

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

MORENA GUADALUPE MENDEZ-SALAZAR,

Petitioner,

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
DAREN K. MARGOLIN, Director, Executive Office for Immigration Review, in his official capacity;
JOSH JOHNSON, in his official capacity as Acting Director of the Dallas Field Office of ICE, Enforcement and Removal Operations, encompassing the Prairieland ERO Sub-Office; and
WARDEN, BLUEBONNET DETENTION CENTER,

Respondents.

Civil Action No. 1:26-cv-00144-H

Immigration No. 

**PETITIONER'S ORIGINAL
VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS UNDER 28 U.S.C. §
2241 AND REQUEST FOR
TEMPORARY RESTRAINING
ORDER AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Petitioner MORENA GUADALUPE MENENDEZ-SALAZAR (A# ) is a native and citizen of El Salvador who has resided in the United States for many years, most recently in the Dallas–Fort Worth region of North Texas. She was taken into ICE custody following a routine check-in and is currently detained at the Bluebonnet Detention Facility in Anson, Texas. *See* Ex. A, Proof of Detention in ICE Custody.

2. Ms. Menendez-Salazar has been placed into removal proceedings under INA § 240, 8 U.S.C. § 1229a. On June 23, 2025, she appeared for a scheduled 6:00 a.m. ICE check-in at 8101 N. Stemmons Freeway in Dallas, Texas, as required. Instead of continuing her supervision, ICE detained her at approximately 6:40 a.m. during that check-in. Petitioner has no criminal history. She is the mother of three United States citizen children and has long resided in Texas in compliance with all reporting requirements. *See* Ex. B, Documentation of Petitioner's Immigration History.

3. Additionally, in the intervening period, the United States Court of Appeals for the Fifth Circuit issued a published decision on an expedited basis in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026), which may bear on the instant case. Petitioner files this habeas action under 28 U.S.C. § 2241 challenging the legality of her continued civil immigration detention.

4. This petition demonstrates that habeas review is not barred, and that independent Fourth Amendment and Fifth Amendment Due Process violations continue to warrant habeas relief, notwithstanding the Fifth Circuit's intervening statutory holding in *Buenrostro-Mendez v. Bondi*. Because Ms. Menendez-Salazar's habeas petition rests on independent Fourth Amendment and Fifth Amendment violations, and because *Buenrostro-Mendez* does not foreclose review of those claims, this Court retains both jurisdiction and authority to grant relief.

5. Ms. Menendez-Salazar therefore petitions this Court for habeas relief pursuant to 28 U.S.C. § 2241 and seeks immediate release from custody. In the alternative, she requests injunctive relief—including, if necessary, a Temporary Restraining Order—directing Respondents to release her under conditions no more restrictive than those previously imposed during her prior period of ICE supervision. Because Petitioner has already received and been

denied a bond hearing, she does not seek a new custody determination but instead challenges the legality of her continued detention.

II. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by persons held in custody in violation of federal law or the Constitution. This action further invokes the Court’s authority under the All Writs Act, 28 U.S.C. § 1651.

7. The jurisdiction-channeling provisions of 8 U.S.C. § 1252 do not deprive this Court of authority to adjudicate this petition. Petitioner does not challenge a final order of removal, nor does she seek review of discretionary determinations or classwide relief. Instead, she brings an individualized habeas action challenging the constitutionality of her ongoing civil detention. The Supreme Court has repeatedly recognized that detention-based constitutional claims are not funneled into the petition-for-review process under § 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not bar review of unlawful custody. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). Nor does § 1252(f)(1) preclude this Court from granting individual injunctive relief. *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022). To the extent the Fifth Circuit’s statutory interpretation in *Buenrostro-Mendez v. Bondi* addresses the scope of § 1226(e), it does not foreclose habeas review of independent constitutional claims challenging the legality of continued detention.

8. Venue is proper in this District because Petitioner is detained at the Bluebonnet Detention Facility in Anson, Texas, which is located within the Northern District of Texas, Abilene

Division. Thus, Petitioner is in custody within this Court's jurisdiction, and her detention is administered through ICE – Enforcement and Removal Operations in this district. *See* Ex. A.

III. PARTIES

9. Petitioner, MORENA GUADALUPE MENENDEZ SALAZAR (“Ms. Menendez-Salazar”), is a citizen and national of Honduras who has lived in the United States for several years. On June 23, 2025, she appeared for a scheduled ICE check-in in Dallas, Texas, at 6:00 a.m., as required, and was detained at approximately 6:40 a.m. during that check-in. Petitioner has no criminal history. She is the mother of three United States citizen children and has consistently complied with all supervision requirements. *See* Ex. B.

10. Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a (INA § 240) and is subject to an order of removal issued by the Immigration Court in Dallas, Texas on November 2, 2021. Petitioner timely appealed that decision to the Board of Immigration Appeals on November 29, 2021, where the appeal remains pending. There are currently no future hearings scheduled in Immigration Court, and the Board has not issued a decision. Accordingly, Petitioner remains in custody while her appeal is administratively pending. *See* Ex. D, EOIR Automated Case Information System.

11. Respondent MARKWAYNE MULLIN is the Secretary of the U.S. Department of Homeland Security (“DHS”). He is sued in his official capacity.

12. Respondent TODD LYONS is the Acting Director of Immigration and Customs Enforcement (“ICE”), an executive branch agency within the Department of Homeland Security. He is sued in his official capacity.

13. Respondent DAREN K. MARGOLIN is the Director of the Executive Office for Immigration Review (“EOIR”), the component of the Department of Justice responsible for

immigration court adjudications, including bond determinations for noncitizens in removal proceedings. He is sued in his official capacity because EOIR, through its Immigration Judges, conducted and denied Petitioner's bond hearing. The bond denial forms part of the detention framework that Petitioner now challenges as unconstitutional. Petitioner does not seek a new bond hearing in this action but instead challenges the legality of her continued detention following that bond determination.

14. Respondent JOSH JOHNSON is the Acting Director of the Dallas Field Office of ICE, Enforcement and Removal Operations ("ERO"), which encompasses the Prairieland Sub-Office and has jurisdiction over Petitioner's custody. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

15. Respondent, WARDEN, BLUEBONNET DETENTION FACILITY, is responsible for housing noncitizens in ICE custody at that facility, which is located at 400 2nd Street, Anson, Texas 79501. Respondent is sued in his or her official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

16. Respondents Mullin, Lyons, and Margolin, who represent DHS, ICE, and EOIR, are properly included as the executives of federal agencies within the meaning of the Administrative Procedure Act ("APA").

IV. FACTUAL BACKGROUND

1. Petitioner MORENA GUADALUPE MENENDEZ-SALAZAR is a thirty-eight-year-old native and citizen of El Salvador. She entered the United States without inspection in or around November 2016 and was subsequently placed into removal proceedings under INA § 240 after the Department of Homeland Security issued a Notice to Appear charging her under INA § 212(a)(6)(A)(i).

2. Upon her initial apprehension, DHS issued a Warrant for Arrest and a Notice to Appear but subsequently released Ms. Menendez-Salazar on her own recognizance pursuant to a formal custody determination. At that time, she was not subject to mandatory detention and was permitted to reside in the community without a bond. Following that release, she complied with all reporting requirements and remained at liberty in Texas for several years without incident. This formal release on recognizance—granted after the government exercised its detention authority—established a settled expectation of conditional liberty that she honored fully until her later re-detention.

3. Ms. Menendez-Salazar filed an Application for Asylum, Withholding of Removal, and protection under the Convention Against Torture (Form I-589) in her removal proceedings. On November 2, 2021, the Immigration Judge denied relief and ordered her removed. She timely appealed that decision to the Board of Immigration Appeals on November 29, 2021, where the appeal remains pending. The briefing schedule has expired without submission by either party, and no decision has issued.

4. Since her arrival in the United States, Ms. Menendez-Salazar has established substantial family and community ties in North Texas. She is married and is the mother of three United States citizen children. She has maintained stable employment, obtained employment authorization, and holds a valid Texas driver's license. She resides within a strong family and community network, supported by extensive documentation including letters of support, financial records, and evidence of continuous residence.

5. Ms. Menendez-Salazar has no criminal history, no arrests, and no record of violent or dangerous conduct. The government has never alleged that she poses a danger to the community.

Her time in the United States has been marked by full compliance with reporting requirements and participation in her immigration proceedings.

6. On June 23, 2025, Ms. Menendez-Salazar appeared alone for a scheduled 6:00 a.m. ICE check-in at 8101 N. Stemmons Freeway in Dallas, Texas, as required. She had informed her employer that she might be late to work that morning due to the appointment. Instead of continuing her supervision, ICE detained her at approximately 6:40 a.m. during that check-in. She is currently detained in ICE custody.

7. Ms. Menendez-Salazar's removal proceedings were conducted before the Immigration Court in Dallas, Texas. There are currently no future hearings scheduled, and her appeal remains pending before the Board of Immigration Appeals.

8. On or about January 2026, Ms. Menendez-Salazar received a custody redetermination hearing pursuant to 8 C.F.R. § 1236.1(d), at which release was denied. Thus, this case does not involve a denial of access to a bond hearing. Rather, the present petition challenges the constitutional sufficiency and continued legality of her detention following that denial, including: the legal basis for her detention classification; the adequacy of the procedures employed; and the constitutionality of continued confinement given her extensive equities and lack of danger or flight risk.

9. Ms. Menendez-Salazar is a long-term resident of Texas, a mother of three United States citizen children, and an individual with no criminal history who has demonstrated years of compliance with government supervision. Her continued detention is not based on any criminal conviction, individualized finding of dangerousness, or demonstrated flight risk. Instead, she remains confined in civil immigration detention despite her substantial equities and prior release. Continued detention under these circumstances—following years of liberty and compliance—

raises serious constitutional concerns under the Due Process Clause and governing habeas principles.

V. LEGAL FRAMEWORK

A. Statutory Structure of Immigration Detention Authority.

10. Immigration detention authority arises principally under three provisions of the Immigration and Nationality Act: § 235(b) [8 U.S.C. § 1225(b)], § 236(a) [8 U.S.C. § 1226(a)], and § 236(c) [8 U.S.C. § 1226(c)].

11. Section 236(a) governs discretionary detention of noncitizens in removal proceedings under INA § 240 and expressly authorizes release on bond or conditional parole pending adjudication. In contrast, § 235(b) applies to certain categories of arriving applicants for admission and mandates detention during threshold admissibility screening. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018).

12. For decades, the Board of Immigration Appeals has recognized that individuals placed in removal proceedings under INA § 240 following entry without inspection are subject to custody determinations under § 236(a), including bond eligibility. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). That framework has been reaffirmed in recent decisions addressing the scope of detention authority.

13. Petitioner was placed into § 240 proceedings and, in 2016, DHS exercised its detention authority and released her on her own recognizance after issuing a Notice of Custody Determination. That custody determination necessarily reflected DHS's conclusion that she was not subject to mandatory detention at that time.

14. Although Petitioner does not premise this habeas action solely on statutory misclassification, she preserves the argument that § 236(a)—not § 235(b)—governs her

detention for purposes of appellate review. Courts have recognized that habeas jurisdiction remains available to address statutory misapplications that result in unlawful detention.

15. To the extent the Fifth Circuit's recent panel decision in *Buenrostro-Mendez v. Bondi* addresses the scope of review under § 1226(e), that statutory holding does not eliminate federal jurisdiction over independent constitutional claims challenging the legality of detention itself.

16. Accordingly, even if statutory classification issues are ultimately constrained by intervening circuit authority, this Court retains authority to adjudicate Petitioner's constitutional claims.

B. Constitutional Limits on Civil Immigration Detention.

17. Immigration detention is civil in nature and therefore subject to the constraints of the Fifth Amendment's Due Process Clause.

18. The Supreme Court has repeatedly emphasized that civil detention must bear a reasonable relation to its regulatory purpose and cannot become arbitrary or excessive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even where Congress authorizes detention, constitutional limits remain operative. *Jennings*, 583 U.S. at 302–03 (declining to rewrite statute but preserving constitutional challenges).

19. Petitioner's case presents a distinct constitutional concern: (1) the government exercised detention authority in 2016; (2) it affirmatively restored her liberty through release on recognizance; (3) she relied on that liberty for years, complying fully with all conditions of supervision; and (4) the government re-detained her on June 23, 2025, during a routine ICE check-in, without intervening misconduct, changed circumstances, or individualized justification.

20. When the government confers conditional liberty through a formal custody determination and an individual fully complies for years, that liberty interest cannot be revoked arbitrarily. *See*

Zadvydas, 533 U.S. at 690 (liberty from physical restraint lies at the core of due process protections).

21. This case therefore does not hinge solely on whether Petitioner received a bond hearing—she did. Rather, the constitutional question is whether the government may revoke a previously granted liberty determination and impose continued confinement absent new conduct, individualized findings, or constitutionally sufficient justification.

22. Due process protects against both warrantless seizures and arbitrary executive reversals of settled liberty interests, particularly where the deprivation involves physical confinement.

C. Scope of Habeas Review After the Panel Decision in *Buenrostro-Mendez*.

23. Section 1226(e) limits review of discretionary judgments but does not strip federal courts of jurisdiction to consider constitutional claims or questions of law. The Supreme Court has repeatedly reaffirmed that jurisdiction-stripping provisions do not bar habeas review of constitutional challenges to detention. *See Jennings*, 583 U.S. at 839–42; *Zadvydas*, 533 U.S. at 688.

24. Even if *Buenrostro-Mendez* constrains certain statutory arguments under § 1226(e), it does not eliminate habeas review of: (1) procedural due process violations; (2) substantive arbitrariness in continued detention; (3) unlawful revocation of a previously granted liberty interest; or (4) detention untethered from its regulatory purpose.

25. This Petition therefore presents constitutional claims independent of discretionary bond determinations and independent of pure statutory interpretation disputes.

D. Relief Available Under 28 U.S.C. § 2241.

26. Where detention violates the Constitution, the traditional remedy in habeas is release. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

27. Because Petitioner has already received a bond hearing, she does not seek a remand for a new custody determination. Instead, she challenges the legality of her continued detention following the revocation of her previously granted liberty.

28. Where civil detention becomes arbitrary, excessive, or untethered from its regulatory purpose, release—under appropriate conditions if necessary—is the proper habeas remedy.

VI. CLAIMS FOR RELIEF

Count I – Violation of Procedural Due Process

29. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

30. Despite the Fifth Circuit's recent panel decision in *Buenrostro-Mendez*, this Court retains authority to grant habeas relief on constitutional grounds, at least in this case.

31. Simply put, the question before the Court is not whether Ms. Menendez-Salazar is statutorily eligible for bond under the INA as interpreted by the Fifth Circuit. Rather, the question is whether Respondents may continue to detain her in violation of the Constitution. On that question, *Buenrostro-Mendez* is not dispositive, and habeas relief remains available. To this end, Ms. Menendez-Salazar is prepared to present argument and evidence by in-person appearance or, if the Court prefers, by videoconference. Should the Court require live testimony, Petitioner requests to be produced at the hearing.

32. Even assuming *arguendo* that Petitioner's detention is statutorily authorized following *Buenrostro-Mendez*, the Constitution independently constrains the procedures by which the Government may deprive her of liberty. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. U.S. Const. amend. V. That protection extends to

noncitizens physically present in the United States. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

33. The Court must consider the adequacy of the process accompanying the revocation of liberty previously granted to Petitioner. This action does not challenge Congress's authority to authorize civil detention in immigration proceedings. Nor does it assert that detention is categorically unconstitutional. Rather, it challenges the Government's withdrawal of liberty after years of supervised release without constitutionally sufficient procedural justification.

34. Ms. Menendez-Salazar was released on her own recognizance in November 2016 after issuance of a Notice to Appear and custody determination. For years thereafter, she remained in the community, complied with ICE reporting requirements, maintained employment authorization, obtained a Texas driver's license, supported her family, and raised three United States citizen children. She incurred no criminal history and did not violate supervision conditions.

35. The Government conferred liberty, and Petitioner thus has a reliance interest in that grant of liberty. The Due Process Clause governs its revocation. *See Zadvydas*, 533 U.S. at 690; *Meza v. Livingston*, 607 F.3d 392, 399–400 (5th Cir. 2010); *Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 U.S. Dist. LEXIS 206751, at *21–22 (W.D. Tex. Oct. 21, 2025).

A. Petitioner Possessed a Protected Liberty Interest in Continued Freedom.

36. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), the threshold question is whether a protected liberty interest is implicated. It plainly is.

37. Freedom from physical restraint lies at the core of the liberty protected by the Fifth Amendment. *Zadvydas*, 533 U.S. at 690; *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

Immigration detention constitutes a substantial deprivation of that liberty. *Demore v. Kim*, 538 U.S. 510, 529 (2003).

38. Release on recognizance reflects an affirmative governmental determination that detention is unnecessary to secure appearance or protect the community. For years, ICE reaffirmed that determination by permitting Ms. Menendez-Salazar to remain at liberty under supervision.

39. Federal courts within this Circuit have recognized that prior release creates a cognizable liberty interest for purposes of procedural due process analysis. *See Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 U.S. Dist. LEXIS 206751, at *21–22 (W.D. Tex. Oct. 21, 2025) (recognizing liberty interest following release on recognizance); *Lopez-Arevelo v. Ripa*, No. 3:25-cv-337-KC, 2025 U.S. Dist. LEXIS 188232, at *18–19 (W.D. Tex. Sept. 21, 2025).

40. The Fifth Circuit has similarly held that once the Government creates or recognizes a liberty interest, it must provide constitutionally adequate procedures before revoking it. *See Meza v. Livingston*, 607 F.3d 392, 399–400 (5th Cir. 2010) (recognizing that conditional liberty, once granted, triggers due process protections upon revocation); see also *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972).

41. Accordingly, Ms. Menendez-Salazar possessed a protected liberty interest in her continued freedom following years of government-sanctioned release.

B. Application of the *Mathews v. Eldridge* Factors Demonstrates a Procedural Due Process Violation.

42. Under *Mathews*, the Court balances: (1) The private interest affected; (2) The risk of erroneous deprivation and the probable value of additional safeguards; and (3) The Government's interest. *Mathews*, 424 U.S. at 335.

43. Each factor weighs in Petitioner's favor.

(1) The Private Interest at Stake Is Substantial.

44. The private interest here is physical liberty. Few interests carry greater constitutional weight. *Zadvydas*, 533 U.S. at 690; *Foucha*, 504 U.S. at 80.

45. Ms. Menendez-Salazar's liberty interest is particularly substantial because it follows years of sustained community presence pursuant to the Government's own release decision. She developed substantial ties during that period, including stable employment, family life with her husband, and parenthood of three U.S. citizen children, while maintaining compliance with supervision requirements.

46. Re-detention therefore represents the withdrawal of established liberty, not an initial custodial determination. This factor weighs heavily in favor of meaningful procedural protection.

(2) The Risk of Erroneous Deprivation Is Significant.

47. The risk of error is heightened where the Government reverses its own prior release determination without identifying materially changed circumstances.

48. Ms. Menendez-Salazar was re-detained during a routine ICE check-in despite years of compliance and without new criminal conduct or supervision violations. Although she received a bond hearing at which release was denied, due process requires more than a discretionary post-detention determination. It requires that revocation of liberty be grounded in individualized, reasoned findings demonstrating necessity.

49. The Fifth Circuit has repeatedly distinguished between unreviewable discretionary determinations and reviewable constitutional deficiencies in the procedures underlying detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore*, 538 U.S. at 516–17; *Andrade v. Gonzales*, 459 F.3d 538, 543–44 (5th Cir. 2006).

50. Where detention follows categorical reclassification rather than new factual predicates, the danger that liberty is being restrained unnecessarily is substantial. Additional procedural safeguards—such as meaningful consideration of continued suitability for supervised release and explicit findings regarding changed circumstances—would materially reduce that risk.

51. This factor weighs in Petitioner's favor.

(3) The Government's Interest Does Not Outweigh the Liberty Interest.

52. The Government's interest lies in ensuring appearance and effectuating removal. *See Demore*, 538 U.S. at 528.

53. But those interests were effectively served for more than nine years through supervised release. Mrs. Menendez-Salazar complied with reporting requirements and did not abscond. The Government has not articulated new facts demonstrating that prior supervision became inadequate.

54. Under *Mathews*, the administrative burden of providing constitutionally sufficient procedures must be considered. 424 U.S. at 348. Immigration courts routinely evaluate flight risk and alternatives to detention. The burden of articulating individualized findings tied to changed circumstances is minimal.

55. The Government's generalized enforcement interest does not justify summary revocation of established liberty.

C. This Procedural Due Process Claim Is Distinct from Petitioner's Substantive Due Process Claim.

56. This count concerns the adequacy of procedures accompanying the revocation of liberty. It asks whether the Government provided constitutionally sufficient process before or at the time it withdrew previously granted freedom.

57. By contrast, Count II (Substantive Due Process) addresses whether continued civil detention, in light of Petitioner's long-standing compliance and lack of changed circumstances, has become arbitrary or excessive in relation to its regulatory purpose. *See County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998); *Zadvydas*, 533 U.S. at 690.

58. Procedural due process asks: Were constitutionally adequate safeguards provided when liberty was revoked?

59. Substantive due process asks: Even if procedures were provided, is the detention itself arbitrary in light of the facts?

60. These inquiries are analytically distinct and independently remediable.

D. The Procedural Violation Is Cognizable in Habeas.

61. Section 1226(e) does not bar review of constitutional claims. *Jennings*, 138 S. Ct. at 841; *Demore*, 538 U.S. at 516–17.

62. Habeas corpus remains the appropriate vehicle to test whether executive detention complies with constitutional requirements. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

63. Petitioner does not seek reweighing of bond factors. She challenges the constitutional sufficiency of the process accompanying revocation of previously conferred liberty.

64. Because Ms. Menendez-Salazar's liberty was withdrawn after years of compliance and without materially changed circumstances sufficient to justify reversal, the procedures employed were constitutionally inadequate.

65. Accordingly, this Court may order appropriate relief, including release under conditions no more restrictive than those previously imposed during his period of supervised release.

Count II – Mrs. Menendez-Salazar's Continued Detention Constitutes Arbitrary Civil Confinement in Violation of Substantive Due Process.

66. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

67. Even where Congress has authorized civil detention in the immigration context, the Constitution imposes substantive limits on the Government's power to confine. The Due Process Clause does not permit civil detention that is arbitrary, excessive, or unrelated to its regulatory purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998).

68. This Count is analytically distinct from Count I. Count I addresses whether constitutionally sufficient procedures accompanied the revocation of previously granted liberty. This Count addresses whether continued detention, in light of Petitioner's individual circumstances, has become arbitrary and excessive in relation to the Government's stated regulatory interests.

A. Immigration Detention Must Bear a Reasonable Relation to Its Regulatory Purpose.

69. The Supreme Court has repeatedly held that civil detention is permissible only when it is reasonably related to a legitimate regulatory objective and not punitive or excessive in relation to that purpose. *Zadvydas*, 533 U.S. at 690; *see also Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

70. In *Zadvydas*, the Court emphasized that immigration detention is constitutionally valid only insofar as it is tied to its regulatory purpose—namely, ensuring appearance and effectuating removal. 533 U.S. at 690. Once detention ceases to bear a reasonable relation to those objectives, it becomes constitutionally suspect. *Id.* at 699–700.

71. The Fifth Circuit has recognized the same principle: civil detention must remain connected to legitimate governmental objectives and may not become arbitrary confinement. *See*

Odusote v. Barr, 774 F. App'x 238, 239–40 (5th Cir. 2019) (acknowledging *Zadvydas* limits on immigration detention); *Tran v. Mukasey*, 515 F.3d 478, 483–84 (5th Cir. 2008) (recognizing constitutional limits on prolonged detention).

72. At the time of her entry in November 2016, Ms. Menendez-Salazar was apprehended, served with a Notice to Appear, issued a warrant, and placed into removal proceedings. DHS then released her on her own recognizance. The ROR decision necessarily reflected a determination that detention was not required to secure her appearance or protect the community. *See* 8 U.S.C. § 1226(a). The release documents directed her to report as instructed and comply with all conditions of supervision. She did so. For years, she appeared as required, maintained a fixed address, complied with reporting obligations, maintained employment authorization and a Texas driver's license, and incurred no criminal history. *See* Ex. B.

73. In light of that sustained compliance, continued incarceration does not reasonably advance the Government's regulatory objectives. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (civil detention must bear a reasonable relation to its regulatory purpose); *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) (civil confinement permissible only when reasonably related to legitimate nonpunitive objective). Where the Government has already determined that supervision adequately mitigates flight risk and danger—and the individual has demonstrated long-term adherence to those conditions—re-detention absent materially changed circumstances ceases to bear a rational connection to its asserted regulatory goals.

B. In Light of Petitioner's Years of Compliance, Continued Immigration Detention Is Excessive in Relation to Its Regulatory Purpose.

74. The Government's regulatory interests are ensuring appearance at proceedings and protecting the community. *See Demore v. Kim*, 538 U.S. 510, 528 (2003).

75. Those interests were successfully served for more than five years through supervised release.

76. Ms. Menendez-Salazar: was released on her own recognizance in November 2016; complied with all ICE reporting requirements; maintained lawful employment authorization; maintained a Texas driver's license; supported her family in Texas; is the mother of three United States citizen children; incurred no criminal history; and violated no supervision conditions. See Ex. B.

77. The Government has not identified any new criminal conduct, supervision violation, or flight from proceedings that would materially alter the prior assessment underlying his release.

78. Substantive due process prohibits civil confinement that becomes excessive in relation to its purpose. *Zadvydas*, 533 U.S. at 690; *Hendricks*, 521 U.S. at 356. Where an individual has demonstrated sustained compliance and stability under supervised release, continued incarceration may cease to bear a reasonable relation to the regulatory objective of ensuring appearance.

79. This is not a case involving border apprehension followed by continuous custody. It is the confinement of an individual who lived in the community for five years under government supervision without incident.

80. The absence of materially changed circumstances renders continued detention constitutionally disproportionate.

C. Substantive Due Process Protects Against Arbitrary Executive Confinement.

81. The Supreme Court has made clear that the Due Process Clause protects against executive action that is arbitrary in the constitutional sense. *Lewis*, 523 U.S. at 845–46.

82. In the civil detention context, arbitrariness arises where confinement is imposed despite the absence of facts demonstrating necessity. *See Foucha v. Louisiana*, 504 U.S. 71, 79–80 (1992) (civil detention impermissible absent justification tied to statutory purpose).

83. Here, the Government’s own prior conduct—over nine years of supervised release—demonstrates that detention was not necessary to secure appearance or protect the community. The reversal of that determination without new factual predicates suggests that detention is being imposed categorically rather than based on individualized necessity.

84. Substantive due process does not forbid civil immigration detention per se. But it forbids confinement that is arbitrary, excessive, or untethered to its regulatory justification. *Zadvydas*, 533 U.S. at 690; *Lewis*, 523 U.S. at 845–46.

D. This Substantive Due Process Claim Is Independent of Procedural Adequacy.

85. Even if the Government provided constitutionally adequate procedures—which Petitioner disputes—continued detention may nonetheless violate substantive due process if it is excessive in relation to its purpose.

86. Procedural due process asks whether the correct procedures were followed. Substantive due process asks whether, even with procedures, the deprivation itself is constitutionally unreasonable. *See Lewis*, 523 U.S. at 845–46 (distinguishing procedural and substantive protections).

87. Because Mrs. Menendez-Salazar’s continued detention, after years of demonstrated compliance and without materially changed circumstances, no longer bears a reasonable relation to its regulatory objective, it constitutes arbitrary civil confinement in violation of the Fifth Amendment.

E. Habeas Relief Is Available to Remedy Arbitrary Civil Detention.

88. Habeas corpus remains available to test whether civil confinement violates substantive constitutional limits. *Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

89. Section 1226(e) does not bar review of constitutional claims. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018).

90. Where civil detention becomes excessive in relation to its regulatory purpose, habeas relief is appropriate. *Zadvydas*, 533 U.S. at 699–700.

91. Accordingly, because Mrs. Menendez-Salazar’s continued detention is no longer reasonably related to ensuring appearance or protecting the community—and instead constitutes arbitrary executive confinement—this Court may order appropriate relief, including release under conditions no more restrictive than those previously imposed.

**Count III –Petitioner’s Warrantless Interior Arrest Did
Not Comply with Fourth Amendment Requirements.**

92. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

A. The Fourth Amendment Governs Civil Immigration Arrests.

93. The Fourth Amendment applies to civil immigration arrests. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984). Although removal proceedings are civil in nature, the seizure of a person by immigration officers must comport with constitutional standards. *Id.*; see also *Arizona v. United States*, 567 U.S. 387, 413 (2012) (recognizing limits on warrantless immigration arrests).

94. An arrest inside the United States is a “seizure” and must be supported by probable cause. *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). The Fourth Amendment’s protection

applies fully within the interior of the country and is not diminished merely because the arrest is civil rather than criminal. *See Lopez-Mendoza*, 468 U.S. at 1043.

95. Accordingly, DHS's authority to arrest under the INA must be exercised in a manner consistent with the Fourth Amendment.

B. Warrantless Immigration Arrests Are Strictly Limited by Statute and Regulation.

96. Congress has authorized warrantless immigration arrests only in narrow circumstances. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest without a warrant only if: (1) The officer has reason to believe the individual is removable; and (2) The officer has reason to believe the individual is "likely to escape before a warrant can be obtained."

97. *Both elements must be satisfied.* The statute does not authorize categorical or routine warrantless re-arrests of individuals long present in the community and compliant with supervision.

98. The Fifth Circuit has recognized that § 1357(a)(2) requires probable cause. *See United States v. Cantu*, 519 F.2d 494, 496–97 (5th Cir. 1975). The Supreme Court has likewise emphasized that civil immigration arrests are constrained by the Fourth Amendment and statutory limits. *Arizona*, 567 U.S. at 413.

99. Implementing regulations further limit warrantless arrests. *See* 8 C.F.R. § 287.8(c)(2)(i) (requiring probable cause and compliance with constitutional standards); 8 C.F.R. § 287.8(b)(2) (requiring that arrests be made only when the officer has reason to believe the individual is removable).

100. A warrantless arrest in the interior years after entry — absent exigency or risk of flight — does not satisfy these statutory prerequisites.

C. Petitioner's Arrest Did Not Satisfy § 1357(a)(2).

101. Petitioner was apprehended at entry, served with a Notice to Appear, and released on her own recognizance. The Government thereby determined that she posed neither a danger nor a flight risk. She complied with all reporting and court obligations thereafter. *See* Ex. B.

102. Years later, ICE re-detained Petitioner in the interior during a routine check-in on June 23, 2025, without a judicial warrant. *See. Id.*

103. There was no risk that Petitioner would abscond “before a warrant could be obtained.” 8 U.S.C. § 1357(a)(2). He had an established address, a known identity, and a documented compliance history. There was no exigency.

104. Where the Government has long known an individual’s whereabouts and has previously determined that release is appropriate, a warrantless arrest cannot be justified on the theory that the person is “likely to escape.” *See United States v. Abdi*, 463 F.3d 547, 554 (6th Cir. 2006) (requiring specific, articulable basis for belief that individual is likely to flee before a warrant can be obtained); *cf. Welsh v. Wisconsin*, 466 U.S. 740, 749–50 (1984) (exigency must be strictly circumscribed).

105. Permitting warrantless re-arrest under these facts would collapse the statutory limitation into a nullity.

D. The Arrest Was Not Salvaged by Later Custody Review or Bond Proceedings.

106. A constitutional violation at the moment of seizure is not cured by subsequent administrative review. The Fourth Amendment requires that a warrantless arrest be supported by probable cause at its inception, and later proceedings do not retroactively validate an unlawful seizure. *Gerstein v. Pugh*, 420 U.S. 103, 111–12 (1975); *Manuel v. City of Joliet*, 580 U.S. 357, 365–67 (2017). The Fifth Circuit likewise recognizes that the legality of an arrest is evaluated based on the facts and authority existing at the time of the seizure, and that subsequent events

cannot supply retroactive justification. *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 204–05 (5th Cir. 2009) (probable cause must exist at the moment of arrest); *United States v. Wadley*, 59 F.3d 510, 512 (5th Cir. 1995) (same). Habeas relief therefore remains available where continued detention flows from an arrest that was unconstitutional at its inception. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001); *see also* 28 U.S.C. § 2241(c)(3).

107. The Supreme Court has consistently treated the legality of an arrest as distinct from later detention procedures. *See Gerstein v. Pugh*, 420 U.S. 103, 111–12 (1975) (Fourth Amendment requires prompt judicial determination of probable cause after warrantless arrest). The existence of later process does not retroactively validate an unlawful seizure.

108. Here, the question is whether ICE complied with constitutional and statutory arrest authority at the moment of re-detention. A later bond hearing — even if provided — does not erase a Fourth Amendment violation at the outset.

E. Detention Derived from an Unlawful Arrest Is Cognizable in Habeas.

109. Habeas corpus remains available to challenge custody that flows from an unconstitutional seizure. *See* 28 U.S.C. § 2241(c)(3); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). The Supreme Court has recognized that habeas lies to test the legality of executive detention in violation of constitutional constraints. *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001).

110. If the initial arrest violated § 1357(a)(2) and the Fourth Amendment, continued custody derived from that arrest is unlawful.

F. Relief Requested.

111. Because Petitioner's warrantless interior arrest did not comply with 8 U.S.C. § 1357(a)(2), the Fourth Amendment, or implementing regulations, continued detention flowing from that seizure violates the Constitution and laws of the United States.

112. This Court should grant habeas relief and order appropriate remedial relief, including release or other relief deemed just and proper.

Count IV – Arrest Conducted Contrary to 8 C.F.R. § 287.8(c)(2).

113. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

A. Federal Agencies Are Bound to Follow Their Own Regulations.

114. It is well established that when an agency promulgates regulations governing the exercise of its authority, it must adhere to those regulations. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954). The Supreme Court has repeatedly reaffirmed this principle: agency action taken in violation of its own binding regulations is unlawful. *Service v. Dulles*, 354 U.S. 363, 388 (1957); *Vitarelli v. Seaton*, 359 U.S. 535, 539–40 (1959).

115. The Fifth Circuit has consistently applied the *Accardi* doctrine. *See Galvez-Vergara v. Gonzales*, 484 F.3d 798, 801 (5th Cir. 2007) (“Under *Accardi*, an agency is required to follow its own regulations.”); *United States v. Caceres*, 440 U.S. 741, 752–53 (1979) (recognizing principle, though declining suppression remedy in criminal context).

116. This rule applies fully in immigration proceedings. Where DHS officers act in a manner inconsistent with binding regulatory standards governing arrest authority, resulting detention is subject to judicial review.

B. 8 C.F.R. § 287.8(c)(2) Imposes Mandatory Limitations on Immigration Agents' Authority to Conduct Warrantless Arrest.

117. The regulation governing immigration arrests provides: “An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested is an alien illegally in the United States and is likely to escape before a warrant can be obtained.” 8 C.F.R. § 287.8(c)(2)(i) (emphasis added).

118. The regulation’s use of “shall” is mandatory, not discretionary. *See Lopez v. Davis*, 531 U.S. 230, 241 (2001) (contrasting “shall” and “may” in statutory construction).

119. This regulation implements 8 U.S.C. § 1357(a)(2), which similarly limits warrantless arrests to circumstances where the officer has reason to believe the individual is removable and “likely to escape before a warrant can be obtained.”

120. Thus, the regulatory framework requires two findings: (1) Removability; and (2) Likelihood of escape before a warrant can be obtained. Both must exist at the moment of arrest.

121. The Fifth Circuit evaluates compliance with arrest authority based on the facts known at the time of seizure. *See Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 204–05 (5th Cir. 2009) (probable cause assessed at moment of arrest); *United States v. Wadley*, 59 F.3d 510, 512 (5th Cir. 1995) (same).

C. ICE Did Not Comply with 8 C.F.R. § 287.8(c)(2) in Arresting Petitioner.

122. Ms. Menendez-Salazar was apprehended at entry in November 2016, served with a Notice to Appear, issued a warrant, and released on her own recognizance. *See* Ex. B. DHS thereby determined that detention was not necessary to ensure appearance or protect the community.

123. She then established a stable life while reporting as required—she maintained a stable residence, remained with her husband and children in Texas, maintained employment

authorization, held a Texas driver's license, incurred no criminal history, and violated none of the conditions of her supervision. *See* Ex. B.

124. Yet, years after releasing her on her own recognizance, ICE effected a warrantless interior arrest on June 23, 2025, when Ms. Menendez-Salazar appeared alone for a scheduled 6:00 a.m. check-in at 8101 N. Stemmons Freeway, Dallas, Texas 75247. Client reports indicate that she was detained at approximately 6:40 a.m. during that check-in. At the time of her arrest, she had complied with all prior reporting requirements, maintained a known residence and employment, and had informed her employer that she would be late to work that morning due to the appointment.

125. Under § 287.8(c)(2), ICE was required to have reason to believe Petitioner was “likely to escape before a warrant can be obtained.” The record does not support such a finding.

126. Petitioner's address was known. Her identity was known. Her history reflected five years of compliance. There was no attempt to abscond. No violation of reporting conditions. No evidence of concealment.

127. Where the Government has previously released an individual on recognizance and that individual has demonstrated long-term compliance, it cannot reasonably conclude that the person is “likely to escape before a warrant can be obtained” absent materially changed circumstances. *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2). The legality of a warrantless arrest must be evaluated based on the facts known to officers at the moment of seizure. *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 204–05 (5th Cir. 2009); *United States v. Wadley*, 59 F.3d 510, 512 (5th Cir. 1995). Where the Government has already determined through release on recognizance that supervision adequately mitigates flight risk—and the individual has complied with those conditions for years—the absence of any new or emergent circumstance undermines

any claim that immediate arrest without a warrant was necessary to prevent escape. *See United States v. Cantu*, 519 F.2d 494, 496–97 (5th Cir. 1975); *cf. Hernandez-Fernandez v. Lyons*, No. 5:25-cv-773-JKP, 2025 U.S. Dist. LEXIS 206751, at *21–22 (W.D. Tex. Oct. 21, 2025). No such materially changed circumstances are alleged here.

128. Failure to satisfy the escape-risk requirement renders the arrest inconsistent with § 287.8(c)(2) and therefore unlawful under *Accardi*.

D. Violation of § 287.8(c)(2) Renders the Resulting Detention Legally Defective.

129. The *Accardi* doctrine is not limited to removal hearings; it applies whenever an agency disregards its own binding rules. *Accardi*, 347 U.S. at 267; *Galvez-Vergara*, 484 F.3d at 801.

130. Here, ICE exercised arrest authority in a manner inconsistent with the regulatory prerequisites governing warrantless seizures. That defect is not merely procedural. It goes to the legality of the custody itself.

131. Habeas relief is available to test whether executive detention complies with “the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3); *see INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

132. Section 1226(e) does not bar review of threshold legal questions concerning compliance with arrest regulations. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). Petitioner does not challenge discretionary weighing of bond factors; she challenges whether the Government complied with binding regulatory prerequisites before depriving her of liberty.

133. Where detention flows from an arrest conducted contrary to governing regulations, continued custody cannot stand.

E. This Claim Is Distinct from the Fourth Amendment Count.

134. Count IV addresses whether the arrest satisfied constitutional standards.

135. This Count addresses whether ICE complied with mandatory regulatory conditions precedent to exercising warrantless arrest authority.

136. Even if the Court were to conclude that the arrest satisfied constitutional minimums, the Government must still demonstrate compliance with its own binding regulations. Under *Accardi*, failure to do so renders the action unlawful.

F. Relief Requested.

137. Because ICE failed to comply with 8 C.F.R. § 287.8(c)(2) before effecting a warrantless interior arrest, Petitioner's continued detention rests on an arrest conducted contrary to binding regulatory requirements.

138. Under the *Accardi* doctrine and 28 U.S.C. § 2241, this Court may grant appropriate habeas relief.

Count V – Unlawful Agency Action Under the APA

139. Petitioner incorporates by reference the above factual allegations and re-asserts them as though stated fully herein.

140. Respondents' detention framework, including their reliance on recent Board decisions to restrict bond authority and alter longstanding detention classifications, constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706.

141. The APA requires agencies to engage in reasoned decision-making and prohibits arbitrary and capricious action. 5 U.S.C. § 706(2)(A). An agency must "display awareness that it is changing position" and must provide a "reasoned explanation" for disregarding prior policy or precedent. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016); *see also FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Failure to acknowledge or adequately

explain a departure from established interpretation renders the action unlawful. *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 20–21 (2020).

142. The Fifth Circuit applies this same arbitrary-and-capricious standard. *See Texas v. United States*, 809 F.3d 134, 179 (5th Cir. 2015) (agency action invalid where it fails to provide reasoned explanation); *La. Pub. Serv. Comm'n v. FERC*, 522 F.3d 378, 395 (5th Cir. 2008) (agency must articulate rational connection between facts found and decision made).

143. This case illustrates the practical consequences of that unreasoned shift. Ms. Menendez-Salazar was apprehended in 2016, placed into removal proceedings under § 240, and released on her own recognizance after DHS determined that detention was not necessary to ensure her appearance. For years thereafter, she complied with supervision, maintained employment authorization, maintained a stable residence in Texas, supported her family, and raised three United States citizen children. On June 23, 2025, she appeared alone for a scheduled 6:00 a.m. ICE check-in at 8101 N. Stemmons Freeway, Dallas, Texas 75247, as required. Rather than continue her supervision, ICE detained her at approximately 6:40 a.m. despite her years of compliance and without any known intervening criminal conduct, supervision violation, or changed circumstance. She had been scheduled to report to work at 7:00 a.m. that same morning and had already informed her employer that she would be late because of the appointment. The agency's reliance on its post-2025 reinterpretation of detention authority to narrow bond jurisdiction and reshape the custody framework applicable to individuals like Petitioner occurred without meaningful acknowledgment of those settled expectations or explanation for departing from prior longstanding practice. Where an agency alters a detention regime in a manner that affects liberty interests without addressing reliance interests or explaining its departure from prior precedent, its action is arbitrary and capricious under 5 U.S.C. § 706(2)(A).

A. The Agency Departed from Longstanding Bond Jurisdiction Without Reasoned Explanation.

144. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a), including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing individualized bond framework based on flight risk and danger to the community).

145. The pre-2025 framework reflected consistent administrative practice: individuals placed in § 240 removal proceedings were subject to discretionary custody determinations under § 236(a), with bond eligibility determined through individualized adjudication.

146. In 2025, however, the BIA issued *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), reinterpreting detention classifications to place certain noncitizens who entered without inspection into § 1225(b) mandatory detention. *See Ex. C, Recent BIA Decisions on Detention.*

147. That reinterpretation significantly curtailed immigration judges' bond jurisdiction and altered the practical availability of release for a broad class of detainees.

148. An agency may change its interpretation of a statute. But it must acknowledge the change and provide a reasoned explanation for abandoning prior precedent. *Encino Motorcars*, 579 U.S. at 221–22; *Regents*, 591 U.S. at 20–21.

149. The 2025 BIA decisions did not meaningfully grapple with the agency's decades-long practice of treating similarly situated individuals as eligible for § 236(a) bond. Nor did they reconcile the shift with the structure of §§ 1225 and 1226 or explain why prior interpretations were erroneous.

150. Abrupt policy shifts that affect liberty interests require particularly careful justification. *See Encino Motorcars*, 579 U.S. at 222 (heightened requirement where change upsets serious reliance interests).

B. The Agency's Interpretation Has Directly Shaped Petitioner's Detention.

151. Although Petitioner received a bond hearing at which release was denied, the broader detention framework governing her classification and continued custody has been shaped by the agency's post-2025 interpretive shift.

152. Petitioner was apprehended at entry in 2016; released on her own recognizance; fully compliant with supervision for years; and re-detained in the interior without materially changed circumstances.

153. The interpretive expansion of § 1225(b) altered the lens through which detention authority is exercised and narrowed the practical availability of release for individuals like Petitioner.

154. The APA prohibits agency action that is arbitrary, capricious, or not in accordance with law. 5 U.S.C. § 706(2)(A). Where an agency reclassifies individuals in a manner that materially alters detention authority without adequate explanation, that action is subject to judicial review.

155. Section 1226(e) does not bar review of legal questions concerning statutory interpretation or the lawfulness of the governing detention framework. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018). Nor does it insulate threshold legal challenges to the statutory basis of detention. *See St. Cyr*, 533 U.S. at 301.

C. The Agency's Action Is Reviewable and Remediable.

156. The APA provides that courts shall “hold unlawful and set aside agency action” found to be arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A).

157. This claim does not ask the Court to reweigh the Immigration Judge’s discretionary bond factors. Rather, it challenges the legality of the agency’s interpretive shift that altered the detention framework applied to Petitioner.

158. The Fifth Circuit has recognized that courts retain authority to review agency action that exceeds statutory bounds or rests on an unreasonable interpretation of governing law. *See Texas v. United States*, 809 F.3d at 179.

159. Because Respondents’ detention framework rests in part on an abrupt and insufficiently explained departure from longstanding precedent, it constitutes unlawful agency action under the APA.

D. Relief Requested.

160. Where agency action affecting individual liberty is arbitrary or not in accordance with law, judicial relief is appropriate. 5 U.S.C. § 706(2)(A).

161. Accordingly, to the extent Respondents’ detention of Petitioner rests on an unlawful interpretive shift that curtailed bond authority and altered detention classification without reasoned explanation, this Court may grant appropriate relief under 28 U.S.C. § 2241 and the APA.

**Count VI — Violation of the Text of the Immigration and Nationality Act
Statutory Classification of Detention Authority**

162. Petitioner incorporates by reference the foregoing allegations as if fully set forth herein.

163. This Count preserves the statutory question whether Petitioner’s detention is governed by 8 U.S.C. § 1226(a) or § 1225(b). Although the Fifth Circuit recently addressed

aspects of this issue in *Buenrostro-Mendez v. Bondi*, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026), Petitioner maintains that the statutory text, structure, and longstanding administrative practice support classification under § 1226(a).

A. The Statutory Framework Distinguishes Between § 1225(b) and § 1226(a).

164. Section 1225(b) governs certain “applicants for admission” at the threshold of entry. 8 U.S.C. § 1225(b). Section 1226(a), by contrast, governs detention “pending a decision on whether the alien is to be removed from the United States.” 8 U.S.C. § 1226(a).

165. The Supreme Court has repeatedly treated these provisions as distinct detention regimes. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 837–38 (2018) (describing statutory differences); *Demore v. Kim*, 538 U.S. 510, 521–22 (2003) (addressing § 1226 detention separately from § 1225).

166. Historically, individuals who entered without inspection but were placed into § 240 removal proceedings were treated as detained under § 1226(a), subject to bond eligibility. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). That framework reflected the statutory distinction between threshold inspection and post-placement removal proceedings.

B. Petitioner’s Procedural Posture Aligns with § 1226(a).

167. Ms. Menendez-Salazar was apprehended in 2016, issued a Notice to Appear, and placed into § 240 removal proceedings. She was released on her own recognizance and permitted to remain in the community under supervision for years, during which she complied with all reporting requirements, maintained steady employment, and supported her husband and three United States citizen children.

168. On June 23, 2025, she appeared alone for a scheduled 6:00 a.m. ICE check-in at 8101 N. Stemmons Freeway in Dallas, Texas, as required. She had informed her employer that

she might be late to work that morning due to the appointment. Instead of continuing her long-standing supervision, ICE detained her at approximately 6:40 a.m. during that check-in, disrupting her employment and abruptly separating her from her family, who were expecting her to return home that day.

169. Once formal removal proceedings are initiated under § 240, detention authority generally arises under § 1226(a), which governs custody “pending a decision” on removability. *See* 8 U.S.C. § 1226(a).

170. Petitioner was not subject to expedited removal at the time of her re-detention. Nor was she continuously detained from entry under § 1225(b). Rather, she was released, lived in the community for years, complied fully with supervision, and was later re-detained in the interior despite that sustained compliance and without any identified intervening misconduct.

C. This Issue Is Preserved for Further Review.

171. Petitioner recognizes that *Buenrostro-Mendez* addressed statutory classification questions concerning certain noncitizens deemed “applicants for admission.” To the extent that decision is interpreted to foreclose § 1226(a) eligibility for individuals in Petitioner’s position, Petitioner respectfully preserves the statutory argument for further review.

172. Nothing in the INA’s text expressly reclassifies individuals who have been placed into § 240 proceedings, released on recognizance, and permitted long-term community presence as categorically subject to mandatory detention under § 1225(b). The statutory scheme distinguishes between inspection-stage detention and post-placement custody determinations. *See Jennings*, 138 S. Ct. at 837–38.

173. Section 1226(e) does not bar this Court from addressing the legal question of which detention statute applies. *See Jennings*, 138 S. Ct. at 841 (jurisdiction-stripping provision

does not preclude review of statutory interpretation questions); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001).

174. Accordingly, while Petitioner's primary claims rest on constitutional and regulatory grounds, he preserves the statutory classification issue for purposes of appellate review.

D. Relief Requested.

175. To the extent this Court concludes that statutory classification bears on the lawfulness of detention, Petitioner respectfully submits that his custody is governed by 8 U.S.C. § 1226(a). At minimum, this issue is preserved for further review.

V. REQUEST FOR INJUNCTIVE RELIEF (INCLUDING TRO)

176. Petitioner respectfully requests that this Court issue a Temporary Restraining Order directing Respondents to release Ms. Menendez-Salazar under conditions no more restrictive than those previously imposed during her period of supervision, or to grant such other immediate relief as is just and proper. Petitioner further requests preliminary and permanent injunctive relief as appropriate.

177. The Supreme Court has made clear that such extraordinary relief depends on four factors: (1) likelihood of success on the merits; (2) irreparable injury absent relief; (3) that the balance of equities favors the movant; and (4) that an injunction is in the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). Likelihood of success and irreparable harm are the most critical factors. *Id.* at 434.

178. As set forth below, each factor weighs in Petitioner's favor.

A. Mrs. Menendez-Salazar Is Likely to Succeed on the Merits of Her Petition.

179. Petitioner presents substantial constitutional and legal claims that are independently cognizable notwithstanding *Buenrostro-Mendez*.

180. First, Petitioner has demonstrated a strong likelihood of success on her procedural due process claim. The Government released her on her own recognizance in 2016 and permitted her to reside in the community for years under supervision. That conferred liberty interest cannot be withdrawn without constitutionally adequate justification. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Meza v. Livingston*, 607 F.3d 392, 399–400 (5th Cir. 2010).

181. Second, Petitioner has demonstrated a substantial likelihood of success on his substantive due process claim. Civil detention must bear a reasonable relation to its regulatory purpose and may not become arbitrary or excessive. *Zadvydas*, 533 U.S. at 690; *County of Sacramento v. Lewis*, 523 U.S. 833, 845–46 (1998). Where an individual has demonstrated five years of compliance with supervision and no materially changed circumstances, continued incarceration no longer reasonably advances the Government’s stated objectives.

182. Third, Petitioner raises serious questions regarding the legality of his warrantless interior arrest and ICE’s compliance with 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2). An arrest must be justified at its inception. *Gerstein v. Pugh*, 420 U.S. 103, 111–12 (1975); *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 204–05 (5th Cir. 2009). Failure to comply with binding regulatory prerequisites renders agency action unlawful under United States ex rel. *Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954).

183. Finally, Petitioner preserves a substantial statutory classification argument and APA challenge, both of which remain reviewable legal questions. *Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); 5 U.S.C. § 706(2)(A).

184. Taken together, these claims present more than a plausible basis for relief. Under *Nken*, a “substantial case on the merits” is sufficient where the balance of harms tips strongly in the movant’s favor. 556 U.S. at 434–35. That standard is satisfied here.

B. Mrs. Menendez-Salazar Will Suffer Irreparable Harm If a TRO Does Not Issue.

185. The deprivation of physical liberty constitutes irreparable harm. The Supreme Court has recognized that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 690.

186. Courts routinely hold that ongoing detention constitutes irreparable injury for purposes of injunctive relief. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (loss of constitutional freedoms, even for minimal periods, constitutes irreparable injury); *O’Donnell v. Harris Cnty.*, 892 F.3d 147, 163 (5th Cir. 2018) (recognizing irreparable harm from unconstitutional pretrial detention).

187. Each additional day Ms. Menendez-Salazar remains confined inflicts harm that cannot be undone. On June 23, 2025, she appeared alone for a scheduled 6:00 a.m. ICE check-in at 8101 N. Stemmons Freeway in Dallas, Texas, as required. She had informed her employer that she might be late to work that morning due to the appointment. Instead, she was detained at approximately 6:40 a.m. during that check-in, abruptly interrupting her employment and separating her from her husband and three United States citizen children, who depended on her and expected her to return home that day. Her continued detention prevents her from maintaining that employment and from providing daily care and support to her family.

188. Under *Nken*, irreparable injury must be “likely,” not speculative. 556 U.S. at 434–35. Continued incarceration satisfies that requirement.

C. Balance of Equities Weighs in Mrs. Menendez-Salazar 's Favor.

189. The balance of equities weighs decisively in Petitioner's favor.

190. On one side lies Petitioner's interest in freedom from arbitrary civil confinement.

On the other lies the Government's generalized interest in continued detention.

191. For years, the Government determined that supervision adequately mitigated any flight risk. Petitioner complied fully. She has no criminal history, no record of violence, and no evidence suggests she poses a danger to the community.

192. Reinstating supervision under conditions no more restrictive than those previously imposed would preserve the Government's regulatory interests while preventing ongoing constitutional harm.

193. Where liberty is at stake and the Government can achieve its objectives through less restrictive means, the equities favor release. *See Zadvydas*, 533 U.S. at 690.

D. This Is Strong Public Interest In Maintaining the Pre-2025 Status Quo.

194. When the Government is a party, the balance of equities and public interest factors merge. *Nken*, 556 U.S. at 435.

195. The public has no interest in detention that exceeds statutory or constitutional limits. The public interest is served when executive officials adhere to governing statutes, regulations, and constitutional constraints. *See Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015) (public interest lies in ensuring agencies comply with law).

196. Ensuring that immigration detention operates within legal boundaries reinforces public confidence in the integrity of the system and the rule of law.

E. Conclusion.

197. Each factor of the equitable test weighs in Petitioner's favor. She has demonstrated a substantial likelihood of success on the merits; she suffers ongoing irreparable harm from continued detention; the equities favor restoration of supervised release; and the public interest supports lawful executive action.

198. Accordingly, this Court should issue a Temporary Restraining Order directing Respondents to release Ms. Menendez-Salazar under reasonable conditions no more restrictive than those previously imposed or grant such other immediate relief as the Court deems just and proper.

VIII. PRAYER FOR RELIEF

199. For the above and foregoing reasons, Petitioner respectfully requests that this Court take the following actions:

- a. Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 declaring Petitioner's continued detention unlawful under the Constitution and laws of the United States;
- b. Order Respondents to release Petitioner under reasonable conditions of supervision no more restrictive than those previously imposed during her period of release on recognizance, or grant such other custody-related relief as is consistent with this Court's findings;
- c. In the alternative, order Respondents to provide constitutionally adequate custody proceedings consistent with this Court's rulings, including compliance with applicable statutory and regulatory requirements;
- d. Issue declaratory relief that Respondents' detention of Petitioner, as currently effectuated, violates the Fifth Amendment, the Fourth Amendment, and binding regulatory provisions including 8 C.F.R. § 287.8(c)(2);

- e. Issue declaratory relief, to the extent necessary for preservation and further review, regarding the proper statutory classification of detention authority under 8 U.S.C. §§ 1225 and 1226 as applied to Petitioner's procedural posture;
- f. Grant temporary, preliminary, and permanent injunctive relief as appropriate to prevent continued unlawful detention;
- g. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable provision of law; and
- h. Grant such other and further relief as this Court deems just and proper.

DATE: March 31, 2026.

Respectfully submitted,

THE LAW OFFICE OF JOHN M. BRAY, PLLC
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By: /s/ John M. Bray
John M. Bray
Texas Bar No. 24081360
ATTORNEY FOR PETITIONER

VERIFICATION

My name is Helen Mosothoane.

My date of birth is  1976.

My address is 8194 Lewis Canyon Dr., Frisco, TX 75036.

I am the Petitioner's common law aunt.

I am over age 18, of sound mind, and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

I have personal knowledge of the substance of the foregoing document.

To the best of my knowledge and belief, the factual statements contained in the foregoing document are true and correct.

I declare, under penalty of perjury, that all information in the foregoing document is true and correct.

Signed in Denton County, of the State of Texas.

Executed on this Date: March 19, 2024


Printed Name of Declarant: Helen Mosothoane