**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

JUAN DARIO CARCAMO BATIZ,
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 Acting Director of the Houston Field Office of ICE, Enforcement and Removal Operations;
RAYMOND THOMPSON, Warden of the Joe Corley Processing Center; and
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review,
Respondents.

Civil Action No. 4:25-cv-05356

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 JUAN DARIO CARCAMO BATIZ (A# [redacted] is a native and citizen of Honduras who has resided in the United States for many years, primarily in the Central Texas region but most recently in Arkansas. He is currently subject to indefinite detention after ICE's early morning apprehension of him at his home in Arkansas, and he is currently detained at the Joe Corley Processing Center in Conroe, Texas. *See* Ex. A, Proof of Detention in ICE Custody.

2. Years before his arrest, Mr. Carcamo had been placed into removal proceedings under INA § 240, 8 U.S.C. § 1229a, but DHS recalendared his case follow his arrest by ICE officers his home in Arkansas. *See* Ex. B, Immigration Court Case Documents.

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Mr. Carcamo, 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. Carcamo 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. Carcamo therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, including a Temporary Restraining Order ("TRO") directing Respondents to release him immediately, or if necessary, to provide him an individualized custody hearing or release him under reasonable conditions without delay.

## 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 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 Joe Corley Processing Center in Conroe, 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, JUAN DARIO CARCAMO BATIZ ("Mr. Carcamo"), is a citizen and national of Honduras who has lived in the United States for twelve and a half years. He

was transferred to the Joe Corley Processing Center, where he remains detained, following his arrested by ICE near his home in Arkansas. Petitioner is currently awaiting placement into active removal proceedings under 8 U.S.C. § 1229a (INA § 240), despite the fact that he has remained in ICE custody for nearly three months since his most recent arrest, which was conducted by Arkansas sheriff's deputies in coordination with ICE on the basis of racial animus disguised as immigration enforcement.[1] Despite having received an NTA and I-830, Mr. Carcamo immigration court remains ongoing. *See* Ex. D, EOIR Automated Case Information System. This is due largely to DHS's allegation that Mr. Carcamo was neither "admitted nor paroled" following his entry to the United States on or about May 17, 2012 at or near Brownsville, Texas.

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

13. Respondent, RAYMOND THOMPSON, Warden of the Joe Corley Processing Center, is responsible for housing noncitizens from various regions of Texas in ICE

[1] The Immigration Court in Houston will likely be the administrative control docket due to ICE's transfer of Petitioner to detention in Conroe, Texas.

custody pending the completion of their removal proceedings. The Joe Corley Processing Center is located at 500 Hilbig Rd, Conroe, Texas 77301. 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 Juan Dario Carcamo Batiz is a citizen and national of Honduras, born in 1990. He has lived continuously in the United States since his entry on May 17, 2012, when he was processed by U.S. Customs and Border Protection ("CBP") at the southern border in Brownsville, Texas and released on recognizance. *See* Ex. B, Immigration Court Case Documents. Since that time, he has continuously resided in the United States, first in the Central Texas area with his U.S. Citizen children, before eventually moving to Arkansas.

17. After entry, Petitioner passed a Credible Fear Interview and was released on his own recognizance, eventually filing an application for asylum and withholding of removal (Form I-589) with the Executive Office for Immigration Review ("EOIR") less

than a year after entering the United States. At present, Mr. Carcamo's asylum application remains pending but unadjudicated, after the I-130 family petition filed by his daughter C[redacted] was approved just prior to his final asylum hearing in December 2016. *See* Ex. G, Petitioner's Visa Case Documents; *see* Ex. B (observe date of order for administrative closure). However, ICE's recent arrest of Mr. Carcamo likely means that his case will be needlessly severed from that of his family, resulting in a waste of administrative and judicial economy.

18. Despite his long-pending asylum application, and despite having now been in ICE custody for close to three months, Mr. Carcamo's removal proceedings before the EOIR reflect that his next immigration court hearing is scheduled for December 4, 2025, as indicated by the official EOIR Automated Case Information System. *See* Ex. D, EOIR Case Information.

19. Since his release from immigration custody in May 2012, Petitioner has fully complied with all conditions of his supervision, and he has even obtained a valid work permit, also called an Employment Authorization Document. *See* Ex. B, Immigration Court Case Documents.

20. On or about the early morning hours of August 19, 2025, ICE assisting local law enforcement officials in Arkansas in arresting Mr. Carcamo before finally transferring him to the Joe Corley Processing Center in Conroe, Texas. The facility is operated under contract with the Conroe Sub-Field Office of the Houston Field Office of ICE – Enforcement and Removal Operations ("ERO"). At present, the ICE Detainee Locator confirms Petitioner's custody in Conroe, Texas. *See* Ex. A.

21. Until his recent transfer into a remote immigration facility in Conroe, Texas, Mr. Carcamo had lived and worked in Arkansas, and before that, in the Central Texas area, for many years, where he developed close ties to his community. Mr. Carcamo has no history of violence nor any criminal record that would justify treating him as a danger to society—no arrests, convictions, or even traffic citations—since entering the United States to seek asylum in May 2012. To the contrary, he has demonstrated continuous residence, stable employment, and strong family and community ties. Mr. Carcamo's detention was not the result of any criminal act or immigration violation, but rather, an arbitrary arrest by ICE as aided by local law enforcement officials.

22. As of the filing of this petition, Petitioner remains detained at the Joe Corley Processing Center. Although ICE filed his Notice to Appear with EOIR, Mr. Carcamo 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. Carcamo, coupled with agency policy, renders his detention ultra vires, indefinite, and constitutionally infirm. He has been held for months—contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

23. Petitioner's ongoing detention has caused significant emotional and financial hardship to his family, who depend on him for financial support. Given Respondents' policy preventing Mr. Carcamo from obtaining an immigration bond hearing and the lack of any justification for continued custody, Petitioner respectfully seeks a Preliminary Injunction ordering his immediate release, or alternatively, scheduling Petitioner for an individualized custody determination before this Court at which Respondents may participate, should they choose to do so.

24. On or about May 17, 2012, ICE apprehended Mr. Carcamo upon his entry into the United States through the Texas border. Following this, DHS served Mr. Carcamo with a Notice to Appear ("NTA"), dated July 10, 2012, formally charging him as removable under INA § 212(a)(7)(A)(i) [8 U.S.C. § 1182(a)(7)(A)(i)] for not having in his "possession a valid unexpired immigrant visa reentry permit . . . or other suitable travel document" when he requested entry to the country at or near Brownsville, Texas, before he was eventually released on recognizance. *See* Ex. B, Immigration Court Case Documents (observe contents of NTA).

25. Although ICE filed the NTA with the immigration court after serving it on Mr. Carcamo which placed him into § 240 removal proceedings, the EOIR Automated Case Information system no longer shows Mr. Carcamo's next immigration hearing following his arrest by ICE on December 4, 2025. Instead, ICE's detention of Mr. Carcamo ignores his lengthy history in this country, as well as the fact that he has now had an asylum application pending for several years. For this reason, Mr. Carcamo 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.

26. Despite this case history, current immigration policy treats Mr. Carcamo 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 binding circuit law—purport to strip immigration judges of authority to hold bond hearings for individuals like Mr. Carcamo.

27. As a result of this, as well as ICE's arbitrary arrest and transfer of Mr. Carcamo within the bowels of the immigration industrial complex, Mr. Carcamo now finds himself locked away at the Joe Corley Processing Center in Conroe, Texas, a remote facility hundreds of miles from his community North 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 and community support, impeding his ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

28. In sum, Mr. Carcamo is a man with deep roots in the United States, strong claims for humanitarian protection, 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. Carcamo's 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.

29. 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.

30. 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.

31. 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).

32. 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.

33. 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. Carcamo—are eligible to request bond hearings before the immigration court.

34. 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.

35. 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). This Court should follow suit.

36. 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. Carcamo 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)]

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

38. 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.

39. 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."

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

41. 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.

42. Even though Petitioner was placed him into removal proceedings thirteen years ago under Section 240 of the INA [8 U.S.C. § 1229a], Mr. Carcamo is not yet set for a

final hearing. Even so, Mr. Carcamo 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 Houston (Green Road) Immigration Court. Because Petitioner has been detained in anticipation of removal proceedings, and because he has now lived in the United States for over thirteen years, his custody is governed by § 236(a), not § 235(b).

43. 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 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.

44. 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**

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

46. 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.

47. 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.

48. 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).

49. 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.

50. 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).

51. 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.

52. Petitioner is a long-time resident of the United States, with over thirteen years of continuous presence. He has strong community, family, and business ties in both Texas

and Arkansas. 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.

53. 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)**

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

55. 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.

56. 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).

57. 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.

58. 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).

59. Although Petitioner has not filed a bond application since entering ICE custody on or about August 19, 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.

60. 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

61. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release him, or alternatively, to provide him with an immediate individualized custody redetermination hearing before this Court in accordance with INA § 236(a) within seven (7) days, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner intends to seek a Temporary Restraining Order through a separate motion that is forthcoming, and upon a final hearing, Petitioner asks for permanent injunctive relief as appropriate.

62. 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. Carcamo Is Likely to Succeed on the Merits of His Petition.**

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

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

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

66. 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. Carcamo Will Suffer Irreparable Harm If an Injunction Does Not Issue.**

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

68. Even if Mr. Carcamo 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. Carcamo's ongoing imprisonment without a lawful hearing meets that standard.

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

69. 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.

70. 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.**

71. Finally, the public interest strongly supports the issuance of an 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.

72. 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.

73. Each factor of the equitable test weighs heavily in Mr. Carcamo'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.

74. For these reasons, this Court should issue a preliminary injunction at the earliest possible opportunity, requiring Respondents to release Mr. Carcamo immediately, or alternatively, the Court should hold an individualized bond hearing in accordance with INA § 236(a), in which Respondents may participate should they choose to do so.

## VIII. PRAYER FOR RELIEF

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

a. Issue an Order to Show Cause to Respondents named herein;

b. Schedule a hearing on a preliminary injunction, and at the conclusion of such hearing, issue injunctive relief ordering Petitioner's immediate release;

c. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;

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

e. Issue a writ of habeas corpus ordering Respondents to release Petitioner;

f. Grant permanent injunctive relief as appropriate;

g. 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

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

DATE: November 9, 2025.

Respectfully submitted,

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By: */s/ John M. Bray*
John M. Bray
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ATTORNEY FOR PETITIONER

**VERIFICATION**

My name is CHERRY CARCAMO ("Declarant"), and I hereby make this declaration under penalty of perjury of the United States pursuant to 28 U.S.C. § 1746. I am above the age of twenty-one (21) years of age, am of sound mind, and am 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 the factual statements contained herein above are true and correct to the best of my knowledge and belief.

Cherry Carcamo (Nov 9, 2025 01:18:22 CST)

CHERRY CARCAMO,
Declarant