

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UMARJON BABAEV,

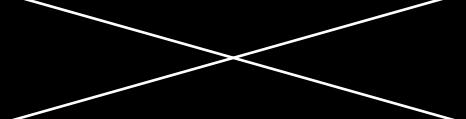
Plaintiff,

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;
JOSH JOHNSON, in his official capacity as Acting Director of the Dallas Field Office of ICE, Enforcement and Removal Operations; and
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review,

Defendants.

Civil No. 4:26-cv-00113

Immigration No. A 

**PLAINTIFF'S ORIGINAL
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Plaintiff Umarjon Babaev (A# ) is a native and citizen of Tajikistan who was initially apprehended by U.S. immigration authorities on or about November 30, 2021, following his entry into the United States near San Luis, Arizona, and placed into removal proceedings under INA § 240. On January 6, 2022, ICE determined that Mr. Babaev was eligible for release and ordered him released on his own recognizance pursuant to INA § 236. After remaining at liberty for several years while his removal proceedings remained pending, Mr. Babaev was re-detained by ICE on or about November 12, 2025, and is currently confined at the Eden Detention Center in Eden,

Texas, where he is being held without a new or individualized custody determination justifying his continued detention. *See Ex. A, Proof of Detention in ICE Custody.*

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

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Mr. Babaev, due to a perceived lack of jurisdiction. These denials have relied on recent Board of Immigration Appeals (“BIA”) precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See Ex. C, Recent BIA Decisions on Bond.* However, numerous federal district court, including some from within the jurisdiction of the United States Court of Appeals for the Fifth Circuit, have made clear that noncitizens detained under INA § 236(a) are entitled to individualized bond hearings.

4. Despite this posture, immigration judges continue to refuse to provide noncitizens such as Mr. Babaev with an individualized custody redetermination hearing, asserting a lack of jurisdiction based on erroneous Board of Immigration Appeals precedent. The refusal to provide such a hearing violates the INA, the Due Process Clause of the Fifth Amendment, and the APA, because detention in § 240 proceedings is governed by INA § 236(a), which clearly provides that noncitizens are entitled to bond hearings.

5. Mr. Babaev therefore petitions this Court for declaratory and injunctive relief under 28 U.S.C. §§ 2201 & 2202, and he intends to seek a Temporary Restraining Order (“TRO”) and preliminary injunctive relief, directing Defendants to provide him with

immediate release under any conditions the Court deems reasonably necessary, or alternatively, to provide him with an individualized bond hearing without delay.¹

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 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 does he seek class-wide relief. Claims challenging detention are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018) (concerning claims only challenging detention and not the substantive removal proceedings). 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 Houston Division, because the agency responsible for refusing to afford Petitioner an immigration bond here is the Conroe Immigration Court, which is located at 500 Hilbig Rd., Conroe, Texas 77301 and thus lies within the jurisdiction of the Southern District of Texas. *See* Ex. A, Proof of Detention in ICE Custody; *see* Ex. D, EOIR Case Information (proving hearing location).

¹ Petitioner hereby informs the Court that Petitioner intends to seek a Temporary Restraining Order through a separately filed motion subsequent to the initiation of this action.

III. PARTIES

9. Plaintiff Umarjon Babaev (“Mr. Babaev”) is a native and citizen of Tajikistan who has been present in the United States since at least November 2021. He is currently detained by U.S. Immigration and Customs Enforcement (“ICE”) at the Eden Detention Center in Eden, Texas, following his re-detention on or about November 12, 2025, after having previously been released on his own recognizance pursuant to INA § 236. Mr. Babaev is presently in active removal proceedings under 8 U.S.C. § 1229a (INA § 240), and his immigration court case remains pending. *See Ex. D, EOIR Automated Case Information System.* DHS alleges that Mr. Babaev is removable under INA § 212(a)(6)(A)(i) on the ground that he was not “admitted or paroled” following his entry into the United States near San Luis, Arizona, on or about November 25, 2021.

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

11. Defendant 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. Defendant JOSH JOHNSON is the Acting Director of the Dallas Field Office of ICE – Enforcement and Removal Operations (“ERO”), and therefore, he oversees the San Angleo Sub-Office of ERO Dallas, which has jurisdiction over Plaintiff. He is sued in his official capacity as Plaintiff’s local custodian and DHS’s local decisionmaker.

13. Defendant, 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.

14. Defendants Noem and Lyons, who represent DHS and ICE, are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act (“APA”).

IV. FACTUAL BACKGROUND

15. Plaintiff Umarjon Babaev is a native and citizen of Tajikistan, born on [REDACTED]

[REDACTED] He entered the United States near San Luis, Arizona, on or about November 25, 2021, and was taken into immigration custody shortly thereafter. See Ex. B, Immigration Court Case Documents. Since his entry, Mr. Babaev has remained continuously subject to the jurisdiction of U.S. immigration authorities.

16. On November 30, 2021, the Department of Homeland Security (“DHS”) issued Mr. Babaev a Notice to Appear (“NTA”), charging him as removable under INA § 212(a)(6)(A)(i) for having entered the United States without being admitted or paroled. DHS thereafter placed Mr. Babaev into formal removal proceedings under INA § 240, which remain pending to this day. See Ex. B.

17. Following his initial apprehension, Mr. Babaev was detained under INA § 236. However, on January 6, 2022, DHS determined that continued detention was not warranted and released Mr. Babaev on his own recognizance, subject to conditions of supervision. See Ex. C, Notice of Custody Determination and Order of Release on Recognizance. Mr. Babaev complied with all conditions imposed by ICE and remained at liberty for several years while his immigration proceedings continued.

18. Despite his compliance and the absence of any intervening criminal conduct, ICE re-detained Mr. Babaev on or about November 12, 2025, and transferred him into civil immigration custody at the Eden Detention Center in Eden, Texas, where he remains confined. See Ex. A; Ex. E, ICE Form I-830E. ICE provided no new individualized findings justifying renewed detention.

19. As of the filing of this petition, Mr. Babaev has now been detained for over one month following his re-arrest, notwithstanding his prior release, his compliance with supervision, and the ongoing nature of his § 240 removal proceedings. His detention is civil, not punitive, and is not predicated on any criminal conviction or allegation of dangerousness.

20. Mr. Babaev's removal proceedings remain active before the Executive Office for Immigration Review ("EOIR"). According to the EOIR Automated Case Information System, his next master calendar hearing is scheduled for January 8, 2026, before Immigration Judge Scott V. Greenbaum at the Conroe Immigration Court. *See* Ex. D. Thus, no final order of removal has been entered, and his case remains pending.

21. Notwithstanding his placement in § 240 proceedings, ICE has categorically refused to permit Mr. Babaev to seek a bond hearing before an immigration judge under INA § 236(a). This refusal is not based on any individualized determination that Mr. Babaev is a danger to the community or a flight risk, but rather on DHS's blanket reliance on recent Board of Immigration Appeals decisions that purport to eliminate bond jurisdiction for individuals in Mr. Babaev's procedural posture.

22. Specifically, ICE has treated Mr. Babaev as though he were subject to mandatory detention applicable to "arriving aliens," even though DHS itself placed him into full

removal proceedings under § 240. This position relies on the Board's 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), which were issued without notice-and-comment rulemaking and conflict with the plain language of INA § 236(a).

23. As a result of this policy-driven interpretation, immigration judges within the Fifth Circuit are declining to exercise bond jurisdiction for individuals like Mr. Babaev, rendering any request for a bond redetermination futile. Mr. Babaev is thus detained without access to any meaningful administrative or judicial review of his custody status.

24. Mr. Babaev has no criminal history, no record of violence, and no prior immigration violations beyond the charged manner of entry. He has demonstrated compliance with government supervision, respect for the legal process, and a willingness to appear for all required proceedings. Nevertheless, he is detained under conditions indistinguishable from those imposed on individuals subject to mandatory detention, without statutory or constitutional justification.

25. Mr. Babaev's confinement at the Eden Detention Center—a remote facility far from counsel and support networks—has imposed severe and ongoing hardships. His detention impedes his ability to meaningfully consult with counsel, prepare his defense, and pursue relief from removal, while subjecting him to the psychological and physical toll inherent in prolonged civil detention.

26. In sum, Mr. Babaev is a civil detainee with no disqualifying criminal history, a prior grant of release under § 236, and a long-pending removal case that remains unresolved. His continued detention—without an individualized bond hearing and based solely on recent, non-binding agency precedent—is ultra vires, arbitrary, and

unconstitutional. Absent judicial intervention, Mr. Babaev faces prolonged and potentially indefinite detention in violation of the Immigration and Nationality Act and the Due Process Clause.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

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 § 236(a) to govern the detention of individuals who, like Plaintiff, are in regular removal proceedings under § 240. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

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

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

31. Recently, multiple district courts in 2025 have addressed the Government’s efforts to expand § 1225(b)(2)(A) beyond its intended scope by assessing similar petitions for noncitizens in similar circumstances and have repeatedly concluded that the clear and unambiguous language of Section 236 of the INA permits noncitizens who arrived without being inspected and admitted—persons who are in precisely the same legal circumstances as Mr. Babaev—are eligible to request bond hearings before the immigration court.

32. For example, in *Santos v. Noem*, 2025 U.S. Dist. LEXIS 183412 (W.D. La. Sept. 15, 2025), the court emphasized that relief in federal court was proper to correct statutory misclassification and to preserve the petitioner’s due process rights. In *Kostak v. Trump*, 2025 U.S. Dist. LEXIS 167280 (W.D. La. Aug. 27, 2025), the court ordered bond eligibility under § 1226(a), rejecting the Government’s assertion that § 1225(b) applied. Likewise, in *Salazar v. Dedos*, 2025 U.S. Dist. LEXIS 183335 (D.N.M. Sept. 17, 2025), the district court ordered an individualized bond hearing under § 1226(a) within seven days, holding that prolonged detention without such a hearing violates the Fifth Amendment’s Due Process Clause.

33. Similarly, recent decisions from district courts within the Fifth Circuit further confirm that courts are flatly rejecting agency efforts to apply § 1225(b)(2)(A) to individuals who are properly subject to § 1226(a). See, e.g., *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); *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 (W.D. Tex. Sept. 21, 2025). This Court should follow suit.

34. These holdings reflect a growing consensus that district courts retain jurisdiction to intervene where detention rests on a statutory misapplication and results in ongoing constitutional harm. The cumulative weight of these decisions underscores that Mr. Babaev is entitled to bond consideration under § 1226(a).

VI. CLAIMS FOR RELIEF

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

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

36. Defendants' refusal to provide Plaintiff 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.

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

39. In interpreting the plain language of Section 236(a), various federal district courts confirmed that noncitizens detained under Section 236(a) are statutorily eligible for

individualized bond determinations before an immigration judge. Thus, the Attorney General must consider bond application by detained aliens pending the outcome of their removal proceedings, since immigration judges retain jurisdiction to conduct custody redetermination hearings under that provision.

40. Although Plaintiff was initially apprehended shortly after his entry into the United States, Defendants continue to treat him as though he remains at the threshold of entry, notwithstanding that he has long since been placed into formal removal proceedings under INA § 240 and was previously released from custody pursuant to INA § 236. Mr. Babaev is currently detained at the Eden Detention Center, and his case remains pending on the detained docket of the Conroe Immigration Court. Because Plaintiff is detained pending removal proceedings—not subject to expedited removal—and because DHS has already exercised its discretion to release him under § 236, his current custody is governed by INA § 236(a), not INA § 235(b).

41. By adopting a policy refusing to provide Plaintiff with an individualized bond hearing that comports with INA § 236(a), Defendants have acted contrary to statutory authority requiring consideration of such bond application. This policy supports the conclusion that the filing of a bond application with the immigration courts is currently a futile endeavor. Plaintiff's continued detention without access to an individualized custody redetermination violates the INA and must be addressed in federal court.

42. Accordingly, this Court should grant declaratory and injunctive relief and order Plaintiff's immediate release, or alternatively, that Plaintiff receive an individualized bond hearing under INA § 236(a), as recently made clear by the decisions of multiple federal district courts to examine these issues around the country.

Count II – Fifth Amendment Due Process Violation

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

44. Plaintiff'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.

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). Immigration detention is civil in nature, but it nonetheless implicates this fundamental liberty interest.

46. Because Plaintiff is detained by ICE at the Eden Detention Center, he is categorically barred from presenting evidence that he is not a danger to the community and that he poses no flight risk. The blanket denial of access to a bond hearing strips Plaintiff of the individualized determination required by due process and by the plain language of Section 236(a).

47. Unlike noncitizens subject to mandatory detention for serious criminal offenses under Section 236(c) [8 U.S.C. § 1226(c)], Plaintiff has no qualifying convictions that justify a categorical denial of release. His only arrest was conducted by ICE as a result of perceived alienage. The government has no legitimate basis to insist that Plaintiff's detention be mandatory, yet he remains confined with no opportunity for release.

48. Denying Plaintiff any access to a bond hearing deprives him of procedural protections guaranteed by the Due Process Clause. Moreover, prolonged detention

without meaningful review violates the substantive limits of due process, as articulated in *Zadydas and Demore v. Kim*, 538 U.S. 510 (2003).

49. By adopting and enforcing a policy that categorically refuses to provide Plaintiff with an individualized bond hearing consistent with INA § 236(a), Defendants have effectively foreclosed any meaningful custody review despite Plaintiff's placement in full removal proceedings under INA § 240. This refusal is not based on any individualized assessment of Plaintiff's circumstances, but rather on Defendants' reliance on recent Board of Immigration Appeals decisions that purport to eliminate bond jurisdiction for individuals in Plaintiff's procedural posture—an interpretation that conflicts with the plain language of the statute and controlling constitutional principles.

50. Plaintiff has no criminal history, was previously deemed suitable for release by DHS itself, and has complied with all conditions imposed during his period of liberty. There has been no determination that he is a danger to the community or a flight risk. Nevertheless, solely because of Defendants' application of recent, non-binding BIA decisions, Plaintiff has been categorically denied access to an individualized custody determination. This blanket denial of process constitutes an arbitrary deprivation of liberty in violation of the Due Process Clause of the Fifth Amendment.

51. Accordingly, the Court should grant declaratory and injunctive relief on constitutional grounds and order that Plaintiff be released, or alternatively, that he be afforded an immediate bond hearing, pending the final outcome of his Section 240 removal proceedings.

Count III – Unlawful Agency Action (APA)

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

53. Defendants' continued detention of Plaintiff without affording him a bond hearing also constitutes unlawful agency action under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706. The abrupt departure from longstanding precedent without reasoned explanation violates the Administrative Procedure Act.

54. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a), including those who entered without inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *see also* Ex. E, Pre-2025 Unpublished BIA Bond Decisions. That framework allowed for individualized custody determinations consistent with both statutory text and constitutional principles. These cases include, without limitation, the following:

- *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing criteria of danger to community and flight risk as factors for immigration bond requests);
- *In re L-E-V-H-*, AXXX-XXX-504 (BIA, Dec. 21, 2018) (despite noncitizen's testimony he had “turned himself in to officials at the border,” held noncitizen had entered without inspection and was therefore not “arriving alien”);
- *In re A-R-S-*, AXXX-XXX-161 (BIA, June 25, 2020) (remanding to develop record where noncitizen who had DACA alleged he had entered without inspection but had been misclassified as “arriving alien”);
- *In re M-D-M-*, AXXX-XXX-797 (BIA, Aug. 24, 2020) (despite recent arrest, granted bond to noncitizen who had lived in the U.S. for over 20 years); and

- *In re F-P-J.*, AXXX-XXX-699 (BIA, Oct. 22, 2020) (where noncitizen had a pending circuit court appeal and IJ failed to consider alternatives to detention, granted bond to noncitizen who had lived in the U.S. for over 17 years).

55. 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 Plaintiff, without notice-and-comment rulemaking and without reasoned explanation for abandoning prior precedent.

56. 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).

57. Although Plaintiff did not file a new bond redetermination application following his re-detention on or about November 12, 2025, the record establishes that such a request would have been futile. Immigration judges, including those within the Fifth Circuit, have expressly declined to exercise jurisdiction over custody redeterminations in reliance on the Board of Immigration Appeals’ decisions in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), concluding that they lack authority to conduct bond hearings for individuals in Plaintiff’s procedural posture. As reflected in recent immigration court orders denying bond for similarly situated detainees, requiring Plaintiff to pursue administrative exhaustion would only

prolong his detention without affording any meaningful opportunity for relief. *See* Ex. F, Sample IJ Order Denying Bond Post-*Maldonado Bautista*.

58. Accordingly, Defendants' refusal to provide Plaintiff an individualized custody redetermination hearing constitutes unlawful agency action under the APA, and this Court should grant declaratory and injunctive relief to remedy the violation.

VII. REQUEST FOR INJUNCTIVE RELIEF

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

60. 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, Plaintiff satisfies each of these factors.

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

61. Mr. Babaev has a strong likelihood of success on the merits of his claims. As explained more fully hereinabove, numerous district courts including some from within the Fifth Circuit, have already determined that noncitizens in circumstances substantially similar to that of Mr. Babaev, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge.

62. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Babaev might file—due to the Board of Immigration Appeals’ recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a). *See also* Ex. F.

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

64. 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, Plaintiff’s claim is exceptionally strong.

B. Mr. Babaev Will Suffer Irreparable Harm If an Injunction Does Not Issue.

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

66. Even if Mr. Babaev were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, and reputational damage—could never be undone. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and

concrete. 556 U.S. at 435. Mr. Babaev’s ongoing imprisonment without a lawful hearing meets that standard.

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

67. The balance of equities tips decisively in Plaintiff’s favor. On his side lies the interest in safeguarding one of the most fundamental rights recognized in our legal system—the right not to be arbitrarily detained without process. On the government’s side, the only asserted interest is administrative convenience in applying the BIA’s recent—and in the view of federal courts across the country—nonbinding precedents.

68. There is no evidence that Plaintiff poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any legitimate basis for continued detention. In contrast, every additional day of unlawful confinement inflicts significant harm on Plaintiff. 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.

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

70. Granting Plaintiff 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 Plaintiff's interest, but in the interest of the public at large.

71. Each factor of the equitable test weighs heavily in Mr. Babaev's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(a) by various federal district courts and the Due Process Clause; he faces irreparable harm each day he remains detained without lawful process; the equities tilt overwhelmingly toward protecting his liberty; and the public interest is best served by ensuring that immigration detention is consistent with statutory and constitutional limits.

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

VIII. PRAYER FOR RELIEF

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

- a. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are present without admission and unless their most recent arrest occurs while at the threshold of entry;
- b. Issue an injunction enjoining Respondents to release him immediately, or in the alternative, to provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;

- c. Issue an injunction enjoining DHS from initiating or pursuing expedited removal against Mr. Babaev while his § 240 removal proceedings remains non-final and while he seeks relief from removal before an Immigration Judge;
- d. Grant injunctive relief requiring Respondents not to re-detain Petitioner without providing him with an individualized bond hearing under INA § 236(a);
- 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: December 23, 2025.

Respectfully submitted,

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By: /s/ John M. Bray
John M. Bray
Texas Bar No. 24081360
ATTORNEY FOR PLAINTIFF

VERIFICATION

My name is UKTAM ABLIKULOV ("Declarant"), and I hereby make this declaration under penalty of perjury of the United States pursuant to 28 U.S.C. § 1746. I am above the age of twenty-one (21) years of age, am of sound mind, and am in all ways competent to execute this verification. I have had the substance of the foregoing document read to me and/or I provided the information forming the basis of the factual contention in this document, I have personal knowledge of the facts contained herein, and the factual statements contained herein above are true and correct to the best of my knowledge and belief.

/s/ Uktam Ablikulov
UKTAM ABLIKULOV,
Declarant

DATE: December 23, 2025.