UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION

ANTONIO DE JESUS GALLEGOS HERNANDEZ,

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;
JOSH JOHNSON, in his official capacity as Acting Director of the Winnfield Field Office of ICE, Enforcement and Removal Operations;
PHILLIP VALDEZ, Warden of the Eden Detention Center; and
DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review,

Respondents.

Civil Action No. 6:25-cv-00087

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 ANTONIO DE JESUS GALLEGOS HERNANDEZ (A# [redacted] is a native and citizen of Mexico who has resided in the United States for seven years, most recently in the North Texas area. He was recently transferred to ICE custody in Texas and subsequently transferred to the Eden Detention Center in Eden, Texas, where he is currently detained. *See* Ex. A, Proof of Detention in ICE Custody.

2. Mr. Gallegos 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 Arlington, 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. Gallegos, 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. Gallegos 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. Gallegos 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]

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[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 San Angelo Division, because Petitioner is detained at the Eden Detention Center in Eden, Texas, within this Court's jurisdiction, whereas Petitioner's detention is controlled by the Prairieland Sub-Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

9. Petitioner, ANTONIO DE JESUS GALLEGOS HERNANDEZ ("Mr. Gallegos"), is a citizen and national of Mexico who has lived in the United States for approximately

twenty years. He was transferred to the Eden Detention Center, where he remains detained, following his arrest by ICE in Dallas, Texas on or about September 15, 2025, following a routine checkin at the Dallas Field Office of ICE – Enforcement and Removal Operations. 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 Conroe Immigration Court before the Judge McPhail.[2] Petitioner's next scheduled hearing in his § 240 removal proceedings is currently set for December 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 JOSH JOHNSON is the Director of the Dallas Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Prairieland Sub-Office of Dallas 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, PHILLIP VALDEZ, Warden of the Eden Detention Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Eden Detention Center is

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[2] Despite Mr. Gallegos's place of detention in Eden, Texas, and despite his earlier non-detained removal proceedings through the Dallas Immigration Court, the Immigration Judge assigned to Mr. Gallegos's immigration court case is presiding from the Conroe Immigration Court, likely as a result of Respondents' intend to engage in forum shopping.

located at 702 E. Broadway, Eden, Texas 76837. Respondent is sued in his 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. FACTUAL BACKGROUND

A. Immigration Case History.

1. Petitioner Antonio De Jesus Gallegos Hernandez ("Mr. Gallegos") is a twenty-nine-year-old citizen and national of Mexico (A No. [redacted], who has made the United States his home for many years but most recently entered the country on or about February 17, 2024 through El Paso, Texas. He is presently detained at the Eden Detention Center, located at 702 E. Broadway, Eden, Texas 76837, under the authority of U.S. Immigration and Customs Enforcement ("ICE").

2. Despite entering the United States with his family to seek asylum, Respondents never coordinated a Credible Fear Interview ("CFI") required by 8 C.F.R. § 208.30(b), and instead, DHS agents paroled Mr. Gallegos and his family into the country. *See* Ex. B, Documentation of Removal Proceedings (NTA) (observe no CFI was performed).

3. DHS issued a Notice to Appear ("NTA") on September 15, 2025, charging Petitioner as inadmissible under INA § 212(a)(7)(A)(i)(I) for being present in the United States without possessing a valid, unexpired visa or other travel document. *See* Ex. B, Documentation of Removal Proceedings (NTA). The NTA ordered him to appear before the Dallas Immigration Court on September 29, 2025.

4. The Notice to Appear charges Petitioner as an alien "who entered the United States without being admitted or paroled." Under the Board of Immigration Appeals' decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), noncitizens apprehended shortly after unlawful entry are classified as "applicants for admission" detained under INA § 235(b) rather than under § 236(a), and are thereby ineligible for release on bond. *See* Ex. C.

5. Immigration Judges within EOIR have followed *Q. Li* to deny jurisdiction over bond motions for similarly situated respondents. Federal courts in analogous cases have found that such detention regimes raise significant constitutional concerns, particularly where detention becomes prolonged without individualized review. *See* Ex. G., *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP (W.D. Tex. Oct. 21, 2025); *Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC (W.D. Tex. Sept. 22, 2025).

6. In similar cases, immigration judges have routinely denied bond, concluding that the BIA's decisions in either *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) or *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025), have divested Immigration Judges of jurisdiction to grant bond to non-admitted entrants under INA § 235(b)(2)(A).

7. Because EOIR has disclaimed jurisdiction, Mr. Gallegos remains detained without a bond hearing or individualized custody review, in violation of his Fifth

Amendment due-process rights. Despite the fact Mr. Gallegos's undersigned Counsel requested release on parole in the days following the attack on the ICE facility in Dallas, ICE has not conducted any discretionary parole review under 8 C.F.R. § 212.5(b) nor issued a written custody determination explaining the continued need for confinement. *See* Ex. I, Email to Dallas ICE.

B. Apprehension by Immigration Officials

8. On or about September 23, 2025, Mr. Gallegos was apprehended by ICE officers after he attended a routine "checkin" appointment at the Dallas Field Office of ICE – Enforcement and Removal Operations, despite having been permitted to the United States a year and a half earlier. *See* Ex. B, Documentation of Removal Proceedings.

9. Following his apprehension by ICE, Mr. Gallegos was held along with other detainees in a transport vehicle that was the object of a targeted attack on the Dallas Field Office of ERO—a violent incident that quickly made international news within minutes. *See* Ex. H, Documentation of Removal Proceedings. Mr. Gallegos suffered psychological trauma and other harm as a result of his presence in the zone of danger during this attack. as three of the detainees in Mr. Gallegos's vicinity were shot, two of whom later died after being hospitalized.

10. Following this incident, ICE transferred Mr. Gallegos to the Eden Detention Center, located at 702 East Broadway Street, Eden, Texas 76837, where he remains in ICE custody. *See* Ex. B. Documentation of Removal Proceedings. To date, Mr. Gallegos has not received any grief or trauma counseling, despite surviving a mass shooting event.

11. The Eden Detention Center is operated under contract with CoreCivic, Inc., and the current warden of the facility is Phillip Valdez, who has served in that capacity since approximately May 2019.

12. According to the Department of Homeland Security's Online Detainee Locator System, Mr. Gallegos remains listed as "In ICE Custody" at the Eden Detention Center in Texas. *See* Ex. A, Proof of ICE Custody.

13. The ICE Deportation Officer assigned to Mr. Gallegos's case is Mario L. Castro, of the Dallas Field Office of ICE – Enforcement and Removal Operations ("ERO"), which retains administrative authority over his detention and removal proceedings. *See* Ex. B, Documentation of Removal Proceedings.

14. The Notice to EOIR (Form I-830E) issued by Officer Castro also confirms that Mr. Gallegos was detained at the Eden Detention Center as of September 23, 2025, and that his case was originally assigned to the El Paso Immigration Court (EOIR code ELP), but he is now set before an immigration judge presiding from the Conroe Immigration Court. *See* Ex. B, Documentation of Removal Proceedings.

15. The Executive Office for Immigration Review (EOIR) Automated Case Information system reflects that Mr. Gallegos's removal proceedings remain pending in Conroe, and no final order of removal has been entered against him. *See* Ex. D, EOIR Case Information. Yet, Mr. Gallegos's continued detention in Eden, Texas places him under the jurisdiction of the San Angelo Division of the United States District Court for the Northern District of Texas, which is therefore the proper venue for this petition under 28 U.S.C. § 2241.

16. Despite being held in ICE custody since late September 2025, and despite his lawful entry to the country nearly two years ago, Respondents have implemented a policy that treats individuals like Mr. Gallegos as "applicants for admission" not entitled to a bond hearing. This effectively prevents Mr. Gallegos from obtaining a prompt, individualized custody review or explanation for Mr. Gallegos's continued detention, in violation of his due-process rights under the Fifth Amendment.

17. Critically, however, when Mr. Gallegos's N TA was filed with the immigration court and served upon him, it placed him into § 240 removal proceedings. As a result, Mr. Gallegos claims entitlement 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 history of compliance with the conditions imposed upon him when he entered the country.

18. Yet, current immigration policy treats Mr. Gallegos 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. Gallegos.

19. As a result, Mr. Gallegos now finds himself locked away at the Eden Detention Center in Eden, 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.

20. In sum, Mr. Gallegos is a man with deep roots in the United States and strong claims for protection from removal, including for a U Visa as a result of the vicious attack from which ICE officials in Dallas negligently failed to protect him. Mr. Gallegos 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.

21. 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.

22. 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.

23. 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).

24. 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.

25. 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. Gallegos—are eligible to request bond hearings before the immigration court. *See* Ex. G.

26. 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.

27. 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).

28. 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. Gallegos 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)]

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

30. 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.

31. 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."

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

33. 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.

34. 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 Oakdale 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).

35. 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.

36. 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

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

38. 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.

39. 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.

40. Because Petitioner is detained by ICE at the Eden 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).

41. 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.

42. 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).

43. Petitioner has now lived in the United States for nearly two years, after lawfully entering the country upon asking permission to enter at the port of entry in El Paso, Texas. He has strong family and community ties in North 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—Mr. Gallegos 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.

44. 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)

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

46. 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.

47. 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).

48. 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.

49. 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).

50. Although Petitioner has not filed a bond application since entering ICE custody in September 2025, doing so would be 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) due to the decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado*, 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.

51. 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

52. 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.

53. 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. Gallegos Is Likely to Succeed on the Merits of His Petition.

54. Mr. Gallegos 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. Gallegos, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge.

55. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Gallegos 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).

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

57. 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. Gallegos Will Suffer Irreparable Harm If an Injunction Does Not Issue.

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

59. Even if Mr. Gallegos 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. Gallegos's ongoing detention without a lawful hearing meets that standard.

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

60. 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.

61. 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.

62. Additionally, the undersigned Counsel for Petitioner has undertaken to contact Counsel for Respondents by emailing the duty attorney for the Office of Principal Legal Advisor for ICE in Conroe, Texas, as well as the U.S. Attorney's Office for the Northern District, in a good faith effort to notify Respondents of Petitioner's intent to obtain a hearing on this TRO request as soon as practicable.

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

63. 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.

64. 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.

65. Each factor of the equitable test weighs heavily in Mr. Gallegos'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.

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

VIII. PRAYER FOR RELIEF

67. 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. Gallegos 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: November 5, 2025.

Respectfully submitted,

THE LAW OFFICE OF JOHN M. BRAY, PLLC
911 N. Bishop Ave.
Dallas, TX 75208
Tel: (855) 566-2729
Fax: (214) 960-4164
Email: john@jmblawfirm.com

By: */s/ John M. Bray*
John M. Bray
Texas Bar No. 24081360
LEAD COUNSEL FOR PETITIONER

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared ROBERTO GALLEGOS ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's brother, and who after being by me duly sworn, stated that he is above the age of twenty-one (21) years of age, is of sound mind, and is in all ways competent to make this verification. Affiant acknowledged that he had the substance of the foregoing document read to him, that he has personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of Affiant's knowledge and belief.

ROBERTO GALLEGOS,
Affiant

SUBSCRIBED AND SWORN BEFORE ME on this 29 day of October, 2025.

[SEAL]

Maria Fernanda Maldonado Martinez
My Commission Expires
10/30/2027
Notary ID 132087971

NOTARY PUBLIC
In and for the State of Texas