UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

NERY ORTIZ-ORTIZ,	§	
	§	
Petitioner,	§	
	§	
vs.	§	
	§	Civ. No. 25-132
	§	
PAMELA JO BONDI, UNITED STATES ATTORNEY GENERAL, *et al.*,	§	
	§	**EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**
Respondents.	§	
	§	*Points and Authorities in Support of Emergency Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction (Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief)*
	§	

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NOTICE OF MOTION

Petitioner Nery Ortiz-Ortiz ("Mr. Ortiz" or "Petitioner") applies to this honorable Court for a temporary restraining order. He filed his petition for issuance of a writ of habeas corpus on August 7, 2025. The Court ordered Respondents to file and serve a response by September 11, 2025. The Respondents have not done so, nor filed anything at all. On September 16, this Court ordered Petitioner to submit an advisory to the Court indicating how he intends to proceed with his lawsuit regarding Respondents. On September 19, he filed his Advisory indicating he wished the Court to order his release, adjudicate the petition on the merits, as "[P]etitioner remains incarcerated without lawful cause, and each day of delay compounds the prejudice and injustice he suffers." Dkt. 6 at 4. Nor, in the intervening ten days, have the Respondents filed any reason or explanation or contrary authority. The Petitioner now files this motion for Temporary Restraining Order because he shows he has good cause.

He asks this Court for an order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain based on its incorrect interpretation of the Immigration and Nationality Act (INA), (2) ordering him immediately released from immigration detention; (3) order Respondents not to re-arrest him until he is afforded a hearing before a neutral decision-maker, as required by the Due Process clause of the Fifth Amendment, to determine whether circumstances have materially changed such that her reincarceration would be justified because there is clear and convincing evidence establishing that he is a danger to the community or a flight risk; (4) enjoining Respondents from continuing to detain him unless Petitioner is provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within three days of the TRO; (5) Issue an order enjoining Respondents from

using its same argument they now use in interpreting the bond statutes as requiring mandatory detention, based on him being allegedly subject to 8 U.S.C. § 1225(b), as a basis to refuse to accept Petitioner's bond payment, if any, where ICE would file an automatic stay of any IJ's decision granting him bond under 8 C.F.R. § 1003.19(i) ("Stay of custody order pending appeal by the government") (This injunction would not restrain ICE from pursuing a normal appeal of any IJ's bond decision); (6) prohibit Respondents from relocating Petitioner outside of the Southern District or from deporting him pending final resolution of this litigation. (7) order Respondents to file with this Court a complete copy of his administrative file maintained by the Department of Justice and the Department of Homeland Security.

As set forth in these Points and Authorities in support of this motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful detention, where that detention appears indefinite and which was imposed absent a pre-deprivation due process hearing, and which, moreover, has gone un-defended by the Respondents in their apparent disregard of its orders, or lack of opposition to his release before this Court.

INTRODUCTION

1. Although Petitioner was present and residing in the United States for over 23 years at the time of his 2025 immigration arrest, he was subjected to a new DHS policy—issued on July 8, 2025—which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. TRO Exh. 1, Todd Lyons Memorandum, "ICE Interim Guidance Regarding Detention Authority for Applicants for Admission."

2. The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *See Id.* at 1.

3. The Petitioner is detained at the Rio Grande Detention Center and has been denied a bond hearing by an Immigration Judge (IJ) on June 11, 2025, based on this new policy. *See* TRO Exh. 3, IJ Emmanuel Garcia, Bond Decision; *see* TRO Exh. 7, ICE Locator Results.

4. The denial of a bond hearing to Petitioner and his ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. The DHS policy has been found by numerous district courts (over twenty as of this writing (listed here in footnote 1)) to be unfounded and unlawful.[1] Despite the new DHS policy interpretation to the contrary, the plain language of 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and is now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on bond or conditional parole. Indeed, in July 2012, when ICE first encountered him in Georgia, it did release him on "conditional parole," *see* 8 U.S.C. § 1226(a)(1)(B). Section 1226(a) expressly applies to people who, like Petitioner,

[1] *Chogllo v. Scott,* No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *1 (D. Me. 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump,* No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer,* No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump,* No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Hernandez v. Noem*, No. 1:25-CV-02428- JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.,* 5:25-cv-01873-SSS-BFM, Dkt # 14 (C.D. Ca. Jul. 28, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025).

is charged as removable for having entered the United States without inspection and being present without admission. See TRO Exh. 4, Notice to Appear.

5. Respondents' new legal interpretation set forth in the policy is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner who is present within the United States. Respondents' new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving him of statutory and constitutional rights and constitutes irreparable injury.

6. Petitioner therefore seeks a Temporary Restraining Order enjoining Respondents from continuing to detain him based on their new, and he maintains, incorrect interpretation of the Immigration and Nationality Act. Petitioner requests immediate release from immigration detention, or alternatively, that this Court conduct a bond hearing, or order the Respondents enjoined from continuing to detain him unless he is provided an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within three days of this Court's order. Petitioner further requests that Respondents be restrained from re-arresting him unless and until they first provide a hearing before a neutral decision-maker, consistent with the Due Process Clause of the Fifth Amendment, establishing by clear and convincing evidence that any renewed detention would not be indefinite and that Petitioner is either a danger to the community or a flight risk.

7. Petitioner also seeks an Order enjoining Respondents from invoking 8 U.S.C. § 1225(b) or relying on 8 C.F.R. § 1003.19(i) ("Stay of custody order pending appeal by the government") as a basis to refuse acceptance of any bond payment or to automatically stay the effect of any Immigration Judge's bond decision in his case because it appeals any IJ

grant of bond under that emergency regulation by filing Form EOIR-43, notice of appeal.[2] This injunction would not restrain Respondents from pursuing a normal appeal of any bond decision but would prevent the unlawful "run-out-the-clock" tactic, where BIA bond appeals currently average seven months. Petitioner further seeks an order prohibiting Respondents from relocating him outside the Southern District of Texas or deporting him from the United States during the pendency of this litigation. Finally, Petitioner requests that Respondents be required to file with this Court a complete copy of his administrative file maintained by the Department of Justice and the Department of Homeland Security.

I. STATEMENT OF FACTS

8. Petitioner Nery Ortiz is 39, he has resided in the United States for over 23 years, more than half of his life, having entered unlawfully from Guatemala in 2002 at the age of 16. He began living in Georgia, working to support himself. In July 2012, at age 26, local police stopped him for a traffic violation. They asked for a license, and when he could not produce one, he was arrested for No Driver License. ICE placed a hold at the jail. He was processed and then released by ICE on his own recognizance under 8 U.S.C. § 1226(a)(1)(B), conditional parole. ICE also gave him a Notice to Appear (NTA) for the Atlanta Immigration Court on July 24, 2012, beginning removal proceedings. The NTA charges him as subject to removal under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as an alien present without admission or parole. TRO Exh. 4, Notice to Appear. On October 2, 2014, Immigration Judge Wayne Houser in Atlanta granted the parties' joint request to administratively close his removal proceedings. TRO Exh. 6, IJ Order Granting

[2] Were the Respondents to soon simply invoke the automatic stay per 8 C.F.R. § 1003.19(i)(2) "Notice of Intent to Appeal Custody Redetermination" of any IJ grant of bond in this matter, it would render the IJ's custody redetermination order an "empty gesture" absent demonstration of a compelling interest or special circumstance left unanswered by the IJ.

Administrative Closure. His removal proceedigns have remained closed for the past 15 years. ICE then re-arrested him on May 29, 2025 in Tallahassee FL at a work-site raid[3] along with over 100 others it believed were noncitizens present without permission. TRO Exh. 5, DHS Form I-213, dated May 29, 2025. ICE apparently the same day revoked his Order of Recognizance from 2012, and it has held him at no bond ever since. *Id.* at 2. The record does not show the name of the ICE officer who made the decision to re-arrest him, or why it believes revoking the order of release was necessary. *Id.* Petitioner has never violated the terms of his Order of Recognizance since 2012. The removal proceedings have remained administratively closed until August 2025, when ICE moved to re-calendar them on the Laredo Immigration Court's detained docket at the Rio Grande Processing Center. His next hearing is October 23, 2025 at 1pm. TRO Exh. 9, EOIR Automated Case Information Results.

9. Petitioner filed a motion for bond determination on June 11, 2025 with the Laredo Immigration Court through his prior counsel. The DHS counsel argued at the bond hearing that the Immigration Judge (IJ) did not have jurisdiction because it alleged detention of Petitioner was mandatory under INA § 235(b). The IJ issued a written decision determining affirming for the DHS's reasons that he had no jurisdiction to re-determine Petitioner's bond pursuant to INA § 235(b). Dkt. 8-1. He appealed that decision to the Board of Immigration Appeals on July 3, 2025. It remains pending. Dkt. 1-2.

10. On September 5, 2025, after Petitioner filed his petition, the BIA published *Matter of Yajure-Hurtado*, holding that "aliens present in the United States without having been

[3] Operation Tidal Wave," see Kim Luciania, ICE Arrest 100 in Tallahassee:Over 100 detained in one of Florida's largest raids. What we know," Tallahassee Democrat, May 29, 2025, https://www.tallahassee.com/story/news/2025/05/29/tallahassee-florida-ice-raid-illegal-immigration/83924632007/.

admitted or paroled, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission." 29 I&N Dec. 216 (BIA 2025); TRO Exh. 2, BIA Decision *Matter of Yajure Hurtado*, issued on Sept. 5, 2025.

II. PROCEDURAL BACKGROUND

11. Petitioner filed this Petition for Habeas Corpus with this Court on August 7, 2025. Dkt.1.

12. This Court ordered the Respondents to file their answer by September 11, 2025. Dkt. 3.

13. Respondents did not file any response. On September 16, 2025, the Court ordered Petitioner to file an advisory as to how to proceed. Dkt. 5. Petitioner filed it on September 19, 2025. Dkt. 6. He seeks now in this motion for this Court to order Respondents to end its continuing detention of him.

III. LEGAL STANDARD

14. The purpose of a TRO is to "preserv[e] the status quo and prevent[ ] irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

15. Petitioner is entitled to a temporary restraining order or preliminary injunction only if he shows: "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest." *Jones v. Tex. Dep't of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018) (per curiam) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). The party seeking injunctive relief must meet all four requirements. *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016) (quoting

Bluefield Water Ass'n v. City of Starkville, 577 F.3d 250, 253 (5th Cir. 2009)). Even if Petitioner here does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

A. Petitioner Warrants a Temporary Restraining Order

16. A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City,* 415 U.S. 423, 439 (1974).

17. Petitioner is likely to be remain in unlawful custody in violation of his due process rights and is likely to be subject to an illegal removal from the United States, without intervention by this Court. Petitioner will continue suffer irreparable injury if he continues to be detained without due process, because he will be sent far from his family, to Guatemala, a country he has not known for twenty-three years, without having enjoyed his right here to pursue a bond hearing, and be released to his home, where he can prepare for his immigration hearings with the help of his family, who are suffering without his support, and to prepare evidence with counsel of the exceptional and extremely unusual hardship to his family if his Cancellation of Removal application is not granted.

(i) Petitioner Is Likely to Succeed on the Merits of His Claims

18. Petitioner is likely to succeed on his claim that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before an immigration judge is unlawful. The text, context, and legislative and statutory history of the Immigration and Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs his detention.

19. The Government's denial of his requested bond hearing violates his Fifth Amendment right to due process, violates federal law and its own administrative procedures. Dkt. 1 at 15–17. Aliens have due process rights to life, liberty and property. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Since Petitioner is in governmental custody, his liberty interest is at stake. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, moreover, the Government has not made any legal argument or explanation to defend their belief that he is subject to mandatory detention. Here, the Petitioner is not an applicant for admission, so he would be entitled to a bond hearing. Dkt. at 16-18. Thus, if Petitioner is not an "applicant for admission," the denial of his request for a bond hearing violates his due process rights.

20. The government has not raised this issue in its filings, since they have failed to respond. However, after this habeas petition was filed, the Board of Immigration Appeals issued a new decision. On September 5, 2025, the BIA published *Matter of Yajure-Hurtado*, holding that "aliens present in the United States without having been admitted or paroled, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission." 29 I&N Dec. 216 (BIA 2025); TRO Exh. 2, BIA Decision *Matter of Yajure Hurtado*, issued on Sept. 5, 2025.

21. Yet, since September 5, numerous federal district courts have rejected the reasoning of *Yajure-Hurtado*, expressly finding it to be contrary to law, and ordering the release of similarly situated noncitizens.[4] Courts have thus widely rejected that reading of the statute.

22. This Court is not bound by the BIA's interpretation of the INA, particularly where it conflicts with the statutory text and longstanding federal case law. Moreover, under *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), federal courts owe no deference to agency interpretations of statutes. The overwhelming weight of authority against *Yajure-Hurtado* demonstrates that, even if Respondents were correct in raising this issue, Petitioner would still be entitled at minimum to an individualized bond hearing under the governing statutory scheme.

23. Section 1225(a)(1) states:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C. § 1225(a)(1).

The term "admitted" means "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, the Government argues that any alien who illegally entered the United States without having been inspected by an immigration officer is an applicant for admission. Under this interpretation, because Petitioner admits having entered the United States without inspection in 2002 (Dkt. 1 at 10), he would be an applicant for admission.

24. On the other hand, even statutory language that is unambiguous in isolation must be read

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[4] *See, e.g., A.E. v. Andrews*, No. ___, 2025 WL 1424382, at *6–8 (E.D. Cal. May 16, 2025); *Lopez Benitez v. Francis*, No. ___, 2025 WL 2371588, at *6–7 (S.D.N.Y. June 9, 2025); *Lopez-Campos v. Raycraft*, No. ___, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025).

in context. *See Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality); *Pulsifer v. United States*, 601 U.S. 124, 133 (2024). The context clues present here point against Petitioner' classification as an applicant for admission. As other courts have determined, e.g., *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025), considering § 1225 alongside its § 1226 companion demonstrates that the most natural interpretation of § 1225 is that it applies to aliens encountered as they are attempting to enter the United States or shortly after they gained entry without inspection.[5] Section 1225 repeatedly refers to aliens entering the country. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (screenings for aliens "arriving in the United States"); *id.* § 1225(b)(2)(C) (aliens "arriving on land ... from a foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings); *id.* § 1225(d)(1) (immigration officers authorized to inspect "any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States"). The statute further explicitly addresses "crewm[e]n" and "stowaway[s]" in § 1225(b)(2), reflecting that Congress envisions applicants for admission as being arriving aliens. In addition, its sister statute, 8 U.S.C. § 1225a, focuses on the pre-inspection of aliens entering the country at foreign airports. In sum, § 1225 is set up with arriving aliens in mind.

25. Compare that to § 1226's broader language that realistically applies to any alien awaiting a removal decision. Considering § 1225 in its entirety, and in relation to § 1226, reveals that § 1225 is more limited than what that plain text of § 1225(a)(1) might indicate when construed in the abstract.

26. Moreover, courts construe statutes "so that effect is given to all its provisions, so that no

[5] As noted previously, over twenty federal courts concur generally with Petitioner's interpretation of the statutory language as applied in this context. *See, e.g.*, *Pizarro-Reyes*, 2025 WL 2609425, at *7 (citing cases).

part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009). Adopting the Government's reading would be to find recent congressional enactments superfluous. Congress passed the Laken Riley Act to amend § 1226(c) and include more classes of aliens who are ineligible for bond under § 1226(a). Laken Riley Act, Pub. L. No. 119-1, sec. 236, § 2, 139 Stat. 3, 3 (2025). One of those new classes of non-bondable aliens are aliens not admitted into the United States who were charged with specific crimes. 8 U.S.C. § 1226(c)(1)(E) (citing *id.* § 1182(a)(6)(A)). Under the Government's apparent—though it has not argued it here—expansive interpretation of § 1225, the amendment would have no purpose. Section 1225(b)(2) would already provide for mandatory detention of every unadmitted alien, regardless of whether the alien falls within one of the new classes of non-bondable aliens established by the Laken Riley Act.

27. In short, for purposes of Petitioner's motion for entry of a temporary restraining order and preliminary injunction, the Court should find that he is likely to succeed on the merits of his habeas petition, at least to the extent that he is entitled to a bond hearing. This factor weighs in favor of a preliminary injunction. Moreover, the government has presented no contravening arguments or indeed any response.

(ii) Petitioner Will Suffer Irreparable Harm

28. Petitioner has been in the United States for twenty-three years, without criminal history (he had one arrest in Georgia on July 23, 2012 for driving without a license). TRO Exh. 5 at 2. He has four children all of whom are United States citizens, ranging from 14 to two years old. TRO Exh. 8 at 14-18. He is married to Cecilia Martinez Alfaro, the children's mother, since April 2025. *Id.* at 12. His youngest son, Danny Ortiz, age 7, suffers emotional and developmental issues, and has an Individualized Education Plan in the Gwinnet County,

Georgia school system, and he suffers mixed hearing loss. *Id.* at 19-47. He requires atresia repair surgery of his ear canal. *Id.* at 55-56. Danny requires Petitioner's presence to support him emotionally and financially for this surgery and for his needs. Before his arrest, Petitioner was gainfully employed in construction, and was arrested at a building site in Tallahassee on May 29, 2025 (TRO Exh. 5). *Id.* at 173. His wife now must support the four children without his contributions.

29. He will suffer irreparable harm were he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. S*ee, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for

suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day). *See also* "*Concerns Grow Over Dire Conditions in Immigrant Detention:* Mass immigration arrests have led to overcrowding in detention facilities, with reports of unsanitary and inhumane conditions," Miriam Jordan and Jazmine Ulloa, New York Times, July 1, 2025, available at https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html (visitor reported that several detainees complained that they had been given few opportunities to shower, had been limited to two bottles of drinking water per day and were unable to flush their toilets for days at a time.) *See also* National Public Radio, September 24, 2025, "The Conditions in ICE Detention Centers," available at https://www.npr.org/2025/09/24/nx-s1-5552752/the-conditions-in-ice-detention-centers; Alexandra Villareal, "It's hard to know what day it is': families tell of grim Ice detention in Texas," The Guardian, Sept. 30, 2025, https://www.theguardian.com/us-news/2025/sep/30/immigration-detainees-ice-texas-jail.

30. Further, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' " *Hernandez*, 872 F.3d at 994–95 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (cleaned up). As discussed, if Petitioner is re-detained without a pre-detention hearing before a neutral decisionmaker, the deprivation of liberty that Petitioner faces is likely unconstitutional and is an immediate and irreparable harm. *Hernandez*, 872 F.3d at 995 (holding Plaintiffs have met their burden to show irreparable harm that they "will likely be

deprived of their physical liberty unconstitutionally in the absence of the injunction"). *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at *8 (N.D.Cal., 2025).

31. Moreover, Petitioner has been out of ICE custody for over thirteen years. During that time, he has worked hard to establish a stable life for himself. He has worked, raised his children, supported his community, and spent time with his family. Detention would irreparably harm not only Petitioner, but also irreparable harm to his family and friends.

32. As detailed supra, Petitioner contends that his re-arrest in 2025 absent a hearing before a neutral adjudicator would violate his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Petitioner from suffering irreparable harm by being subject to unlawful and unjust detention.

(iii) The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

33. The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

34. First, the balance of hardships strongly favors Petitioner. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.,* 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution. Nor, indeed, has the government answered his habeas petition in any manner.

35. Further, any burden imposed by requiring the DHS to release Petitioner from unlawful custody and refrain from re-arrest unless and until he is provided a hearing before a neutral is both de minimis and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

36. Finally, a temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer,* 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Petitioner in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez,* 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); cf. *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

37. Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant a Temporary Restraining Order and, after hearing, a Preliminary Injunction ordering that Respondents:

(1) Be restrained from continuing to detain Petitioner based on their incorrect interpretation of the Immigration and Nationality Act;

(2) Immediately release Petitioner from immigration detention;

(3) Not re-arrest Petitioner unless and until he is provided a hearing before a neutral decision-maker, as required by the Due Process Clause of the Fifth Amendment, establishing by clear and convincing evidence that his reincarceration is justified because he is a danger to the community or a flight risk;

(4) Not continue to detain Petitioner unless he is provided an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) within three days of this Court's order;

(5) Be enjoined from invoking 8 U.S.C. § 1225(b) or applying 8 C.F.R. § 1003.19(i) as a basis to refuse acceptance of Petitioner's bond payment or to automatically stay the effect of any Immigration Judge's bond decision (by invoking 8 C.F.R. §1003.19(i)(2), while preserving Respondents' right to pursue a normal bond appeal;

(6) Be prohibited from relocating Petitioner outside the Southern District of Texas or deporting him from the United States while this litigation remains pending; and

(7) Be ordered to file with this Court a complete copy of Petitioner's administrative file from the Department of Justice and the Department of Homeland Security.

Respectfully submitted on September 30, 2025.

s/ Stephen O'Connor

Stephen O'Connor
Attorney for Petitioner
TXSB # 24060351
steve@oconnorimmigration.com
O'Connor & Associates, PLLC
7703 N. Lamar Blvd. Ste. 300
Austin, Texas 78752
(512) 617 9600

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(g), undersigned counsel certifies that, due to the emergency nature of this filing and the need for immediate relief to prevent irreparable harm, it was not possible to hold a substantive conference with opposing counsel prior to filing. On September 30, 2025, undersigned counsel provided notice by emailing a courtesy copy of this motion to U.S. Attorney Nicholas J. Ganjei, at USATXS.CivilNotice@usdoj.gov.

In accordance with Federal Rule of Civil Procedure 65(b)(1)(B), Petitioner respectfully submits this motion ex parte because immediate and irreparable injury will occur before Respondents can be heard in opposition. Also, Respondents have failed to respond to his law suit whatsoever to date.

Respectfully submitted,

s/ Stephen O'Connor

Stephen O'Connor
Attorney for Petitioner
TXSB # 24060351
steve@oconnorimmigration.com
O'Connor & Associates, PLLC
7703 N. Lamar Blvd. Ste. 300
Austin, Texas 78752

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2025, I electronically filed the foregoing Emergency Ex Parte Motion for Temporary Restraining Order with the Clerk of Court using the CM/ECF system. In addition, on September 30, 2025, I served a courtesy copy of this motion by email to U.S. Attorney Nicholas J. Ganjei, at USATXS.CivilNotice@usdoj.gov.

Respectfully submitted,

s/ Stephen O'Connor

Stephen O'Connor
Attorney for Petitioner
TXSB # 24060351
steve@oconnorimmigration.com
O'Connor & Associates, PLLC
7703 N. Lamar Blvd. Ste. 300
Austin, Texas 78752