

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

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

MARICELA MACHIN GONZALEZ

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security;

TODD M. LYONS, in her official capacity
as Acting Director of U.S. Immigration and
Customs Enforcement;

MIGUEL VERGARA, in her official
capacity as Director of the San Antonio
Field Office of ICE, Enforcement and
Removal Operations;

RAYMOND E. THOMPSON, Warden of
the Karnes County Immigration Processing
Center; and

DAREN K. MARGOLIN, Director of the
Executive Office for Immigration Review,
Respondents.

Civil Action No. 5:26-cv-675

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 MARICELA MACHIN GONZALEZ () hereinafter referred to as "*Petitioner*" or "*Ms. Machin Gonzalez*," is a native and citizen of Cuba who has resided in the United States for nearly four years. She is currently subject to indefinite detention after her apprehension by ICE in Texas and is detained at the Karnes County Immigration Processing Center in Karnes City, Texas. *See* Petitioner's Ex. 1, ICE Detainee Locator Search Results.

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

3. In recent months, immigration judges have routinely denied requests for a bond hearing to individuals in situations substantially similar to that of Ms. Machin Gonzalez, 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 INA § 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. Machin Gonzalez 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 INA § 240 [8 U.S.C. § 1229a] 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. Machin Gonzalez therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, directing Respondents to release her under reasonable conditions or, in the alternative, provide her an individualized custody hearing without delay.

II. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by

persons held in custody in violation of federal law or the Constitution. This action also invokes the Court's authority under the All-Writs Act, 28 U.S.C. § 1651.

7. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. Petitioner does not challenge a final order of removal, nor seek class-wide relief. Detention-based habeas claims are not channeled by Section 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not foreclose review of unlawful custody or *ultra vires* attempts to switch a non-final INA § 240 case into expedited removal. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999) (hereinafter also referred to as “*Reno v. AADC*”). Individual injunctive relief is not barred by Section 1252(f)(1). *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022).

8. Venue is proper in this District, and in the San Antonio Division, because Petitioner is detained at the Karnes County Immigration Processing Center in Karnes City, Karnes County, Texas, within this Court's jurisdiction, whereas Petitioner's immigration detention is controlled by the San Antonio Office of ICE – Enforcement and Removal Operations. *See* Petitioner Ex. 1.

III. PARTIES

9. Petitioner, Maricela Machin Gonzalez, is a citizen and national of Cuba who has lived in the United States for nearly four years, having arrived in the United States on or about February 4, 2022. On or about January 20, 2026, Petitioner was detained by ICE and 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. she is sued in her 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, she oversees the Karnes Sub-Office of ERO San Antonio, which has jurisdiction over Petitioner. she is sued in her 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 her 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, she 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. she is sued in her 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. Machin Gonzalez is a citizen and national of Cuba. She has lived continuously in the United States since her initial entry on or about February 4, 2022, when she was processed by

immigration officials at the southern border in Texas and released on recognizance (I-220A). *See* Petitioner's Ex. 2, Documents from Petitioner's Removal Proceedings. Petitioner has thereafter resided in the United States continuously for nearly four years in Texas while awaiting the adjudication of her removal proceedings.

16. Importantly in this matter, Ms. Machin Gonzalez's removal proceedings were previously administratively closed pending the adjudication of an I-130 Family Petition filed on Petitioner's behalf by her United States Citizen son in order that she may pursue consular processing. *See* Petitioner's Ex. 3, Order of the Immigration Judge, 10/24/2024. As of this moment, Petitioner is still awaiting adjudication of the I-130 Family Petition.

17. Since her release from immigration custody in February 2022, Petitioner has fully complied with all conditions of her parole. She has reported regularly to the ICE Field Office as directed. Each appointment was completed without incident, and Petitioner was advised to return on future dates.

18. On or about January 20, 2026, Petitioner dutifully appeared for her scheduled ICE appointment. She expected a routine compliance check-in, having no criminal record or pending violations. *See* Petitioner's Ex. 4, Texas Criminal Records Search. Likewise, Petitioner was not expecting to be detained given that her removal proceedings had been administratively closed. Without warning or explanation, ICE officers detained Petitioner and refused to release her. ICE officers informed Ms. Machin Gonzalez that she would now be detained, despite her history of appearing at ICE check-ins while in removal proceedings for the previous years and the fact that her removal proceedings had been administratively closed.

19. Ms. Machin Gonzalez 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 Field Office of ICE – Enforcement and Removal Operations (“ERO”). The ICE Detainee Locator confirms Petitioner’s custody in Karnes City, Texas. *See* Petitioner Ex. 1.

20. Until her recent transfer into a remote immigration facility in Karnes City, Texas, Ms. Machin Gonzalez had lived and worked in Texas for nearly four years, where she developed close ties to her community. Ms. Machin Gonzalez has no history of violence and no criminal record whatsoever that would justify treating her as a danger to society—no arrests or convictions—since entering the United States and was not involved in any criminal activity that would justify her arrest on January 20, 2026. *See* Petitioner’s Ex. 4. On the contrary, Respondent has appeared at her removal proceedings, and her proceedings had been administratively closed due to the pending family petition filed on her behalf. *See* Petitioner’s Ex. 2; Petitioner’s Ex. 3. Likewise, she has demonstrated continuous residence, stable employment, and family and community ties.

21. As of the filing of this petition, Petitioner remains detained at the Karnes County Immigration Processing. *See* Petitioner’s Ex. 1. Although ICE filed its Notice to Appear with EOIR, Ms. Machin Gonzalez is deemed 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. Machin Gonzalez, coupled with agency policy, renders her detention *ultra vires*, indefinite, and constitutionally infirm. Petitioner has now been held without a bond in violation of the immigration statutes, and without being afforded judicial oversight or administrative review.

22. Given Respondents’ failure to justify continued custody or to provide Petitioner with a proper bond hearing, 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. Following her initial detention after entering the United States in 2022, the Department of Homeland Security (“DHS”) served Ms. Machin Gonzalez 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, before releasing her on her own recognizance. *See* Petitioner’s Ex. 2.

24. Although ICE filed the NTA with the immigration court after serving it on Ms. Machin Gonzalez, placing her into INA § 240 [8 U.S.C. § 1229a] removal proceedings, ICE’s detention of Ms. Machin Gonzalez ignores her lengthy history in this country, as well as the fact that an immigration judge previously ruled that her case be administratively closed pending the adjudication of a family petition by her United States Citizen son. For this reason, Ms. Machin Gonzalez is entitled to the full panoply of due process guaranteed by the INA, including release from detention, a hearing on relief from removal and a bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)], and not merely a summary expulsion.

25. Despite this case history, current immigration policy treats Ms. Machin Gonzalez, as though she is only now arriving to the United States and is therefore 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 and has been present in the country for several years. Instead of being allowed to pursue her case outside of detention as was previously authorized, or to seek release on bond before an immigration judge, Respondents have categorically denied her a chance to demonstrate that she is neither a danger to the community nor a flight risk.

26. 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 already present in the United States like Ms. Machin Gonzalez.

27. As a result of this, as well as ICE's arbitrary arrest and transfer of Ms. Machin Gonzalez into the immigration detention apparatus, Ms. Machin Gonzalez now finds herself isolated at the Karnes County Immigration Processing Center in Karnes City, Texas, a remote facility over a hundred miles 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 suffered by Petitioner. Petitioner is separated from her family and community support, impeded in her ability to consult with counsel, and suffered the psychological strain that prolonged and unnecessary detention inevitably produces.

28. In sum, Ms. Machin Gonzalez has roots in the United States, a strong claim for adjustment of status to that of a lawful permanent resident, a strong claim for asylum and withholding of removal, and no disqualifying criminal record. Her detention has placed her into indefinite civil detention based solely on the government's reliance on recent, non-binding BIA decisions that contravene the plain language of the INA and the recent decisions of multiple federal district courts. Ms. Machin Gonzalez's continued detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody 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 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.

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 Supreme Court also observed that the decision on who may enter this country and who may remain generally begins at the Nation’s borders and ports of entry, where the government must determine whether an alien seeking to enter the country is admissible. *Jennings*, 583 U.S. at 287. The Court noted that 8 U.S.C. § 1225(b) applies to those persons seeking entry into the United States, not those who have already entered the United States. *Jennings* 583 U.S. at 297. The Board of Immigration Appeals itself recognized for decades that individuals in INA § 240 [8 U.S.C. § 1229a] 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 Petitioner. 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 Ms. Machin Gonzalez—are eligible to request bond hearings before the immigration court.

34. 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)).

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 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 Ms. Machin Gonzalez is entitled to release from detention in order to proceed with her removal proceedings outside of detention, or at a minimum be provided a 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 them as though stated fully herein.

39. Respondents' refusal to release Petitioner or provide her 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]. Not only was Petitioner placed into removal

proceedings, but those removal proceedings were also administratively closed due to a family-based petition currently pending, which if approved, would allow Petitioner to seek residency through consular processing. Ms. Machin Gonzalez remains detained at the Karnes County Immigration Processing Center, with her case likely to be placed on the detained docket of the Pearsall Immigration Court despite that administrative closure. Because Petitioner has been detained for removal proceedings, and because she has now lived in the United States for many years, her custody is governed by INA § 236(a) [8 U.S.C. § 1226(a)], not INA § 235(b) [8 U.S.C. § 1225(b)]. Such a classification is supported by the Supreme Court's ruling in *Jennings*, which clarifies that a person who has been present in the United States for a significant amount of time, such as being present for over a year, is considered to already have entered the country. *Jennings*, 583 U.S. at 289. Given that she has been present in the country for decades, it is clear that INA § 236(a) [8 U.S.C. § 1226(a)] applies to Petitioner's case.

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 immediately released under the conditions previously granted to her or that she 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. *See* Petitioner's Ex. 3. 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 the ability to pursue her removal proceedings outside of detention or seek 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 long in the United States, with nearly four years of continuous presence. She has family and community ties in Texas. There has been no finding or evidence presented that indicate 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 be afforded an immediate custody redetermination hearing.

VII. REQUEST FOR INJUNCTIVE RELIEF

55. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release her under reasonable conditions of supervision or 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.

56. 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. Machin Gonzalez Is Likely to Succeed on the Merits of her Petition.

57. Ms. Machin Gonzalez 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. Machin Gonzalez, who are detained under INA § 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings before an immigration judge.

58. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request—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. As a person who has been present in the United States for many years without any interaction with immigration enforcement officials, Petitioner himself is within the class covered by this ruling. This further supports Petitioner’s request for release or a custody redetermination hearing.

59. Additionally, Ms. Machin Gonzalez raises a constitutional claim under the Fifth Amendment, as prolonged detention without any opportunity for individualized custody review violates due process.

60. 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. Machin Gonzalez Will Suffer Irreparable Harm If a Preliminary Injunction Does Not Issue.

61. If this Court does not grant immediate relief, Ms. Machin Gonzalez 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. Machin Gonzalez remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury.

62. Even if Ms. Machin Gonzalez 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. Machin Gonzalez's ongoing imprisonment following a constructive denial of her requested bond hearing meets that standard.

C. Balance of Equities Weighs in favor of Ms. Machin Gonzalez.

63. 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.

64. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and she has no criminal history. *See* Petitioner's Ex. 4. In contrast, every additional day of unlawful confinement inflicts significant harm on Petitioner. When weighed against each other, the equities clearly support granting immediate relief.

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

65. 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.

66. 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.

67. Each factor of the equitable test weighs heavily in Ms. Machin Gonzalez'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.

68. For these reasons, this Court should issue a Preliminary Injunction at the earliest possible opportunity, requiring Respondents to release Ms. Machin Gonzalez from detention, or in the alternative, provide an immediate custody redetermination hearing.

VIII. PRAYER FOR RELIEF

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

- a. Issue a writ of habeas corpus ordering Respondents to release Petitioner from custody, or alternatively provide him with an individualized bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)] within seven (7) days of the Court's order;
- b. Grant a preliminary injunction requiring Petitioner's immediate release, or alternatively such a hearing;
- c. 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. Order Respondents to return any of Petitioner's identity documents confiscated upon detention including Petitioner's passport, government issued-identification, driver's license, and immigration case documentation;
- e. 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;
- f. Grant permanent injunctive relief as appropriate;

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

DATE: February 3, 2026.

Respectfully submitted,

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

By: /s/ Guillermo M. Hernandez III
Guillermo M. Hernandez 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 Maricely Otano Machin, ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's daughter, 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.



Maricely Otano Machin,
Affiant

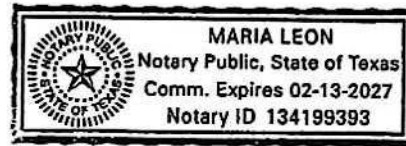
Maricela MACHIN GONZALEZ; 

NOTARIAL CERTIFICATE

State of Texas §
County of Bexar §

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this
the 27th 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)

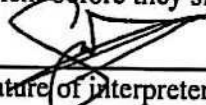
Maricela MACHIN GONZALEZ;



CERTIFICATE OF INTERPRETATION FOR AFFIDAVIT OF

MARICELY OTANO MACHIN

I, Sugey Vidales, 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)

Sugey Vidales
(typed/printed name of interpreter)

Maricela MACHIN GONZALEZ; 

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

CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2026, a true copy of the above Plaintiff's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Request For Declaratory and Injunctive Relief was filed via the Court's CM/ECF and that a copy will be sent automatically to all counsel of record.

DATE: February 3, 2026.

/s/ Guillermo M. Hernandez III

Guillermo M. Hernandez III

Attorney for Petitioner

Texas Bar No. 24073310

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