Petition for a Writ of Habeas Corpus 28 U.S.C. §2241

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MANUEL ENRIQUE ALVAREZ VASQUEZ,
Petitioner.

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
MIGUEL VERGARA, in his official capacity as Field Office Director, ICE Enforcement and Removal Operations, El Paso Field Office;
RAYMOND THOMPSON, Warden (or Facility Administrator) of the Karnes County Immigration Processing Center, Texas, in his or her official capacity; and
DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office for Immigration Review.

Respondents.

Civil Action No. 5:25-cv-01839

Immigration No. [redacted]

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 MANUEL ENRIQUE ALVAREZ VASQUEZ ([redacted]), hereinafter referred to as "Petitioner" or "Mr. Alvarez," is a native and citizen of El Salvador who has been present in the United States for nearly seven (7) years. He is currently detained in the custody of U.S. Immigration and Customs Enforcement ("ICE") at the Karnes County Immigration Processing Center in Karnes City, Texas. *See Petitioner's Ex. 1, Proof of Detention in ICE Custody.*

2. On March 9, 2019, the Department of Homeland Security issued a Notice to Appear, placing Mr. Alvarez in removal proceedings pursuant to INA § 240 [8 U.S.C. § 1229a]. *See Petitioner's Ex. 2, Notice to Appear.*

3. In recent months, immigration judges have denied bond hearing requests filed by individuals in circumstances substantially similar to those of Mr. Alvarez, asserting a lack of jurisdiction. Those denials have relied on recent Board of Immigration Appeals ("BIA") decisions, including *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025). Numerous federal district courts, including courts within the Fifth Circuit, have concluded that similarly situated noncitizens detained pursuant to INA § 236(a) [8 U.S.C. § 1226(a)] are entitled to individualized bond hearings before an immigration judge.

4. Despite this authority, immigration judges continue to deny noncitizens such as Mr. Alvarez access to individualized custody redetermination hearings, asserting a lack of jurisdiction based on erroneous interpretations of recent BIA precedent. This refusal violates the Immigration and Nationality Act, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act, because detention in INA § 240 removal proceedings is governed by INA § 236(a), which expressly authorizes release on bond and requires individualized custody determinations.

5. Mr. Alvarez therefore petitions this Court for habeas relief pursuant to 28 U.S.C. § 2241 and seeks immediate injunctive relief, including a Preliminary Injunction directing Respondents to provide him with an individualized custody redetermination hearing under INA § 236(a) or, in the alternative, to release him from immigration detention under reasonable conditions of supervision without delay.

II. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which authorizes federal district courts to hear habeas corpus petitions filed by persons held in custody in violation of the Constitution or laws of the United States. This action further 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 action. Petitioner does not challenge a final order of removal, nor does he seek class-wide relief. Detention-based habeas claims are not channeled by 8 U.S.C. § 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose judicial review of unlawful immigration detention or ultra vires attempts to subject a non-final INA § 240 removal case to expedited removal procedures. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). Moreover, Petitioner seeks individual injunctive relief, which is not barred by 8 U.S.C. § 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

8. Venue is proper in this District, and in the San Antonio Division, because Petitioner is detained at the Karnes County Immigration Processing Center in Karnes City, Karnes County, Texas, within this Court's territorial jurisdiction. Venue is further proper because Petitioner's immigration detention is administered and controlled by ICE Enforcement and Removal Operations, San Antonio Field Office. *See Petitioner's Ex. 1, ICE Detainee Locator search results.*

III. PARTIES

9. Petitioner, Manuel Enrique Alvarez Vasquez ("Mr. Alvarez"), is a citizen and national of El Salvador who has been present in the United States for nearly seven (7) years. According to the Department of Homeland Security, Mr. Alvarez arrived in the United States at or near Antelope Wells, New Mexico, on or about March 8, 2019, and was not admitted or paroled after inspection by an immigration officer. On March 9, 2019, the Department of Homeland Security issued a Notice to Appear, placing Mr. Alvarez in removal proceedings pursuant to INA § 240 [8 U.S.C. § 1229a]. *See Petitioner's Ex. 2, Notice to Appear.* On or about October 27, 2025, Mr. Alvarez was taken into custody by U.S. Immigration and Customs Enforcement ("ICE") immediately following a Master Calendar Hearing at the Immigration Court in San Antonio, Texas. He was subsequently transferred to the Karnes County Immigration Processing Center in Karnes County, Texas, where he is currently detained. *See Petitioner's Ex. 1, ICE Detainee Locator search results.*

10. Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security ("DHS"), the federal agency responsible for the administration and enforcement of the immigration laws of the United States. She is named as a Respondent in her official capacity.

11. Respondent TODD LYONS is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"), an agency within DHS responsible for immigration detention and enforcement. He is named as a Respondent in his official capacity.

12. Respondent MIGUEL VERGARA is the Field Office Director of ICE Enforcement and Removal Operations ("ERO"), San Antonio Field Office, and exercises legal custody

over Petitioner. He is responsible for custody and detention determinations within this District and is sued in his official capacity.

13. Respondent RAYMOND THOMPSON is the Warden (or Facility Administrator) of the Karnes County Immigration Processing Center, located in Karnes County, Texas, and is Petitioner's immediate physical custodian for purposes of this habeas action. He is sued in his official capacity.

14. Respondent DAREN K. MARGOLIN is the Director of the Executive Office for Immigration Review ("EOIR"), which oversees the Immigration Courts and the policies governing custody redetermination hearings. He is sued in his official capacity.

15. Respondents Noem and Lyons, as officials of federal agencies, are properly included in this action within the meaning of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706.

IV. FACTUAL BACKGROUND

16. Petitioner Manuel Enrique Álvarez Vázquez is a citizen and national of El Salvador. He was born on [redacted] 1992, in El Salvador and does not possess any other nationality. According to the Department of Homeland Security, Mr. Alvarez arrived in the United States at or near Antelope Wells, New Mexico, on or about March 8, 2019, and was not admitted or paroled after inspection by an immigration officer. Mr. Alvarez does not have a prior order of removal. *See Petitioner's Ex. 2, Notice to Appear.*

17. Following his entry in 2019, Mr. Alvarez was briefly detained by immigration authorities and was thereafter released from custody. After his release, Mr. Alvarez complied with all immigration court appearances and reporting requirements imposed by the Department of Homeland Security. Mr. Alvarez has a pending application for asylum.

18. Since his release in 2019, Mr. Alvarez has resided in the United States and established substantial family and community ties. He currently resides in San Antonio, Texas, with his partner, Leily Samara Rodas. Together, they have two minor children who are United States citizens, ages three years and three months, respectively. Mr. Alvarez also has an older child from a prior relationship who has been diagnosed with cerebral palsy. Mr. Alvarez is divorced from his prior spouse.

19. Mr. Alvarez has no criminal history. He has no arrests or convictions in the United States or elsewhere, and his immigration custody has not arisen from any criminal conduct. *See Petitioner's Ex. 3, Search Results – Criminal History Conviction Name Search.*

20. On or about October 27, 2025, Mr. Alvarez appeared for a Master Calendar Hearing at the Immigration Court in San Antonio, Texas. Immediately following the conclusion of that hearing, the Department of Homeland Security ("DHS"), through U.S. Immigration and Customs Enforcement ("ICE"), took Mr. Alvarez into immigration custody. *See Petitioner's Ex. 1, ICE Detainee Locator search results.*

21. Following his apprehension, ICE transferred Mr. Alvarez into immigration detention and subsequently transported him to the Karnes County Immigration Processing Center, located in Karnes County, Texas, where he remains detained. ICE's Detainee Locator System confirms Mr. Alvarez's custody at that facility. *See Petitioner's Ex. 1, ICE Detainee Locator search results.*

22. The Notice to Appear issued by DHS was filed with the Immigration Court, thereby placing Mr. Alvarez into removal proceedings under INA § 240. Those proceedings remain pending.

23. Since his apprehension on October 27, 2025, Mr. Alvarez has remained continuously detained in ICE custody. As of the filing of this Petition, has been detained for more than one month without any bond hearing or individualized custody determination, despite being statutorily eligible for release under INA § 236(a).

24. Mr. Alvarez's next general hearing in immigration court is currently scheduled for March 2029, nearly four years from now. He has not been provided with any hearing or administrative process to determine his eligibility for release from custody pending the resolution of his removal proceedings.

25. As a result of his continued detention, Mr. Alvarez remains confined at the Karnes County Immigration Processing Center, a facility geographically distant from his home and immediate family in San Antonio, Texas. *See Petitioner's Ex. 1, ICE Detainee Locator search results.*

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations

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

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

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

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

29. Despite this clear statutory framework, the Department of Homeland Security ("DHS") has invoked recent BIA decisions—namely, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—to curtail immigration judges' bond authority in cases such as Petitioner's. Those decisions, however, cannot override the plain language of the statute.

30. In recent weeks, multiple district courts have addressed the government's efforts to expand 8 U.S.C. § 1225(b)(2)(A) beyond its intended scope by adjudicating habeas petitions filed by noncitizens in materially similar circumstances. These courts have repeatedly concluded that the clear and unambiguous language of INA § 236(a) permits noncitizens who entered without inspection—individuals in the same legal posture as Mr. Alvarez—to seek individualized bond hearings before an immigration judge

31. 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 appropriate to correct statutory misclassification and to safeguard 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 INA §

236(a), rejecting the government's assertion that INA § 235(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 INA § 236(a) within seven days, holding that prolonged detention without such a hearing violates the Due Process Clause of the Fifth Amendment.

32. Petitioner's position is further reinforced by the recent decision in *Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr. et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), in which the court granted partial summary judgment in favor of the petitioners, holding that mandatory detention without individualized bond hearings exceeds statutory authority under INA § 236(a) and violates due process. In that class action, the court rejected the government's expansive interpretation of INA § 235(b) [8 U.S.C. § 1225(b)] and emphasized that noncitizens in regular removal proceedings are entitled to custody review.

33. Similarly, recent decisions from district courts within the Fifth Circuit—including *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)—confirm that courts are rejecting agency efforts to apply 8 U.S.C. § 1225(b)(2)(A) to individuals properly subject to detention under INA § 236(a) [8 U.S.C. § 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). This Court should follow suit in the instant case.

34. Taken together, these decisions reflect a growing judicial consensus that district courts retain jurisdiction to intervene where immigration detention rests on a

misapplication of the statute and results in ongoing constitutional harm. The cumulative weight of this authority confirms that Mr. Alvarez is entitled to bond consideration under INA § 236(a) [8 U.S.C. § 1226(a)].

VI. CLAIMS FOR RELIEF

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

35. Petitioner incorporates by reference the foregoing factual allegations and reasserts them as if fully set forth herein.

36. Respondents' refusal to provide Petitioner with an individualized custody redetermination hearing violates the Immigration and Nationality Act ("INA") and is inconsistent with recent decisions of multiple federal district courts, including courts within the Fifth Circuit.

37. 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."

38. By its plain text, INA § 236(a) applies to noncitizens who are arrested and detained pending removal proceedings, unless mandatory detention under INA § 236(c) applies.

39. Consistent with the plain language of INA § 236(a), numerous federal district courts have confirmed that noncitizens detained under that provision are statutorily eligible for individualized bond determinations before an immigration judge. Accordingly, immigration judges retain jurisdiction to conduct custody redetermination hearings under

§ 236(a), and the Attorney General must consider bond applications filed by detained noncitizens pending the outcome of their removal proceedings.

40. Petitioner was placed into removal proceedings pursuant to INA § 240 [8 U.S.C. § 1229a] and remains detained at the Karnes County Immigration Processing Center in Karnes City, Karnes County, Texas. Because Petitioner was apprehended within the interior of the United States and placed in removal proceedings under INA § 240, his custody is governed by INA § 236(a) [8 U.S.C. § 1226(a)], not INA § 235(b) [8 U.S.C. § 1225(b)].

41. By adopting and enforcing a policy that refuses to provide Petitioner with an individualized bond hearing as contemplated by INA § 236(a), Respondents have acted contrary to statutory authority requiring consideration of such a bond application. This policy further demonstrates that filing a bond application with the immigration court would be futile. Petitioner's continued detention without access to an individualized custody redetermination violates the INA and must be remedied through habeas relief.

42. Accordingly, this Court should grant the writ of habeas corpus and order that Petitioner receive an individualized bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)], consistent with the reasoning of multiple federal district courts that have examined these issues.

Count II – Fifth Amendment Due Process Violation

43. Petitioner incorporates by reference the foregoing factual allegations and reasserts them as if fully set forth herein.

44. Respondents' continued detention of Petitioner without access to an individualized custody redetermination hearing violates the Due Process Clause of the Fifth Amendment.

Prolonged civil immigration detention without bond review is arbitrary, punitive in effect, and unconstitutional.

45. 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). Although immigration detention is civil in nature, it nonetheless implicates this fundamental liberty interest.

46. Because Petitioner is detained by ICE at the Karnes County Immigration Processing Center, Respondents have denied him any meaningful opportunity to present evidence demonstrating that he is neither a danger to the community nor a flight risk. The denial of a bond hearing deprives Petitioner of the individualized custody determination required by the Due Process Clause and by the plain language of INA § 236(a) [8 U.S.C. § 1226(a)].

47. Unlike noncitizens subject to mandatory detention for certain criminal offenses under INA § 236(c) [8 U.S.C. § 1226(c)], Petitioner has no criminal convictions that would trigger mandatory detention. Accordingly, Respondents lack a legitimate basis to treat Petitioner's detention as mandatory, yet he remains confined without any opportunity for release.

48. Denying Petitioner access to a bond hearing deprives him of the procedural protections guaranteed by the Due Process Clause. Moreover, prolonged civil detention without meaningful review violates the substantive limits of due process, as recognized in *Zadvydas and Demore v. Kim*, 538 U.S. 510 (2003).

49. By adopting and enforcing a policy that categorically refuses to provide Petitioner with an individualized bond hearing as contemplated by INA § 236(a) [8 U.S.C. § 1226(a)],

Respondents have acted contrary to statutory authority and in violation of constitutional due process.

50. Petitioner has lived in the United States for nearly seven (7) years and has established substantial family and community ties in San Antonio, Texas, where he resides with his partner and their two United States citizen children. There has been no individualized finding that Petitioner poses a danger to the community or a risk of flight. Nevertheless, based solely on Respondents' reliance on recent Board of Immigration Appeals decisions—decisions that are not binding on this Court—Petitioner has been denied the process to which he is entitled under the Immigration and Nationality Act and the Constitution. This categorical denial of an individualized custody determination constitutes an arbitrary deprivation of liberty in violation of the Fifth Amendment.

51. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be afforded an immediate individualized bond hearing, or, in the alternative, be released from immigration detention pending the final resolution of his INA § 240 [8 U.S.C. § 1229a] removal proceedings.

Count III – Unlawful Agency Action (APA)

52. Petitioner incorporates by reference the foregoing factual allegations and reasserts them as if fully set forth herein.

53. Respondents' continued detention of Petitioner without affording him an individualized bond hearing constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706. This abrupt departure from longstanding agency practice and precedent, without a reasoned explanation, violates the APA.

54. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a) [8 U.S.C. § 1226(a)], including individuals who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). That framework permitted individualized custody determinations based on factors such as danger to the community and risk of flight, consistent with the statutory text and constitutional principles. Illustrative decisions include, without limitation, the following:

- *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing danger to the community and risk of flight as factors governing immigration bond determinations);
- *In re L-E-V-H-*, AXXX-XXX-504 (BIA Dec. 21, 2018) (holding that a noncitizen who entered without inspection was not an "arriving alien" despite later presenting himself to border officials);
- *In re A-R-S-*, AXXX-XXX-161 (BIA June 25, 2020) (remanding to develop the record where a noncitizen who had DACA alleged entry without inspection but had been misclassified as an "arriving alien");
- *In re M-D-M-*, AXXX-XXX-797 (BIA Aug. 24, 2020) (granting bond to a noncitizen with more than twenty years of residence in the United States despite a recent arrest); and
- *In re F-P-J-*, AXXX-XXX-699 (BIA Oct. 22, 2020) (granting bond where the immigration judge failed to consider alternatives to detention and the noncitizen had lived in the United States for more than seventeen years).

55. In 2025, the Board of Immigration Appeals ("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

construed certain noncitizens who entered without inspection as subject to mandatory detention under INA § 235(b) [8 U.S.C. § 1225(b)]. These decisions abruptly curtailed immigration judges' long-recognized bond authority for a broad class of detainees, including Petitioner, without notice-and-comment rulemaking and without a reasoned explanation for departing from prior precedent.

56. The APA requires agencies to engage in reasoned decision-making and prohibits action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A). An unexplained reversal of established policy is a paradigmatic example of arbitrary and capricious agency action. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

57. Although Petitioner has not filed a bond application since entering ICE custody on or about October 27, 2025, doing so would be futile because, under current government policy, immigration judges decline to exercise jurisdiction over custody determinations for individuals in Petitioner's position. By treating Petitioner as subject to mandatory detention under INA § 235(b) [8 U.S.C. § 1225(b)], Respondents have adopted an unlawful and arbitrary interpretation of the statute that is inconsistent with the plain language of INA § 236(a) [8 U.S.C. § 1226(a)] and unsupported by reasoned statutory analysis.

58. Accordingly, Respondents' refusal to provide Petitioner with an individualized custody redetermination hearing constitutes unlawful agency action under the APA, and this Court should grant appropriate habeas and injunctive relief to remedy that violation.

VII. REQUEST FOR INJUNCTIVE RELIEF

59. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to provide him with an immediate individualized custody redetermination hearing pursuant to INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days of the Court's order, or, in the alternative, to release Petitioner from immigration detention under reasonable conditions of supervision. Upon a final adjudication on the merits, Petitioner further requests that the Court grant permanent injunctive relief as appropriate.

60. The Supreme Court has made clear that the issuance of such extraordinary relief depends on a four-factor test: (1) likelihood of success on the merits; (2) irreparable harm; (3) the balance of equities; and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434–35 (2009). As explained below, Petitioner satisfies each of these factors.

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

61. Mr. Alvarez has a strong likelihood of success on the merits of his claims. As explained above, numerous federal district courts—including courts within the Fifth Circuit—have recognized that noncitizens detained pursuant to INA § 236(a) [8 U.S.C. § 1226(a)] are entitled to an individualized custody or bond hearing before an immigration judge.

62. Current government policy, which purports to prohibit immigration judges from exercising jurisdiction over bond requests filed by individuals such as Mr. Alvarez—based on recent Board of Immigration Appeals 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 INA § 236(a) [8 U.S.C. § 1226(a)]. Nor can non-

precedential agency interpretations supersede statutory text or binding judicial authority. This conclusion is further supported by the decision in *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), which invalidated materially similar policies denying bond hearings to noncitizens placed in regular removal proceedings.

63. Independently, Mr. Alvarez raises a substantial constitutional claim under the Fifth Amendment, as prolonged civil immigration detention without any opportunity for an individualized custody determination violates due process.

64. Taken together, these statutory and constitutional grounds present not merely a plausible claim, but a compelling likelihood of success on the merits. Under *Nken v. Holder*, 556 U.S. 418, 434 (2009), likelihood of success is the most critical factor in evaluating interim relief. That factor weighs decisively in Petitioner's favor.

B. Mr. Alvarez Will Suffer Irreparable Harm If Injunctive Relief Does Not Issue

65. If this Court does not grant immediate relief, Mr. Alvarez 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). Each day Mr. Alvarez remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

66. Even if Mr. Alvarez were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—including loss of liberty, disruption of family life, psychological strain, and reputational harm—could not be undone. As the Supreme Court explained in Nken, irreparable harm must be actual and

concrete, not speculative. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Mr. Alvarez's continued detention without a lawful custody determination satisfies that standard.

C. The Balance of Equities Weighs in Favor of Mr. Alvarez

67. 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 due process of law. On the government's side, the only asserted interest is administrative convenience in applying recent Board of Immigration Appeals decisions, which are not binding on this Court.

68. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and he has no criminal history. In contrast, each additional day of continued confinement inflicts significant and irreparable harm on Petitioner. When weighed against one another, the equities strongly favor granting immediate injunctive relief.

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

69. Finally, the public interest strongly supports the issuance of a Preliminary Injunction. The Supreme Court has explained that when the government is the opposing party, the balance of equities and the public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The public has no interest in perpetuating unlawful detention; rather, the public interest is served by ensuring that government agencies act within the bounds of statutory and constitutional authority.

70. 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 only in Petitioner's interest, but also in the interest of the public at large.

71. Each factor of the equitable test weighs heavily in Mr. Alvarez's favor. He has demonstrated a substantial likelihood of success on the merits based on the proper interpretation of INA § 236(a) [8 U.S.C. § 1226(a)] and the Due Process Clause; he suffers irreparable harm each day he remains detained without lawful process; the balance of equities tips decisively toward protecting his liberty; and the public interest is best served by ensuring that immigration detention complies with statutory and constitutional limits.

72. For these reasons, this Court should issue a Preliminary Injunction at the earliest possible opportunity, requiring Respondents to provide Mr. Alvarez with an immediate individualized bond hearing or, in the alternative, ordering his release from immigration detention under reasonable conditions of supervision.

VIII. PRAYER FOR RELIEF

73. For the foregoing reasons, Petitioner respectfully requests that this Court grant the following relief:

a. Issue a writ of habeas corpus ordering Respondents to provide Petitioner with an individualized bond hearing pursuant to INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days of the Court's order;

b. Grant a Preliminary Injunction requiring Respondents to provide such a bond hearing or, in the alternative, ordering Petitioner's immediate release from immigration detention under reasonable conditions of supervision;

c. Issue a declaratory judgment that the plain language of INA § 236(a) [8 U.S.C. § 1226(a)] authorizes immigration judges to adjudicate bond requests for noncitizens who are present without admission and not classified as arriving aliens;

d. Grant permanent injunctive relief as appropriate to prevent ongoing and future violations of Petitioner's statutory and constitutional rights;

e. Award Petitioner reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable provision of law; and

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

DATE: 12/19/2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 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.

Date: 12/22/2028

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