

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JORGE LARREA GONZALES,


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; SAMUEL J. OLSON, in his official capacity as Director of the St. Paul Field Office of ICE, Enforcement and Removal Operations; ERIC TOLLEFSON, Warden of the Kandiyohi County Jail; and DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review,


Respondents.

Civil Action No. 25-cv-04696

Immigration No. 

**PETITIONER'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 JORGE LARREA GONZALES () is a native and citizen of Mexico who has resided in the United States for many years,

since May 2012, primarily in the North Dakota. He is currently subject to indefinite detention after ICE's early morning apprehension of him at his home in Watford City, North Dakota, and he is currently detained at the Kandiyohi County Jail in Willmar, Minnesota. *See Ex. A, Proof of Detention in ICE Custody.*

2. Following his arrest, Mr. Larrea was placed into immigration removal proceedings under INA § 240, 8 U.S.C. § 1229a, despite the fact that his immigration case has been pending for several years before USCIS. *See Ex. B, Immigration Court Case Documents.*

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Mr. Larrea, due to a perceived lack of jurisdiction. These denials have relied on recent Board of Immigration Appeals ("BIA") precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Ex. C, Recent BIA Decisions on Bond.* However, numerous federal district court, including some from within the jurisdiction of the United States Court of Appeals for the Eighth 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. Larrea 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. Larrea therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and he will be seeking immediate injunctive relief through a separate filing, including a Temporary Restraining Order (“TRO”) directing Respondents to release him immediately, or if necessary, to provide him an individualized custody hearing or release him under reasonable conditions without delay.

II. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by persons held in custody in violation of federal law or the Constitution. This action

also invokes the Court's authority under the All Writs Act, 28 U.S.C. § 1651.

7. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek class-wide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as "*Reno v. AADC*"). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

8. Venue is proper in this District, because Petitioner is detained at the Kandiyohi County Jail in Willmar, Minnesota, within this Court's jurisdiction, whereas Petitioner's immigration detention is controlled by the St. Paul Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

9. Petitioner, JORGE LARREA GONZALES ("Mr. Larrea"), is a citizen and national of Mexico who has lived in the United States for roughly

twenty-five years. He was transferred to the Kandiyohi County Jail, where he remains detained, following his arrested by ICE near his home in Corpus Christi, Minnesota. Petitioner is currently in active removal proceedings under 8 U.S.C. § 1229a (INA § 240), and he has remained in ICE custody for over a month since his most recent arrest, which Petitioner would aver, upon information and belief, was conducted by ICE on the basis of racial animus disguised as immigration enforcement. After receiving an NTA and I-830, Mr. Larrea's immigration court case remains ongoing. *See* Ex. D, EOIR Automated Case Information System. This is due largely to DHS's allegation that Mr. Larrea was neither "admitted nor paroled" following his entry to the United States at an unknown location and on an unknown date.

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 SAMUEL J. OLSON is the Acting Director of the St. Paul Field Office of ICE - Enforcement and Removal Operations ("ERO"),


which has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

13. Respondent, ERIC TOLLEFSON, Warden of the Kandiyohi County Jail, is responsible for housing noncitizens from various regions of Minnesota in ICE custody pending the completion of their removal proceedings. The Kandiyohi County Jail is located at 2201 NE 23rd St, Suite 101, Willmar, Minnesota 56201. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

14. Respondent, DAREN K. MARGOLIN, is Director of the Executive Office for Immigration Review. As such, he is responsible for directing and coordinating policy for the United States Immigration Court system, including policies relating to immigration bond applications and requests for custody redeterminations in immigration court. He is sued in his official capacity only.

15. Respondents Noem and Lyons, who represent DHS and ICE, are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act ("APA").

IV. FACTUAL BACKGROUND

16. Petitioner Jorge Larrea Gonzales () is a citizen and national of Mexico, born in 1989. He has lived continuously in the United States since his last entry in the year 2012, when he was 23 years of age. *See* Ex. B, Immigration Court Case Documents. Since that time, he has continuously resided in the United States in North Dakota with his family wife and six U.S. Citizen children. *See* Ex. G, I-589 Application.

17. ICE's public detainee-locator confirms that he is currently held at the Kandiyohi County Jail, located at 2201 23rd Street NE, Willmar, Minnesota 56201. *See* Ex. A, Proof of ICE Custody.

18. According to counsel's notes maintained in the ordinary course of representation through the firm's case-management system, ICE took Mr. Larrea into custody in March 2025, and he has remained detained continuously since that time – now exceeding six months without a constitutionally adequate custody determination.

19. Removal proceedings were carried out against Mr. Larrea before the Immigration Court in Fort Snelling, Minnesota. He filed an Application for Asylum and Withholding of Removal (Form I-589) on May 22, 2025, through immigration counsel, which the Immigration Court docketed under his A-Number. *See* Ex. G, I-589 Application.

20. Due to Respondents' current detention policy, Mr. Larrea had no choice but to pursue his immigration case while **detained**, making it difficult for him to assist his immigration counsel in his own defense. *See* Ex. F, Sample IJ Order Denying Bond.

21. EOIR records confirm that the Immigration Judge issued an order in his case, which is now subject to review before the Board of Immigration Appeals. The appeal remains pending, and the BIA set November 10, 2025, as the deadline for briefing. Counsel has advised Mr. Larrea that the timing of a BIA decision cannot be predicted and may take many months beyond the briefing deadline.

22. Despite his prolonged confinement, Mr. Larrea has not received a constitutionally adequate custody hearing at which the Government was required to justify continued detention by clear and convincing evidence, nor has ICE provided any meaningful post-custody review capable of ordering release. Instead, he remains confined in a county jail facility used to house individuals in civil immigration custody, even though he presents no danger or flight risk that could not be mitigated by appropriate conditions of supervision. *See* Ex. A, Proof of ICE Detention.

23. Mr. Larrea has complied with all requirements of the immigration process, is pursuing his administrative immigration appeal in good faith,

and has substantial ties to the United States — including six U.S.-citizen children. *See* Ex. G, I-589 Application.

24. The Government's prolonged detention of a noncitizen with a pending appeal, no criminal allegation in these proceedings, and no individualized determination of dangerousness is unreasonable, punitive in effect, and violates the Due Process Clause.

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

26. The charges justifying Petitioner's placement into removal proceedings are found in the Notice to Appear ("NTA"), dated April 23, 2025, served upon him by DHS, which formally charges him as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] for having entered the United States without being inspected and admitted or paroled, and also, under the separate ground of inadmissibility at INA § 212(a)(7)(A)(i)

[8 U.S.C. § 1182(a)(7)(A)(i)], for not having in his “possession a valid unexpired immigrant visa reentry permit . . . or other suitable travel document” when he requested entry to the country at or near an unknown date and place. *See* Ex. B, Immigration Court Case Documents (observe NTA).

27. Although the immigration judge denied Mr. Larrea application for relief from removal, he technically remains in § 240 removal proceedings with an as-yet non-final removal order, and the EOIR Automated Case Information system confirms Mr. Larrea’s removal case remains on appeal with the Board of Immigration Appeals. However, ICE’s detention of Mr. Larrea ignores his lengthy history in this country, as well as the fact that his detention for the last eight months during his removal proceedings have significantly interfered with the ability of his immigration counsel to prepare his case. Given this context, Mr. Larrea claims entitlement to the full panoply of due process guaranteed by the INA, including a non-detained hearing on relief from removal and a bond hearing under § 236(a), and not merely what amounts to a summary expulsion.

28. Despite this case history, current immigration policy treats Mr. Larrea 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, Respondents have 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 decisions of multiple federal district courts throughout the country – purport to strip immigration judges of their statutory authority to hold bond hearings for individuals like Mr. Larrea.

29. As a result of Respondents' current detention policy, as well as ICE's arbitrary arrest and transfer of Mr. Larrea within the bowels of the immigration industrial complex, Mr. Larrea now finds himself locked away at the Kandiyohi County Jail in Willmar, Minnesota, a remote facility hundreds of miles from his community in North Dakota. *See Ex. A.* He is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal conviction that would bar his release under Section 236(c) of the INA. Each day of confinement exacerbates the harm – separating him from family and

community support, impeding his ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

30. In sum, Mr. Larrea 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. Larrea's continued detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

31. 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.

32. Congress designed § 236(a) to govern the detention of individuals who, like Petitioner, are in regular removal proceedings under § 240 and who are apprehended while *already* in the United States. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

33. 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).

34. 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.

35. In recent months, 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. Larrea – are eligible to request bond hearings before the immigration court.

36. 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.

37. Indeed, the analysis and holding by the BIA in *Matter of Yajure Hurtado* has also consistently been rejected by district courts across the country over the last several months. *See, e.g., Alonso Sanchez v. Hermosillo*, No. 2:25-CV-02152-TMC, 2025 WL 3171362 (W.D. Wash. Nov. 13, 2025); *Anselmo v. Moniz*, No. 1:25-CV-13309-IT, 2025 WL 3171137 (D. Mass. Nov.

13, 2025); *Cabrera v. Noem*, No. 25 C 12160, 2025 WL 3171288 (N.D. Ill. Nov. 13, 2025); *Contreras Alvarez v. Noem*, No. 1:25-CV-1313, 2025 WL 3151948 (W.D. Mich. Nov. 12, 2025); *Diallo v. Maldonado, Jr.*, No. 25-CV-05740 (DG), 2025 WL 3158295 (E.D.N.Y. Nov. 12, 2025); *Diego v. Raycraft*, No. 25-13288, 2025 WL 3159106 (E.D. Mich. Nov. 12, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751 (W.D. Tex. Oct. 21, 2025); *Parada-Hernandez v. Johnson*, No. 3:25-cv-2729-K-BN, 2025 U.S. Dist. LEXIS 234517 (N.D. Tex. Dec. 2, 2025).

38. Similarly, recent decisions from this district further confirm the rejection of agency efforts to apply § 1225(b)(2)(A) to individuals who are *actually* subject to § 1226(a). This Court should follow suit in this case, as well. *See, e.g., E.M. v. Noem*, No. 25-CV-3975 (SRN/DTS), 2025 WL 3157839 (D. Minn. Nov. 12, 2025); *Eliseo A.A. v. Olson*, CV 25-3381 (JWB/DJF) (D. Minn. Oct. 8, 2025); *Belsai D.S. v. Bondi*, No. 25-CV-3682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025).

39. These holdings reflect a clear emerging 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. Larrea is entitled to

immediate release, or at a minimum, to a bond reconsideration under § 1226(a) as soon as possible.

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 Eighth 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. Even though Petitioner last entered the United States some thirteen years ago, his treatment by Respondents is as though he were still at the threshold of entry into the country. Thus, Mr. Larrea remains detained at the Kandiyohi County Jail, and his case remains pending before the Board of Immigration Appeals while he remains detained. But because Petitioner has been detained for removal proceedings, and because he has now lived in this country for 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 Kandiyohi County Jail, 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. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), despite failing to file the NTA and turning a blind eye to Petitioner's pending I-589 application for asylum now pending with USCIS, Respondents have attempted to circumvent the processing of his affirmatively filed Form I-589 asylum application.

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

56. 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)

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

58. 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.

59. 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).

60. 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.

61. 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).

62. Although Petitioner did not file a new bond redetermination application following his detention on October 30, 2025, the record establishes that such a request would have been futile. Immigration judges across the country have expressly declined to exercise jurisdiction over custody redeterminations in light of the Board's 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)—even after a recent injunction was issued for a nationwide class of aliens that includes Petitioner, who have been improperly subjected to mandatory detention. *See Ex. F, Sample IJ Order Denying Bond Post-Maldonado Bautista*.

63. 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 V - Fourth Amendment Violation

64. Petitioner incorporates by reference the foregoing factual allegations and asserts an additional, independent claim arising under the Fourth Amendment to the United States Constitution.

65. On or about the morning of March 15, 2025, Mr. Perez was arrested by ICE officers after being encountered by local law enforcement during a suspicionless traffic stop of a vehicle in which he was a passenger. *See Ex. B, Immigration Court Documents (observe I-213)*. The officers did not present a warrant or have any individualized basis to believe that Mr. Perez had committed any immigration violation. Instead, the agents addressed him in Spanish and began questioning him about his immigration status.

66. This pattern of conduct demonstrates that ICE agents acted not pursuant to individualized suspicion, but rather engaged in a form of dragnet racial profiling directed at individuals of Hispanic appearance. Such conduct violates the Fourth Amendment's guarantee that "[t]he right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. The Supreme

Court has made clear that seizures without probable cause, or predicated solely on race or ethnicity, are unconstitutional. *See United States v.*

Brignoni-Ponce, 422 U.S. 873, 885-87 (1975) (holding that apparent Mexican ancestry alone cannot justify a stop by immigration officers).

67. Here, there is no evidence that ICE possessed either (1) a valid arrest warrant specifically naming Petitioner, or (2) reasonable suspicion particularized to Petitioner that would justify a seizure. Instead, the agents' conduct fits precisely within the type of generalized, race-based enforcement action that *Brignoni-Ponce* and its progeny forbid. By seizing Petitioner without lawful authority, Respondents violated the Fourth Amendment.

68. This violation is not a mere procedural irregularity: it taints the very basis of Petitioner's detention. As courts have recognized, unlawful seizures may warrant suppression of evidence in immigration proceedings, and they independently justify habeas relief where continued detention is the fruit of a Fourth Amendment violation. *See, e.g., Oliva-Ramos v. Att'y Gen.*, 694 F.3d 259, 279-80 (3d Cir. 2012) (suppression warranted where ICE engaged in warrantless, suspicionless home raids); *Yanez-Marquez v. Lynch*, 789 F.3d 434, 449-50 (4th Cir. 2015) (held that exclusionary rule stemming from Fourth Amendment violations applies

even in removal proceedings, because “[t]o hold otherwise would give no effect to the language used by the Supreme Court in *Lopez-Mendoza* expressing concern over fundamentally unfair methods of obtaining evidence and would ignore the fact that eight justices in *Lopez-Mendoza* seem to have agreed that the exclusionary rule applies in removal proceedings in some form”); *Orhorhaghe v. INS*, 38 F.3d 488, 501 (9th Cir. 1994) (suppressing evidence obtained through race-based immigration stop).

69. Moreover, Petitioner’s arrest, effected in a public place without a judicial warrant, violated 8 U.S.C. § 1357(a)(2), which requires that immigration officers may arrest an alien without a warrant only where they have “reason to believe” the person is in violation of the law and is “likely to escape before a warrant can be obtained.” No such exigent circumstances existed here. Petitioner was simply on his way to work.

70. Therefore, it is clear that Petitioner’s ongoing detention is the direct product of an unconstitutional seizure and should be declared unlawful. This Court should grant habeas relief and order his release, or at minimum, declare that his seizure violated the Fourth Amendment and enjoin Respondents from continuing to detain him on the basis of this unconstitutional arrest.

VII. REQUEST FOR INJUNCTIVE RELIEF

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

72. 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. Larrea Is Likely to Succeed on the Merits of His Petition.

73. Mr. Larrea 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 Eighth Circuit, have already determined that noncitizens in circumstances substantially similar to that of Mr.

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

74. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Larrea 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). *See also* Ex. F.

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

76. 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. Larrea Will Suffer Irreparable Harm If an Injunction Does Not Issue.

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

78. Even if Mr. Larrea 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. Larrea’s ongoing imprisonment without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Mr. Larrea’s Favor.

79. 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 the view of federal courts across the country—nonbinding precedents.

80. 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.

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

82. 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.

83. Each factor of the equitable test weighs heavily in Mr. Larrea'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.

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

VIII. PRAYER FOR RELIEF

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

- a. Issue an Order to Show Cause to Respondents named herein;
- b. Schedule a hearing on an injunction, for the cross-examination of the immigration officers who arrested Petitioner, and at the conclusion of such hearing, issue findings of fact and conclusions of law;
- c. Based on upon the Court's findings and conclusions, issue an order granting the writ of habeas corpus, and injunctive relief ordering

Petitioner's immediate release, or in the alternative, an immigration bond hearing within seven (7) days;

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

f. Grant permanent injunctive relief as appropriate;

g. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and

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

DATE: December 12, 2025.

Respectfully submitted,

/s/ Marc Prokosch

Marc Prokosch, esq.

Prokosch Law, LLC

MN Bar #0354028

1700 W. Hwy. 36, Ste. 570

Roseville, MN 55113

(651) 333-3039

THE LAW OFFICE OF JOHN M. BRAY,
PLLC
911 N. Bishop Ave.
Dallas, TX 75208
Tel: (855) 566-2729
Fax: (214) 960-4164
Email: john@jmblawfirm.com

By: /s/ John M. Bray
John M. Bray
Texas Bar No. 24081360
LEAD COUNSEL FOR
PETITIONER*

* Application for admission *pro hac vice* has been concurrently submitted.

VERIFICATION

My name is Edith Karina Alvarez Lomeli (“Declarant”), and I am Petitioner’s wife. I am above the age of twenty-one (21) years of age, am of sound mind, and am in all ways competent to make this verification. I hereby declare, pursuant to 28 U.S.C. § 1746, that I have knowledge of the substance of the foregoing document, that I have personal knowledge of the facts contained in it, and that the factual statements contained in it are true and correct to the best of my knowledge and belief.

Edith Álvarez
EDITH KARINA ALVAREZ LOMELI
Declarant

DATE: 12/11/2025