

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

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHALIA EDUALEMA GONZALEZ
ALVAREZ, individually and as parent and
Next Friend of L.A.C.G., a minor,

Petitioners,

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;

JOSE RODRIGUEZ JR., Warden of the
Dilley Immigration Processing Center; and
DAREN K. MARGOLIN, Director of the
Executive Office for Immigration Review,

Respondents.

Civil Action No. 5:26-cv-00013

Immigration No. [REDACTED] &
[REDACTED]

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

I. INTRODUCTION

1. Petitioners Shalia Edualema Gonzalez Alvarez ([REDACTED]), hereinafter referred to as "*Petitioner Gonzalez*" or "*Ms. Gonzalez*," and the minor L.A.C.G. ([REDACTED]) hereinafter referred to as "*Petitioner L.A.C.G.*" or "*the Minor*," are citizens of Cuba who have resided in the United States for over three years. Petitioners are currently subject to indefinite detention after

their apprehension by ICE in Texas and are detained at the Dilley Immigration Processing Center in Dilley, Texas. *See* Petitioner Ex. 1, ICE Detainee Locator Search Results.

2. Petitioners have been placed in removal proceedings under INA § 240 [8 U.S.C. § 1229a]. *See* Petitioner Ex. 2, Documentation of Petitioners' Immigration Proceedings.

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Petitioners due to a perceived lack of jurisdiction. These denials have relied on recent Board of Immigration Appeals ("BIA") precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See* Petitioner Ex. 3, Recent BIA Decisions on Bond. However, numerous federal district courts, including some from within the 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 Petitioners, 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. Petitioners therefore petition this Court for habeas relief under 28 U.S.C. § 2241, and seek immediate injunctive relief, including a preliminary injunction directing Respondents to provide an individualized custody hearing or release Petitioners 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. Petitioners do 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 Petitioners are detained at the Dilley Immigration Processing Center in Dilley, Texas, within this Court’s jurisdiction, whereas Petitioners’ immigration detention is controlled by the San Antonio Office of ICE – Enforcement and Removal Operations. *See* Petitioner Ex. 1.

III. PARTIES

9. Petitioner Shalia Edualema Gonzalez Alvarez (“Ms. Gonzalez”) is a citizen and national of Cuba who has lived in the United States for over three years, having arrived in the United States on or about April 26, 2022. On or about December 8, 2025, she was transferred to the Dilley Immigration Processing Center, where she remains detained. *See* Petitioner Ex. 1.

10. Petitioner L.A.C.G (“the Minor”) is a twelve-year-old citizen and national of Cuba who has lived in the United States for over three years, having arrived in the United States on or about April 26, 2022. On or about December 8, 2025, she was transferred to the Dilley Immigration Processing Center, where she remains detained. *See* Petitioner Ex. 1.

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

12. 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.


13. 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 Dilley Sub-Office of ERO San Antonio, which has jurisdiction over Petitioners. He is sued in his official capacity as Petitioners’ local custodian and DHS’s local decisionmaker.

14. Respondent, JOSE RODRIGUEZ JR., Warden of the Dilley Immigration Processing Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Dilley Immigration Processing Center is located at 300 El Rancho, Dilley, TX 78017. Respondent is sued in his official capacity as Petitioners’ immediate physical custodian as of the filing of this petition.

15. 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.

16. 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 (“APA”).

IV. FACTUAL BACKGROUND

17. Ms. Gonzalez, a citizen and national of Cuba born on , entered the United States on or about April 26, 2022, accompanied by her now twelve-year-old child, L.A.C.G. After being processed at the southern border in Texas, both were released on recognizance. *See* Petitioner Ex. 2. Since then, Petitioners have complied with all the conditions of their release, including attending ICE check-in appointments and immigration court hearings. Their commitment to seeking relief from removal is evidenced by their pending asylum application, withholding of removal, and protection under the Convention against Torture. *See* Petitioner Ex. 2, Documentation of Petitioners’ Immigration Proceedings; *see also* Petitioner Ex. 4, Evidence of I-589 Application Submission.

18. Since their release from immigration custody in or around April 2022, Petitioners have not only complied with all conditions of their supervision but have also taken proactive steps to demonstrate their commitment to legal obligations. Petitioners have promptly reported to the ICE Field Office as scheduled. Each appointment was completed without incident, and Petitioners were advised to return on future dates.

19. On or about December 8, 2025, Petitioner Gonzalez and the Minor dutifully appeared for their scheduled ICE appointment. Ms. Gonzalez expected a routine compliance check-in, having no criminal record or pending violations herself. Without warning or explanation, ICE officers detained Petitioners on the spot and refused to release them. ICE officers informed Petitioners that they would now be detained, despite their history of appearing at ICE check-ins while in removal proceedings for the previous years.

20. Petitioners were transferred to the Dilley Immigration Processing Center in Dilley, Texas. The facility is operated under contract with the San Antonio Field Office of ICE – Enforcement and Removal Operations (“ERO”). The ICE Detainee Locator confirms that Petitioner Gonzalez is in custody in Dilley, Texas. *See* Petitioner Ex. 1. The system does not provide information for detainees under the age of 18, such as Petitioner L.A.C.G.

21. Until her recent transfer into a remote immigration facility in Dilley, Texas, Ms. Gonzalez had lived and worked in Texas for over three years, where she developed close ties to her community. Ms. Gonzalez has no history of violence and no criminal record whatsoever that would justify treating her as a danger to society—no arrests, convictions, or citations—since entering the United States. *See* Petitioner Ex. 5, Criminal Conviction Search Results for Petitioner Gonzalez. To the contrary, she has demonstrated continuous residence, stable employment, and strong family and community ties in Austin, Texas. Petitioners’ detention was not the result of any criminal act or immigration violation but rather a routine compliance visit that ICE converted into an arbitrary arrest.

22. As of the filing of this petition, Petitioners remain detained at the Dilley Immigration Processing Center. *See* Petitioner Ex. 1. Although ICE filed its Notices to Appear with EOIR, Petitioners are 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. The government’s arbitrary arrest of Petitioners, coupled with agency policy, renders their detention ultra vires, indefinite, and constitutionally infirm. Petitioners have been held for weeks, contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

23. Given Respondents’ failure to provide Petitioners with a bond hearing or justify continued custody, Petitioners respectfully seek a Preliminary Injunction ordering their immediate release,

or alternatively, requiring Respondents to promptly provide them with an individualized custody determination before an immigration judge.

24. On or about April 26, 2022, immigration officials apprehended Petitioners upon entry into the United States through the Texas border. Following this, the Department of Homeland Security (“DHS”) served Petitioners with Notices to Appear (“NTA”), formally charging them as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] for entry without inspection near Eagle Pass, Texas before they were released on recognizance. *See* Petitioner Ex. 2.

25. Although ICE filed the NTA with the immigration court after serving it on Petitioners, placing them into INA § 240 [8 U.S.C. § 1229a] removal proceedings, ICE’s detention of Petitioners ignores their lengthy history in this country, as well as the fact that they have avenues for removal relief. For this reason, Petitioners are entitled to the due process guaranteed by the INA, including an individualized custody redetermination hearing under INA § 236(a) [8 U.S.C. § 1226(a)], and not merely a summary expulsion.

26. Despite this case history, current immigration policy treats Petitioners, for bond purposes, as though they were subject to the harshest form of “arriving alien” detention, even though they have been properly 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 them any chance to demonstrate that Ms. Gonzalez 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 Petitioners.

27. As a result of this, as well as ICE's arbitrary arrest and transfer, Petitioners now find themselves detained at the Dilley Immigration Processing Center in Dilley, Texas, a remote facility drastically distant from their community. *See* Petitioner Ex. 1. They are held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal conviction that would bar release under Section 236(c) [8 U.S.C. § 1226(c)] of the INA. *See* Petitioner Ex. 5. Each day of confinement exacerbates the harm—separating them from family and community support, impeding ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

28. In sum, Petitioner Gonzalez has deep roots in the United States, a strong claim for political asylum and humanitarian protection, and no disqualifying criminal record. *See* Petitioner Ex. 5. Despite this, she and Petitioner L.A.C.G. have 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 numerous federal district courts. Petitioners' detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust. A favorable ruling in his case would reaffirm the principle that due-process protections do not turn on bureaucratic labels, but rather uphold the foundational rights guaranteed under the Constitution, signaling a commitment to justice and fairness in the immigration system.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

29. 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.

30. Congress designed INA § 236(a) [8 U.S.C. § 1226(a)] to govern the detention of individuals who, like Petitioners, 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.

31. 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).

32. 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 Petitioners. Those decisions, however, cannot override the plain language of the statute.

33. In recent weeks, 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 Petitioners—are eligible to request bond hearings before the immigration court.

34. 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 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. 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 8 U.S.C. § 1226(a) within seven days, holding that prolonged detention without such a hearing violates the Fifth Amendment’s Due Process Clause.

35. Additionally, Petitioners’ 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).

36. 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.

37. 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 Petitioners are 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)]

38. Petitioners incorporate by reference the above factual allegations and reassert them as though stated fully herein.

39. Respondents' refusal to provide Petitioners with an individualized custody redetermination hearing violates the INA and the recent decisions of multiple federal district courts from around the country, including courts within the Fifth Circuit.

40. 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.”

41. 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.

42. 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.

43. Petitioners were served an NTA indicating their placement into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a]. Petitioners remain detained at the Dilley Immigration Processing Center, with their case placed on the detained docket of the Pearsall Immigration Court. Because Petitioners have been detained for removal proceedings, and because they have now lived in the United States for several years and applied for asylum, their custody is governed by § 236(a) [8 U.S.C. § 1226(a)], not § 235(b) [8 U.S.C. § 1225(b)].

44. By adopting a policy refusing to provide Petitioners 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. Petitioners' continued detention without access to an individualized custody redetermination violates the INA and must be corrected through habeas relief.

45. Accordingly, this Court should grant the writ and order that Petitioners 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

46. Petitioners incorporate by reference the above factual allegations and reassert them as though stated fully herein.

47. Petitioners' 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.

48. 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.

49. Because Petitioners are detained by ICE at the Dilley Immigration Processing Center, Ms. Gonzalez 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 Petitioners of the individualized determination required by due process and by the plain language of Section 236(a) [8 U.S.C. § 1226(a)].

50. Unlike noncitizens subject to mandatory detention for serious criminal offenses under Section 236(c) [8 U.S.C. § 1226(c)], Petitioner Gonzalez has no qualifying convictions that justify a categorical denial of release. *See* Petitioner Ex. 5. The government has no legitimate basis to insist that Petitioners' detention be mandatory, yet they remain confined with no opportunity for release.

51. Denying Petitioners any access to a bond hearing deprives them 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).

52. By adopting a policy refusing to provide Petitioners 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.

53. Petitioners are individuals who have long resided in the United States, with over three years of continuous presence. Petitioner Gonzalez has strong family and community ties in Texas. There has been no finding that they are a danger to the community or a flight risk. Yet, solely because of recent, erroneous BIA decisions—decisions not binding in the Fifth Circuit—Petitioners have been categorically denied the process to which they are entitled. This amounts to an arbitrary deprivation of liberty in violation of the Fifth Amendment.

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

Count III – Unlawful Agency Action (APA)

55. Petitioners incorporate by reference the above factual allegations and reassert them as though stated fully herein.

56. Respondents' continued detention of Petitioners without affording them 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 a reasoned explanation violates the Administrative Procedure Act.

57. 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).

58. 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 Petitioners, without notice-and-comment rulemaking and without reasoned explanation for abandoning prior precedent.

59. 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).

60. Although Petitioners have not filed a bond application since entering ICE custody on or about December 8, 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 Petitioners 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.

61. Accordingly, Respondents' refusal to provide Petitioners 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

62. Petitioners respectfully request that this Court issue a preliminary injunction directing Respondents to provide them with an immediate individualized custody redetermination hearing under INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days, or, in the alternative, to release them under reasonable conditions of supervision. Upon a final hearing, Petitioners ask for permanent injunctive relief as appropriate.

63. 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, Petitioners satisfy each of these factors.

A. Petitioners are Likely to Succeed on the Merits of their Petition.

64. Petitioners have a strong likelihood of success on the merits of their claims. As explained more fully hereinabove, numerous district courts, including some from within the Fifth Circuit, have already determined that noncitizens in circumstances substantially similar to those of Petitioners, who are detained under Section 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings before an immigration judge.

65. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Petitioners 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.

66. Additionally, Petitioners raise a constitutional claim under the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

67. 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, Petitioners' claim is exceptionally strong.

B. Petitioners Will Suffer Irreparable Harm If a Preliminary Injunction Does Not Issue.

68. If this Court does not grant immediate relief, Petitioners 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 that Petitioners remain confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

69. Even if Petitioners 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. Petitioners' ongoing imprisonment without a lawful hearing meets that standard.

C. Balance of Equities Weighs in favor of Petitioners.

70. The balance of equities tips decisively in Petitioners' favor. On their 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.

71. There is no evidence that Petitioner Gonzalez poses a danger to the community or a risk of flight, and she has no criminal history. *See* Petitioner Ex. 5. In contrast, every additional day of

unlawful confinement inflicts significant harm on Petitioners. 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.

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

73. Granting Petitioners 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 Petitioners' interest, but in the interest of the public at large.

74. Each factor of the equitable test weighs heavily in Petitioners' favor. They have 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; they face irreparable harm each day they remain detained without lawful process; the equities tilt overwhelmingly toward protecting their liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

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

VIII. PRAYER FOR RELIEF

76. For the above and foregoing reasons, Petitioners respectfully request that this Court take the following actions:

- a. Issue a writ of habeas corpus ordering Respondents to provide Petitioners with an individualized bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days of the Court's order;
- b. Grant a preliminary injunction requiring such a hearing, or Petitioners' immediate release;
- c. 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;
- d. Grant permanent injunctive relief as appropriate;
- e. Award Plaintiff reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and
- f. Grant such other relief as this Court deems just and proper.

DATE: January 5, 2026.

(signature block on following page)

Respectfully submitted,

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

By: /s/ Fernando Baeza Corona
Fernando Baeza
Texas Bar No. 24128680
ATTORNEY FOR PETITIONER

VERIFICACIÓN

ESTADO DE TEXAS

§

CONDADO DE BEXAR

§

§


DECLARACIÓN BAJO PENA DE PERJURIO DE ELIESER GONZALEZ ALVAREZ

Mi nombre es Elieser Gonzalez Alvarez. Soy mayor de dieciocho (18) años de edad. Soy plenamente competente para formular la presente declaración respecto de los hechos alegados en esta Petición de Habeas Corpus, y bajo juramento declaro y afirmo que lo siguiente es verdadero y correcto según mi leal saber y entender.

1. Yo, Elieser Gonzalez Alvarez, soy el hermano de la peticionaria Shalia Edualema Gonzalez Álvarez y tío de la menor L.A.C.G.
2. Soy mayor de veintiún (21) años de edad, me encuentro en pleno uso de mis facultades mentales y soy, en todos los aspectos, competente para ejecutar esta verificación. Reconozco que he leído el contenido del documento que antecede, que tengo conocimiento personal de los hechos aquí contenidos, y que las manifestaciones fácticas aquí expuestas son verdaderas y correctas según mi conocimiento y creencia.

Declaro bajo pena de perjurio que lo anterior es verdadero y correcto. Otorgado el 30 de diciembre de 2025.

Fecha: 30 de diciembre de 2025


(Name, Title, Date, Time, Location, etc.)

ELIESER GONZALEZ ALVAREZ

VERIFICATION

STATE OF TEXAS

§

COUNTY OF BEXAR

§

§

DECLARATION UNDER PENALTY OF PERJURY OF ELIESER GONZALEZ


ALVAREZ

My name is Elieser Gonzalez Alvarez. I am over eighteen years old. I am fully competent to make this declaration regarding facts alleged in this Petition for Writ of Habeas Corpus, and upon my oath, I swear and affirm that the following is true and correct to the best of my knowledge.

- 1. I, Elieser Gonzalez Alvarez, am the brother of Petitioner, Shalia Edualema Gonzalez Alvarez, and uncle of minor L.A.C.G.
- 2. I am above the age of twenty-one (21) years of age, of sound mind, and in all ways competent to execute this verification. I acknowledge that I have read the substance of the foregoing document, that have personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 30, 2025.

Date: December 30, 2025


Elieser Gonzalez Alvarez (Last Name, First Name, Middle Initial, Suffix)

ELIESER GONZALEZ ALVAREZ

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 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: January 5, 2026

/s/Fernando Baeza Corona

Fernando Baeza Corona
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