)(2)(A).

VII. LEGAL FRAMEWORK

34. The Immigration and Nationality Act establishes multiple detention authorities governing noncitizens in removal proceedings, depending on procedural posture and statutory classification. These detention provisions operate against the backdrop of constitutional limitations on civil confinement and long-recognized principles of individualized custody review.

35. First, INA § 236(a), 8 U.S.C. § 1226(a), authorizes the discretionary detention of noncitizens placed in full removal proceedings under INA § 240, 8 U.S.C. § 1229a. Historically, individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

36. Second, INA § 235(b), 8 U.S.C. § 1225(b), governs the detention of noncitizens classified as "applicants for admission," including individuals subject to expedited removal under § 1225(b)(1) and those referred to full removal proceedings under § 1225(b)(2). Section 1225(b)(2)(A) provides that certain applicants for admission "shall be detained" pending removal proceedings, subject to limited parole authority.

37. Following the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the Executive Office for Immigration Review promulgated regulations explaining that, as a general matter, noncitizens who entered without inspection and were placed in § 240 removal proceedings were detained under § 1226(a), not § 1225(b). *See* 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). For nearly three decades thereafter, most noncitizens who entered without inspection, unless subject to some other detention authority, received bond hearings.

38. On July 8, 2025, DHS issued guidance to ICE stating that it had "revisited its legal position on detention and release authorities" and "determined that section 235 of the Immigration and Nationality Act . . . rather than section 236 . . . is the applicable immigration detention authority for all applicants for admission." As a result, DHS now treats all noncitizens who entered without inspection and are charged as inadmissible, including longtime United States residents like Petitioner, as subject to mandatory detention under § 1225(b) and ineligible for release on bond.

39. On September 5, 2025, the Board of Immigration Appeals issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that, based on the plain language of 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission. On February 6, 2026, the Fifth Circuit endorsed that statutory interpretation in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within this Circuit.

40. *Buenrostro-Mendez* now stands on the minority side of an acknowledged circuit split. Four courts of appeals have squarely rejected the government's position, holding that §

1225(b)(2)(A) reaches only noncitizens "seeking admission" at the border, and that noncitizens who entered without inspection and were thereafter arrested in the interior of the United States are detained under § 1226(a) and are eligible for bond hearings. *See Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14075, 2026 WL 1243395 (11th Cir. May 6, 2026); *Lopez-Campos v. Raycraft*, No. 25-1965, 2026 WL 1283891 (6th Cir. May 11, 2026); *Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026). Most recently, in *Quiroz*, the Tenth Circuit relied on *Jennings*'s explanation that § 1225 "authorizes the Government to detain certain aliens seeking admission into the country" while § 1226 "authorizes the Government to detain certain aliens already in the country," held that a longtime resident detained after a traffic stop in the interior is not "seeking admission," and remanded with instructions that the government provide a bond hearing or release the petitioner within seven days. Only the Eighth Circuit has joined the Fifth. *Herrera Avila v. Bondi*, No. 25-3248 (8th Cir. Mar. 25, 2026). The Supreme Court has meanwhile granted certiorari on closely related questions concerning the process due to noncitizens in prolonged immigration detention. *Genalo v. Black*, No. 25-886 (U.S. cert. granted June 15, 2026).

41. However, neither *Yajure Hurtado* nor *Buenrostro-Mendez* addressed, much less resolved, the independent constitutional, administrative-law, equal-protection, Suspension Clause, or *Accardi*-based limitations on prolonged civil detention without individualized review. As the Supreme Court made clear in *Jennings v. Rodriguez*, 583 U.S. 281, 302–03 (2018), the absence of a statutory bond entitlement does not eliminate constitutional constraints on detention or foreclose habeas review.

42. District courts within this Circuit have applied these principles to grant habeas relief to detainees in Petitioner's exact posture. In *Longoria Mendoza v. Noem*, ___ F. Supp. 3d ___, No. 5:26-CV-0728-JKP, 2026 WL 809441 (W.D. Tex. Feb. 26, 2026), and numerous subsequent decisions, the court held that (1) it had jurisdiction under § 2241 to consider the petition; (2) any failure to exhaust administrative remedies was excused; and (3) the categorical denial of any individualized custody determination to a noncitizen with a significant presence in the United States who poses no flight risk and no danger to the community violates procedural due process. The reasoning of those decisions is persuasive and directly applicable here.

VIII. ARGUMENT

43. *Buenrostro-Mendez* 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.

44. The Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi* 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. The panel addressed only the statutory interpretation dispute and reversed the district courts solely because they had granted bond hearings as a matter of statutory entitlement under § 1226(a). The panel had no occasion to consider due process challenges to prolonged or indefinite mandatory detention without any individualized hearing, nor did it address claims under the Administrative Procedure Act, the equal protection component of the Fifth Amendment, the Suspension Clause, or the *Accardi* doctrine.

45. 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

expressly remanded for the lower courts to consider constitutional arguments in the first instance. *Id.* at 302–03. The Fifth Circuit's statutory holding leaves those constitutional questions open, just as *Jennings* did.

46. 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. *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.

47. The Administrative Procedure Act claim remains viable because DHS's abrupt 2025 policy reversal, announced via internal memorandum without notice-and-comment or reasoned explanation for departing from twenty-eight years of practice, is arbitrary and capricious under 5 U.S.C. § 706(2)(A). *Buenrostro-Mendez* did not address this administrative-law challenge.

48. As *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).

49. Nor can Respondents maintain that noncitizens whom DHS classifies under § 1225(b)(2)(A) are categorically barred from raising due process challenges to their detention, as some district courts have reasoned. *See, e.g., Garcia De La Cruz v. Bondi*, No. CV H-25-5577, 2026 WL 309939 (S.D. Tex. Feb. 5, 2026); *Zarate v. Bradford*, No. 4:26-CV-02369, 2026

WL 905334 (S.D. Tex. Apr. 2, 2026). That reasoning cannot be squared with *Zadvydas* and *Jennings*, which confirm that all persons detained within the United States are protected by the Due Process Clause and that habeas remains available to test the constitutionality of detention procedures. And it is untenable in light of the now-prevailing view among the courts of appeals that Congress never authorized no-bond detention of noncitizens in Petitioner's posture in the first place: in the Second, Sixth, Tenth, and Eleventh Circuits, a detainee in Petitioner's precise circumstances receives an individualized bond hearing as a matter of ordinary statutory right. *See Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026) (ordering bond hearing or release within seven days); *Cunha*, 2026 WL 1146044; *Lopez-Campos*, 2026 WL 1283891; *Hernandez Alvarez*, 2026 WL 1243395. Where the overwhelming weight of authority reads the statute to require the very hearing Petitioner seeks, the risk that his no-process confinement is erroneous, and therefore unconstitutional, is at its apex, and the *Mathews* balance tilts decisively toward requiring individualized process.

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

IX. CLAIMS FOR RELIEF

COUNT I

Unlawful Detention in Violation of the Immigration and Nationality Act and Implementing Regulations

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

52. The Immigration and Nationality Act authorizes immigration detention only to the extent it serves legitimate, non-punitive statutory purposes: 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).

53. Petitioner acknowledges that, under the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), he does not possess a purely statutory entitlement to a bond hearing before an Immigration Judge under 8 U.S.C. § 1226(a).

54. Nevertheless, Petitioner expressly asserts, and preserves for en banc and Supreme Court review, his claim that his detention is governed by 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). Although Petitioner is an "applicant for admission," he is not "seeking admission" within the meaning of § 1225(b)(2)(A), because he has no present request for lawful entry pending; he is accordingly entitled by statute to an individualized bond hearing under § 1226(a). Four courts of appeals have adopted precisely this construction. *See Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026); *Lopez-Campos v. Raycraft*, No. 25-1965, 2026 WL 1283891 (6th Cir. May 11, 2026); *Hernandez Alvarez v.*

Warden, Fed. Det. Ctr. Miami, No. 25-14075, 2026 WL 1243395 (11th Cir. May 6, 2026); *Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026). Consistent with counsel's duty of candor, Petitioner acknowledges that this claim is presently foreclosed in this Circuit by *Buenrostro-Mendez*, and he raises it here solely to preserve it for further review in light of the deepening circuit split on this question.

55. 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.

56. 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 conditions where detention no longer serves a legitimate statutory objective. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

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

58. Accordingly, Petitioner's continued detention is unlawful under the Immigration and Nationality Act and its implementing regulations. Petitioner respectfully requests that this

Court grant habeas relief by ordering his immediate release, or, in the alternative, ordering Respondents to provide a prompt, lawful, and meaningful individualized custody determination consistent with the INA and governing law.

COUNT II

Violation of the Due Process Clause of the Fifth Amendment to the United States Constitution

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

60. 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).

61. Petitioner has been categorically barred from receiving any hearing before a neutral adjudicator to determine whether his detention is justified. No Immigration Judge in this Circuit has authority to consider Petitioner's bond request on the merits. Under *Buenrostro-Mendez* and *Matter of Yajure Hurtado*, the Immigration Court lacks jurisdiction to conduct a custody redetermination for noncitizens in Petitioner's posture. He has been denied the opportunity to present evidence, contest the government's assertions, or obtain meaningful review of his custody.

62. 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. District courts in this Circuit have since applied that principle to grant habeas relief on procedural due process grounds to detainees in Petitioner's position.

63. The constitutional infirmity here is not merely the length of detention but the complete absence of any meaningful custody process. Petitioner is detained pursuant to a regime in which: (a) no Immigration Judge may conduct a bond hearing; (b) DHS is not required to justify continued detention with evidence; and (c) no neutral decisionmaker is empowered to order release, regardless of Petitioner's lack of danger or flight risk.

64. Application of the *Mathews v. Eldridge* balancing test, 424 U.S. 319, 335 (1976), confirms that due process requires an individualized hearing here. The private interest at stake is physical liberty, the most significant interest the Constitution protects. *Zadvydas*, 533 U.S. at 690. Petitioner has lived in the United States for more than two decades; he resides with his spouse and his United States citizen son at a fixed address he has maintained for six years; his DACA-recipient daughter lives and works nearby; he is gainfully employed in construction and has paid his taxes; and his only conviction is a 2013 offense from which he was successfully discharged in 2019, *see* Exhibit 4. Indeed, when DHS placed Petitioner in removal proceedings following that arrest, he was released on a $7,000 bond, appeared at every hearing for nine years, and the Department itself ultimately moved to dismiss the proceedings. He is statutorily eligible for cancellation of removal and potentially for U nonimmigrant status, relief he cannot meaningfully pursue from detention. His decades of presence and his record of rehabilitation underscore the profound private liberty interest at stake. His confinement also impairs his ability to prepare his defense and his applications for relief in the removal proceedings before Judge Segovia.

65. The risk of erroneous deprivation under the current regime is not merely elevated; it is total. No neutral decisionmaker has ever assessed whether Petitioner's detention serves any legitimate purpose. As DHS labels him an "applicant for admission," he receives no hearing, no findings, no burden of proof, and no opportunity to present evidence that he is neither a flight risk nor a danger. A custody hearing before a neutral adjudicator is the minimal safeguard that would permit a determination of whether detention is actually necessary. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004). The risk of error is confirmed by the fact that, in the four circuits that have rejected the government's reading of § 1225(b)(2)(A), a detainee in Petitioner's precise posture receives an individualized bond hearing as a matter of course. *See Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026); *Cunha*, 2026 WL 1146044; *Lopez-Campos*, 2026 WL 1283891; *Hernandez Alvarez*, 2026 WL 1243395.

66. The Government's interests in ensuring appearance at proceedings and protecting public safety are legitimate, but they are served, not undermined, by individualized custody determinations. The additional burden is minimal: bond hearings are routine proceedings that immigration courts conducted for noncitizens in Petitioner's exact posture for twenty-eight years before the 2025 policy shift. The Government has never alleged that Petitioner poses a flight risk or danger. It has simply refused to ask the question. And the last time it did ask, the answer was proven in practice: released on a $7,000 bond on May 13, 2013, Petitioner appeared at every hearing over nine years of removal proceedings. *See* Exhibit 5. All three *Mathews* factors weigh decisively in Petitioner's favor.

67. Accordingly, Petitioner's continued detention without an individualized custody determination violates the Fifth Amendment as applied to him. Habeas relief is warranted.

Petitioner respectfully requests that this Court order his immediate release from ICE custody; or, in the alternative, order Respondents to provide a prompt, constitutionally adequate individualized custody hearing before a neutral decisionmaker with authority to grant release, at which the government bears the burden of justifying continued detention.

COUNT III

Violation of the Administrative Procedure Act is an Arbitrary and Capricious Agency Action

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

69. 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).

70. Petitioner does not herein challenge the Fifth Circuit's statutory holding in *Buenrostro-Mendez v. Bondi* 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.

71. 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. By treating it 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.

72. DHS has failed to consider relevant factors in Petitioner's case, including but not limited to: (a) Petitioner's minimal and dated criminal history, consisting of a single 2013 conviction from which he was successfully discharged in 2019; (b) DHS's own decision, following that arrest, to move to dismiss the removal proceedings it had initiated against Petitioner, proceedings in which Petitioner was released on a $7,000 bond and appeared at every scheduled hearing between 2013 and 2022; (c) his residence in the United States for more than two decades; (d) his family ties, including his spouse, his United States citizen son, and his DACA-recipient daughter; (e) his steady employment in construction, his payment of taxes, and his fixed residence of six years in Del Valle, Texas; (f) his statutory eligibility for relief from removal; (g) the absence of any individualized flight-risk finding; and (h) the availability of less restrictive alternatives to detention.

73. 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. Indeed, in *Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026), the Tenth Circuit treated the

government's nearly thirty-year interpretation, under which § 1225(b)(2)(A) applied at the border while § 1226(a) applied in the interior, as a "longstanding practice" probative of the statutes' meaning. DHS's unexplained abandonment of the very practice that four courts of appeals have now held reflects the statutes' correct construction is the paradigm of the arbitrary reversal the APA forbids.

74. 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. Habeas relief is warranted to remedy this unlawful agency 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 APA, the INA, and governing constitutional principles.

COUNT IV

Violation of the Equal Protection Guarantee of the Fifth Amendment

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

76. 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); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

77. 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.

78. 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 last entry—facts never adjudicated in a custody hearing and never tested before a neutral decisionmaker. This classification is particularly arbitrary as applied to Petitioner given his more than two decades of residence, his United States citizen son and his DACA-recipient daughter, his steady employment and payment of taxes, his statutory eligibility for relief from removal, and the absence of any individualized finding that he poses a risk of flight or danger.

79. 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). 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. The arbitrariness of Petitioner's treatment is further underscored by geography: under the decisions of the Second, Sixth, Tenth, and Eleventh Circuits, a noncitizen in Petitioner's identical circumstances detained in New York, Ohio, Colorado, or Florida receives an individualized bond hearing, while Petitioner, detained in Texas, receives none. *See Quiroz v. Mullin*, No. 26-6019, 2026 WL 3234850 (10th Cir. June 30, 2026); *Lopez-Campos*, 2026 WL 1283891; *Hernandez Alvarez*, 2026 WL

1243395; *Cunha*, 2026 WL 1146044. Whether a longtime resident with deep community and family ties remains confined without any custody review should not turn on the happenstance of the judicial circuit in which ICE effectuates his arrest.

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

COUNT V

Violation of the Suspension Clause of the United States Constitution

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

82. The Suspension Clause 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).

83. 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.

84. 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. When no adequate and effective substitute exists, habeas review is constitutionally required. *St. Cyr*, 533 U.S. at 305; *Boumediene*, 553 U.S. at 779 ("The writ must be effective."). Accordingly, habeas corpus relief is constitutionally required, and Petitioner respectfully requests that this Court grant the writ and order his immediate release or, in the alternative, direct Respondents to provide a prompt, meaningful, and individualized custody determination before a neutral decisionmaker with authority to order release.

COUNT VI

Violation of the *Accardi* Doctrine with Respect to 8 C.F.R. § 287.8(c)(2)(i) and (ii)

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

86. 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.

87. Regulations governing immigration enforcement require that warrantless arrests comply with the standards set forth in 8 C.F.R. § 287.8(c). 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 the individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii). 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.

88. On or about June 29, 2026, Petitioner was taken into custody by ICE shortly after 7:00 AM as he left a Home Depot store in Austin, Texas on his way to work. ICE officers had been waiting near the exit of the store, followed Petitioner's vehicle, and executed a traffic stop, identifying themselves as ICE officers. The officers asked Petitioner to produce documents establishing his lawful status and, when he could not, detained him. Upon information and belief, ICE officers took Petitioner into civil immigration custody without any warrant, judicial or administrative, and without independently satisfying the regulatory prerequisites for a lawful warrantless arrest under 8 C.F.R. § 287.8(c)(2). Upon information and belief, to the extent any administrative warrant of arrest (Form I-200) exists, it was issued only after Petitioner was already in custody and cannot retroactively supply the authority that 8 C.F.R. § 287.8(c)(2) requires at the time of arrest.

89. Petitioner was not evading law enforcement, posed no danger, and presented no risk of flight. He was leaving a retail store on a weekday morning, driving to work, as he had done for years. Petitioner has been known to DHS since 2013, when the Department initiated removal proceedings against him, released him on a $7,000 bond, saw him appear at every hearing for nine years, and then moved to dismiss those proceedings; nothing prevented ICE from

seeking a warrant in advance of arresting a man who has lived at the same fixed address for six years. For the reasons set forth above, Petitioner's deep community and family ties, his fixed residence of six years, his steady employment, his eligibility for relief from removal, and his years of law-abiding conduct foreclose any conclusion that he was "likely to escape before a warrant can be obtained," as required by 8 C.F.R. § 287.8(c)(2)(ii).

90. ICE officers thus failed to comply with the mandatory regulatory prerequisites of 8 C.F.R. § 287.8(c)(2) when taking Petitioner into custody. Petitioner's ongoing detention flows directly from, and is predicated upon, that unlawful warrantless arrest, and continued detention based on an arrest that contravenes binding regulations is itself unlawful. *See Accardi*, 347 U.S. at 267–68; *St. Cyr*, 533 U.S. at 301–05. Habeas relief is therefore warranted. Petitioner respectfully requests that this Court grant the writ and order his immediate release or provide appropriate relief to remedy the unlawful detention resulting from DHS's regulatory violations.

X. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays that this Court grant the following relief:

91. Assume jurisdiction over this matter pursuant to 28 U.S.C. §§ 2241 and 1331;
92. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action, absent further order of the Court;
93. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days;
94. 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 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;

95. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody; OR, in the alternative, order Respondents to provide Petitioner with a prompt, constitutionally adequate, and individualized custody determination before a neutral decisionmaker with actual authority to order release, at which the government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary to serve a legitimate governmental purpose and that no less restrictive conditions of supervision would suffice; and

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

Respectfully submitted,

/s/ C.M. Boston Cote
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