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

GEORGE ELIOT OSSANG MBUA,

Petitioner

v.

TODD BLANCHE, in his official capacity as Attorney General of the United States,

MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security;

DAVID J. VENTURELLA, in his official capacity as Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

MARY DE ANDA-YBARRA, in her official capacity as Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

ANGEL GARITE, in his official capacity as Assistant Field Office Director of the El Paso Field Office of U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations;

Respondents.

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS

Case No. 26-CV-02258

INTRODUCTION

1. This case challenges Petitioner's unlawful arrest and re-detention. Petitioner, George Eliot Ossang-Mbua, is a forty-one (41) year old Cameroon National who entered the United States without inspection on or about September 27, 2023. Mr. Ossang Mbua fled from his native country to escape [redacted]. Mr. Ossang

Mbua was detained upon entry and requested asylum. Mr. Ossang Mbua was released under an order of supervision.

2. As a condition of his release under order of supervision, Mr. Ossang Mbua was instructed to report to an ICE Deportation Officer. He reported as required during the past almost three years. Mr. Ossang Mbua did not violate any of the conditions of release imposed on him.

3. After release under an order of supervision, and during the past two and a half years, Mr. Ossang Mbua lived in the El Paso, Texas area. Mr. Ossang Mbua appeared for multiple scheduled court hearings throughout the past almost two and a half years. He appeared and attended each of his scheduled hearings and scheduled reports with his ICE deportation officer. Mr. Ossang Mbua timely filed his I-589 Application for Asylum and for Withholding of Removal. Mr. Ossang Mbua was scheduled for a final individual hearing before he was detained.

4. Mr. Ossang Mbua was arrested without warrant and re-detained by ICE officers on or about February 18, 2026, when he went in to report to his ICE deportation officer. He was redetained without legal cause or justification by ICE officers. He was placed under ICE custody and redetained at the El Paso Processing Center (EPC), El Paso, Texas. Mr. Ossang Mbua was placed at EPC where he remains detained. He has been detained for over six months. At the time of his original arrest—and at all times since—there has been no material change in Mr. Ossang Mbua's circumstances since his original release on an order of supervision.

5. Mr. Ossang Mbua had his final individual merits hearing on June 10, 2026. The immigration judge granted Withholding of Removal. Mr. Ossang Mbua filed a timely appeal with the Board of Immigration Appeals (BIA), which remains pending.

6. Mr. Ossang Mbua's warrantless arrest violated his statutory and Fourth Amendment rights. His detention contravenes the fundamental Due Process protections of the U.S. Constitution and

runs afoul of the government's own policies, practices and regulations. Accordingly, Mr. Ossang Mbua asks this Court to issue a writ of habeas corpus ordering his immediate release from ICE custody.

7. Accordingly, this Court should grant the instant petition for a writ of habeas corpus, stay Petitioner's removal, and order Petitioner's immediate release.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question jurisdiction), and Art. I § 9, cl. 2 of the U.S. Constitution (Suspension Clause).

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

10. Federal district courts have jurisdiction to hear habeas claims brought by noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (recognizing habeas jurisdiction over immigration detention challenges); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (same); *Tran v. Mukasey*, 515 F.3d 478, 482 (5th Cir. 2008) (same).

11. Venue is proper because Petitioner is in Respondents' custody at the El Paso Processing Center in El Paso, Texas. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493–500 (1973), venue lies in the judicial district in which Petitioner is currently in custody.

12. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred and continue to occur in the Western District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted); *see also Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–38 (9th Cir. 1954) (habeas corpus is "a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination").

PARTIES

15. Petitioner, **George Eliot Ossang-Mbua,** is a 41 forty-one year old Cameroon National who entered the United States without inspection on or about September 27, 2023. Mr. Ossang Mbua was detained upon entry, requested asylum and was released under an order of supervision. Mr. Ossang Mbua reported as instructed to his ICE Deportation Officer during the past almost three years. Mr. Ossang Mbua did not violate any of the conditions of release imposed on him. Despite this, Respondents detained him when he went in to report to his ICE deportation officer. He was granted Withholding of Removal by the immigration judge on June 10, 2026. Mr. Ossang Mbua filed a timely appeal which remains pending before the BIA. Mr. Ossang Mbua remains detained at the El Paso Processing Center.

16. Respondent **Angel Garite** is named in his official capacity as the Assistant Field Office Director for the El Paso Field Office of ICE Enforcement and Removal Operations ("El Paso ICE"). As Assistant Field Office Director, Respondent Garite serves a role analogous to that of a warden for the Camp East Montana, whise Mr. Ossang Mbua is confined. As such, he is the immediate physical custodian of Mr. Ossang Mbua.

17. Respondent **Mary De Anda-Ybarra** is named in his official capacity as the Field Office Director for El Paso ICE. As Field Office Director, Respondent De Anda-Ybarra oversees ICE's enforcement and removal operations in El Paso. As such, he is a legal custodian of Mr. Ossang Mbua.

18. Respondent **David J. Venturella** is named in his official capacity as Acting Director U.S. Immigration and Customs Enforcement and as such is the legal custodian of Petitioner.

19. Respondent **Markwayne Mullin** is named in his official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, he is responsible for overseeing ICE's day-to-day operations, leading approximately 20,000 ICE employees, including Respondents Venturella, Bradford, and Sanchez. Secretary Mullin is the ultimate legal custodian of Petitioner.

20. Respondent **Todd Blanche** is named in his official capacity as the Attorney General of the United States. As Attorney General, Respondent Blanche oversees the immigration court system, including the immigration judges who conduct bond hearings as his designees, and is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g). He is legally responsible for administering Petitioner' removal proceedings, and as such, he is Petitioner' legal custodian.

Factual Background

21. Petitioner, George Eliot Ossang-Mbua, is a forty-one (41) year old Cameroon National who entered the United States without inspection on or about September 27, 2023. Mr. Ossang Mbua fled from his native country to escape [redacted]. Mr. Ossang Mbua was detained upon entry and requested asylum. Mr. Ossang Mbua was released under an order of supervision. As a condition of his release under order of supervision, Mr. Ossang Mbua was instructed to report to an ICE Deportation Officer. He reported as required during the past almost three years. Mr. Ossang Mbua did not violate any of the conditions of release imposed on him.

22. After release under a order of supervision, and during the past two and a half years, Mr. Ossang Mbua lived in the El Paso, Texas area. Mr. Ossang Mbua appeared for multiple scheduled court hearings throughout the past almost two and a half years. He appeared and attended each of his scheduled hearings and scheduled reports with his ICE deportation officer. Mr. Ossang Mbua timely filed his I-589 Application for Asylum and for Withholding of Removal. Mr. Ossang Mbua was scheduled for a final individual hearing before he was detained.

23. Mr. Ossang Mbua was arrested without warrant and redetained by ICE officers on or about February 18, 2026, when he went in to report to his ICE deportation officer. He was redetained without legal cause or justification by ICE officers. He was placed under ICE custody and redetained at the El Paso Processing Center (EPC), El Paso, Texas. Mr. Ossang Mbua was placed at EPC where he remains detained. He has been detained for over six months. At the time of his arrest—and at all times since—there has been no material change in Mr. Ossang Mbua's circumstances since his original release on order of supervision.

24. Mr. Ossang Mbua had his final individual merits hearing on June 10, 2026. The immigration judge granted Withholding of Removal. Mr. Ossang Mbua filed a timely appeal with the Board of Immigration Appeals (BIA), which remains pending.

25. Mr. Ossang Mbua's warrantless arrest violated his statutory and Fourth Amendment rights. His detention contravenes the fundamental Due Process protections of the U.S. Constitution and runs afoul of the government's own policies, practices and regulations. Accordingly, Mr. Ossang Mbua asks this Court to issue a writ of habeas corpus ordering his immediate release from ICE custody.

26. Respondents did not provide any written notice explaining the basis for Petitioner's detention. Likewise, Respondents did not assess whether Petitioner presented a flight risk or danger to the community prior to his arrest and detention. Nor did Respondents provide a hearing before a neutral decisionmaker, where ICE was required to justify the basis for his detention or to explain why Petitioner is a flight risk or danger to the community.

27. Petitioner has a compelling Asylum and Withholding of Removal claim and a very strong appeal. Petitioner' appeal remains pending before the BIA.

Legal Framework

28. 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.

29. First, INA § 236(a), 8 U.S.C. § 1226(a), authorizes the discretionary detention of noncitizens placed in full removal proceedings under INA § 240, 8 U.S.C. § 1229a.

Historically, individuals in section 1226(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

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

31. Finally, the Act also provides for the detention of noncitizens who have previously been ordered removed, including those in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b). The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub.L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

32. Section 1226(c) was most recently amended earlier this year by the LRA, Pub. L. No. 119-1, 139 Stat. 3 (2025). Congress enacted these provisions against a longstanding background principle that civil immigration detention must remain tied to legitimate regulatory purposes and must comport with constitutional due-process requirements.

33. Following IIRIRA's enactment, the Executive Office for Immigration Review promulgated regulations explaining that, as a general matter, noncitizens who entered without inspection and were placed in § 240 removal proceedings were detained under § 1226(a), not § 1225(b). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the

decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with pre-IIRIRA procedure, in which noncitizens not deemed "arriving" were entitled to a custody hearing before an Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see* also *H.R. Rep.* No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a) simply "restates" the detention authority previously found at section 1252(a)).

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

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole. These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated.
> *The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).*

> Moving forward, ICE will not issue Form I-286, Notice of Custody Determination, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286. *See* https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authorityfor-applications-for-admission (last accessed August 4, 2025) (emphasis original).

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

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

37. On February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed that statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearings under § 1226(a) within this Circuit.

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

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

THE FIFTH CIRCUIT'S FEBRUARY 6, 2026 DECISION IN BUENROSTRO-MENDEZ v. BONDI FORECLOSES PETITIONER'S PURELY STATUTORY CLAIM TO A BOND HEARING UNDER 8 U.S.C. § 1226(a) BUT DOES NOT PRECLUDE HABEAS RELIEF ON CONSTITUTIONAL AND OTHER GROUNDS

40. On February 6, 2026, a panel of the United States Court of Appeals for the Fifth Circuit issued its published opinion in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026). The panel held that noncitizens who are present in the United States without having been admitted or paroled—including those apprehended years after entry—are "applicants for admission" under 8 U.S.C. § 1225(a)(1) and are subject to mandatory detention under § 1225(b)(2)(A) pending removal proceedings under § 1229a. The panel further held that such

individuals are not eligible for discretionary release on bond under § 1226(a) and that immigration judges lack jurisdiction to conduct bond hearings in their cases. The panel endorsed the Board of Immigration Appeals' precedential decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), and reversed two district court orders that had granted habeas relief on statutory grounds.

41. This Court is bound by the Fifth Circuit's holding on the purely statutory question of whether § 1225(b)(2)(A) or § 1226(a) governs Petitioner's detention and whether he has a statutory entitlement to a bond hearing before an immigration judge. Petitioner respectfully acknowledges that, under *Buenrostro-Mendez*, Petitioner has no statutory right to such a hearing.

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

43. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), similarly held that there is no statutory right to periodic bond hearings under §§ 1225(b), 1226(a), or 1226(c), but it explicitly remanded for the lower courts to consider constitutional arguments in the first instance. *Id.* at 302–03. The Fifth Circuit's statutory holding in *Buenrostro-Mendez* leaves those constitutional questions open, just as *Jennings* did.

44. Nothing in *Buenrostro-Mendez* strips this Court of jurisdiction under 28 U.S.C. § 2241 to adjudicate constitutional challenges to immigration detention or to review whether the Executive's custody scheme violates governing law. *Jennings* itself distinguishes unreviewable discretionary custody judgments from reviewable questions of law and constitutional claims. Likewise, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v. Kim*, 538 U.S. 510 (2003), both proceeded through § 2241 habeas and underscore that civil immigration detention must remain tethered to lawful purposes and must satisfy due process.

45. 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.

46. Even accepting the Fifth Circuit's interpretation that § 1225(b)(2)(A) mandates detention and provides no statutory bond hearing, Petitioner's ongoing and potentially indefinite detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment as applied to him.

47. Civil immigration detention is permissible only to the extent it serves the statutory purposes of ensuring appearance at proceedings and protecting the community from danger. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 527–28 (2003). When detention becomes prolonged or indefinite and is no longer tied to those purposes, it becomes punitive and unconstitutional. *Id.*

48. Numerous district courts, including within the Fifth Circuit, have held post-*Jennings* that due process requires an individualized bond hearing, with the government bearing the

burden of proof by clear and convincing evidence, when mandatory detention under §§ 1225(b) or 1226(c) becomes prolonged. While the Fifth Circuit has not adopted a bright-line rule, district courts in this Circuit and others commonly find six months presumptively unreasonable absent individualized justification. *See*, e.g., practice advisories and district court orders cited in post-*Jennings* litigation, collecting cases requiring hearings after 6–12 months under analogous mandatory detention provisions.

49. The constitutional concerns are heightened here because the government's new interpretation—upheld in *Buenrostro-Mendez*—extends mandatory detention without bond or hearing to noncitizens who have lived openly in the United States for significant periods of time, accrued equities, and were not detained at the time of initial processing.

50. Traditional "arriving alien" detention under § 1225(b) historically applied to those apprehended at or near the border or port of entry, where detention was typically brief pending expedited processing. Extending it to individuals in full § 1229a proceedings with meritorious relief claims raises far graver liberty interests than the brief detention upheld in Demore or contemplated for true arriving aliens.

51. Petitioner has strong family ties in the El Paso, Texas area, does not have a serious criminal record, and strong humanitarian claims. Continued categorical detention without any hearing—where the government never has to justify his confinement by evidence—serves no legitimate purpose and is punitive in effect.

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

a. The phrase "an alien seeking admission" in § 1225(b)(2)(A) is in the present tense and applies only to those actively seeking admission at the time of apprehension (e.g., at a port of entry or in active inspection), not to individuals living quietly in the interior years later.
b. The government's and panel's reading renders § 1226(a)'s bond provisions largely superfluous for the vast majority of noncitizens in removal proceedings who entered without inspection.
c. It contradicts three decades of consistent administrative practice (1997–2025), including EOIR regulations and DHS guidance treating such individuals as detained under § 1226(a).
d. It reverses the congressional intent behind IIRIRA, which sought to eliminate incentives for evading inspection but did not contemplate mandatory indefinite detention for long-present residents.
e. Over 350 district courts nationwide rejected the government's position in 2025–early 2026 habeas cases, finding the text, structure, and history compel application of § 1226(a).

53. These preserved arguments do not request this Court to disregard binding Fifth Circuit precedent on the statutory issue; they are included solely to preserve further review.

54. The APA claim remains viable because DHS's abrupt 2025 policy reversal—announced via internal memo without notice-and-comment or reasoned explanation for departing from 28 years of practice—is arbitrary and capricious under 5 U.S.C. § 706(2)(A). *Buenrostro-Mendez* did not address this administrative law challenge.

55. Because *Buenrostro-Mendez* resolved only the statutory interpretation question, it does not preclude (a) equal protection challenges to arbitrary detention classifications and disparate treatment without a rational basis, (b) Suspension Clause claims where the government's scheme eliminates any meaningful mechanism—other than habeas—to test the legality of detention, and (c) Accardi claims requiring the agency to follow its own binding arrest and processing regulations. *See* 8 C.F.R. § 287.8(c)(2)(i)–(ii).

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

57. To further preserve the statutory issue for potential *en banc* review by the Fifth Circuit or *certiorari* to the Supreme Court, Petitioner respectfully submits that the panel's decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), is inconsistent with the Supreme Court's controlling precedent in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

58. In *Loper Bright*, the Supreme Court held that courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" and may no longer defer to an agency's interpretation of an ambiguous statute under *Chevron*. *Id.* at374. While agencies' views may still be entitled to respectful consideration under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)—with persuasive force depending on factors such as the thoroughness of the agency's reasoning, the consistency of its position over time, and its expertise—courts must independently determine the best reading of the statute using traditional tools of statutory construction. *Loper Bright*, 603 U.S. at 402.

59. The panel in *Buenrostro-Mendez* did not adhere to this mandate. Although the panel conducted a textual analysis, its reasoning effectively accorded dispositive weight to the Board of Immigration Appeals' recent interpretation in *Matter of Yajure Hurtado*, 29 I. &N. Dec. 216 (BIA 2025)—a 2025 decision that abruptly reversed nearly three decades of

consistent administrative practice (1997–2025) treating unadmitted noncitizens apprehended in the interior as subject to discretionary detention and bond eligibility under § 1226(a). The panel adopted the BIA's new position wholesale, without acknowledging or applying the *Skidmore* factors that, post-*Loper Bright*, should have diminished the persuasive value of an inconsistent, late-breaking agency reversal.

60. Under *Skidmore* and *Loper Bright*, longstanding agency interpretations are entitled to greater weight precisely because consistency and reliance interests bolster their persuasiveness. Here, the opposite occurred: for 28 years, multiple administrations, EOIR regulations, and DHS guidance uniformly applied § 1226(a) to individuals in Petitioner's position. *See*, e.g., Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). The BIA's 2025 reversal—prompted by a policy shift announced in a July 2025 DHS memo—lacks the hallmarks of thorough, consistent reasoning that could earn persuasive force. Yet the panel endorsed it without critically examining this inconsistency or independently weighing the superior reading supported by historical practice, statutory structure, and the overwhelming majority of pre-2026 district court decisions (over 350 nationwide).

61. This approach mirrors the deference prohibited by *Loper Bright*, as the panel appeared to treat the agency's new litigating position and BIA precedent as authoritative rather than exercising fully independent judgment. The panel dismissed the decades of contrary practice as irrelevant ("The text says what it says, regardless of the decisions of prior administrations"), effectively insulating the agency's reversal from meaningful judicial scrutiny—the very dynamic *Loper Bright* rejected. As the dissent in *Buenrostro-Mendez* recognized, the

majority's reading amounts to "rubber stamp[ing]" the government's "proposed legislation by executive fiat," a concern heightened in the post-*Chevron* era where courts must not abdicate their interpretive role.

62. The panel's failure to grapple with *Loper Bright*'s implications is particularly striking given that the BIA itself invoked *Loper Bright* in *Yajure Hurtado* to assert that the statute is "clear and unambiguous," thereby attempting to preempt deference questions. But where reasonable minds differ—as evidenced by the hundreds of district courts rejecting the government's position, the dissent's detailed critique, and the statutory tensions (*e.g.*, surplusage in § 1226(a), present-tense "seeking admission")—*Loper Bright* requires courts to resolve ambiguity independently, not to defer to an agency's self-serving declaration of clarity after decades of interpreting the statute differently.

63. For these reasons, the panel's statutory holding warrants reconsideration *en banc*, as it conflicts with *Loper Bright*'s command that courts, not agencies, hold the ultimate responsibility for statutory meaning. This Court, while bound by the panel's result on the pure statutory claim in this Circuit, may note this tension in support of granting relief on the independent constitutional and APA grounds asserted herein.

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

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

65. The Immigration and Nationality Act authorizes immigration detention only to the extent it serves legitimate, non-punitive statutory purposes—namely, to ensure an individual's appearance at future proceedings or to protect public safety. Detention that does not advance

those purposes, or that becomes arbitrary and indefinite, exceeds the government's statutory authority. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005).

66. Petitioner is a forty-one year old Cameroon national who entered the United States during September 2023. He requested asylum, was allowed to enter and released under order of supervision. Petitioner was arrested, re-detained and placed at the El Paso Processing Center in Respondents' custody on February 18, 2026 when he went in to report to his ICE deportation officer. Petitioner asserted Asylum, Withholding of Removal, and Protection Under the Convention Against Torture. Petitioner had his final individual merits hearing on June10, 2026 and the immigration judge granted Withholding of Removal. Petitioner filed a timely appeal which remains pending with the BIA.

67. Petitioner has no criminal history and has never exhibited conduct suggesting that he is danger to the community or risk of flight. Nothing in his immigration file indicates that he poses a threat to public safety or that he would fail to appear for his hearings if released.

68. The Immigration Court denied Petitioner's request for a custody redetermination solely on jurisdictional grounds, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Immigration Judge concluded that he lacked authority to conduct any individualized custody assessment and therefore declined to consider Petitioner's eligibility for release.

69. The Immigration Judge did not consider any individualized custody factors and did not evaluate Petitioner's lack of criminal history, his non-dangerousness, his cooperation with immigration authorities, or the feasibility of alternatives to detention.

70. Because the Immigration Judge determined that he lacked jurisdiction, Petitioner now has no administrative mechanism for custody review, effectively subjecting him to prolonged and potentially indefinite detention without statutory authority or procedural safeguards.

71. Petitioner acknowledges that, under the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), he does not possess a purely statutory entitlement to a bond hearing before an immigration judge under 8 U.S.C. § 1226(a).

72. However, neither *Buenrostro-Mendez* nor *Matter of Yajure Hurtado* authorizes unlimited, unreviewable civil detention untethered from the INA's non-punitive purposes. The INA does not permit detention to operate as punishment, deterrence, or coercion, nor does it authorize prolonged confinement absent a meaningful mechanism to assess whether continued detention is necessary to serve its legitimate aims. *Zadvydas*, 533 U.S. at 690–91; Clark, 543 U.S. at 380–81.

73. Even where detention is initially authorized under INA § 235(b)(2)(A), the statute must be applied consistent with its limited purpose and in conjunction with the INA's broader detention framework, including DHS's continuing discretionary authority to release noncitizens through parole, supervision, or other conditions where detention no longer serves a legitimate statutory objective. *See* 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 212.5.

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

75. Petitioner's continued detention bears no reasonable relationship to the purposes of the INA. It is not tied to imminent removal, is not supported by any individualized finding of danger or flight risk and persists solely as a result of a categorical legal interpretation that eliminates all meaningful custody review.

76. Detention under these circumstances exceeds the detention authority Congress conferred in the INA and contravenes the statute's non-punitive design, its implementing regulations, and controlling Supreme Court precedent limiting civil immigration detention to what is reasonably necessary to achieve its lawful purposes.

77. Accordingly, Petitioner's continued detention is unlawful under the Immigration and Nationality Act and its implementing regulations. Petitioner respectfully requests that this Court grant habeas relief by ordering his immediate release, or, in the alternative, ordering Respondents to provide a prompt, lawful, and meaningful individualized custody determination consistent with the INA and governing law.

COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

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

79. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Noncitizens physically present in the United States—including those who entered without inspection—are "persons" within the meaning of the Fifth Amendment and entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia,* 459 U.S. 21, 32 (1982).

80. Petitioner is a forty-one year old Cameroon national who entered the United States during September 2023. He requested asylum, was allowed to enter and released under order of

supervision. Petitioner was arrested, re-detained and placed at the El Paso Processing Center in Respondents' custody on February 18, 2026 when he went in to report to his ICE deportation officer. Petitioner asserted Asylum, Withholding of Removal, and Protection Under the Convention Against Torture. Petitioner had his final individual merits hearing on June10, 2026 and the immigration judge granted Withholding of Removal. Petitioner filed a timely appeal which remains pending with the BIA.

81. Petitioner has no serious criminal convictions and no pending criminal charges and has never exhibited conduct suggesting danger to the community or risk of flight and has consistently cooperated with immigration authorities since his apprehension.

82. Petitioner has been continuously detained in civil immigration custody since February 2026, when he was taken into ICE custody and presently confined at El Paso Processing Center.

83. Petitioner sought custody redetermination before the immigration court. Through counsel, he requested individualized custody determination and proffered evidence establishing that he poses no danger to the community, has community ties and a stable place to reside, and is fully willing to comply with all immigration court requirements.

84. The Immigration Judge concluded that he lacked authority to conduct any individualized custody assessment and therefore declined to consider Petitioner's eligibility for release.

85. As a result, Petitioner has been categorically barred from receiving any hearing before a neutral adjudicator to determine whether his detention is justified. He has been denied the opportunity to present evidence, contest the government's assertions, or obtain a meaningful review of his custody.

86. Immigration detention implicates a fundamental liberty interest. While Congress may authorize civil detention in the immigration context, such detention must remain reasonably related to its non-punitive purposes—ensuring appearance at proceedings and protecting public safety—and must comport with basic procedural due process. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

87. Even accepting the Fifth Circuit's statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), which forecloses a purely statutory entitlement to a bond hearing under 8 U.S.C. § 1226(a), that decision does not authorize prolonged or potentially indefinite civil detention without any individualized custody hearing and does not resolve the constitutional question presented here.

88. The Supreme Court has made clear that the absence of a statutory right to a bond hearing does not foreclose as-applied constitutional challenges to immigration detention. In *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court rejected a statutory bond-hearing requirement but expressly remanded for consideration of constitutional due process claims. *Id.* at 302–03.

89. Petitioner is likely to continue detained for many additional months or years. Absent any mechanism for individualized review, Petitioner faces a substantial risk of prolonged or indefinite detention under penal-like conditions without any finding that his confinement is necessary to serve the government's legitimate interests.

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

a. No immigration judge may conduct a bond hearing;
b. DHS is not required to justify continued detention with evidence; and

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

91. This categorical denial of any individualized custody determination violates procedural due process. Fundamental fairness requires, at a minimum, a meaningful opportunity to be heard before a neutral adjudicator when the government restrains physical liberty for a prolonged period. Zadvydas, 533 U.S. at 690; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

92. The government's detention of Petitioner without any individualized assessment also violates substantive due process. Detaining an asylum seeker with no criminal history, no dangerousness, and no flight risk—without requiring the government to justify detention or consider less restrictive alternatives—renders the confinement excessive and punitive in effect.

93. Because the Immigration Judge has disclaimed jurisdiction and DHS has provided no alternative constitutionally adequate custody process, habeas corpus is the only effective mechanism by which Petitioner may test the legality of his confinement. Continued detention under these circumstances offends the core protections of the Due Process Clause.

94. Accordingly, Petitioner's continued detention without an individualized custody determination violates the Fifth Amendment as applied to him. *Habeas* relief is warranted. Petitioner respectfully requests that this Court order his immediate release from ICE custody; or in the alternative, order Respondents to provide a prompt, constitutionally adequate individualized custody hearing before a neutral decisionmaker with authority to grant release, at which the government bears the burden of justifying continued detention.

COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT – ARBITRARY AND CAPRICIOUS AGENCY ACTION

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

96. The Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), requires courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. An agency acts arbitrarily and capriciously when it fails to examine relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress has not so provided. *Judulang v. Holder*, 565U.S. 42, 53–55 (2011).

97. Petitioner does not challenge the Fifth Circuit's statutory holding in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), regarding immigration-judge bond jurisdiction. Rather, Petitioner challenges DHS's independent-agency action in implementing and applying a blanket detention policy that treats *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as eliminating all meaningful individualized custody discretion and review.

98. The Department of Homeland Security has acted arbitrarily and capriciously by continuing to detain Petitioner without any individualized custody assessment or reasoned explanation. Petitioner has no serious criminal convictions, has no pending criminal charges, has not engaged in dangerous behavior, and has consistently cooperated with immigration authorities since his transfer into ICE custody.

99. Despite these facts, DHS has maintained Petitioner's detention for an extended and potentially indefinite period without providing any reasoned explanation or evidence that

continued confinement serves a legitimate statutory purpose. DHS has failed to articulate why release under supervision, bond, or other alternatives would be insufficient.

100. DHS's reliance on *Matter of Yajure Hurtado* to justify continued detention is arbitrary and contrary to law. *Yajure Hurtado* addresses the jurisdiction of Immigration Judges to conduct bond hearings. It does not compel DHS to detain noncitizens indefinitely, nor does it eliminate DHS's longstanding discretionary authority to release noncitizens on parole, recognizance, supervision, or bond.

101. By treating *Yajure Hurtado* as an absolute bar to any form of individualized custody consideration, DHS has unlawfully transformed a discretionary detention framework into a blanket detention rule, substituting categorical inaction for the case-by-case decision-making required by the INA and the APA.

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

a. Petitioner's lack of criminal history and non-dangerousness;
b. His demonstrated compliance with immigration authorities;
c. His pending humanitarian protection claims;
d. The absence of any individualized flight-risk finding; and
e. The availability of less restrictive alternatives to detention.

103. DHS has also failed to provide a reasoned explanation for its abrupt departure from decades of settled administrative practice (1997–2025), during which noncitizens in Petitioner's posture routinely received individualized custody determinations and were considered for release under supervision or bond. Such an unexplained reversal of course is arbitrary and capricious under the APA. *Judulang*, 565 U.S. at 55.

104. Civil immigration detention is statutorily limited to non-punitive purposes—ensuring appearance at proceedings and protecting public safety. DHS's continued detention

of Petitioner, without individualized justification and without consideration of alternatives, does not advance either purpose and therefore exceeds lawful agency discretion.

105. DHS's actions are arbitrary, capricious, an abuse of discretion, and not in accordance with law within the meaning of 5 U.S.C. § 706(2)(A). The agency has effectively nullified its own discretionary authority through categorical non-exercise, which the APA prohibits.

106. Habeas relief is warranted to remedy this unlawful agency conduct. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct DHS to conduct a prompt, individualized, and reasoned custody determination consistent with the Administrative Procedure Act, the Immigration and Nationality Act, and governing constitutional principles.

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

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

108. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal protection that prohibits the federal government from treating similarly situated individuals differently without a rational and legitimate governmental purpose. *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Bolling v.Sharpe*, 347 U.S. 497, 499 (1954).

109. Petitioner is in removal proceedings under section 240 of the Immigration and Nationality Act—the same adjudicatory framework that governs millions of noncitizens nationwide, whose cases proceed before immigration judges and whose liberty interests are assessed through individualized custody determinations.

110. Petitioner is similarly situated, for custody purposes, to other noncitizens in § 240 proceedings who have no criminal convictions and no record of violence or dangerous behavior. He has cooperated fully with immigration authorities since entering ICE custody. Yet Petitioner alone is categorically denied access to any individualized custody review.

111. Petitioner's disparate treatment rests solely on DHS's *post-hoc* classification of him as an "applicant for admission" under INA § 235(b), based on disputed and unreviewed allegations regarding the manner and timing of his entry—facts never adjudicated in a custody hearing and never tested before a neutral decisionmaker.

112. Petitioner's bond request was denied solely on jurisdictional grounds. The Immigration Judge concluded that the Court lacked authority to consider bond, relying on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). As a result, Petitioner was denied any individualized consideration of danger, flight risk, community ties, or alternatives to detention.

113. This categorical denial creates an unjustifiable disparity between Petitioner and other similarly situated § 240 respondents who receive individualized custody determinations—even where those individuals entered without inspection, were apprehended long after entry, and present identical risk profiles.

114. Equal protection requires that detention classifications bear a rational relationship to a legitimate governmental purpose. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). Civil immigration detention is permissible only insofar as it serves the non-punitive purposes of ensuring appearance at proceedings or protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

115. DHS's classification scheme fails rational-basis review as applied to Petitioner. The government has never alleged—let alone established—that Petitioner poses a danger or flight risk, nor has it explained how denying him any custody review advances detention's legitimate purposes.

116. Instead, DHS relies on a categorical rule that treats similarly situated individuals differently based solely on entry-related labels that bear no rational relationship to present-day custody concerns. Such arbitrary line-drawing is constitutionally impermissible even under deferential review. *See Zadvydas*, 533 U.S. at 690; *Plyler*, 457 U.S. at 216.

117. Moreover, federal courts have recognized that immigration detention classifications must comport with fundamental fairness and may not be applied arbitrarily or discriminatorily. *See*, e.g., *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (government must justify detention with individualized evidence); *Rodriguez v. Robbins*, 804 F.3d 1060, 1074–76 (9th Cir. 2015) (due process prohibits prolonged detention without meaningful review).

118. The irrationality of this classification is heightened by the government's own prior practice. For nearly three decades, DHS and EOIR treated noncitizens in Petitioner's posture as eligible for individualized custody determinations. DHS's abrupt departure from that settled practice—without individualized justification—underscores the arbitrariness of the disparate treatment imposed here.

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

120. *Habeas* relief is therefore warranted to remedy this unconstitutional disparate treatment. Petitioner respectfully requests that this Court order his immediate release or, in the alternative, direct Respondents to provide him with a prompt and meaningful individualized custody determination under constitutionally adequate standards.

COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES

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

122. The Suspension Clause of the United States Constitution provides that "[t]he Privilege of the *Writ of Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." U.S. Const. art. I, § 9, cl. 2. The Clause guarantees the availability of judicial review to challenge the lawfulness of executive detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S. 289, 300–05 (2001).

123. *Habeas corpus* remains available to all persons in the United States who are detained by executive authority, including noncitizens in civil immigration custody. The Supreme Court has repeatedly held that Congress—and a fortiori the Executive—may not eliminate all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at 305–06; *Boumediene*, 553 U.S. at 779.

124. Petitioner is detained solely under civil immigration authority and is currently confined at El Paso Processing Center. He has no serious criminal convictions, no pending criminal charges and his removal proceedings remain pending before the BIA.

125. The Immigration Judge categorically denied jurisdiction to consider bond or conduct any individualized custody determination, relying exclusively on *Matter of Yajure*

Hurtado, 29 I. & N. Dec. 216 (BIA 2025). This classification—based on disputed and unreviewed allegations regarding the manner and timing of Petitioner's entry—foreclosed access to the custody redetermination process available to other § 240 respondents.

126. Because the Immigration Judge concluded that he lacked jurisdiction, Petitioner has no administrative pathway to challenge the legality, duration, or necessity of his detention. The Board of Immigration Appeals likewise lacks jurisdiction to review custody determinations in which no bond hearing can be held. ICE has also declined to provide any individualized parole or custody assessment.

127. As a result, no adequate or effective substitute for habeas corpus exists through which Petitioner may obtain judicial review of the legality of his confinement. Neither the Immigration Courts nor the Board of Immigration Appeals possesses jurisdiction to review custody challenges arising from DHS's classification decisions.

128. The Suspension Clause forbids the government from implementing a detention scheme that eliminates all meaningful opportunity for detainees to test the legality of their confinement. *Boumediene*, 553 U.S. at 779 ("The writ must be effective."). When no adequate and effective substitute exists, *habeas* review is constitutionally required. *St. Cyr*, 533 U.S. at 305.

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

130. The government's application of *Matter of Yajure Hurtado* to categorically bar all custody review, combined with DHS's refusal to conduct any individualized discretionary

assessment, results in a detention regime that violates the Suspension Clause by eliminating any effective means to challenge unlawful detention.

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

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

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

133. Under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders resulting agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). This principle applies with full force in immigration proceedings and is enforceable through habeas corpus where regulatory violations result in unlawful detention.

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

135. These regulatory requirements are mandatory, not discretionary. They impose substantive limitations on ICE's authority to conduct warrantless arrests in the interior of the United States and are designed to protect against arbitrary deprivations of liberty.

136. Petitioner was not evading law enforcement, was not subject to any criminal investigation, posed no danger to any person or to the community, and presented no risk of flight. There was no factual basis to conclude that Petitioner was "likely to escape before a warrant could be obtained," as required by 8 C.F.R. § 287.8(c)(2)(ii).

137. ICE officers, therefore, failed to comply with a mandatory regulatory prerequisite to a lawful warrantless arrest. This violation of DHS's own binding regulations renders Petitioner's arrest unlawful under the Accardi doctrine.

138. The consequences of this regulatory violation are not limited to the moment of arrest. Petitioner's ongoing detention flows directly from—and is predicated upon—the unlawful warrantless arrest conducted in violation of 8 C.F.R. § 287.8(c). Continued detention based on an arrest that contravenes binding regulations is itself unlawful.

139. Federal courts have repeatedly recognized that habeas corpus is an appropriate vehicle to remedy detention that results from an agency's failure to follow its own regulations, particularly where those regulations are designed to protect individual liberty. *See Accardi*, 347 U.S. at 267–68; *St. Cyr*, 533 U.S. at 301–05.

140. By arresting Petitioner without a warrant and without satisfying the regulatory requirements governing such arrests, DHS violated the *Accardi* doctrine and deprived Petitioner of liberty in a manner not authorized by law.

141. *Habeas* relief is therefore warranted. Petitioner respectfully requests that this Court grant the writ and order his immediate release from ICE custody or, in the alternative,

provide appropriate relief to remedy the unlawful detention resulting from DHS's regulatory violations.

PRAYER FOR RELIEF

Petitioner respectfully requests that the Court grant the following relief:

A. Assume jurisdiction over this matter;

B. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days absent good cause for a short extension, and set the matter for prompt hearing;

C. Prohibit Petitioner's removal from the United States and transfer outside the Eastern District of Texas during the pendency of this action;

D. Declare that Petitioner's arrest and continued detention violate the Fifth Amendment of the U.S. Constitution; the Administrative Procedure Act; the *Accardi* doctrine as to 8 C.F.R. §§ 236.23(d), 287.8(c)(2)(i), (ii); and the Fourth Amendment of the U.S. Constitution;

E. Grant the writ of habeas corpus and order Petitioner's immediate release from ICE custody; and

F. Grant such other and further relief as law and justice require.

Dated: August 31, 2026 Respectfully submitted,

/s/ Norma Islas
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I, Norma Angelica Islas, represent Petitioner, George Eliot Ossang Mbua, and submit this verification on his behalf. I hereby verify under penalty of perjury that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATE: August 31, 2026

/s/ Norma Islas

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