

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Carlos RIOS LOPEZ,


Petitioner-Plaintiff,

v.

Civ. No. 25-5787

PAM BONDI,

United States Attorney General;

DHS File Number: 

KRISTI LYNN NOEM,

Secretary of the United States

Department of Homeland Security;

TODD M. LYONS,

Director of United States

Immigration and Customs Enforcement;

MATHEW W. BAKER,

Acting ICE Houston Field Office Director

U.S. Immigration and Customs Enforcement,

JOHN LINS COTT, ICE Director HCDF,

Houston Contract Detention Facility,

U.S. Immigration and Customs Enforcement,

MARTIN FRINK,

Warden, Houston Contract Detention Facility)

CoreCivic,

Respondents-Defendants.

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. §2241
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Petitioner, Carlos Rios Lopez (“Mr. Rios Lopez”), respectfully petitions this Honorable Court for a Writ of Habeas Corpus to remedy Petitioner’s unlawful detention and attempted removal from the United States by Respondents.

INTRODUCTION

This emergency habeas petition challenges the federal government’s unlawful detention of Petitioner, a long-term resident of the United States who has lived in the country for more than twenty years, has deep family ties—including three U.S. citizen children—and no disqualifying criminal history. DHS initiated standard removal proceedings against him under INA § 240, serving him with a Notice to Appear on November 24, 2025, charging him under INA § 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I). DHS did not initiate expedited removal under INA § 235(b) and did not complete the forms required to process an arriving alien under that statute (Forms I-867A/B or I-860).

Despite these facts, Immigration Judge Andrew Caborn refused to hold a bond hearing and issued a short “No Action” order on December 1, 2025, stating: “In consideration of the Board’s September 5, 2025, decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Court has reviewed Respondent’s request for custody redetermination. The record contains no evidence that Respondent has been lawfully admitted into the United States. Pursuant to INA § 235(a)(1), an alien present in the United States without admission is deemed an ‘applicant for admission’ and is subject to mandatory detention under INA § 235(b)(2)(A). The Board has expressly held that Immigration Judges lack jurisdiction to consider or grant bond to such individuals. Respondent may refile this request with evidence establishing lawful admission or brief the Court’s jurisdiction.”

IJ Caborn refused to (1) hear oral argument, (2) accept briefing, (3) permit development of a factual record, and (4) hold any hearing whatsoever. Instead, the IJ categorically concluded that any noncitizen not lawfully admitted is mandatorily detained under INA § 235(b)(2)—a conclusion that would effectively eliminate INA § 236(a) from the statute entirely.

This order is legally incorrect, constitutionally infirm, and contrary to the Supreme Court's requirement that courts independently interpret immigration statutes after the overruling of *Chevron* in *Loper Bright Enterprises v. Raimondo* (2024). The Board's decision in *Matter of Yajure Hurtado* applies only to individuals properly processed under § 235(b)—not to long-term residents arrested in the interior and placed in standard removal proceedings.

Because Petitioner is detained under INA § 236(a) and entitled to an individualized custody determination, his continued detention without a hearing violates the INA, the Administrative Procedure Act, and the Fifth Amendment's guarantee of procedural and substantive due process.

For these reasons, this Court should grant the writ, order his immediate release on reasonable conditions, or in the alternative, order that he receives a constitutionally compliant bond hearing at which DHS bears the burden of proof.

CUSTODY

1. Mr. Rios Lopez is being held in the exclusive, physical custody of the United States Immigration and Customs Enforcement (ICE) at the Houston Contract Detention Facility, 15850 Export Plaza Blvd, in Houston Texas, in violation of the Constitution and laws of

the United States and remains under threat of such unlawful detention and imminent removal. Petitioner has been detained continuously since being transferred to ICE custody following his release from the Montgomery County Jail on November 21, 2025.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1361, 2241, 2243, and the Habeas Corpus Suspension Clause of the U.S. Constitution (U.S. Const. art. I, § 9, cl. 2). This action is a civil matter arising under the Constitution and the laws of the United States, challenging

3. Mr. Rios Lopez's custody is under color of authority of the United States. 28 U.S.C. § 2241(c)(1). Such custody is in violation of the U.S. Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3). Mr. Rios Lopez seeks corrective action by officers and employees of the United States in their official capacity and challenges his detention as it violates the Constitution and laws of the United States. 28 U.S.C. §2241(c)(3).

4. No other petition for habeas corpus has been filed in any court to review Petitioner's case.

Thus, this Court has the authority to grant the writ and to order Petitioner's release or a constitutionally adequate custody hearing.

VENUE

5. Venue lies in the United States District Court for the Southern District of Texas, the judicial district in which Mr. Rios Lopez is detained. 28 U.S.C. §1391(e).

PARTIES

6. Mr. Rios Lopez is a citizen and national of Mexico who has resided continuously in the United States for over twenty years. He has been and remains detained under the

custody of U.S. Department of Homeland Security (DHS). He is currently detained at the Houston Contract Detention Facility, in Houston, Texas.

7. Respondent Bret Bradford is the Houston Field Office Director for Detention and Removal within ICE, and has held legal custody of Mr. Rios Lopez.

8. Respondent Todd Lyons is the Director for Immigration and Customs Enforcement nationwide and has held legal custody of Mr. Rios Lopez.

9. Respondent, Mathew Baker, is the acting ICE Field Office Director for Houston, and has held legal custody of Petitioner.

10. Respondent John Linscott is the acting Director of the Houston Contract Detention Facility, Houston, Texas and has physical custody of Mr. Rios Lopez.

11. Respondent Pamela Jo Bondi is Attorney General of the United States and exercises authority over immigration matters through the Executive Office of Immigration Review (EOIR) whose chief function is to conduct removal proceedings and bond proceedings in immigration courts and adjudicate appeals arising from the proceedings.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Petitioner's Background and Long-Term Residence in the United States

12. Petitioner Carlos Rios Lopez is a Mexican national who entered the United States without inspection in 2004, at the age of sixteen. He has lived continuously in Texas for more than twenty-one years. He has deep and longstanding family ties in the United States, including his partner and three U.S. citizen children, one of whom suffers from Autism Spectrum Disorder, Developmental Speech and Language Delay, and Congenital Hearing Loss.

13. Petitioner has no aggravated felony convictions and no disqualifying criminal history. His sole offense is a misdemeanor conviction for Obstructing a Highway or Passageway on November 21, 2025, for which he received time served (20 days) before being transferred from the Montgomery County Jail directly to ICE custody. This offense does not trigger mandatory detention under INA § 236(c), nor does it render him removable on criminal grounds.

14. Petitioner is fully eligible to pursue Cancellation of Removal for Non-LPRs under INA § 240A(b) based on more than ten years of continuous physical presence, good moral character, and the exceptionally compelling medical and developmental needs of his U.S. citizen child.

B. DHS Initiates Standard § 240 Removal Proceedings – Not § 235(b) Proceedings

15. On November 24, 2025, DHS served Petitioner with a Notice to Appear initiating standard removal proceedings under INA § 240 and charging him as removable under INA § 212(a)(6)(A)(i), for being present in the United States without admission or parole, and § 212(a)(7)(A)(i)(I), for lacking valid entry documents at the time of entry. DHS did not initiate or attempt to initiate expedited removal under INA § 235(b). It did not conduct a credible-fear interview, administer or record a sworn statement under Forms I-867A/B, or issue a Form I-860 expedited removal order. Nor did DHS classify Petitioner as an “arriving alien” for purposes of § 235(b). Instead, DHS routed him directly into full INA § 240 removal proceedings, the statutory framework used for interior arrests rather than border apprehensions. At no point has Petitioner been processed as an “arriving alien” or “recent entrant” under § 235(b), and his custody has therefore been governed from the outset by the discretionary detention authority of INA § 236(a).

C. Petitioner Requested a Bond Hearing Under INA § 236(a)

16. On November 26, 2025, Petitioner, through counsel, submitted a formal Custody Redetermination Request seeking a bond hearing under INA § 236(a). In that request, Petitioner explained that DHS had never invoked expedited-removal procedures under INA § 235(b) and therefore could not lawfully classify him as an “arriving alien” subject to mandatory detention. Petitioner emphasized that he was apprehended in the interior of the United States after more than twenty years of continuous residence, placing him squarely within the ordinary framework of § 236(a), which provides for discretionary release on bond. Petitioner further argued that longstanding BIA and Supreme Court precedent recognizes the right of noncitizens in § 240 proceedings to seek individualized custody determinations, and nothing about his case removes him from that statutory scheme. He also made clear that his only conviction—Obstructing a Highway or Passageway—was a minor traffic-related misdemeanor that does not trigger mandatory detention under § 236(c) and cannot serve as a basis for bypassing the custody-redetermination process. Because DHS appeared to be asserting an improper mandatory-detention classification, Petitioner expressly requested a *Joseph* hearing to challenge any claim that § 236(c) applied, and a *Victorph* hearing to contest any assertion that he had been correctly classified under § 235(b). Through this filing, Petitioner sought nothing more than the custody review Congress expressly provided in § 236(a) and that due process requires—a fair opportunity to demonstrate that he is neither a danger nor a flight risk and is therefore eligible for release.

D. Immigration Judge Caborn Refused to Hold Any Hearing and Issued a One-Page “No Action” Order

17. On December 1, 2025, Immigration Judge Andrew Caborn issued a one-page written order titled “No Action,” in which he refused to conduct any form of custody review. Judge Caborn did

not hold a hearing of any kind, did not allow counsel to present oral argument, and did not accept or solicit briefing on the statutory or constitutional issues raised in Petitioner's custody request. The IJ declined to permit the development of a factual record, ignored the legal arguments presented by counsel, and failed to apply the governing standards for *Joseph* or *Victorph* hearings, both of which are required when DHS asserts mandatory-detention authority. The order likewise reflects no consideration of the statutory framework distinguishing INA § 235 from INA § 236 or any assessment of Petitioner's eligibility for bond under § 236(a). Instead, Judge Caborn announced a categorical legal conclusion that because Petitioner entered the United States without inspection more than twenty years ago, he is an "applicant for admission" under § 235(a)(1) and therefore subject to mandatory detention under § 235(b)(2). Relying solely on *Matter of Yajure Hurtado*, the IJ asserted that he lacked jurisdiction to consider or grant bond to any individual who has not been formally admitted and instructed that Petitioner could seek custody redetermination only by proving that he had, at some point, been lawfully admitted to the United States. This reasoning fundamentally misstates the statute, misapplies *Matter of Yajure Hurtado*— which governs individuals properly processed under § 235(b), not long-term residents placed in § 240 proceedings—and contradicts decades of established law recognizing that noncitizens in interior apprehensions fall under the discretionary custody regime of § 236(a). In short, the IJ's order rested on a legally erroneous premise and deprived Petitioner of the individualized custody review required by statute and due process.

E. DHS and the IJ Misapplied *Matter of Yajure Hurtado* and Eliminated § 236(a)

18. Immigration Judge Caborn's order rests entirely on a misapplication of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), a precedential decision that governs a fundamentally

different class of individuals. Yajure involved a recent entrant apprehended near the border who was properly processed under the expedited removal framework of INA § 235(b). In that context—and only in that context—the Board held that individuals lawfully placed into § 235(b) procedures are subject to mandatory detention and are not eligible for a bond hearing before an Immigration Judge. Petitioner bears none of the hallmarks of a Yajure respondent. He entered the United States in 2004, has resided in Texas for more than two decades, and was arrested in Montgomery County, hundreds of miles from any port of entry. DHS then served him with a Notice to Appear and initiated full removal proceedings under INA § 240. DHS never invoked § 235(b), never conducted expedited-removal processing, and never treated Petitioner as an “arriving alien.” The statutory scheme reserves § 235(b) for border-enforcement processing, not for long-term residents apprehended in the interior.

By invoking Yajure where it plainly does not apply, the IJ effectively transformed every noncitizen who entered without inspection at any point in the past—regardless of how many years they have lived in the United States, how deeply rooted their family ties, or what procedures DHS actually invoked—into a perpetual “arriving alien” subject to mandatory detention. This interpretation obliterates the statutory distinction between § 235(b) and § 236(a), rendering Congress’s discretionary bond provision meaningless. It also nullifies the structure of the mandatory-detention statute, including the recently amended INA § 236(c)(1)(E) enacted by the Laken Riley Act, which lists specific criminal categories triggering detention. Under the IJ’s interpretation, those amendments become surplusage because anyone who entered without inspection would already be mandatorily detained under § 235(b), making § 236(c)’s detailed categories irrelevant.

The IJ's reading contradicts binding precedent, including *Zadvydas v. Davis*, *Department of Homeland Security v. Thuraissigiam*, and *Jennings v. Rodriguez*, each of which recognizes that the source of detention authority depends on the statutory context and the procedural posture of the case. It conflicts with *Matter of Lemus-Losa*, where the BIA held that individuals placed in § 240 proceedings fall under § 236(a) unless DHS properly invokes § 235(b) procedures. It violates the anti-surplusage canon, as it would collapse significant portions of the INA's detention framework into a single, all-encompassing category untethered from Congress's design. And, critically, the IJ's reliance on *Yajure* ignores the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, which abolished Chevron deference and requires courts to interpret statutes using traditional tools of construction rather than deferring reflexively to agency interpretations. In sum, the IJ's misapplication of *Yajure* not only misstates the law but also fundamentally reshapes the INA in ways Congress did not authorize.

F. Petitioner Has Been Deprived of All Custody Review

19. As a direct consequence of the Immigration Judge's refusal to hold any form of custody proceeding, Petitioner has been deprived of every procedural safeguard that Congress and the Constitution require. He has never received an individualized custody hearing under INA § 236(a) and has not been afforded even a minimal opportunity to demonstrate that he is neither a danger to the community nor a flight risk. DHS, for its part, has never been required to justify Petitioner's detention with evidence or to meet any burden of proof. Instead, Petitioner has been held solely on the basis of a categorical legal misclassification—that he is subject to mandatory detention under § 235(b), despite DHS's decision to place him in § 240 proceedings and the absence of any expedited-removal processing. Because the IJ refused to consider his *Joseph* and *Victor*

requests, Petitioner was denied the very mechanisms designed to ensure that individuals are not misclassified and unlawfully detained under mandatory-detention provisions. No administrative remedy exists within EOIR to correct the IJ's refusal to exercise jurisdiction or to develop a record for appeal; the BIA cannot meaningfully review an order that rests on a bare, erroneous legal conclusion and contains no factual findings. Petitioner has now remained in immigration detention for weeks without lawful authority, without judicial review, and without any of the procedural protections that the INA and the Fifth Amendment demand.

G. Habeas Review Is Necessary to Prevent Ongoing Constitutional and Statutory Violations

20. Habeas review is indispensable in this case because Petitioner has no meaningful administrative avenue to challenge the Immigration Judge's refusal to exercise custody jurisdiction. The IJ created no factual record whatsoever, leaving nothing for the Board of Immigration Appeals to review even if an appeal were pursued. The question presented—whether Petitioner is subject to detention under INA § 235(b) or § 236(a)—is a pure matter of statutory interpretation, which the BIA cannot resolve where the IJ has declined to make findings or accept briefing. Moreover, EOIR lacks authority to adjudicate constitutional claims, including the procedural and substantive due process violations arising from Petitioner's detention without a hearing. Meanwhile, each additional day of detention inflicts irreparable harm on Petitioner and on his U.S. citizen children, one of whom suffers from documented developmental and medical conditions that require his presence and support. With no administrative mechanism capable of correcting the legal errors underlying his detention, habeas corpus is the only vehicle available to secure judicial review, prevent the continuation of unlawful and unauthorized detention, and vindicate the constitutional and statutory rights that Congress has preserved.

STATEMENT OF LAW

21. The Immigration and Nationality Act establishes a detailed and deliberately tiered detention framework that distinguishes among three primary statutory authorities: (1) expedited removal detention under INA § 235(b); (2) discretionary detention under INA § 236(a); and (3) mandatory detention based on specific criminal categories under INA § 236(c). Understanding the boundaries of each section is necessary to determine the legality of Petitioner's detention and the scope of judicial review.

22. Section 235(b) governs the processing of "applicants for admission" encountered at or near the border and applies only when DHS affirmatively invokes expedited-removal procedures, including administering sworn statements, issuing a Form I-860, and either entering an expedited removal order or referring the individual for credible-fear review. Detention under § 235(b) flows automatically and exclusively from those procedures. Courts have made clear that § 235(b) is a border-enforcement mechanism, not an all-purpose detention authority for long-term residents or individuals arrested in the interior of the United States. Nothing in § 235(b) authorizes DHS to retroactively impose expedited-removal detention on individuals who were never processed under that framework.

23. Section 236(a) establishes the general rule for detention of individuals placed in full removal proceedings under INA § 240, which is the process DHS employs when it serves a Notice to Appear rather than issuing an expedited removal order. Section 236(a) expressly authorizes DHS to either detain or release such individuals on bond or conditional parole, subject to review by an Immigration Judge. This discretionary-custody framework has existed for decades and remains the

default rule for all individuals in § 240 proceedings unless DHS properly invokes one of the narrow exceptions in § 236(c).

24. Section 236(c) provides for mandatory detention of individuals who fall within specific criminal or national-security categories. As amended by the *Laken Riley Act* in 2025, § 236(c)(1)(E) now includes an enumerated list of qualifying offenses, but it remains a limited exception that must be strictly construed. The Supreme Court has repeatedly held that mandatory detention is a narrow carve-out from the general rule of individualized review under § 236(a), and DHS bears the burden of demonstrating that an individual properly falls within § 236(c) if mandatory detention is asserted. Where DHS misclassifies an individual or fails to satisfy statutory prerequisites, the individual is entitled to a *Joseph* hearing—a procedural safeguard confirming that mandatory detention is legally justified.

25. In sum, the INA establishes a carefully structured system in which § 236(a) serves as the baseline detention authority for individuals in standard removal proceedings; § 235(b) applies only when DHS initiates expedited removal at or near the border; and § 236(c) applies only when specific criminal-grounds criteria have been met. Petitioner’s case falls squarely within § 236(a), and no lawful basis exists for placing him under § 235(b) or § 236(c).

26. The Fifth Amendment’s Due Process Clause protects the liberty interests of all persons in the United States, including noncitizens. The Supreme Court has repeatedly recognized that immigration detention is subject to substantive and procedural due process limitations. In *Zadvydas v. Davis*, the Court held that civil immigration detention must remain “reasonably related” to its permissible purposes and cannot become punitive or indefinite. Similarly, in *Jennings v. Rodriguez*, the Court affirmed that the statutory basis for detention governs its

constitutional limits, emphasizing that courts retain the duty to evaluate whether detention is authorized under the relevant statutory provision.

27. Procedurally, due process requires a meaningful opportunity to be heard at a meaningful time. A noncitizen detained under § 236(a) is entitled to an individualized determination of whether detention is necessary to prevent flight or danger, and decisions regarding detention must be supported by evidence, not categorical assumptions. Courts have recognized that the denial of a bond hearing based on a legally erroneous classification violates due process because it denies the individual access to the very procedures Congress designed to protect against unlawful detention.

28. Where an Immigration Judge refuses to exercise jurisdiction, declines to hold a hearing, or issues a blanket conclusion without factual development or legal analysis, the noncitizen is deprived of the procedural protections guaranteed by the Constitution. That is precisely what occurred here. The absence of a hearing, the refusal to accept briefing, and the failure to consider statutory arguments collectively constitute a due process violation warranting habeas relief.

29. In *Loper Bright Enterprises v. Raimondo* (2024), the Supreme Court expressly abolished Chevron deference, holding that courts must independently interpret statutes using traditional tools of construction rather than deferring to agency interpretations. This ruling has sweeping implications for immigration law, particularly in the detention context, where the statutory framework is complex and where agency decisions often push the boundaries of congressional authorization.

30. After *Loper Bright*, immigration courts and the BIA cannot rely on their own interpretations of ambiguous statutory language to restrict jurisdiction or expand detention authority. Instead, courts must look to the text, structure, history, and purpose of the INA. Under any faithful reading of these tools, § 235(b) does not apply to individuals placed in § 240 proceedings, and § 236(a) remains the default rule unless DHS properly invokes § 236(c) or § 235(b) through the required procedural channels.

31. The IJ's reliance on *Matter of Yajure Hurtado*—itself an agency interpretation issued before *Loper Bright*—cannot displace the statute's plain meaning. Courts must independently determine whether Congress authorized the detention at issue. Because Petitioner was placed in § 240 proceedings, never processed under § 235(b), and does not fall within § 236(c), the statutory text clearly places him under § 236(a) and entitled him to custody review.

32. The Supreme Court has consistently held that habeas corpus remains available to review immigration detention, even where 8 U.S.C. § 1226(e) limits the ability of courts to review discretionary bond decisions. In *INS v. St. Cyr*, the Court reaffirmed the historical role of habeas review in safeguarding constitutional and statutory rights. More recently, cases such as *Jennings* and *Thuraissigiam* confirm that federal courts retain jurisdiction to adjudicate challenges to the legal basis of detention, including misclassification under the INA.

33. Section 1226(e) bars only review of discretionary bond determinations; it does not insulate decisions that rest on legal or constitutional error, such as the categorical refusal to exercise jurisdiction or the misapplication of a detention statute. Here, Petitioner challenges not a discretionary bond amount, but the IJ's legal conclusion that he is ineligible for bond as a matter of law—a question squarely within the jurisdiction of the federal courts.

34. The Suspension Clause provides that the writ of habeas corpus shall not be suspended absent rebellion or invasion. The Clause ensures that individuals detained by executive action retain access to judicial review where Congress has not provided an adequate alternative. When the Immigration Judge refuses to hold a hearing, declines to accept briefing, and issues no factual findings, the administrative process becomes incapable of resolving legal errors or preventing unlawful detention.

35. Because EOIR lacks jurisdiction to adjudicate constitutional claims and because the BIA cannot review issues where the IJ has created no record, Petitioner has no adequate alternative to habeas. Under *Boumediene v. Bush*, the lack of any meaningful review mechanism triggers the Suspension Clause and obligates federal courts to provide a remedy through habeas corpus.

ARGUMENT

I. Petitioner Is Lawfully Detained Under INA § 236(a), Not § 235(b), and Is Therefore Entitled to a Bond Hearing

36. Petitioner is detained under the discretionary custody provisions of INA § 236(a) because DHS elected to place him in full removal proceedings under § 240 after serving him with a Notice to Appear on November 24, 2025. The statutory text creates a clear demarcation between expedited removal processing under § 235(b) and standard removal proceedings under § 240, with detention authority deriving from the procedural path DHS selects. Because DHS did not initiate expedited removal, did not take any steps associated with § 235(b), and did not classify Petitioner as an arriving alien, detention authority defaulted to § 236(a). Under that provision, Petitioner is entitled to an individualized custody determination by an Immigration Judge, where DHS must justify continued detention based on evidence of flight risk or dangerousness. The IJ's

conclusion that Petitioner's twenty-year-old entry without inspection retroactively renders him an applicant for admission who must be detained under § 235(b)(2) ignores the statutory structure and collapses Congress's carefully crafted distinctions. Petitioner is therefore entitled, as a matter of law, to a full bond hearing.

II. The Immigration Judge's Reliance on *Matter of Yajure Hurtado* Was Legally Erroneous Because *Yajure* Applies Only to Individuals Properly Processed Under § 235(b)

37. The IJ's reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), was misplaced and fundamentally incorrect. *Yajure* governs only individuals who are properly subject to expedited removal after being apprehended at or near the border and who have been processed using the statutory mechanisms of § 235(b), including a sworn statement under Form I-867A/B and, where applicable, the issuance of a Form I-860. Petitioner shares none of these characteristics. He was apprehended in Montgomery County, Texas, after more than two decades of residence in the United States. DHS initiated § 240 removal proceedings, and no expedited-removal procedures were used at any stage. Because *Yajure* is tethered to the statutory prerequisites of § 235(b), the IJ's extension of its logic to Petitioner—who was never placed in expedited removal—effectively rewrites the INA to eliminate § 236(a) entirely for all individuals who entered without inspection at any point in their lives. This interpretation is legally unsustainable and inconsistent with the statutory structure that Congress enacted.

III. The Immigration Judge's Interpretation Nullifies § 236(a), Renders § 236(c) Superfluous, and Violates Canons of Statutory Construction

38. The IJ's holding that any noncitizen who has not been formally admitted is automatically subject to § 235(b)(2) mandatory detention collapses the entire detention framework into a single category. If accepted, this interpretation would mean that no individual who entered without inspection—regardless of how long they have resided in the United States or in what

procedural posture they are placed—could ever seek bond. Such a reading would erase § 236(a), because anyone present without admission would be deemed an “applicant for admission” subject to mandatory detention. It would also render § 236(c) superfluous, including Congress’s recent amendments under the Laken Riley Act, which expanded mandatory detention to specific criminal categories. Congress would not have enacted detailed provisions governing mandatory detention in § 236(c) if every noncitizen who entered without inspection were already mandatorily detained under § 235(b). The IJ’s construction violates the anti-surplusage canon, the presumption against implied repeals, and the constitutional avoidance doctrine. When traditional tools of interpretation are properly applied, it becomes indisputable that Petitioner is detained under § 236(a), not § 235(b).

IV. Even If the Statute Were Ambiguous, *Loper Bright* Requires Independent Judicial Interpretation, and the IJ’s Deference to an Agency Interpretation Is Impermissible

39. After the Supreme Court’s decision in *Loper Bright Enterprises v. Raimondo* (2024), courts may no longer defer to agency interpretations of ambiguous statutes simply because the agency has opined on the issue. The Immigration Judge’s uncritical reliance on *Yajure* as a binding interpretation of § 235(b) is inconsistent with the Supreme Court’s requirement that courts must independently examine statutory text, structure, and purpose. When those tools are applied here, § 235(b) unambiguously applies only when DHS initiates expedited-removal processing, not when DHS chooses to serve a Notice to Appear and place an individual in § 240 proceedings. The IJ’s failure to apply post-*Loper Bright* standards constitutes legal error requiring correction through habeas review.

V. The IJ’s Refusal to Hold a Custody Hearing Violated Due Process Because Petitioner Was Denied a Meaningful Opportunity to Contest His Detention

40. The IJ's refusal to conduct a custody hearing, accept briefing, or create a factual record deprived Petitioner of the procedural protections guaranteed by the Fifth Amendment. Due process requires that civil detention be accompanied by procedures reasonably calculated to prevent erroneous deprivation of liberty. By denying Petitioner any opportunity to challenge his classification or demonstrate his eligibility for release, the IJ imposed detention that is arbitrary, punitive, and inconsistent with the purpose of immigration custody. The absence of a *Joseph* hearing foreclosed Petitioner's ability to contest DHS's implicit assertion of mandatory detention, and the absence of a *Victorph* hearing prevented him from demonstrating that he was improperly classified under § 235(b). Without any hearing or process, Petitioner's detention violates core constitutional protections, and habeas relief is required to remedy this deprivation.

VI. Because EOIR Cannot Provide an Adequate Remedy, the Suspension Clause Requires Habeas Jurisdiction to Prevent Indefinite Unlawful Detention

41. Petitioner has no administrative remedy capable of correcting the errors in his case. The IJ refused to create a record, leaving the BIA without a factual or legal foundation to review; EOIR lacks authority to adjudicate constitutional claims; and delays inherent in the appeals process would prolong Petitioner's unlawful detention for months. Under the Suspension Clause, federal courts must intervene where administrative processes are structurally incapable of providing relief. Petitioner is being detained on the basis of a categorical legal error that EOIR cannot correct, and habeas corpus is therefore the only mechanism capable of ensuring compliance with the INA and the Constitution. Without judicial intervention, Petitioner faces indefinite detention despite the absence of statutory authority for such custody. The Suspension Clause does not permit that result.

CAUSES OF ACTION

**COUNT I – Unlawful Detention in Violation of the Immigration and Nationality Act
(INA §§ 235, 236, 240)**

Pétitioner re-alleges and incorporates paragraphs 1 through 41 as though fully set forth herein. Petitioner is detained pursuant to the discretionary-custody authority of INA § 236(a) because DHS elected to place him in full removal proceedings under § 240 and never initiated expedited-removal procedures under § 235(b). The statutory text, structure, and history make clear that § 235(b) applies only to individuals processed as recent entrants or arriving aliens, whereas § 236(a) governs custody for noncitizens placed in § 240 proceedings after the service of a Notice to Appear. By categorizing Petitioner as an “applicant for admission” subject to mandatory detention under § 235(b)(2), despite the absence of any expedited-removal processing or classification as an arriving alien, DHS and the Immigration Judge acted contrary to the explicit allocation of detention authority in the INA. This misapplication of § 235(b) results in detention not authorized by statute and violates the INA’s carefully designed custody framework. Because Petitioner is legally entitled to custody review under § 236(a), his continued detention without such review constitutes detention not authorized by law and is therefore unlawful.

**COUNT II – Arbitrary and Capricious Agency Action in Violation of the Administrative
Procedure Act (5 U.S.C. §§ 702, 706)**

Petitioner re-alleges and incorporates paragraphs 1 through 41 as though fully set forth herein. DHS’s and the Immigration Judge’s refusal to apply § 236(a), their reliance on an inapplicable BIA decision (Matter of Yajure Hurtado), and their failure to conduct any individualized analysis constitute final agency action that is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law within the meaning of the Administrative Procedure Act. Agency action is arbitrary and capricious where it fails to examine relevant data, relies on factors Congress did not intend the agency to consider, or entirely ignores critical

statutory distinctions, such as the difference between § 235(b) expedited-removal detention and § 236(a) discretionary detention. By declining to hold a hearing, declining to accept briefing, and issuing a conclusory “No Action” order unsupported by statutory authority or factual development, EOIR deprived Petitioner of a lawful and reasoned decision. Such action cannot be squared with the APA’s requirement that agencies articulate a rational basis for their decisions and adhere to governing statutory standards. Petitioner is entitled to habeas and declaratory relief because the challenged actions exceed statutory authority and fail APA review.

COUNT III – Violation of Procedural Due Process (U.S. Const. amend. V)

Petitioner re-alleges and incorporates paragraphs 1 through 41 as though fully set forth herein. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without providing constitutionally adequate procedures. Petitioner has been detained for weeks without a hearing, without an opportunity to be heard, without the ability to present evidence, and without the availability of *Joseph* or *Victoroph* hearings specifically designed to prevent misclassification under mandatory-detention statutes. The Immigration Judge’s refusal to hold a custody hearing or accept briefing deprived Petitioner of any opportunity to contest the legal basis for his detention and resulted in an arbitrary deprivation of liberty. Because detention under the INA is premised on civil, not punitive, purposes, the government must provide procedural protections that guard against erroneous or prolonged confinement. Here, Petitioner was denied those protections entirely. The IJ’s categorical refusal to exercise jurisdiction and the absence of any process whatsoever violate the procedural due process rights guaranteed by the Fifth Amendment.

COUNT IV – Violation of Substantive Due Process (U.S. Const. amend. V)

Petitioner re-alleges and incorporates paragraphs 1 through 41 as though fully set forth

herein. Substantive due process prohibits executive detention that is arbitrary, punitive, or not reasonably related to its purported civil purpose. Petitioner's detention is not tied to any lawful statutory purpose because it rests on legal error and a misapplication of § 235(b). Mandatory detention under § 235(b) exists only where DHS has engaged in specific border-processing steps, none of which occurred here. As a result, Petitioner is confined solely on the basis of an invented legal theory that ignores the statutory framework and treats all individuals who entered without inspection decades earlier as perpetual arriving aliens. Such detention is not reasonably related to ensuring Petitioner's presence at proceedings or protecting the community; it is instead the product of an unfounded presumption and a refusal to apply the statutory provision Congress enacted for individuals in § 240 proceedings. Because the deprivation of liberty is wholly disconnected from any legitimate governmental purpose, Petitioner's continued detention violates substantive due process.

COUNT V – Suspension Clause Violation (U.S. Const. art. I, § 9, cl. 2)

Petitioner re-alleges and incorporates paragraphs 1 through 41 as though fully set forth herein. The Suspension Clause guarantees that the writ of habeas corpus shall not be suspended unless required by rebellion or invasion. Habeas review is constitutionally required where an individual is detained without lawful authority and where no adequate alternative mechanism exists to correct legal error. Here, Petitioner has no administrative remedy capable of addressing the statutory and constitutional violations underlying his detention. The IJ created no factual record, refused to accept briefing, and declined to apply the statutory framework governing custody. EOIR cannot adjudicate constitutional claims, and the BIA cannot meaningfully review a conclusory order lacking factual findings. Without habeas relief, Petitioner's unlawful detention will continue indefinitely, rendering the INA's protections meaningless. Because Petitioner's

detention is unauthorized and because no adequate substitute for habeas review exists, the Suspension Clause requires that this Court exercise jurisdiction and grant relief.

COUNT VI – Declaratory Judgment Under 28 U.S.C. §§ 2201–2202

Petitioner re-alleges and incorporates paragraphs 1 through 41 as though fully set forth herein. An actual and immediate controversy exists regarding the legality of Petitioner’s detention and the statutory provisions governing his custody classification. Petitioner seeks a declaration that he is detained under INA § 236(a), that DHS and the Immigration Judge misapplied § 235(b), that mandatory detention does not apply, and that Petitioner is entitled to an individualized custody hearing. A declaratory judgment will clarify the parties’ rights and obligations, prevent ongoing harm, and ensure compliance with the INA and the Constitution. In conjunction with the writ of habeas corpus, declaratory relief is necessary to redress the unlawful actions described herein and to prevent further violations of Petitioner’s statutory and constitutional rights.

RELIEF SOUGHT

WHEREFORE Petitioner respectfully requests that this Court exercise its habeas jurisdiction under 28 U.S.C. § 2241 and its equitable and declaratory powers under 28 U.S.C. §§ 1331, 1361, and 2201–2202, and issue the following relief:

- (1) Assume jurisdiction over this matter pursuant to 28 U.S.C. § 2241, the Suspension Clause, and binding Supreme Court precedent;
- (2) Declare that ICE’s apprehension and continued detention of Mr. Rios Lopez is unlawful, because Respondents lacked statutory authority to classify him under INA § 235(b), failed to provide any individualized determination of danger or flight risk, and improperly denied him access to the custody-review procedures mandated by INA § 236(a);

- (3) Issue an order directing Respondents to show cause why the writ of habeas corpus should not be granted;
- (4) Order Respondents to produce the complete administrative record, including Petitioner's A-file, R-file, all custody-classification documents, and any materials relied upon in asserting mandatory detention, from both the Department of Homeland Security and the Executive Office for Immigration Review;
- (5) Enjoin ICE from transferring or removing Petitioner from the jurisdiction of the Southern District of Texas while this habeas petition is pending, in order to preserve this Court's jurisdiction and prevent irreparable harm;
- (6) Grant the writ of habeas corpus and order Petitioner's immediate release on his own recognizance, parole, or reasonable conditions of supervision; or, in the alternative, order the Immigration Court to conduct a constitutionally adequate custody redetermination hearing under INA § 236(a)—including application of the correct statutory framework, the proper burden of proof on DHS, and the protections required by *Matter of Joseph* and *Matter of Victorph*;
- (7) Award Petitioner reasonable costs and attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, because Respondents' actions were not substantially justified and resulted in the unlawful deprivation of liberty;
- (8) Grant any further relief that this Court deems just, proper, and necessary to remedy ongoing violations of the INA, the APA, and the United States Constitution.

Respectfully submitted on this December 3, 2025.

/s/ Daniel J. Corno
Counsel for Petitioner
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, the undersigned counsel for Petitioner **Carlos Rios Lopez**, hereby verify pursuant to 28 U.S.C. § 2242 that I have reviewed the factual allegations contained in this Petition for Writ of Habeas Corpus and that the facts asserted therein are true and correct to the best of my knowledge, information, and belief, based on my representation of Petitioner and my review of the records and information available to me. I submit this verification on Petitioner's behalf because Petitioner is detained and not reasonably able to execute this verification in person.

Dated this December 3, 2025.

/s/ Daniel J. Corno
Daniel Corno