

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

RENE GARIBAY-ROBLEDO,  
Petitioner,

Civil Action No. 1:25-cv-00177-H

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security;  
TODD LYONS, in his official capacity as  
Director of U.S. Immigration and  
Customs Enforcement;  
JOSH JOHNSON, in his official capacity  
as Acting Director of the Dallas Field  
Office of ICE, Enforcement and Removal  
Operations; and  
MARCELLO VILLEGAS, in his official  
capacity as Warden of the Bluebonnet  
Detention Center,  
Respondents.

**PETITIONER'S CORRECTED  
PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 U.S.C. § 2241  
AND REQUEST FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**TO THE HONORABLE JUDGE HENDRIX:**

**I. INTRODUCTION**

1. Petitioner Rene Garibay-Robledo is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Bluebonnet Detention Center in Anson, Texas. Mr. Garibay has resided continuously in the United States since 1994.

2. On September 4, 2025, Immigration Judge Abdias Tida denied Petitioner's bond request, citing a lack of jurisdiction. This denial relied on recent Board of Immigration Appeals ("BIA") precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). However, numerous federal district court, including several from within the jurisdiction of the United States Court of Appeals

for the Fifth Circuit, have made clear that noncitizens detained under INA § 236(a) are entitled to individualized bond hearings.

3. Petitioner seeks habeas relief to compel such a hearing, or release, and further seeks a temporary restraining order and preliminary injunction ordering Respondents to provide such relief without delay.

## II. JURISDICTION AND VENUE


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

5. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek classwide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as “*Reno v. AADC*”). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

6. Venue is proper in this District, and in the Abilene Division, because Petitioner is detained at the Bluebonnet Detention Center in Anson, Texas, within this Court’s

jurisdiction, despite the fact that Petitioner's detention is controlled by the Dallas Field Office of ICE – Enforcement and Removal Operations.

### III. PARTIES

7. Petitioner, Rene Garibay-Robledo (A# ) , a citizen and national of Mexico. He was detained by Respondents following a dismissed criminal proceeding and is currently in active removal proceedings under 8 U.S.C. § 1229a (INA § 240), for which he currently appears by video teleconference (WebEx) before the El Paso Immigration Court.<sup>1</sup>

8. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security (“DHS”). She is sued in her official capacity.

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

10. Respondent JOSH JOHNSON is the Acting Director of the Dallas Field Office of ICE – Enforcement and Removal Operations. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

11. Respondent, MARCELLO VILLEGAS, is the Warden of the Bluebonnet Detention Center, which is located at 400 E 2nd St, Anson, Texas 79501, and is responsible for housing noncitizens from various regions of Texas in ICE custody

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<sup>1</sup> Despite the fact that the El Paso Immigration Court is the administrative control docket, the immigration judge who denied bond due to lack of jurisdiction, Immigration Judge Abdias Tida, is ordinarily presides over immigration cases in Houston. See Executive Office for Immigration Review, Houston Jefferson Street Immigration Court – Staff Directory, available at: <https://www.justice.gov/eoir/houston-jefferson-street-immigration-court> (last accessed Sept. 10, 2025).

pending the completion of their removal proceedings. He is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this verified petition.

12. Respondents Noem and Lyons, who represent DHS and ICE, are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act ("APA").

#### **IV. FACTUAL BACKGROUND**

13. Petitioner entered the United States without inspection on or about March 1, 1994, and he has lived here continuously since that date.

14. On August 14, 2025, DHS initiated removal proceedings charging Petitioner under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)], for being present without inspection and admission.

15. On September 2, 2025, Counsel for DHS lodged an additional charge under INA § 212(a)(7)(A)(i)(I) [8 U.S.C. § 1182(a)(7)(A)(i)(I)], for lacking valid entry documents.

16. On September 4, 2025, IJ Tida denied Petitioner's bond request citing lack of jurisdiction.

17. Meanwhile, Petitioner's recent federal criminal indictment for firearm possession under 18 U.S.C. § 922(g)(5) was dismissed on August 6, 2025.

18. Petitioner has family in Texas, strong community ties, and no current criminal convictions barring release.

#### **V. LEGAL FRAMEWORK**

19. Section 236(a) of the Immigration and Nationality Act (the "INA"), 8 U.S.C. § 1226(a), authorizes the Attorney General to release noncitizens on bond pending removal

proceedings. INA § 235(b), 8 U.S.C. § 1225(b), governs mandatory detention for certain arriving aliens.

20. The Supreme Court has confirmed the distinction between these statutory schemes. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (explaining differences between § 235(b) mandatory detention and § 236(a) discretionary custody).

21. The Board of Immigration Appeals itself recognized for decades that noncitizens who were in § 240 proceedings after entry without inspection were eligible for custody redeterminations. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (recognizing IJ authority to conduct bond hearings and discussing factors for consideration).

22. Recent BIA decisions to the contrary in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), do not bind this Court, especially as they are in direct contravention of the plain language of the relevant statutory provisions of INA § 236(a) governing bond hearings of noncitizens who are present in the United States after entering without inspection.

## VI. CLAIMS FOR RELIEF

### Count I – Violation of INA § 236(a) [8 U.S.C. § 1226(a)]

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

24. Respondents' refusal to provide Petitioner with an individualized custody redetermination hearing violates the INA and controlling precedent of the United States Court of Appeals for the Fifth Circuit.

25. INA § 236(a), 8 U.S.C. § 1226(a), provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether

the alien is to be removed from the United States,” and that the Attorney General “may continue to detain the arrested alien” or “may release the alien on—(A) bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.”

26. By its plain text, § 236(a) applies to all noncitizens arrested and detained pending removal proceedings unless mandatory detention under § 236(c) applies.

27. In interpreting the plain language of Section 236(a), various federal district courts across the country have confirmed that noncitizens detained under Section 236(a) are statutorily eligible for individualized bond determinations before an immigration judge. Thus, the Attorney General must consider bond application by detained aliens pending the outcome of their removal proceedings, since immigration judges retain jurisdiction to conduct custody redetermination hearings under that provision.

28. Respondents have relied on *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), in which the BIA held that certain noncitizens who entered without inspection are to be treated as “applicants for admission” subject to mandatory detention under INA § 235(b). These decisions purport to eliminate immigration judges’ bond jurisdiction for individuals like Petitioner, who entered without inspection in 1994.

29. Petitioner was served with a Notice to Appear in August 2025 charging him as inadmissible under INA § 212(a)(6)(A)(i), see Ex. A, I-213 Form for Rene Garibay, and an additional charge was later lodged under § 212(a)(7)(A)(i)(I). See Ex. B, I-261 Form for Rene Garibay.

30. Petitioner is now in removal proceedings under INA § 240 [8 U.S.C. § 1229a], and his case remains pending before the detained docket of the El Paso Immigration Court. Because Petitioner is detained in the context of ongoing removal proceedings, his custody is governed by § 236(a), not § 235(b).

31. On September 4, 2025, IJ Abdias Tida denied Petitioner's bond request, expressly citing a "lack of jurisdiction." *See Ex. C, IJ Decision - Bond Denied*. That ruling was based on the erroneous premise that Petitioner's detention is governed by INA § 235(b), consistent with the BIA's recent decisions. However, the IJ had jurisdiction to conduct a bond redetermination hearing under § 236(a), and Petitioner was entitled to such a hearing.

32. By refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), Respondents have acted contrary to statutory authority. Petitioner's continued detention without access to an individualized custody redetermination violates the INA and must be corrected through habeas relief.

33. Accordingly, this Court should grant the writ and order that Petitioner receive an individualized bond hearing under INA § 236(a), as mandated by controlling law in this Circuit.

#### **Count II – Fifth Amendment Due Process Violation**

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

35. Petitioner's continued detention without access to an individualized custody redetermination hearing also violates the Due Process Clause of the Fifth Amendment. Prolonged detention without bond review is arbitrary, punitive, and unconstitutional.

36. The Supreme Court has long recognized that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Immigration detention is civil in nature, but it nonetheless implicates this fundamental liberty interest.

37. Petitioner has been detained at the Bluebonnet Detention Center since August 2025. On September 4, 2025, the Immigration Judge refused to consider bond, stating he lacked jurisdiction. *See* Ex. C, IJ Decision - Bond Denied. As a result, Petitioner has been categorically barred from presenting evidence that he is not a danger to the community and that he poses no flight risk. The blanket denial of access to a bond hearing strips Petitioner of the individualized determination required by due process.

38. Unlike noncitizens subject to INA § 236(c) mandatory detention for serious criminal offenses, Petitioner has no qualifying convictions that justify a categorical denial of release. His only recent criminal case—a federal indictment for firearm possession under 18 U.S.C. § 922(g)(5)—was dismissed in August 2025. *See* Ex. D, Order Dismissing Federal Charge; *see* Ex. E, Government’s Motion to Dismiss Indictment. The government has no legitimate basis to insist that Petitioner’s detention be mandatory, yet he remains confined with no opportunity for release.

39. The plain language of INA § 236(a), 8 U.S.C. § 1226(a), makes clear that individuals apprehended inside the United States are entitled to seek an individualized bond determinations. Denying Petitioner any access to such a hearing deprives him of procedural protections guaranteed by the Due Process Clause. Moreover, prolonged

detention without meaningful review violates the substantive limits of due process, as articulated in *Zadvydas* and *Demore v. Kim*, 538 U.S. 510 (2003).

40. Petitioner is a long-time resident of the United States, with nearly thirty years of continuous presence. He has strong family and community ties in Texas. There has been no finding that he is a danger to the community or a flight risk. Yet, solely because of recent, erroneous BIA decisions, he has been categorically denied the process to which he is entitled. This amounts to an arbitrary deprivation of liberty in violation of the Fifth Amendment.

41. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be afforded an immediate bond hearing, or that he be released from custody pending the final outcome of his § 240 removal proceedings.

### **Count III – Unlawful Agency Action (APA)**

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

43. Respondents' continued detention of Petitioner without affording him a bond hearing also constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706. The abrupt departure from longstanding precedent without reasoned explanation violates the Administrative Procedure Act.

44. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a), including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). That framework allowed for individualized custody determinations consistent with both statutory text and constitutional principles.

45. In 2025, the BIA issued *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which held that certain noncitizens who entered without inspection are subject to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b). These decisions abruptly stripped immigration judges of bond authority for a large class of detainees, including Petitioner, without notice-and-comment rulemaking and without reasoned explanation for abandoning prior precedent.

46. The APA requires agencies to engage in reasoned decision-making, and prohibits arbitrary or capricious action. 5 U.S.C. § 706(2)(A). The BIA's reversal of decades of established law without acknowledging or adequately explaining its departure is the very definition of arbitrary and capricious action. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

47. Petitioner sought bond in September 2025, but the immigration judge refused to exercise jurisdiction, expressly relying on this recent BIA policy shift. *See Ex. C, IJ Decision - Bond Denied*. By treating Petitioner as subject to mandatory detention under INA § 235(b), Respondents have applied an unlawful, arbitrary interpretation of the statute that is inconsistent with the language of Section 1226(a) and unsupported by reasoned analysis, as many other federal courts have already concluded.

48. Accordingly, Respondents' refusal to provide Petitioner an individualized custody redetermination hearing constitutes unlawful agency action under the APA, and this Court should grant habeas relief to remedy the violation.

## **VII. REQUEST FOR INJUNCTIVE RELIEF (INCLUDING TRO)**

49. Petitioner respectfully requests that this Court issue a Temporary Restraining Order directing Respondents to provide him an immediate individualized custody

redetermination hearing under INA § 236(a) within seven (7) days, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner further requests preliminary and permanent injunctive relief as appropriate.

50. The Supreme Court has made clear that such extraordinary relief depends on a four-factor test: likelihood of success on the merits, irreparable harm, the balance of equities, and the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). As explained below, Petitioner satisfies each of these factors.

**A. Mr. Garibay Is Likely to Succeed on the Merits of His Petition.**

51. Mr. Garibay has a strong likelihood of success on the merits of his claims. Many other federal courts have already determined that noncitizens detained under INA § 236(a) are entitled to individualized bond hearings before an immigration judge.

52. Mr. Garibay is currently detained after having lived in the interior of the United States for many years and he is now in § 240 removal proceedings, placing him squarely within the class of individuals covered by 8 U.S.C. § 1226(a). The immigration judge's refusal to exercise jurisdiction over his bond request—based on the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the statute.

53. Additionally, Mr. Garibay raises a constitutional claim under the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

54. Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling one. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009),

likelihood of success is the most critical factor in evaluating interim relief. Here, Petitioner's claim is exceptionally strong.

**B. Mr. Garibay Will Suffer Irreparable Harm If a TRO Does Not Issue.**

55. If this Court does not grant immediate relief, Mr. Garibay will continue to suffer irreparable harm. The Supreme Court has recognized that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Every day Mr. Garibay remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

56. Even if Mr. Garibay were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, and reputational damage—could never be undone. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and concrete. 556 U.S. at 435. Mr. Garibay's ongoing imprisonment without a lawful hearing meets that standard.

**C. Balance of Equities Weighs in Mr. Garibay's Favor.**

57. The balance of equities tips decisively in Petitioner's favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal system—the right not to be arbitrarily detained without process. On the government's side, the only asserted interest is administrative convenience in applying the BIA's recent precedents marking an abrupt departure from decades of agency jurisprudence.

58. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any

legitimate basis for continued detention. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

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

59. Finally, the public interest strongly supports the issuance of a TRO. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and the public interest merge. 556 U.S. at 435. The public has no interest in perpetuating unlawful detention; rather, the public's interest is served by ensuring that government agencies act within the bounds of statutory and constitutional authority.

60. Granting Petitioner the bond hearing mandated by § 1226(a) promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner's interest, but in the interest of the public at large.

61. Each factor of the equitable test weighs heavily in Mr. Garibay's favor. He has shown a substantial likelihood of prevailing on the merits based on controlling Fifth Circuit precedent and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process; the equities tilt overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

62. For these reasons, this Court should issue a Temporary Restraining Order at the earliest possible opportunity, requiring Respondents to provide Mr. Garibay an immediate bond hearing or release.

### VIII. PRAYER FOR RELIEF

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

- a. Issue a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;
- b. Grant a temporary restraining order and preliminary injunction requiring such a hearing, or Petitioner's immediate release;
- c. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;
- d. Grant permanent injunctive relief as appropriate;
- e. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and
- f. Grant such other relief as this Court deems just and proper.

DATE: December 3, 2025.

Respectfully submitted,

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By: /s/ John M. Bray

John M. Bray  
Texas Bar No. 24081360  
ATTORNEY FOR PETITIONER

**CERTIFICATE OF SERVICE**

By my signature below, I hereby certify that on this day, I served a true and correct copy of the above and foregoing *Petitioner's Corrected Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Request for Declaratory and Injunctive Relief*, as well as any and all attachments thereto, on Counsel for Respondents-Defendants by serving the same via email and/or electronic service to Ms. Ann Cruce-Haag by filing the same using the Court's CM/ECF system.

/s/ John M. Bray  
John M. Bray  
Attorney for Petitioner

DATE: December 3, 2025.