

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

EDGARDO ALEXIS GOMEZ LOPEZ,


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;
CHARLES WALL, in his official capacity as Director of the New Orleans Field Office of ICE, Enforcement and Removal Operations;
RAFEAL VERGARA, Warden of the Adams County Correctional Center; and
DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review,


Respondents.

Civil No. 5:25-cv-132-DCB-RPM

Immigration No. A 

**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 EDGARDO ALEXIS GÓMEZ LÓPEZ (A# ) is a native and citizen of Honduras who has resided in the United States for several years, most recently in the Dallas, Texas area. He was initially released from ICE custody on recognizance and complied with all supervision requirements. He was recently re-apprehended by agents of ICE – Enforcement and Removal Operations and transferred to the Adams County Correctional Center in Natchez, Mississippi, where he remains detained.

2. Mr. Gómez López has been placed into removal proceedings under INA § 240, following ICE’s most recent decision to revoke his release and assume custody. His case is currently docketed before the immigration court within the New Orleans jurisdiction. A Notice to Appear has been issued charging him under INA § 212(a)(6)(A)(i).

3. In recent months, immigration judges have routinely denied requests for custody redetermination hearings to individuals in materially similar circumstances due to a perceived lack of jurisdiction. These denials have relied on the Board of Immigration Appeals’ recent precedent 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). However, numerous federal district courts — including courts within the Fifth Circuit — have made clear that noncitizens detained under INA § 236(a) are entitled to individualized bond hearings.

4. Despite being in § 240 proceedings, immigration judges continue to refuse to grant noncitizens such as Mr. Gómez López an individualized custody redetermination, asserting a lack of jurisdiction based solely on erroneous and non-binding BIA precedent. The refusal to provide such a hearing violates the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act. Detention in § 240 proceedings is governed by INA § 236(a), which expressly provides that noncitizens are eligible to seek bond unless they fall within the narrow mandatory detention provisions of § 236(c), which Mr. Gómez López does not.

5. Mr. Gómez López therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks emergency and preliminary injunctive relief directing Respondents to provide him with an individualized bond hearing — or, alternatively, to release him from custody under any appropriate conditions the Court deems necessary 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 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 Western Division, because Petitioner is detained at the Adams County Correctional Center, Mississippi, within this Court’s jurisdiction, whereas Petitioner’s detention is controlled by the New Orleans-Field Office of ICE – Enforcement and Removal Operations. *See Ex. A.*

III. PARTIES

9. Petitioner, EDGARDO ALEXIS GÓMEZ LÓPEZ (A# ) is a citizen and national of Honduras who has resided in the United States for several years, most

recently in Dallas, Texas. After initially being released from custody on recognizance, he was re-apprehended by ICE and subsequently transferred to the Adams County Correctional Center in Natchez, Mississippi, where he remains detained. Petitioner is currently in active removal proceedings pursuant to 8 U.S.C. § 1229a (INA § 240). His case is docketed before the New Orleans Immigration Court, and he remains under the jurisdiction of that court for all future hearings.

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 CHARLES WALL is the Director of the New Orleans Field Office of ICE – Enforcement and Removal Operations (“ERO”), and therefore, he oversees the Mississippi Office of ERO, which has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner’s local custodian and DHS’s local decisionmaker.

13. Respondent, RAFEAL VERGARA, Warden of the Adams County Correctional Center, is responsible for housing noncitizens from various regions in ICE custody pending the completion of their removal proceedings. The Adams Country Correctional Center is located at 20 Hobo Forks Rd, Natchez, MS, 39120. 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. STATEMENT OF FACTS

A. Background Information and Apprehension by ICE.

1. Petitioner Edgardo Alexis Gómez López (“Mr. Gómez López”) is a forty-one-year-old citizen and national of Honduras (A# ). He has lived in the United States for several years, establishing family and community ties in Texas. He is presently detained at the Adams County Correctional Center in Natchez, Mississippi, under the authority of U.S. Immigration and Customs Enforcement (“ICE”).

2. Mr. Gómez López fled Honduras to escape longstanding instability, economic insecurity, and violence that placed him and his family at risk. After entering the United States, he resided primarily in Texas, where he complied with immigration procedures, maintained a stable address on file with USCIS, and pursued available forms of immigration relief, including family-based petitions and address updates documented in his file.

3. On or about October 17, 2024, ICE Enforcement and Removal Operations issued an Order of Release on Recognizance (Form I-220A), permitting Mr. Gómez López to reside at his home in Dallas, Texas, while reporting regularly to his assigned ICE officer within the Dallas Field Office.

4. Despite complying with ICE supervision and attending appointments as directed, Mr. Gómez López was subsequently re-detained by ICE, and his recognizance was revoked. At the time ICE assumed custody for this most recent detention, he was not serving a criminal sentence, nor was he in the custody of state or federal authorities for any criminal matter. His detention is therefore entirely civil in nature, undertaken solely for immigration enforcement.

5. Records from his prior immigration counsel note the existence of past or pending criminal charges, which prevented counsel from proceeding with certain filings, such as consular processing. However, the file does not contain any record of a final conviction that would trigger mandatory detention under INA § 236(c). The administrative materials do not identify a qualifying conviction or criminal disposition that would require ICE to hold him without bond.

6. After his re-detention, ICE notified the immigration court and confirmed his custodial status within the New Orleans Immigration Court system. The Executive Office for Immigration Review's automated system reflects an active removal case docketed on October 23, 2024, placing him formally in removal proceedings under INA § 240.

7. Mr. Gómez López is currently confined at the Adams County Correctional Center within the jurisdiction of the United States District Court for the Southern District of Mississippi, Western Division. Despite being in § 240 proceedings, DHS and EOIR have designated him ineligible for a custody redetermination before an immigration judge, relying on the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

8. In sum, Mr. Gómez López is a long-term resident with strong ties to the United States who was previously released under ICE supervision and complied with all reporting requirements. Yet DHS now detains him without the opportunity for an individualized bond hearing, in violation of the Immigration and Nationality Act, the Administrative Procedure Act, the Due Process Clause of the Fifth Amendment, and longstanding constitutional principles governing civil detention.

B. Current Policy Prevents Certain Immigrants from Seeking Bond.

9. DHS issued a Notice to Appear charging Mr. Gómez López as removable under INA § 212(a)(6)(A)(i) for entering the United States without being admitted or paroled. He is therefore in § 240 removal proceedings, which ordinarily entitle him to the procedural protections of the INA, including the opportunity to seek release on bond under INA § 236(a).

10. Under the INA and longstanding Fifth Circuit precedent, individuals in § 240 proceedings—who are not subject to mandatory detention—are entitled to an individualized custody redetermination before an immigration judge. Nothing in the record establishes that Mr. Gómez López has a final conviction that would bring him within the mandatory detention provisions of § 236(c).

11. Despite this statutory posture, DHS has classified Mr. Gómez López as ineligible for bond, treating him as though he were an “arriving alien” or otherwise barred from seeking custody redetermination. This classification rests on DHS and EOIR’s reliance on the BIA’s recent decisions in *Matter of Q. Li* and *Matter of Yajure Hurtado*, which assert that certain individuals in § 240 proceedings cannot seek bond. These decisions were issued without notice-and-comment rulemaking, conflict with the plain language of

the INA, and disregard Fifth Circuit authority reaffirming that bond jurisdiction exists for individuals placed in § 240 proceedings.

12. As a result of this policy, Mr. Gómez López — who previously lived in the community under ICE supervision — is now held in a secure civil detention facility with no opportunity to demonstrate he is neither a danger nor a flight risk. He is subjected to punitive-like conditions despite being detained solely under civil immigration authority.

13. In sum, Mr. Gómez López remains detained solely because DHS has adopted a categorical and unlawful policy that denies bond hearings to individuals in § 240 proceedings, rather than conducting individualized assessments as Congress intended. This violates the structure of the INA, the Administrative Procedure Act, and the Fifth Amendment’s guarantee of due process. He therefore seeks this Court’s intervention through a writ of habeas corpus to restore the protections guaranteed by law.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

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

15. Congress designed § 236(a) to govern the detention of individuals who, like Petitioner, are in regular removal proceedings under § 240. The statutory text expressly

provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

16. The Supreme Court has confirmed the distinction between these statutory schemes. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (explaining differences between § 235(b) mandatory detention and § 236(a) discretionary custody). The Board of Immigration Appeals itself recognized for decades that individuals in § 240 proceedings after entry without inspection were eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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

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

19. For example, in *Santos v. Noem*, 2025 U.S. Dist. LEXIS 183412 (W.D. La. Sept. 15, 2025), the court emphasized that habeas relief is proper to correct statutory misclassification and to preserve the petitioner's due process rights. In *Kostak v. Trump*, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court ordered bond eligibility under § 1226(a), rejecting the Government's assertion that § 1225(b) applied.

Likewise, in *Salazar v. Dedos*, 2025 U.S. Dist. LEXIS 183335 (D.N.M. Sept. 17, 2025), the district court ordered an individualized bond hearing under § 1226(a) within seven days, holding that prolonged detention without such a hearing violates the Fifth Amendment’s Due Process Clause.

20. Similarly, *Lopez v. Hardin*, 2025 U.S. Dist. LEXIS 188368 (N.D. Tex. 2025), and *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 (S.D. Tex. 2025), further confirm that courts are rejecting agency efforts to apply § 1225(b)(2)(A) to individuals who are properly subject to § 1226(a).

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

VI. CLAIMS FOR RELIEF

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

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

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

24. INA § 236(a), 8 U.S.C. § 1226(a), provides that “[o]n a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States,” and that the Attorney General “may continue to detain the arrested alien” or “may release the alien on—(A) bond of at least

\$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole.”

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

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

27. Petitioner is now in removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a], and his case has been placed on the detained docket of the New Orleans Immigration Court. Because Petitioner is detained in the context of ongoing removal proceedings, his custody is governed by § 236(a), not § 235(b).

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

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

Count II – Fifth Amendment Due Process Violation

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

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

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

33. Because Petitioner is detained by ICE at the Adams County Correctional Center, he is categorically barred from presenting evidence that he is not a danger to the community and that he poses no flight risk. The blanket denial of access to a bond hearing strips Petitioner of the individualized determination required by due process and by the plain language of Section 236(a).

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

35. Denying Petitioner any access to a bond hearing deprives him of procedural protections guaranteed by the Due Process Clause. Moreover, prolonged detention

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

36. Petitioner is a long-time resident of the United States, with over ten years of continuous presence. He has strong family and community ties in 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—he has been categorically denied the process to which he is entitled. This amounts to an arbitrary deprivation of liberty in violation of the Fifth Amendment.

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

Count III – Unlawful Agency Action (APA)

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

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

40. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a), including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *see also* Ex. E, Pre-2025 Unpublished BIA Bond Decisions. That framework allowed for individualized custody determinations consistent

with both statutory text and constitutional principles. These cases include, without limitation, the following:

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

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

42. The APA requires agencies to engage in reasoned decision-making, and prohibits arbitrary or capricious action. 5 U.S.C. § 706(2)(A). The BIA’s reversal of decades of

established law without acknowledging or adequately explaining its departure is the very definition of arbitrary and capricious action. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

43. Although Petitioner did not file a new bond redetermination request following his most recent re-detention, the record establishes that doing so would have been futile. Immigration judges within the Fifth Circuit, including those sitting within the New Orleans Immigration Court jurisdiction, have routinely declined to exercise custody-jurisdiction in light of the Board’s recent decisions in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). District courts within the Fifth Circuit have further recognized that requiring noncitizens to seek a bond hearing in this posture only prolongs the very constitutional injury at issue—continued civil detention without access to an individualized custody determination. Courts have accordingly held that administrative exhaustion is not required where, as here, the agency has predetermined that no bond jurisdiction exists. By treating Petitioner as categorically ineligible for bond and effectively subject to mandatory detention, Respondents have adopted an unlawful interpretation of the statute that conflicts with the plain language of Section 236(a) and deprives Petitioner of the due process protections guaranteed by the Fifth Amendment.

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

VII. APPLICATION FOR INJUNCTIVE RELIEF

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

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

A. Mr. Gómez López Is Likely to Succeed on the Merits of His Petition.

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

48. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Gómez López might file—due to the Board of Immigration Appeals’ recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a).

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

50. Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling one. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009), likelihood of success is the most critical factor in evaluating interim relief. Here, Petitioner’s claim is exceptionally strong.

B. Mr. Gómez López Will Suffer Irreparable Harm If an Injunction Does Not Issue.

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

52. Even if Mr. Gómez López 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. Gómez López’s ongoing detention without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Mr. Gómez López’s Favor.

53. The balance of equities tips decisively in Petitioner’s favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal

system—the right not to be arbitrarily detained without process. On the government’s side, the only asserted interest is administrative convenience in applying the BIA’s recent, and in this Circuit nonbinding, precedents.

54. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any legitimate basis for continued detention. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

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

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

56. Granting Petitioner an individualized bond hearing promotes confidence in the integrity of the immigration system, reinforces respect for the rule of law, and prevents the arbitrary deprivation of liberty. Protecting fundamental due process rights is not just in Petitioner’s interest, but in the interest of the public at large.

57. Each factor of the equitable test weighs heavily in Mr. Gómez López’s favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) by various federal district courts and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process; the equities tilt

overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

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

VIII. PRAYER FOR RELIEF

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

- a. Issue a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;
 - b. Grant a preliminary injunction requiring such an individualized bond hearing, or alternatively, ordering Petitioner's immediate release;
 - c. Issue a declaration that DHS may not initiate or pursue expedited removal against Mr. Gomez Lopez 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 19, 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: christy@jmblawfirm.com

By: Christy M. White
CHRISTY M. WHITE
Mississippi Bar No. 104438
COUNSEL FOR PETITIONER

VERIFICATION

STATE OF TEXAS

§

COUNTY OF NATCHEZ

§

§

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

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



JOHN BRAY,
Declarant

VERIFICATION

STATE OF TEXAS

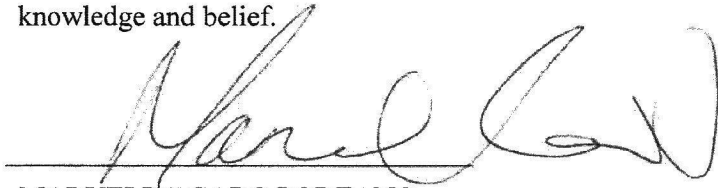
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COUNTY OF DALLAS

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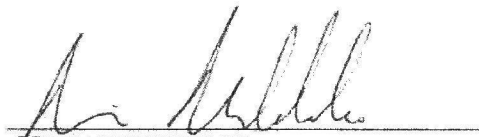
BEFORE ME, the undersigned authority, on this day personally appeared MARVELLA CARO PORTANO (“AFFIANT”), known to me to be the person whose name is included in the foregoing document as Petitioner’s wife, and who after being by me duly sworn, stated that she is above the age of twenty-one (21) years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



MARVELLA CARO PORTANO,
Affiant

SUBSCRIBED AND SWORN BEFORE ME on this 27 day of October, 2025.

[SEAL]


NOTARY PUBLIC
In and for the State of Texas