UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROSARIO RODRIGUEZ ORTIZ,
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;
MIGUEL VERGARA, in his official capacity as Director of the San Antonio Field Office of ICE, Enforcement and Removal Operations;
RAYMOND E. THOMPSON, Warden of the Karnes County Immigration Processing Center; and
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review,
Respondents.

Civil Action No. 5:26-cv-00002

Immigration No. [redacted]

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

I. INTRODUCTION

1. Petitioner ROSARIO RODRIGUEZ ORTIZ ([redacted]5), hereinafter referred to as "Petitioner" or "Ms. Rodriguez", is a native and citizen of Cuba who has resided in the United States for over four years. She is currently subject to indefinite detention after her apprehension by ICE in Texas and is detained at the Karnes County Immigration Processing Center in Karnes City, Karnes County, Texas. *See* Petitioner Ex. 1, Proof of Detention in ICE custody.

2. Ms. Rodriguez has been placed in removal proceedings under INA § 240 [8 U.S.C. § 1229a].

3. In recent months, immigration judges have routinely denied requests for a custody redetermination request to individuals in situations substantially similar to that of Ms. Rodriguez, 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). \However, numerous federal district courts, including some from within the San Antonio Division for the Western District of Texas, and other courts within jurisdiction of the United States Court of Appeals for the Fifth Circuit, have made clear that similarly situated noncitizens, who are detained under 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings.
4. Despite this posture, immigration judges continue to refuse to provide noncitizens such as Ms. Rodriguez 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 Administrative Procedure Act ("APA"), because detention in § 240 proceedings is governed by INA § 236(a) [8 U.S.C. § 1226(a)], which clearly provides that noncitizens are entitled to bond hearings.
5. Ms. Rodriguez therefore petitions this Court for habeas relief under 28 U.S.C. § 2241 and seeks immediate injunctive relief directing Respondents to release her under reasonable conditions or alternatively provide her and individualized custody hearing 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, 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 jurisdiction, whereas Petitioner's immigration detention is controlled by the San Antonio Office of ICE – Enforcement and Removal Operations. *See* Petitioner Exhibit 1.

III. PARTIES

9. Petitioner, ROSARIO RODRIGUEZ ORTIZ ("Ms. Rodriguez"), is a citizen and national of Cuba who has lived in the United States for over four years having arrived to the United States on or about July, 2021. On or about December 24, 2025, she was transferred to the Karnes County Immigration Processing Center, where she remains detained. *See* Petitioner Ex. 1.

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 MIGUEL VERGARA is the Acting Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Karnes County Immigration Processing Center Sub-Office of ERO San Antonio, which has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

13. Respondent, RAYMOND E. THOMPSON, Warden of the Karnes County Immigration Processing Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Karnes County Immigration Processing Center is located at 566 Veteran Drive, Karnes City, Karnes County, Texas 78061. 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 APA.

IV. FACTUAL BACKGROUND

16. Ms. Rodriguez is a citizen and national of Cuba. She has lived continuously in the United States since her initial entry on or about July, 2021, when she entered through the river at the southern border in Texas, and was processed by immigration officials. Since that time, she has continuously resided in Texas.

17. On November 14, 2025, Ms. Rodriguez was arrested by the Immigration and Customs Enforcement in Houston, Texas when she appeared to her regular check-in with Immigration and Customs Enforcement. Petitioner was held at the Montgomery Processing Center in Conroe, Texas.

18. Ms. Rodriguez was held at the Montgomery Processing Center until she was transferred to the Karnes County Immigration Processing Center on or about December 24, 2025. The facility is operated under contract with the Karnes County Immigration Processing Center Sub-Field Office of the San Antonio Fiels Office of ICE – Enforcement and Removal Operations ("ERO"). The ICE Detainee Locator confirms Petitioner's custody in Karnes City, Texas, as of January 2, 2025. *See* Petitioner Ex. 1.

19. Until her recent transfer into a remote immigration facility in Karnes City, Texas, Ms. Rodriguez had lived and worked in Texas for several years, where she developed close ties to her community. She has demonstrated continuous residence, stable employment, and strong family and community ties in her community.

20. As of the filing of this petition, Petitioner remains detained at the Karnes County Immigration Processing Center. *See* Petitioner Ex. 1. Although ICE filed its Notice to Appear with EOIR, Ms. Rodriguez is ineligible for any bond hearing or opportunity for review under INA § 236(a) [8 U.S.C. § 1226(a)] under the current policies of ICE and EOIR. Despite the lack of a criminal record or violations of her release conditions, she continued to be detained and was then

subsequently transferred into ICE custody. The government's continued arbitrary detention of Ms. Rodriguez, coupled with agency policy, renders her detention ultra vires, indefinite, and constitutionally infirm. She has been held for over a month, contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

21. Given Respondent's failure to provide Petitioner with a bond hearing or justify continued custody, Petitioner respectfully seeks a Preliminary Injunction ordering her immediate release, or alternatively, requiring Respondent to promptly provide her with an individualized custody determination before an immigration judge.

22. On or about July, 2021, immigration officials apprehended Ms. Rodriguez upon her entry into the United States through the Southern border. Following this, the Department of Homeland Security ("DHS") served Ms. Rodriguez with a Notice to Appear ("NTA"), formally charging her as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] for entry without inspection near an unknown location, and under Section 212 (a)(7)(A)(i)(I) [8 U.S.C. § 1182(a)(7)(A)(i)(I)] of the Immigration and Nationality Act (Act), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid entry document required by the Act.. Ms. Rodriguez was subsequently released by DHS to pursue her case on the non-detained docket.

23. Although ICE filed the NTA with the immigration court after serving it on Ms. Rodriguez, placing her into INA § 240 [8 U.S.C. § 1229a] removal proceedings, ICE's detention of Ms. Rodriguez ignores her lengthy history in this country, as well as the fact that she has avenues for removal relief. For this reason, Ms. Rodriguez is entitled to the full panoply of due process guaranteed by the INA, including a hearing on relief from removal and a bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)], and not merely a summary expulsion.

24. Despite this case history, current immigration policy treats Ms. Rodriguez, for bond purposes, as though she were subject to the harshest form of "arriving alien" detention, even though she has been placed in INA § 240 [8 U.S.C. § 1229a] proceedings. Instead of being allowed to seek release on bond before an immigration judge, ICE has categorically denied her any chance to demonstrate that she 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 Ms. Rodriguez.

25. As a result of this, Ms. Rodriguez now finds herself detained at the Karnes County Immigration Processing Center in Karnes City, Karnes County, Texas, a remote facility over a hundred miles from her community. *See* Petitioner Ex. 1. She is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal convictions that would bar her release under Section 236(c) [8 U.S.C. § 1226(c)] of the INA. Each day of confinement exacerbates the harm—separating her from family and community support, impeding her ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

26. In sum, Ms. Rodriguez is a woman with roots in the United States, who has been thrust into seemingly indefinite civil detention solely because of the government's reliance on recent, non-binding, BIA decision that contravene the plain language of the INA and the recent decisions

of multiple federal district courts. Ms. Rodriguez'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 Redeterminations.

27. 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.

28. Congress designed INA § 236(a) [8 U.S.C. § 1226(a)] to govern the detention of individuals who, like Petitioner, are in regular removal proceedings under INA § 240 [8 U.S.C. § 1229a]. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

29. 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) [8 U.S.C. § 1225(b)] mandatory detention and INA § 236(a) [8 U.S.C. § 1226(a)] discretionary custody). The Board of Immigration Appeals itself recognized for decades that individuals in INA § 240 proceedings after entry without inspection were eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

30. 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.

31. In recent months, multiple district courts in 2025 have directly addressed the Government's efforts to expand INA § 235(b)(2)(A) [8 U.S.C. § 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 INA § 236(a) [8 U.S.C. § 1226(a)] permits noncitizens who arrived without inspection—persons in precisely the same legal circumstances as Ms. Rodriguez —are eligible to request bond hearings before the immigration court.

32. For example, in the San Antonio Division of the Western District of Texas, *Rego Guerra v. Noem*, No. 5:25-cv-01725-JKP (filed December 12, 2025), the court concluded that jurisdiction was proper though habeas relief correct statutory misclassification and to preserve the petitioner's due process rights. The court concluded the Petitioner subject to detention under INA § 236(a) [8 U.S.C. § 1226(a)], rejecting the Government's assertion that INA § 235(b) [8 U.S.C. § 1225(b)] applied. *Id.* The district court ordered petitioner's direct release under reasonable conditions finding no evidence submitted that she had violated the conditions of her initial release on recognizance when processed by DHS. *Id.; see also e.g., Acea-Martinez v. Noem*, No. 5:25-CV-01390-XR (filed Oct. 28, 2025) (addressing § 1225(b)(2)); *Guevara-Vasquez v. Thompson*, No. 5:25-CV-01372-XR (filed Nov. 25, 2025) (addressing § 1225(b)(1)).

33. Additionally, Petitioner's position is 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.), where the federal court granted partial summary judgment in favor of petitioners, holding that mandatory detention without individualized bond hearings violates due process and exceeds statutory authority under INA § 236(a). 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. This ruling, supported by multiple amicus briefs, underscores the growing judicial consensus against blanket denial of bond hearings. *Cf.* Maldonado Bautista, Order of Nov. 20, 2025 (granting partial summary judgment).

34. 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 8 U.S.C. § 1225(b)(2)(A) to individuals who are properly subject to 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) (reviewing new detention policy). This Court should follow suit.

35. These holdings reflect a growing consensus that federal 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 Ms. Rodriguez is entitled to release from custody, or alternatively a custody determination consideration under INA § 236(a) [8 U.S.C. § 1226(a)].

VI. CLAIM FOR RELIEF

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

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

37. 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 Western District of Texas and the Fifth Circuit.

38. 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."

39. By its plain text, Section 236(a) [8 U.S.C. § 1226(a)] applies to all noncitizens arrested and detained pending removal proceedings unless mandatory detention under § 236(c) [8 U.S.C. § 1226(c)] applies.

40. In interpreting the plain language of Section 236(a) [8 U.S.C. § 1226(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 applications by detained aliens pending the outcome of their removal proceedings, since immigration judges retain jurisdiction to conduct custody redetermination hearings under that provision.

41. Petitioner was served an NTA indicating her placement into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a]. Ms. Rodriguez remains detained at the Karnes County Immigration Processing Center with her case placed on the detained docket of the Pearsall Immigration Court. Because Petitioner has been detained for removal proceedings, and because she has now lived in the United States for several years her custody is governed by § 236(a) [8 U.S.C. § 1226(a)], not § 235(b) [8 U.S.C. § 1225(b)].

42. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a) [8 U.S.C. § 1226(a)], Respondents have acted contrary to statutory

authority requiring consideration of such a 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.

43. Accordingly, this Court should grant the writ and order that Petitioner be released from custody, or alternatively receive an individualized bond hearing under INA § 236(a) [8 U.S.C. § 1226(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

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

45. 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.

46. 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.

47. Because Petitioner is detained by ICE at the Karnes County Immigration Processing Center, she is categorically barred from presenting evidence that she is not a danger to the community and that she 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) [8 U.S.C. § 1226(a)].

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

49. Denying Petitioner any access to a bond hearing deprives her 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).

50. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a) [8 U.S.C. § 1226(a)], Respondents have acted contrary to statutory authority requiring consideration of such a bond application.

51. Petitioner is a long-time resident of the United States, with over four years of continuous presence. She has strong family and community ties in Texas. There has been no finding that she is a danger to the community or a flight risk. Yet, solely because of recent, erroneous BIA decisions—decisions not binding in the Fifth Circuit—she has been categorically denied the process to which she is entitled. This amounts to an arbitrary deprivation of liberty in violation of the Fifth Amendment.

52. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be afforded an immediate bond hearing, or that she be released from custody pending the final outcome of her Section 240 [8 U.S.C. § 1229a] removal proceedings.

Count III – Unlawful Agency Action (APA)

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

54. Respondents' continued detention of Petitioner without affording her 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.

55. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a) [8 U.S.C. § 1226(a)], including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). 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 the 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 that 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).

56. 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.

57. 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).

58. Although Petitioner has not filed a bond application since entering ICE custody on or about November 14, 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) [8 U.S.C. § 1225(b)], Respondents have applied an unlawful, arbitrary interpretation of the statute that is inconsistent with the plain language of Section 236(a) [8 U.S.C. § 1226(a)] and unsupported by reasoned analysis.

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

VII. REQUEST FOR INJUNCTIVE RELIEF

60. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release her from custody under reasonable conditions of supervision, or alternatively, provide her with an immediate individualized custody redetermination hearing under INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days. Petitioner asks for permanent injunctive relief as appropriate.

61. 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. Ms. Rodriguez Is Likely to Succeed on the Merits of Her Petition.

62. Ms. Rodriguez has a strong likelihood of success on the merits of her claims. As explained more fully hereinabove, numerous district courts, including some from within the San Antonio Division of the Western District of Texas and throughout the Fifth Circuit, have already determined that noncitizens in circumstances substantially similar to those of Ms. Rodriguez, who are detained under Section 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings before an immigration judge.

63. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Ms. Rodriguez 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) [8 U.S.C. § 1226(a)]. This conclusion is further supported by the recent ruling in *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), which

invalidated similar policies denying bond hearings to noncitizens in regular removal proceedings.

64. Additionally, Ms. Rodriguez raises a constitutional claim under the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violated due process.

65. 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. Ms. Rodriguez Will Suffer Irreparable Harm If an Injunctive Relief Does Not Issue

66. If this Court does not grant immediate relief, Ms. Rodriguez will continue to suffer irreparable harm. The Supreme Court has recognized that "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Everyday Ms. Rodriguez remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

67. Even if Ms. Rodriguez 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. *Nken* 556 U.S. at 435. Ms. Rodriguez's ongoing imprisonment without a lawful hearing meets that standard.

C. Balance of Equities Weighs in Favor of Ms. Rodriguez

68. The balance of equities tips decisively in Petitioner's favor. On her 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.

69. There is no evidence that Petitioner poses a danger to the community or a risk of flight and has no criminal history. 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.

70. Finally, the public interest strongly supports the issuance of a injunctive relief. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and the public interest merge. *Nken,* 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.

71. 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.

72. Each factor of the equitable test weighs heavily in Ms. Rodriguez's favor. She has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) [8 U.S.C. § 1226(a)] by various federal district courts and the Due Process Clause; she faces irreparable harm each day she remains detained without lawful process; the equities tilt

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

73. For these reasons, this Court should issue a Preliminary Injunction at the earliest possible opportunity, requiring Respondents to release Ms. Rodriguez under reasonable conditions, or in the alternative, provide her with an immediate bond hearing.

VIII. PRAYER FOR RELIEF

74. 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 release Petitioner from custody, or alternatively provide him 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 Petitioner's immediate release, or alternatively such a hearing;

c. Grany a Temporary Restraining Order or Preliminary Injunction prohibiting the Respondents from removing the Petition from the United States or transferring Petitioner from the current detention center where he is being held in custody or outside the jurisdiction of this Court;

d. Issue a declaration that the plain language of INA § 236(a) [8 U.S.C. § 1226(a)] permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;

e. Grant permanent injunctive relief as appropriate;

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

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

DATE:01/02/202

Respectfully submitted,

RIVERA HERNANDEZ CAMPOS, PLLC
5835 Callaghan Rd., Suite 503
San Antonio, TX 78228
Tel: (210) 922-8541
Fax: (210) 922-8547
Email: rcampos@rhc.law

By: */s/ Roberto A. Campos Garduno*
Roberto A. Campos Garduno
Texas Bar No. 24116159
ATTORNEY FOR PETITIONER

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Kirenia Gurko Diaz ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's partner, and who after being by me duly sworn, stated that he is above the age of twenty-one (21) years of age, is of sound mind, and is in all ways competent to execute this verification. Affiant acknowledged that he had read the substance of the foregoing document, that he has personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of Affiant's knowledge and belief.

Kirenia Gurko Diaz, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this the 02 day of JANUARY, 2025.

[SEAL]

Isabel Carballeyra
My Commission Expires
12/20/2027
Notary ID134688649

NOTARY PUBLIC
In and for the State of Texas

CERTIFICATE OF SERVICE

I hereby certify that on_____01/02/2026_____, 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:01/02/2026

/s/Roberto A. Campos Garduno

Roberto A. Campos Garduno
Attorney
Texas Bar No. 24116159
5835 Callaghan Rd, Suite 503
San Antonio, TX 78228
Tel. (210) 922-8541
Fax. (210) 922-8547
Email: rcampos@rhc.law