

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

SALUD ALBERTO MARTINEZ RODRIGUEZ,
Petitioner,

v.

WARDEN, Bluebonnet Detention Facility,
DALLAS FIELD OFFICE DIRECTOR,
U.S. Immigration & Customs Enforcement (ICE ERO),
KRISTI NOEM, Secretary of the U.S. Department of
Homeland Security, JOSEPH B. EDLOW, Director, U.S.
Citizenship and Immigration Services (USCIS); and
PAMELA J. BONDI, Attorney General of the United States
In their official capacities,
Respondents.

Case No. 1:26-cv-44

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241)
AND COMPLAINT FOR MANDAMUS/APA RELIEF (28 U.S.C. § 1361; 5 U.S.C. §§
555(b), 706(1))

INTRODUCTION

1. Petitioner/Plaintiff Salud Alberto Martinez Rodriguez,  ("Petitioner" or "Plaintiff") is currently re-detained by U.S. Immigration and Customs Enforcement ("ICE") at Bluebonnet Detention Facility in Anson, Texas, within the Northern District of Texas, Abilene Division. *See* Exhibit 5. He is both a DACA applicant and an applicant for Asylum, Withholding of Removal and Convention Against Torture (CAT) who has resided in the State of Texas since he was two years old in 2005. *See* Exhibit 1, Exhibit 2 at 22, Exhibits 9-11. He was previously released on bond by an Immigration Judge (IJ) under 8 U.S.C. §1226(a). He has been detained one year. This filing seeks two distinct forms of relief in a single civil action:

- a. With respectful awareness and acknowledgement of prior rulings by this Court¹ and without wishing upon the Court a negative use of its resources, Petitioner prays that he may be allowed opportunity to distinguish this case using 6-3 U.S. Supreme Court opinions authored by Chief Justice Roberts and Justice Alito,² in favor of Habeas relief under 28 U.S.C. § 2241, challenging the lawfulness of continued detention and requesting immediate release on the least restrictive conditions, or, in the alternative, a prompt and lawful custody redetermination; and
 - b. Mandamus and APA relief compelling U.S. Citizenship and Immigration Services (“USCIS”) to take action to a lawful endpoint consistent with the Fifth Circuit³ within a reasonable time on Plaintiff’s properly submitted DACA-related filing. The Fifth Circuit did not address aging, 5-year-old applications that had been acknowledged, but never actioned, due to failure of the Biden Administration. The lawful endpoint sought is for USCIS to issue a reasoned written agency recognition of objective, verifiable facts in the DACA application, i.e., that criteria are met, without asking the Court to dictate the outcome.
2. Because Petitioner’s Individual Hearing is scheduled for February 5, 2026, time is of the essence. *See* Exhibit 8. Removal or transfer can occur with little notice and can defeat or materially impair habeas jurisdiction and meaningful review, Petitioner also requests

¹ This Court has previously held that individuals charged as applicants for admission under § 1225(b)(2)(A) are not entitled to bond hearings under § 1226(a). *See, e.g., Garibay-Robledo v. Noem*, No. 1:25-CV-177-H (N.D. Tex.); *Montelongo Zuniga v. Lyons*, No. 1:25-CV-221-H (N.D. Tex.), among others.

² *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

³ The Fifth Circuit affirmed the district court’s conclusion that the 2012 DACA memorandum was unlawful, but left undisturbed the remedial order preserving deferred action and forbearance from removal for existing DACA recipients. *Texas v. United States*, 50 F.4th 498, 529–30 (5th Cir. 2022), *aff’g in relevant part* 549 F. Supp. 3d 572 (S.D. Tex. 2021).

emergency temporary restraining relief preserving the status quo while the Court adjudicates the § 2241 petition and the and the 28 U.S.C. § 1361 mandamus complaint.

3. Upon information and belief, Petitioner/Plaintiff and his counsel file these causes in the good faith belief that the pleadings have basis in law and fact, and that there is room for narrowly tailored relief in this case. Should the Court find that further briefing on the issues presented herein will not result in a Habeas outcome any different than those that have come before, or that it finds it does not have jurisdiction on any of the five Counts presented herein, then we pray the Court dispose of the matter right away.

JURISDICTION & VENUE

A. Habeas jurisdiction (Counts I-III)

4. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas) because Petitioner is “in custody” within this District and Division at Bluebonnet Detention Facility (See Exhibit 5), 28 U.S.C. § 1331 (federal question), Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause), authority to issue declaratory and injunctive relief under 28 U.S.C. § 1651 (All Writs Act), and the Administrative Procedure Act (APA).. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A district court may review a writ of habeas corpus if a petitioner is in federal custody in violation of the Constitution or federal law. 28 U.S.C. § 2241. “At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest.” *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001). Accordingly, a district court’s habeas jurisdiction includes challenges to the lawfulness of immigration-related detention. The Court may grant habeas relief ordering release or other appropriate relief to remedy unlawful custody. See, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*,

538 U.S. 510, 516–17 (2003); *Baez v. Bureau of Immigr. & Customs Enft.*, 150 F. App'x 311, 312 (5th Cir. 2005) (unpublished); *Oyelude v. Chertoff*, 125 F. App'x 543, 546 (5th Cir. 2005) (unpublished).

B. Mandamus/APA jurisdiction (Counts IV-V)

5. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331⁴ (federal question), has mandamus jurisdiction under 28 U.S.C. § 1361 to compel an officer or employee of the United States to perform a duty owed to Plaintiff, and under the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 702, 706(1), to remedy agency action unlawfully withheld or unreasonably delayed and to compel agency action.
6. Mandamus jurisdiction exists where the plaintiff demonstrates a clear right to the relief sought, a plainly defined and nondiscretionary duty on the part of the defendant to perform the act in question, and the absence of any other adequate remedy. *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 764–65 (5th Cir. 2011); *Heckler v. Ringer*, 466 U.S. 602, 616–17 (1984).
7. Under the APA, a court may compel agency action unlawfully withheld or unreasonably delayed where the plaintiff identifies a discrete agency action that the agency is legally required to take, and the reasonableness of any delay is assessed under the TRAC factors. *Norton v. S. Utah Wilderness All. (SUWA)*, 542 U.S. 55, 63–65 (2004);

⁴ The Court's subject-matter jurisdiction arises under 28 U.S.C. § 1331, not the APA itself. The APA does not independently confer jurisdiction but instead supplies a cause of action and standards of review once jurisdiction is established. See *Califano v. Sanders*, 430 U.S. 99, 105–07 (1977). Section 702 of the APA waives sovereign immunity for claims seeking relief other than money damages against federal officers or agencies acting in an official capacity. *Bowen v. Massachusetts*, 487 U.S. 879, 891–92 (1988). Section 706(1) provides the remedial authority to compel agency action unlawfully withheld or unreasonably delayed, limited to discrete action that the agency is legally required to take. *Norton v. SUWA*, 542 U.S. 55, 63–65 (2004). Mandamus jurisdiction independently exists under 28 U.S.C. § 1361 to compel performance of a clear, nondiscretionary duty owed to the plaintiff, and does not alter the substantive mandamus standard. *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 764–65 (5th Cir. 2011); *Heckler v. Ringer*, 466 U.S. 602, 616–17 (1984).

Telecommunications Research & Action Ctr. v. FCC (TRAC), 750 F.2d 70, 79–80 (D.C. Cir. 1984); *Li v. Jaddou*, No. 22-50756 (5th Cir. May 12, 2023).

C. Venue

8. Habeas venue lies in the district of confinement at the time of filing. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Pack v. Yusuff*, 218 F.3d 448 (5th Cir. 2000). Venue is proper in the Northern District of Texas, Abilene Division because Petitioner is in custody there, and the immediate custodian, the Warden of Bluebonnet Detention Center, resides in this District and Division. *See* Exhibit 4.
9. Venue is also proper for the mandamus/APA claims because Defendants are United States officers sued in their official capacities and the effects of the challenged inaction are felt in this District and Division, including through Plaintiff's detention and the pending EOIR schedule. *See* Exhibit 3 at 45, Exhibit 4.

REQUIREMENTS OF 28 U.S.C. § 2243

10. 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, i.e., that if the facts were proved true, there was still not a valid Petition for Writ. 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.* (emphasis added).
11. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, 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) (emphasis added). This passage about habeas accurately describes the fundamental nature of habeas, and the speed and imperative character of relief under § 2243.

NORTHERN DISTRICT REQUIREMENTS FOR 28 U.S.C. § 2243

12. Exhaustion is not a § 2241 statutory requirement for Petitioner. However, in the Fifth Circuit, or at least the Northern District, Petitioners are required to show “proper” exhaustion of “prudential” remedies and to demonstrate that a Petition for Writ is not used as a substitute for appeal to the BIA.

[W]ithout “proper” exhaustion, *citing Woodford v. Ngo*, 548 U.S. 81, 90 (2006), and “[i]t is settled that habeas corpus is not to be used as a substitute for appeal.” *Stewart v. Dunn*, 363 F.2d 591, 597 (5th Cir. 1966); *accord. Bousley v. United States*, 523 U.S. 614, 621 (1998).⁵ Romero has asked the immigration judge to revisit the terms of her supervised release (Petition, Ex. 5 at 42–50, ECF No. 1) and it is clear she can appeal any denial of that request within the agency. This case appears to simply be an appeal of the immigration judge’s custody determination, which is an improper use of habeas corpus. *Stewart*, 363 F.2d at 597.

13. Exhaustion of “prudential” remedies:

It is clearly established that a “person seeking habeas relief must first exhaust available administrative remedies.” *Hinojosa v. Horn*, 896 F.3d 305, 314 (5th Cir. 2018). “But any exhaustion requirement is prudential,” when, as the parties here agree, no statutory requirement exists. *Cabanas*, 2025 WL 3171331, at *3. Where “Congress has not clearly required exhaustion, sound judicial discretion governs.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). The Court should require exhaustion, when appropriate, “because it serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency.” *Id.* at 145. “Exceptions to the exhaustion requirement are appropriate where the available administrative remedies either are unavailable or wholly inappropriate to the relief sought, or where the attempt to exhaust such remedies would itself be a patently futile course of action.” *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994). But these exceptions apply only in “extraordinary circumstances” and upon “demonstrating the futility of administrative review.” *P. B. v. Bergami, et al*, Case No. 3:25-CV-02978-O.

⁵ ICE does not raise exhaustion in its opposition to the petition.

14. Cited above, the DHS/ICE Interim Guidance published July, 8, 2025 and the BIA's *Hurtado* decision established both exhaustion and futility for all aliens in custody to obtain release on bond, stating that 8 U.S.C. § 1226(a) no longer has application to any of them, but instead it is 8 U.S.C. § 1225(b)(2), requiring mandatory detention, that applies to all aliens who do not have legal status.
15. If we read this correctly, this Court appears to be granting deference to Executive Branch agencies, including ICE, the USCIS and the Immigration Courts (via the U.S. Attorney General) by upholding such guidance to date per the cases cited in Footnote 1; i.e. individuals charged as applicants for admission under § 1225(b)(2)(A) are not entitled to bond hearings under § 1226(a). *Garibay-Robledo v. Noem*; *Montelongo Zuniga v. Lyons*.

REQUIREMENTS OF 28 U.S.C. § 1361

16. Mandamus is available where Plaintiff shows (1) a clear right to relief, (2) a plainly defined, nondiscretionary duty to take action (not to grant relief), and (3) no other adequate remedy; here, Plaintiff seeks only an order requiring USCIS to take discrete action to a lawful endpoint within a reasonable time on a properly submitted DACA filing, without dictating approval. *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 764–65 (5th Cir. 2011); *Heckler v. Ringer*, 466 U.S. 602, 616–17 (1984).

REQUIREMENTS OF 5 U.S.C. §§ 555(b), 706(1)

17. Under the APA, an agency must conclude matters presented to it within a reasonable time, 5 U.S.C. § 555(b), and a court may compel agency action unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1), so long as the plaintiff identifies a discrete action the agency is legally required to take; Plaintiff seeks only a deadline for USCIS to issue

a reasoned written action reflecting its legally permissible disposition in light of controlling court orders (including any injunction constraints), not an order compelling DACA approval. *Norton v. S. Utah Wilderness All. (SUWA)*, 542 U.S. 55, 63–65 (2004); *Telecommunications Research & Action Ctr. v. FCC (TRAC)*, 750 F.2d 70, 79–80 (D.C. Cir. 1984); *Li v. Jaddou*, No. 22-50756 (5th Cir. May 12, 2023).

PARTIES

A. Petitioner/Plaintiff

18. Salud Alberto Martinez Rodriguez, A# XXXXXXXXXX, is detained at Bluebonnet Detention Facility in Anson, Texas. *See* Exhibit 5.

B. Habeas Respondents (Counts 1–2 only)

19. Respondents: (1) Warden, Bluebonnet Detention Facility, the immediate custodian with day-to-day control of Petitioner, *See* Exhibit 5; (2) Dallas Field Office Director, ICE ERO (3) Kristi Noem, DHS Secretary; (4) Pamela J. Bondi, U.S. Attorney General. All in their official capacities.

B. Mandamus/APA Defendants (Counts 3–4 only)

21. Defendants: (1) Kristi Noem, Secretary of DHS; and (2) Joseph B. Edlow, Director of USCIS, each in their official capacities.

C. Express limitation of parties by count

22. Counts 1–2 (Habeas) are asserted against Habeas Respondents only.

23. Counts 3–4 (Mandamus/APA) are asserted against Mandamus/APA Defendants only.

24. Excepting DHS Secretary Noem, Habeas Respondents are not Defendants to Counts 3–4; Mandamus/APA Defendant Director Edlow is not a Respondent to Counts 1–2.

INCORPORATION BY REFERENCE

25. Petitioner/Plaintiff attaches Exhibits as listed immediately below, and hereby incorporates by reference all facts, declarations, and documentary evidence contained therein as if set forth fully herein:

Exhibit 1: DACA filing packet Dated 12.10.2020	2
Form G-1145 E-Notification of Application/Petition Acceptance	3
Form I-765 (Application for Employment Authorization; DACA context)	4
Form I-765WS (Worksheet)	11
Form I-821D (Consideration of Deferred Action for Childhood Arrivals)	12
Exhibit 2: DACA Evidence filed with Application	20
Birth Certificate and Translation (Supporting biographic data)	21
Mi Escuelita Preschool enrollment letter (2006/2007 school year)	22
Medical records request/authorization form	23
Immunization Summary Report 2005-15	24
DISD High School Transcript 2017-2020	26
DISD Enrollment records 2008-2020	27
Letter from supervisor at Moore Clean LLC (proof of employment)	28
Mexican passport	30
Lincoln Tech Student ID Issued September 5, 2024 & Education record	31
Lincoln Tech Account/billing/ledger statement	32
Catholic Confirmation Certificate 5-12-20, Dallas, Texas	34
First Communion certificate (community tie)	35
Letter from State Senator Royce West June 1, 2021	36
Sunset High School Diploma, Dallas, TX (education tie)	37
Form I-797 Receipt of I-821D Consideration of DACA Dec. 14, 2020	40
Notice Date January 12, 2021 (Mandamus Date)	
Exhibit 3: Charging document (NTA)	44
Form I-862 Notice to Appear Dated 9-17-24	45
(includes INA § 212(a)(6)(A)(i) charge/allegations) custody at Prairieland Detention Center in Alvarado, Texas.	
Exhibit 4: EOIR bond/custody history screenshot	49
Release on \$10,000 bond 10-25-24 under 8 U.S.C. § 1226(a)	51
ICE custody proof: Bluebonnet	52
Exhibit 5: [Petitioner]’s Motion to Terminate Removal Proceedings – DACA	54
Exhibit 6: Denial of Motion to Terminate 10-23-25	70
Exhibit 7: EOIR Notice of Internet-Based Hearing 2-5-26	73
Exhibit 8: Denial of 2 nd Motion to Terminate	76
Exhibit 9: I-589 Application for Asylum, Withholding of Removal and CAT	79
Exhibit 10: Pre-Hearing Statement in Support of I-589	96
Exhibit 11: Evidence in Support of I-589	112
Exhibit 12: <i>Mexico: Organized Crime and Drug Trafficking Organizations</i> , CRS	166
Exhibit 13: U.S. Department of State Designation of International Cartels 2-20-25	210

STATEMENT OF FACTS AND PROCEDURAL POSTURE

A. Early Life, DACA Filing Package and Fifth Circuit Ruling

26. Salud Martinez was born [REDACTED], in Salvatierra, Guanajuato, Mexico. *See* Exhibit 2 at 21. He entered the United States, aged 2, via Laredo, Texas in April 2005. *See* Exhibit 9 at 84, Exhibit 10 at 101. A third-party letter confirms Petitioner was enrolled in Mi Escuelita Preschool for the 2006/2007 school year, corroborating childhood residence and community ties. *See* Exhibit 2 at 22.
27. Plaintiff's receipt affixed to his filed USCIS Form G-1145 on December 10, 2020, shows this date and the payment of the filing fee. The DACA-related package included:
- a. Form I-765 (Application for Employment Authorization). *See* Exhibit 1 at 4.
 - b. Form I-765WS (Worksheet). *See* Exhibit 1 at 11.
 - c. Form I-821D (Consideration of Deferred Action for Childhood Arrivals). *See* Exhibit 1 at 12.
28. Petitioner's I-765 provides a fixed U.S. mailing address and a fixed U.S. physical address in Dallas, Texas 75211. *See* Exhibit 1 at 4.
29. A third-party letter confirms Petitioner was enrolled in Mi Escuelita Preschool for the 2006/2007 school year, corroborating childhood residence and community ties. *See* Exhibit 2 at 22.
30. As cited in Footnote 1, the Fifth Circuit has stayed removal for DACA recipients who were initially processed and granted DACA prior to July 16, 2021. Current DACA recipients can continue to apply to DHS to renew their DACA grants. The relief is limited to Texas. Federal officials may classify DACA recipients as low priorities for removal and not remove them. *Texas v. United States* at 529–30.

31. The USCIS has posted this advisory on its website (uscis.gov):

On Jan. 17, 2025, the U.S. Court of Appeals for the Fifth Circuit issued a decision regarding the DACA Final Rule. Pursuant to the court's order, USCIS will continue to accept and process DACA renewal requests and accompanying applications for employment authorization under the DACA regulations at 8 CFR 236.22 and 236.23. USCIS will continue to accept initial requests but will not process initial DACA requests at this time. Current grants of DACA and related Employment Authorization Documents remain valid until they expire, unless individually terminated. See uscis.gov/i-821d#, citing *State of Texas, et al. v. U.S.A, et al.*, 23-40653 (5th Cir. 2025), found that portions of the DACA program violated U.S. immigration law.

A. I-589 Filing

32. August 26, 2025: Because of his membership in [REDACTED]

[REDACTED] which has been repeatedly and systematically attacked by cartel members in Guanajuato, Petitioner/Plaintiff has filed an I-589 Application for Asylum, Withholding of Removal and CAT. See Exhibits 9, 10, 11.

33. Salud does not meaningfully know Mexico, has no safe place to which he can return there, and fears that if he is removed, he will be targeted, tortured, and likely killed by the [REDACTED]

[REDACTED]

[REDACTED]

34. Salud's Statement (See Exhibit 9) and Pre-Hearing Brief (See Exhibit 10) detail the

[REDACTED]. There have been no prosecutions by the Mexican authorities for any of these crimes.

35. The evidence for his I-589 contains three Death Certificates. All were Salud's cousins, and all were deported from the U.S., only to be murdered back "home" in or near Guanajuato.

36. [REDACTED] died age 20 on April 8, 2020, due to [REDACTED] [REDACTED],” which sounds to this layman counsel like [REDACTED] [REDACTED]. See Exhibit 10 at p. 101, Exhibit 11 at pp. 139-141.

37. [REDACTED] died age 50 on January 8, 2025, due to [REDACTED] [REDACTED]. See Exhibit 10 at p. 102, Exhibit 11 at pp. 142-144.

38. Salud's statement owes another cousin's death to being [REDACTED] [REDACTED]. According to his official death certificate, [REDACTED] died age 38 on March 3, 2025, due to [REDACTED].” See Exhibit 10 at p. 102, Exhibit 11 at pp. 145-147.

39. He had been [REDACTED], though at first this was not fully understood by layman counsel. Medical texts provide information about [REDACTED] [REDACTED]. In fire deaths, carbon monoxide poisoning is a frequent cause of death, often occurring before lethal burns. Carbon monoxide (CO) binds to hemoglobin 200–250 times more strongly than oxygen, forming carboxyhemoglobin (COHb). Victims may succumb to CO before sustaining fatal burns. This is why some victims show little or no escape behavior and minimal defensive injuries. *Spitz and Fisher's Medicolegal Investigation of Death: Guidelines for the Application of Pathology to Crime Investigation*, 5th ed. (Charles C.

Thomas, Publisher); *Forensic Pathology*, DiMaio, V.J.M. & DiMaio, D., 2d ed. (CRC Press).

A. Custody status and detention location

40. ICE's detainee locator shows Petitioner is "In ICE Custody" and identifies "Bluebonnet Detention Facility" in Anson, Texas, as the current detention facility, as do his EOIR papers. *See* Exhibit 4.

D. Removal proceedings and hearing schedule

41. September 2, 2024: DHS issued a Notice to Appear ("NTA") on September 17, 2024, placing Petitioner in INA § 240 removal proceedings. The NTA alleges Petitioner is "present in the United States who has not been admitted or paroled" and charges inadmissibility under INA § 212(a)(6)(A)(i). *See* Exhibit 3.
42. On October 21, 2025, immigration counsel (not present counsel) filed a Motion to Terminate Removal Proceedings Based on Pending DACA request. *See* Exhibit 5. It was denied by the IJ on October 23, citing *Matter of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022). *See* Exhibit 6. A second Motion to Terminate was denied on the same grounds. *See* Exhibit 8.
43. EOIR has issued a Notice of Internet-Based Hearing setting an Individual Hearing February 5, 2026. This hearing may be Salud's last stand to fight removal based on DACA and Asylum/Withholding of Removal/CAT. *See* Exhibit 7.
- C. Bond/custody history shown in the EOIR portal record**
44. Petitioner was taken into custody after his September 17, 2024, hearing. He was granted release on bond by the IJ on October 25, 2024. *See* Exhibit 4 at 51. This clarifies that 8 U.S.C. §1226(a) was applied to Petitioner.

45. Petitioner was re-detained March 10, 2025, and taken to Bluebonnet, where he currently resides. Upon information and belief, we believe it was after being charged dubiously with Assault on a Family Member. The Dallas County District Attorney moved to dismiss because the State could not secure the complaining witness and could not prove a prima facie case; the criminal court granted dismissal. *See* Exhibit 11 at 117. This disposition is not a conviction under INA § 101(a)(48)(A).
46. Salud's family, one of whom was the supposed victim, is paying his legal bills.
47. On July 8, 2025, ICE announced a new policy entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission." DHS, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), <https://perma.cc/2V6H-FHVD>. The policy states that 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226(a), is the applicable immigration detention authority for all noncitizens who are applicants for admission. *Id.* Subsequently, on September 5, 2025, the Board of Immigration Appeals (BIA) issued a published decision in line with this interim guidance, holding that immigration judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission because they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Petitioner will be arguing that announced policy does not repeal statutes.
48. Salud has been in ICE custody a total of one year.

CLAIMS FOR RELIEF

**COUNT I HABEAS: UNLAWFUL CIVIL DETENTION UNDER INA 8 U.S.C. § 1226(A),
THE APA & DUE PROCESS**

49. Petitioner realleges and incorporates paragraphs 1–48.
50. Petitioner is in custody for § 2241 purposes. He has pursued administrative remedies to the extent available, thereby meeting the District’s qualification of proper, prudential exhaustion.
51. Continued detention without a legally adequate, individualized consideration of alternatives violates 8 U.S.C. § 1226(a) and the Fifth Amendment. DHS/ERO has not contested any of the documented facts provided by Petitioner, yet continues to detain Petitioner without a constitutionally sufficient, individualized assessment of flight risk/danger considering undisputed equities (21-year presence; verified work history; no disqualifying criminal history; full compliance with ICE conditions).
52. The record evidence demonstrates substantial stability and appearance incentives, including fixed address and long-term ties. *See* Exhibit 2 at pp. 20-43.
53. Based on the facts in evidence, already introduced and/or accepted by the DHS as true the court should order immediate release of Petitioner, or that the DHS or an individualized determination with reasoned findings on its own administrative record as reflected in this proceeding. *See* Exhibits 1-2, 9-11.

**COUNT II HABEAS/ALL WRITS: ANTI-TRANSFER TO PRESERVE JURISDICTION
AND DECLARATORY/INJUNCTIVE RELIEF**

54. Petitioner realleges and incorporates paragraphs 1–53.
55. Declaratory judgment that Petitioner’s detention is unlawful and injunctive relief ordering release or a constitutionally adequate hearing and prohibiting transfer pending final adjudication. An order is necessary to maintain the status quo and protect this Court’s

jurisdiction over the person of the custodian and Petitioner, and to prevent irreparable harm through counsel deprivation and forum manipulation.

**COUNT III HABEAS: APPLICATION OF THE *GUERRA* FACTORS
DEMONSTRATES RELEASE IS WARRANTED**

56. Petitioner realleges and incorporates paragraphs 1–55.
57. There are nine factors the BIA has stated are relevant for bond determinations, including flight risk and danger to the community and/or national security. *Matter of Guerra*, 24 I. & N. Dec. 37 (B.I.A. 2006).
58. The following nine Guerra factors, applied with exact record citations, favor release:
- Factor 1. Fixed address in the United States. Petitioner provided a fixed U.S. mailing and physical address in Dallas, Texas 75211. *See* Exhibit 9 at 81.
- Factor 2. Length of residence in the United States. A third-party school letter confirms Petitioner’s enrollment in Dallas preschool in the 2006/2007 school year. *See* Exhibit 2 at 22.
- Factor 3. Family ties in the United States and whether they may entitle the alien to reside permanently in the United States in the future. Petitioner’s DACA filing package reflects good-faith pursuit of relief through lawful DHS channels and reinforces strong incentives to appear and comply with conditions. *See* Exhibits 1-2.
- Factor 4. Employment history. Petitioner filed Form I-765 and Form I-765WS showing intent to work lawfully and economic stability goals. *See* Exhibit 1 at 4-11.
- Factor 5. Record of appearances in court. ICE issued Petitioner a NTA on September 2, 2024 and Petitioner appeared September 17, 2024, only to be taken into custody for detention. He was released October 25, 2024 with bond under 8 U.S.C. 1226(a) and deemed no flight risk. EOIR has issued an Individual Hearing notice on February 5, 2026. and

Petitioner should be released, because he will show up. He has demonstrated that he adheres to structured court oversight and has strong incentives to appear. (*See* Exhibit 7).

Factor 6. Criminal record (extensiveness, recency, seriousness). The exhibit packet submitted with this emergency filing contains no criminal judgments or conviction records. The NTA page shown charges civil inadmissibility and does not allege criminal convictions. *See* Exhibit 3.

Factor 7. History of immigration violations. The NTA alleges inadmissibility under INA § 212(a)(6)(A)(i). *See* Exhibit 3 at 45. Salud's EOIR file compiled by DHS does not reflect any absconding, failure to appear, or supervision violations. *See* Exhibits 3-11.

Factor 8. Attempts to flee prosecution or escape from authorities. No allegation of flight/escape appears in the submitted custody/bond record evidence.⁶ *See* Exhibits 3-11.

Factor 9. Manner of entry into the United States. DHS alleges entry "at or near unknown place, on or about 2005," without admission or parole. He did not receive a NTA as he was two-years old. *See* Exhibit 3.

59. Because the Guerra factors favor release and because less restrictive conditions can reasonably assure appearance and protect the community, continued detention is unlawful as applied and habeas relief is warranted.

COUNT IV APA: AGENCY ACTION UNLAWFULLY WITHHELD OR UNREASONABLY DELAYED (5 U.S.C. §§ 555(b), 706(1))

60. Petitioner realleges and incorporates paragraphs 1–59.

61. Plaintiff submitted a DACA-related filing package including Forms I-765, I-765WS, and I-821D. *See* Exhibit 1.

⁶ The only way an alien can find a way to legality is to show up for all check-ins and hearings. Excluding Nicolas Maduro, the only way for one to truly flee the awesome jurisdictional power of the United States, is to leave the United States, thus, ironically meeting DHS' #1 charging goal. The only place Salud wants to "run" is to his home address in Dallas, Texas, and to school at the Lincoln Technical Institute.

62. The package includes a fixed address and identity/ties documentation relevant to intake and processing. *See* Exhibits 1-2.
63. USCIS has a duty under 5 U.S.C. § 555(b) to conclude matters presented to it within a reasonable time.
64. The Biden Administration USCIS failure to action Plaintiff's application to a lawful endpoint within a reasonable time constitutes agency action unlawfully withheld or unreasonably delayed, remediable under 5 U.S.C. § 706(1).
65. Plaintiff does not request an order compelling approval of DACA; Plaintiff seeks an order compelling agency action to a lawful endpoint and a reasoned written agency action and a Stay of Removal while the DACA questions continue their journey through the U.S. Courts.

COUNT V MANDAMUS: COMPEL PERFORMANCE OF DUTY OWED

(Against Mandamus/APA Defendants only)

66. Petitioner realleges and incorporates paragraphs 1–65.
67. Under 28 U.S.C. § 1361, Defendants owe a duty to take action to a lawful endpoint within a reasonable time on properly submitted matters and to issue a reasoned written action reflecting that disposition.
68. Plaintiff has no adequate alternative remedy to compel such action within a reasonable time while detained and subject to imminent immigration consequences. *See* Exhibits 3, 6, 7, 8.
69. Mandamus relief is appropriate to compel performance of this duty without dictating a discretionary outcome.

ARGUMENT FOR HABEAS CAUSES I-III

A. UNLAWFUL RE-DETENTION & DUE PROCESS

70. Petitioner realleges and incorporates paragraphs 1–69.

71. DHS unlawfully re-detained Petitioner after prior release, whether legally recognized as “on recognizance” under INA § 236, 8 U.S.C 1226(a), or another INA section, without alleging a violation of prior release conditions or providing due process.

72. In habeas proceedings, the Government bears the burden of justifying detention. *Zadvydas v. Davis* at 688. Immigration detention must be expressly authorized by statute and exercised within constitutional limits. *Demore v. Kim* at 517. Re-detention without an individualized custody determination or bond hearing renders detention punitive rather than regulatory and violates the Due Process Clause. *Zadvydas v. Davis* at 690.

B. THE DHS AND AG NO LONGER ALLOW INDIVIDUALIZED CUSTODY DETERMINATIONS OR BOND HEARINGS AS A MATTER OF POLICY.

66. Per the INA, it is the Attorney General who has the authority to grant bond and set the terms, whether with monetary bond or ISAP, by its authority under 8 U.S.C. §1226(a) delegated to Immigration Judges. The Attorney General is, as a matter of law, in charge of bond, administratively speaking, and Immigration Judges are their delegated proxies.

67. Per the Statement of Facts above, the July 8, 2025, ICE “Interim Guidance Regarding Detention Authority for Applicants for Admission” states that 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226(a), is the applicable immigration detention authority for all noncitizens who are applicants for admission. The BIA then held that immigration judges lack authority to hear bond requests or to grant bond to noncitizens who are present in the United States without admission because they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025

68. It may not be instantly visible to even the most seasoned immigration attorney, but close inspection reveals leaps of logic in the execution of this policy that travel beyond the INA and the U.S. Supreme Court's boundaries. To make the point, counsel prints below, without edit, the text of the Denial of Bond form in use by all IJs post-*Hurtado*. Bold has been added by counsel to point out the BIA's embellishments with specificity:

Denied, because

Respondent entered the United States without being admitted or paroled after inspection by an immigration officer. Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), **Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.** *YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025). Under section 235, Congress created three different categories of applicants for admission. The first two categories are covered by section 235(b)(1)(A) of the INA, 8 U.S.C. § 1225(b)(1)(A). They include: (1) arriving aliens inadmissible under section 212(a)(6)(C) or 212(a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7), and (2) aliens not admitted or paroled into the United States who are inadmissible under section 212(a)(6)(C) or 212(a)(7), 8 U.S.C. § 1182(a)(6)(C), (a)(7), and “who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility.” INA § 235(b)(1)(A)(i), (iii)(II), 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(II); see also 8 C.F.R. § 235.3(b)(1) (2025).

The INA explicitly requires that aliens who fall into either of these two categories are subject to mandatory detention for the duration of their immigration proceedings. See INA § 235(b)(1)(B)(ii), (iii)(IV), 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV); see also 8 C.F.R. § 235.3(b)(2)(iii). **Thus, an Immigration Judge lacks authority to hear a bond request filed by an applicant for admission in either of these two categories.** See *Matter of M-S-*, 27 I&N Dec. 509, 515–19 (A.G. 2019). The third category of applicants for admission subject to the inspection, detention, and removal procedures set forth in section 235 of the INA, 8 U.S.C. § 1225, are those aliens who are seeking admission and who an immigration officer has determined are “not clearly and beyond a doubt entitled to be admitted.” INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A). This category is a “catchall provision that applies to all applicants for admission not covered by [section 235(b)(1)].” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Like with the first two categories of applicants for admission, the INA explicitly requires that this third “catchall” category of applicants for admission be

mandatorily detained for the duration of their Cite as 29 I&N Dec. 216 (BIA 2025) Interim Decision #4125 Page 219 immigration proceedings. See INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A); see also *Jennings*, 583 U.S. at 299 (interpreting the “plain meaning” of sections 235(b)(1) and (2) to mean that applicants for admission be mandatorily detained for the duration of their immigration proceedings); 8 C.F.R. § 235.3(b)(1)(ii).

C. THE POLICY IS NOT IN ADHERENCE WITH THE INA.

69. The text of the INA 8 U.S.C. § 1225(b)(2)(A) cited by the first sentence in bold:

In general. Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229(a) of this title.

76. The definition of immigration officer per 8 U.S.C. 1101(a)(18):

(18) The term “immigration officer” means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this chapter or any section of this title.

70. Yet there is nothing in the Denial of Bond form stating what source repealed

8 U.S.C. 1226(a)(2)(A)-(B), which explicitly authorizes bond or parole:

(a) Arrest, detention, and release

On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General-- (1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole [end cite].

71. As the language in 1226(a)(1)-(2) plainly states, the Attorney General is granted jurisdiction, and the AG is represented by the IJs. There is no language that says they cannot grant bond. It is an entirely permissive section.

72. Petitioner specifically notes the specific statutory language that requires proceedings under § 1229(a), and under 8 CFR §1003.10(b), for appointed immigration judges to exercise their “independent judgement.”

INA § 101(b)(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 1229(a) of this title. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

8 CFR §1003.10

(a) Appointment. The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

(b) Powers and duties. In conducting hearings under section 240 of the Act and such other proceedings the Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.

73. Thus, a blanket policy taking away the IJs independent judgement in every case before them would be unlawful.

74. The next citation offered up by the BIA is *Matter of M-S-*, 27 I&N Dec. 509, 515–19 (A.G. 2019). The heading for that case (after expressly overruling *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005)) reads:

An alien who is transferred from expedited removal proceedings to full removal proceedings after establishing a credible fear of persecution or torture is ineligible for release on bond. Such an alien must be detained until his removal proceedings conclude, unless he is granted parole.

75. Attorney General Barr described a very narrow circumstance. In Salud's case, he has (1) never been in expedited removal proceedings. In fact, he was detained while merely a DACA filer. See Exhibits __ and __. Nor has he (2) been transferred to full removal proceedings. He started out in them. Finally, Salud has not (3) established a credible fear of persecution or torture that would establish an inability to be released on bond (according to AG Barr.) He has not had the hearing to do so. He has only submitted his application, and no answer has been heard from ICE or ruling has been issued by the IJ. Meanwhile, he has been jailed for a year, but he does not fit the bill.

D. JENNINGS IS NOT AN ENDORSEMENT FOR ALL ALIEN'S UNLIMITED DETENTION.

91. Next, the Denial of Bond cites the U.S. Supreme Court in revoking bond authority from Immigration Judges. It has not done so. In fact, the case cited by *Hurtado*, and then by the form, explicitly states that release is available to aliens. *Jennings v. Rodriguez* 583 U.S. 281, 287 (2018). Justice Alito, in writing for a 6 to 3 majority in *Jennings*, did not write that aliens are never entitled to bond. In fact, the Court conducted a painstaking review deconstructing the INA and many of its machinations. The Court explicitly endorsed bond (Op. at 4) but simply said that a new bond hearing "every six months" is excessive. *Jennings* at 287. In doing so the Court never reached the idea that bond should be denied

in immigration cases “across the Board.”⁷ In fact, the Court specifically acknowledged remedies, via bond or parole.

[T]here is a specific provision authorizing release from §1225(b) detention whereas no similar release provision applies to §1231(a)(6). With a few exceptions not relevant here, the Attorney General may “for urgent humanitarian reasons or significant public benefit” temporarily parole aliens detained under §§1225(b)(1) and (b)(2). 8 U.S.C. §1182(d)(5)(A). *Id.*

76. In *Jennings*, the Court made clear it did not want judges straying from the statutes unless required, adhering to “the canon of constitutional avoidance,” which “comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one [plausible] construction.” *Clark v. Martinez*, 543 U.S. 371, 385, as quoted in *Jennings Op* at 12.

77. Petitioner argues that lack of jurisdiction would be a ruling for (i) an Article III court (ii) with jurisdiction (iii) to apply, and (iv) for the DOJ/DHS/ICE to follow. It would not be a “policy change” as announced by the DOJ/BIA to make new law without its passing by Congress, much less being vetoed or signed into law by the President.

78. The use of bond under 8 U.S.C. has been endorsed in this District in the last month. In the cited case, “ICE detained [the alien] under 8 U.S.C. § 1226(a). ICE initiated removal proceedings following an immigration judge’s determination that Romero was here illegally and subject to removal.” *Sura Romero v. Johnson*, No. 3:25-CV-02853-O, slip op. at 2 (N.D. Tex. Dec. 22, 2025). Prior to the cited case, she was granted bond under the same section subject to monitoring conditions. The Court denied further relief in the cited

⁷ Quotations are for the cliché, not quoting the Supreme Court.

case but let the bonded release stand without question. It did not question the IJs jurisdiction to grant bond. *Sura Romero v. Johnson*, Op. at 4.⁸

79. The Supreme Court in *Jennings* did not rule that immigration judges can no longer decide bond cases. Nor did the Court rule that IJs, as the IJ did in the instant case, could (i) set bond hearings (ii) hear them, (iii) grant bond, then (iv) re-detain by claiming a loss of jurisdiction due to change in policy rather than law.

B. DETENTION IS ULTRA VIRES UNDER INA § 1225(b)

52. Petitioner realleges and incorporates paragraphs 1–85.

53. In the alternative, if Respondents still contend that Petitioner is detained under INA § 235(b), 8 U.S.C. § 1225(b), that contention is inconsistent with DHS’s own contemporaneous custody paperwork. In this case, the IJ already granted bond under 8 U.S.C. § 1226(a). *See* Exhibit 4 at 51. Having processed Petitioner into § 240 removal proceedings and released him under § 1226(a), Respondents cannot plausibly recharacterize him as a § 1225(b) detainee to deny bond and due process.

54. Section § 1225(b) permits arrival release only through parole under 8 U.S.C. § 1182(d)(5). *Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958). Petitioner was a toddler and did not receive a NTA upon arrival. The absence of any parole finding on the NTA, together with DHS’s express § 1226(a) release, confirms that § 1225(b) is not the operative detention statute here. *See* Exhibit 1.

55. Accordingly, any attempt to detain Petitioner under § 1225(b) at this late stage is ultra vires. At minimum, Respondents must proceed under the discretionary detention framework that their own Order of Release on Recognizance invoked—§ 1226(a)—and provide an

⁸ Counsel vouches that the Chief Judge of the Northern District did not shy from offering ideas *sua sponte*.

individualized custody determination consistent with due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Odusote v. Barr*, 980 F.3d 363 (5th Cir. 2020).

56. Petitioner pleads that, under these circumstances, detention is ultra vires and void.

E. CHEVRON DEFERENCE OVERTURNED BY LOPER. ICE AND AG BREACH THE APA

57. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

58. Until recently, the Supreme Court, and in so following, the Fifth Circuit, had a long history of granting substantial deference to administrative agencies of the Executive Branch. *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984). In sum, *Chevron* required courts to defer to an administrative agency's reasonable interpretation of an ambiguous statute for which that agency is responsible.

59. The Fifth Circuit followed. *Martinez v. Mukasey*, 519 F. 3d 532, 541–42 (5th Cir. 2008).

While calling into question the clarity of the INA, *Martinez* states:

...[W]e first accord substantial deference, if warranted, to the BIA's interpretation of the INA. *Omari v. Gonzales*, 419 F.3d 303, 306 (5th Cir.2005) (quoting *Smalley v. Ashcroft*, 354 F.3d 332, 335-36 (5th Cir.2003)). Having afforded any necessary deference, we then “review de novo whether the particular statute that the prior conviction is under falls within the relevant INA definition.” *Id.* (citations omitted). [Their parenthetical].

60. *Martinez*, *Omari* and *Smalley* are all progeny of *Chevron*. *Smalley* announces itself as giving “*Chevron* deference” in the context of the BIA's interpretation of a crime involving moral turpitude (CIMT). *Smalley* at 335-36. The other cases follow suit in their respective subject matters citing *Chevron*.

61. The cases cited immediately above proclaim deference to the BIA or administrative

agencies in general. The Fifth Circuit has looked at the issues related to statutory interpretation directly in INA cases and others. Yet through no fault of its own, the Fifth Circuit's recognition of *Chevron* deference is out of date.

62. This is due to *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 (2024), in which the Supreme Court, per the pen of Chief Justice Roberts, overruled *Chevron* deference with a 6-3 vote. In reaching its conclusion, the Court found that when federal agency rulemaking goes beyond administering laws as passed by Congress, the agency instead engages in legislating. The majority opinion noted that under the Separation of Powers doctrine, the framers of the Constitution envisioned that courts would have the final interpretation of law — not the Executive Branch. The Court held that the judiciary has the sole prerogative to interpret the law, and that Congress's Administrative Procedure Act of 1946 (APA) indicates agencies are not entitled to deference when interpreting statutes. The Court emphasized the text of the APA, which is designed to impose a “check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in the legislation creating their offices.” *Op.* at 13. The BIA's invention of a lack of jurisdiction that is directly contradicted by statute is an example of what Justice Roberts termed “zeal.”

63. While eliminating *Chevron* doctrine deference, the Supreme Court's decision did not instruct lower courts to completely ignore agency expertise, particularly when the agency interpretation has been long-standing and “consistent over time.” *Op.* at 8, 16-17. Petitioner argues that The Interim Guidance of 2025 and Hurtado are not in line with a long tradition. They are, in fact, policies that diverge from the INA and a reasonable deferential interpretation according to *Loper*. The Eastern District has already cited *Loper* in *Texas v Becerra*, 6:24-cv- 211-JDK (ED Tex, 2024).

B. EXHAUSTION IS ATTAINED

77. Petitioner realleges and incorporates paragraphs 1–76.
78. ICE and the AG have made exhaustion and futility achieved before any alien files a Request for Bond.
79. Exhaustion is not a § 2241 statutory requirement for Petitioner; however, in the Northern District, Petitioners are required to show “proper” exhaustion of “prudential” remedies as shown in the Legal Standard section above. Petitioner must not use this Petition as a substitute for appeal within the immigration procedural context, i.e., the Board of Immigration Appeals (BIA). *Woodford v. Ngo*, 548 U.S. 81, 90 (2006); *Stewart v. Dunn*, 363 F.2d 591, 597 (5th Cir. 1966); *accord. Bousley v. United States*, 523 U.S. 614, 621 (1998). “[A]n appeal of the immigration judge’s custody determination...is an improper use of habeas corpus.” *Stewart*, 363 F.2d at 597.
80. The *Stewart* case was decided almost 60 years before the Interim Guidance of July 8, 2025, and the subsequent BIA *Hurtado* decision, and is still cited as good law in the Northern District. *Sura Romero v. Johnson*, No. 3:25-CV-02853-O, slip op. (N.D. Tex. Dec. 22, 2025). The Northern District gave deference to the Executive Branch in that questioning administrative agencies judgement would be an exception, but these exceptions apply only in “extraordinary circumstances” and upon “demonstrating the futility of administrative review.” *P. B. v. Bergami, et al*, Case No. 3:25-CV-02978-O.
81. The BIA has spoken, saying administrative review is futile, and that is an extraordinary circumstance itself, and not a longstanding tradition. *Matter of Hurtado*, 29 I&N Decision 216 (BIA 2025).

82. The Attorney General has shown conclusively that obtaining consideration or reduction of any form of detention, or custody, currently, between the DHS and the AG, is as a matter of policy, and execution of the policy, impossible. Petitioner pleads that it is illegal and is the very definition of futility at the administrative level.

P. WHEN UNLAWFUL DETENTION IS THEN UNCONSTITUTIONAL

50. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.
51. Where the Government cannot articulate the legal and factual basis for revoking a prior release on recognizance and continuing detention, that detention becomes arbitrary and unlawful. Habeas corpus exists to test the legality of custody itself and to order release when detention exceeds statutory or constitutional limits. *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).
52. Detention under INA § 236(a), 8 U.S.C. § 1226(a), is discretionary rather than mandatory, and it requires an individualized assessment of flight risk and danger and consideration of release on conditions less restrictive than detention.
53. The public interest favors preventing unlawful detention and wrongful removal. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Continued detention serves no legitimate regulatory purpose and violates due process. *Zadvydas v. Davis* at 690.

E. RECENT RULINGS PROVIDE PERSUASIVE AUTHORITY

64. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

65. Now that the concept of judicial deference to administrative agencies has been scaled back in *Loper*, the Supreme Court has re-established the Federal Courts' supremacy over interpretation of statutes.
66. To this end, recent Petitions for Habeas Corpus for adjudication by the U.S. District Court for the Southern District of Texas are noted herein as persuasive authority. Recent filings in SDTX, e.g., *Alkis v. ICE* and *JAV v. Trump*, highlight the District's role in adjudicating habeas petitions involving detained noncitizens. Other petitions filed in SDTX are *Hassan Ahmed v. Noem* and *Nery Ortiz Ortiz v. Bondi*. Finally, Petitioner includes *Cruz Gutierrez v. Thompson et al.*, No. 4:25-cv-4695 (S.D. Tex. Nov. 14, 2025), in which the petitioner, a Mexican national detained in ICE custody at the Joe Corley Processing Center in Conroe, Texas, filed a § 2241 habeas petition seeking release on bond. The Court denied the Government's motion for summary judgment and granted habeas relief.

F. EQUITIES IN FAVOR OF PETITIONER: EVIDENTIARY PROFER ON DANGER TO NATIONAL SECURITY AND FLIGHT RISK (R-A-V-P- factors),

67. Petitioner realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.
68. Petitioner submits the following concise proffer, mapped factor-by-factor to the BIA's framework in *Matter of R-A-V-P-*, with pinpoint record cites. Petitioner does not plea herein that if the Court orders a legally sufficient bond determination on the part of an IJ to ensue, that the Court can order the result of such hearing. However, on this paper record, without factual disputes between the parties, Petitioner pleas that the Court issue findings of fact on the following nine equities already outlined in Count III above.
-

ARGUMENT FOR MANDAMUS CAUSES IV-V

A. AGENCY ACTION UNLAWFULLY WITHHELD OR UNREASONABLY DELAYED (5 U.S.C. §§ 555(b), 706(1))

69. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

70. Footnote 1, the Legal Standards, and Counts IV-V cite the law currently applicable to Plaintiff.

71. The DACA application was submitted in December 2020. It may be reasonably said that the dog ate the Biden Administration's homework. Plaintiff pleads that Administration unlawfully withheld or unreasonable delayed processing, whether such application was lost or someone slept on the job.

72. In the nearly 250-year history of the United States of America, the opportunity to breathe air within our borders has never been more valuable. This value can be calculated against the massive amount of dollars spent asking people to leave via One Big Beautiful Bill Act, H.R. 1, Pub.L. 119-21, 139 Stat. 72. The OBBB appropriated \$75 billion over four years, or \$18.7 billion annually, for detention and removal.

73. By botching Salud's application, the Biden Administration may have blown Salud's chance to stay here, even if it is only during the time of DACA's limbo. Loss of that opportunity would be immeasurable.

B. COMPEL PERFORMANCE OF DUTY OWED

74. This suit does not ask this Court to decide Plaintiff's DACA application or to order USCIS to approve it. We do not ask the Court to reach beyond jurisdiction presently afforded by *Texas v. United States* at 529–30. Plaintiff simply requests that his application be read and

his biometrics taken. The duty of the Biden Administration was to process the application well before courts began to declare DACA illegal in July 2021. Salud's qualifications appeared to present prima facie eligibility for DACA, should it ultimately be declared legal, or for a remedy to be obtained in some fashion for DACA recipients.

CONCLUSION

77. Petitioner's detention is unlawful because, it is not in accordance with the INA the All Writs Act, the APA, the Due Process Clause of the Fifth Amendment, U.S. Supreme Court and Fifth Circuit precedent, as well as applicable precedent in this District. Continued detention under these circumstances without individualized consideration of less restrictive alternatives is outside the foregoing laws, Further, the government can adequately mitigate any of its interests without harm using less restrictive means. Petitioner seeks a writ releasing him forthwith, or alternatively, an order requiring an immediate individualized custody hearing with appropriate burden/standard and consideration of ability to pay and alternatives to detention.

78. On this evidentiary record—fixed residence, long-standing U.S. ties, verified employment, no criminal history, no absconding, true equities in well-founded fear of a return to a Cartel-controlled Mexico entirely unfamiliar to him, the Court should find no flight risk, order release on recognizance or minimal conditions, or alternatively order an individualized custody redetermination with explicit findings keyed to the above factors, pending adjudication of the merits of Petitioner's Withholding of Removal, CAT and DACA eligibility.

PRAYER FOR RELIEF

Based on the foregoing, Petitioner respectfully requests that the Court:

1. Grant the Petition for Writ of Habeas Corpus;
2. Order Petitioner's immediate release under statutory or as-applied Due Process or,
3. In the alternative, order a prompt, individualized bond hearing;
4. Enjoin Respondents from transferring or removing Petitioner absent further order of the Court;
5. Issue an Order to Show Cause under 28 U.S.C. § 2243;
6. Recognize Petitioner's bond of \$10,000 that has been paid and not returned to him as adequate given he showed no danger to the community or flight risk while previously released on bond;
7. Overturn *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) on the basis of *Loper Bright Enterprises v. Raimondo* 603 U.S. 369 (2024) as it seeks to deny the Attorney General's bond jurisdiction via the BIA and Immigration Courts;
8. As Injunctive Relief or as otherwise authorized by the Court's Jurisdiction, continuance of Petitioner's Individual Hearing in Immigration Court (currently set for February 5, 2026) for a period of time in accordance with law and the continuously unfolding facts related to DACA;
9. Grant Mandamus relief to at least process, without granting approval unless permissible under law, up to the limit of the Court's jurisdiction; and
10. Grant all other relief the Court deems just and proper.

Dated: February 1, 2026
Respectfully submitted,

/s/ Sean P. Cordobés

Attorney for Petitioner

Admissions: TX Bar No. 00792106 | New York 4069282;

U.S. District Court for the Northern District of Texas

U.S. District Court for the Southern District of Texas Fed. No. 3879286

U.S. District Court for the Eastern District of Texas

U.S. District Court for the Western District of Texas

U.S. Fifth Circuit Court of Appeals

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

I am counsel of record for Petitioner, Salud Alberto Martinez Rodriguez. Pursuant to 28 U.S.C. § 2242, I submit this verification on Petitioner's behalf.

I have reviewed the foregoing Petition for Writ of Habeas Corpus, and I declare that the factual statements contained therein are true and correct to the best of my knowledge, information, and belief, based upon my personal knowledge, review of records, and information provided to me by Petitioner and other sources.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 1st day of February, 2026

/s/ Sean P. Cordobés
Attorney for Petitioner