UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

RICARDO ROMERO DILIEGROS,
Petitioner,

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security;
DAVID J. VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MIGUEL VERGARA, in his official capacity as Director of the San Antonio Field Office of ICE, Enforcement and Removal Operations;
RAYMOND E. THOMPSON, Warden of the Karnes County Immigration Processing Center; and;
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review,
Respondents.

Civil Action No. 5:26-cv-4340

Immigration No. [redacted]

PLAINTIFF'S VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Petitioner Ricardo Romero Diliegros ([redacted]), hereinafter referred to as "*Petitioner*" or "*Mr. Romero*," is a native and citizen of Mexico who has resided in the United States for nearly (29) years. He is currently subject to indefinite detention after his apprehension by U.S. Immigration and Customs Enforcement ("ICE") in Texas and is detained at the Karnes County Immigration Processing Center, Karnes County, Texas. *See* Petitioner's Ex. 1, ICE Detainee Locator Search Results.

2. Mr. Romero has been placed in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a.

3. In recent months, immigration judges have routinely denied requests for an individualized custody redeterminations to individuals. These denials have relied on recent Board of Immigration Appeals ("BIA") precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and specifically in the Fifth Circuit, *Buenrostro-Mendez v. Bondi,* Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026).

4. The Department of Homeland Security ("DHS") has taken the position that, based on *Matter of Yajure Hurtado* and subsequent agency guidance, Petitioner is categorically ineligible for any custody redetermination before an immigration judge and may be detained for the duration of his removal proceedings absent discretionary parole.

5. As a result of this categorical denial of custody review, Petitioner now faces prolonged and potentially indefinite civil detention without any meaningful opportunity for an individualized determination of whether his continued confinement is necessary or lawful. DHS has not conducted any neutral, individualized assessment of Petitioner's danger to the community, risk of flight, or suitability for less restrictive alternatives to detention.

6. Petitioner has no criminal record, no history of violence nor criminal charges. *See* Petitioner's Ex. 2, Texas DPS Criminal Conviction Search results. His continued detention is not based on any individualized finding that confinement is necessary to serve a legitimate governmental purpose.

7. Petitioner's continued detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, the Suspension Clause of the United States Constitution, and binding agency regulations. DHS's reliance on a

categorical jurisdictional bar has resulted in prolonged civil confinement without adequate procedural safeguards or meaningful judicial review.

8. Mr. Romero therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, including a preliminary injunction directing Respondents to release him under reasonable conditions or provide him an individualized custody determination before a neutral decision-maker with authority to order release. For the foregoing reasons, the Court should grant the writ and restore Petitioner's liberty.

II. JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by persons held in custody in violation of federal law or the Constitution. This action also invokes the Court's authority under the All-Writs Act, 28 U.S.C. § 1651.

10. The 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., and the All Writs Act, 28 U.S.C. § 1651. Congress has preserved judicial review of challenges to immigration detention, including claims raising statutory and constitutional questions. *See*, e.g., *Nielsen v. Preap*, 139 S. Ct. 954, 961–62 (2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (distinguishing reviewable legal and constitutional claims from unreviewable discretionary determinations under 8 U.S.C. § 1226(e)).

11. Federal district courts have jurisdiction to hear *habeas corpus* claims brought by noncitizens challenging the lawfulness of their immigration detention. *See Demore v. Kim,* 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over challenges to immigration detention); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (same). That jurisdiction extends

to claims alleging that detention exceeds statutory authority, violates constitutional guarantees, or results from agency action that is arbitrary, capricious, or contrary to law.

12. Although certain provisions of the INA limit judicial review of discretionary custody determinations, *see* 8 U.S.C. § 1226(e), those provisions do not preclude *habeas* review of constitutional claims, questions of law, or challenges to the legal basis for detention itself. Petitioner does not ask this Court to review or second-guess any discretionary bond decision. Rather, he challenges Respondents' authority to continue detaining Petitioner without any individualized custody determination, the constitutionality of prolonged detention without meaningful review, the lawfulness of DHS's blanket detention policy under the Administrative Procedure Act, and the legality of his warrantless arrest and resulting detention under binding agency regulations. Such claims fall squarely within the scope of *habeas* review. The Supreme Court has long recognized that federal courts retain *habeas* jurisdiction to review the statutory and constitutional bases of immigration detention notwithstanding jurisdiction-stripping provisions, as such review lies at the core of the Great Writ. *See Demore v. Kim*, 538 U.S. at 516–17; *Zadvydas v. Davis*, 533 U.S. at 687–88.

13. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek class-wide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or V *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as "*Reno v. AADC*"). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2026).

14. Venue is proper in this District, and in the San Antonio Division, because Petitioner is detained at the Karnes County Immigration Processing Center, Karnes County, Texas, within this Court's jurisdiction, whereas Petitioner's immigration detention is controlled by the San Antonio Office of ICE – Enforcement and Removal Operations. *See* Petitioner's Ex. 1.

III. PARTIES

15. Petitioner, RICARDO ROMERO DILIEGROS, is a citizen and national of Mexico who has lived in the United States for nearly (29) years, having arrived in the United States on or about 1997. On or about June 10, 2026, he was detained and transferred to the Karnes County Immigration Processing Center, where he remains detained. *See* Petitioner's Ex. 1.

16. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security ("DHS"). He is sued in his official capacity.

17. Respondent DAVID J. VENTURELLA is the Acting Director of Immigration and Customs Enforcement ("ICE"), an executive branch agency within the Department of Homeland Security. He is sued in his official capacity.

18. Respondent MIGUEL VERGARA is the Acting Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Karnes County Immigration Processing Center of ERO San Antonio, which has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

19. Respondent RAYMOND E. THOMPSON, Warden of the Karnes County Immigration Processing Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Karnes County Immigration

Processing Center is located at 409 FM 1144, Karnes City, Texas 78118. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

20. Respondent, DAREN K. MARGOLIN, is Director of the Executive Office for Immigration Review. As such, he is responsible for directing and coordinating policy for the United States Immigration Court system, including policies relating to immigration bond applications and requests for custody redeterminations in immigration court. He is sued in his official capacity only.

21. Respondents MULLIN and VENTURELLA, who represent DHS and ICE, are properly included herein as the executives of federal agencies within the meaning of the APA ("APA").

IV. FACTUAL BACKGROUND

22. Mr. Romero is a citizen and national of Mexico, born on [redacted]. He has lived continuously in the United States since his initial entry on or about 1997. He entered the United States at approximately 25 years of age. Since that time, he has continuously resided in the United States, and he has established strong family and community ties. These longstanding ties demonstrate that Mr. Romero is not a flight risk and has a strong incentive to appear for and comply with his immigration proceedings outside of immigration detention.

23. On June 10, 2026, Petitioner was detained and taken into ICE custody during a traffic stop in Somerset, Texas, at what appeared to be checkpoint, where constable, accompanied by an immigration officers, proceeded to detain him despite his having committed no infraction or offense. Mr. Romero was then transported to the Karnes County Immigration Processing Center.

24. Following his apprehension, Mr. Romero was placed into ICE custody and transferred to the Karnes County Immigration Processing Center, Karnes County, Texas, where he remains detained. His detention at the facility is confirmed by ICE's detainee Locator System. *See* Petitioner's Ex. 1, ICE Detainee Locator Search Results.

25. Prior to his detention, Mr. Romero had lived in United States for nearly (29) years. His life is deeply rooted in this country; he has maintained steady employment and developed meaningful family and community ties. He has been in a common law marriage with his U.S. citizen wife. He has one daughter, 22 years-old, who also is a U.S. citizen. Mr. Romero is prima facie eligible for relief from removal through Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. Mr. Romero has no history of violence and no criminal record. *See* Petitioner's Ex. 2, Texas DPS Criminal Conviction Search results. This demonstrates that he does not pose flight risk or a danger to the community.

26. On or about June 11, 2026, the DHS, served Mr. Romero with a Notice to Appear ("NTA"), charging him as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] based on his entry without being admitted or paroled. *See* Petitioner's Ex. 3, EOIR Case Information.

27. As of the filing of this petition, Petitioner remains detained at the Karnes County Immigration Processing Center. *See* Petitioner's Ex. 1. As a result, his detention continues without meaningful administrative or judicial review.

28. Mr. Romero's continued detention fails to account for his residence in the United States and his individualized circumstances. As a noncitizen in civil removal proceedings, Mr. Romero is entitled to the protections of due process guaranteed by the Immigration and Nationality Act and the Fifth Amendment, including the opportunity for an individualized custody determination under INA § 236(a).

29. Instead, current immigration policy treats Mr. Romero as categorically ineligible for an individualized custody determination. ICE has denied him any opportunity to demonstrate that he is neither a danger to the community nor a flight risk. This denial is not based on any individualized assessment of Mr. Romero's circumstances.

30. The government's position relies on recent Board of Immigration Appeals decisions, including *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and in the Fifth Circuit: *Buenrostro-Mendez v. Bondi,* Nos. 25-20496 & 25-40701 (5th Cir Feb, 2026), which purports to limit immigration judges' authority to conduct bond hearings. These decisions have resulted in the prolonged civil detention of thousands noncitizens without individualized custody determinations.

31. As a result of ICE's actions, Mr. Romero remains detained at the Karnes County Immigration Processing Center, a facility located far from his community and support network. *See* Petitioner's Ex. 1. He is detained under conditions comparable to those imposed on individuals subject to mandatory detention, despite the absence of any criminal conviction that would render him ineligible for bond under INA § 236(c).

32. In sum, Mr. Romero is a long-term resident of the United States with deep ties to the country, avenues of immigration relief, and no criminal record.

V. EXHAUSTION OF ADMINISTRATIVE REMEDIES

33. Petitioner has not filed a motion for bond before the Immigration Court following his entry into ICE custody on or about June 10, 2026. Any such filing would be futile, as immigration judges in the Fifth Circuit are currently declining to exercise bond jurisdiction pursuant to *Buenrostro-Mendez v. Bondi,* Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026).

34. Further administrative exhaustion would be futile. On or about January 19th, 2026, Chief Immigration Judge Teresa L. Riley issued guidance instructing immigration judges in the Fifth Circuit that: "For cases arising in the 5th Circuit, the court did not overrule or vacate the recent 5th Circuit precedential decision" (referring to *Buenrostro-Mendez*) Judge Riley instructed immigration judges: "Nor did the court overrule or vacate well-established precedent requiring

administrative agencies to apply binding circuit court precedent to cases arising within that circuit." *See* Petitioner's Ex. 4, Maia Spoto & Megan Crepeau, *Immigration Judge's Guidance Sets Up Race to Avoid Fifth Circuit*, Bloomberg L. (Feb. 20, 2026, 12:32 PM CST). Under these circumstances, no administrative body within EOIR has authority to provide the relief sought.

35. 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.

36. Therefore, 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.

VI. LEGAL FRAMEWORK

37. The Immigration and Nationality Act ("INA") 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.

38. 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).

39. 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.

40. Finally, the Act also provides for the detention of noncitizens who have previously been ordered removed, including those in withholding-only proceedings. See 8 U.S.C. § 1231(a)–(b).

41. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585. Section 1226(c) was most recently amended earlier this year by the LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress enacted these provisions against a longstanding background principle that civil immigration detention must remain tied to legitimate regulatory purposes and must comport with constitutional due-process requirements.

42. Following IIRIRA's enactment, the Executive Office for Immigration Review promulgated regulations explaining that, as a general matter, noncitizens who entered without inspection and were placed in § 1229a removal proceedings were detained under § 1226(a), not § 1225(b). See 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). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with

pre-IIRIRA procedure, in which noncitizens not deemed "arriving" were entitled to a custody hearing before an Immigration Judge or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

43. On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA) [8 U.S.C. § 1225], rather than section 236 [8 U.S.C. § 1226], is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." The memo further stated DHS' new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.
>
> **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**
>
> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas

> petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authorityfor-applications-for-admission (last accessed August 4, 2025) (emphasis original).

44. As a result, DHS now considers all noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including longtime U.S. residents, are now considered to be subject to mandatory detention under section § 1225(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)]." *Id.*

45. On September 5, 2025, the BIA 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.

46. On February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed that statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within this Circuit. However, there is currently a circuit split as the Second Circuit, Eleventh Circuit, Sixth Circuit and Twelfth Circuit have ruled that detention for aliens who entered without inspection are rightfully detained pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A). *See Cunha v. Freden*, 2026 U.S. App. LEXIS 12201 (2nd Cir. April 28,

2026[A); *Alvarez v. Warden*, Fed. Det. Ctr. Mia., No. 25-14065, 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); *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048 (7th Cir. 2025); see also *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, No. 25-3050, 2026 WL 1223250 (7th Cir. May 5, 2026).

47. On February 18, 2026, a California District Court in *Yajure Hurtado* found that it violated the law under the Administrative Procedures Act. *See Lazaro Maldonado Bautista v. Santacruz,* No. 5:25-cv-01873-SSS-BFM, slip op. at 1 (C.D. Cal. Feb. 18, 2026) (Sykes, J.) (order granting plaintiffs' motion to enforce judgment). This order is currently stayed by the Ninth Circuit Court of Appeals.

48. On March 6, 2026, the Ninth Circuit Court of Appeals issued a stay of the California District Court order vacating *Yajure Hurtado*. *See Maldonado Bautista v. U.S. Dep't of Homeland Sec.*, No. 26-1044, slip op. at 1 (9th Cir. Mar. 6, 2026) (order granting administrative stay pending appeal).

49. On July 2, 2026, the Fifth Circuit Court of Appeals issued a decision in the case *Sosnava Rodriguez v. Ortega*, Nos. 26-50183, 26-50219, 26-50221, ___ F.4th ___, 2026 WL _____ (5th Cir. July 2, 2026). The Fifth Circuit recognized that "Freedom from physical restraint [is] a fundamental right." *Foucha v. Louisiana*, 504 U.S. 71, 86 (1992). The Court concluded that the Due Process Clause requires the Government to provide a bond hearing to aliens held under Section 1225(b)(2)(A) within a reasonable time of detention. *Sosnava Rodriguez*, slip op. at 33. The Court further concluded that the Government may detain aliens under Section 1225(b)(2)(A) for ninety days but no longer without a bond hearing. *Id.* at 36. The Court order that a bond hearing must be held within 90 days of the commencement of

detention and that at the hearing, the Government must articulate an individualized justification for further detention without bond. *Id.* at 37.

50. On July 10, the Fifth Circuit Court of Appeals issued an order vacating its July 2, 2026 panel opinion in *Sosnava Rodriguez* and granting rehearing of the case en banc. *Sosnava Rodriguez v. Ortega*, Nos. 26-50183, 26-50219 & 26-50221, slip op. at 3 (5th Cir. July 10, 2026) (per curiam) (order granting rehearing en banc and vacating panel opinion).

51. 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, 203-03 (2018), the absence of a statutory bond entitlement does not eliminate constitutional constraints on detention or foreclose habeas review.

52. Accordingly, even where § 1225(b)(2)(A) is assumed to govern detention, continued civil confinement remains subject to the Due Process Clause, the Administrative Procedure Act, the Suspension Clause, and binding agency regulations. Detention that becomes prolonged, indefinite, arbitrary, or wholly insulated from meaningful review exceeds the lawful authority conferred by Congress and violates fundamental constitutional guarantees.

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

A. *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.

53. 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.

54. 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.

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

56. 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.

B. 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.

57. 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.

58. 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 decision-maker 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

59. 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.

60. 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.*

61. Although Petitioner's detention is one month, since June 10, 2026, his relief of Cancellation of Removal is complex and typically require extended proceedings– often lasting two to five years or more, given required evidence, testimony, and case backlog. Absent any mechanism for individualized review, Petitioner faces a substantial risk of indefinite detention under penal conditions despite having no criminal history, no disciplinary infractions, and no individualized finding of danger or flight risk.

62. 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.

63. The constitutional Concerns are heightened here because the governments 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.

64. Petitioner has no criminal history, no history of violence, and prima facie claims for relief from removal. Continued categorical detention without any hearing—where the government never has to justify his confinement by evidence—serves no legitimate purpose and is punitive in effect.

PRESERVATION OF STATUTORY ARGUMENT FOR SUPREME COURT REVIEW

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

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

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

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

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

detention for long-present residents.

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

66. 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.

67. 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.

68. 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).

69. 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 custody redetermination hearing before a neutral decision-maker 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*

70. To further preserve the statutory issue for potential *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).

71. 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 v. 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.

72. 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.

73. 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).

74. 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.

75. 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.

76. For these reasons, the panel's statutory holding 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.

VII. CLAIMS FOR RELIEF

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

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

78. 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).

79. Petitioner entered the United States on or about 1997. Petitioner was placed into removal proceedings under 8 U.S.C. § 1229a (INA § 240) on or about June 11, 2026. Petitioner is in a common law marriage with his U.S. citizen wife. He has one daughter, aged 22 years old, who also is a U.S. citizen. He is prima facie eligible for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. His removal proceedings remain ongoing.

80. Petitioner has no criminal convictions, 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.

81. Petitioner has been continuously detained in civil immigration custody since June 2026, following his arrest by immigration authorities, and is currently confined at the Karnes County Immigration Processing Center in Karnes County, Texas.

82. No neutral decision-maker has considered any individualized custody factors and did not evaluate Petitioner's lack of criminal history, his non-dangerousness, his cooperation with immigration authorities, or the feasibility of alternatives to detention.

83. Rather, EOIR has determined that Immigration Judges lack jurisdiction to make custody determinations for noncitizens in Petitioner's position. Petitioner now has no administrative mechanism for custody review, effectively subjecting him to prolonged and potentially indefinite detention without statutory authority or procedural safeguards.

84. 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).

85. 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.

86. 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.

87. 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.

88. 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.

89. 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.

90. 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 U.S. CONSTITUTION

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

92. 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)

93. Petitioner is a noncitizen who entered the United States on or about 1997. He was placed into full removal proceedings under 8 U.S.C. § 1229a (INA § 240) on or about June 11, 2026. His removal proceedings remain pending.

94. Petitioner has no criminal convictions, no record of violence, and no pending criminal charges, and has never exhibited conduct suggesting danger to the community or risk of flight. Petitioner has been continuously detained in civil immigration custody since June 2026, and he remains confined at the Karnes County Immigration Processing Center in Karnes County, Texas.

95. 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).

96. 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.

97. 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.

98. 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 without any finding that his confinement is necessary to serve the government's legitimate interests.

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

A. No immigration judge may conduct a bond hearing;

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

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

100. 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).

101. The government's detention of Petitioner without any individualized assessment also violates substantive due process. Detaining a noncitizen with a viable claim for immigration relief, with no criminal history, no dangerousness, and no flight risk—without requiring the government to justify detention or consider less restrictive alternatives—renders the confinement excessive and punitive in effect.

102. Because the EOIR 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.

103. 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 – ARBITRARY AND CAPRICIOUS AGENCY ACTION

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

105. 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).

106. 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.

107. 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.

108. Despite these facts, DHS is willing to maintain 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.

109. 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.

110. 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.

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

a) Petitioner's lack of criminal history and non-dangerousness;

b) His demonstrated compliance with immigration authorities;

c) His available claims for relief from removal in his immigration proceedings;

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

e) The availability of less restrictive alternatives to detention.

112. 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.

113. 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.

114. 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.

115. 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

Administrative Procedure Act, the Immigration and Nationality Act, and governing constitutional principles.

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

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

117. 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).

118. Petitioner is in removal proceedings under 8 U.S.C. § 1229a (§ 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.

119. Petitioner is similarly situated, for custody purposes, to other noncitizens in § 1992a (§ 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.

120. 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.

121. 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).

122. 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.

123. 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.

124. 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).

125. 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.

126. 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.

127. *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

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

129. 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).

130. *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.

131. Petitioner is detained solely under civil immigration authority and is currently confined at the Karnes County Immigration Processing Center in Karnes County, Texas. He has no criminal convictions, no pending criminal charges, no history of violence, and his removal proceedings remain pending before an immigration judge.

132. The Immigration Judges in the Fifth Circuit are categorically denying jurisdiction to consider bond or conduct any individualized custody determination, relying exclusively on *Buenrostro-Mendez v. Bondi*. 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 § 1229a (§ 240) respondents.

133. Because the Immigration Judges are concluding that the Court lacks 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.

134. 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.

135. The Suspension Clause forbids the government from implementing a detention scheme that eliminates all meaningful opportunities 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.

136. Petitioner's detention—prolonged, non-punitive in name but punitive in effect, and wholly insulated from individualized review—implicates the core protections of the Suspension Clause. Without *habeas corpus*, Petitioner has no judicial or administrative forum in which to contest the legality of his ongoing confinement.

137. The government's application of *Buenrostro-Mendez* in the Fifth Circuit 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.

138. Accordingly, *habeas corpus* relief is constitutionally required. Petitioner respectfully requests that this Court grant the writ and order Petitioner's immediate release from ICE custody or, in the alternative, direct Respondents to provide a prompt, meaningful, and individualized custody determination before a neutral decisionmaker with authority to order release.

COUNT VI: VIOLATION OF THE *ACCARDI* DOCTRINE WITH RESPECT TO 8 C.F.R. § 287.8(C)(2)(I) AND (II)

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

140. 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.

141. The United States has also failed to follow immigration-specific arrest and processing regulations. Regulations governing immigration enforcement require that warrantless arrests comply with the standards set forth in 8 C.F.R. § 287.8(c). Specifically, for any arrest, immigration officers must have reason to believe that an individual committed an offense against the United States or was present in the United States illegally. 8 C.F.R. § 287.8(c)(2)(i). And, for a warrantless arrest, officers must also have reason to believe that an individual is "likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii).

142. 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.

143. At the time he was taken into ICE custody on or about June 10, 2026, and at all times thereafter, Petitioner has complied with all immigration requirements, he has pending relief claims of his removal proceedings, which remain ongoing. On June 10, 2026, Petitioner was detained and taken into ICE custody during a traffic stop in Somerset, Texas, at what appear to be checkpoint, where constable, accompanied by an immigration officers, proceeded to detain him despite his having committed no infraction or offense. Mr. Romero was then transferred to the Karnes County Immigration Processing Center.

144. 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).

145. 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.

146. 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.

147. 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.

148. 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.

149. *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.

VIII. PRAYER FOR RELIEF

150. For the above and foregoing reasons, Petitioner respectfully requests that this Court take the following actions:

a. 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;

b. Enjoin the Respondents from removing the Petitioner from the United States or transferring Petitioner from the current detention center where he is being held in custody or outside the jurisdiction of this Court;

c. 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;

d. Order Respondents to return any of Petitioner's identity documents confiscated upon detention including Petitioner's passport, government issued-identification, driver's license, and immigration case documentation;

e. Grant permanent injunctive relief as appropriate;

f. Award Plaintiff reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and

g. Grant such other relief as this Court deems just and proper.

DATE: July 10, 2026

Respectfully submitted,

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Guillermo M. Hernandez, III
Texas Bar No. 24073310
ATTORNEY FOR PETITIONER

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Neida Romero, ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's daughter, and who after being by me duly sworn, stated that she is above the age of eighteen (18) years of age, is of sound mind, and is in all ways competent to execute this verification. Affiant acknowledged that she had read the substance of the foregoing document, that she has personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of Affiant's knowledge and belief.

[redacted] (Jul 2, 2026 16:31:23 CDT)

Neida Romero,
Affiant

NOTARIAL CERTIFICATE

State of Texas §

County of Bexar §

Before me Maria Leon, on this day personally appeared by means of an interactive two-way video communication Neida Romero, who has provided satisfactory evidence of identity in accordance with Chapter 406, Texas Government Code to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed. This notarial act was an online notarization.

Given under my hand and seal of office this 2nd day of July, 2026.

Notary Seal

Digital Certificate

Notary Public State of Texas

Maria Leon

My comm. exp. 02/13/2027

Notary ID 134199393

HABEAS CORPUS AFFIDAVIT VERIFICATION - with interpreter certificate & electronic notary

Final Audit Report

2026-07-02

Created:	2026-07-02
By:	maria leon (mleon@rhc.law)
Status:	Signed
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CERTIFICATE OF SERVICE

I, Guillermo M. Hernandez, III, hereby certify that on July 10, 2026, a true copy of the above document was filed via the Court's CM/ECF and that a copy will be sent automatically to all counsel of record.

Date: July 10, 2026

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