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*(Pro Hac Vice Application to be filed)*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS**

Yuxia Chi,

*Petitioner.*

v.

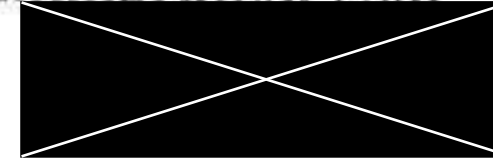
WARDEN, of Bluebonnet Detention  
Facility; TODD LYONS, Acting Director of  
Immigration and Customs Enforcement;  
KRISTI NOEM, Secretary of the U.S.  
Department of Homeland Security;  
PAMELA BONDI, Attorney General of the  
United States.

*Respondents.*

Docket No. 1:26-cv-67

**VERIFIED PETITION  
FOR HABEAS CORPUS**

Immigration No.:



## INTRODUCTION

1. Petitioner, Yuxia Chi, is being unlawfully detained by Respondents in Texas and deprived of release on bond. Petitioner was born in China and entered the United States on or about August 29, 2023 without having been paroled or admitted. Shortly thereafter, the Department of Homeland Security (“DHS”) served Petitioner with a Notice to Appear (“NTA”), which designated him as “an alien present in the United States who has not been admitted or paroled” and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) as an “alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.”

2. On or about August 30, 2023, Petitioner was released by DHS pursuant to a Order of Release on Recognizance (“ROR”).

3. However, on February 3, 2026, Petitioner was detained by Immigration and Customs Enforcement (“ICE”) at Oklahoma city. Upon information and belief, at the time of this filing, Petition is being held in Bluebonnet Detention Center in Texas.

4. Petitioner is subject to pre-final order of removal detention under 8 U.S.C. § 1226(a). Noncitizens detained under section 1226(a) are subject to discretionary detention and can request a change in custody redetermination (i.e. bond hearing) with an Immigration Judge (“IJ”).

5. However, on July 8, 2025, DHS issued an internal Interim Guidance (“Policy”) that took the baseless position that—contrary to statutory principles and governing case law—noncitizens like Petitioner who entered the United States without permission or parole are subject to mandatory detention under 8 U.S.C. § 1225(b) instead of discretionary detention under section

1226(a). On September 5, 2025, the Board of Immigration Appeals (“BIA”) issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) that sided with DHS’ position.

6. DHS’ contention that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b) is without merit. DHS’ Policy has upended decades of DHS’ own interpretation of bond eligibility under sections 1226(a) and 1225(b).

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

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

9. Petitioner’s continued detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment, the Administrative Procedural Act, the Suspension Clause of the United States Constitution, and binding agency regulations. DHS’s reliance on a categorical jurisdictional bar has resulted in prolonged civil confinement without adequate procedural safeguards or meaningful judicial review.

10. For the foregoing reasons, the Court should grant habeas relief and direct Respondents to release Petitioner.

### **JURISDICTION**

11. This action arises under the Constitution of the United States and the INA, 8 U.S.C. § 1101 *et seq.*

12. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (*habeas corpus*) because Petitioner challenges the legality of his ongoing civil immigration detention and seeks relief that is within the traditional scope of *habeas corpus*. Jurisdiction also lies under 28 U.S.C. § 1331 (federal question), as this Petition raises federal questions arising under the Constitution, laws, and treaties of the United States. The Suspension Clause of the United States Constitution further guarantees Petitioner's right to seek *habeas corpus* review where no other adequate remedy exists. *See* Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

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

14. Federal district courts have jurisdiction to hear *habeas corpus* claims brought by noncitizens challenging the lawfulness of their immigration detention. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (recognizing *habeas* jurisdiction over challenges to immigration detention; *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2002) (same)). That jurisdiction extends to claims alleging that detention exceeds statutory authority, violates constitutional guarantees, or results from agency action that is arbitrary, capricious, or contrary to law.

15. Although certain provisions of the INA limit judicial review of discretionary custody determinations, *see* 8 U.S.C. § 1226(e), those provisions do not preclude *habeas* review

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

#### VENUE

16. Venue is proper because Petitioner is detained at the Eden Detention Center, which is within the jurisdiction of this District. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States. See 28 U.S.C. § 1391(e).

#### PARTIES

17. Respondent Warden of the Bluebonnets Detention Center, the facility where Petitioner is currently detained. Respondent, Warden of the Bluebonnet has immediate physical custody of Petition and is sued in his or her official capacity.

18. Respondent Todd Lyons is sued in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. Respondent Lyons is a legal custodian of Petitioner and has authority to release him.

19. Respondent Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Respondent Noem is responsible for the implementation and enforcement of the INA, and oversees ICE, the component agency responsible for Petitioner's detention and custody. Respondent Noem is a legal custodian of Petitioner.

20. Respondent Pamela Bondi is sued in her official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice. In that capacity, she has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the BIA. Respondent Bondi is a legal custodian of Petitioner.

#### **STATEMENT OF FACTS**

21. Petitioner was born in China and entered the United States on or about August 29, 2023 without having been paroled or admitted. Shortly thereafter, the Department of Homeland Security ("DHS") served Petitioner with a Notice to Appear ("NTA"), which designated him as "an alien present in the United States who has not been admitted or paroled" and charged him with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA") as an "alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General."

22. On or about August 30, 2023, Petitioner was released by DHS pursuant to a Order of Release on Recognizance ("ROR").

23. Despite not violating any terms of his ROR released, Petitioner was detained by Immigration and Customs Enforcement (“ICE”) officers on February 5, 2025. Petitioner was transferred to Eden Detention Center, where he remains detained as of the date of this filing.

### **LEGAL FRAMEWORK**

24. The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. See 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. 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).

25. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under 8 U.S.C. § 1225(b)(2).

26. Finally, the INA also provides for detention of noncitizens who are subject to final orders of removal, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

27. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(c) was most recently amended earlier this year by the Laken Riley Act (“LRA”), Pub. L. No. 119-1, 139 Stat. 3 (2025).

28. Following enactment of the IIRIRA, the EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under section 1225 and that they were instead detained under section 1226(a). 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 the practice prior to the enactment of the IIRIRA, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ 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)).

29. On July 8, 2025, DHS issued a memo to all employees of 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) [8 U.S.C. § 1225(a)(1)]. **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(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) [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)].**

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-authority-for-applications-for-admission> (last accessed August 4, 2025) (emphasis original).

30. 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 long-time U.S. residents, 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.*

31. On September 5, 2025, the BIA issued a decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) holding that, based on the plain language of section 1225(b)(2)(A), IJs lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.

32. 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

(5<sup>th</sup> Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearing under § 1226(a) within this Circuit.

33. 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 *Jenning v. Rodriguez*, 583 U.S. 281, 301-03 (2018), the absence of a statutory bond entitlement does not eliminate constitutional constraints on detention or foreclose habeas review.

34. 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.

35. **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**

36. ***Buenrostro-Mendez* forecloses Petitioner's purely statutory entitlement theory under § 1226(a), but it does not deprive this Court of habeas jurisdiction or resolve Petitioner's independent constitutional and other claims.**

37. 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 (5<sup>th</sup> 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.

38. 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.

39. 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 *BuenrostroMendez* 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.

40. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), similarly held that there is no statutory right to periodic bond hearings under §§ 1225(b), 1226(a), or 1226(c), but it explicitly remanded for the lower courts to consider constitutional arguments in

the first instance. *Id.* at 302–03. The Fifth Circuit's statutory holding in *Buenrostro-Mendez* leaves those constitutional questions open, just as *Jennings* did.

**B. Habeas jurisdiction remains available to test the legality of detention and the constitutionality of detention procedures; § 1226(e) does not bar review of legal and constitutional claims.**

41. 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.

42. 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.

**AS-APPLIED DUE PROCESS VIOLATION FROM PROLONGED OR INDEFINITE  
DETENTION WITHOUT INDIVIDUALIZED HEARING**

43. 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.

44. 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.*

45. 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.

46. 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, here, over two years, accrued equities, and were not detained at the time of initial processing. Traditional “arriving alien” detention under § 1225(b) historically applied to those apprehended at or near the border or port of entry, where detention was typically brief pending expedited processing. Extending it to individuals in full § 1229a proceedings with meritorious relief claims raises far graver liberty interests than the brief detention upheld in *Demore* or contemplated for true arriving aliens.

47. Petitioner has no criminal record, no history of violence, and strong humanitarian claims. Continued categorical detention without any hearing--where the government never has to justify his confinement by evidence—services no legitimate purpose and is punitive in effect.

**PRESERVATION OF STATUTORY ARGUMENT FOR EN BANC OR SUPREME  
COURT REVIEW**

48. 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).

49. 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.

50. 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.

51. 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).

52. 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.

**THE FIFTH CIRCUIT PANEL'S DECISION IN *BUENROSTRO-MENDEZ* v. *BONDI* IS  
INCONSISTENT WITH *LOPER BRIGHT ENTERPRISES* v. *RAIMONDO***

53. 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).

54. In *Loper Bright*, the Supreme Court held that courts “must exercise their independent judgment in deciding whether an agency has acted within its statutory authority” and may no longer defer to an agency's interpretation of an ambiguous statute under *Chevron*. *Id.* at 374. While agencies' views may still be entitled to respectful consideration under *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944)—with persuasive force depending on factors such as the thoroughness of the agency's reasoning, the consistency of its position over time, and its expertise—courts must independently determine the best reading of the statute using traditional tools of statutory construction. *Loper Bright*, 603 U.S. at 402.

55. 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.

56. 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).

57. 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.

58. 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.

59. 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.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

##### **Violation of Fifth Amendment Right to Substantive Due Process**

60. The allegations in the above paragraphs are realleged and incorporated herein.

61. Petitioner is challenging DHS' unlawful custody determination that Petitioner is subject to detention under 8 U.S.C. § 1225(b) and is ineligible for bond and his continued detention under the automatic stay provision at 8 C.F.R. § 1003.19(i)(2), which violates Petitioner's right to substantive due process of law afforded him through the Fifth Amendment to the United States Constitution.

62. The Fifth Amendment provides in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law[.]" U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

63. Petitioner is a citizen of China who entered the United States in 2023, and was placed into full removal proceedings under INA § 240. His removal proceedings remain pending.

and he has filed applications for asylum, withholding of removal, and protection under the Convention Against Torture.

64. Petitioner has no criminal convictions and no record of violence, and no pending criminal charges, and has never exhibited conduct suggesting danger to the community or risk of flight, and has consistently cooperated within immigration authorities since his apprehension.

65. Even accepting the Fifth Circuit's statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5<sup>th</sup> 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.

66. 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.

67. Petitioner is clearly detained pursuant to 8 U.S.C. § 1226(a) and is eligible for release on bond. Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b). Respondents have violated Petitioner's due process rights under the Fifth Amendment by detaining him without the possibility of release on bond.

68. 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.

69. 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, 33 (1976).

70. 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.

71. 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 protection of the Due Process Clause.

72. 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 TWO**

### **Violation of Petitioner's Procedural Due Process Rights**

73. The allegations in the above paragraphs are realleged and incorporated herein.

74. 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)

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

76. Petitioner does not challenge the Fifth Circuit’s statutory holding in *BuenrostroMendez 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.

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

78. 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.

79. 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.

80. 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 114. 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.

81. 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.

82. 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.

83. 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.

84. 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 THREE**

#### **Violation of the Equal Protection Guarantee of the Fifth Amendment**

85. The allegations in the above paragraphs are realleged and incorporated herein.

86. 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).

87. 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.

88. 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.

89. Petitioner's disparate treatment rest 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.

90. 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.

91. 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).

92. DHS's classification scheme fails rations-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.

93. 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.

94. 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).

95. 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.

96. 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.

97. *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 FOUR

##### **Violation of The Suspension Clause of the United States Constitution**

98. The allegations in the above paragraphs are realleged and incorporated herein.

99. 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).

100. *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.

101. Petitioner is detained solely under civil immigration authority and is currently confined by DHS. He has no criminal convictions, no pending charges, no history of violence, and his removal proceedings remain pending before an immigration judge.

102. 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.

103. 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.

104. 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.

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

#### COUNT FIVE

##### **Violation of the *Accardi* Doctrine with Respect to 8 C.F.R. § 287.8(C)(2)(I) and (II)**

106. The allegations in the above paragraphs are realleged and incorporated herein. 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.

107. 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).

108. 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.

109. At the time he was taken into ICE custody on October 17, 2025, and at all times thereafter, Petitioner had complied with all immigration requirements, including appearing for his immigration proceedings and remaining available to immigration authorities. Petitioner was taken into ICE custody during an ICE enforcement operation conducted in a public area, without a judicial warrant.

110. 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).

111. 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.

112. 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.

113. 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.

114. 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.

115. *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

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Respondents from transferring Petitioner during the pendency of the instant action;
- (3) Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a); and/or the Fifth Amendment to the U.S. Constitution;
- (4) Order Petitioner released from detention;
- (5) Grant Equal Access to Justice Act ("EAJA") fees and costs; and
- (6) Grant any other further relief this Court deems just and proper.

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*Attorney for Petitioner*  
*(Pro Hac Vice Application to be filed)*

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

I represent Petitioner, and I submit this verification on his behalf. Because Petitioner is detained at Eden Detention Center and immediate relief is sought, counsel verifies this petition on his behalf pursuant to 28 U.S.C. § 2242. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 10<sup>th</sup> day of February, 2026.

/s/ Muhammed Gulen  
Muhammed Gulen

/s/Ling Li  
Ling Li