

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 AUSTIN DIVISION
4

5 HUGO ENRIQUE IBARRA PEREZ §

6 Petitioner; §

7 §

8 V. §

9 §

10 Todd Blanche, §

11 Acting Attorney General §

12 of the United States; §

13 §

14 §

15 Warden, T. Don Hutto Detention Center; §

16 §

17 Michael Vergara, §

18 Field Office Director, ICE; §

19 §

20 David J. Venturella, §

21 Senior Official Performing the Duties §

22 of the Director ICE; §

23 §

24 Markwayne Mullin, §

25 Secretary, Department of Homeland §

26 Security; §

27 §

28 §

29 Respondents. §

30 §

Civ. No. 26-2217

DHS File Number: 

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF;
PETITION FOR HABEAS CORPUS

31 PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241 AND
32 COMPLAINT FOR PRELIMINARY INJUNCTIVE RELIEF

33 Petitioner, Hugo Enrique Ibarra Perez, respectfully petitions this Honorable Court for a Writ of
34 Habeas Corpus pursuant to 28 U.S.C. § 2241 and seeks declaratory and preliminary injunctive
35 relief to remedy his unlawful civil detention by the Department of Homeland Security ("DHS")
36 and U.S. Immigration and Customs Enforcement ("ICE").

37 Petitioner, Alien Registration Number  is a native and citizen of Mexico who was
38 born on  He entered the United States without inspection in 2006 and has
39 continuously resided in the United States since then, for the last twenty (20) years. Throughout

40 these last twenty years, Petitioner has maintained steady employment, paid taxes, and established
41 deep family and community ties in the United States. These facts are reflected in the intake
42 materials and immigration records provided to counsel.

43 United States Citizenship and Immigration Services ("USCIS") has approved a Petition for Alien
44 Relative filed on Petitioner's behalf through his US citizen spouse, in November 2022. Petitioner
45 then filed an Application for a Provisional Unlawful Presence Waiver, in May 2024, which
46 application currently remains pending before USCIS. Petitioner's application is based on the
47 corroborated extreme hardship his US citizen wife and three (3) US citizen children ages 6, and
48 4 (twins), would suffer, if the family is separated as part of Petitioner's immigration process. The
49 immigration records submitted with this Petition document Petitioner's family based petition
50 approval, and pending provisional Waiver for Unlawful Presence. Petitioner's continued
51 detention has resulted in significant hardship to his wife and children, who depend upon him for
52 financial and emotional support.

53 On or about August 1st, 2026, Petitioner was pulled over while driving to work as part of a
54 traffic stop in Bastrop County, Texas. He was not issued a ticket nor issued a traffic citation. He
55 was immediately taken into ICE custody. Petitioner has no criminal convictions reflected in the
56 information available to counsel and has lived a law-abiding life in the United States,
57 maintaining steady employment and supporting his family. He is currently detained at the T. Don
58 Hutto Detention Center in Taylor, Texas.

59 Removal proceedings are pending before the Immigration Court. According to the Executive
60 Office for Immigration Review's Automated Case Information System, Petitioner's case was
61 docketed on August 4, 2026, remains pending, and no future hearing has been scheduled.

62 Petitioner has resided in the United States for nearly twenty years, has no criminal history, is
63 married to a United States citizen, is the father of three United States citizen children, and
64 presents neither a danger to the community nor a meaningful risk of flight. USCIS has approved
65 a Petition to Alien Relative on his behalf, through his US citizen spouse, and he currently has an
66 Application for Provisional Unlawful Presence Waiver pending adjudication also before USCIS.
67 He has completed biometrics for this application. Nevertheless, Respondents continue to deprive
68 him of his liberty through civil detention without providing a prompt opportunity for meaningful
69 judicial or administrative review of that detention. Petitioner therefore seeks immediate habeas
70 relief and all other appropriate declaratory and injunctive relief authorized by law.

71 PARTIES

- 72 1. Respondent **Michael Vergara** is the Field Office Director for U.S. Immigration and
73 Customs Enforcement ("ICE"), San Antonio Field Office, and is responsible for
74 Petitioner's continued detention.
- 75 2. Respondent **The Warden of the T. Don Hutto Detention Center**, not known by name,
76 is Petitioner's immediate custodian.
- 77 3. Respondents **Markwayne Mullin**, Secretary of the Department of Homeland Security
78 ("DHS"); **David J. Venturella**, Senior Official Performing the Duties of the Director of
79 U.S. Immigration and Customs Enforcement; and **Todd Blanche**, Acting Attorney
80 General of the United States, are federal officials acting under color of federal law and
81 are responsible for the authority pursuant to which Petitioner is detained.

82 CUSTODY

- 83 4. Petitioner is in the physical custody and control of Respondents within this judicial
84 district.

JURISDICTION AND VENUE

85

86 5. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 because Petitioner is in federal
87 custody and alleges that his custody violates the Constitution and laws of the United
88 States; pursuant to 28 U.S.C. § 1331 because this action arises under federal law and the
89 Constitution; pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202; and
90 pursuant to the Court’s traditional equitable authority and the All Writs Act, 28 U.S.C. §
91 1651.

92 6. A petition under § 2241 is the traditional mechanism for challenging the legality of
93 present physical confinement, including immigration detention. *Zadvydas v. Davis*, 533
94 U.S. 678, 687 (2001).

95 7. The Supreme Court has repeatedly recognized federal habeas jurisdiction over
96 constitutional and legal challenges to immigration detention. *Demore v. Kim*, 538 U.S.
97 510, 516–17 (2003); *INS v. St. Cyr*, 533 U.S. 289, 300–14 (2001).

98 8. Statutory limitations on judicial review, including 8 U.S.C. §§ 1226(e), 1252(a)(2),
99 1252(b)(9), 1252(g), and related provisions, do not bar this action because Petitioner does
100 not seek judicial review of a final removal order, the commencement of removal
101 proceedings, the execution of a removal order, or a discretionary bond determination.

102 9. Petitioner instead challenges the constitutional and legal basis for present physical
103 confinement and the absence of a meaningful individualized procedure capable of
104 resulting in release.

105 10. Section 1226(e) does not prevent review of constitutional challenges to the statutory
106 framework or procedures governing detention. *Jennings v. Rodriguez*, 583 U.S. 281,
107 295–96, 303–12 (2018).

108 11. Section 1252(b)(9) likewise does not bar jurisdiction because Petitioner's claims concern
109 detention and are collateral to the merits of his removal proceedings. *Id.* at 292–95.

110 12. Petitioner's injury is physical confinement, not the institution or continuation of removal
111 proceedings.

112 13. His claims can be fully adjudicated without determining whether Petitioner is removable
113 or ultimately entitled to immigration relief.

114 14. To the extent Respondents contend that any provision of § 1252 must be interpreted to
115 eliminate meaningful habeas review of the legality of Petitioner's present physical
116 confinement, that construction would raise the serious Suspension Clause concerns
117 addressed separately below.

118 15. Venue is proper because Petitioner is confined at the T. Don Hutto Detention Center in
119 Taylor, Texas, within the Western District of Texas.

120 16. Petitioner's immediate physical custodian is located within this District.

121 17. Venue is therefore proper under 28 U.S.C. §§ 1391(e) and 2241. See *Rumsfeld v. Padilla*,
122 542 U.S. 426, 434–35, 442–43 (2004).

123 **EXHAUSTION**

124 18. Petitioner has exhausted all administrative remedies available to him, or, alternatively,
125 exhaustion should be excused because no adequate or effective administrative remedy
126 exists to challenge the legality of his continued detention. Petitioner's claims arise under
127 the Constitution and laws of the United States and are properly brought pursuant to 28
128 U.S.C. § 2241. To the extent any administrative remedies remain theoretically available,
129 requiring further exhaustion would be futile because those procedures cannot provide the
130 prompt judicial review necessary to remedy Petitioner's ongoing deprivation of liberty.

131 19. Petitioner has remained continuously detained by ICE since approximately August 1,
132 2026. Although removal proceedings have been initiated, the Executive Office for
133 Immigration Review reflects that Petitioner's case is merely pending, and no future
134 hearing has been scheduled. Even if a hearing is scheduled, the Petitioner will not be
135 afforded an opportunity to present evidence that he is not dangerous and is not a flight
136 risk. Currently, immigration bond hearings are often illusory, with bond rarely granted.
137 However, when conducted under safeguards imposed by federal courts, these hearings
138 become more meaningful, and the likelihood of obtaining bond improves somewhat.

139 20. In addition, bond hearings are *"no substitute for the requirement that ICE engage in a*
140 *deliberative process prior to, or contemporaneous with, the initial decision to strip a*
141 *person of the freedom that lies at the heart of the Due Process Clause."* *Cruz-Reyes*, 2026
142 WL 332315, at *5 (quotation marks omitted). *"The suggestion that government agents*
143 *may sweep up any person they wish without consideration of dangerousness or flight risk,*
144 *so long as the person will, at some unknown future date, be allowed to ask some other*
145 *official for his or her release, offends the ordered system of liberty that is the pillar of the*
146 *Fifth Amendment."* *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626, at *5
147 (S.D.N.Y. Oct. 19, 2025). Further, in cases of re-detention of a noncitizen in violation of
148 the Fifth Amendment, *"a post-deprivation bond hearing before a DHS officer or even an*
149 *immigration judge would provide no genuine opportunity to relief because the detention*
150 *without adequate pre-deprivation procedures has already been carried out."* (Emphasis
151 added). *Rodriguez-Acurio v. Almodovar*, ___ F. Supp. 3d ___, ___, No. 2:25CV-6065
152 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). As a result, Petitioner
153 continues to be deprived of his liberty without any meaningful opportunity to obtain
154 prompt judicial review of the legality or necessity of his continued civil detention.

155 21. Petitioner has no adequate administrative mechanism through which to obtain the relief
156 requested in this action. A writ of habeas corpus is therefore the appropriate and
157 necessary vehicle to challenge the legality of his continued detention and to vindicate his
158 rights under the Fifth Amendment to the United States Constitution.

159 **STATEMENT OF FACTS**

160 22. Petitioner, Hugo Enrique Ibarra Perez, is a native and citizen of Mexico. He was born on
161  and entered the United States in approximately 2006. Since that time,
162 Petitioner has continuously resided in the United States, for the last twenty years.

163 23.

164 24. United States Citizenship and Immigration Services ("USCIS") has approved a Petition
165 for Alien Relative filed on Petitioner's behalf through his US citizen spouse, in
166 November 2022. Petitioner then filed an Application for a Provisional Unlawful Presence
167 Waiver, in May 2024, which application currently remains pending before USCIS.
168 Petitioner's application is based on the corroborated extreme hardship his US citizen wife
169 and three (3) US citizen children ages 6, and 4 (twins), would suffer, if the family is
170 separated as part of Petitioner's immigration process.

171 25. Petitioner's wife and children rely upon him for financial, emotional, and familial
172 support.

173 26. Petitioner's family, employment, and community ties are all located within the United
174 States.

175 27. Petitioner has maintained steady employment in his adult life, has paid taxes, and has no
176 criminal convictions reflected in the information available to counsel.

177 28. Prior to his current detention, Petitioner lived openly in Texas, maintained stable
178 employment, and established substantial ties to his community.

179 29. On or about August 1, 2026, Petitioner was stopped while driving to work as part of an
180 alleged traffic stop in Bastrop County, Texas. Petitioner was not convicted of any
181 criminal offense arising from that encounter before being transferred to immigration
182 authorities. Following the traffic stop, officers transferred Petitioner to the custody of
183 U.S. Immigration and Customs Enforcement ("ICE"). Petitioner is presently detained at
184 the T. Don Hutto Detention Center, where he has remained continuously confined.

185 30. Removal proceedings have been initiated against Petitioner. According to the Executive
186 Office for Immigration Review's Automated Case Information System, Petitioner's case
187 was docketed on August 4, 2026 and remains pending. However, no future hearing has
188 been scheduled, and Petitioner continues to be detained while awaiting further action in
189 his immigration proceedings.

190 31. Petitioner's continued detention serves no legitimate governmental purpose. Petitioner
191 has resided in the United States for twenty years, entered this country without inspection
192 in search of a better life and security, has a United States citizen spouse and children, has
193 an approved Petition for Alien Relative and a pending Application for a Provisional
194 Waiver, and has demonstrated strong and enduring ties to his community. He poses
195 neither a danger to the community nor a meaningful risk of flight.

196 32. Despite these compelling equities, Respondents continue to detain Petitioner without
197 affording him a prompt and meaningful opportunity to challenge the necessity of his
198 continued civil detention. As a result, Petitioner's continued confinement violates the Due
199 Process Clause of the Fifth Amendment and the governing provisions of the Immigration
200 and Nationality Act.

201 **LEGAL FRAMEWORK**

202 33. Pursuant to 28 U.S.C. § 2243, this Court must either grant the instant Petition for Writ of
203 Habeas Corpus or issue an Order directing Respondents to show cause within three days
204 why the writ should not be granted, unless it appears from the Petition that Petitioner is
205 not entitled to relief. If the Court issues an Order to Show Cause, Respondents must file a
206 return "within three days unless for good cause additional time, not exceeding twenty
207 days, is allowed." 28 U.S.C. § 2243.

208 34. The Fifth Amendment to the United States Constitution guarantees that no person shall
209 be deprived of liberty without due process of law. It is well established that noncitizens
210 physically present in the United States are entitled to the protections of the Due Process
211 Clause during removal proceedings. *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting
212 *Reno v. Flores*, 507 U.S. 292, 306 (1993)).

213 35. The Supreme Court has repeatedly recognized that "[f]reedom from imprisonment—from
214 government custody, detention, or other forms of physical restraint—lies at the heart of
215 the liberty that the Due Process Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690
216 (2001). Immigration detention is civil rather than criminal in nature and therefore must
217 remain reasonably related to its legitimate governmental purposes.

218 36. Although Congress has authorized the detention of certain noncitizens during removal
219 proceedings, that authority is subject to constitutional limitations. Civil detention must
220 bear a reasonable relationship to its regulatory purpose and may not become arbitrary,
221 excessive, or punitive in violation of the Fifth Amendment. See *Demore*, 538 U.S. at
222 527–28; *Zadvydas*, 533 U.S. at 690.

223 37. The Supreme Court has recognized that the legitimate purposes of civil immigration
224 detention include ensuring a noncitizen's appearance at future immigration proceedings

225 and protecting the community from danger. Detention that is not reasonably related to
226 either of these purposes exceeds constitutional limits. *Zadvydas*, 533 U.S. at 690;
227 *Demore*, 538 U.S. at 528.

228 38. Habeas corpus under 28 U.S.C. § 2241 remains the traditional mechanism through which
229 federal courts review the legality of executive detention. Federal district courts possess
230 jurisdiction to determine whether continued immigration detention complies with the
231 Constitution and laws of the United States.

232 39. Petitioner presents exceptionally strong equities demonstrating that continued detention is
233 unnecessary. Petitioner entered the United States without detection in search of a better
234 life and safety, and has resided continuously in this country for twenty years. USCIS has
235 **approved a Petition for Alien Relative on his behalf**, and currently USCIS has an
236 Application pending for him for a Provisional Unlawful Presence Waiver. Petitioner has
237 completed biometrics with USCIS. Petitioner as an adult has maintained steady
238 employment, paid taxes, and supported his family. He has established deep family and
239 community ties, is married to a US citizen, and is the father of US citizen children.

240 40. Petitioner has no criminal convictions reflected in the information available to counsel
241 and has demonstrated throughout his adult life that he is neither a danger to the
242 community nor a meaningful flight risk. Prior to his detention, Petitioner lived openly in
243 Texas, maintained steady employment, and supported his United States citizen family.

244 41. Petitioner's removal proceedings remain pending before the Immigration Court.
245 According to the Executive Office for Immigration Review's Automated Case
246 Information System, Petitioner's case was docketed on August 4, 2026, remains pending,
247 and no future hearing has been scheduled. Petitioner therefore continues to remain in civil

detention while awaiting further proceedings without a scheduled hearing before the Immigration Court.

42. Under these circumstances, Petitioner's continued detention without a prompt and meaningful opportunity to obtain review of the necessity of that detention raises serious constitutional concerns. The Due Process Clause requires that civil detention remain reasonably related to its regulatory purposes and not become an arbitrary deprivation of liberty.

43. Because Petitioner presents substantial evidence that he poses neither a danger to the community nor a meaningful risk of flight, and because Respondents continue to deprive him of his liberty while removal proceedings remain pending without a scheduled hearing, judicial intervention is necessary to ensure that Petitioner's continued detention comports with the Constitution and laws of the United States.

GOVERNING CONSTITUTIONAL PRINCIPLES

44. The Due Process Clause of the Fifth Amendment protects every "person" within the United States, including noncitizens, from arbitrary deprivation of liberty. U.S. Const. amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Freedom from physical restraint lies at the core of the liberty protected by due process. *Id.* at 690.

45. Civil detention is a severe deprivation of liberty even when imposed in the immigration context. *Id.*

46. Because immigration detention is civil rather than criminal, it may not be imposed as punishment. *Id.* at 690–91. Civil confinement must bear a reasonable relationship to a legitimate, nonpunitive governmental purpose. *Id.*

270 47. The Supreme Court has identified preventing flight and protecting the community as
271 regulatory purposes supporting immigration detention. *Demore v. Kim*, 538 U.S. 510, 528
272 (2003). Even when Congress authorizes detention, that authority remains subject to
273 constitutional limitations. *Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018).

274 48. In *Jennings*, the Supreme Court rejected a statutory interpretation that inserted periodic
275 bond-hearing requirements into immigration detention statutes. *Id.* at 296–304. The Court
276 expressly did not decide the merits of the constitutional challenges and remanded them
277 for further consideration. *Id.* at 312.

278 49. Thus, *Jennings* does not hold that mandatory detention is constitutionally permissible in
279 every application, under every procedure, or for every duration. Instead, *Jennings*
280 confirms that the statutory and constitutional inquiries are distinct.

281 50. Due process requires procedures appropriate to the nature and severity of the deprivation.
282 *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

283 51. A meaningful opportunity to be heard must occur at a meaningful time and in a
284 meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

285 52. Where the Government physically confines a person, due process requires meaningful
286 procedures sufficient to test the factual and legal basis for confinement. See *Hamdi v.*
287 *Rumsfeld*, 542 U.S. 507, 533 (2004).

288 53. The risk of erroneous confinement must be addressed through procedural protections
289 proportionate to the profound liberty interest at stake. *Addington v. Texas*, 441 U.S. 418,
290 425–33 (1979).

291 54. In *Addington*, the Supreme Court required clear and convincing evidence in the
292 civil-commitment context because physical confinement implicates an exceptionally
293 significant liberty interest and the consequences of erroneous confinement are grave. *Id.*

55. By analogy, where the Government seeks to continue civil immigration incarceration on the ground that an individual is dangerous or likely to flee, a heightened evidentiary standard is necessary to appropriately allocate the risk of error.

56. The Government should therefore bear the burden of establishing the necessity of continued confinement by clear and convincing evidence.

STATUTORY DETENTION FRAMEWORK

57. Respondents are expected to contend that Petitioner is detained under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), because he entered the United States without inspection and was never formally admitted or paroled.

58. Section 1225(b)(2)(A) provides that, subject to specified exceptions, an applicant for admission whom an examining immigration officer determines is not clearly and beyond a doubt entitled to admission “shall be detained” for removal proceedings.

59. Section 1226(a), by contrast, authorizes the arrest and detention of a noncitizen pending a decision on whether the person is to be removed and permits release on bond or conditional parole. 8 U.S.C. § 1226(a).

60. Petitioner maintains that § 1226(a) is the provision most naturally applicable to a person who has lived continuously in the interior for approximately twenty years, was apprehended far from the border, was not attempting to enter the country, and is proceeding through ordinary removal proceedings under INA § 240.

61. Applying a border-oriented mandatory-detention provision to a settled interior resident apprehended more than twenty years after entry collapses the practical distinction between persons arriving at the border and persons already living in the United States.

62. Petitioner was not “seeking admission” in any ordinary or contemporaneous sense when ICE detained him.

318 63. He was living with his United States citizen wife and children, working, paying taxes,
 319 and pursuing a family-based immigration process, with a Petition for Alien Relative
 320 already approved and an Application for a Provisional Waiver pending.

321 64. Petitioner recognizes, however, that the Fifth Circuit held in *Buenrostro-Mendez v. Bondi*,
 322 166 F.4th 494, 502–08 (5th Cir. 2026), that an unadmitted noncitizen may be detained
 323 under § 1225(b)(2)(A) after residing in the interior for many years.

324 65. In *Buenrostro-Mendez*, the Fifth Circuit concluded that §§ 1225 and 1226 may overlap
 325 and that the Government may detain under § 1225(b)(2)(A) persons who entered without
 326 inspection and were later apprehended in the interior. *Id.* at 502–06.

327 66. The Court therefore rejected the argument that § 1226(a) necessarily supplies the
 328 exclusive detention authority for every long-term interior resident placed in ordinary
 329 removal proceedings. *Id.*

330 67. Petitioner preserves his statutory argument for further review and in light of any
 331 subsequent authority modifying, distinguishing, or overruling *Buenrostro-Mendez*.

332 68. The statutory holding in *Buenrostro-Mendez*, however, does not resolve this Petition.
 333 *Buenrostro-Mendez* addressed which statutory provision authorized detention. It did not
 334 decide whether the Fifth Amendment permits the Government to exercise §
 335 1225(b)(2)(A) detention authority categorically, without any individualized assessment of
 336 the necessity of confinement and without a meaningful procedure capable of resulting in
 337 release.

338 69. Statutory authorization and constitutional sufficiency are separate questions. Congress's
 339 authorization of civil detention does not eliminate the Fifth Amendment's protection
 340 against arbitrary or excessive physical confinement. *Zadvydas v. Davis*, 533 U.S. 678,
 341 690–91 (2001).

342 70. Accordingly, even if § 1225(b)(2)(A) provides the statutory authority for Petitioner's
343 detention, Respondents' exercise of that authority remains subject to procedural and
344 substantive due process.

345 **THE PENDING *EN BANC* PROCEEDINGS IN *SOSNAVA RODRIGUEZ* CONFIRM**
346 **THAT THE CONSTITUTIONAL QUESTION WAS NOT RESOLVED BY**
347 ***BUENROSTRO-MENDEZ***

348 71. The constitutional question implicated by Petitioner's claims is presently before the Fifth
349 Circuit sitting en banc in *Sosnava Rodriguez v. Ortega*, No. 26-50183, consolidated with
350 Nos. 26-50219 and 26-50221.

351 72. The petitioners in *Sosnava Rodriguez* were long-term residents who had entered without
352 inspection years earlier, were later arrested in the interior, had no criminal histories, and
353 were detained pursuant to § 1225(b)(2)(A) without individualized custody
354 determinations.

355 73. Like Petitioner, those petitioners did not rely exclusively on the contention that § 1226(a)
356 supplied the applicable detention authority. They also presented independent
357 constitutional challenges to physical detention without a meaningful opportunity to
358 establish that incarceration was unnecessary.

359 74. On July 2, 2026, a divided panel of the Fifth Circuit issued a published opinion
360 addressing those constitutional claims. *Sosnava Rodriguez v. Ortega*, 174 F.4th 221,
361 228–41 (5th Cir. 2026), reh'g en banc granted and opinion vacated, No. 26-50183, 2026
362 WL 2014647 (5th Cir. July 10, 2026). Because the panel opinion has been vacated,
363 Petitioner does not rely upon it as binding precedent.

364 75. The vacated panel accepted *Buenrostro-Mendez* as controlling on the statutory question
365 and recognized that § 1225(b)(2)(A) required detention as a matter of statutory
366 interpretation. *Sosnava Rodriguez*, 174 F.4th at 232–34, opinion vacated.

367 76. The panel nevertheless treated the independent constitutional question as analytically
368 distinct. *Id.* at 234–41. The panel concluded that, after a specified period, continued
369 detention without individualized custody review violated due process. *Id.* at 240–41.

370 77. On July 10, 2026, the Fifth Circuit, acting on its own motion, granted rehearing en banc
371 and vacated the panel opinion pursuant to Fifth Circuit Rule 41.3. *Sosnava Rodriguez v.*
372 *Ortega*, No. 26-50183, 2026 WL 2014647, at *1 (5th Cir. July 10, 2026).

373 78. The vacated panel opinion therefore does not constitute binding circuit precedent while
374 en banc proceedings remain pending. See *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460,
375 468 (5th Cir. 2013).

376 79. The procedural posture of *Sosnava Rodriguez* nevertheless remains relevant to defining
377 what *Buenrostro-Mendez* did and did not decide. The grant of rehearing *en banc* did not
378 transform *Buenrostro-Mendez* into a constitutional holding.

379 80. *Buenrostro-Mendez* did not hold that detention under § 1225(b)(2)(A) is constitutionally
380 permissible in every individual case, under every procedure, regardless of the factual
381 necessity for incarceration.

382 81. Nor has the Fifth Circuit held that long-term interior residents detained pursuant to §
383 1225(b)(2)(A) possess no procedural-due-process rights concerning the necessity of
384 physical confinement.

385 82. The pendency of *en banc* review therefore does not eliminate this Court's obligation to
386 adjudicate the individual habeas petition before it under presently binding Supreme Court
387 and Fifth Circuit authority.

388 **83. Petitioner's loss of liberty is occurring now.** His constitutional injury does not cease
389 merely because appellate proceedings involving other detainees remain pending.

390 84. Petitioner suffers a continuing loss of physical liberty each day he remains detained.

391 85. His wife and children continue to suffer the loss of his financial, practical, and emotional
392 support.

393 86. His household obligations likewise continue notwithstanding his confinement.

394 87. Habeas corpus exists to test the legality of present physical detention, not merely to
395 provide retrospective relief after detention has already inflicted irreparable harm. See
396 *Preiser v. Rodriguez*, 411 U.S. 475, 484–87 (1973).

397 88. This Court should therefore adjudicate Petitioner's individual constitutional claims under
398 existing Supreme Court authority, binding circuit precedent, and the particular facts of
399 this case rather than postpone consideration indefinitely pending the resolution of
400 separate en banc proceedings.

401 89. In addition, Respondents may request that this Court postpone adjudication of
402 Petitioner's constitutional claims pending the Fifth Circuit's en banc decision in *Sosnava*
403 *Rodriguez*.

404 90. Such a delay would impose the entire cost of appellate uncertainty upon Petitioner's
405 physical liberty. The Fifth Circuit has not directed district courts to stay all habeas
406 petitions raising constitutional challenges to § 1225(b)(2)(A) detention. Nor has the Fifth
407 Circuit issued a controlling decision holding that such constitutional claims fail as a
408 matter of law.

409 91. Petitioner's alleged constitutional injury is occurring now.

410 92. Every additional day of unconstitutional confinement represents an additional deprivation
411 of liberty that cannot later be restored.

93. Habeas corpus protects present physical liberty and should not be transformed into a remedy available only after the detention it challenges has already run its course.

94. This Court therefore can and should adjudicate Petitioner's individual constitutional challenge under existing binding authority while the separate en banc proceedings remain pending.

**PETITIONER'S CONSTITUTIONAL CLAIM DOES NOT DEPEND SOLELY UPON
THE NUMBER OF DAYS HE HAS BEEN DETAINED**

95. Petitioner's constitutional challenge does not rest solely upon the passage of a particular number of days.

96. The constitutional defect began with the process through which Respondents deprived Petitioner of liberty and continues because no neutral decisionmaker has determined that incarceration is necessary.

97. Respondents detained Petitioner following an encounter that apparently began as an alleged minor traffic violation.

98. Petitioner was not arrested for criminal conduct.

99. Petitioner has no criminal history.

100. He has lived in the United States for approximately twenty years.

101. He is married to a United States citizen and has a United States citizen children ages 6 and 4 (twins).

102. He has maintained employment, filed taxes, and supported his household.

103. He is pursuing a family-based immigration process through consular processing and a waiver, of which the first part has been approved, the Petition for Alien Relative and the second part, the Provisional Waiver application currently remains pending before USCIS.

104. Yet Respondents have provided no written individualized finding of danger.

105. Respondents have provided no written individualized finding of flight risk.

106. Respondents have provided no written explanation why reporting requirements, supervision, electronic monitoring, ISAP, or other conditions would be inadequate.

107. Respondents have provided no neutral adjudicator possessing authority to test those questions and order Petitioner's release.

108. Instead, Petitioner's incarceration follows categorically from Respondents' legal classification of him under § 1225(b)(2)(A).

109. A statutory detention classification may identify persons whom the Government has statutory authority to detain, but it does not answer the distinct constitutional question whether continued physical incarceration is necessary in this individual case.

110. Nor does a statutory classification eliminate the requirement that the Government's exercise of civil detention authority remain constitutionally permissible.

111. The Government may not answer every individualized circumstance with an irrebuttable presumption that every person classified under § 1225(b)(2)(A) must remain physically incarcerated regardless of actual danger, actual flight risk, family ties, community stability, available alternatives, or the circumstances of apprehension.

112. The Due Process Clause requires examination of the actual deprivation imposed upon Petitioner, the procedures accompanying that deprivation, the risk of erroneous confinement, and the governmental interests asserted. *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976).

113. Those considerations overwhelmingly favor meaningful individualized review in Petitioner's case.

THE *MATHEWS V. ELDRIDGE* FACTORS REQUIRE ADDITIONAL PROCESS

114. Courts determine what process is constitutionally due by considering: (1) the private interest affected; (2) the risk of erroneous deprivation under the procedures employed and the probable value of additional safeguards; and (3) the Government's interest, including the administrative burden associated with additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

115. Each factor favors the Petitioner.

1. Petitioner's Private Interest Is Profound

116. The private interest at stake is freedom from physical imprisonment.

117. The Supreme Court has repeatedly described that interest as lying at the heart of the liberty protected by due process. *Zadvydas*, 533 U.S. at 690.

118. Detention also separates Petitioner from his United States citizen wife and children, prevents him from supporting his household, jeopardizes his employment, threatens the family's ability to meet its financial obligations, and materially impairs his ability to participate in his immigration proceedings.

119. These collateral consequences magnify an already fundamental deprivation.

2. Existing Procedures Create an Acute Risk of Erroneous Confinement

120. The procedures employed by Respondents create an intolerably high risk that a person who could safely and reliably be released will instead remain unnecessarily incarcerated.

121. Petitioner has not received a hearing at which Respondents must establish that continued incarceration is necessary.

122. Petitioner has not received a written custody decision explaining the individualized evidence supporting detention. Petitioner has not received an individualized assessment of danger. Petitioner has not received an individualized assessment of flight risk.

123. Petitioner has not received meaningful consideration of less restrictive alternatives.

124. Petitioner has not received a decision accounting for his lack of criminal history, longstanding residence, US citizen wife and children, employment, tax compliance, approved and ongoing family-based immigration process, and willingness to comply with reasonable conditions.

125. The risk of error is heightened by the opacity of Respondents' decisionmaking.

126. ICE has not articulated in writing why Petitioner must remain physically confined.

127. Without a written explanation, Petitioner cannot meaningfully identify, challenge, or correct factual errors.

128. A reviewing court likewise lacks a developed custody record against which to test whether continued confinement is individualized and supported by evidence.

129. The failure to provide basic notice of the factual grounds for incarceration undermines the meaningful opportunity to be heard required by due process. See *Armstrong v. Manzo*, 380 U.S. 545, 550–52 (1965).

130. Petitioner's detention also arose from an encounter that did not result in any charges.

131. That unusual circumstance further increases the need for deliberate individualized review rather than categorical incarceration.

132. A neutral hearing, a Government burden of proof, meaningful consideration of alternatives, and a reasoned written decision would materially reduce the risk of erroneous confinement.

The Government's Legitimate Interests Can Be Protected Through Less Restrictive Means

133. The Government has legitimate interests in ensuring Petitioner's appearance and protecting the public. Those interests do not require physical incarceration where reasonable conditions can adequately mitigate any individualized concern.

134. Petitioner has no criminal history and presents no evidence of danger.

135. Petitioner has a United States citizen wife and children, a fixed residence, a long term employment, an immigration route with an approval and the next step in process, professional obligations, tax records, and substantial community ties.

136. Those ties materially reduce any rational concern regarding flight.

137. Petitioner is willing to report regularly, maintain an updated address, participate in electronic monitoring or ISAP if individually demonstrated to be necessary, comply with geographic restrictions, and attend every immigration proceeding.

138. Respondents could therefore employ the concrete alternatives identified above rather than continuing physical incarceration.

139. Although the Petitioner recognizes that immigration bond hearings currently do not result in freedom, individualized custody determinations are already familiar features of federal immigration administration. Requiring Respondents to justify physical incarceration before a neutral decisionmaker does not impose an extraordinary administrative burden.

140. It requires procedures proportionate to the gravity of the liberty deprivation imposed.

141. The burden of conducting individualized review is minimal when compared with the profound cost of erroneously imprisoning a person who could safely be released.

142. The *Mathews* balance therefore strongly favors additional procedural safeguards.

A Neutral Decisionmaker Must Possess Actual Authority to Order Release

143. A hearing is not meaningful if the adjudicator lacks authority to grant effective relief.

528 144. Respondents' asserted classification of Petitioner under § 1225(b)(2)(A), together
529 with the administrative interpretation reflected in *Matter of Yajure Hurtado*, 29 I. & N.
530 Dec. 216, 218–22 (B.I.A. 2025), deprives immigration judges of ordinary bond
531 jurisdiction over persons falling within Petitioner's asserted category.

532 145. As a result, Petitioner cannot obtain meaningful review merely by requesting an
533 immigration-court bond hearing that the immigration judge believes he or she lacks
534 jurisdiction to conduct.

535 146. Due process requires review by a neutral decisionmaker who possesses actual
536 authority to order release.

537 147. Any hearing ordered by this Court must therefore require an adjudicator possessing
538 authority to release Petitioner if Respondents fail to satisfy their constitutional burden.

539 148. By analogy to *Addington*, the severity of the deprivation requires a heightened
540 standard that meaningfully minimizes the risk of erroneous incarceration.

541 149. Requiring Petitioner to prove a negative—that he is not dangerous and will not
542 flee—would improperly allocate that risk to the person whose liberty has already been
543 taken.

544 150. Respondents should therefore be required to establish by clear and convincing
545 evidence that Petitioner presents a danger to the community or a flight risk that cannot
546 reasonably be mitigated through conditions of release.

547 **THE PURPORTED ADMINISTRATIVE REMEDIES ARE INADEQUATE**
548 **(BOND HEARINGS ARE OFTEN ILLUSORY)**

549 151. The Petitioner is barred from seeking relief through administrative custody
550 procedures. Respondents' asserted legal position is that Petitioner is subject to mandatory

detention under § 1225(b)(2)(A) and is not eligible for an ordinary immigration-judge bond determination.

152. A process that the agency considers legally unavailable is not an adequate remedy.

153. Even if some form of custody review were theoretically available, that process would not resolve Petitioner's constitutional injury unless the adjudicator possessed authority to release him, Respondents bore an appropriate burden, less restrictive alternatives were meaningfully considered, Petitioner received adequate notice and preparation time, and the adjudicator provided a reasoned written decision.

154. If release is administratively denied, appeal to the Board of Immigration Appeals may leave Petitioner detained for a substantial period while the appeal remains pending. During that period, Petitioner would continue suffering the precise deprivation challenged in this action.

155. Delayed review incapable of timely remedying ongoing physical confinement is not an adequate substitute for habeas relief.

156. Habeas corpus exists to address unlawful detention where administrative remedies are unavailable, ineffective, inadequate, or incapable of providing timely relief. 28 U.S.C. § 2241(c)(3); *Boumediene v. Bush*, 553 U.S. 723, 779 (2008).

A later hearing also does not erase constitutional harm caused by prior detention imposed without adequate procedures.

157. The constitutional deprivation continues for so long as unsupported physical confinement persists.

158. Moreover, a constitutionally meaningful alternative hearing must afford counsel sufficient advance notice and preparation time to assemble supporting documentation,

secure witnesses where appropriate, obtain relevant records, and prepare Petitioner and his family.

159. If this Court orders an alternative hearing instead of immediate release, the order should therefore require reasonable advance notice to counsel, adequate preparation time, a neutral adjudicator with release authority, a clear-and-convincing Government burden, consideration of alternatives, and a written ruling.

160. A subsequent bond hearing does not cure ICE's failure to engage in a reasoned, individualized assessment before—or at the time of—the initial decision to deprive a person of liberty. *Cruz-Reyes*, 2026 WL 332315, at *5. Due process does not permit government agents to detain individuals without first considering dangerousness or flight risk merely because those individuals may, at some uncertain future date, request release from another official. *Gonzalez v. Joyce*, No. 25 Civ. 8250 (AT), 2025 WL 2961626, at *5 (S.D.N.Y. Oct. 19, 2025).

161. This principle is particularly important in cases involving unconstitutional re-detention because a post-deprivation bond hearing before either DHS or an immigration judge **cannot** undo the constitutional injury caused by detention imposed without adequate pre-deprivation procedures. *Rodriguez-Acurio v. Almodovar*, ___ F. Supp. 3d ___, ___, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025).

162. Accordingly, immediate release nevertheless remains the remedy that most directly redresses the present constitutional injury.

595 **CLAIMS FOR RELIEF**
596 **COUNT ONE - VIOLATION OF THE FIFTH AMENDMENT – SUBSTANTIVE AND**
597 **PROCEDURAL DUE PROCESS**

598 163. Petitioner realleges and incorporates by reference paragraphs above of this Petition as
599 though fully set forth herein.

600 164. Petitioner's continued civil detention violates his rights to substantive and procedural
601 due process guaranteed by the Fifth Amendment to the United States Constitution.

602 165. The Due Process Clause of the Fifth Amendment prohibits the federal government
603 from depriving any person of liberty without due process of law. U.S. Const. amend. V.
604 Those protections extend to noncitizens physically present in the United States, including
605 those in pending removal proceedings.

606 166. Petitioner entered the United States in 2006 and has continuously resided in this
607 country for twenty years. Throughout his adult life, Petitioner has maintained lawful
608 employment, paid taxes, began an immigration process, and established substantial
609 family and community ties. He is married to a US citizen and is the father of a US citizen
610 children.

611 167. Petitioner has no criminal convictions reflected in the information available to
612 counsel and presents neither a danger to the community nor a meaningful risk of flight.
613 Prior to his detention, Petitioner resided openly in Texas, maintained steady employment,
614 and supported his family.

615 168. Respondents have not explained why reporting, supervision, electronic monitoring,
616 ISAP, or other release conditions would be inadequate.

617 169. Under these circumstances, categorical incarceration is excessive in relation to the
618 legitimate regulatory interests traditionally associated with immigration detention.

619 170. Respondents may possess an interest in ensuring Petitioner's appearance, but
620 incarceration is not reasonably necessary where less restrictive measures can adequately
621 accomplish that purpose.

622 171. Respondents may possess an interest in protecting the public, but they have identified
623 no conduct suggesting that Petitioner threatens public safety.

624 172. Continued physical confinement without an individualized relationship to danger or
625 flight risk therefore operates punitively rather than merely regulatorily.

626 173. Punishment may not be imposed through civil immigration detention without the
627 protections accompanying criminal prosecution. *Zadvydas*, 533 U.S. at 690–91.

628 174. Petitioner has remained in ICE custody since approximately August 1, 2026.
629 Although removal proceedings are pending, the Executive Office for Immigration
630 Review reflects that no future hearing has been scheduled, and Petitioner continues to be
631 deprived of his liberty while awaiting further proceedings.

632 175. Under these circumstances, Petitioner's continued detention has become arbitrary and
633 unreasonable. Civil immigration detention must remain reasonably related to its
634 legitimate regulatory purposes, including ensuring a noncitizen's appearance at future
635 proceedings and protecting the community. Continued detention without a meaningful
636 opportunity to challenge its necessity violates the Due Process Clause of the Fifth
637 Amendment.

638 176. Petitioner's substantial equities—including his longtime residence in the United
639 States, approved Petition for Alien Relative and pending Provisional Waiver application,
640 steady employment history, United States citizen spouse and children, and lack of
641 criminal convictions reflected in the record—demonstrate that less restrictive alternatives

642 to detention are available and that continued detention is not reasonably necessary to
643 accomplish the purposes of the immigration laws.

644 177. This Court also presents an as-applied constitutional challenge to the procedures
645 Respondents have afforded this Petitioner in connection with his present physical
646 detention.

647 178. Petitioner possesses a fundamental liberty interest in freedom from physical restraint.

648 179. Respondents have deprived and continue to deprive Petitioner of that liberty.

649 180. Respondents have not provided Petitioner with a meaningful individualized custody
650 determination before a neutral decisionmaker possessing authority to order release.

651 181. Respondents have not been required to prove by clear and convincing evidence that
652 Petitioner presents a danger or flight risk that cannot reasonably be mitigated through
653 release conditions.

654 182. Respondents have not provided a written decision stating individualized reasons for
655 continued confinement.

656 183. No adjudicator has meaningfully considered less restrictive alternatives.

657 184. The procedures accompanying Petitioner's detention create an acute risk of erroneous
658 deprivation.

659 185. Petitioner's private interest is fundamental, the risk of error is substantial, the value of
660 additional safeguards is significant, and the Government's administrative burden is
661 modest.

662 186. Under *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976), the procedures afforded
663 Petitioner are constitutionally insufficient.

664 187. In this individual case, due process requires at minimum meaningful notice of the
665 grounds asserted for confinement, a neutral decisionmaker possessing authority to release

Petitioner, a Government burden commensurate with the severity of physical incarceration, meaningful consideration of alternatives, and a reasoned written decision if confinement continues.

188. Respondents' detention of Petitioner without those basic procedural safeguards violates the procedural component of the Fifth Amendment as applied to Petitioner.

189. Accordingly, Petitioner's continued detention violates the substantive and procedural protections guaranteed by the Fifth Amendment to the United States Constitution, and he is entitled to appropriate habeas and declaratory relief.

COUNT TWO
STATUTORY CLAIM – VIOLATION OF THE IMMIGRATION
AND NATIONALITY ACT

190. Petitioner realleges and incorporates by reference paragraphs above of this Petition as though fully set forth herein.

191. The Immigration and Nationality Act authorizes immigration detention only for legitimate civil and regulatory purposes authorized by Congress. That authority is limited by the Constitution and does not permit arbitrary, punitive, or indefinite civil detention that bears no reasonable relationship to its lawful objectives.

192. Petitioner's removal proceedings remain pending before the Immigration Court. Although the Executive Office for Immigration Review has docketed Petitioner's case, no hearing has been scheduled, and Petitioner continues to remain in ICE custody without a prompt and meaningful opportunity to obtain review of the necessity of his continued detention.

193. Petitioner has substantial equities demonstrating that continued detention is unnecessary, including his nearly twenty years of residence in the United States, his approved Petition for Alien relative and pending application for Provisional Unlawful

691 Presence Waiver, with biometrics completed, his steady employment history, his United
692 States citizen spouse and children, and the absence of criminal convictions reflected in
693 the information available to counsel.

694 194. Under these circumstances, Respondents' continued detention of Petitioner exceeds
695 the lawful purposes of civil immigration detention and is contrary to the Immigration and
696 Nationality Act as applied in a manner consistent with the Due Process Clause of the
697 Fifth Amendment.

698 195. Petitioner maintains that 8 U.S.C. § 1226(a), rather than § 1225(b)(2)(A), is the
699 detention provision most naturally applicable to a long-term interior resident apprehended
700 approximately twenty years after entry and placed in ordinary removal proceedings under
701 INA § 240.

702 196. Petitioner was not apprehended while seeking admission, was not encountered at or
703 near the border, and was not processed as a recent entrant.

704 197. Petitioner recognizes that *Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 502–08 (5th
705 Cir. 2026), presently permits DHS to apply § 1225(b)(2)(A) to an unadmitted person
706 apprehended in the interior.

707 198. Petitioner preserves his contrary statutory position for *en banc*, Supreme Court, or
708 other further review and in light of any subsequent controlling authority.

709 199. Regardless of the disposition of that preserved statutory claim, Petitioner's
710 independent constitutional claims remain properly before this Court.

711 200. *Buenrostro-Mendez* did not decide whether detention authorized under §
712 1225(b)(2)(A), as applied to a long-term interior resident, may continue categorically
713 without constitutionally adequate individualized process.

201. Respondents' reliance upon statutory detention authority therefore does not defeat the other Counts raised here.

202. Petitioner is therefore entitled to habeas relief under 28 U.S.C. § 2241, together with such declaratory and injunctive relief as this Court deems just and proper.

COUNT THREE - ATTORNEYS' FEES AND COSTS

203. If he prevails, Petitioner requests attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412. The undersigned counsel recognizes the Fifth Circuit's decision in *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023) ruling that fees are not available to be awarded in 28 U.S.C. § 2241. Nonetheless, the issue is ripe for redetermination at the Fifth Circuit. At least two Circuit Courts and two district courts have disagreed with *Barco*. See *Vacchio v. Ashcroft*, 404 F.3d 663, 670-72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985); *Abioye v. Oddo*, 2024 U.S. Dist. LEXIS 174205 (W. D. Penn. 2024); *Arias v. Choate*, 2023 U.S. Dist. LEXIS 119907 (Dist. Colo. 2023). Given ICE's recent actions in detaining individuals without substantial justification, EAJA fees are needed to ensure attorneys can confront detention that is unconstitutional.

SUSPENSION CLAUSE — PRESERVATION OF MEANINGFUL HABEAS REVIEW

204. Petitioner incorporates by reference Paragraphs above as though fully set forth herein.

205. The Suspension Clause protects the availability of habeas corpus to test the legality of executive detention. U.S. Const. art. I, § 9, cl. 2.

206. The writ has historically provided a mechanism for obtaining release from unlawful physical custody. *Boumediene v. Bush*, 553 U.S. 723, 739–52 (2008).

207. Petitioner does not ask this Court to facially invalidate 8 U.S.C. § 1226(e), § 1252, or any other jurisdictional provision of the INA.

208. Petitioner instead seeks an interpretation of those provisions that preserves constitutionally adequate habeas review of his present physical confinement.

740 209. If any provision of the INA were construed to prevent this Court from reviewing
741 Petitioner's legal and constitutional challenge to present physical confinement altogether,
742 such a construction would raise grave Suspension Clause concerns.

743 210. No adequate substitute exists where the immigration court is asserted to lack bond
744 jurisdiction and no alternative administrative procedure provides sufficiently timely,
745 neutral, constitutionally adequate review capable of ordering Petitioner's release.

746 211. Petitioner must therefore retain a meaningful opportunity to test the legality of his
747 detention through habeas corpus. See *INS v. St. Cyr*, 533 U.S. 289, 300–14 (2001).

748 212. This Court should construe the relevant jurisdictional provisions consistently with the
749 Suspension Clause and exercise jurisdiction over Petitioner's claims.

750 213. This Court possesses authority to grant effective relief from unlawful physical
751 detention.

752 **PRAYER FOR RELIEF**

753 WHEREFORE, Petitioner respectfully requests that this Court:

754 A. Assume jurisdiction over this action;

755 B. Immediately issue an Order to Show Cause directing Respondents to show cause within three
756 days, or within another brief period established by the Court consistent with 28 U.S.C. § 2243,
757 why the writ should not be granted;

758 C. Declare that Respondents' continued detention of Petitioner without constitutionally adequate
759 individualized process violates the Due Process Clause of the Fifth Amendment;

760 D. Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to immediately
761 release Petitioner from immigration custody under such reasonable conditions of supervision and
762 reporting as this Court deems appropriate;

763 E. Only in the alternative to immediate release, order Respondents to provide Petitioner, within a
764 short and definite time established by this Court, a constitutionally adequate individualized
765 custody hearing before a neutral decisionmaker possessing actual authority to order release;

766 F. Require at any alternative custody hearing that Respondents bear the burden of proving by
767 clear and convincing evidence that continued physical detention is necessary because Petitioner
768 presents a danger to the community or a flight risk that cannot reasonably be mitigated through
769 conditions of release;

770 G. Require the neutral decisionmaker to meaningfully consider less restrictive alternatives to
771 detention, including reporting requirements, supervision, electronic monitoring where
772 individually demonstrated to be necessary, ISAP participation, reasonable geographic
773 restrictions, and other appropriately tailored conditions;

774 H. Require the neutral decisionmaker to order Petitioner's release if Respondents fail to satisfy
775 their burden;

776 I. Require the neutral decisionmaker to issue a contemporaneous written decision stating the
777 individualized factual and legal reasons for any continued detention and explaining why less
778 restrictive alternatives would be inadequate;

779 J. Require Respondents to provide undersigned counsel with reasonable advance notice of the
780 exact date and time of any Court-ordered custody hearing and sufficient time to prepare
781 evidence, witnesses, and a complete release package;

782 K. Enjoin Respondents, absent further order of this Court, from transferring Petitioner outside
783 the Western District of Texas during the pendency of this habeas action without reasonable
784 advance notice to Petitioner's counsel and this Court, provided that nothing in such order need
785 prohibit an emergency or medically necessary transfer that does not frustrate this Court's habeas
786 jurisdiction and for which counsel receives notice as soon as reasonably practicable;

787 L. Enjoin Respondents, absent further order of this Court, from removing Petitioner from the
788 United States during the pendency of this habeas proceeding without reasonable prior notice to
789 counsel and leave of Court sufficient to preserve this Court's jurisdiction and ability to grant
790 effective habeas relief;

791 M. Retain jurisdiction to ensure Respondents' prompt and complete compliance with any order
792 granting relief;

793 N. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice
794 Act, 28 U.S.C. § 2412, or any other applicable authority, to the extent Petitioner ultimately
795 qualifies for such an award; and

796 O. Grant such other and further relief as this Court deems just and proper.

797 Respectfully submitted on August 12, 2026.

798 */s/ Lourdes M. Leal Oteiza*

799 Lourdes M. Leal Oteiza

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806 Counsel for Petitioner

807 Admitted into the Western District of Texas

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

810 I represent Petitioner and submit this verification on his behalf.

811 I verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and
812 Complaint for Declaratory and Injunctive Relief are true and correct to the best of my
813 knowledge, information, and belief, based upon consultation notes, communications with
814 Petitioner and his family, immigration records, and other records available to undersigned
815 counsel.

816 Dated: August 12, 2026.

817 */s/ Lourdes M. Leal Oteiza*

818 Lourdes M. Leal Oteiza

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834 CERTIFICATE OF SERVICE

835 I certify that on August 12, 2026, I filed the foregoing through the Court's CM/ECF system,
836 which will provide electronic notice to all registered counsel of record.

837 To the extent required by Federal Rule of Civil Procedure 4(i), Petitioner will additionally effect
838 service upon the United States Attorney for the Western District of Texas, the Attorney General
839 of the United States, and the appropriate federal officers or agencies in accordance with the
840 applicable Federal Rules of Civil Procedure.

841 */s/ Lourdes M. Leal Oteiza*

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