UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLEYVER JULIAN ABRAHAM FARFAN,
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;
BOBBY THOMPSON, Warden of the South Texas ICE Processing Center; and
DAREN K. MARGOLIN, Director of the Executive Office for Immigration Review,
Respondents.

Civil Action No. 5:26-cv-539

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 Cleyver Julian Abraham Farfan (A[redacted]), hereinafter referred to as "*Petitioner*" or "*Mr. Abraham*," is a native and citizen of Mexico who entered the United States as a minor around 1998. He is currently subject to indefinite detention after his apprehension by U.S. Immigration and Customs Enforcement ("ICE") in Texas and is detained at the South Texas ICE Processing Center in Pearsall, Texas. *See* Petitioner Ex. 1, ICE Form I-830E.

2. Mr. Abraham has been placed in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1229a. *See* Petitioner 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. Abraham, 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. Abraham with an individualized custody redetermination hearing, asserting a lack of jurisdiction based on erroneous Board of Immigration Appeals precedent. The refusal to provide such a hearing violates the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act ("APA"), because detention in § 240 proceedings is governed by INA § 236(a) [8 U.S.C. § 1226(a)], which clearly provides that noncitizens are entitled to bond hearings.

5. Mr. Abraham therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, including a preliminary injunction directing Respondents to release him under reasonable conditions or provide him 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 South Texas ICE Processing Center in Pearsall, Texas, within this Court's jurisdiction, whereas Petitioner's immigration detention is controlled by the San Antonio Office of ICE – Enforcement and Removal Operations.

III. PARTIES

9. Petitioner, Cleyver Julian Abraham Farfan ("Mr. Abraham"), is a citizen and national of Mexico who has lived in the United States since his entry as a minor on or about 1998. On or about September 25, 2025, he was transferred to the South Texas ICE Processing Center, where he remains detained. *See* Petitioner Ex. 1.

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

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

12. Respondent MIGUEL VERGARA is the Acting Director of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"), and therefore, he oversees the Persall 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, BOBBY THOMPSON, Warden of the South Texas ICE Processing Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The South Texas ICE Processing Center is located at 566 Veterans Drive, Pearsall, TX 78061. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

14. Respondent, DAREN K. MARGOLIN, is Director of the Executive Office for Immigration Review. As such, he is responsible for directing and coordinating policy for the United States Immigration Court system, including policies relating to immigration bond applications and requests for custody redeterminations in immigration court. He is sued in his official capacity only.

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

IV. FACTUAL BACKGROUND

16. Mr. Abraham is a citizen and national of Mexico, born on [redacted] 1990. He has lived continuously in the United States since his initial entry as a minor around 1998. Since then, he has

grown up and resided in Texas. He has also established significant family ties through his adoptive parents, who are U.S. citizens. These longstanding ties demonstrate that Mr. Abraham is not a flight risk and has a strong incentive to appear for and comply with his immigration proceedings.

17. Mr. Abraham has sought removal relief during his time in the U.S., becoming a DACA recipient and the beneficiary of an approved I-130. *See* Petitioner Ex. 3, Petitioner's Immigration Removal Relief.

18. On or about November 14, 2024, Mr. Abraham pleaded guilty to misdemeanor assault (Texas Penal Code 22.01). *See* Petitioner Ex. 4, Criminal History Conviction Search for Petitioner. Mr. Abraham has no prior or subsequent criminal history outside of this event. *See id.* After his plea, Mr. Abraham was turned over to immigration officials. On or about November 18, 2024, the Department of Homeland Security ("DHS") initiated removal proceedings against Mr. Abraham through the service of a Notice to Appear. Mr. Abraham was charged as removable under INA § 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)], based on his alleged entry without inspection. He was then released on his own recognizance. *See* Petitioner Ex. 2. He has since complied with the conditions of his release and appeared for ICE check-in appointments.

19. On or about September 25, 2025, Petitioner dutifully appeared for his scheduled ICE appointment, where he expected a routine check-in. Without warning or explanation, ICE officers detained him on the spot and refused to release him. ICE officers informed Mr. Abraham that he would now be detained, despite his history of appearing at ICE check-ins while in removal proceedings.

20. Following his apprehension, Mr. Abraham was transferred to the South Texas ICE Processing Center in Pearsall, TX. The facility is operated under contract with the Pearsall Sub-

Field Office of the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO").

21. Until his recent transfer into a remote immigration facility in Pearsall, Texas, Mr. Abraham had lived and worked in Texas for many years, where he developed close ties to his community. Mr. Abraham has no prior or subsequent criminal history outside the November 2024 plea. His current detention does not stem from any criminal conduct but arises solely from civil immigration enforcement, underscoring that he does not pose a danger to the community.

22. On December 11, 2025, the immigration judge provided a scheduling order for Mr. Abraham to submit a Form 42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. *See* Petitioner Ex. 2. Because of the scheduling constraints at the South Texas ICE Processing Center, Mr. Abraham was unable to communicate this scheduling order with counsel. He was ordered removed without a hearing on January 6, 2026. Mr. Abraham, through counsel, is in the process of appealing of the decision of the immigration judge with the Board of Immigration Appeals ("BIA") within the 30-day filing deadline for submitting a notice of appeal. Mr. Abraham has also filed a motion to reopen his removal proceedings before the immigration court. *See* Petitioner Ex. 5, Documentation of Petitioner's Motion to Reopen with the Pearsall Immigration Court.

23. As of the filing of this petition, Petitioner remains detained at the South Texas ICE Processing Center. Under current ICE and EOIR policies, he has been denied an opportunity to seek an individualized custody determination or bond hearing pursuant to INA § 236(a) [8 U.S.C. § 1226(a)], notwithstanding his placement in Section 240 removal proceedings. As a result, his detention continues without meaningful administrative or judicial review.

24. Mr. Abraham, continued detention fails to account for his lengthy residence in the United States, his single incident of criminal history, and his individualized circumstances. As a noncitizen in civil removal proceedings, Mr. Abraham is entitled to the protections of due process guaranteed by the Immigration and Nationality Act and the Fifth Amendment, including the opportunity for an individualized custody determination under INA § 236(a).

25. Instead, current immigration policy treats Mr. Abraham as categorically ineligible for a bond hearing. ICE has denied him any opportunity to seek release on bond before an immigration judge or to demonstrate that he is neither a danger to the community nor a flight risk. This denial is not based on any individualized assessment of Mr. Abraham's circumstances.

26. The government's position relies on recent Board of Immigration Appeals decisions, including *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which purports to limit immigration judges' authority to conduct bond hearings in cases such as Mr. Abraham's. These decisions have resulted in the prolonged civil detention of noncitizens without individualized custody determinations.

27. As a result of ICE's actions, Mr. Abraham remains detained at the South Texas ICE Processing Center, a facility located far from his community and support network. He is detained under conditions comparable to those imposed on individuals subject to mandatory detention, despite the absence of any criminal conviction that would render him ineligible for bond under INA § 236(c).

28. In sum, Mr. Abraham is a longtime resident of the United States with substantial ties to this country and no crimes that would justify mandatory detention. His continued detention, without access to an individual bond hearing, is arbitrary, unlawful, and inconsistent with the Immigration and Nationality Act and the Constitution.

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 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).

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. Recently, multiple district courts in 2025/2026 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. Abraham—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. 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.

36. 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).

37. 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.

38. 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 Mr. Abraham 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.

39. 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)]

40. 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 immigration judge 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).

41. Here, Mr. Abraham is not subject to 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 has filed a Motion to Reopen his removal proceedings with the immigration court, which remains pending. *See* Petitioner's Ex. 5. Petitioner is also in the process of filing a notice of appeal to the BIA within the required 30-day deadline. Since the order of removal issued against him is not considered final, Mr. Abraham has not received a final order of removal and is eligible to seek custody redetermination or release.

42. 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. The BIA has recognized that custody redetermination is appropriate 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 her 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)]

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

44. 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.

45. 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."

46. 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.

47. 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.

48. Petitioner was served an NTA indicating his placement into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a]. Mr. Abraham remains detained at the South Texas ICE 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 many years, his custody is governed by § 236(a) [8 U.S.C. § 1226(a)], not § 235(b) [8 U.S.C. § 1225(b)].

49. 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.

50. 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

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

52. 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.

53. 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.

54. Because Petitioner is detained at the South Texas ICE 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)].

55. 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 he remains confined with no opportunity for release.

56. 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).

57. 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.

58. Petitioner is an individual who has long resided in the United States and has strong family 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.

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

Count III – Unlawful Agency Action (APA)

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

61. 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 a reasoned explanation violates the Administrative Procedure Act.

62. 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).

63. 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.

64. 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).

65. Although Petitioner has not filed a bond application since entering ICE custody on or about September 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.

66. 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

67. 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.

68. 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. Abraham Is Likely to Succeed on the Merits of His Petition.

69. Mr. Abraham 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.

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

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

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

72. 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. Abraham Wil Suffer Irreparable Harm If a Preliminary Injunction Does Not Issue.

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

74. Even if Mr. Abraham 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. Mr. Abraham's ongoing imprisonment without a lawful hearing meets that standard.

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

75. 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.

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

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

77. 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.

78. 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.

79. Each factor of the equitable test weighs heavily in Mr. Abraham'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.

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

VIII. PRAYER FOR RELIEF

81. 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;

d. Issue a declaration that the plain language of INA § 236(a) [8 U.S.C. § 1226(a)] permits immigration judges to consider bond requests of noncitizens who are present without admission and are not classified as arriving aliens;

e. Grant permanent injunctive relief as appropriate;

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

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

DATE: January 29, 2026.

Respectfully submitted,

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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 Julian Abraham Farfan, ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's brother, and who after being by me duly sworn, stated that he is 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 he had read the substance of the foregoing document, that he has 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.

Julian Abraham Farfan,
Affiant

NOTARIAL CERTIFICATE

State of Texas §

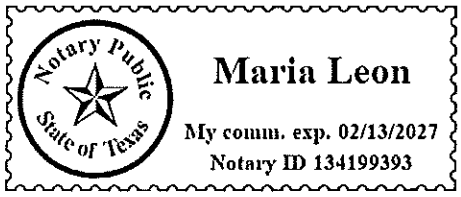
County of Bexar §

Before me Maria Leon, on this day personally appeared by means of an interactive two-way video communication Julian Abraham Farfan, who has provided satisfactory evidence of identity in accordance with Chapter 406, Texas Government Code to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed. This notarial act was an online notarization.

Given under my hand and seal of office this 26th day of January, 2025.

Notary Seal

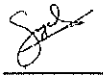
Digital Certificate



CERTIFICATE OF INTERPRETATION FOR AFFIDAVIT OF

ROY CASTILLO JR.

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))

HABEAS CORPUS AFFIDAVIT VERIFICATION - with interpreter certificate & electronic notary

Final Audit Report 2026-01-26

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 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 29, 2026

/s/Guillermo M. Hernandez, III

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