UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FRANCO ENRIQUE BACCIARINI NUÑEZ,§
§
Petitioner,§
§
v.§ CAUSE NO. 3:26-cv-02195
§
WARDEN OF ERO EL PASO CAMP EAST§
MONTANA; MARY DE ANDA-§
YBARRA, in her official capacity as Field§
Office Director, El Paso Field Office, U.S.§
Immigration and Customs Enforcement,§
Enforcement and Removal Operations;§
DAVID J. VENTURELLA, in his official§
capacity as Acting Director of U.S.§
Immigration and Customs Enforcement;§
MARKWAYNE MULLIN, in his official§
capacity as Secretary of the U.S. Department§
of Homeland Security; and TODD BLANCHE,§
in his official capacity as Attorney General of§
the United States,§
§
Respondents.§

EMERGENCY VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241, COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND REQUEST FOR EXPEDITED CONSIDERATION

I. INTRODUCTION

COMES NOW Petitioner Franco Enrique Bacciarini Nuñez, a civil immigration detainee in the custody of the Department of Homeland Security ("DHS") at ERO El Paso Camp East Montana, El Paso, Texas, and respectfully petitions this Court for a writ of habeas corpus under 28 U.S.C. § 2241 and requests immediate, expedited consideration. This Petition arises in the

first instance from an acute medical emergency: on August 17, 2026, Petitioner was removed from his housing unit and taken to medical after presenting with symptoms of a hypertensive crisis. On information and belief, that episode was caused, and continues to be aggravated, by conditions of confinement that fail to meet the minimum requirements of the Due Process Clause of the Fifth Amendment. Within days of that episode Respondents transferred Petitioner more than 1,500 miles, from Florida to a tent encampment in the Chihuahuan Desert, in the month of August, at a facility where ICE's own inspectors documented forty-nine violations of national detention standards in a single three-day inspection and where at least three people have died in custody since it opened.

Petitioner seeks immediate relief in two forms, sought concurrently with this Petition by way of an Emergency Motion for Temporary Restraining Order: (1) an order requiring Respondents to immediately provide Petitioner adequate medical evaluation, monitoring, and treatment for his hypertension, and to house him in conditions with functioning climate control adequate to protect his health and safety; and (2) an order enjoining Respondents from transferring Petitioner out of the jurisdiction of this Court pending resolution of this Petition. Absent immediate relief, Petitioner faces a serious and imminent risk of stroke, cardiac injury, or other irreversible harm.

Petitioner has lived in the United States since he was five years old. He has no criminal convictions. He holds federal employment authorization valid through February 2030. In the thirteen days since Respondents took him into custody, no officer and no immigration judge has made any individualized determination that his detention is necessary. He has received no custody determination of any kind. In addition to the claims arising from his medical condition and the conditions of his confinement, this Petition therefore asserts the following claims:

Count I — the conditions of Petitioner's confinement at ERO El Paso Camp East Montana, and the medical care he has received there, violate the Due Process Clause of the Fifth Amendment;

Count II — detaining Petitioner without any individualized custody determination violates procedural due process;

Count III — Petitioner's detention serves no lawful regulatory purpose and violates substantive due process;

Count IV — DHS has acted arbitrarily and capriciously under the Administrative Procedure Act by treating a decision about the jurisdiction of immigration judges as extinguishing its own authority to release him;

Count V — Petitioner's categorical exclusion from custody review violates the equal protection component of the Fifth Amendment;

Count VI — the elimination of every avenue to test the legality of Petitioner's confinement violates the Suspension Clause;

Count VII — Petitioner's arrest violated 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2), the Fourth Amendment, and the Accardi doctrine; and

Count VIII — Petitioner is detained under 8 U.S.C. § 1226(a) and entitled to a bond hearing; a claim pleaded solely for preservation and foreclosed in this Circuit by Buenrostro-Mendez v. Bondi.

Except where otherwise indicated, the allegations in this Petition are made upon personal knowledge as to Petitioner's own circumstances and upon information and belief as to all other matters.

II. JURISDICTION

1.This Court has jurisdiction under 28 U.S.C. § 2241(c)(3), because Petitioner is in custody in violation of the Constitution and laws of the United States, and under 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* The Court may grant relief under 28 U.S.C. §§ 2241–2243, the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202, and the All Writs Act, 28 U.S.C. § 1651.

2.The writ of habeas corpus is "available to every individual detained within the United States," *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), and that guarantee extends to immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008).

3.No provision of the INA strips this Court of jurisdiction. Section 1252(g) bars review only of three discrete actions — the decision to commence proceedings, adjudicate cases, or execute removal orders — and the Fifth Circuit has held that it "does not bar courts from reviewing an alien detention order, because such an order, while intimately related to efforts to deport, is not itself a decision to execute removal orders." *Cardoso v. Reno*, 216 F.3d 512, 516–17 (5th Cir. 2000); *see also Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Section 1252(b)(9) likewise does not reach this action, because Petitioner does not challenge an order of

removal or any action taken to remove him; he challenges the lawfulness of his detention. *Jennings*, 583 U.S. at 293. Judges of this District have rejected these same arguments. *See Vieira v. De Anda-Ybarra*, 806 F. Supp. 3d 690, 697 (W.D. Tex. 2025).

4.Section 1226(e) does not bar review either. Petitioner does not ask this Court to review or second-guess a discretionary bond determination — none has ever been made. He challenges the Government's asserted authority to detain him with no individualized custody determination at all, and the constitutionality of that regime as applied to him. Those are questions of law and constitutional claims that remain reviewable. *Jennings*, 583 U.S. at 294–95; *Demore*, 538 U.S. at 516–17.

5.Section 1252(e)(3) is inapplicable. That provision channels facial challenges to regulations implementing the expedited removal system of § 1225(b)(1) to the District Court for the District of Columbia. Petitioner brings an as-applied constitutional challenge to his own detention, not a systemic challenge to expedited removal, and he is not in expedited removal proceedings. *See Cruz Zafra*, 2025 WL 3239526.

6.A prior petition for a writ of habeas corpus concerning this detention was filed in the United States District Court for the Middle District of Florida, Jacksonville Division, while Petitioner was confined at the Baker County Detention Center in Sanderson, Florida. That petition was withdrawn following Petitioner's transfer out of that district. No court has adjudicated the merits of any habeas petition concerning this detention.

III. VENUE

7.Venue is proper in the Western District of Texas, El Paso Division. Petitioner is physically confined at ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas 79936, within this District and Division, and his immediate custodian — the official in charge of that facility — exercises day-to-day control over his confinement within this Court's territorial jurisdiction. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004).

8.Venue is also proper under 28 U.S.C. § 1391(e), because Respondents are officers and employees of the United States acting in their official capacities and a substantial part of the events giving rise to Petitioner's claims — his continued confinement and the denial of any custody determination — is occurring in this District.

9.Petitioner was arrested in Florida and transferred to this District by Respondents. The transfer was not of his choosing, and he received no notice of his destination before it occurred. Jurisdiction and venue are proper here because this is where he is now confined and where his immediate custodian is located. *See Cruz Zafra*, 2025 WL 3239526 (petitioner arrested in Chicago, Illinois and transferred to a detention facility in El Paso, Texas); *Cumbe Lema*, slip op. at 1 (petitioner apprehended in Minnesota and detained at Camp East Montana in El Paso).

IV. PARTIES

10.Petitioner Franco Enrique Bacciarini Nuñez is a native and citizen of Chile, born [redacted]. He is presently detained in the physical custody of ICE at ERO El Paso Camp East Montana, El Paso, Texas. He is the respondent in removal proceedings before the Orlando Immigration Court under INA § 240, 8 U.S.C. § 1229a, and has a pending application for asylum, withholding of removal, and protection under the Convention Against Torture.

11.Respondent Warden of ERO El Paso Camp East Montana is the official in charge of the facility where Petitioner is confined, 6920 Digital Road, El Paso, Texas 79936. The facility is operated under contract by Amentum Services, Inc. As the official with immediate physical custody of Petitioner, this Respondent is the proper respondent to this Petition. *Padilla*, 542 U.S. at 435, 442. Respondent is sued in his or her official capacity.

12.Respondent Mary De Anda-Ybarra is the Field Office Director of the El Paso Field Office of ICE Enforcement and Removal Operations, 11541 Montana Avenue, Suite E, El Paso, Texas 79936. In that capacity Respondent oversees Petitioner's detention within this Area of Responsibility and possesses authority over his continued confinement and release. Respondent is sued in her official capacity.

13.Respondent David J. Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. In that capacity Respondent is responsible for ICE detention policy, including the policy challenged here, and possesses authority to release Petitioner from custody. Respondent is sued in his official capacity.

14.Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security. In that capacity Respondent is responsible for the administration and enforcement of the immigration laws and oversees ICE. Respondent is sued in his official capacity.

15.Respondent Todd Blanche is the Attorney General of the United States. In that capacity Respondent oversees the Executive Office for Immigration Review, which administers the immigration courts and the Board of Immigration Appeals. Respondent is sued in his official capacity.

V. STATEMENT OF FACTS

A. Background and Custody Status

16.Petitioner is a native and citizen of Chile who has resided in the Jacksonville, Florida area since childhood, where his immediate family, his United States citizen daughter, his partner, and multiple siblings, continues to reside. He was arrested by ICE Enforcement and Removal Operations on August 11, 2026.

17.Upon information and belief, ICE officers arrested Petitioner without a warrant. No officer presented Petitioner with a warrant of arrest at the time he was taken into custody, and no warrant was thereafter served upon him.

18.At the time of his arrest, Petitioner was living openly at the Jacksonville, Florida address he had reported to USCIS, the same address that appears on his Notice to Appear and on every notice USCIS has mailed to him. He was employed at a known workplace and had worked there through the preceding week. He held an employment authorization document issued by the United States Government and valid through February 2030. He had a pending application for asylum, withholding of removal, and protection under the Convention Against Torture. He had appeared as directed at an Application Support Center for biometrics collection in September 2024. He was not the subject of any criminal investigation, charge, or warrant.

19.Petitioner entered the United States on or about September 13, 2001, at or near Phoenix, Arizona, when he was five years old. He was not admitted or paroled. He has remained in this country continuously for twenty-five years, the great majority of his life. He was enrolled

in the Duval County, Florida public schools by March 2006 and received a Florida high school diploma in September 2019.

20.Petitioner's daughter, [redacted]., was born in Jacksonville, Florida in March 2015 and is a citizen of the United States. She was found eligible for exceptional student education services by the Duval County school district in January 2025 on the basis of a specific learning disability. Petitioner's three younger half-siblings were each born in Jacksonville and are each citizens of the United States.

21.On February 15, 2025, USCIS approved Petitioner's Form I-765 and granted him employment authorization under category (c)(8), valid from February 14, 2025 through February 13, 2030. That authorization remains valid today. Petitioner worked continuously under it, including for a drywall contracting company in St. Augustine, Florida through the week before his arrest, and he filed federal income tax returns. He has no criminal convictions, no pending criminal charges, and has never been alleged to have committed an act of violence. A United States citizen who has known Petitioner and his family since 2018 has offered in writing to house him, to provide financial support, and to ensure his compliance with any conditions of release.

22.Petitioner's removal proceedings are pending before the Orlando Immigration Court under INA § 240, 8 U.S.C. § 1229a. He was placed in those proceedings by a Notice to Appear issued on February 4, 2026 by an asylum officer and served on him by regular mail, charging him under INA § 212(a)(6)(A)(i) as an alien present in the United States without admission or parole. He has a pending, non-frivolous application for asylum, withholding of removal, and protection under the Convention Against Torture. No hearing has been held. He is not subject to any order of removal.

23.Since taking Petitioner into custody, Respondents have not issued him a Form I-286, Notice of Custody Determination. No officer has made or communicated to him any individualized determination that his detention is necessary to prevent flight or to protect the community. No immigration judge has held a bond hearing in his case. Petitioner has received no custody determination of any kind.

B. The Medical Emergency

24.On August 17, 2026, while confined at the Baker County Detention Center in Sanderson, Florida, Petitioner began experiencing symptoms of high blood pressure. He was removed from his housing unit and taken to the medical unit at that facility.

25.Counsel is informed and believes that this episode was caused, or substantially aggravated, by the extreme heat inside Petitioner's housing unit resulting from a non-functioning air conditioning system. Anny Leon, Esq., who represents Petitioner in his removal proceedings before the Orlando Immigration Court and who practices in the same office as the undersigned, visited the Baker facility in person on Friday, August 14, 2026, met with Petitioner there, and experienced those conditions herself. The air conditioning had been inoperable for some time, and no estimated date for its restoration was given.

26.Uncontrolled hypertension, particularly when aggravated by heat exposure and dehydration, carries a serious and well-recognized risk of stroke, myocardial infarction, and other acute cardiovascular events.

C. The Transfer to the Western District of Texas

27.At the time Petitioner was taken to medical on August 17, 2026, ICE personnel told him that he would be transferred and instructed him to pack his belongings. He was not told where he was being taken.

28.Respondents thereafter transferred Petitioner from Florida to ERO El Paso Camp East Montana, 6920 Digital Road, El Paso, Texas, where he remains confined. The transfer was not of his choosing. It moved him more than 1,500 miles from the Orlando Immigration Court, where his removal proceedings remain pending, and from the United States citizen daughter, partner, and siblings who reside in the Jacksonville area.

29.Respondents transferred Petitioner within days of a medical episode requiring removal to a medical unit, without any indication that his condition had been stabilized, evaluated, or monitored, and into the conditions described below.

D. Conditions at ERO El Paso Camp East Montana

30.ERO El Paso Camp East Montana is a tent encampment constructed on the grounds of Fort Bliss in the Chihuahuan Desert east of El Paso. It opened in August 2025 and is the largest immigration detention facility in the United States, housing on the order of 3,000 people per day. Petitioner is confined there in the month of August.

31.On February 10 through 12, 2026, ICE's own Office of Detention Oversight conducted a congressionally mandated inspection of the facility. The resulting report documents forty-nine deficiencies — violations of national detention standards or ICE policy — of which twenty-two concerned use of force and restraints, eleven concerned facility security and control, and five

concerned medical care. The most deficiencies identified in any other inspection conducted by that office so far in 2026 was thirteen.[1]

32.Among the findings: facility staff did not document whether required checks to prevent self-harm and suicide were being conducted; the operating contractor refused to provide staffing information to ICE, making it impossible to determine whether staffing was sufficient to maintain security; a detainee escaped when no staff member had been assigned to observe the perimeter; tools and equipment were unsecured and unaccounted for throughout the facility; staff did not maintain an accurate ammunition inventory; officers who used or witnessed uses of force and restraints failed to file required written reports; supervisors failed to document their observations; video of use-of-force incidents was in some instances not recorded or not preserved; and the facility failed to conduct after-action reviews of whether chemical agents or other force were appropriately used.

33.As to medical care specifically, the inspection found that medical staff failed to isolate a detainee presenting with symptoms consistent with tuberculosis, an airborne disease, and failed to notify ICE of the case. The facility also responded to a dozen detainee grievances concerning medical care only after intervals of six to fourteen business days.

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[1]U.S. Immigration & Customs Enforcement, Office of Detention Oversight, Compliance Inspection, ERO El Paso Camp East Montana, El Paso, Texas, Feb. 10–12, 2026, Inspection No. 2026-001-098, https://www.ice.gov/doclib/foia/odo-compliance-inspections/eroElPasoCampEastMontana_ElPasoTX_Feb10-12_2026.pdf. See also Ryan J. Foley, Inspection Finds Violations at El Paso Immigration Facility, Texas Tribune / Associated Press (Apr. 3, 2026), https://www.texastribune.org/2026/04/03/texas-el-paso-camp-east-montana-immigration-inspection-violations/; Kanishka Singh, Inspection Finds 49 Violations of Detention Standards at Largest US Migrant Detention Camp, Reuters (Apr. 2, 2026); Inspection Finds Dozens of Detention Standard Violations at El Paso's Camp East Montana, El Paso Matters (Apr. 2, 2026), https://elpasomatters.org/2026/04/02/ice-el-paso-texas-camp-east-montana-inspection-finds-violations-detention-standards/.

34.At least three people have died in custody at ERO El Paso Camp East Montana since it opened, one of whose deaths the El Paso County Medical Examiner ruled a homicide. The facility has experienced outbreaks of both tuberculosis and measles; during the measles outbreak it was closed to attorneys and visitors, and detainees could reach counsel only remotely. A separate report by the Government Accountability Office found that detainee health was endangered and that evidence was destroyed or lost in the investigation of a death in custody. On March 12, 2026 ICE replaced the prime contractor, Acquisition Logistics LLC, which had been awarded a contract worth up to $1.3 billion to build and operate the facility despite having no prior experience operating a detention facility.[2]

35.On information and belief, Petitioner remains exposed to conditions of the kind that precipitated his hypertensive episode, and has not received adequate evaluation, monitoring, or treatment for his hypertension since his arrival at the facility.

VI. LEGAL FRAMEWORK

36.Section 236(a) of the INA, 8 U.S.C. § 1226(a), authorizes the discretionary detention of noncitizens placed in removal proceedings under INA § 240 and permits release on bond or conditional parole. Persons detained under § 1226(a) have historically been entitled to a custody

[2]On deaths in custody and the homicide ruling: Sergio Martínez-Beltrán, Immigrant Detainees Sue Over 'Horrific' Conditions at Texas ICE Facility, NPR (May 30, 2026), https://www.npr.org/2026/05/30/nx-s1-5841359/immigrant-detainees-sue-texas-camp-east-montana; ICE Detention Deaths Are on a Record Pace. One Texas Facility Bears the Brunt, NPR (Apr. 3, 2026), https://www.npr.org/2026/04/03/nx-s1-5754749/ice-detention-deaths-are-on-a-record-pace-one-texas-facility-bears-the-brunt. On the measles outbreak and the suspension of in-person attorney access: ICE Confirms a Measles Outbreak in the Nation's Largest Detention Facility in Texas, NBC News (Mar. 4, 2026), https://www.nbcnews.com/news/us-news/ice-confirms-measles-outbreak-nations-largest-detention-facility-texas-rcna261659; Statement of Rep. Veronica Escobar on Facility Quarantine of Camp East Montana (Mar. 3, 2026), https://escobar.house.gov/news/documentsingle.aspx?DocumentID=3066. On the Government Accountability Office findings: Report: ICE Wasted Millions, Endangered Detainees in Largest Immigration Facility, NPR (June 10, 2026), https://www.npr.org/2026/06/10/nx-s1-5853534/report-ice-wasted-millions-endangered-detainees-in-largest-immigration-facility. On the replacement of the prime contractor: El Paso Matters (Apr. 2, 2026), supra.

redetermination hearing before an immigration judge. 8 C.F.R. §§ 236.1(d), 1003.19(a). Section 1226(c) requires mandatory detention of noncitizens with specified criminal histories. Petitioner has no such history.

37.Section 235(b) of the INA, 8 U.S.C. § 1225(b), governs the detention of "applicants for admission." Section 1225(b)(2)(A) provides that where an examining immigration officer determines that "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

38.For nearly three decades after the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the agencies charged with administering these provisions treated noncitizens who entered without inspection and were placed in § 240 proceedings as detained under § 1226(a) and eligible for bond. The Department of Justice said so expressly in the rulemaking issued to implement IIRIRA: "Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." 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 Fifth Circuit acknowledged in *Buenrostro-Mendez* that this language "appears to concede that unadmitted aliens fell literally within the scope of § 1225," 166 F.4th at 507, and the dissent treated it as the contemporaneous understanding of the agency charged with the statute's execution, *id.* at 516 (Douglas, J., dissenting). That practice was uniform across administrations from 1997 to 2025.

39.On July 8, 2025, DHS reversed course. Then-Acting ICE Director Todd M. Lyons issued interim guidance to all ICE employees, titled "Interim Guidance Regarding Detention

Authority for Applicants for Admission," stating that DHS, in coordination with the Department of Justice, had "revisited its legal position on detention and release authorities" and concluded that INA § 235, "rather than section 236, is the applicable immigration detention authority for all applicants for admission." The guidance provided that, effective immediately, such persons "are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole," that they "are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge," and that "[f]or custody purposes, these aliens are now treated in the same manner that 'arriving aliens' have historically been treated." The only persons remaining eligible for a custody determination under INA § 236(a) are those admitted to the United States and chargeable with deportability under INA § 237. The guidance further directed that ICE would no longer issue Form I-286 to applicants for admission and would affirmatively cancel previously issued forms.

40.On September 5, 2025, the Board of Immigration Appeals adopted the Government's position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that "[b]ased on the plain language of section 235(b)(2)(A) . . . Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission."

41.On February 6, 2026, a divided panel of the Fifth Circuit endorsed that statutory interpretation in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (Nos. 25-20496 & 25-40701).

42.Neither *Yajure Hurtado* nor *Buenrostro-Mendez* addressed the constitutional limits on civil detention, the Administrative Procedure Act, the equal protection component of the Fifth

Amendment, the Suspension Clause, or the requirement that an agency follow its own regulations. Those questions remain open, and they are the questions this Petition presents.

VII. CLAIMS FOR RELIEF

COUNT I

UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT AND DENIAL OF ADEQUATE MEDICAL CARE

(Fifth Amendment Due Process)

43.Petitioner realleges and incorporates by reference each preceding paragraph.

Legal Standard.

44.Petitioner is a civil detainee. He is not serving a criminal sentence and has not been convicted of any offense. Civil immigration detention is not punishment and may not be imposed or administered as punishment. *Zadvydas*, 533 U.S. at 690.

45.A civil detainee may not be subjected to conditions that amount to punishment. A condition constitutes punishment where it is imposed with an expressed intent to punish or where it is not reasonably related to a legitimate governmental objective. *Bell v. Wolfish*, 441 U.S. 520, 535–39 (1979). Persons in civil confinement are entitled to conditions at least as protective as those afforded convicted prisoners, and to reasonably safe conditions of confinement. *Youngberg v. Romeo*, 457 U.S. 307, 315–16, 321–22 (1982).

A. The Conditions of Petitioner's Confinement.

46.The conditions at ERO El Paso Camp East Montana described above are documented by Respondents' own Office of Detention Oversight, by the Government Accountability Office, and by the deaths of at least three people in custody at the facility since it opened. Petitioner is held in a tent encampment in the Chihuahuan Desert in August, at a facility where the operator would not disclose staffing levels to ICE, where required suicide-prevention checks went undocumented, where a person with symptoms of an airborne communicable disease was not isolated, and where uses of force went unreported, unreviewed, and unrecorded.

B. The Medical Care Petitioner Has Received.

47.The Government owes an affirmative duty of care to those it holds in civil custody. When the State takes a person into its custody and holds him there against his will, it assumes responsibility for his safety and general well-being, including the provision of adequate medical care. *Youngberg*, 457 U.S. at 317, 324.

48.Respondents have known since August 17, 2026 that Petitioner presented with symptoms of dangerously elevated blood pressure requiring removal to a medical unit. Rather than stabilize and monitor him, Respondents transferred him within days to a tent facility in the desert whose own inspection record shows a failure to isolate a detainee with symptoms of an airborne communicable disease, a failure to document required health and safety checks, and delays of up to fourteen business days in responding to detainee grievances about medical care.

49.The conditions to which Respondents subject Petitioner, and their failure to provide him adequate medical care while holding him in civil custody, are not reasonably related to any legitimate governmental objective and amount to punishment of a person who has been convicted of nothing. Petitioner's continued confinement under those conditions violates the Due

Process Clause of the Fifth Amendment, whether the medical-care component is measured by an objective-reasonableness standard or by a standard of deliberate indifference to a serious medical need.

COUNT II

PROCEDURAL DUE PROCESS — DETENTION WITHOUT ANY INDIVIDUALIZED CUSTODY DETERMINATION

(Fifth Amendment Due Process)

50.Petitioner realleges and incorporates by reference each preceding paragraph.

A. Petitioner Is Entitled to the Protections of the Due Process Clause.

51.The Fifth Amendment forbids the Government to deprive any person of liberty without due process of law. "Freedom from imprisonment — from government custody, detention, or other forms of physical restraint — lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690. It is "well established that the Fifth Amendment entitles aliens to due process of law." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025). "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

B. Petitioner Possesses a Substantial Liberty Interest.

52."The interest in being free from physical detention is the most elemental of liberty interests." *Hamdi*, 542 U.S. at 529. That interest is at its most weighty for a person who has built an entire life in this country.

53.Petitioner entered the United States at the age of five and has lived here for twenty-five years — approximately eighty-four percent of his life. He was educated in American public schools from the fourth grade and holds an American high school diploma. His daughter is a United States citizen, as are his three half-siblings. He holds valid federal employment authorization through February 2030 and has worked continuously under it. He pays taxes. He has no criminal record. *Cf. Cruz Zafra*, 2025 WL 3239526 (petitioner present since 2000, gainfully employed, primary financial support for his family, "possess[ed] a strong liberty interest in his freedom from detention because he has established a life here"); *Cumbe Lema*, slip op. at 1 (approximately thirty-seven years' presence).

54.Respondents' position appears to be that a protected liberty interest arises only once detention becomes prolonged. That position "fails to consider that above all else, Petitioner has acquired a liberty interest by being present in the United States" for decades. *Cruz Zafra*, 2025 WL 3239526. Petitioner possesses a cognizable liberty interest in his freedom from detention that deserves great weight.

C. The Mathews Factors Establish a Violation.

55.To determine whether civil detention violates due process, courts apply the three-factor test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976): the private interest affected; the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and the Government's interest, including the fiscal and administrative

burdens of additional procedure. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333.

56.The first factor weighs heavily in Petitioner's favor for the reasons stated above. His interest is in physical liberty itself, and it is magnified by twenty-five years of residence and by the family, employment, and community ties he has built in that time.

57.The second factor weighs in Petitioner's favor. The procedure Respondents have used is no procedure at all. Petitioner has received no Form I-286, no custody determination, and no hearing. Under *Yajure Hurtado*, an immigration judge would dismiss a bond request for want of jurisdiction without reaching the merits, and an appeal to the Board would be futile. The risk of erroneous deprivation in a system that never asks whether detention is necessary is not merely substantial; it is total. The probable value of an individualized custody hearing is correspondingly high: such hearings are routine, agency decisionmakers conduct them regularly, and they would permit a neutral adjudicator to determine on the specific facts whether confinement is necessary to secure Petitioner's appearance or to protect the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1003.19(h)(3); *Cruz Zafra*, 2025 WL 3239526; *Lopez-Arevelo*, 2025 WL 2691828.

58.The third factor weighs in Petitioner's favor. Respondents have a generalized interest in ensuring that noncitizens appear for removal proceedings and do not endanger the community. Nothing in this record suggests Petitioner threatens either interest, and in any event both would be fully vindicated at a bond hearing. Any administrative burden is slight: the Government conducted individualized custody determinations for persons in Petitioner's position continuously from 1997 until it reinterpreted the statute in 2025, and immigration bond hearings are routine

proceedings of minimal cost. *See Cruz Zafra*, 2025 WL 3239526; *Lopez-Arevelo*, 2025 WL 2691828.

59.Because all three *Mathews* factors favor Petitioner, detaining him without any individualized assessment of flight risk or dangerousness deprives him of procedural due process, and 8 U.S.C. § 1225(b)(2)(A) is unconstitutional as applied to him.

COUNT III

SUBSTANTIVE DUE PROCESS — DETENTION SERVING NO LAWFUL PURPOSE

(Fifth Amendment Due Process)

60.Petitioner realleges and incorporates by reference each preceding paragraph.

61.Civil detention is constitutionally permissible only where it serves a legitimate, non-punitive purpose. In the immigration context, those purposes are ensuring the noncitizen's appearance at removal proceedings and protecting the community from danger. *Zadvydas*, 533 U.S. at 690–91. "[D]ue process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." *Jackson v. Indiana*, 406 U.S. 715, 738 (1972).

62.Petitioner's detention serves neither purpose. Respondents have never alleged, much less found, that he is dangerous or likely to abscond. He has no criminal history, a fixed address, verified employment, a United States citizen child, and a United States citizen sponsor who has offered housing and supervision. He appeared for his biometrics appointment when directed, and

he holds federal work authorization valid for another three and a half years, which the Government itself granted him.

63.Petitioner is detained not because any officer determined that his confinement is necessary, but because a categorical rule places him beyond the reach of individualized assessment. Detention imposed on that basis bears no reasonable relation to any legitimate regulatory purpose and violates substantive due process.

COUNT IV

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

(5 U.S.C. § 706(2)(A))

64.Petitioner realleges and incorporates by reference each preceding paragraph.

65.The APA requires reviewing courts to hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). An agency acts arbitrarily when it fails to consider relevant factors, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress conferred it. *Judulang v. Holder*, 565 U.S. 42, 53–55 (2011). APA review may proceed through a petition for writ of habeas corpus. 5 U.S.C. § 703.

66.Petitioner does not challenge the Fifth Circuit's construction of § 1225(b)(2)(A) or the Board's holding regarding immigration judge jurisdiction. He challenges DHS's own conduct: its treatment of *Matter of Yajure Hurtado* — a decision addressed solely to the authority of

immigration judges — as extinguishing DHS's independent statutory and regulatory authority to release him.

67.Nothing in *Yajure Hurtado* or in *Buenrostro-Mendez* requires DHS to detain anyone. DHS retains authority to release Petitioner on parole under 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5. By treating a decision about immigration judge jurisdiction as an absolute bar to any individualized custody consideration, DHS has converted a discretionary framework into a blanket rule and substituted categorical inaction for the case-by-case judgment the INA contemplates.

68.DHS has failed to consider factors relevant to Petitioner's custody, including his twenty-five years of continuous residence; his lack of any criminal history; his United States citizen daughter and her documented educational disability; his valid employment authorization and continuous employment; his identified sponsor and stable proposed residence; and the availability of alternatives to detention.

69.DHS has further failed to give any reasoned explanation for abandoning twenty-eight years of consistent agency practice under which persons in Petitioner's position received individualized custody determinations. An unexplained departure of that magnitude is arbitrary and capricious. *Judulang*, 565 U.S. at 55.

COUNT V

VIOLATION OF THE EQUAL PROTECTION COMPONENT OF THE FIFTH AMENDMENT

70.Petitioner realleges and incorporates by reference each preceding paragraph.

71.The Due Process Clause of the Fifth Amendment contains an equal protection guarantee that forbids the federal government from treating similarly situated persons differently absent a rational relationship to a legitimate governmental purpose. *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000).

72.Petitioner is in removal proceedings under INA § 240, the same framework governing every other respondent before the immigration courts. For custody purposes he is similarly situated to noncitizens in § 240 proceedings who have no criminal history, no record of violence, and comparable community ties — including persons who were admitted on a visa and overstayed, and who are apprehended in the interior many years after entry. Those persons receive individualized custody determinations. Petitioner is categorically denied one.

73.The sole basis for that disparity is the manner of Petitioner's entry as a five-year-old child in 2001. That circumstance bears no rational relationship to whether he presents a danger to the community or a risk of flight in 2026. The Government's own twenty-eight-year practice of treating such persons as eligible for custody determinations underscores the irrationality of the line it now draws.

COUNT VI

VIOLATION OF THE SUSPENSION CLAUSE

74.Petitioner realleges and incorporates by reference each preceding paragraph.

75.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 a meaningful opportunity to test the legality of executive detention, and where Congress or the Executive forecloses every alternative avenue of review, habeas must remain available and effective. *Boumediene v. Bush*, 553 U.S. 723, 745–46, 779 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300–06 (2001).

76.Petitioner has no administrative avenue to test his confinement. ICE has issued no custody determination and, under its own guidance, will issue none. An immigration judge lacks jurisdiction to hold a bond hearing. The Board cannot review a determination that was never made. Parole is discretionary and unreviewable.

77.If habeas corpus is unavailable to Petitioner, no forum exists in which the legality of his confinement may be tested at all. The Suspension Clause forbids that result.

COUNT VII

UNLAWFUL WARRANTLESS ARREST — 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8(c)(2), THE FOURTH AMENDMENT, AND THE ACCARDI DOCTRINE

78.Petitioner realleges and incorporates by reference each preceding paragraph.

79.An agency must follow its own binding regulations, and action taken in violation of them is unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974).

80.An immigration officer may make a warrantless arrest only where the officer has reason to believe that the person is in the United States in violation of law *and* is likely to escape before a warrant can be obtained. 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(i)–(ii). Those requirements are mandatory. The Fourth Amendment independently requires a neutral determination of probable cause, either before the arrest by warrant or promptly afterward. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975).

81.Upon information and belief, Respondents arrested Petitioner without a warrant, and the regulatory predicates for a warrantless arrest were not satisfied.

82.Whether or not a warrant issued, no immigration officer could have had reason to believe that Petitioner was likely to escape before one could be obtained. Petitioner had lived at the same reported Jacksonville address for years, had given that address to USCIS, and had received government correspondence there — including the Notice to Appear that placed him in removal proceedings. He was employed at a known workplace. He held federal employment authorization valid for another three and a half years. He had a pending application for relief that gave him every incentive to remain. He had appeared as directed for biometrics collection. He was not the subject of any criminal process. A person in those circumstances is not a person about to flee, and 8 C.F.R. § 287.8(c)(2)(ii) permitted no warrantless arrest of him.

83.Petitioner's present confinement flows directly from and is predicated upon that unlawful arrest. Habeas corpus is the appropriate vehicle to remedy detention that results from an agency's failure to observe binding regulations designed to protect individual liberty. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention."); *Poree v. Collins*, 866 F.3d 235, 242–43 (5th Cir. 2017).

COUNT VIII

UNLAWFUL DETENTION UNDER 8 U.S.C. § 1226(a) — CLAIM PRESERVED

84.Petitioner realleges and incorporates by reference each preceding paragraph. Petitioner pleads this Count solely to preserve it for en banc or Supreme Court review. He acknowledges that *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), binds this Court and forecloses relief on this ground, and he does not ask this Court to depart from that decision. Judge Douglas dissented. *Id.* at 508–09 (Douglas, J., dissenting).

85.Petitioner is detained pending proceedings under INA § 240 and is properly subject to detention under 8 U.S.C. § 1226(a), which permits release on bond or conditional parole and entitles him to a custody redetermination hearing before an immigration judge. 8 C.F.R. §§ 236.1(d), 1003.19(a).

86.The phrase "an alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) is cast in the present tense and describes a person presently seeking admission — a person in the process of inspection at a port or border. It does not describe a person apprehended in the interior of the country a quarter century after entry.

87.The Government's construction renders the bond provisions of § 1226(a) inoperative as to the large majority of noncitizens in removal proceedings, contrary to the canon against surplusage.

88.The Government's construction contradicts twenty-eight years of consistent administrative practice, including the agency's own 1997 rulemaking, *see* 62 Fed. Reg. at 10323, and the reliance interests that practice engendered.

89.The Government's construction was not the product of independent statutory analysis by the agency but of a policy directive issued in July 2025, which the Board then ratified. Under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), courts must exercise independent judgment in determining the best reading of a statute and may not defer to an agency's interpretation. An agency's views may command respect under *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944), in proportion to the thoroughness of its reasoning and the consistency of its position over time. An abrupt reversal of twenty-eight years of settled practice, announced by internal memorandum and ratified within two months, possesses neither quality.

90.Petitioner further notes that on February 18, 2026, the United States District Court for the Central District of California vacated *Matter of Yajure Hurtado* in enforcing a classwide declaratory judgment that 8 U.S.C. § 1226(a) governs the detention of class members nationwide. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, ECF No. 116 (C.D. Cal. Feb. 18, 2026).

VIII. REQUEST FOR EXPEDITED CONSIDERATION

91.Given the acute and ongoing nature of Petitioner's medical condition, and because he is detained without any custody determination at all, Petitioner respectfully requests that this Court issue an order to show cause and rule on this Petition, and on the contemporaneously filed Emergency Motion for Temporary Restraining Order, on the shortest schedule consistent with due process. Judges of this District have resolved materially identical petitions within days of filing. *See Cumbe Lema v. De Anda-Ybarra*, No. EP-26-CV-249-KC (W.D. Tex. Feb. 9, 2026); *Clemente Ceballos v. Garite*, No. EP-26-CV-00312-DB (W.D. Tex. Feb. 10, 2026). Every day of

continued detention under the conditions described above compounds the risk of serious and irreversible harm to Petitioner's health.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Pursuant to 28 U.S.C. § 2243, issue an order directing Respondents to show cause within three days why the writ should not be granted, and set this matter for prompt disposition;

c. Order Respondents to immediately provide Petitioner with adequate medical evaluation, monitoring, and treatment for his hypertension, including access to appropriate specialist care if medically indicated;

d. Order Respondents to immediately house Petitioner in conditions with functioning climate control adequate to protect his health and safety;

e. Enjoin Respondents from transferring Petitioner outside the territorial jurisdiction of this Court, and from removing him from the United States, during the pendency of this action;

f. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the equal protection component of the Fifth Amendment, the Suspension Clause, the Administrative Procedure Act, and the regulations binding upon Respondents;

g. Grant the writ of habeas corpus and order Petitioner's immediate release from custody under reasonable conditions of supervision; or, in the alternative, order Respondents to

provide Petitioner, within a date certain, an individualized custody hearing before a neutral decisionmaker with authority to order release, at which the Government bears the burden of establishing by clear and convincing evidence that Petitioner is a danger to the community or a risk of flight and that no condition of release will reasonably assure his appearance and the safety of the community, and order that Petitioner be released immediately if Respondents decline or fail to provide such a hearing;

h. Award costs and reasonable attorneys' fees to the extent permitted by law; and

i. Grant such other and further relief as the Court deems just and proper.

Dated: August 24, 2026

Respectfully submitted,

/s/ Zoraida Cruz

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Franco Enrique Bacciarini Nuñez, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of

Habeas Corpus are true and correct to the best of my knowledge, information, and belief, based on communications within the firm and with Petitioner and his family.

Dated: August 24, 2026/s/ Zoraida Cruz

Zoraida Cruz, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 24, 2026, a true and correct copy of the foregoing Emergency Verified Petition for Writ of Habeas Corpus was served on Respondents via the CM/ECF system.

/s/ Zoraida Cruz
Zoraida Cruz, Esq.