

1
2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 ABILENE DIVISION

5 SINDY XIOMARA LOPEZ-GUTIERREZ

6 Petitioner,

7 v.

8 Robert CERNA, Field Office Director of
9 Enforcement and Removal Operations,
10 DALLAS Field Office, Immigration and
11 Customs Enforcement; Markwayne MULLIN,
12 Secretary, U.S. Department of Homeland
13 Security; U.S. DEPARTMENT OF
14 HOMELAND SECURITY; Pamela BONDI,
15 U.S. Attorney General; EXECUTIVE OFFICE
16 FOR IMMIGRATION REVIEW; WARDEN of
17 BLUEBONNET DETENTION FACILITY,
18 Respondents.

Case No. 1:26-cv-145

**PETITION FOR WRIT OF
HABEAS CORPUS**

PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C § 2241

1. Petitioner, Sindy Xiomara Lopez-Gutierrez, by and through undersigned counsel, Abraham J. Galaviz, respectfully petitions this Honorable Court for a writ of *habeas corpus* pursuant to 28 U.S.C. § 2241 to challenge her ongoing and unlawful civil immigration detention by the United States Department of Homeland Security (“DHS”) and its agents. Petitioner is an El Salvador national who is currently detained at Bluebonnet Detention Facility, 400 2nd Street, Anson, Texas 79501, within the Northern District of Texas.
2. Petitioner entered the United States approximately twelve (12) years ago.
3. On or about February 18, 2026, Immigration and Customs Enforcement (“ICE”) took custody of Petitioner, and placed her in immigration detention.
4. Immigration Judges are denying jurisdiction to consider bond or conduct any custody review, expressly concluding that the court lacked authority pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 2016 (BIA 2025). As a result of that jurisdictional ruling, Immigration Judge’s are not considering individualized custody factors, including danger to the community, risk of flight, community tie, or alternatives to detention.
5. DHS has taken the position that, based on *Matter of Yajure Hurtado* and subsequent agency guidance, Petitioner is categorically ineligible for any custody redetermination before an immigration judge and may be detained for the duration of her removal proceedings absent discretionary parole.
6. As a result of this categorical denial of custody review, Petitioner now faces prolonged and potentially indefinite civil detention without any meaningful opportunity for an individualized determination of whether her continued confinement is necessary or lawful. DHS has not conducted any neutral, individualized assessment of Petitioner’s danger to the community, risk of flight, or suitability for less restrictive alternatives to detention.
7. Petitioner has no criminal convictions, no history of violence, and no pending criminal charges. Her continued detention is not based on any individualized finding that confinement is necessary to serve a legitimate governmental purpose.
8. Petitioner’s continued detention without any individualized custody determination violates the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, the Suspension Clause of the United States Constitution, and binding agency regulations.

1 DHS's reliance on a categorical jurisdictional bar has resulted in prolonged civil
2 confinement without adequate procedural safeguards or meaningful judicial review.

- 3 9. Petitioner seeks *habeas* relief ordering her immediate release from ICE custody, or in the
4 alternative, order directing Respondents to provide her with a prompt, constitutionally
5 adequate, and individualized custody determination before a neutral decisionmaker with
6 authority to release. For the foregoing reasons, the Court should grant the *writ* and restore
7 Petitioner's liberty.

8 **FACTUAL BACKGROUND**

- 9 10. Petitioner, Sindy Xiomara Lopez-Gutierrez, [REDACTED] has no criminal convictions,
10 history of violence, dangerous behaviors, or pending criminal charges.
11 11. Petitioner entered the United States on or about 2014. She is a citizen of El Salvador. It
12 has been determined that she didn't possess any valid documents permitting entry.
13 12. On June 21, 2021, the Immigration Court ordered the Petitioner removed from the United
14 States during removal proceedings.
15 13. On July 21, 2021, the Petitioner filed an Appeal with the Board of Immigration Appeals,
16 which remains pending.
17 14. On February 18, 2026, Petitioner was taken into custody by Immigration and Customs
18 Enforcement ("ICE"). She has remained in continuous civil immigration detention since
19 that date while her appeal remains pending.
20 15. Petitioner is currently detained at Bluebonnet Detention Facility, located at 400 2nd Street,
21 Anson, Texas 79501, within the Northern District of Texas. She has remained
22 continuously detained since February 2026, despite having no criminal convictions, no
23 disciplinary infractions while in custody, and no individualized finding that her detention
24 is necessary to serve a legitimate governmental purpose.
16. Petitioner's ongoing detention-imposed without any opportunity for an individualized
custody determination and based solely on a categorical jurisdictional ruling, has resulted
in prolonged and potentially indefinite civil confinement. Her detention under restrictive
penal-like conditions, despite her compliance with immigration authorities and lack of any
criminal history, inflicts serious liberty harms and raises grave constitutional concerns.
17. Petitioner has now been held in civil immigration detention since February 2026, without
any meaningful mechanism to seek release or to obtain a neutral review of whether her

1 continued confinement is justified. Absent judicial intervention, Petitioner faces continued
2 detention while her appeal remains pending before the Board of Immigration Appeals
3 without an individualized assessment or procedural safeguards.

JURISDICTION

- 4 18. This action arises under the Constitution of the United States and the Immigration and
5 Nationality Act ("INA"), 8 U.S.C. §1101 *et seq.* This Court has jurisdiction under 28
6 U.S.C. § 2241 because Petitioner challenges the legality of his ongoing civil immigration
7 detention and seeks relief that is within the traditional scope of *habeas corpus*. Jurisdiction
8 also lies under 28 U.S.C. § 1331, as this Petition raises federal questions arising under the
9 Constitution, laws, and treaties of the United States. The Suspension Clause of the United
10 States Constitution, laws, and treaties of the United States. The Suspension Clause of the
11 United States Constitution further guarantees Petitioner's right to seek habeas corpus
12 review where no other adequate remedy exists.
- 13 19. The Court may grant relief under the *habeas corpus* statutes, 28 U.S.C. § 2241 *et seq.*, the
14 Declaratory Judgement Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. §
15 1651. Congress has preserved judicial review of challenges to immigration detention,
16 including claims raising statutory and constitutional questions. *See, e.g., Nielson v. Preap*,
17 139 S. Ct. 954, 961-62 (2019); *Jennings v. Rodriguez*, 583 U.S. 281 (2018) (distinguishing
18 reviewable legal and constitutional claims from unreviewable discretionary determinations
19 under 8 U.S.C. § 1226(e)).
- 20 20. Federal district courts have jurisdiction to hear *habeas corpus* claims brought by
21 noncitizens challenging the lawfulness of their detention. *See Demore v. Kim*, 538 U.S.
22 510, 516-17 (2003) (recognizing *habeas* jurisdiction over challenges to immigration
23 detention); *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001) (same). That jurisdiction
24 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.
- 21 21. Although certain provisions of the INA limit judicial review of discretionary custody
22 determinations, *see* 8 U.S.C. § 1226(e), those provisions do not preclude *habeas* review of
23 constitutional claims, questions of law, or challenges to the legal basis for detention itself.
24 Petitioner does not ask this Court to review or second-guess any discretionary bond
decision. Rather, she challenges Respondents' authority to continue detaining Petitioner

1 without any individualized custody determination, the constitutionality of prolonged
2 detention without meaningful review, the lawfulness of DHS's blanket detention policy
3 under the Administrative Procedure Act, and the legality of her warrantless arrest and
4 resulting detention under binding agency regulations. Such claims fall squarely within the
5 scope of *habeas* review. The Supreme Court has long recognized that federal courts retain
6 *habeas* jurisdiction to review the statutory and constitutional bases of immigration
7 detention notwithstanding jurisdiction-stripping provisions, as such review lies at the core
8 of the Great Writ. See *Demore v. Kim*, 538 U.S. at 516-517, *Zadvydas v. Davis*, 533 U.S.
9 687-88.

10 22. No petition for a *writ of habeas corpus* has previously been filed in any court regarding
11 Petitioner.

12 VENUE

13 23. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500
14 (1973), venue lies in the United States District Court for the Texas Northern District Court,
15 the judicial district in which Petitioner currently is detained.

16 24. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents
17 are employees, officers, and agencies of the United States, and because a substantial part
18 of the events or omissions giving rise to the claims occurred in the Texas Northern District
19 Court.

20 PARTIES

21 25. Petitioner Sindy Xiomara Lopez-Gutierrez is a citizen of El Salvador who has been in
22 immigration detention since February 2026. After Petitioner was arrested, ICE did not set
23 bond or have her custody reviewed by an Immigration Judge. Petitioner has resided in the
24 United States for approximately twelve (12) years.

25 26. Respondent Robert Cerna is the Director of the Dallas Field Office of ICE's Enforcement
26 and Removal Operations division. As such, Robert Cerna is Petitioner's immediate
27 custodian and is responsible for Petitioner's detention and removal. He is named in his
28 official capacity.

29 27. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security.
30 He is responsible for the implementation and enforcement of the Immigration and
31 Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention.

1 Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official
2 capacity.

3 28. Respondent Department of Homeland Security (DHS) is the federal agency responsible for
4 implementing and enforcing the INA, including the detention and removal of noncitizens.

5 29. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible
6 for the Department of Justice, of which the Executive Office for Immigration Review and
7 the immigration court system it operates is a component agency. She is sued in her official
8 capacity.

9 30. Respondent Executive Office for Immigration Review (EOIR) is the federal agency
10 responsible for implementing and enforcing the INA in removal proceedings, including for
11 custody redeterminations in bond hearings.

12 31. Respondent, Warden of Bluebonnet Detention Facility where Petitioner is detained. He
13 has immediate physical custody of Petitioner. He is sued in his official capacity.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 32. Petitioner has exhausted all available administrative remedies, and no further
16 administrative relief is available or required.

17 33. The Immigration Court has determined that it lacked jurisdiction to conduct any custody
18 redetermination, Petitioner has no administrative mechanism through which to challenge
19 the legality, duration, or necessity of her detention. The Board of Immigration Appeals
20 likewise lacks jurisdiction to review custody determinations where no bond hearing may
21 be held.

22 34. Further administrative exhaustion would be futile. On or about January 13, 2026, Chief
23 Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration
24 judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to
vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to treat the BIA's
decision in *Matter of Yajure Hurtado* as binding precedent. EOIR guidance further states
that a "declaratory judgement" is not binding and lacks authority to compel specific action.
Under these circumstances, no administrative body within EOIR has authority to provide
the relief sought.

35. DHS's discretionary parole authority does not constitute an available or adequate
administrative remedy that must be exhausted prior to habeas review. Parole decisions are

1 committed to agency discretion, are not subject to neutral adjudication, and provide no
2 mechanism for Petitioner to challenge the legality of her detention. Courts have
3 consistently held that discretionary parole is not an exhaustion prerequisite to habeas
corpus relief.

4 36. Therefore, Petitioner has been categorically denied access to any administrative custody
5 review, and no adequate alternative remedy exists; exhaustion is either satisfied or excused
6 as futile. A writ of *habeas corpus* is the sole avenue to vindicate Petitioner's constitutional,
statutory, and regulatory rights and to restore her liberty.

7 LEGAL FRAMEWORK

8 37. The Immigration and Nationality Act ("INA") establishes multiple detention authorities
9 governing noncitizens in removal proceedings, depending on procedural posture and
10 statutory classification. These detention provisions operate against the backdrop of
11 constitutional limitations on civil confinement and long-recognized principles of
individualized custody review.

12 38. First, INA § 236(a), 8 U.S.C. § 1226(a), authorizes the discretionary detention of
13 noncitizens placed in full removal proceedings under INA § 240, 8 U.S.C. § 1229a.
14 Historically, individuals in section 1226(a) detention are entitled to a bond hearing at the
15 outset of their detention, *see* 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).

16 39. Second, INA § 235(b), 8 U.S.C. § 1225(b), governs the detention of noncitizens classified
17 as "applicants for admission," including individuals subject to expedited removal under
18 §1225(b)(1) and those referred to full removal proceedings under § 1225(b)(2). Section
19 1225(b)(2)(A) provides that certain applicants for admission "shall be detained" pending
removal proceedings, subject to limited parole authority.

20 40. Finally, the Act also provides for the detention of noncitizens who have previously been
21 ordered removed, including those in withholding-only proceedings. *See* 8 U.S.C. §
1231(a)-(b).

22 41. The detention provisions at section 1226(a) and 1225(b)(2) were enacted as part of the
23 Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub.
24 L. No. 104-208, Div. C. §§302-03, 110 Stat. 3009-546, 3009-582 to 3009-583, 3009-585.

1 Section 1226(c) was most recently amended earlier this year by the LRA, Pub. L. 119-1,
2 139 Stat. 3 (2025). Congress enacted these provisions against a longstanding background
3 principle that civil immigration detention must remain tied to legitimate regulatory
4 purposes and must comport with constitutional due-process requirements.

5 42. Following IIRIRA's enactment, the Executive Office for Immigration Review promulgated
6 regulations explaining that, as a general matter, noncitizens who entered without inspection
7 and were placed in § 240 removal proceedings were detained under § 1226(a), not §
8 1225(b). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of
9 Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323
10 (March 6, 1997). In the decades that followed, most noncitizens who entered without
11 inspection – unless they were subject to some other detention authority – received bond
12 hearings. This practice was also consistent with the pre-IIRIRA procedure, in which
13 noncitizens not deemed “arriving” were entitled to a custody hearing before an
14 Immigration Judge or other hearing officer. *See* 8 U.S.C. § 1252(a)(1994); *see also H.R.*
15 *Rep.* No. 104-469, pt. 1, at 229 (1996) (noting that section 1226(a) simply “restates” the
16 detention authority previously found at section 1252 (a)).

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

An “applicant for admission” is an alien present in the United States who
has not been admitted or who arrives in the United States, whether or not at
a designated port of arrival. INA § 235(a)(1). Effective immediately, it is
the position of DHS that such aliens are subject to detention under INA §
235(b) and may not be released from ICE custody except by INA §
212(d)(5) parole. These aliens are also ineligible for a custody
redetermination hearing (“bond hearing”) before an immigration judge and
may not be released for the duration of their removal proceedings absent a
parole by DHS. For custody purposes, these aliens are now treated in the

1 same manner that “arriving aliens” have historically been treated.
 2 **The only aliens eligible for a custody determination and release on**
 3 **recognizance, bond, or other conditions under INA § 236(a) during**
 4 **removal proceedings are aliens admitted to the United States**
 5 **and chargeable with deportability under INA § 237, with the exception**
 6 **of those subject to mandatory detention under INA § 236(c).**

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

- 18 44. As a result, DHS now considers all noncitizens who have entered the United States without
 19 inspection and are subject to the grounds of inadmissibility, including longtime U.S.
 20 residents, are now considered to be subject to mandatory detention under section § 1225(b)
 21 and ineligible for release on bond. Conversely, according to DHS “[t]he only aliens
 22 eligible for a custody determination and release on recognizances, bond, or other conditions
 23 under INA 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to
 24 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.*
45. On September 5, 2025, the BIA issued a precedential decision in *Matter of Yajure*
Hurtado, 29 I&N Dec. 216 (BIA 2025), holding that, based on the plain language of 8 U.S.C.
 §1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond
 to noncitizens who were present in the United States without admission.
46. On February 6, 2026, the United States Court of Appeals for the Fifth Circuit endorsed that
 statutory interpretation in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th
 Cir. Feb. 6, 2026), foreclosing purely statutory claims to bond hearings under § 1226(a)
 within this Circuit.
47. However, neither *Yajure Hurtado* nor *Buenrostro-Mendez* addressed – Much less resolved –
 the independent constitutional, administrative-law, equal-protection, Suspension Clause,

1 or *Accardi*-based limitations on prolonged civil detention without individualized review.
 2 As the Supreme Court made clear in *Jennings v. Rodriguez*, 583 U.S. 281, 302-03 (2018),
 3 the absence of the statutory bond entitlement does not eliminate constitutional constraints
 on detention or foreclose habeas review.

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

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

11 **A. *Buenrostro-Mendez* forecloses Petitioner's purely statutory entitlement theory under**
 12 **§ 1226(a), but it does not deprive this Court of habeas jurisdiction or resolve**
Petitioner's independent constitutional and other claims.

13 49. On February 6, 2026, a panel of the United States Court of Appeals for the Fifth Circuit
 14 issued its published opinion in *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701
 15 (5th Cir. Feb. 6, 2026). The panel held that noncitizens who are present in the United States
 16 without having been admitted or paroled—including those apprehended years after entry—
 17 are “applicants for admission” under 8 U.S.C. § 1225(a)(1) and are subject to mandatory
 18 detention under § 1225(b)(2)(A) pending removal proceedings under § 1229a. The panel
 19 further held that such individuals are not eligible for discretionary release on bond under §
 20 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.

21 50. This Court is bound by the Fifth Circuit's holding on the purely statutory question of
 22 whether § 1225(b)(2)(A) or § 1226(a) governs Petitioner's detention and whether she has
 23 a statutory entitlement to a bond hearing before an immigration judge. Petitioner
 24

1 respectfully acknowledges that, under *Buenrostro-Mendez*, Petitioner has no statutory right
2 to such a hearing.

3 51. However, the Fifth Circuit's decision does not resolve—and expressly did not reach—the
4 independent constitutional and other claims raised in this Petition. The panel in *Buenrostro-*
5 *Mendez* addressed only the statutory interpretation dispute and reversed the district courts
6 solely because they had granted bond hearings as a matter of statutory entitlement under §
7 1226(a). The panel had no occasion to consider due process challenges to prolonged or
8 indefinite mandatory detention without any individualized hearing, nor did it address
9 claims under the Administrative Procedure Act, the equal protection component of the Fifth
10 Amendment, the Suspension Clause.

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

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

19 53. Nothing in *Buenrostro-Mendez* strips this Court of jurisdiction under 28 U.S.C. § 2241 to
20 adjudicate constitutional challenges to immigration detention or to review whether the
21 Executive's custody scheme violates governing law. *Jennings* itself distinguishes
22 unreviewable discretionary custody judgments from reviewable questions of law and
23 constitutional claims. Likewise, *Zadvydas v. Davis*, 533 U.S. 678 (2001), and *Demore v.*
24 *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.

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

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

55. 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 her.

56. 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.*

57. Although Petitioner's detention is approximately two months old, since February 2026, a decision for an Appeal before the Board of Immigration Appeals, often takes years, given the current backlog. Absent any mechanism for individualized review, Petitioner faces a substantial risk of indefinite detention under penal conditions despite having no criminal history, no disciplinary infractions, demonstrated compliance, and no individualized finding of danger or flight risk.

58. 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.

59. 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 twelve 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

1 typically brief pending expedited processing. Extending it to individuals in full § 1229a
 2 proceedings with meritorious relief claims raises far graver liberty interests than the brief
 3 detention upheld in *Demore* or contemplated for true arriving aliens.

4 60. Petitioner is an El Salvador National with no criminal record, no history of violence, and
 5 strong humanitarian claims. Continued categorical detention without any hearing—where
 6 the government never has to justify his confinement by evidence—serves no legitimate
 7 purpose and is punitive in effect.

8 **PRESERVATION OF STATUTORY ARGUMENT FOR *EN BANC* OR SUPREME** 9 **COURT REVIEW**

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

14 a) The phrase “an alien seeking admission” in § 1225(b)(2)(A) is in the present tense and
 15 applies only to those actively seeking admission at the time of apprehension (e.g., at a port
 16 of entry or in active inspection), not to individuals living quietly in the interior years later.

17 b) The government's and panel's reading renders § 1226(a)'s bond provisions largely
 18 superfluous for the vast majority of noncitizens in removal proceedings who entered
 19 without inspection.

20 c) It contradicts three decades of consistent administrative practice (1997–2025), including
 21 EOIR regulations and DHS guidance treating such individuals as detained under § 1226(a).

22 d) It reverses the congressional intent behind IIRIRA, which sought to eliminate incentives
 23 for evading inspection but did not contemplate mandatory indefinite detention for long-
 24 present residents.

25 e) Over 350 district courts nationwide rejected the government's position in 2025–early
 26 2026 habeas cases, finding the text, structure, and history compel application of § 1226(a).

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

29 61. The APA claim remains viable because DHS's abrupt 2025 policy reversal—announced
 30 via internal memo without notice-and-comment or reasoned explanation for departing from

1 28 years of practice—is arbitrary and capricious under 5 U.S.C. § 706(2)(A). *Buenrostro-*
 2 *Mendez* did not address this administrative law challenge.

3 62. Because *Buenrostro-Mendez* resolved only the statutory interpretation question, it does not
 4 preclude (a) equal protection challenges to arbitrary detention classifications and disparate
 5 treatment without a rational basis, (b) Suspension Clause claims where the government's
 6 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).

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

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

13 64. To further preserve the statutory issue for potential *en banc* review by the Fifth Circuit or
 14 *certiorari* to the Supreme Court, Petitioner respectfully submits that the panel's decision in
 15 *Buenrostro-Mendez v. Bondi*, Nos. 25-20496 & 25-40701 (5th Cir. Feb. 6, 2026), is
 16 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).

17 65. In *Loper Bright*, the Supreme Court held that courts “must exercise their independent
 18 judgment in deciding whether an agency has acted within its statutory authority” and may
 19 no longer defer to an agency's interpretation of an ambiguous statute under *Chevron*. *Id.* at
 20 374. While agencies' views may still be entitled to respectful consideration under *Skidmore*
 21 *v. Swift & Co.*, 323 U.S. 134 (1944)—with persuasive force depending on factors such as
 22 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.

23 66. The panel in *Buenrostro-Mendez* did not adhere to this mandate. Although the panel
 24 conducted a textual analysis, its reasoning effectively accorded dispositive weight to the

1 Board of Immigration Appeals' recent interpretation in *Matter of Yajure Hurtado*, 29 I. &
2 N. Dec. 216 (BIA 2025)—a 2025 decision that abruptly reversed nearly three decades of
3 consistent administrative practice (1997–2025) treating unadmitted noncitizens
4 apprehended in the interior as subject to discretionary detention and bond eligibility under
5 § 1226(a). The panel adopted the BIA's new position wholesale, without acknowledging
6 or applying the *Skidmore* factors that, post-*Loper Bright*, should have diminished the
7 persuasive value of an inconsistent, late-breaking agency reversal.

67. Under *Skidmore* and *Loper Bright*, longstanding agency interpretations are entitled to
8 greater weight precisely because consistency and reliance interests bolster their
9 persuasiveness. Here, the opposite occurred: for 28 years, multiple administrations, EOIR
10 regulations, and DHS guidance uniformly applied § 1226(a) to individuals in Petitioner's
11 position. See, e.g., Inspection and Expedited Removal of Aliens; Detention and Removal
12 of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312,
13 10323 (Mar. 6, 1997). The BIA's 2025 reversal—prompted by a policy shift announced in
14 a July 2025 DHS memo lacks the hallmarks of thorough, consistent reasoning that could
15 earn persuasive force. Yet the panel endorsed it without critically examining this
16 inconsistency or independently weighing the superior reading supported by historical
17 practice, statutory structure, and the overwhelming majority of pre-2026 district court
18 decisions (over 350 nationwide).

15 68. This approach mirrors the deference prohibited by *Loper Bright*, as the panel appeared to
16 treat the agency's new litigating position and BIA precedent as authoritative rather than
17 exercising fully independent judgment. The panel dismissed the decades of contrary
18 practice as irrelevant (“The text says what it says, regardless of the decisions of prior
19 administrations”), effectively insulating the agency's reversal from meaningful judicial
20 scrutiny—the very dynamic *Loper Bright* rejected. As the dissent in *Buenrostro-Mendez*
21 recognized, the majority's reading amounts to “rubber stamp[ing]” the government's
22 “proposed legislation by executive fiat,” a concern heightened in the post-*Chevron* era
23 where courts must not abdicate their interpretive role.

22 69. The panel's failure to grapple with *Loper Bright*'s implications is particularly striking given
23 that the BIA itself invoked *Loper Bright* in *Yajure Hurtado* to assert that the statute is “clear
24 and unambiguous,” thereby attempting to preempt deference questions. But where

1 reasonable minds differ—as evidenced by the hundreds of district courts rejecting the
2 government's position, the dissent's detailed critique, and the statutory tensions (*e.g.*,
3 surplusage in § 1226(a), present-tense “seeking admission”)—*Loper Bright* requires courts
4 to resolve ambiguity independently, not to defer to an agency's self-serving declaration of
clarity after decades of interpreting the statute differently.

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

9 **COUNT I: UNLAWFUL DETENTION IN VIOLATION OF THE IMMIGRATION AND
NATIONALITY ACT (“INA”) AND IMPLEMENTING REGULATIONS**

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

12 72. The Immigration and Nationality Act authorize immigration detention only to the extent it
13 serves legitimate, non-punitive statutory purposes—namely, to ensure an individual's
14 appearance at future proceedings or to protect public safety. Detention that does not
15 advance those purposes, or that becomes arbitrary and indefinite, exceeds the government's
statutory authority. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*,
543 U.S. 371, 381 (2005).

16 73. Petitioner is a twenty-eight (28) year old El Salvador National, who entered the United
17 States on or about 2014, was placed into removal proceedings under INA § 240. She was
18 ordered removed by an Immigration Judge in Annandale, Virginia on June 21, 2021.
19 Petitioner filed an appeal with the Board of Immigration Appeals on July 21, 2021 which
remains pending.

20 74. Petitioner has no criminal convictions and no record of violence and has never exhibited
21 conduct suggesting danger to the community or risk of flight. Nothing in her immigration
22 file indicates that she poses a threat to public safety or that she would fail to appear for her
23 hearings if released.
24

1 75. Petitioner has been continuously detained in civil immigration custody since February
2 2026, she is currently confined at the Bluebonnet Detention Facility, 400 2nd Street, Anson,
3 Texas 79501.

4 76. Further administrative exhaustion would be futile. On or about January 13, 2026, Chief
5 Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration
6 judges that: “*Maldonado Bautista* is not a nationwide injunction and does not purport to
7 vacate, stay or enjoin *Yajure Hurtado*.” Immigration judges are instructed to treat the BIA’s
8 decision in *Matter of Yajure Hurtado* as binding precedent. EOIR guidance further states
9 that a “declaratory judgment” is not binding and lacks authority to compel specific action.
10 Under these circumstances, no administrative body within EOIR has authority to provide
11 the relief sought.

12 77. DHS’s discretionary parole authority does not constitute an available or adequate
13 administrative remedy that must be exhausted prior to habeas review. Parole decisions are
14 committed to agency discretion, are not subject to neutral adjudication, and provide no
15 mechanism for Petitioner to challenge the legality of her detention. Courts have
16 consistently held that discretionary parole is not an exhaustion prerequisite to habeas
17 corpus relief.

18 78. Therefore, Petitioner has been categorically denied access to any administrative custody
19 review, and no adequate alternative remedy exists; exhaustion is either satisfied or excused
20 as futile. A writ of habeas corpus is the sole avenue to vindicate Petitioner’s
21 constitutional, statutory, and regulatory rights and to restore her liberty.

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

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

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

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

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

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

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

24
**COUNT II: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE U.S. CONSTITUTION**

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

87. 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

1 and entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678,
2 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982)

3 88. Petitioner is an El Salvador National, who entered the United States on or about 2014. She
4 was placed into removal proceedings under INA § 240. An Immigration Judge ordered her
5 removed on June 21, 2021 in Annandale, Virginia. An appeal on the immigration judge's
6 decision was filed on July 21, 2021. Petitioner's brief was received by the Board of
7 Immigration Appeals on August 29, 2022. The appeal remains pending.

8 89. Petitioner has no criminal convictions, no record of violence, no pending criminal charges,
9 and has never exhibited conduct suggesting danger to the community or risk of flight, and
10 has consistently cooperated with immigration authorities since her apprehension.

11 90. Petitioner has been continuously detained in civil immigration custody since February
12 2026, when she was taken into ICE custody, and is now confined at the Bluebonnet
13 Detention Facility, 400 2nd Street, Anson, Texas 79501.

14 91. Petitioner is seeking a custody redetermination before the Immigration Court. Through
15 counsel she will provide evidence establishing that she poses no danger to the community,
16 has community ties and a stable place to reside, and is fully willing to comply with all
17 immigration court requirements.

18 92. Further administrative exhaustion would be futile. On or about January 13, 2026, Chief
19 Immigration Judge Teresa L. Riley issued nationwide guidance instructing all immigration
20 judges that: "*Maldonado Bautista* is not a nationwide injunction and does not purport to
21 vacate, stay or enjoin *Yajure Hurtado*." Immigration judges are instructed to treat the BIA's
22 decision in *Matter of Yajure Hurtado* as binding precedent. EOIR guidance further states
23 that a "declaratory judgment" is not binding and lacks authority to compel specific action.
24 Under these circumstances, no administrative body within EOIR has authority to provide
the relief sought.

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

94. Immigration detention implicates a fundamental liberty interest. While Congress may
authorize civil detention in the immigration context, such detention must remain

1 reasonably related to its non-punitive purposes—ensuring appearance at proceedings and
2 protecting public safety—and must comport with basic procedural due process. *Zadvydas*,
3 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 527–28 (2003).

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

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

14 97. Petitioners’ appeal is likely to remain pending for many additional months or years. Absent
15 any mechanism for individualized review, Petitioner faces a substantial risk of prolonged
16 or indefinite detention under penal-like conditions without any finding that her
17 confinement is necessary to serve the government’s legitimate interests.

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

21 a.) No immigration judge may conduct a bond hearing;

22 b.) DHS is not required to justify continued detention with evidence; and

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

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

100. The government’s detention of Petitioner without any individualized assessment also
violates substantive due process. Detaining an individual seeking Asylum with no criminal

1 history, no dangerousness, and no flight risk—without requiring the government to justify
2 detention or consider less restrictive alternatives—renders the confinement excessive and
3 punitive in effect.

4 101. Because Immigration Judges have disclaimed jurisdiction and DHS has provided no
5 alternative constitutionally adequate custody process, habeas corpus is the only effective
6 mechanism by which Petitioner may test the legality of her confinement. Continued
7 detention under these circumstances offends the core protections of the Due Process
8 Clause.

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

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

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

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

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

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

5 107. Despite these facts, DHS has maintained Petitioner's detention for an extended and
6 potentially indefinite period without providing any reasoned explanation or evidence that
7 continued confinement serves a legitimate statutory purpose. DHS has failed to articulate
why release under supervision, bond, or other alternatives would be insufficient.

8 108. DHS's reliance on *Matter of Yajure Hurtado* to justify continued detention is arbitrary and
9 contrary to law. *Yajure Hurtado* addresses the jurisdiction of Immigration Judges to
10 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,
11 recognizance, supervision, or bond.

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

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

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

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

1 112. Civil immigration detention is statutorily limited to non-punitive purposes— ensuring
2 appearance at proceedings and protecting public safety. DHS’s continued detention of
3 Petitioner, without individualized justification and without consideration of alternatives,
4 does not advance either purpose and therefore exceeds lawful agency discretion.

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

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

13 **COUNT IV: VIOLATION OF THE EQUAL PROTECTION GUARANTEE OF THE**
14 **FIFTH AMENDMENT**

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

17 116. The Due Process Clause of the Fifth Amendment contains an implicit guarantee of equal
18 protection that prohibits the federal government from treating similarly situated individuals
19 differently without a rational and legitimate governmental purpose. *Reno v. Flores*, 507
20 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Bolling v. Sharpe*, 347 U.S.
21 497, 499 (1954).

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

118. 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. She has cooperated fully with immigration authorities since entering ICE
custody. Yet Petitioner alone is categorically denied access to any individualized custody
review.

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

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

7 121. Equal protection requires that detention classifications bear a rational relationship to a
8 legitimate governmental purpose. *Village of Willowbrook v. Olech*, 528 U.S. 562, 564
9 (2000). Civil immigration detention is permissible only insofar as it serves the non-punitive
10 purposes of ensuring appearance at proceedings or protecting public safety. *Zadvydas v.*
Davis, 533 U.S. 678, 690 (2001).

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

14 123. Instead, DHS relies on a categorical rule that treats similarly situated individuals differently
15 based solely on entry-related labels that bear no rational relationship to present-day
16 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.

17 124. Moreover, federal courts have recognized that immigration detention classifications must
18 comport with fundamental fairness and may not be applied arbitrarily or discriminatorily.
19 *See, e.g., Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th Cir. 2011) (government must
20 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).

21 125. The irrationality of this classification is heightened by the government's own prior practice.
22 For nearly three decades, DHS and EOIR treated noncitizens in Petitioner's posture as
23 eligible for individualized custody determinations. DHS's abrupt departure from that
24

1 settled practice—without individualized justification—underscores the arbitrariness of the
2 disparate treatment imposed here.

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

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

10 **COUNT V: VIOLATION OF THE SUSPENSION CLAUSE OF THE UNITED STATES**
11 **CONSTITUTION**

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

14 129. The Suspension Clause of the United States Constitution provides that “[t]he Privilege of
15 the *Writ of Habeas Corpus* shall not be suspended, unless when in Cases of Rebellion or
16 Invasion the public Safety may require it.” U.S. Const. art. I, § 9, cl. 2. The Clause
17 guarantees the availability of judicial review to challenge the lawfulness of executive
18 detention. *Boumediene v. Bush*, 553 U.S. 723, 745–46 (2008); *INS v. St. Cyr*, 533 U.S. 289,
19 300–05 (2001).

20 130. *Habeas corpus* remains available to all persons in the United States who are detained by
21 executive authority, including noncitizens in civil immigration custody. The Supreme
22 Court has repeatedly held that Congress—and a fortiori the Executive—may not eliminate
23 all avenues of meaningful judicial review of the legality of detention. *St. Cyr*, 533 U.S. at
24 305–06; *Boumediene*, 553 U.S. at 779.

131. Petitioner is detained solely under civil immigration authority and is currently confined at
the Bluebonnet Detention Facility. She has no criminal convictions, no pending criminal
charges, no history of violence, and her appeal remain pending before the Board of
Immigration Appeals.

132. Chief Immigration Judge Teresa L. Riley’s nationwide guidance instructing all
immigration judges that they lack jurisdiction to consider bond or conduct any
Individualized custody determination, relying exclusively on *Matter of Yajure Hurtado*, 29

1 I. & N. Dec. 216 (BIA 2025) renders further administrative exhaustion futile. This
2 classification—based on disputed and unreviewed allegations regarding the manner and
3 timing of Petitioner’s entry—forecloses access to the custody redetermination process
4 available to other § 240 respondents.

5 133. Because the Immigration Judge lack of jurisdiction, Petitioner has no administrative
6 pathway to challenge the legality, duration, or necessity of his detention. The Board of
7 Immigration Appeals likewise lacks jurisdiction to review custody determinations in which
8 no bond hearing can be held. ICE has also declined to provide any individualized parole or
9 custody assessment.

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

14 135. The Suspension Clause forbids the government from implementing a detention scheme that
15 eliminates all meaningful opportunity for detainees to test the legality of their confinement.
16 *Boumediene*, 553 U.S. at 779 (“The writ must be effective.”). When no adequate and
17 effective substitute exists, *habeas* review is constitutionally required. *St. Cyr*, 533 U.S. at
18 305.

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

23 137. The government’s application of *Matter of Yajure Hurtado* to categorically bar all custody
24 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.

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

PRAYER FOR RELIEF

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

1. Assume jurisdiction over this habeas corpus action pursuant to 28 U.S.C. §§ 2241 and 1331;
2. Pursuant to 28 U.S.C. § 2243, issue an order to show cause directing Respondents to file a return within three (3) days, absent good cause for a short extension not exceeding ten days, and set the matter for a prompt hearing;
3. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this action, absent further order of the Court;
4. Declare that Petitioner's continued detention violates the Constitution and laws of the United States, including but not limited to the Due Process Clause of the Fifth Amendment; the equal protection component of the Fifth Amendment; the Suspension Clause of Article I, Section 9 of the United States Constitution; the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and the Accardi doctrine, based on Respondents' failure to comply with binding immigration arrest regulations;
5. Grant the *writ of habeas corpus* and order Petitioner's immediate release from ICE custody; OR in the alternative, order Respondents to provide Petitioner with a prompt, constitutionally adequate, and individualized custody determination before a neutral decisionmaker with actual authority to order release, at which the government bears the burden of proving—by clear and convincing evidence—that continued detention is necessary to serve a legitimate governmental purpose and that no less restrictive conditions of supervision would suffice;
6. Award Petitioner her costs and reasonable attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable authority; and
7. Grant any other further relief this Court deems just and proper.

Respectfully submitted this 31ST day of March, 2026

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Respectfully submitted,

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on this 31ST day of March 2026, a true and correct copy of the foregoing was filed and served via the Court's CM/ECF system on all counsel of record.

/s/ Abraham J. Galaviz
Abraham J. Galaviz

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