

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

EDUARDO ZAPATA PALACIOS,

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;  
MARTIN FRINK, Warden of the Houston Contract Detention Facility; and  
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review, Respondents.


Civil Action No. 4:25-cv-5953

Immigration No. 

**PETITIONER'S ORIGINAL  
PETITION FOR WRIT OF HABEAS  
CORPUS UNDER 28 U.S.C. § 2241  
AND REQUEST FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**I. INTRODUCTION**

1. Petitioner - EDUARDO ZAPATA PALACIOS ("Mr. Zapata Palacios") 

 is a native and citizen of Mexico who has resided in the United States since his entry in 2007, most recently in the San Antonio, Texas area. He is currently subject to indefinite detention after his apprehension by ICE in Texas and is currently detained at the Houston Contract Detention Facility. *See* Petitioner Ex. 1, ICE Detainee Locator search results for Petitioner.

2. Mr. Zapata Palacios has been placed into removal proceedings before under INA § 240, 8 U.S.C. § 1229a, following his recent arrest by ICE officers near Port Lavaca, Texas. *See* Petitioner Ex. 2, EOIR Automated Case Information and Respondent Case Information obtained from bklg.org.

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Mr. Zapata Palacios, 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* Petitioner Ex. 3, 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. Zapata Palacios 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. Zapata Palacios therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief directing Respondents to provide him an individualized custody hearing or release him under reasonable conditions without delay.

6. Additionally, Mr. Zapata Palacios brings this petition for a writ of habeas corpus to seek enforcement of his rights as a member of the Bond Denial Class certified in *Maldonado*

*Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Houston Contract Detention Facility. *See* Petitioner Ex. 1., ICE Detainee Locator search results for Petitioner. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

7. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs, and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at \*11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at \*9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). *See* Petitioner Ex. 3, District Court Orders.

8. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at \*11.

9. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be released on bond.

10. Petitioner Eduardo Zapata Palacios is a member of the Bond Eligible Class, as he:

- a. Does not have lawful status in the United States and is currently detained at the Houston Contract Detention Facility. He was apprehended by immigration authorities on November 5, 2025.
- b. Entered the United States without inspection nearly nineteen years ago and was not apprehended upon arrival *cf. id.*; and
- c. Is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

11. After apprehending Petitioner on November 5, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

12. The Court should expeditiously grant this petition.

13. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

14. Immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

15. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order, Respondent DHS must release Petitioner.

16. Alternatively, the Court should order Petitioner’s release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

## II. JURISDICTION AND VENUE

17. 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.

18. Venue is proper in this District, and in the Houston Division, because Petitioner is detained at the Houston Contract Detention Facility in Houston, Texas, within this Court’s jurisdiction, whereas Petitioner’s immigration detention is controlled by the Houston Office of ICE – Enforcement and Removal Operations. *See* Petitioner Ex. 1.

## III. PARTIES

19. Petitioner, EDUARDO ZAPATA PALACIOS, is a citizen and national of Mexico who has lived in the United States for nearly nineteen years. He was transferred to the Houston Contract Detention Facility, where he remains detained.

20. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security (“DHS”). She is sued in her official capacity.

21. 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.

22. Respondent BRET A. BRADFORD is the Acting Director of the Houston Field Office of ICE – Enforcement and Removal Operations (“ERO”). As such, he is Petitioner’s immediate custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.

23. Respondent, MARTIN FRINK, Warden of the Houston Contract Detention Facility, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Houston Contract Detention Facility is located at 15850 Export Plaza Dr, Houston, TX 77032. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

24. 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.

#### **IV. FACTUAL BACKGROUND**

25. Petitioner Eduardo Zapata Palacios is citizen and national of Mexico, born in 1984. He has lived continuously in the United States since his initial entry in 2007 without inspection. Since that time, he has continuously resided in the San Antonio, Texas area with his wife, Betzadada Diaz. Mr. Zapata Palacios is prima facie eligible for 42B Cancellation of Removal for Certain Nonpermanent Residents. He has continuously resided in the United States for a period of more than 10 years, he does not have any disqualifying criminal convictions, and he has two U.S. citizen children who will suffer exceptional and extremely unusual hardship if he were removed from the United States. Petitioner Ex. 4, EOIR-42B Cancellation of Removal instructions.

26. On or about November 5, 2025, Mr. Zapata Palacios was apprehended by Immigration and Customs Enforcement officers. Mr. Zapata Palacios was traveling back to San Antonio from the Houston, Texas area after working a job. The vehicle was in was stopped by a patrol car and he was apprehended by Immigration and Customs Enforcement officers. Mr. Zapata

Palacios was subsequently transferred to the Houston Contract Detention Facility. The ICE Detainee Locator confirms Petition's custody in Houston, Texas as of December 10, 2025. *See* Petitioner Ex. 1.

27. Until his recent detention in Houston, Texas, Mr. Zapata Palacios has lived and worked in the San Antonio, Texas area for many years, where he developed close ties to his community. no history of violence and no criminal record whatsoever that would justify treating him as a danger to society—no arrests, convictions —since entering the United States. To the contrary, he has demonstrated continuous residence, stable employment, and strong family, including his 2 U.S. citizen children, and community ties in San Antonio, Texas. Mr. Zapata Palacios' detention was not the result of any criminal act or immigration violation but rather a routine compliance visit that ICE converted into an arbitrary arrest.

28. As of the filing of this petition, Petitioner remains detained at the Houston Contract Detention Facility. Although ICE filed his Notice to Appear with EOIR, Mr. Zapata Palacios 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. Zapata Palacios, coupled with agency policy, renders his detention ultra vires, indefinite, and constitutionally infirm. He has been held for over a month contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

29. Petitioner's ongoing detention has caused significant emotional and financial hardship to his wife and U.S. citizen children, who depend on him for financial support. Given Respondents' position regarding lack of jurisdiction to consider an individualized custody redetermination, provide him with an hearing, or justify continued custody, Petitioner respectfully seeks a Preliminary Injunction ordering his immediate release, or alternatively, requiring

Respondents to promptly provide him with an individualized custody determination before an immigration judge.

30. Current immigration policy treats Mr. for bond purposes as though he were subject to the harshest form of “arriving alien” detention, even though he has been properly placed in § 240 proceedings. Instead of being allowed to seek release on bond before an immigration judge, ICE has categorically denied him any chance to demonstrate that he is neither a danger to the community nor a flight risk. This blanket denial is not based on any individualized finding, but on the government’s insistence on applying the Board of Immigration Appeals’ recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Those decisions—issued without notice-and-comment rulemaking, and in direct tension with the plain language of the statute—purport to strip immigration judges of authority to hold bond hearings for individuals like Mr. Zapata Palacios.

31. In sum, Mr. Zapata Palacios 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. Zapata Palacios’ 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.

32. 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.

33. 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.

34. 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).

35. 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.

36. 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. Zapata Palacios—are eligible to request bond hearings before the immigration court.

37. 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.

38. 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 in this case.

39. 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. Zapata Palacios 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)]

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

41. 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.

42. 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.”

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

44. 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.

45. Petitioner was served an NTA and placed into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a]. Mr. Zapata Palacios remains detained at the Houston Contract Detention Facility. His case has been placed on the detained docket of the Houston Immigration Court. Because Petitioner has been detained pending the outcome of removal proceedings, and because he has now lived in the United States for several years, his custody is governed by § 236(a), not § 235(b).

46. 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.

47. 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**

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

49. 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.

50. 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.

51. Because Petitioner is detained by ICE at the Houston Contract Detention Facility, 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).

52. 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.

53. 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).

54. Petitioner is a long-time resident of the United States, with over ten years of continuous presence and two U.S. citizen children. He has strong family and community ties in San Antonio, 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.

55. 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)**

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

57. 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.

58. 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).

59. 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.

60. 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).

61. Although Petitioner has not filed a bond application since entering ICE custody on or about November 5, 2025, doing so would be futile, as immigration judges refuse to exercise jurisdiction, expressly relying on this recent BIA policy shift. 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.

62. 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.

#### **Count IV - Request for Relief Pursuant to *Maldonado Bautista***

63. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

64. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

65. The order granting class certification in *Maldonado Bautista* further orders that “[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”

66. Respondents are parties to *Maldonado Bautista* and bound by the Court’s declaratory judgment, which has the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

67. By denying a bond hearing under § 1226(a) and asserting that Petitioner is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner’s statutory rights under the INA and the Court’s judgment in *Maldonado Bautista*.

#### **VII. REQUEST FOR INJUNCTIVE RELIEF**

68. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to provide him with an immediate individualized custody redetermination hearing under INA § 236(a) within seven (7) days, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner asks for permanent injunctive relief as appropriate.

69. 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. Zapata Palacios Is Likely to Succeed on the Merits of His Petition.**

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

71. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Zapata Palacios 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).

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

73. 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. Zapata Palacios Will Suffer Irreparable Harm If a Preliminary Injunction Does Not Issue.**

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

75. Even if Mr. Zapata Palacios 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. Zapata Palacios’ ongoing imprisonment without a lawful hearing meets that standard.

**C. Balance of Equities Weighs in Mr. Zapata Palacios Favor.**

76. 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.

77. 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.**

78. 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.

79. 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.

80. Each factor of the equitable test weighs heavily in Mr. Zapata Palacios' 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.

81. For these reasons, this Court should issue a Preliminary Injunction at the earliest possible opportunity, requiring Respondents to provide Mr. Zapata Palacios an immediate bond hearing or release.

82. 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 a hearing, or 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. Grant permanent injunctive relief as appropriate;
- e. 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
- f. Grant such other relief as this Court deems just and proper.

DATE: December 10, 2025

Respectfully Submitted,

**Eduardo Zapata Palacios**

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2025, a true copy of the above document was filed via the Court's CM/ECF and that a copy will be sent automatically to all counsel of record.

December 10, 2025

/s/Pablo E. Rivera

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