UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PHALITA PUN,

Petitioner,

v.

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security;
TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;
DAREN K. MARGOLIN, Director, Executive Office for Immigration Review, in his official capacity;
SYLVESTER M. ORTEGA, in his official capacity as Director of the San Antonio Field Office of ICE, Enforcement and Removal Operations; and
JOSE RODRIGUEZ JR., Warden of the Dilley Immigration Processing Center,

Respondents.

Civil Action No. SA-26-CV-534

Immigration No. [redacted]

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

I. INTRODUCTION

1. Petitioner PHALITA PUN (A# [redacted]) is a native and citizen of Nepal who has resided in the United States for over a year, most recently in the North Texas Region. She was recently transferred to ICE custody in South Texas and is currently detained at the Dilley Immigration Processing Center in Dilley, Texas. *See* Ex. A, Proof of Detention in ICE Custody.

2. Ms. Pun was placed into removal proceedings under INA § 240, 8 U.S.C. § 1229a, following her initial apprehension by border patrol in San Diego, California. *See* Ex. B, Notice to Appear.

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

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

5. Ms. Pun therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, including by seeking a Temporary Restraining Order ("TRO") through a separate forthcoming motion, directing Respondents to provide him an individualized custody hearing or release her 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 classwide 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 Dilley Immigration Processing Center in Dilley, Texas, within this Court's jurisdiction, whereas Petitioner's detention is controlled by the San Antonio Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

III. PARTIES

9. Petitioner, PHALITA PUN ("Ms. Pun"), is a citizen and national of Nepal who has lived in the United States for more than a year. She was transferred to the Dilley

Immigration Processing Center, where she remains detained, following her arrest by ICE near her home in Dallas County, Texas. Petitioner is currently in active removal proceedings under 8 U.S.C. § 1229a (INA § 240).[1] Petitioner's next scheduled hearing in her § 240 removal proceedings is a Master Calendar Hearing set before Judge Veronic Marie Segovia on February 23, 2026, at 9:00 a.m. at the Pearsall Immigration Court. *See* Ex. D, EOIR Automated Case Information System.

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 DAREN K. MARGOLIN is the Director of the Executive Office for Immigration Review ("EOIR"), the component of the Department of Justice responsible for immigration court adjudications, including bond hearings for noncitizens in removal proceedings. He is sued in his official capacity because EOIR, through its Immigration Judges, exercises exclusive authority over the conduct and scheduling of bond hearings, and EOIR's refusal to provide Petitioner with a constitutionally adequate bond hearing is an underlying basis of the unlawful detention challenged in this habeas petition.

13. Respondent SYLVESTER M. ORTEGA is the Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Pearsall Sub-Office of ERO, which has jurisdiction over Petitioner. He is

[1] The Immigration Court in Pearsall is now the administrative control docket due to ICE's transfer of Petitioner despite her lengthy residence in the North Texas Region, likely an effort to engage in forum-shopping.

sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

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

15. Respondents Noem, Lyons, and Margolin who represent DHS, ICE, and EOIR are properly included herein as the executives of federal agencies within the meaning of the Administrative Procedure Act ("APA").

IV. FACTUAL BACKGROUND

1. Petitioner PHALITA PUN is a twenty-eight-year-old citizen of Nepal who has made the United States her home for over a year, since November 17, 2024. She entered the United States on or about more than a year ago through San Diego California and has lived here continuously since that date.

2. Until her recent transfer into a remote immigration facility in Dilley, Texas, Ms. Pun lived and worked in both the North Texas Region for over a year, where she developed close ties to her community. She has a pending lawful Asylum application, valid employment authorization documentation, a valid Limited Term Texas Driver's License, no criminal history, no history of violence, maintains steady and regular employment, resides here with her spouse in the North Texas Region, and has no disqualifying convictions that would justify treating her as a danger to society.

3. On or about December 5, 2025, ICE apprehended Ms. Pun at her regularly scheduled ICE check-in in Dallas County, Texas; despite her pending lawful Asylum Application, Employment Authorization documentation, lawful valid limited term Texas Driver's License, lack of disqualifying criminal history, consistent employment record, substantial community ties, and lengthy history of compliance with ICE's legal and regulatory requirements for supervision. *See* Ex. B, Documentation of Immigration History. Ms. Pun has been served by The Department of Homeland Security ("DHS") 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.

4. Critically, when Ms. Pun's case was filed with the immigration court and served upon her, it placed her into § 240 removal proceedings. As a result of this, Ms. Pun 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 § 236(a), and not merely a summary expulsion—a natural result, in view of her lengthy history in this country.

5. Despite this posture, Ms. Pun has been treated for bond immigration purposes as though he were subject to the harshest form of "arriving alien" detention, even though she has been properly placed in § 240 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 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 decisions issued by this Court—purport to strip immigration judges of authority to hold bond hearings for individuals like Ms. Pun.

6. As a result, Ms. Pun now finds herself locked away at the Dilley Immigration Processing Center, suffering from bouts of panic and depression, in a remote facility hundreds of miles from her family in the North Texas Region. *See* Ex. A. 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) of the INA. Each day of confinement exacerbates her 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 produces.

7. In summary, Ms. Pun has deep roots in the United States, strong claims for humanitarian protection, and no disqualifying criminal record. She has been thrust into prolonged 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 decisions of the majority of courts in this circuit. Her 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.

8. 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.

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

10. The Supreme Court has confirmed the distinction between these statutory schemes. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (explaining differences between § 235(b) mandatory detention and § 236(a) discretionary custody). The Board of Immigration Appeals itself recognized for decades that individuals in § 240 proceedings after entry without inspection were eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

11. 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.

12. In recent weeks, multiple district courts in 2025 have directly addressed the Government's efforts to expand § 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 Section 236 of the INA permits noncitizens who arrived without inspection—persons in precisely the same legal circumstances as Ms. Pun —are eligible to request bond hearings before the immigration court.

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

14. Similarly, *Lopez-Arevelo v. Ripa*, 2025 U.S. Dist. LEXIS 188232 (W.D. Tex. Sept. 21, 2025), further confirms that courts are rejecting agency efforts to apply § 1225(b)(2)(A) to individuals who are properly subject to § 1226(a).

15. 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 Ms. Pun is entitled to bond consideration under § 1226(a).

VI. CLAIMS FOR RELIEF

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

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

17. Respondents' refusal to provide Petitioner with an individualized custody redetermination hearing violates the INA and the decisions of most district courts in the United States Court of Appeals for the Fifth Circuit.

18. 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."

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

20. In interpreting the plain language of Section 236(a), various federal district courts confirmed that noncitizens detained under Section 236(a) are statutorily eligible for individualized bond determinations before an immigration judge. Thus, the Attorney General must consider bond application by detained aliens pending the outcome of their removal proceedings, since immigration judges retain jurisdiction to conduct custody redetermination hearings under that provision.

21. Petitioner is now in removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a], and her case has been placed on the detained docket of the Pearsall Immigration Court. Because Petitioner is detained in the context of ongoing removal proceedings, her custody is governed by § 236(a), not § 235(b).

22. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), Respondents have acted contrary to statutory authority requiring consideration of such bond application. This policy supports the conclusion that the filing of a bond application with the immigration courts is currently a

futile endeavor. Petitioner's continued detention without access to an individualized custody redetermination violates the INA and must be corrected through habeas relief.

23. Accordingly, this Court should grant the writ and order that Petitioner receive an individualized bond hearing under INA § 236(a), as repeatedly recognized by the majority of federal district courts in this Circuit.

Count II – Fifth Amendment Due Process Violation

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

25. 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.

26. 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.

27. Because Petitioner is detained by ICE at the Dilley Immigration Processing Center, she is categorically barred from presenting evidence that she 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).

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

29. 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).

30. Petitioner is a long-time resident of the United States, with over a year of continuous presence. She has strong family and community ties in the North Texas region. 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 in conflict with the most courts in this 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.

31. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be afforded an immediate bond hearing, or that she be released from custody pending the final outcome of his Section 240 removal proceedings.

Count III – Unlawful Agency Action (APA)

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

33. 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 reasoned explanation violates the Administrative Procedure Act.

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

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

35. 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.

36. 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).

37. Although Petitioner has not filed a bond application since entering ICE custody on or about December 5, 2025, doing so would be futile, as immigration judges refuse to exercise jurisdiction, expressly relying on this recent BIA policy shift. *See* Ex. F, Sample IJ Bond Decision. By treating individuals such as Petitioner as subject to mandatory detention under Section 235(b), Respondents have applied an unlawful, arbitrary interpretation of the statute that is inconsistent with the plain language of Section 236(a) and unsupported by reasoned analysis.

38. 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

39. Petitioner respectfully requests that this Court grant injunctive relief directing Respondents to provide her an immediate individualized custody redetermination hearing under INA § 236(a) within seven (7) days, or, in the alternative, to release her under

reasonable conditions of supervision. Petitioner will also request preliminary injunctive relief and a Temporary Restraining Order in a separate filing, which is forthcoming.

40. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Ms. Pun 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).

41. There is no evidence that Petitioner poses a danger to the community or presents a risk of flight. To the contrary, Petitioner has affirmatively complied with DHS requirements by initiating and maintaining a lawful Employment Authorization Application, pursuing asylum protection through her pending application, and, obtained a valid Limited Term Texas Driver's License, consistently appearing for required ICE check-ins. She has lived and worked lawfully in her community, taken concrete steps to regularize her residence here and remained in full compliance with immigration authorities.

42. 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.

43. For these reasons, this Court should grant injunctive relief, requiring Respondents to release Ms. Pun or provide her with a bond hearing as soon as possible.

VIII. PRAYER FOR RELIEF

44. 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 provide Petitioner with an individualized bond hearing under INA § 236(a), 8 U.S.C. § 1226(a) within seven (7) days of the Court's order;

b. Issue a declaration that DHS may not initiate or pursue expedited removal against Ms. Pun while her § 240 removal proceedings remain non-final and while she seeks relief from removal before an Immigration Judge;

c. Issue a declaration that the plain language of INA § 236(a) permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;

d. Grant permanent injunctive relief as appropriate;

e. Award Petitioner reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 552(a)(4)(E), and any other applicable provision of law; and

f. Grant such other relief as this Court deems just and proper.

DATE: January 29, 2026.

Respectfully submitted,

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VERIFICATION

STATE OF TEXAS §
§
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, personally appeared EKESH THAPA, who stated the following under oath:

My name is EKESH THAPA ("Affiant"), and I am Petitioner's husband. I hereby swear and acknowledge that I am above the age of twenty-one (21) years of age, I am of sound mind, and I am in all ways competent to execute this verification, and I further acknowledge that I have provided the facts contained in the foregoing document, that I have personal knowledge of the facts contained in it, and that the factual statements contained therein are true and correct to the best of my knowledge and belief.

Date: January 29, 2026.

EKESH THAPA,
Affidavit

SWORN TO AND SUBSCRIBED before me, the undersigned Notary Public in and for the State of Texas on 29th, January, 2026.

NOTARY PUBLIC
Jessalyn Trinidad Martinez Rodriguez
Exp. 2/23/2028
ID No. 134779355
STATE OF TEXAS

Notary Public, State of Texas