UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FACUNDO SUAREZ GUERRERO,
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;
BRET A. BRADFORD, in his official capacity as Director of the Houston Field Office of ICE, Enforcement and Removal Operations;
MARTIN FRINK, Warden of the Houston Contract Detention Facility; and
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review,
Respondents.

Civil Action No. 4:25-cv-5351

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 FACUNDO SUAREZ GUERRERO (A# [redacted]) is a native and citizen of Mexico who has resided in the United States for over twenty-five years, mostly in the East Texas area. He is currently subject to indefinite detention after his apprehension by ICE in Galveston County, Texas and is currently detained at the Houston Contract Detention Facility in Houston, Texas. *See* Ex. A, Proof of Detention in ICE Custody.

2. Mr. Suarez has been placed into removal proceedings before under the Immigration and Nationality Act (INA) § 240, 8 U.S.C. § 1229a, following his recent

arrest by ICE officers near where he was working in Galveston County, 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. Suarez, 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 courts, 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. Suarez 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. Suarez therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, he asks for a declaration that his continued detention violates Due Process, and he seeks injunctive relief, including a Temporary Restraining Order ("TRO") directing Respondents to release him under reasonable conditions without delay[1] or, in the alternative, provide him an individualized custody hearing.

[1] The undersigned Counsel would note that, earlier today, Government Counsel in a different habeas case with similar facts in the Austin Division of the Western District of Texas conceded that the appropriate relief in immigration habeas cases is release, rather than an immigration bond hearing. The undersigned Counsel will undertake to obtain a copy of the transcript of this hearing once it becomes available.

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 Houston Division, because Petitioner is detained at the Houston Contract Detention Facility in Houston, Texas, within this Court's jurisdiction, whereas Petitioner's immigration detention is controlled by the Houston Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

9. Petitioner, FACUNDO SUAREZ GUERRERO ("Mr. Suarez"), is a citizen and national of Mexico who has lived in the United States for twenty-seven and a half years.

He was transferred to the Houston Contract Detention Facility (after having been initially booked into the Galveston County jail on civil immigration charges alone), where he remains detained, following his arrest by ICE, accompanied by a Galveston County law enforcement officer, while trying to board the ferry in Galveston County, Texas. Petitioner has been placed into active removal proceedings under 8 U.S.C. § 1229a (INA § 240), with his first hearing in immigration court set for December 2, 2025. *See* Ex. D, EOIR 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 BRET A. BRADFORD is the Director of the Houston Field Office of ICE – Enforcement and Removal Operations ("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, MARTIN FRINK, Warden of the Houston Contract Detention Facility, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Houston Contract Detention Facility is located at 15850 Export Plaza Drive, Houston, Texas 77032. 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

16. Petitioner Facundo Suarez Guerrero is a citizen and national of Mexico, born in 1983. He has lived continuously and without absence in the United States since his initial entry without inspection or admission around March of 1998, when he was just 15 years old. He was not apprehended upon his entry and, up until his arrest by Galveston County law enforcement and subsequent transfer to ICE on October 28, 2025, Mr. Suarez had had zero negative immigration contact. *See* Ex. B, Documentation of Petitioner's Immigration Case. Since that time, he has continuously resided in the East Texas area, where he attended high school the town of New Summerfield, married his high school sweetheart Sonia Suarez, with whom he shares four U.S. citizen children, and started his own construction and remodeling business.

17. Petitioner's arrest and detention is a tremendous waste of government resources. His father, after whom Petitioner is named, is a naturalized U.S. citizen. *See* Ex. G (reflecting father's naturalization certificate). On February 23, 2001, Petitioner's father filed a Form I-130 family-based immigrant petition for his wife, while Petitioner was still

unmarried and under 21 years old. *See* Ex. G. That petition was approved on January 19, 2006, and Petitioner's mother obtained her lawful permanent residence on that basis. *See* Ex. G. Then, on April 5, 2006, Petitioner's father filed a Form I-130 family-based immigrant petition for Petitioner, which was approved on June 11, 2010. *See* Ex. G. Thus, Petitioner remains eligible to adjust status to lawful permanent residence (what is known colloquially as a "green card") through the petition filed on his behalf, and because he was single and under 21 years old when his father filed an I-130 petition for his mother, Petitioner is allowed, under the immigration laws, to make use of his mother's earlier February 23, 2001 priority date (the date that dictates when a nonimmigrant who qualifies for a visa is allowed to apply for and receive it). *See* INA § 245(i), 8 U.S.C. § 1255(i). And he qualifies to apply for and receive his lawful permanent residence here in the U.S. *See* INA § 245(i), 8 U.S.C. § 1255(i).

18. On that basis, Petitioner and his wife filed their Form I-485 applications to adjust of status (green card applications), which U.S. Citizenship and Immigration Services ("USCIS") received on February 22, 2024. *See* Ex. G. USCIS has processed their applications and granted Petitioner and his wife work authorization. And, on October 20, 2025, merely eight days before Petitioner's arrest by ICE, USCIS scheduled both Petitioner and his wife for interviews on their applications with the USCIS Dallas Field Office, set for November 24, 2025. *See* Ex. G.

19. To be clear, attending this "green card" interview is the final step Petitioner's long journey to becoming a lawful permanent resident, where Petitioner will be approved and granted lawful permanent resident status. *See* Ex. G, Petitioner's USCIS Case History. However, ICE's recent arrest of Mr. Suarez severely complicates the end of his

immigration journey: ICE has refused to release him and will not transport him to his November 24, 2025 interview, despite the fact that USCIS retains jurisdiction over his application, despite the fact that he remains eligible for lawful permanent residence (a status he and his father have pursued for him since 2001), and despite the fact that USCIS will deem his failure to appear at his interview as abandonment of his adjustment of status application—a tremendous waste of administrative and judicial economy, all while detaining Mr. Suarez at taxpayer expense in the midst of a government shutdown. See Ex. J (observe that ICE has ignored the reasonable requests of Petitioner's immigration counsel simply to allow him to attend his USCIS interview on November 24, 2025).

20. Since his detention, the EOIR has scheduled Mr. Suarez for what it calls a master calendar hearing, the initial hearing in removal proceedings, for December 2, 2025 (notably, after his USCIS interview date of November 24 has come and gone). *See* Ex. D, EOIR Case Information; *see* Ex. B (Notice to Appear in removal proceedings).

21. On or about October 28, 2025, while Petitioner and his brother was boarding the ferry in Galveston, Texas, where he was working, a Galveston County sheriff's deputy and an ICE agent began to ask people boarding the ferry who looked Hispanic for their immigration status and papers. Petitioner showed the officers his work authorization document, which indicates on its face that he has an adjustment of status application pending, but the officers told him that wasn't good enough. They arrested him immediately, booking him into the Galveston County Jail until ICE picked up him about a couple of days later, transferred him to the Houston Contract Detention Facility, and detained him there, where he remains. *See* Ex. A. The facility is operated under contract with the Houston Field Office of ICE – Enforcement and Removal Operations ("ERO").

The ICE Detainee Locator confirms Petitioner's custody in Houston, Texas, as of November 7, 2025. *See* Ex. A.

22. ICE ERO is fully aware of Petitioner's pending adjustment of status application and USCIS interview date because that information exists across the Department of Homeland Security ("DHS") databases. To reiterate, Petitioner's immigration counsel has sent e-mail correspondence to both the Dallas and Houston detained docket e-email addresses, attaching the interview notice, to bring it to the attention of ICE ERO detention supervisors. *See* Ex. J. She has not received a response.

23. Until his recent transfer into an immigration facility in Houston, Texas, Mr. Suarez had lived and worked in the East Texas area for many years, where he has developed, nurtured, and deepened close ties to his community. He shares four U.S. citizen children with his wife Sonia, all boys, ages 17, 15, 10, and 7 years old. All four boys are enrolled in schools in the New Summerfield Independent School District. In approximately 2010, Mr. Suarez started his own construction and remodeling business with his brother called J&C Remodeling Services and More, LLC. He has been a member of the local Catholic church for over 25 years. He has filed income tax returns with the federal government since he began working many years ago. *See* Ex. H, Evidence of Community Ties.

24. Mr. Suarez has also never been convicted of a crime. The only mark in his criminal history is an arrest when he was 18 years old on May 1, 2001 for aggravated assault with a deadly weapon for accidentally shooting his brother-in-law with a pellet or BB gun. Given the facts surrounding the incident, the Cherokee County District Attorney's Office declined to prosecute the offense on June 1, 2002. *See* Ex. I, Letter

from DA's Office. He has not been arrested any other time, with the exception of his recent ICE arrest. Mr. Suarez has no history of violence and no criminal record whatsoever that would justify treating him as a danger to society. His ICE detention was not the result of any criminal act or immigration violation, just awful luck: he was boarding a ferry to buy groceries with his brother, and an ICE agent happened to be inspecting people coming on board alongside a sheriff's deputy, particularly Hispanic people. *See* Ex. J, Email of Immigration Counsel.

25. To the contrary, Mr. Suarez has demonstrated extraordinary integrity, continuous residence, stable employment, and strong family and community ties in New Summerfield, Texas. The twenty-eight reference letters, Mr. Suarez's wife was able to gather from New Summerfield community members over one weekend alone, attest to Mr. Suarez's exceptional character and speak for themselves. *See* Ex. H. Notably, they include letters written by the New Summerfield mayor, city manager, and chief of police; the New Summerfield ISD superintendent, assistant superintendent, teachers, and the Parent Teacher Organization president; and church pastors and elders, elderly neighbors, and other community members. Each letter describes its author's personal experience with Mr. Suarez, but they all mention Mr. Suarez's outstanding character, integrity, kindness, selflessness, and generosity. They all discuss Mr. Suarez's devotion to his wife, to his children, and to his community, his work ethic, the myriad ways in which he gives constantly of his time and money and effort, the kindness and consideration he consistently shows his neighbors, especially those who most need it. Mr. Suarez is a model citizen, the kind of person who constantly volunteers his time and effort to community-wide and school and church events, who gives scholarships to graduating

students, who cooks tacos for the entire community during the Christmas parade free of charge, who pays club soccer fees for children whose parents cannot afford it, who regularly checks in on and takes care of his elderly neighbors, who, when a terrible storm swept the town and inflicted serious damage on homes in the community, showed up the next day with his crew to start repairing the damage at friends' and neighbors' houses without being asked and without asking for anything in return. *See* Ex. H. Would that every community had its own Mr. Suarez. He makes his community, this country, and the world a better place.

26. That is the person ICE has arrested. That is the person that both ICE and the EOIR have detained without the possibility of release. As of the filing of this petition, Petitioner remains detained at the Houston Contract Detention Facility. Although ICE filed his Notice to Appear with EOIR, Mr. Suarez is ineligible for any bond hearing or opportunity for review under INA § 236(a) under the current policies of ICE and EOIR. The government's arbitrary arrest of Mr. Suarez, coupled with agency policy, renders his detention ultra vires, indefinite, and constitutionally infirm. He has been held for over a week contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

27. Petitioner's ongoing detention has caused significant emotional trauma and financial hardship to his wife and his four children, who depend on him entirely for financial support because Mrs. Suarez does not work. Given Respondents' failure to provide him with a bond hearing, or justify continued custody, Petitioner intends to seek a Temporary Restraining Order (through a separate motion) ordering his immediate

release, or alternatively, requiring Respondents to promptly provide him with an individualized custody determination before an immigration judge as soon as possible.

28. Following Mr. Suarez's arrest and detention, the DHS served Mr. Suarez with a Notice to Appear ("NTA"), formally charging him 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.

29. ICE's detention of Mr. Suarez ignores his lengthy history and community ties in this country, as well as the fact that he not only has an adjustment of status application pending with USCIS since February 2024 and a work authorization document, but also that USCIS has scheduled him for an interview on that adjustment of status application for November 24, 2025, an appointment he will miss unless he is released from detention. *See* Ex. G (observe receipt notices were mailed to Petitioner's immigration counsel just eight days before his apprehension in Galveston). For this reason, Mr. Suarez claims entitlement to the full panoply of due process guaranteed by the INA, including a bond hearing under § 236(a).

30. Despite this case history, current immigration policy treats Mr. Suarez for bond purposes as though he were subject to the harshest form of "arriving alien" detention, even though he has been properly placed in § 240 proceedings. Instead of being allowed to seek release on bond before an immigration judge, ICE has 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 decisions—issued without notice-and-comment rulemaking, and in direct tension with the plain language of the statute—purport to strip immigration judges of authority to hold bond hearings for individuals like Mr. Suarez.

31. As a result of this, as well as ICE's arbitrary arrest and transfer of Mr. Suarez within the bowels of the immigration industrial complex, Mr. Suarez now finds himself locked away at the Houston Contract Detention Facility in Houston, Texas, a facility hundreds of miles from his community in East Texas. *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, from his minor children, and from community support, impeding his ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

32. In sum, Mr. Suarez is a man with deep roots in the United States, a pending adjustment of status application for which he qualifies and for which USCIS has set an interview, and no disqualifying criminal record. He has been thrust into seemingly indefinite civil detention solely because of the Government's reliance on recent, non-binding BIA decisions that contravene the plain language of the INA and the recent decisions of multiple federal district courts. Mr. Suarez's high continued detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

33. 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.

34. 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.

35. 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).

36. 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.

37. In recent weeks, multiple district courts in 2025 have directly 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. Suarez—are eligible to request bond hearings before the immigration court. *See* Ex. K, Appendix of Recent Habeas Decisions.

38. 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.

39. Similarly, recent decisions from district courts within the Fifth Circuit, such as *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). *See also Buenrostro-Mendez v. Bondi*, No. 4:25-cv-3726, slip op. at 3 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara*, No. 5:25-cv-00112, slip op. at 3-4 (S.D. Tex. Oct. 8, 2025) (reviewing new detention policy). And just yesterday, a United States Magistrate Judge issued Findings and Conclusions recommending the grant of habeas in a similar case, after concluding that the noncitizen in that case "entitled to procedural protections under the Fifth Amendment's Due Process Clause." *See* Ex. L,

Aparicio Rodriguez v. Noem, No. 3:25-cv-02858-L-BN, ECF No. 10 (N.D. Tex. Nov. 6, 2025). This Court should follow suit.

40. 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. Suarez 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)]

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

42. Respondents' refusal to provide Petitioner with an individualized custody redetermination hearing violates the INA and the recent decisions of multiple federal district courts from around the country, including courts within the Fifth Circuit.

43. 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."

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

45. 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.

46. Even though Petitioner was served an NTA indicated ICE's intention to place him into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a], ICE has not yet done so. Even so, Mr. Suarez remains detained at the Joe Corley Processing Center, and once his NTA is filed, his case will be placed on the detained docket of the El Paso Immigration Court. Because Petitioner has been detained in anticipation of removal proceedings, and because he has now lived in the United States for several years and applied for asylum affirmatively, his custody is governed by § 236(a), not § 235(b).

47. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), despite failing to file the NTA and turning a blind eye to Petitioner's pending I-589 application for asylum now pending with USCIS, Respondents have acted contrary to statutory authority requiring consideration of such bond application. This policy 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.

48. Accordingly, this Court should grant the writ and order that Petitioner receive an individualized bond hearing under INA § 236(a), as recently made clear by the decisions of multiple federal district courts to examine these issues around the country.

Count II – Fifth Amendment Due Process Violation

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

50. 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.

51. 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.

52. Because Petitioner is detained by ICE at the Joe Corley Processing 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).

53. 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.

54. 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).

55. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), despite failing to file the NTA and turning a blind eye to Petitioner's pending I-589 application for asylum now pending with USCIS, Respondents have attempted to circumvent the processing of his affirmatively filed Form I-589 asylum application.

56. 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 East 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.

57. 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)

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

59. 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.

60. 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).

61. 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.

62. 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).

63. Although Petitioner has not filed a bond application since entering ICE custody on or about September 20, 2025, doing so would be futile, as immigration judges refuse to exercise jurisdiction, expressly relying on this recent BIA policy shift. *See* Ex. F, Sample 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.

64. 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

65. Petitioner respectfully requests that this Court grant injunctive relief directing Respondents to order his immediate release under reasonable conditions of supervision, or in the alternative, to provide him with an individualized custody redetermination hearing under INA § 236(a) within seven (7) days. Petitioner intends to seek a Temporary

Restraining Order through a separate motion that is forthcoming, and upon a final hearing, Petitioner asks for any further injunctive relief as appropriate.[2]

66. 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. Suarez Is Likely to Succeed on the Merits of His Petition.

67. Mr. Suarez 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. Suarez, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge. *See* Ex. K, Appendix of Recent Habeas Decisions; *see* Ex. L (magistrate judge's FCR in habeas case in Dallas).

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

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

[2] As detailed above, Petitioner is scheduled for a "green card" interview at USCIS. Petitioner fears that, even if this Court were to order his release, he could become a target for re-arrest at the interview under Respondents' current immigration enforcement policies, so further injunctive relief may be necessary.

70. 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. Suarez Will Suffer Irreparable Harm If an Injunction Does Not Issue.

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

72. Even if Mr. Suarez 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. Suarez's ongoing imprisonment without a lawful hearing meets that standard.

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

73. 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.

74. 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.

75. Finally, the public interest strongly supports the grant of injunctive relief. 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.

76. Granting Petitioner's release, or in the alternative, granting him 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.

77. Each factor of the equitable test weighs heavily in Mr. Suarez'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.

78. For these reasons, this Court should grant injunctive relief as soon as practicable, requiring Respondents immediately to release Mr. Suarez or provide him with a bond hearing in accordance with INA § 236(a), 8 U.S.C. § 1226(a).

VIII. PRAYER FOR RELIEF

79. 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 release Petitioner immediately, or alternatively, to provide him 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. Schedule this matter for a hearing and, after such hearing, grant any and all injunctive relief the Court deems appropriate to ensure Respondents do not unlawfully detain Petitioner;

c. Issue a declaration that Respondents may not initiate or pursue expedited removal against Mr. Suarez 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 Petitioner 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 provision of law; and

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

DATE: November 7, 2025.

Respectfully submitted,

FISCHER & FISCHER, ATTORNEYS AT LAW
114 South Pecan Street
Nacogdoches, TX 75961
Tel: (936) 564-2222
Email: a.fischerlaw@gmail.com

By: */s/ Amelia Ruiz Fischer*
Amelia Ruiz Fischer
Texas Bar No. 24080087
LEAD COUNSEL FOR PETITIONER

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
CO-COUNSEL FOR PETITIONER

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF NACOGDOCHES §

BEFORE ME, the undersigned authority, on this day personally appeared SONIA SUAREZ ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's wife, and who after being by me duly sworn, stated that she is above the age of twenty-one (21) years of age, is of sound mind, and is in all ways competent to execute this verification. Affiant acknowledged that she had read the substance of the foregoing document, that she 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.

Sonia Suarez

SONIA SUAREZ,
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this the 31st day of October, 2025.

[SEAL]

Eugena Elizondo

NOTARY PUBLIC
In and for the State of Texas

EUGENIA ELENA ELIZONDO
Notary Public
State of Texas
ID # 13271020-8
My Comm. Expires 10-05-2028