JUDGE LEON SCHYDLOWER

FILED
AUG 28 2026
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY
DEPUTY CLERK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MUHAMMED AYKUT,

(A No. [redacted]

Petitioner,

v.

Civil Action No. _____

EP26CV2237

PETITION FOR WRIT OF HABEAS CORPUS

TODD BLANCHE, Attorney General of the United States;

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security;

DAVID VENTURELLA, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

MARY DE ANDA-YBARRA, in her official capacity as Field Office Director, ICE/ERO El Paso Field Office (or successor);

FACILITY ADMINISTRATOR (WARDEN), ERO El Paso Detention Facility,

Respondents.

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Muhammed Aykut, by and through undersigned counsel, respectfully petitions this Honorable Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge his ongoing and unlawful civil immigration detention by the United States Department of Homeland Security ("DHS") and its agents.

2. Petitioner is a native and citizen of Turkiye currently detained at the ERO El Paso Detention Facility, located at 8915 Montana Avenue, El Paso, TX 79925, within the Western District of Texas. *(See Exhibit A)*

3. Petitioner entered the United States on or about November 3, 2024. He was subsequently placed into full removal proceedings under section 240 of the Immigration and Nationality Act ("INA"). His removal proceedings remain pending; his case was placed on the detained docket, and his next scheduled Master Calendar Hearing before the El Paso Immigration Court is set for August 26, 2026. *(See Exhibit B & C)*

4. On August 7, 2026, Petitioner voluntarily appeared for a scheduled check-in appointment at the ICE ERO El Paso facility. Despite his absolute compliance, ICE took custody of Petitioner during this very appointment. He was placed in immigration detention while his removal proceedings are ongoing.

5. Respondents have taken the position that Petitioner is categorically ineligible for any custody redetermination before an immigration judge. The Immigration Judge and/or ICE denied jurisdiction to consider bond or conduct any custody review, expressly concluding that the court lacked authority pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

6. 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.

7. Petitioner has no criminal convictions and has consistently complied with all immigration requirements. His continued detention is not based on any individualized finding that confinement is necessary to serve a legitimate governmental purpose.

8. Petitioner's continued detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, and the Suspension Clause. DHS's reliance on a categorical jurisdictional bar has resulted in prolonged civil confinement without adequate procedural safeguards or meaningful judicial review.

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

FACTUAL BACKGROUND

10. Petitioner Muhammed Aykut is a native and citizen of Turkiye. He has no criminal convictions, no history of violence or dangerous behavior, and no pending criminal charges.

11. He entered the United States on or about November 3, 2024, near Otay Mesa, California.

12. Crucially, Petitioner has demonstrated absolute compliance with U.S. immigration authorities. When scheduled for an ICE appointment at the ERO El Paso Detention Facility on August 7, 2026, at 08:00 AM, Petitioner voluntarily and promptly appeared as directed. He did not abscond, evade, or delay his obligations, unequivocally proving that he poses zero flight risk and respects the administrative process.

13. Despite his full cooperation and voluntary appearance, Petitioner was formally taken into ICE custody on August 7, 2026. He has remained in continuous civil immigration detention at the ERO El Paso Detention Facility since that date.

14. Throughout his immigration proceedings, Petitioner has consistently complied with all requirements imposed by immigration authorities. His case was recently placed on the detained docket, with his next Immigration Court Master Calendar Hearing now set for August 26, 2026. That hearing, however, is a scheduling proceeding only; it affords no custody or bond determination, and no such determination is available to Petitioner at any other point while his removal proceedings remain pending.

15. Following his arrest, Petitioner sought an individualized custody determination. However, Respondents and the Immigration Court have maintained that under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the court lacks jurisdiction to conduct any custody redetermination.

16. Because of this blanket jurisdictional bar, the Immigration Court could not consider any individualized custody factors, including the indisputable fact that Petitioner voluntarily attended his ICE check-in, proving he is neither a danger to the community nor a flight risk.

JURISDICTION AND VENUE

17. Mr. Aykut is detained at the ERO El Paso Detention Facility, located in El Paso, Texas, within the jurisdiction of the United States District Court for the Western District of Texas, El Paso Division.

18. This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 1331, and under the Constitution and laws of the United States.

19. Sections 8 U.S.C. §§ 1252(b)(9) and 1252(g) do not bar jurisdiction because Mr. Aykut does not challenge any removal order or the merits of his removal proceedings; he challenges only the legality of his detention and ICE's refusal to provide an individualized custody determination.

20. Respondents cannot invoke the jurisdictional bars of 8 U.S.C. §§ 1252(b)(9) or 1252(g) to insulate this detention from review. Petitioner does not challenge the decision to initiate proceedings, the merits of his removal charges, or the validity of any future removal order. This petition challenges solely the *fact and duration* of his physical confinement pending those proceedings — a core habeas function expressly preserved by the Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018). As the Supreme Court recognized in *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 140 S. Ct. 1959 (2020), the historical core of habeas corpus is securing "simple release" from unlawful custody. While *Thuraissigiam* upheld statutory restrictions on habeas review in the expedited removal context, where the petitioner was apprehended at the border and challenged a credible fear determination, that holding has no application here. Petitioner is not in expedited removal, is not challenging a credible fear finding, and does not seek re-do of any screening procedure. He challenges only the prolonged and categorical civil detention

of a person already in full § 240 removal proceedings — the precise core habeas function *Thuraissigiam* itself preserved.

21. Venue is proper in this District because Mr. Aykut's immediate custodian (the Facility Administrator/Warden of ERO El Paso Detention Facility) is located in this District and Mr. Aykut is physically confined here. *See Rumsfeld v. Padilla*, 542 U.S. 426, 442–47 (2004) (a habeas petition challenging present physical confinement must ordinarily be filed against the warden of the facility where the petitioner is held, in the district of confinement).

22. Furthermore, 8 U.S.C. § 1252(f)(1) does not strip this Court of jurisdiction to grant relief. As the Supreme Court clarified in *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), while § 1252(f)(1) bars class-wide injunctive relief, it does not preclude federal courts from entertaining individual, as-applied habeas challenges under § 2241 and ordering the release of an unlawfully detained individual.

23. Exhaustion of administrative remedies is not required, and would in any event be futile, because no administrative remedy exists for Petitioner to exhaust. The Immigration Judge has already disclaimed jurisdiction to consider a custody redetermination for Petitioner under *Matter of Yajure Hurtado*, and neither the BIA nor DHS provides any further administrative channel through which Petitioner could seek custody review. Requiring Petitioner to pursue a remedy that Respondents themselves maintain does not exist would serve no purpose but delay. Courts routinely excuse exhaustion under such circumstances, and § 2241 in any event contains no statutory exhaustion requirement.

PARTIES

24. Petitioner Muhammed Aykut (A No. [redacted] is detained at the ERO El Paso Detention Facility, 8915 Montana Avenue, El Paso, TX 79925. He is in the custody and under the direct control of Respondents and their agents.

25. Respondent Facility Administrator (Warden), ERO El Paso Detention Facility, is sued in his/her official capacity. This Respondent has immediate physical custody of Mr. Aykut and has the authority to release him. *See Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

26. Respondent Mary De Anda-Ybarra is sued in her official capacity as Field Office Director, ICE/ERO El Paso Field Office (or successor), and supervises and oversees ICE detention operations affecting Mr. Aykut.

27. Respondent David Venturella is sued in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement and supervises and oversees the ICE Field Office Director.

28. Respondent Markwayne Mullin is sued in his official capacity as Secretary of the Department of Homeland Security. In this capacity, he is responsible for the implementation and enforcement of the INA and oversees ICE. See 8 U.S.C. § 1103(a).

29. 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.

30. First, INA § 236(a), 8 U.S.C. § 1226(a), authorizes the discretionary detention of noncitizens placed in full removal proceedings under INA § 240. Historically, individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, while noncitizens who have been convicted of certain crimes are subject to mandatory detention under § 1226(c).

31. Second, INA § 235(b), 8 U.S.C. § 1225(b), governs the detention of noncitizens classified as "applicants for admission." Section 1225(b)(2)(A) provides that certain applicants for admission "shall be detained" pending removal proceedings, subject to limited parole authority.

32. Third, the INA also provides for the detention of noncitizens who have previously been ordered removed, including those in withholding-only proceedings under 8 U.S.C. § 1231(a).

33. These provisions were enacted or amended as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996. Congress enacted them against a longstanding background principle that civil immigration detention must remain tied to legitimate regulatory purposes and comport with Due Process.

34. Following IIRIRA's enactment, federal regulations and practice clarified that noncitizens who entered without inspection and were placed in § 240 removal proceedings were generally detained under § 1226(a), not § 1225(b). For nearly three decades (1997–2025), most noncitizens who entered without inspection received bond hearings. This was consistent with pre-IIRIRA procedure, where noncitizens not deemed "arriving" were entitled to custody hearings.

35. On July 8, 2025, DHS issued a memo to all ICE employees stating that it had "revisited its legal position." The memo declared that, effective immediately, DHS would treat all noncitizens present without admission as "applicants for admission" subject to mandatory detention under INA § 235(b). The memo explicitly instructed that such aliens "are also ineligible for a custody redetermination hearing ('bond hearing') before an immigration judge."

36. As a result, DHS now considers all noncitizens who entered without inspection — even longtime residents — to be subject to mandatory detention and ineligible for release on bond.

37. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA held that, based on the text of 8 U.S.C. § 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests for noncitizens present in the United States without admission.

38. On February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed that statutory interpretation in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within this Circuit. The Fifth Circuit denied rehearing en banc on April 9, 2026.

39. However, neither *Yajure Hurtado* nor *Buenrostro-Mendez* addressed — much less resolved — the independent constitutional, administrative-law, Suspension Clause, or *Accardi*-based limitations on prolonged civil detention without individualized review. As the Supreme Court recognized in *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018) — which expressly declined to resolve the constitutional questions and remanded them for further

consideration — the absence of a statutory bond entitlement does not, by itself, resolve whether constitutional constraints on prolonged detention apply. Those constitutional questions remain open and are squarely presented here.

40. Accordingly, even where § 1225(b)(2)(A) is assumed to govern detention, continued civil confinement remains subject to the Due Process Clause and the Administrative Procedure Act. Detention that becomes prolonged, indefinite, or arbitrary exceeds lawful authority 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

41. On February 6, 2026, the Fifth Circuit issued its opinion in *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), holding that noncitizens present in the U.S. without admission are "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and are ineligible for bond hearings under § 1226(a).

42. This Court is bound by the Fifth Circuit's holding on the purely statutory question. Petitioner respectfully acknowledges that, under *Buenrostro-Mendez*, he has no statutory right to a bond hearing in this Circuit.

43. However, the Fifth Circuit's decision did not resolve the independent constitutional and administrative law claims raised in this Petition. The panel addressed only the statutory interpretation dispute. It did not address Due Process challenges to prolonged detention, or APA claims regarding the policy shift.

44. In *Jennings v. Rodriguez*, 583 U.S. 281, 286 (2018), the Supreme Court resolved the case on statutory avoidance grounds and expressly declined to rule on the constitutional questions, remanding them for further adjudication. *Jennings* thus preserved — rather than resolved — the question whether prolonged civil detention without any individualized hearing violates the Constitution, or forecloses habeas review of whether such detention has become punitive or unreasonable. That preserved constitutional question is squarely presented here, and neither *Jennings* nor *Buenrostro-Mendez* forecloses this Court from answering it.

45. Respondents may invoke Demore for the proposition that mandatory detention can be constitutional — and Petitioner does not dispute that short-term mandatory detention may survive due process scrutiny. But Demore's own majority opinion premised that holding on detention lasting only "the brief period necessary for [ ] removal proceedings," 538 U.S. at 513; accord id. at 523, 531 (detention for "the limited period of his removal proceedings"), and rested on evidence that § 1226(c) detention "lasts, in the majority of cases, for less than the 90 days" the Court had treated as presumptively valid in Zadvydas. Id. at 528–29. Justice Kennedy, who joined the Court's opinion in full, wrote separately to make explicit what that reasoning implied: due process would require an individualized determination of flight risk and dangerousness "if the continued detention became unreasonable or unjustified," and such an inquiry becomes necessary wherever there is "an unreasonable delay by the [government] in pursuing and completing deportation proceedings." Id. at 532–33 (Kennedy, J., concurring).

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

47. 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 under 5 U.S.C. § 706(2)(A). *Buenrostro-Mendez* did not address this administrative law challenge.

48. Because *Buenrostro-Mendez* resolved only the statutory interpretation question, it does not preclude (a) Suspension Clause claims where the government's scheme eliminates any meaningful mechanism — other than habeas — to test the legality of detention; and (b) *Accardi* claims requiring the agency to follow its own binding arrest and processing regulations. *See* 8 C.F.R. § 287.8(c)(2)(i)–(ii).

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

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE DUE PROCESS CLAUSE (AS-APPLIED)
Prolonged Detention Without Individualized Hearing

50. Even accepting that § 1225(b) governs Petitioner's detention, the Due Process Clause of the Fifth Amendment independently forbids civil detention that is punitive in effect or not reasonably related to a legitimate government purpose. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *United States v. Salerno*, 481 U.S. 739, 746–47 (1987). While *Zadvydas v. Davis*, 533 U.S. 678 (2001), arose in the post-removal-order context under 8 U.S.C. § 1231(a), its core due process principle — that the government may not detain a person indefinitely in civil custody without a legitimate, non-punitive purpose — derives from the Fifth Amendment itself and applies with equal force to any category of prolonged civil detention. *See id.* at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem."). The statutory label attached to Petitioner's confinement does not change the constitutional analysis; what matters is whether the detention has become punitive in fact.

51. Petitioner has been detained since August 7, 2026. His removal proceedings are ongoing and were recently placed on the detained docket, with a Master Calendar Hearing now set for August 26, 2026 — but that hearing is a scheduling proceeding, not a custody

determination, and Petitioner faces continued civil confinement for the full pendency of his proceedings, however long they take to resolve, with no custody review of any kind at any point along the way. He has never received a hearing before a neutral decisionmaker to determine if he poses a danger or flight risk. In Petitioner's specific case, his continued detention has crossed the line from administrative necessity to unconstitutional punishment due to the following facts:

- **Lack of Flight Risk and Punitive Nature of Detention:** The government's failure to provide an individualized hearing is particularly egregious in this case. On August 7, 2026, Petitioner voluntarily traveled to the ERO El Paso Detention Facility solely to comply with an automated ICE check-in email. He did not disrupt the process, nor did he attempt to flee. His voluntary compliance with ICE's reporting requirements conclusively demonstrates that he is not a flight risk and can be safely managed under alternatives to detention (ATD) or reasonable conditions of supervision. Detaining a non-citizen who has affirmatively proven his willingness to report to ICE when called transforms civil detention from a regulatory measure into unconstitutional punishment.

- **Prolonged and Unjustified Pre-Hearing Confinement:** Even now that Petitioner's case has been placed on the detained docket, with a Master Calendar Hearing set for August 26, 2026, that hearing provides no opportunity for a custody or bond determination; it is purely a scheduling proceeding within a removal case whose ultimate resolution remains open-ended. Holding an individual with zero criminal history and demonstrated compliance in a detention facility, with no

avenue for any custody review for as long as his case takes to resolve, serves no legitimate regulatory purpose.

52. Notably, the Fifth Circuit itself has already recognized the constitutional force of this precise argument. In *Sosnava Rodriguez v. Ortega*, 180 F.4th 702 (5th Cir. 2026), a panel of this Circuit held that mandatory detention under 8 U.S.C. § 1225(b)(2)(A), continued beyond ninety days without an individualized bond hearing, violates the Due Process Clause, and required the government to bear the burden of justifying continued detention by clear and convincing evidence. The full Fifth Circuit granted rehearing en banc on July 10, 2026, which under circuit practice vacated the panel opinion; briefing is set to conclude in September 2026, with argument and decision to follow. The panel decision is therefore not currently binding on this Court, but courts routinely treat the reasoning of a vacated panel opinion as persuasive authority even where it no longer carries precedential force.

53. *Sosnava Rodriguez*'s reasoning applies with even greater force here. The petitioners in *Sosnava Rodriguez* were, at minimum, entitled to a bond hearing after ninety days of detention — a fixed, foreseeable outer limit. Respondents' position in this case is that Petitioner is entitled to no custody hearing at all, at any point, for the entire pendency of his removal proceedings, and that pendency has no fixed endpoint: even Petitioner's upcoming August 26, 2026 Master Calendar Hearing, on the newly-accelerated detained docket, resolves nothing about his custody, and his proceedings may well continue for months beyond it. If ninety days of categorical detention without review raises serious due process concerns, a regime that imposes no outer limit on that deprivation whatsoever — one that would persist whether the docket moves quickly or slowly — does so *a fortiori*.

54. This Petition is not premature merely because Petitioner has not yet accumulated ninety days in custody. Unlike the petitioners in *Sosnava Rodriguez*, who at least had a ninety-day administrative benchmark toward which to litigate, Petitioner faces a categorical jurisdictional bar that affords no custody review at any point, however long his detention continues, and no administrative avenue exists for him to invoke once any particular number of days has elapsed. Where, as here, the agency has disclaimed jurisdiction to hear the claim at all, exhaustion and ripeness principles do not require a detainee to wait for the passage of an arbitrary interval before seeking judicial review of an ongoing constitutional violation. *See Zadvydas*, 533 U.S. at 699 (habeas review available notwithstanding the absence of a fixed statutory trigger). Moreover, the harm here is not solely the number of days already served but the fact, undisputed by Respondents, that Petitioner is foreclosed from any custody hearing for the entire pendency of his removal proceedings — a certain and continuing injury from the moment of detention, not one that ripens only after a threshold period expires. Nor does Petitioner's upcoming August 26, 2026 Master Calendar Hearing render this Petition premature: that hearing is a scheduling proceeding on the merits of removability, not a custody or bond determination, and its imminence does nothing to supply the review Respondents' position categorically forecloses.

55. The government cannot use a statutory label to strip a person physically present in the interior of their Fifth Amendment rights against arbitrary, punitive deprivation of liberty. Continued categorical detention without any hearing serves no legitimate regulatory purpose and is punitive in effect. A man who affirmatively complied with ICE instructions, has no criminal record, poses no demonstrated flight risk, and yet is locked in a detention

center with no custody review available at any point in his removal proceedings — however long they take to resolve — is not being regulated — he is being punished.

COUNT II: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT (APA)
Arbitrary Agency Action

56. Petitioner challenges DHS's implementation of its July 2025 detention policy shift as "arbitrary, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A). While *Buenrostro-Mendez* addressed statutory interpretation, it did not insulate DHS's abrupt policy shift from APA review. A federal district court has already vacated this same July 8, 2025 memorandum under the APA on materially identical grounds. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Dec. 18, 2025) (class-wide vacatur of DHS's no-bond policy as not in accordance with law), stay pending appeal granted, No. 26-1071 (9th Cir. Mar. 2026). While that order is currently stayed pending Ninth Circuit review and is not binding here, its reasoning confirms that the identical policy Petitioner challenges is vulnerable to APA vacatur on the merits.

57. Petitioner and similarly situated individuals relied on the settled 28-year agency practice that interior apprehensions for entering without inspection resulted in § 1226(a) processing and bond eligibility. When an agency reverses a prior policy, it must at minimum "display awareness that it is changing position" and "show that there are good reasons for the new policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Where, as here, the prior policy engendered serious reliance interests, the agency must also "be cognizant that longstanding policies may have engendered such reliance" and provide a more substantial justification for the change. *Id.*; *see also Dep't of Homeland Sec. v. Regents of*

the Univ. of California, 140 S. Ct. 1891, 1913 (2020). DHS's abrupt reversal via internal memo — without notice-and-comment rulemaking, without acknowledging 28 years of contrary practice, and without weighing the reliance interests of the thousands of individuals already in proceedings — fails both prongs of this test and is arbitrary and capricious under 5 U.S.C. § 706(2)(A).

COUNT III: VIOLATION OF THE SUSPENSION CLAUSE

58. Under *INS v. St. Cyr*, 533 U.S. 289, 300–01 (2001), and *Boumediene v. Bush*, 553 U.S. 723, 779 (2008), the Suspension Clause requires, at minimum, that a habeas court retain the ability to review both the legal and factual basis for a petitioner's detention and to order release where that detention is unlawful. Where the government purports to withdraw or restrict federal court review, it must provide a substitute mechanism that is "adequate and effective" to test the legality of detention. *Boumediene*, 553 U.S. at 779.

59. Because the Immigration Judge and BIA have disclaimed jurisdiction to review Petitioner's custody under *Matter of Yajure Hurtado*, and DHS provides no neutral internal review, Petitioner has no administrative mechanism — of any kind — to challenge the necessity or punitive nature of his detention. This is not a mere restriction on review; it is a categorical elimination of it. If habeas jurisdiction is denied or limited here, Petitioner is left with no "adequate and effective substitute" to test the legality of his confinement, in direct violation of the Suspension Clause. U.S. Const. art. I, § 9, cl. 2.

COUNT IV: VIOLATION OF THE ACCARDI DOCTRINE
(Failure to Follow 8 C.F.R. § 287.8(c))

60. Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), federal agencies must follow their own binding regulations. The regulation at 8 C.F.R. § 287.8(c)(2)(ii)

provides that, for a warrantless immigration arrest, the arresting officer must have reason to believe the alien is "likely to escape before a warrant can be obtained."

61. Petitioner was taken into custody on August 7, 2026, during a scheduled ICE check-in appointment. Upon information and belief, this was a warrantless arrest: Petitioner is aware of no Form I-200 or other warrant of arrest issued in connection with his custody, and none was presented to him at the time. The objective facts available contradict any assertion that Petitioner was likely to escape: Petitioner voluntarily traveled to the ERO El Paso Detention Facility solely to comply with an automated ICE check-in email, and he has consistently complied with all immigration requirements and pursued lawful relief throughout his proceedings. Because there was no factual basis to conclude he was likely to escape, this warrantless arrest violated DHS's own mandatory arrest regulations. Under the *Accardi* doctrine, that violation renders the resulting detention unlawful.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this habeas corpus action pursuant to 28 U.S.C. §§ 2241 and 1331;

2. Declare that Petitioner's continued detention violates the Due Process Clause, the APA, the Suspension Clause, and/or the *Accardi* doctrine;

3. Grant the Writ of Habeas Corpus and order Respondents to: (a) immediately release Petitioner under reasonable conditions of supervision; OR (b) issue a writ of habeas corpus ordering Respondents to provide Petitioner with a constitutionally required individualized custody hearing before a neutral decisionmaker within seven (7) days, at which the

Government bears the burden of justifying continued detention by clear and convincing evidence, failing which Petitioner must be released;

4. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action; and

5. Award Petitioner costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act (EAJA); and

6. Given Petitioner's ongoing civil confinement, issue an Order to Show Cause directing Respondents to file a Return within fourteen (14) days, and set this matter for expedited briefing and disposition.

Respectfully submitted,

/s/ Basak Burcu Arisliel

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Burlingame, California 94010
Telephone (650) 373-0706
Fax (650) 373-0709
Counsel for Petitioner

Dated: August 26, 2026

VERIFICATION

I, Basak Burcu Arisliel, declare as follows:

1. I am the attorney of record for Petitioner Muhammed Aykut in the above-captioned matter.

2. I have read the foregoing Petition for Writ of Habeas Corpus and know its contents.

3. The factual matters stated therein are true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, I believe them to be true, based on my review of Petitioner's immigration file, my communications with Petitioner, and the exhibits attached hereto.

4. Petitioner is currently detained at the ERO El Paso Detention Facility and, due to the logistical constraints of detention, has been unable to personally execute this verification prior to filing. A verification signed by Petitioner will be filed as a supplement promptly upon its receipt.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on August 26, 2026, at Burlingame, California.

/s/ Basak Burcu Arisliel

Basak Burcu Arisliel

EXHIBIT A



Search Results: 1

MUHAMMED AYKUT

Country of Birth : Turkey
A-Number: [redacted]
Status : In ICE Custody
State: TX
Current Detention Facility: EL PASO PROCESSING CENTER
** Click on the Detention Facility name to obtain facility contact information*

BACK TO SEARCH

Related Information

Helpful Info
- Status of a Case
- About the Detained Locator
- Brochure
- ICE ERO Field Offices
- ICE Detention Facilities
- Privacy Notice

External Links
- Bureau of Prisons Inmate Locator

EXHIBIT B

Uploaded on: 11/04/2024 at 03:04:17 AM (Central Standard Time) Base City: SNA

Subject to the Proclamation (SB)

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [redacted] FINS [redacted] File No: [redacted]

DOB: [redacted] Event No: [redacted]

In the Matter of:

Respondent: MUHAMMED AYKUT currently residing at:

[redacted]

(Number, street, city, state and ZIP code) [redacted] (Area code and phone number)

☐ You are an arriving alien.

☒ You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of Turkiye and a citizen of Turkiye ;
3. You arrived in the United States at or near OTAY MESA, CA, on or about Sunday, November 3, 2024 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

800 DOLOROSA STREET, SUITE 300 SAN ANTONIO TX 78207

(Complete Address of Immigration Court, Including Room Number, if any)

on July 28, 2027 *(Date)* at 09:00 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

JOHN G COYLE
Date: 2024.11.04 00:[illegible]:08:00
0138473470.CBP

Acting/Patrol Agent in Charge

(Signature and Title of Issuing Officer)

Date: November 04, 2024 SAN DIEGO, CA

(City and State)

EOIR – 1 of 3

Uploaded on: 11/04/2024 at 03:04:17 AM (Central Standard Time) Base City: SNA

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/I-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the Internet at http://www.ice.gov/contact/ero, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Upon information and belief, the language that the alien understands is TURKISH

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

(Signature of Respondent)

Date:

(Signature and Title of Immigration Officer)

Certificate of Service

This Notice To Appear was served on the respondent by me on November 4, 2024, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ In person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail

☐ Attached is a credible fear worksheet.

☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the TURKISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

EDDIE PERDOMO
Date: 2024.11.04 00:57:48:00
0145489099.CBP.1

(Signature of Respondent if Personally Served)

Border Patrol Agent

(Signature and Title of officer)

EOIR – 2 of 3

Uploaded on: 11/04/2024 at 03:04:17 AM (Central Standard Time) Base City: SNA

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at https://www.dhs.gov/system-records-notices-sorns. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at https://www.justice.gov/opcl/doj-systems-records. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:
Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

EOIR – 3 of 3

EXHIBIT C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
SAN ANTONIO IMMIGRATION COURT

LEAD FILE: 226-149-968
IN REMOVAL PROCEEDINGS
DATE: Jul 13, 2026
EAD Clock: 600 days elapsed

TO:
AYKUT, MUHAMMED


RE:  AYKUT, MUHAMMED

Notice of In-Person Hearing

Your case has been scheduled for a MASTER hearing before the immigration court on:

Date: Jul 28, 2027
Time: 09:00 A.M. CT
Court Address: 800 DOLOROSA STREET, SUITE 300
COURTROOM #3, SAN ANTONIO, TX 78207

Representation: You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at https://www.justice.gov/eoir/list-pro-bono-legal-service-providers is a list of free legal service providers who may be able to assist you.

Failure to Appear: If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

Change of Address: The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33 either online at https://respondentaccess.eoir.justice.gov/en/ or by completing the enclosed paper form and mailing it to the immigration court listed above.

Internet-Based Hearings: If you are scheduled to have an internet-based hearing, you will appear by video or telephone. If you prefer to appear in person at the immigration court named above, you must file a motion for an in-person hearing with the immigration court at least fifteen days before the hearing date provided above. Additional information about internet-based hearings for each immigration court is available on EOIR's website at https://www.justice.gov/eoir/eoir-immigration-court-listing.

In-Person Hearings: If you are scheduled to have an in-person hearing, you will appear in person at the immigration court named above. If you prefer to appear remotely, you must file a motion for an internet-based hearing with the immigration court at least fifteen days before the hearing date provided above.

For information about your case, please call **1-800-898-7180** (toll-free) or **304-625-2050.**

The Certificate of Service on this document allows the immigration court to record delivery of this notice to you and to the Department of Homeland Security.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY:MAIL[M] PERSONAL SERVICE[P] ELECTRONIC SERVICE[E]
TO: [M] Noncitizen | [ ] Noncitizen c/o Custodial Officer |
[ ] Noncitizen ATT/REP | [E] DHS
DATE: 7/13/26 BY: COURT STAFF SM
Attachments:[ ] EOIR-33 [ ] Appeal Packet [ ] Legal Services List [ ] Other NH

Use a smartphone's camera to scan the code on this page to read the notice online.

Usa la cámara de un teléfono inteligente para escanear el código de esta página y leer el aviso en línea.

Use a câmara do smartphone para digitalizar o código nesta página e ler o manual de instruções online.

使用智能手机摄像头扫描本页面的代码，即可在线阅读该通知。

ਨੋਟਿਸ ਨੂੰ ਔਨਲਾਈਨ ਪੜ੍ਹਨ ਲਈ ਇਸ ਪੰਨੇ 'ਤੇ ਕੋਡ ਨੂੰ ਸਕੈਨ ਕਰਨ ਲਈ ਸਮਾਰਟਫੋਨ ਦੇ ਕੈਮਰੇ ਦੀ ਵਰਤੋਂ ਕਰੋ।

অনলাইনে নোটিশ পড়ার জন্য এই পৃষ্ঠায় কোডটি স্ক্যান করতে স্মার্টফোনের ক্যামেরা ব্যবহার করুন

सूचना अनलाइनमा पढ्न यस पृष्ठमा कोड स्क्यान गर्न स्मार्टफोनको क्यामेरा प्रयोग गर्नुहोस्।

Sèvi ak kamera yon telefòn entèlijan pou eskane kòd ki nan paj sa a pou li avi a sou entènèt.

استخدم كاميرا الهاتف الذكي لمسح الرمز الموجود في هذه الصفحة لقراءة الإشعار على الإنترنت

Чтобы прочитать уведомление онлайн, отсканируйте код на этой странице с помощью камеры вашего смартфона.

Utilisez l'appareil photo d'un téléphone intelligent pour scanner le code sur cette page afin de lire l'avis en ligne.