UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DARIO STEVES DIAZ AGUILA,

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 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-00239

Immigration No. [redacted]

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 Dario Steves Diaz Aguila (A#240-316-877), hereinafter referred to as "*Petitioner*" or "*Mr. Diaz*," is a native and citizen of Cuba who has resided in the United States for over three years. He is currently subject to indefinite detention after his

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 Locater search results.

2. Mr. Diaz 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 Mr. Diaz, 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 Mr. Diaz 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), which clearly provides that noncitizens are entitled to bond hearings.

5. Mr. Diaz 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 provide him an individualized custody hearing or release him under reasonable conditions without delay.

II. JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. This Court also has jurisdiction under 28 U.S.C. § 2241, which grants federal district courts authority to hear habeas petitions filed by persons held in custody in violation of federal law or the Constitution. This action also invokes the Court's authority under the All-Writs Act, 28 U.S.C. § 1651.

7. The jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar this suit. 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's Ex. 1.

III. PARTIES

9. Petitioner, Dario Steves Diaz Aguila ("Mr. Diaz"), is a citizen and national of Cuba who has lived in the United States for three years and nine months, having arrived to the United States on or about April 6, 2022. On or about August 14, 2025, he was transferred to the Karnes County Immigration Processing Center, where he remains detained. *See* Petitioner's Ex. 1.

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

11. Respondent TODD LYONS is the Acting Director of Immigration and Customs Enforcement ("ICE"), an executive branch agency within the Department of Homeland Security. He is sued in his official capacity.

12. Respondent MIGUEL VERGARA is the Acting Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Karnes 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 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 Administrative Procedure Act ("APA").

IV. FACTUAL BACKGROUND

16. Mr. Diaz is a citizen and national of Cuba, born on [redacted] 1996. He has lived continuously in the United States since his initial entry on or about April 6, 2022, when he was processed by immigration officials at the southern border in Texas and released on recognizance. *See* Petitioner's Ex. 2, Documentation of Petitioner's Immigration Case. Since that time, he has continuously resided in Texas. He is married to a U.S. Citizen and has a four (4) month old U.S. Citizen daughter.

17. Mr. Diaz filed an application for asylum and withholding of removal (Form I-589) before the Immigration Court on November 15, 2022, thereby complying with the one-year filing deadline required under INA § 208(a)(2)(B). *See* Petitioner's Ex. 3, Petitioner's Form I-589, Application for Asylum and Withholding of Removal. His asylum application was denied by an immigration judge on September 25, 2025. *See* Petitioner's Ex. 4, Decision of Immigration Judge. Mr. Diaz, through counsel, filed an appeal of the decision of the immigration judge with the Board of Immigration Appeals (BIA) on October 20, 2025, within the 30-day filing deadline for submitting a notice of appeal. *See* Petitioner's Ex. 5, Filing Receipt for Appeal.

18. Since his release from immigration custody in April 2022, Petitioner has fully complied with all conditions of his supervision. He has reported regularly to the ICE Field Office located at 3523 Crosspoint Drive, San Antonio, Texas, as directed. Each appointment was completed without incident, and Petitioner was advised to return on future dates.

19. On or about August 14, 2025, Petitioner dutifully appeared for his scheduled ICE appointment. He expected a routine compliance check-in, having no criminal record or pending violations. Without warning or explanation, ICE officers detained him on the spot and refused to release him. ICE officers informed Mr. Diaz that he would now be detained, despite his history of appearing at ICE check-ins while in removal proceedings for the previous years.

20. Mr. Diaz was initially detained at 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, as of December 2, 2025. *See* Petitioner's Ex. 1.

21. Mr. Diaz had lived and worked in Texas for many years, where he developed close ties to his community. Mr. Diaz has no history of violence and no criminal record whatsoever that would justify treating him as a danger to society—no arrests, convictions, or citations—since entering the United States. *See* Petitioner's Ex. 6, Texas Criminal History Search. To the contrary, he has demonstrated continuous residence, stable employment, and strong family and community ties in San Antonio, Texas. Mr. Diaz'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.

22. As of the filing of this petition, Petitioner remains detained at the Karnes County Immigration Processing. Although ICE filed its Notice to Appear with EOIR, Mr. Diaz is ineligible for any bond hearing or opportunity for review under INA § 236(a) under the current policies of ICE and EOIR. The government's arbitrary arrest of Mr. Diaz, coupled with agency policy, renders his detention ultra vires, indefinite, and constitutionally infirm. He has been held for over five months, contrary to the immigration statutes, and without being afforded judicial oversight or administrative review.

23. On or about November 26, 2025, a DHS/ICE-ERO officer informed Mr. Diaz that he would removal from the United States to Mexico, a country he has not ties to. *See* Petitioner's Ex. 7, Copy of Correspondence regarding DHS advisal of removal. He also informed Mr. Diaz that they were not aware of an appeal pending in his case. The DHS/ICE-ERO officer informed Mr. Diaz that he would be removed from the United States on Saturday, November 29, 2025. This threat of removal was notwithstanding the timely appeal of the Decision of the Immigration Judge filed by Mr. Diaz, through counsel, with the BIA on October 20, 2025. Petitioner's Ex. 5.

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

25. On or about April 6, 2022, immigration officials apprehended Mr. Diaz upon his entry into the United States through the Texas border. Following this, the Department of

Homeland Security ("DHS") served Mr. Diaz with a Notice to Appear ("NTA"), formally charging him as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] for entry without inspection near San Luis, Arizona before he was eventually released on recognizance. *See* Petitioner's Ex. 2, Documentation of Immigration History.

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

27. Despite this case history, current immigration policy treats Mr. Diaz, for bond purposes, as though he were subject to the harshest form of "arriving alien" detention, even though he has been properly placed in INA § 240 proceedings. Instead of being allowed to seek release on bond before an immigration judge, ICE has categorically denied him any chance to demonstrate that he is neither a danger to the community nor a flight risk. This blanket denial is not based on any individualized finding, but on the government's insistence on applying the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Those decisions—issued without notice-and-comment rulemaking, and in direct tension with the plain language of the statute—purport to strip immigration judges of authority to hold bond hearings for individuals like Mr. Diaz.

28. As a result of this, as well as ICE's arbitrary arrest and transfer of Mr. Diaz he finds himself detained at the Karnes County Immigration Processing Center in Karnes, Texas, a

remote facility far from his community. *See* Petitioner's Ex. 1. He is held under conditions indistinguishable from those reserved for dangerous criminals, despite the absence of any criminal conviction that would bar him release under Section 236(c) of the INA. *See* Petitioner's Ex. 6. Each day of confinement exacerbates the harm—separating him from family and community support, impeding him ability to consult with counsel, and inflicting the psychological strain that prolonged and unnecessary detention inevitably produces.

29. In sum, Mr. Diaz is a man with deep roots in the United States, strong claim for political asylum and humanitarian protection and no disqualifying criminal record. *See* Petitioner's Ex. 6. He 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 multiple federal district courts. Mr. Diaz's continued detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust. A favorable ruling in his case would reaffirm the principle that due-process protections do not turn on bureaucratic labels, but rather uphold the foundational rights guaranteed under the Constitution, signaling a commitment to justice and fairness in the immigration system.

30. V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

31. 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.

32. 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.

33. 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).

34. 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.

35. 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 Mr. Diaz—are eligible to request bond hearings before the immigration court.

36. 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)). 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.

37. 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).

38. 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.

39. 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. Diaz is entitled to bond consideration under INA § 236(a) [8 U.S.C. § 1226(a)].

B. Noncitizens Remain Eligible for a Bond Hearing So Long as a Final Order of Removal Has Not Been Issued.

40. An order for removal made by an immigration judge at the conclusion of proceedings under INA § 240 will become final: upon dismissal of an appeal by the BIA; upon waiver of appeal by the alien; upon expiration of the time allotted for an appeal; upon the date of the subsequent decision ordering removal if certified by the BIA; an in absentia removal order; or if the alien fails to depart within the timeframe allotted for them to voluntarily depart. 8 C.F.R. § 1241.1(a-f). The term "*order of deportation*" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation. INA § 101(a)(47)(A) [8

U.S.C. 1101(a)(47)(A)]. The order of deportation shall become final upon the earlier of a determination by the BIA affirming such order; or the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals. INA § 101(a)(47)(B) [8 U.S.C. 1101(a)(47)(B)]

41. After an initial custody determination by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR § 1240 becomes final, request amelioration of the conditions under which he or she may be released. 8 C.F.R. § 1236.1. Custody and bond determinations made by the service pursuant to 8 CFR § 1236 may be reviewed by an Immigration Judge pursuant to 8 CFR § 1236. 8 C.F.R. § 1003.19(a). The BIA has held that bond regulations give a detained alien the right to apply to an IJ for modification of the conditions of his release at any time after an initial custody determination has been made by the district director and before an order of deportation becomes administratively final. *Matter of Uluocha* 20 I & N Dec. 133, 134 (BIA 1989).

42. Here, the Respondent has not been issued a final order of removal and thus is justified in seeking a proper custody redetermination hearing or release from detention through this habeas corpus petition. Petitioner received an order of removal after her application for asylum was denied. Petitioner subsequently filed a notice of appeal within the required 30-day deadline with the BIA. *See* Petitioner's Ex. 5. As of present, the BIA is still reviewing Petitioner's claim. As such, no final order of removal has been issued against Petitioner.

43. Under 8 C.F.R. § 1236.1, Petitioner may request amelioration of the conditions under which he or she may be released because there is no final order of removal as per 8 C.F.R. § 1241.1 and INA § 101(a)(47) [8 U.S.C. 1101(a)(47)]. Further, it is consistent with

case precedent that Petitioner be allowed to seek release from detention because the BIA has recognized that custody redetermination is allowed until the order of removal becomes administratively final. *Uluocha*, 20 I & N Dec. at 134. Therefore, Petitioner's request presented in this petition is not barred by the fact that a removal order has been issued against him. Petitioner would only be barred from pursuing custody redetermination if he did not file his appeal within the statutory deadline, or failed to meet any of the other requirements to prevent the order of removal from becoming final.

VI. CLAIMS FOR RELIEF

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

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

45. 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.

46. 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."

47. 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.

48. 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.

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

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

51. Accordingly, this Court should grant the writ and order that Petitioner be released, or in the alternative, 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

52. Petitioner incorporates by reference the above factual allegations and reassert them as though stated fully herein.

53. 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.

54. 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.

55. Because Petitioner is detained by ICE at the Karnes County Immigration Processing 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 Petitioner of the individualized determination required by due process and by the plain language of Section 236(a) [8 U.S.C. § 1226(a)].

56. 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. 6. The government has no legitimate basis to insist that Petitioner's detention be mandatory, yet he remains confined with no opportunity for release.

57. Denying Petitioner 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 *Zadvydas* and *Demore v. Kim*, 538 U.S. 510 (2003).

58. 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.

59. Petitioner is a long-time resident of the United States, with nearly three and a half years of continuous presence. He has strong family and community ties in Texas. There has been no finding that he 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—he has been categorically denied the process to which he is entitled. This amounts to an arbitrary deprivation of liberty in violation of the Fifth Amendment.

60. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be released from custody pending the final outcome of his Appeal with the BIA or be afforded an immediate custody redetermination hearing.

Count III – Unlawful Agency Action (APA)

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

62. Respondents' continued detention of Petitioner 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.

63. For decades, immigration judges exercised bond jurisdiction over individuals detained under INA § 236(a) [8 U.S.C. § 1226(a)], including those who entered without

inspection. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). That framework allowed for individualized custody determinations consistent with both statutory text and constitutional principles. These cases include, without limitation, the following:

- *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006) (establishing criteria of danger to the community and flight risk as factors for immigration bond requests);
- *In re L-E-V-H-*, [redacted] (BIA, Dec. 21, 2018) (despite noncitizen's testimony that he had "turned himself in to officials at the border," held noncitizen had entered without inspection and was therefore not "arriving alien");
- *In re A-R-S-*, [redacted] (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-*, [redacted] (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-*, [redacted] (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).

64. 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.

65. 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).

66. Although Petitioner has not filed a bond application since entering ICE custody on or about August 5, 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.

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

VII. REQUEST FOR INJUNCTIVE RELIEF

68. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release him under reasonable conditions of supervision, or in the alternative, to provide him 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..

69. 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. Mr. Diaz Is Likely to Succeed on the Merits of His Petition.

70. Mr. Diaz 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 those of Mr. Diaz, who are detained under Section 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings before an immigration judge.

71. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Diaz 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.

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

73. 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. Mr. Diaz Wil Suffer Irreparable Harm If a TRO Does Not Issue.

74. If this Court does not grant immediate relief, Mr. Diaz 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. Diaz remains confined without access to the procedures guaranteed by law constitutes a grave and irreversible injury. Moreover, DHS/ICE ERO officers have threatened Mr. Diaz with removal from the United States on or about November 26, 2025, despite him filing a timely appeal with the BIA on October 20, 2025. He was informed that they were not aware of an appeal being file in his case, despite there being a receipt of the appeal and the appeal pending for over a month

75. Even if Mr. Diaz 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. Diaz's ongoing imprisonment without a lawful hearing meets that standard.

C. Balance of Equities Weighs in favor of Mr. Diaz.

76. The balance of equities tips decisively in Petitioner'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 this Circuit nonbinding, precedents.

77. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and has no criminal history. *See* Petitioner's Ex. 6. 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.

78. 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.

79. 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.

80. Each factor of the equitable test weighs heavily in Mr. Diaz's favor. He 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; 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.

81. For these reasons, this Court should issue a Preliminary Injunction at the earliest possible opportunity, requiring Respondents to release Mr. Diaz, or in the alternative provide an immediate custody redetermination hearing.

VIII. PRAYER FOR RELIEF

82. 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: January 19, 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: fbaeza@rhc.law

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

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF BEXAR §

DECLARATION UNDER PENALTY OF PERJURY OF NOELANI ROJAS

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

1. I, Noelani Rojas, am the wife of Petitioner, Dario Steves Diaz Aguila.
2. I am above the age of twenty-one (21) years of age, of sound mind, and in all ways competent to execute this verification. I acknowledge that I have read the substance of the foregoing document, that have personal knowledge of the facts contained herein, and that the factual statements contained herein above are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 19, 2026.

Date: January 19, 2026

Noelani Rojas

State of Texas §
§
County of Bexar §

Sworn to and subscribed before me on the 19th Day of January 2026, by Noelani Rojas.

ROBERT WAGNER, II NOTARY PUBLIC STATE OF TEXAS ID 134273114 EXP. 03-27-2027

Robert A. Wagner II

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 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 19, 2026.

/s/ Fernando Baeza Corona
Fernando Baeza Corona
Attorney
Texas Bar No. 24128680
5835 Callaghan Rd, Suite 503
San Antonio, TX 78228
Tel. (210) 922-8541
Fax. (210) 922-8547
Email: fbaeza@rhc.law