UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

HERNANDO RAFAEL ORTEGA MUNOZ, Petitioner, v. KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; MIGUEL VERGARA, in his official capacity as Director of the San Antonio Field Office of ICE, Enforcement and Removal Operations; CHARLOTTE COLLINS, Warden of the T. Don Hutto Detention Center; and DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review, Respondents.	Civil Action No. 1:25-cv-01753 Immigration No. A[redacted] **PLAINTIFF'S ORIGINAL VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 AND REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Petitioner HERNANDO RAFAEL ORTEGA MUNOZ (A#[redacted] is a native and citizen of Venezuela who has resided in the United States for three and a half years, most recently in the Central Texas area. He was recently apprehended by agents of ICE – Enforcement and Removal Operations, after which he was transferred to the T. Don Hutto Detention Center in Taylor, Texas, where he remains detained. *See* Ex. A, Proof of Detention in ICE Custody.

2. Mr. Ortega has been placed into removal proceedings before under INA § 240, 8 U.S.C. § 1229a, following his recent arrest by ICE officers near his home in Del Valle, Texas. *See* Ex. B, Notice to Appear.

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Mr. Ortega, due to a perceived lack of jurisdiction. These denials have 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). *See* Ex. C, Recent BIA Decisions on Bond. However, numerous federal district court, including some 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.

4. Despite this posture, immigration judges continue to refuse to provide noncitizens such as Mr. Ortega with an individualized custody redetermination hearing, asserting a lack of jurisdiction based on erroneous Board of Immigration Appeals precedent. The refusal to provide such a hearing violates the INA, the Due Process Clause of the Fifth Amendment, and the APA, because detention in § 240 proceedings is governed by INA § 236(a), which clearly provides that noncitizens are entitled to bond hearings.

5. Mr. Ortega therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks preliminary injunctive relief, directing Respondents to provide him with an individualized bond hearing or to release him from custody under any conditions the Court deems necessary without delay.[1]

[1] Petitioner hereby informs the Court that Petitioner intends to seek a Temporary Restraining Order through a separately filed motion subsequent to the initiation of this action.

II. JURISDICTION AND VENUE

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

7. 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 does he seek class-wide 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).

8. Venue is proper in this District, and in the Austin Division, because Petitioner is detained at the T. Don Hutto Detention Center in Taylor, Texas, within this Court's jurisdiction, whereas Petitioner's detention is controlled by the Hutto Sub-Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

9. Petitioner, HERNANDO RAFAEL ORTEGA MUNOZ ("Mr. Ortega"), is a citizen and national of Venezuela who has lived in the United States for approximately

three and a half years. He was transferred to the T. Don Hutto Detention Center, where he remains detained, following his arrest by ICE in Del Valle, Texas on or about October 3, 2025. Petitioner is currently in active removal proceedings under 8 U.S.C. § 1229a (INA § 240), for which he is currently scheduled to appear via WebEx at the Pearsall Immigration Court before the Judge Anibal D. Martinez. Petitioner's next scheduled hearing in his § 240 removal proceedings is currently set for November 4, 2025, at 8:30 a.m. *See* Ex. D, EOIR Automated Case Information System.

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

11. 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.

12. Respondent MIGUEL VERGARA is the Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Hutto Sub-Office of ERO, which has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

13. Respondent, CHARLOTTE COLLINS, Warden of the T. Don Hutto Detention Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The T. Don Hutto Detention Center is located at 1001 Welch Street, Taylor, Texas 76574. Respondent is sued in her official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

14. Respondent DAREN K. MARGOLIN, is Director of the Executive Office for Immigration Review. As such, he is responsible for directing and coordinating policy for the United States Immigration Court system, including policies relating to immigration bond applications and requests for custody redeterminations in immigration court. He is sued in his official capacity only.

15. 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. STATEMENT OF FACTS

A. Background Information and Apprehension by ICE.

1. Petitioner Hernando Rafael Ortega Munoz ("Mr. Ortega") is a thirty-one-year-old citizen and national of Venezuela (A[redacted], who has made the United States his home for seven years. He is presently detained at the T. Don Hutto Detention Center, located at 1001 Welch Street, Taylor, Texas 76574, under the authority of U.S. Immigration and Customs Enforcement ("ICE").

2. Mr. Ortega departed Venezuela for the United States, eventually entering the United States on or about March 5, 2022, after fleeing the ongoing political, social, and economic turmoil in Venezuela. Since his arrival, Mr. Ortega has resided primarily in Texas, where he has integrated into the community and sought protection under the laws of the United States.

3. On October 23, 2024, the United States Citizenship and Immigration Services ("USCIS") approved Mr. Ortega's Application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act. His TPS approval was issued

under Receipt Number [redacted] and A No. [redacted] and it is valid from October 23, 2024, through April 2, 2025. See Ex. H, TPS Approval Notice. The approval notice confirms that while under TPS, Mr. Ortega is lawfully present in the United States, protected from removal, and authorized to work pending re-registration during designated renewal periods.

4. On October 3, 2025, officers from ICE Enforcement and Removal Operations (ERO) in Austin, Texas, detained Mr. Ortega and transferred him to the T. Don Hutto Detention Center, located at 1001 Welch Street, Taylor, Texas 76574. *See* Ex. B, Documentation of Immigration Court Case (I-830). The ICE Form I-830 confirms that he remains in ICE custody under the authority of Deportation Officer Santillano. At the time of detention, DHS transmitted formal notice to the Dallas Immigration Court confirming his custodial status.

5. Despite receiving TPS and despite already having removal proceedings pending against him in Dallas, agents of ICE – Enforcement and Removal Operations detained Mr. Ortega. Subsequently, the Pearsall Immigration Court issued a Notice of Internet-Based Hearing dated October 21, 2025, scheduling a Master Calendar Hearing for November 4, 2025, at 8:30 A.M. before Immigration Judge Aníbal Martínez. *See* Ex. D, Notice of Hearing.

6. The ICE Notice to EOIR reflects that Mr. Ortega was not incarcerated by state or local authorities prior to ICE's assumption of custody; rather, Mr. Ortega was detained solely for purposes of immigration enforcement. There is no indication that Mr. Ortega has any disqualifying criminal history or pending criminal charges.

7. Mr. Ortega is presently confined at the T. Don Hutto Detention Center in Taylor, Texas, within the jurisdiction of the United States District Court for the Western District of Texas. Under the current policy of DHS and EOIR, Mr. Ortega is considered to be mandatorily detained, ineligible for a custody redetermination before an immigration judge, despite his prior TPS status, his years of presence in this country, and the absence of flight risk or danger to the community. Mr. Ortega's continued civil detention violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and longstanding constitutional principles governing prolonged immigration detention.

8. In sum, Petitioner is a law-abiding Venezuelan national who entered the United States in 2022, obtained lawful protection through Temporary Protected Status, and has been gainfully contributing to his community in Texas. Nonetheless, he has been taken into ICE custody and remains detained despite holding an active TPS approval that expressly shields him from removal. He now seeks the Court's intervention through a writ of habeas corpus to secure his release and enforce the statutory protections to which he is entitled.

B. Current Policy Prevents Certain Immigrants from Seeking Bond.

9. Pursuant to the NTA issued on March 5, 2022, DHS has formally charged Mr. Ortega as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] for entry without inspection. *See* Ex. B, Documentation of Immigration History. His case remains pending before the Pearsall Immigration Court, where he is seeking relief from removal in the form of asylum and withholding of removal.

10. Critically, when Mr. Ortega's case was filed with the immigration court and served upon him, it placed him into § 240 removal proceedings. As a result of this, Mr.

Ortega is entitled to the full panoply of due process guaranteed by the INA, including a hearing on relief from removal and a bond hearing under § 236(a), and not merely a summary expulsion—a natural result, in view of his lengthy history in this country.

11. Despite this posture, current immigration policy treats Mr. Ortega for bond immigration purposes as an applicant for admission, as though he were subject to the harshest form of "arriving alien" detention, even though he has been placed in § 240 proceedings. Instead of being allowed to seek release on bond before an immigration judge, Respondents have categorically denied him any chance to demonstrate that he is neither a danger to the community nor a flight risk. This blanket denial is not based on any individualized finding, but on the government's insistence on applying 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). Those administrative decisions—issued without notice-and-comment rulemaking, and in direct tension with binding circuit law—purport to strip immigration judges of authority to hold bond hearings for individuals like Mr. Ortega.

12. As a result, Mr. Ortega now finds himself locked away at the T. Don Hutto Detention Center in Taylor, Texas, while in removal proceedings. *See* Ex. A. He is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal conviction that would bar his release under Section 236(c) of the INA. Each day of confinement exacerbates the harm—separating him from family and community support, impeding his ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

13. In sum, Mr. Ortega is a man with deep roots in the United States and strong claims for protection from removal. He has been thrust into prolonged civil detention solely because of the government's reliance on recent, non-binding BIA decisions that contravene the plain language of the INA and recent decisions from other district courts in this Circuit. His detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust. *See* Ex. G, Recent Federal Habeas Decisions.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

14. Immigration detention is governed primarily by two provisions of the INA: Section 235(b) [8 U.S.C. § 1225(b)] and Section 236(a) [8 U.S.C. § 1226(a)]. Whereas Section 236(a) of the INA authorizes the Attorney General to release noncitizens on bond pending removal proceedings, in contrast, Section 235(b) applies to certain categories of "arriving aliens" and mandates detention pending completion of expedited or threshold screening.

15. Congress designed § 236(a) to govern the detention of individuals who, like Petitioner, are in regular removal proceedings under § 240. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

16. 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). The Board of Immigration Appeals itself recognized for decades that individuals in § 240

proceedings after entry without inspection were eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

17. Despite this clear statutory scheme, DHS has invoked recent BIA decisions (*i.e.*, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) to strip immigration judges of bond authority in cases such as those of Petitioner. Those decisions, however, cannot override the plain language of the statute.

18. Recently, multiple district courts in 2025 have addressed the Government's efforts to expand § 1225(b)(2)(A) beyond its intended scope by assessing habeas petitions for noncitizens in similar circumstances and have repeatedly concluded that the clear and unambiguous language of Section 236 of the INA permits noncitizens who arrived without inspection—persons in precisely the same legal circumstances as Mr. Ortega—are eligible to request bond hearings before the immigration court. *See* Ex. G.

19. For example, in *Santos v. Noem*, 2025 U.S. Dist. LEXIS 183412 (W.D. La. Sept. 15, 2025), the court emphasized that habeas relief is proper to correct statutory misclassification and to preserve the petitioner's due process rights. In *Kostak v. Trump*, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court ordered bond eligibility under § 1226(a), rejecting the Government's assertion that § 1225(b) applied. Likewise, in *Salazar v. Dedos*, 2025 U.S. Dist. LEXIS 183335 (D.N.M. Sept. 17, 2025), the district court ordered an individualized bond hearing under § 1226(a) within seven days, holding that prolonged detention without such a hearing violates the Fifth Amendment's Due Process Clause.

20. Similarly, *Lopez v. Hardin*, 2025 U.S. Dist. LEXIS 188368 (N.D. Tex. 2025), and *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 (S.D. Tex. 2025), further confirm

that courts are rejecting agency efforts to apply § 1225(b)(2)(A) to individuals who are properly subject to § 1226(a).

21. These holdings reflect a growing consensus that district courts retain jurisdiction to intervene where detention rests on a statutory misapplication and results in ongoing constitutional harm. The cumulative weight of these decisions underscores that Mr. Ortega is entitled to bond consideration under § 1226(a).

VI. CLAIMS FOR RELIEF

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

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

23. 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.

24. 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."

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

26. In interpreting the plain language of Section 236(a), various federal district courts 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.

27. Petitioner is now in removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a], and his case has been placed on the detained docket of the Pearsall Immigration Court, although his immigration judge is presiding from the Forth Worth Adjudication Center. Because Petitioner is detained in the context of ongoing removal proceedings, his custody is governed by § 236(a), not § 235(b).

28. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), Respondents have acted contrary to statutory authority requiring consideration of such bond application. This policy has supports the conclusion that the filing of a bond application with the immigration courts is currently a futile endeavor. Petitioner's continued detention without access to an individualized custody redetermination violates the INA and must be corrected through habeas relief.

29. Accordingly, this Court should grant the writ and order that Petitioner receive an individualized bond hearing under INA § 236(a), in line with decisions of other federal district courts in this Circuit.

Count II – Fifth Amendment Due Process Violation

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

31. 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.

32. 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.

33. Because Petitioner is detained by ICE at the T. Don Hutto Detention Center, he is 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 and by the plain language of Section 236(a).

34. Unlike noncitizens subject to mandatory detention for serious criminal offenses under Section 236(c) [8 U.S.C. § 1226(c)], Petitioner has no qualifying convictions that justify a categorical denial of release. His only arrest was conducted by ICE as a result of perceived alienage. The government has no legitimate basis to insist that Petitioner's detention be mandatory, yet he remains confined with no opportunity for release.

35. Denying Petitioner any access to a bond 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).

36. Petitioner is a long-time resident of the United States, with over ten years of continuous presence. He has strong family and community ties in Central 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—decisions not binding in this Circuit—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.

37. 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 Section 240 removal proceedings.

Count III – Unlawful Agency Action (APA)

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

39. 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.

40. 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); *see also* Ex. E, Pre-2025 Unpublished BIA Bond Decisions. That framework allowed for individualized custody determinations consistent with both statutory text and constitutional principles. These cases include, without limitation, the following:

- *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing criteria of danger to community and flight risk as factors for immigration bond requests);
- *In re L-E-V-H-*, AXXX-XXX-504 (BIA, Dec. 21, 2018) (despite noncitizen's testimony he had "turned himself in to officials at the border," held noncitizen had entered without inspection and was therefore not "arriving alien");
- *In re A-R-S-*, AXXX-XXX-161 (BIA, June 25, 2020) (remanding to develop record where noncitizen who had DACA alleged he had entered without inspection but had been misclassified as "arriving alien");
- *In re M-D-M-*, AXXX-XXX-797 (BIA, Aug. 24, 2020) (despite recent arrest, granted bond to noncitizen who had lived in the U.S. for over 20 years); and
- *In re F-P-J-*, AXXX-XXX-699 (BIA, Oct. 22, 2020) (where noncitizen had a pending circuit court appeal and IJ failed to consider alternatives to detention, granted bond to noncitizen who had lived in the U.S. for over 17 years).

41. 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.

42. 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).

43. Although Petitioner filed a bond application after entering ICE custody, the immigration judge denied bond on September 10, 2025, explicitly citing *Matter of Yajure-Hurtado* as the basis for the denial. Thus, requesting bond was futile, as immigration judges refuse to exercise jurisdiction, expressly relying on this recent BIA policy shift. *See* Ex. F, IJ Bond Decision. By treating individuals such as Petitioner as subject to mandatory detention under Section 235(b), Respondents have applied an unlawful, arbitrary interpretation of the statute that is inconsistent with the plain language of Section 236(a) and unsupported by reasoned analysis.

44. 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. APPLICATION FOR INJUNCTIVE RELIEF

45. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to provide him an individualized custody redetermination hearing under INA § 236(a) within as soon as practicable, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner would also note that he further intends to request a Temporary Restraining Order in a forthcoming motion.

46. 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. Ortega Is Likely to Succeed on the Merits of His Petition.

47. Mr. Ortega has a strong likelihood of success on the merits of his claims. As explained more fully hereinabove, numerous district courts including some from within the Fifth Circuit, have already determined that noncitizens in circumstances substantially similar to that of Mr. Ortega, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge.

48. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Ortega might file—due to 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 clear and unambiguous language of Section 236(a).

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

50. 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. Ortega Will Suffer Irreparable Harm If an Injunction Does Not Issue.

51. If this Court does not grant immediate relief, Mr. Ortega 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). Everyday Mr. Ortega remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

52. Even if Mr. Ortega 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. Ortega's ongoing detention without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Mr. Ortega's Favor.

53. 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, and in this Circuit nonbinding, precedents.

54. 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.

55. Finally, the public interest strongly supports the issuance of a preliminary injunction. 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.

56. Granting Petitioner an individualized bond hearing 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.

57. Each factor of the equitable test weighs heavily in Mr. Ortega's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) by various federal district courts 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.

58. For these reasons, this Court should issue a preliminary injunction at the earliest possible opportunity, requiring Respondents to provide Mr. Ortega an immediate bond hearing or release.

VIII. PRAYER FOR RELIEF

59. 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 preliminary injunction requiring such an individualized bond hearing, or alternatively, ordering Petitioner's immediate release;

c. Issue a declaration that DHS may not initiate or pursue expedited removal against Mr. Ortega while his § 240 removal proceedings remains non-final and while he seeks relief from removal before an Immigration Judge;

d. 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;

e. Grant permanent injunctive relief as appropriate;

f. Award Plaintiff 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

g. Grant such other relief as this Court deems just and proper.

DATE: October 30, 2025.

Respectfully submitted,

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VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

I, John Michael Bray ("Declarant"), am Petitioner's immigration counsel. I am over the age of twenty-one (21) years of age, of sound mind, and in all ways competent to execute this verification. I have read the substance of the foregoing document, I have personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of my knowledge and belief.

Pursuant to 28 U.S.C. § 1746, I hereby declare that the foregoing is true and correct under penalty of perjury under the laws of the United States of America.

JOHN MICHAEL BRAY,
Declarant