UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JORGE FELIX
RODRIGUEZ TORRES
Petitioner,

v.

KRISTI NOEM, in his 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-548

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 Jorge Felix Rodriguez Torres (A[redacted]), hereinafter referred to as "*Petitioner*" or "*Mr. Rodriguez Torres*," is a native and citizen of Cuba who has resided in the United States for nearly four 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 Locator Search Results.

2. Mr. Rodriguez Torres has been placed in removal proceedings under INA § 240 [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. Rodriguez Torres, due to a perceived lack of jurisdiction. These denials have relied on recent Board of Immigration Appeals ("BIA") precedent in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). However, numerous federal district courts, including some from within the jurisdiction of the United States Court of Appeals for the Fifth Circuit, have made clear that similarly situated noncitizens, who are detained under INA § 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings.

4. Despite this posture, immigration judges continue to refuse to provide noncitizens such as Mr. Rodriguez Torres with an individualized custody redetermination hearing, asserting a lack of jurisdiction based on erroneous Board of Immigration Appeals precedent. The refusal to provide such a hearing violates the INA, the Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act ("APA"), because detention in INA § 240 [8 U.S.C. § 1229a] proceedings is governed by INA § 236(a) [8 U.S.C. § 1226(a)], which clearly provides that noncitizens are entitled to bond hearings.

5. Mr. Rodriguez Torres therefore petitions this Court for habeas relief under 28 U.S.C. § 2241, and seeks immediate injunctive relief, directing Respondents to release his under reasonable conditions or, in the alternative, provide his an individualized custody hearing without delay.

II. JURISDICTION AND VENUE

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

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

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

III. PARTIES

9. Petitioner, Jorge Felix Rodriguez Torres, is a citizen and national of Cuba who has lived in the United States for over three years, having arrived in the United States on or about August 19, 2022. On December 2, 2025, Petitioner was detained at his ICE Check In appointment and was

subsequently transferred to the Karnes County Immigration 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 Karnes City Sub-Office of ERO San Antonio, which has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner's local custodian and DHS's local decisionmaker.

13. Respondent, RAYMOND E. THOMPSON, Warden of the Karnes County Immigration Processing Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Karnes County Immigration Processing Center is located at 409 FM 1144, Karnes City, TX 78118. Respondent is sued in his official capacity as Petitioner's immediate physical custodian as of the filing of this petition.

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

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

IV. FACTUAL BACKGROUND

16. Mr. Rodriguez Torres is a citizen and national of Cuba. He has lived continuously in the United States since his initial entry on or about August 19, 2022, when he was initially detained and processed by immigration officials at the southern border in Texas and released on recognizance (I-220A). *See* Petitioner's Ex. 2, Documents from Petitioner's Removal Proceedings. Petitioner has thereafter resided in the United States continuously for nearly four years in Texas while awaiting the adjudication of his removal proceedings.

16. Since his release from immigration custody in August 2022, Petitioner has fully complied with all conditions of his release. On February 15, 2023, Respondent filed his initial I-589 Application for asylum, withholding of removal and protection under the convention against torture with the Immigration Court. *See* Petitioner's Ex. 2. He has reported regularly to the ICE Field Office as directed. Each appointment was completed without incident, and Petitioner was advised to return on future dates.

17. On or about December 2, 2025, Petitioner dutifully appeared for his scheduled ICE appointment. He expected a routine compliance check-in, having no criminal record or pending violations. *See* Petitioner's Ex. 3, Texas Criminal Records Search. Likewise, Petitioner was not expecting to be detained given that his removal proceedings had been administratively closed. Without warning or explanation, ICE officers detained Petitioner and refused to release him. ICE officers informed Mr. Rodriguez Torres that he would now be detained, despite his history of appearing at ICE check-ins while in removal proceedings for the previous years.

18. Mr. Rodriguez Torres was transferred to the Karnes County Immigration Processing Center in Karnes City, Texas. The facility is operated under contract with the Karnes Sub-Field Office of

the San Antonio Field Office of ICE – Enforcement and Removal Operations ("ERO"). The ICE Detainee Locator confirms Petitioner's custody in Karnes City, Texas. *See* Petitioner Ex. 1.

19. Until his recent transfer into a remote immigration facility in Karnes City, Texas, Mr. Rodriguez Torres had lived and worked in Texas for many years, where he developed close ties to his community. Mr. Rodriguez Torres has no history of violence and no criminal record whatsoever that would justify treating his as a danger to society—no arrests or convictions—since entering the United States and was not involved in any criminal activity that would justify his change in custody on December 2, 2026. *See* Petitioner's Ex. 3. On the contrary, Petitioner has appeared to his removal proceedings and ICE check ins. Likewise, he has demonstrated continuous residence, stable employment, and strong family and community ties.

20. As of the filing of this petition, Petitioner remains detained at the Karnes County Immigration Processing. *See* Petitioner's Ex. 1. Although ICE filed its Notice to Appear with EOIR, Mr. Rodriguez Torres is deemed ineligible for any bond hearing or opportunity for review under INA § 236(a) [8 U.S.C. § 1226(a)] under the current policies of ICE and EOIR. The government's arbitrary arrest of Mr. Rodriguez Torres, coupled with agency policy, renders his detention *ultra vires*, indefinite, and constitutionally infirm. Petitioner has now been held without a bond in violation of the immigration statutes, and without being afforded judicial oversight or administrative review.

21. Given Respondents' failure to justify continued custody or to provide Petitioner with a proper bond hearing, 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.

22. Following his initial detention after entering the United States in August 2022, the

Department of Homeland Security ("DHS") served Mr. Rodriguez Torres 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, before releasing him on his own recognizance. *See* Petitioner's Ex. 2.

23. Although ICE filed the NTA with the immigration court after serving it on Mr. Rodriguez Torres, placing him into INA § 240 [8 U.S.C. § 1229a] removal proceedings, ICE's detention of Mr. Rodriguez Torres ignores his lengthy history in this country. For this reason, Mr. Rodriguez Torres is entitled to the full panoply of due process guaranteed by the INA, including release from detention, a hearing on relief from removal and a bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)], and not merely a summary expulsion.

24. Despite this case history, current immigration policy treats Mr. Rodriguez Torres, as though he is only now arriving to the United States and is therefore subject to the harshest form of "*arriving alien*" detention, even though he has been properly placed in INA § 240 [8 U.S.C. § 1229a] proceedings and has been present in the country for several years. Instead of being allowed to pursue his case outside of detention as was previously authorized, or to seek release on bond before an immigration judge, Respondents have categorically denied him a chance to demonstrate that he is neither a danger to the community nor a flight risk.

25. This blanket denial is not based on any individualized finding, but on the government's insistence on applying the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Those decisions—issued without notice-and-comment rulemaking, and in direct tension with the plain language of the statute—purport to strip immigration judges of authority to hold bond hearings for individuals already present in the United States like Mr. Rodriguez Torres.

26. As a result of this, as well as ICE's arbitrary arrest and transfer of Mr. Rodriguez Torres into the immigration detention apparatus, Mr. Rodriguez Torres now finds himself isolated at the Karnes County Immigration Processing Center in Karnes City, Texas, a remote facility over a hundred miles 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 his release under Section 236(c) [8 U.S.C. § 1226(c)] of the INA. Each day of confinement exacerbates the harm suffered by Petitioner. Petitioner is separated from his family and community support, impeded in his ability to consult with counsel, and suffered the psychological strain that prolonged and unnecessary detention inevitably produces.

27. In sum, Mr. Rodriguez Torres has deep roots in the United States, a strong claim for asylum and withholding of removal, and no disqualifying criminal record. His detention has placed him into indefinite civil detention based solely on the government's reliance on recent, non-binding BIA decisions that contravene the plain language of the INA and the recent decisions of multiple federal district courts. Mr. Rodriguez Torres's continued detention, absent the possibility of an individualized bond hearing, is unlawful, arbitrary, and profoundly unjust.

V. LEGAL FRAMEWORK

A. Statutory Framework for Immigration Custody Determinations.

28. Immigration detention is governed primarily by two provisions of the INA: Section 235(b) [8 U.S.C. § 1225(b)] and Section 236(a) [8 U.S.C. § 1226(a)]. Whereas Section 236(a) of the INA authorizes the Attorney General to release noncitizens on bond pending removal proceedings, in

contrast, Section 235(b) applies to certain categories of "*arriving aliens*" and mandates detention pending completion of expedited or threshold screening.

29. Congress designed INA § 236(a) [8 U.S.C. § 1226(a)] to govern the detention of individuals who, like Petitioner, are in regular removal proceedings under INA § 240 [8 U.S.C. § 1229a]. The statutory text expressly provides for release on bond, subject only to conditions ensuring appearance and protecting the community.

30. The Supreme Court has confirmed the distinction between these statutory schemes. *See Jennings v. Rodriguez*, 583 U.S. 281, 294–95 (2018) (explaining differences between § 235(b) [8 U.S.C. § 1225(b)] mandatory detention and INA § 236(a) [8 U.S.C. § 1226(a)] discretionary custody). The Supreme Court also observed that the decision on who may enter this country and who may remain generally begins at the Nation's borders and ports of entry, where the government must determine whether an alien seeking to enter the country is admissible. *Jennings*, 583 U.S. at 287. The Court noted that 8 U.S.C. § 1225(b) applies to those persons seeking entry into the United States, not those who have already entered the United States. *Jennings* 583 U.S. at 297. The Board of Immigration Appeals itself recognized for decades that individuals in INA § 240 [8 U.S.C. § 1229a] proceedings after entry without inspection were eligible for custody redeterminations. *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

31. Despite this clear statutory scheme, DHS has invoked recent BIA decisions (*i.e.*, *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)) to strip immigration judges of bond authority in cases such as those of Petitioner. Those decisions, however, cannot override the plain language of the statute.

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

33. For example, in the San Antonio Division of the Western District of Texas, *Rego Guerra v. Noem*, No. 5:25-cv-01725-JKP (filed December 12, 2025), the court concluded that jurisdiction was proper though habeas relief correct statutory misclassification and to preserve the petitioner's due process rights. The court concluded the Petitioner subject to detention under INA § 236(a) [8 U.S.C. § 1226(a)], rejecting the Government's assertion that INA § 235(b) [8 U.S.C. § 1225(b)] applied. *Id.* The district court ordered petitioner's direct release under reasonable conditions finding no evidence submitted that she had violated the conditions of her initial release on recognizance when processed by DHS. *Id.*; *see also e.g., Acea-Martinez v. Noem*, No. 5:25-CV-01390-XR (filed Oct. 28, 2025) (addressing § 1225(b)(2)); *Guevara-Vasquez v. Thompson*, No. 5:25-CV-01372-XR (filed Nov. 25, 2025) (addressing § 1225(b)(1)).

34. 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).

35. 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.

36. 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. Rodriguez Torres is entitled to release from detention in order to proceed with his removal proceedings outside of detention, or at a minimum be provided a bond consideration under INA § 236(a) [8 U.S.C. § 1226(a)].

VI. CLAIMS FOR RELIEF

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

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

38. Respondents' refusal to release Petitioner or provide him 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.

39. 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."

40. 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.

41. 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.

42. Petitioner was served an NTA indicating his placement into removal proceedings under Section 240 of the INA [8 U.S.C. § 1229a]. Mr. Rodriguez Torres remains detained at the Karnes County Immigration Processing Center, with his case placed on the detained docket of the Karnes City Immigration Court. Because Petitioner has been detained for removal proceedings, and because he has now lived in the United States for over three years, his custody is governed by INA § 236(a) [8 U.S.C. § 1226(a)], not INA § 235(b) [8 U.S.C. § 1225(b)]. Such a classification is supported by the Supreme Court's ruling in *Jennings*, which clarifies that a person who has been present in the United States for a significant amount of time is considered to already have entered the country. *Jennings*, 583 U.S. at 289. Given that he has been present in the country for over three years, INA § 236(a) [8 U.S.C. § 1226(a)] applies to Petitioners case.

43. 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.

44. Accordingly, this Court should grant the writ and order that Petitioner be released under reasonable conditions, or alternatively, receive an individualized bond hearing under INA § 236(a) [8 U.S.C. § 1226(a)], as recently made clear by the decisions of multiple federal district courts to examine these issues around the country.

Count II – Fifth Amendment Due Process Violation

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

46. 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.

47. 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.

48. 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)].

49. Unlike noncitizens subject to mandatory detention for serious criminal offenses under Section 236(c) [8 U.S.C. § 1226(c)], Petitioner has no qualifying convictions that justify a categorical denial of release. *See* Petitioner's Ex. 3. The government has no legitimate basis to insist that Petitioner's detention be mandatory, yet he remains confined with no opportunity for release.

50. Denying Petitioner the ability to pursue his removal proceedings outside of detention or seek 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).

51. 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.

52. Petitioner is an individual who has long resided in the United States, with over three years of continuous presence. He has strong family and community ties in the State of Texas. There has been no finding or evidence presented that indicate 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.

53. 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.

VII. REQUEST FOR INJUNCTIVE RELIEF

54. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release him under reasonable conditions of supervision no less restrictive than his previous release or 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.

55. 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. Rodriguez Torres Is Likely to Succeed on the Merits of His Petition.

56. Mr. Rodriguez Torres 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. Rodriguez Torres, who are detained under INA § 236(a) [8 U.S.C. § 1226(a)], are entitled to individualized bond hearings before an immigration judge.

57. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request—due to the Board of Immigration Appeals' recent decisions in *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—cannot override the clear and unambiguous language of Section 236(a) [8 U.S.C. § 1226(a)]. This conclusion is further supported by the recent ruling in *Lazaro Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.), which invalidated similar policies

denying bond hearings to noncitizens in regular removal proceedings. This further supports Petitioner's request for release or a custody redetermination hearing.

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

59. 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. Rodriguez Torres Wil Suffer Irreparable Harm If a Preliminary Injunction Does Not Issue.

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

61. Even if Mr. Rodriguez Torres 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. Rodriguez Torres's ongoing imprisonment following a constructive denial of his requested bond hearing meets that standard.

C. Balance of Equities Weighs in favor of Mr. Rodriguez Torres.

62. 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.

63. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and he has no criminal history. *See* Petitioner's Ex. 3. 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.

64. 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.

65. Granting Petitioner immediate release or 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.

66. Each factor of the equitable test weighs heavily in Mr. Rodriguez Torres'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.

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

VIII. PRAYER FOR RELIEF

68. 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 29, 2026.

Respectfully submitted,

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ATTORNEY FOR PETITIONER

VERIFICATION

STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned authority, on this day personally appeared Cynthia Marie Du Plessis, ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's employer, and who after being by me duly sworn, stated that she 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 she had read the substance of the foregoing document, that she 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.

Cynthia Marie Du Plessis
Cynthia Marie Du Plessis (Jan 29, 2026 15:29:08 CST)

Cynthia Du Plessis,
Affiant

NOTARIAL CERTIFICATE

State of Texas §

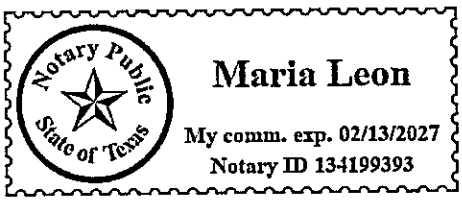
County of Bexar §

Before me Maria Leon, on this day personally appeared by means of an interactive two-way video communication Cynthia Du Plessis, 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 _____ day of _____, 2025.

Notary Seal

Digital Certificate



HABEAS CORPUS AFFIDAVIT VERIFICATION - with interpreter certificate & electronic notary

Final Audit Report 2026-01-29

Created:	2026-01-29
By:	maria leon (mleon@rhc.law)
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"HABEAS CORPUS AFFIDAVIT VERIFICATION - with interpreter certificate & electronic notary" History

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2026, a true copy of the above Plaintiff's Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 and Request For Declaratory and Injunctive Relief was filed via the Court's CM/ECF and that a copy will be sent automatically to all counsel of record.

DATE: January 29, 2026.

/s/ Guillermo M. Hernandez III
Guillermo M. Hernandez III
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