

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION**

JORGE FRED GOMEZ,  
aka Angel Lara Garcia,  
*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;  
ROBERT CERNA, in his official capacity  
as Acting Director of the Dallas Field  
Office of ICE, Enforcement and Removal  
Operations;  
JOHN DOE, Warden of the Bluebonnet  
Detention Center; and  
DAREN K. MARGOLIN, Director of the  
Executive Office for Immigration  
Review,  
*Respondents.*

Civil Action No. 1 :26-cv-00103-H

Immigration No. 

**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 Angel Lara Garcia, also known as Jorge Gomez , is a native and citizen of Mexico who is currently detained by Immigration and Customs Enforcement ("ICE") at the Bluebonnet Detention Center in Anson, Texas. Petitioner has been taken into ICE custody and remains confined pursuant to federal immigration detention authority.

2. Petitioner's present detention is predicated on an expedited removal order issued in March 1998 at Dallas/Fort Worth International Airport following an alleged attempt to

enter the United States using a birth certificate belonging to another individual.

Immigration officials charged Petitioner as inadmissible for allegedly making a false claim to United States citizenship under 8 U.S.C. §1182(a)(6)(C)(ii) and ordered him removed through the expedited removal process under INA §235(b)(1).

3. The expedited removal order was issued without providing Petitioner access to counsel, without a hearing before an immigration judge, and without any meaningful opportunity to challenge the allegations against him. The summary removal process deprived Petitioner of fundamental procedural protections guaranteed under the Immigration and Nationality Act (“INA”) and the Due Process Clause of the Fifth Amendment.

4. Petitioner's current detention relies on that 1998 expedited removal order, which was issued in violation of federal immigration law and constitutional due process requirements. Because the underlying removal order is legally defective, Petitioner's continued detention pursuant to that order is unlawful. In the meanwhile, Petitioner has also made a credible fear claim. *See* Ex. D.

5. Petitioner therefore seeks habeas corpus relief under 28 U.S.C. §2241, requesting that this Court review the legality of his detention and the validity of the removal order upon which it is based. Petitioner further seeks appropriate injunctive relief directing Respondents to release him from custody or provide any other relief necessary to remedy the ongoing unlawful deprivation of his liberty.

## **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. The Supreme Court has repeatedly recognized that detention-based constitutional claims are not funneled into the petition-for-review process under § 1252(b)(9). *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018). Section 1252(g) is narrowly construed and does not bar review of unlawful custody. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–83 (1999). Nor does § 1252(f)(1) preclude this Court from granting individual injunctive relief. *See Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 2065–66 (2022). To the extent the Fifth Circuit's statutory interpretation in *Buenrostro-Mendez v. Bondi* addresses the scope of § 1226(e), it does not foreclose habeas review of independent constitutional claims challenging the legality of continued detention.

8. Venue is proper in this District, and in the Abilene Division, because Petitioner is detained at the Bluebonnet Detention Center in Anson, TX within this Court's jurisdiction, whereas Petitioner's immigration detention is controlled by the Dallas Field Office of ICE – Enforcement and Removal Operations. *See* Ex. A.

### III. PARTIES

9. Petitioner Angel Lara Garcia, also known as Jorge Gomez, is a native and citizen of Mexico who is currently detained by Immigration and Customs Enforcement ("ICE") at the Bluebonnet Detention Center in Anson, Texas. Petitioner is presently in ICE

custody pursuant to federal immigration detention authority. The government asserts that Petitioner is subject to removal based on a prior expedited removal order issued on or about March 8, 1998, at Dallas/Fort Worth International Airport, after immigration officials alleged that Petitioner attempted to enter the United States using a birth certificate belonging to another individual. That expedited removal order was issued under INA § 235(b)(1), 8 U.S.C. § 1225(b)(1), following an allegation that Petitioner had made a false claim to United States citizenship under 8 U.S.C. § 1182(a)(6)(C)(ii).

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 ROBERT CERNA is the Acting Director of the Dallas Field Office of ICE – Enforcement and Removal Operations (“ERO”) and therefore has jurisdiction over Petitioner. He is sued in his official capacity as Petitioner’s local custodian and DHS’s local decisionmaker.

13. Respondent, JOHN DOE, Warden of the Bluebonnet Detention Center, is responsible for housing noncitizens from various regions of Texas in ICE custody pending the completion of their removal proceedings. The Bluebonnet Detention Center is located at 400 E 2nd St., Anson, TX. Respondent is sued in his official capacity as Petitioner’s immediate physical custodian as of the filing of this petition.

14. Respondent, DAREN K. MARGOLIN, is Director of the Executive Office for Immigration Review. As such, he is responsible for directing and coordinating policy for

the United States Immigration Court system, including policies relating to immigration bond applications and requests for custody redeterminations in immigration court. He is sued in his official capacity only.

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

#### **IV. FACTUAL BACKGROUND**

16. Petitioner Angel Lara Garcia, also known as Jorge Gomez (hereinafter also referred to as “Mr. Garcia”), is a native and citizen of Mexico. He is currently detained by Immigration and Customs Enforcement (“ICE”) at the Bluebonnet Detention Center in Anson, Texas, where he remains in federal immigration custody.

17. On or about March 7, 1998, Mr. Garcia attempted to enter the United States through Dallas/Fort Worth International Airport. During inspection, immigration officers alleged that Petitioner presented a Texas birth certificate belonging to another individual, Raymundo Salinas, in an attempt to enter the United States.

18. Immigration officials interrogated Mr. Garcia and obtained a sworn statement during the inspection process. At the time, Mr. Garcia did not have access to legal counsel during this interrogation.

19. Following this encounter, federal authorities charged Petitioner with attempted entry into the United States through false or misleading representation, in violation of 8 U.S.C. §1325(a)(3). Petitioner subsequently entered a guilty plea in federal court.

20. On March 10, 1998, the federal court entered judgment against Petitioner and sentenced him to three years of probation, with a condition that he not return to the United States during the probationary period.

21. On or about March 8, 1998, immigration officials issued an expedited removal order pursuant to INA §235(b)(1), 8 U.S.C. §1225(b)(1). The order charged Petitioner as inadmissible under 8 U.S.C. §1182(a)(6)(C)(ii) for allegedly making a false claim to United States citizenship.

22. Mr. Garcia was removed from the United States shortly thereafter. He was never placed into removal proceedings before an immigration judge and was not provided any opportunity to contest the charges in a formal hearing.

23. Mr. Garcia's current immigration detention relies upon the validity of this 1998 expedited removal order, which was issued through a summary process that denied Petitioner the procedural protections ordinarily afforded in removal proceedings.

## **V. LEGAL FRAMEWORK**

### **A. Statutory Framework for Immigration Custody Determinations.**

24. 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.

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

26. 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).

27. 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.

28. In recent months, federal courts across the country 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 Mr. Garcia—are eligible to request bond hearings before the immigration court.

29. 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.

30. Similarly, federal district courts throughout Texas had also granted habeas petitions in similar cases. See *Angel Fuentes v Lyons*, 5:25-cv-00153 (S.D. Tex. Oct. 16, 2025) (Laredo Division), *Rivera-Henriquez v. Tate*, 4:25-CV-045436, (S.D. Tex. Sep. 26, 2025) (Houston Division) *Buenrostro Mendez v. Bondi*, 4:25-cv-03726 (S.D. Tex. Oct. 7, 2025) (Houston Division), *Ortega-Aguirre v. Noem*, 4:25-cv-04332 (S.D. Tex. Oct. 10, 2025) (Houston Division), *Ascencio-Merino v. Dickey*, 4:25-cv-00490 (S.D. Tex. Oct. 21, 2025) (Houston Division), *Reyes-Lopez v Warden of MPC*, 4:25-cv-04629 (Oct. 21, 2025) (Houston Division), *Aslamov v Warden Bryan Uhls*, 4:25-cv-04299 (S.D. Tex. Oct. 22, 2025) (Houston Division), *Mejia Juarez v. Bondi*, 4:25-cv-03937, (S.D. Tex. Oct. 27, 2025) (Houston Division), *Mendez Velazquez v. Noem*, 4:25-cv-04527 (S.D. Tex. Oct. 30, 2025) (Houston Division), *Torres-Rodriguez v. Noem*, 4:25-cv-5036, (S.D. Tex. Nov. 3, 2025) (Houston Division). *Ramos de Lara v Noem*, 5:25-cv-01459-XR (W.D. Tex. Nov. 21, 2025) (San Antonio Division).

31. Courts across the country have widely rejected DHS' and EOIR's new interpretation because it patently defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.

32. Section 1226(a) applies by default to all persons "pending a decision on whether

the [noncitizen] is to be removed from the United States.” These removal hearings are held under § 1229a, to “decid[e] the inadmissibility or deportability of a [noncitizen].” These pending decisions include matters on appeal to the Board of Immigration Appeals, as the matter is not final.

33. The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also* *Gomes*, 2025 WL 1869299, at \*7.

34. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

35. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute’s entire framework is premised on inspections at the border of people who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

36. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

**B. Recent Case Law Development in the Fifth Circuit and Constitutional Implications of Mandatory Detention Under § 1225.**

37. Despite the foregoing, just a month ago, the United States Court of Appeals for the Fifth Circuit issued a published panel decision on an expedited basis in the case of *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 U.S. App. LEXIS 3899 (5th Cir. Feb. 6, 2026), in which the Fifth Circuit held that Section 1225 governs noncitizens, like Petitioner, who entered the United States without having been inspected and admitted. Nevertheless, Petitioner files this habeas action under 28 U.S.C. § 2241 challenging his civil immigration detention on constitutional grounds, as well as to preserve the argument that this statutory interpretation is incorrect, in the event that the *Buenrostro-Mendez* panel decision is overturned.

38. Through the instant petition, Mr. Garcia would argue that the habeas review is not barred, and that independent Fourth Amendment and Fifth Amendment Due Process violations continue to warrant habeas relief, notwithstanding the Fifth Circuit's intervening statutory holding in *Buenrostro-Mendez v. Bondi*.

39. The Supreme Court has repeatedly emphasized that civil detention must bear a reasonable relation to its regulatory purpose and cannot become arbitrary or excessive. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Even where Congress authorizes detention, constitutional limits remain operative. *Jennings*, 583 U.S. at 302–03 (declining to rewrite statute but preserving constitutional challenges).

40. Petitioner's case presents a distinct concern: (1) the government exercises discretion not to detain or removal Petitioner when it accepts his Form I-914 petition for nonimmigrant status under INA § 101(a)(15)(T) [8 U.S.C. § 1101(a)(15)(T)] as a victim of trafficking; (2) the processing of the T Visa creates an exception to custody, essentially granting Petitioner a liberty interest through granting deferred action from removal under 8 C.F.R. §§ 214.214 and 1003.18(d)(1); (3) Petitioner has relied on the liberty interest implicit in applying for the T Visa and complied fully with all applicable conditions; (4) the government has held Petitioner in detention for several months, ostensibly without a warrant, intervening misconduct, or changed circumstances. *See* Ex. B, Receipt Notice.

41. When the government confers conditional liberty through a formal adjudicative determination and an individual fully complies for years, that liberty interest cannot be revoked arbitrarily. *See Zadvydas*, 533 U.S. at 690 (liberty from physical restraint lies at the core of due process protections).

42. This case therefore does not hinge solely on whether Petitioner received a bond hearing. Rather, the constitutional question is whether the government may impose continued confinement absent criminal conduct, individualized findings, or constitutionally sufficient justification.

43. Due process protects against both warrantless seizures and arbitrary executive reversals of settled liberty interests, particularly where the deprivation involves physical confinement.

44. It is for these reasons that, even prior to the panel decision in *Buenrostro-Mendez*, federal courts have broadly recognized that release from custody confers a protected liberty interest. *See, e.g., Hernandez-Fernandez v. Lyons*, No. 5:25- cv-773-JKP, 2025 U.S. App.

LEXIS 206751 (W.D. Tex. Oct. 21, 2025); *Lopez-Arevelo v. Ripa*, 3:25-cv-337-KC, 2025 U.S. App. LEXIS 188232 (W.D. Tex. Sept. 21, 2025) (“Respondents fail to contend with the liberty interests created by the fact that the Petitioner [ ] in this case [was] released on recognizance prior to the manifestation of [the government’s § 1225] interpretation.”); *Lopez Benitez v. Francis*, Civ. No. 5937, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025). Once that liberty interest exists, the Government may not revoke it without constitutionally adequate procedures.

45. This is especially true where “the decision to release [the noncitizen] on his own recognizance . . . years ago, in and of itself, ‘reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.’” *See Hernandez-Fernandez v. Lyons*, 2025 U.S. App. LEXIS 206751, at \*21-22. As well, to be clear, *Buenrostro-Mendez* involved petitioners who were detained continuously, but it did not consider the constitutional implications of re-detention following a period of liberty.

46. Accordingly, even if Mr. Garcia’s detention is nominally authorized by statute after *Buenrostro-Mendez*, the Constitution independently requires that the Government afford meaningful process before depriving him of liberty. The absence of such process renders continued detention unlawful and fully subject to habeas review. This result has been upheld several times in the weeks since the Fifth Circuit issued the panel decision in *Buenrostro-Mendez*. *See, e.g., Cumbe Lema v. De Anda-Ybarra*, No. EP-26-CV-249-KC (W.D. Tex. Feb. 9, 2026) (Cardone, J.) (expressly noting that statutory lane is foreclosed by *Buenrostro* but granting relief on procedural due process grounds); *Maya-Contreras v. Warden, ERO El Paso East Montana Camp*, No. 3:26-cv-00290-DB (W.D. Tex. Feb. 9, 2026) (Briones, J.) (holding *Buenrostro-Mendez* does not change the outcome on

procedural due process grounds because the court had already accepted without deciding respondents' statutory interpretation in its due process analysis).

## **VI. CLAIMS FOR RELIEF**

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

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

48. 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.

49. 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.”

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

51. 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 application by detained aliens pending the outcome of their removal proceedings and visa petitions, since immigration judges retain jurisdiction to conduct custody redetermination hearings under that provision.

52. Although Petitioner has long resided in the United States and is currently awaiting the outcome of a petition for a “T” nonimmigrant status (also known as a “T Visa” petition) filed under 8 U.S.C. § 1101(a)(15)(T), Respondents continue to treat him as though he were an arriving alien at the threshold of entry. *See* Ex. B, Receipt Notice for T Visa; *see* Ex. C, USCIS Case Documents. Petitioner remains detained at Bluebonnet Detention Center under ICE custody, notwithstanding that his T Visa petition provides for a stay of removal and may only be adjudicated if he is in the United States. *See generally* 8 C.F.R. §§ 214.202 (eligibility requirements for T Visa); *see also* 8 C.F.R. § 214.207 (definition of physical presence in context of T Visa adjudication); 8 CFR 214.205(g) (authority for stay of removal for T Visa applicants).

53. 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.

54. Accordingly, this Court should grant the writ and order that Petitioner receive an individualized bond hearing under INA § 236(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**

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

56. 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.

57. 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.

58. Because Petitioner is detained by ICE at the Bluebonnet Detention 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).

59. 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. His only arrest was related to lack of immigration status and was conducted more than 25 years ago. The government has no legitimate basis to insist that Petitioner's detention be mandatory, especially in light of his bona fide, pending T Visa petition; yet he remains confined with no opportunity for release.

60. 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).

61. By adopting a policy refusing to provide Petitioner with an individualized bond hearing that comports with INA § 236(a), despite turning a blind eye to Petitioner's T Visa petition, Respondents have attempted to circumvent the processing of his temporary protected status.

62. Petitioner is a long-time resident of the United States who has lived in this country for several years and established substantial ties to his community in North Texas. There has been no individualized finding—by ICE or any court—that Petitioner poses a danger to the community or a risk of flight. Nevertheless, Petitioner has been denied any opportunity to obtain an individualized custody determination. This blanket denial of process results in an arbitrary deprivation of liberty in violation of the Due Process Clause of the Fifth Amendment.

63. Accordingly, the Court should grant habeas relief on constitutional grounds and order that Petitioner be afforded an immediate bond hearing, or that he be released from custody pending the final outcome of his T Visa petition.

### **Count III – Unlawful Agency Action (APA)**

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

65. Respondents' continued detention of Petitioner without affording him a bond hearing also constitutes unlawful agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706. The abrupt departure from longstanding precedent without reasoned explanation violates the Administrative Procedure Act.

66. 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-*, AXXX-XXX-504 (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-*, AXXX-XXX-161 (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-*, AXXX-XXX-797 (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-*, AXXX-XXX-699 (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).

67. 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.

68. 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).

69. Although Petitioner did not file a new bond redetermination application following his detention, the record establishes that such a request would have been futile. Immigration judges across the country, including those from within the Fifth Circuit like the Dallas Immigration Court, have expressly declined to exercise jurisdiction over custody redeterminations in light of the Board's decisions in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025)—even after a recent injunction was issued for a nationwide class of aliens that includes Petitioner, who have been improperly subjected to mandatory detention. *See* Ex. F, Sample IJ Order Denying Bond Post-*Maldonado Bautista*.

70. 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**

71. Petitioner respectfully requests that this Court issue a preliminary injunction directing Respondents to release him, or alternatively, to provide him with an immediate individualized custody redetermination hearing before this Court in accordance with INA § 236(a) within seven (7) days, or, in the alternative, to release him under reasonable conditions of supervision. Petitioner intends to seek a Temporary Restraining Order

through a separate motion that is forthcoming, and upon a final hearing, Petitioner asks for permanent injunctive relief as appropriate.

72. 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. Garcia Is Likely to Succeed on the Merits of His Petition.**

73. Mr. Garcia 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 that of Mr. Garcia, who are detained under Section 236(a), are entitled to individualized bond hearings before an immigration judge.

74. Current BIA policy prohibiting immigration judges from exercising jurisdiction over any immigration bond request that Mr. Garcia 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). *See also* Ex. E.

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

76. 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. Garcia Will Suffer Irreparable Harm If an Injunction Does Not Issue.**

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

78. Even if Mr. Garcia were eventually granted a bond hearing after protracted litigation, the harm inflicted by the period of unlawful detention—loss of liberty, disruption of family life, psychological strain, and reputational damage—could never be undone. As *Nken* instructs, irreparable harm cannot be speculative; it must be actual and concrete. 556 U.S. at 435. Mr. Garcia's ongoing imprisonment without a lawful hearing meets that standard.

**C. Balance of Equities Weighs in Mr. Garcia's Favor.**

79. 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 the view of federal courts across the country—nonbinding precedents.

80. There is no evidence that Petitioner poses a danger to the community or a risk of flight, and the dismissal of his recent criminal indictment further diminishes any

legitimate basis for continued detention. 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.**

81. Finally, the public interest strongly supports the issuance of an injunction. The Supreme Court in *Nken* explained that when the government is the opposing party, the balance of equities and the public interest merge. 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.

82. 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.

83. Each factor of the equitable test weighs heavily in Mr. Garcia's favor. He has shown a substantial likelihood of prevailing on the merits based on the interpretation of Section 236(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.

84. For these reasons, this Court should issue a preliminary injunction at the earliest possible opportunity, requiring Respondents to release Mr. Garcia immediately, or

alternatively, the Court should hold an individualized bond hearing in accordance with INA § 236(a), in which Respondents may participate should they choose to do so.

### **VIII. PRAYER FOR RELIEF**

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

- a. Issue an Order to Show Cause to Respondents named herein;
- b. Schedule a hearing on an injunction, and at the conclusion of such hearing, issue injunctive relief ordering Petitioner's immediate release, or in the alternative, an immigration bond hearing within seven (7) days;
- c. Issue a declaration that DHS may not initiate or pursue expedited removal against Mr. Garcia while his T Visa petition remains pending and while he seeks relief from removal before an Immigration Judge;
- d. Issue a writ of habeas corpus ordering Respondents to release Petitioner;
- e. Grant permanent injunctive relief as appropriate;
- f. Award 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.

Respectfully submitted,

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By: /s/ John M. Bray

John M. Bray  
Texas Bar No. 24081360  
ATTORNEY FOR PETITIONER

**VERIFICATION**

**STATE OF TEXAS**

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**COUNTY OF COLLIN**

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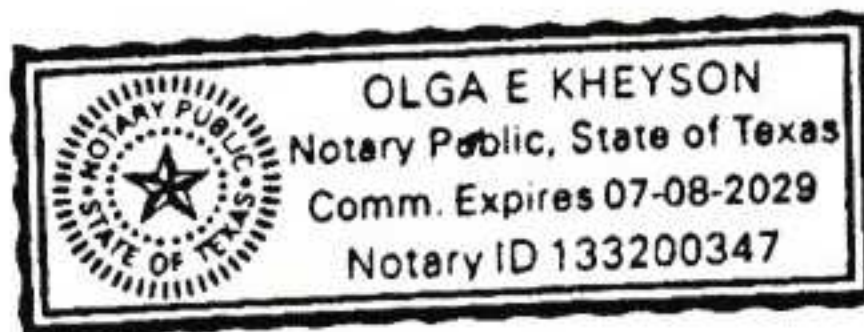
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BEFORE ME, the undersigned authority, on this day personally appeared Alan Fred Gomez ("AFFIANT"), known to me to be the person whose name is included in the foregoing document as Petitioner's son, and who after being by me duly sworn, stated that 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.

Alan Gomez  
ALAN-FRED GOMEZ  
Affiant

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public, on this  
the 23<sup>rd</sup> day of December, 2025.

[SEAL]



Olga Kheyson  
NOTARY PUBLIC  
In and for the State of Texas