

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

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

AQUIRENIA RIVERO ESPINOZA,
Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;
TODD M. 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 Immigration and Customs
Enforcement, Enforcement and Removal
Operations;
RAYMOND E. THOMPSON, Warden of
the Karnes County Immigration Processing
Center; and
DAREN K. MARGOLIN, in his official
capacity as Director of the Executive
Office for Immigration Review,
Respondents.

Civil Action No. 5:26-cv-00198

Immigration No. 

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

I. INTRODUCTION

1. Petitioner AQUIRENIA RIVERO ESPINOZA () hereinafter referred to as “*Petitioner*” or “*Ms. Rivero*,” is a native and citizen of Cuba who has resided in the United States for nearly four years. She is currently subject to continued detention after her apprehension by U.S. Immigration and Customs Enforcement (“ICE”) in Texas and is detained at the Karnes County Immigration Processing Center in Karnes City, Texas. *See* Petitioner’s Ex. 1, ICE Detainee Locator search results.

2. Ms. Rivero has been placed in removal proceedings under INA § 240[8 U.S.C. § 1229a]. See Petitioner's Ex. 2, Documentation of Petitioner's 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 Ms. Rivero, 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 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. Rivero 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. Rivero therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, including a preliminary injunction directing Respondents to release her under reasonable conditions without delay, or alternatively to provide her an individualized custody hearing.

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, 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 Ex. 1.

III. PARTIES

9. Petitioner, Aquirenia Rivero Espinoza (“Ms. Rivero”), is a citizen and national of Cuba who has lived in the United States for nearly four (4) years, having arrived in the United States on or about February 14, 2022. On or about November 5, 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 M. 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 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 409 FM 1144, Karnes City, TX 78118. 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 (“APA”).

IV. FACTUAL BACKGROUND

16. Ms. Rivero is a citizen and national of Cuba, born on  She has lived continuously in the United States since her initial entry on or about February 2, 2022, when she was processed by immigration officials at the southern border in California and released on recognizance. Since then, Ms. Rivero has complied with all the conditions of her release, including attending ICE check-in appointments and immigration court hearings. Her commitment to seeking relief from removal is evidenced by her pending asylum application. *See* Petitioner's Ex. 3, Notice of Filing of Respondent's I-589 Application.

17. Since her release from immigration custody, Petitioner has not only complied with all conditions of her supervision but has also taken proactive steps to demonstrate her commitment to legal obligation. Ms. Rivero promptly reported to the ICE Filed Office located at 3523 Crosspoint, Drive, San Antonio, Texas, as scheduled. Each appointment was completed without incident, and Petitioner was advised to return on future dates.

18. On or about November 5, 2025, Petitioner dutifully appeared for her scheduled ICE appointment. She expected a routine compliance check-in, having no criminal record or pending violation. Without warning or explanation, ICE officers detained her on the spot and refused to release her. ICE officers informed Ms. Rivero that she would be detained, despite her history of appearing at ICE check-ins while in removal proceedings for previous years.

19. Ms. Rivero was transferred to the Karnes County Immigration Processing Center in Karnes City, Texas. The facility is operated under contract with the Karnes Sub-Field Office of the San Antonio Filed Office of ICE – Enforcement and Removal operation (“ERO”). The ICE Detainee Locator confirms Petitioner's custody in Karnes City, Texas. *See* Petitioner's Ex. 1.

20. Until her recent transfer into a remote immigration facility in Karnes City, Texas, Ms. Rivero had lived and worked in Texas for nearly four (4) years, where she developed ties to her community. Ms. Rivero has no history of violence and no criminal record whatsoever that would justify treating her as a danger to society—no arrests, convictions—since entering the United States. *See* Petitioner Ex. 4. Texas DPS Criminal History Conviction search results. To the contrary, she has demonstrated continuous residence, stable employment, and strong family and community ties in San Antonio, Texas. Ms. Rivero’s 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.

21. As of the filing of this petition, Petitioner remains detained at the Karnes County Immigration Processing Center. *See* Petitioner’s Ex. 1. Although ICE filed its Notice to Appear with EOIR, Ms. Rivero 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. The government’s arbitrary arrest of Ms. Rivero, coupled with agency policy, renders her detention ultra vires, indefinite, and constitutionally infirm. She has been held for two (2) months, contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

22. 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 Respondents to promptly provide her with an individualized custody determination before an immigration judge.

23. On or about February 14, 2022, immigration officials apprehended Ms. Rivero upon her entry into the United States through the California Border. Following this, the Department of Homeland Security (“DHS”) served Ms. Rivero 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 Mexicali, California before she was eventually released on recognizance. *See* Petitioner's Ex. 2.

24. Although ICE filed the NTA with the immigration court after serving it on Ms. Rivero, placing her into INA § 240 [8 U.S.C. § 1229a] removal proceedings, ICE's detention of Ms. Rivero ignores her history in this country, as well as the fact that she has avenues for removal relief. For this reason, Ms. Rivero is 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.

25. Despite this case history, current immigration policy treats Ms. Rivero, for bond purposes, as though she were subject to the harshest form of "arriving alien" detention, even though she has 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 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 instance on applying the Board of Immigration Appeal's recent decision 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 judge of authority to hold bond hearings for individuals like Ms. Rivero.

26. As a result of this, as well as ICE's arbitrary arrest and transfer of Petitioner, Ms. Rivero now finds herself detained at the Karnes County Immigration Processing Center in Karnes, Texas, a remote facility drastically distant from her community. *See* Petitioner's Ex. 1. She is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of

any criminal conviction 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 procedures.

27. In sum, Ms. Rivero is a woman with roots in the United States, a strong claim for political asylum and humanitarian protection, and no disqualifying criminal record. She has been thrust into seemingly indefinite civil detention solely because of the government’s reliance on recent, non-binding BIA decisions that contravene the plain language of the INA and the recent decisions of numerous federal district court. Ms. Rivero’s continued detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust. A favorable ruling in her case would reaffirm the principles 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 Determination

28. 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.

29. 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.

30. 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).

31. 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.

32. 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. Rivero—are eligible to request bond hearings before the immigration court.

33. 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)).

34. 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, 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 hearing 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 Ms. Rivero is entitled to bond consideration under INA § 236(a) [8 U.S.C. § 1226(a)].

VI. CLAIMS FOR RELIEF

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

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

39. 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 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. Petitioner was served an NTA indicating her placement into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a]. Ms. Rivero 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 and applied for asylum, her 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 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.

45. 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

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

47. 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.

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 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)].

50. 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. Petitioner Ex. 4. The government has no legitimate basis to insist that Petitioner's detention be mandatory, yet she remains confined with no opportunity for release.

51. 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).

52. 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.

53. Petitioner is an individual who has resided in the United States, with nearly four (4) 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.

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

Count III – Unlawful Agency Action (APA)

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

56. 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 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 danger to the community and flight risk as relevant factors in bond determinations);
- *In re L-E-V-H-*, A [REDACTED] (BIA Dec. 21, 2018) (holding that a noncitizen who entered without inspection was not an “arriving alien”);
- *In re A-R-S-*, [REDACTED] (BIA June 25, 2020) (remanding to develop the record where a noncitizen was allegedly misclassified as an “arriving alien”);
- *In re M-D-M-*, [REDACTED] (BIA Aug. 24, 2020) (granting bond to a long-term resident notwithstanding a recent arrest); and
- *In re F-P-J-*, [REDACTED] (BIA Oct. 22, 2020) (granting bond where the immigration judge failed to consider alternatives to detention).

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 Petitioner, 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 Petitioner has not filed a bond application since entering ICE custody on or about November 24, 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.

61. Accordingly, Respondent's 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

62. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release her under reasonable conditions of supervision, or in alternative to provide her with an immediate individualized custody redetermination hearing under INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days. Upon a final hearing, Petitioner asks 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, Petitioner satisfies each of these factors.

A. Ms. Rivero is Likely to Succeed on the Merits of Her Petition.

64. Ms. Rivero 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 Fifth Circuit,

have already determined that noncitizens in circumstances substantially similar to those of Ms. Rivero, 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 Ms. Rivero 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, Ms. Rivero raises 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, Petitioner’s claim is exceptionally strong.

B. Ms. Rivero Will Suffer Irreparable Harm if a Preliminary Injunction Does Not Issue.

68. If this Court does not grant immediate relief, Ms. Rivero 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. Rivero remains

confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

69. Even if Ms. Rivero 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. Rivero’s ongoing imprisonment without a lawful hearing meets that standard.

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

70. 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.

71. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and she 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 a 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 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.

74. Each factor of the equitable test weighs heavily in Ms. Rivero'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.

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

VIII. PRAYER FOR RELIEF

76. 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 her 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. Grant 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: January 16, 2026

Respectfully submitted,

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Fax: (210) 922-8547
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By: /s/ Guillermo M. Hernández, III
Guillermo M. Hernández, III
Texas Bar No. 24073310
ATTORNEY FOR PETITIONER

VERIFICATION

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Marcial Erasmo Yero Cera ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's husband, and who after being by me duly sworn, stated that they are 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 they have read the substance of the foregoing document, that 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.



Marcial Erasmo Yero Cera,
Affiant

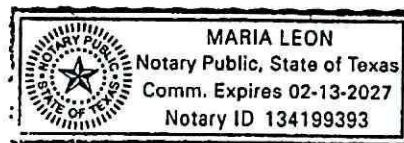
NOTARIAL CERTIFICATE

State of Texas §
County of Bexar §

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this the 15th day of January, 2026.



NOTARY PUBLIC in and for the
STATE OF TEXAS



My commission expires: 02/13/2027

(Certificate of Interpretation on following page)

AQUIRENIA RIVERO ESPINOZA; 

CERTIFICATE OF INTERPRETATION FOR AFFIDAVIT OF
(MARCIAL ERASMO YERO CERA)

I, Diana Barba, am competent to translate and interpret from Spanish into English, and I certify that I have read this entire document to the Affiant in Spanish, and that the Affiant stated that they understood the document before they signed the affidavit above.



(Signature of interpreter)

Diana Barba

(typed/printed name of interpreter))

AQUIRENIA RIVERO ESPINOZA; 

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 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 16, 2026

/s/Guillermo M. Hernandez, III

Guillermo M. Hernandez, III

Attorney

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