**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**BROWNSVILLE DIVISION**

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| **LORENZO CARDENAS PEREZ,** | § | |
| **Petitioner,** | § | |
| | § | |
| **vs.** | § | |
| | § | **Civil Action No. 1:25-cv-181** |
| **KRISTI NOEM, Secretary, U.S. Department of Homeland Security; *et al.*** | § | |
| **Respondents.** | § | |

**SUPPLEMENTAL BRIEF IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Pursuant to the Court's September 3, 2025, Order, ECF Dkt. 12, Petitioner submits this supplemental briefing in support of his Application for Temporary Restraining Order and Preliminary Injunction. ECF Dkt. 8.

1. **Petitioner satisfies all criteria necessary for the issuance of a preliminary injunction. Likelihood of success**

Likelihood of success on the merits is "the most important" factor when considering an application for preliminary injunction. *United States v. Abbott*, 110 F.4th 700, 706 (5th Cir. 2024). As the Court has acknowledged, Petitioner is likely to succeed on his claims that the provisions of 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) that automatically stay the IJ's bond order violate 8 U.S.C. § 1226(a) and the Fifth Amendment. ECF Dkt. 11, at 3-4. The following provides additional recent decisions finding these provisions unlawful and further supports Petitioner's application for a preliminary injunction.

Multiple district courts have found legal violations when considering the application of the automatic stay provisions in the context of Respondents' recent policy change subjecting non-citizens like Mr. Cardenas to mandatory detention. *See Herrera Torralba, et al. v. Knight, et al.*, 2:25-cv-01366-RFB-DJA, 2025 WL 2581792, at 8-*13 (D. Nev., Sept. 5, 2025) (automatic

stay provisions violate procedure due process facially and as applied and substantive due process as applied); *Jacinto v. Trump*, --- F.Supp.3d ---, 2025 WL 2402271, at *3-*5 (D. Neb. Aug. 19, 2025) (finding that 8 C.F.R. § 1003.19(i)(2) violates procedural and substantive due process and 8 U.S.C. § 1226); *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2-*5 (D. Neb. Sept. 3, 2025) (same); *Leal-Hernandez v. Noem*, Civil No. 1:25-cv-02428-JRR, 2025 WL 2430025, at *12-*15 (D. Md. Aug. 24, 2025) (same). Other courts considering the application of the same provisions in slightly different contexts in which petitioners were subjected to unlawful detention have also found due process violations, likely statutory violations, and otherwise called these provisions into question. *See Gunaydin v. Trump*, --- F.Supp.3d ---, 2025 WL 1459154, at *7-*10 (D. Minn. May 21, 2025) (finding 8 C.F.R. § 1003.19(i)(2) violates procedural due process rights of student detained after succeeding before an IJ); *Mohammed H. v. Trump*, --- F.Supp.3d ---, 2025 WL 1692739, at *5 (D. Minn. June 17, 2025) ("Invoking the automatic stay as the Government did her contorts § 1003.19(i)(2) into an unfair procedure."); *Torosyan v. Nielsen*, No. 2:18-cv-5873-PSG, 2018 WL 5784708, at *6-*7 (C.D. Cal. Sept. 27, 2018) (finding likelihood of success on claim that 8 C.F.R. § 1003.19(i)(2) violates 8 U.S.C. § 1226(a) for issuance of preliminary injunction).

8 C.F.R. § 1003.19(i) was first implemented as an interim rule shortly after the terrorist attacks on September 11, 2001, and was spurred by the "detention of a large number of individuals" in connection with the investigation of terrorist activities. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed.Reg. 54909, 54910 (Oct. 31, 2001). Shortly thereafter, several district courts found this rule, which provided for indefinite detention, to be unconstitutional and *ultra vires* of 8 U.S.C. § 1226(a). *Zavala v. Ridge*, 310 F.Supp.2d 1071, 1071 (N.D. Cal. 2004) (automatic stay provisions violate Due Process and are

*ultra vires*); *Ashley v. Ridge*, 288 F.Supp.2d 662, 668-72 (D.N.J. 2003) (automatic stay provisions violate Due Process); *Bezmen v. Ashcroft*, 245 F.Supp.2d 446, 450 (D.Conn. 2003)(automatic stay provision was unconstitutional); *Uritsky v. Ridge*, 286 F.Supp.2d 842, 846-47 (E.D. Mich. 2003)(ordering individualized bond hearing despite Government's use of automatic stay provisions); *Zabadi v. Chertoff*, No. C 05-01796 WHA, 2005 WL 1514122, at *1-*3 (N.D. Cal. June 17, 2005) (finding automatic stay provision unconstitutional). Some district courts found that the interim rule included a "deadline by which [the BIA] must resolve the case" and therefore did not pose a risk of indefinite detention. *See, e.g., Pisciotta v. Ashcroft*, 311 F.Supp.2d 445, 455 (D.N.J. 2004).

As described in Petitioner's Application for Temporary Restraining Order and Preliminary Injunction, the current 8 C.F.R. § 1003.19(i)(2) and 8 C.F.R. § 1003.6(c) and (d) are written in such a way as to permit Respondents to detain Petitioner regardless of the individualized determination by the Immigration Judge with no clear end point. DHS has filed the necessary appeal to invoke the 90-day stay of the IJ's bond decision. *See* ECF Dkt. 8-6; 8 C.F.R. § 1003.6(c)(1) (providing for 90-day stay if appeal filed with the BIA within 10 business days). Even if the BIA authorizes Petitioner's release from detention[1] or the 90-day stay lapses, the automatic stay of the IJ's decision remains effective for an additional five business days and can again be extended by the Attorney General with no termination point. 8 C.F.R. § 1003.6(d). The risk of erroneous deprivation of liberty under a scheme that "conflates the functions of adjudicator and prosecutor" is intolerable. *Zavala v. Ridge*, 310 F.Supp.2d 1071, 1078 (N.D. Cal.

[1] On Friday, September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which confirms DHS's and DOJ's joint policy re-interpreting 8 U.S.C. §§ 1226(a) and 1225(b)(2)(A) to require that non-citizens who entered without inspection and who have resided in the United States for many years be subject to mandatory detention.

2004) (citing *Marcello v. Bonds*, 349 U.S. 302, 305-06 (1955)). The automatic stay provisions "effectively eliminate the discretionary nature of the [IJ's] determination and results in [] mandatory detention for…a new class of aliens, although Congress has specified that such individuals are not subject to mandatory detention." *Id.*, at 1079. Petitioner is likely to succeed in his challenge to the automatic stay provisions.

All other preliminary injunction factors are satisfied in this case. Petitioner will suffer irreparable harm without an injunction. The unconstitutional deprivation of liberty, even for a temporary period, is irreparable harm. *Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (citing *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012)). When the government is a party, the balance of equities and the public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). If Petitioner's detention is permitted to continue he will remain unable to see his family, including his daughter who will soon be relocating for military service. Petitioner will encounter significant logistical difficulty preparing for removal proceedings, especially considering Respondents have moved him hours away from his counsel. Respondents are adequately protected by the IJ's individualized bond determination and discretionary stay procedures available from the BIA. The balance of equities and public interest factors weigh heavily in favor of entry of a preliminary injunction.

**2. The Court has authority to enter a preliminary injunction even if the current Warden is not yet added as a party to this litigation.**

Following Respondents' transfer of Petitioner to an immigration detention facility in Laredo, Texas, Petitioner immediately sought to file an amended petition naming Norbal Vasquez, Warden of the Rio Grande Processing Center ("RGPC") as a Respondent in this action. *See* ECF Dkt. 9. Petitioner's motion for leave remains pending.

Proposed Respondent Norbal Vasquez does not need to be added as a party to this litigation for the Court to be able to enter a preliminary injunction. "When dealing with a preliminary injunction, the 'adverse party' means the party adversely affected by the injunction, not the opponent in the underlying action." *Parker v. Ryan*, 960 F.2d 543, 545 (5th Cir. 1992). Proposed Respondent Vasquez would be adversely affected by the injunction in that he would be required to relinquish physical custody of Petitioner, should the Court order preliminary injunctive relief. "Rule 65(a) does not require service of process" on the adverse party. *Whirlpool Corporation v. Shenzhen Sanlida Electrical Technology Company, Limited*, 80 F.4th 536, 542 (5th Cir. 2023). The sufficiency of notice under Rule 65(a) "is a matter for the trial court's discretion." *Corrigan Dispatch Co. v. Casa Guzman, S.A.,* 569 F.2d 300, 302 (5th Cir. 1978). Proposed Respondent Vasquez has sufficient notice. The United States Attorney's Office appeared on behalf of all current Respondents at the status hearing on September 3, 2025, and received ample notice of the upcoming September 9, 2025, hearing. *See* Minute Entry, 09/03/2025. Because proposed Respondent Vasquez has no independent legal authority to detain Petitioner and acts at the direction of the current Respondents, Petitioner reasonably anticipates that he will also be represented in this action by the United States Attorney's Office. Moreover, notice of the upcoming September 9, 2025, hearing was received by proposed Respondent Vasquez on September 6, 2025. *See* Exh. 1 (Fedex proof of delivery).

Notice is sufficient in this case, especially considering that the case presents primarily legal issues. Rule 65(a)(1) requires that "where factual disputes are presented, the parties must be given a fair opportunity and a meaningful hearing to present their differing versions of those facts before a preliminary injunction may be granted." *PCI Transp., Inc., v. Fort Worth & Western R. Co.*, 418 F.3d 535, 546 (5th Cir. 2005). The facts that support entry of a preliminary

injunction cannot be disputed. Petitioner has resided in Texas since approximately 1998. ECF Dkt. 8-2, at ¶2. He was recently arrested and detained by immigration officials. *Id.*, at ¶3. Petitioner remains detained in Respondents' and proposed Respondent Vasquez's custody despite an individualized determination by an IJ that Petitioner is eligible for release on a bond of $4,000.00. ECF Dkt. 8, at ¶¶1-13; ECF Dkt. 9-1. DHS has appealed that bond decision and invoked automatic stay provisions set out in 8 C.F.R. §§ 1003.19(i)(2), 1003.6(c). ECF Dkt. 8-6. Petitioner suffers irreparable harm because he is detained unlawfully and unable to see or support his wife, children, and grandchildren. ECF Dkt. 8, at ¶39. Further detention risks Petitioner being unable to say goodbye in-person to his daughter before she joins the military and is required to relocate from south Texas. ECF Dkt. 8-3, at ¶4. Given that the attorney who is likely to represent proposed Respondent Vasquez has notice of the preliminary injunction hearing, proposed Respondent Vasquez received sufficient notice of the hearing, and the limited or non-existent factual disputes in this case, the Court has authority to enter preliminary injunctive relief, including relief against proposed Respondent Vasquez.

**3. The Court should grant Petitioner's Motion for Leave to File a Second Amended Petition for Writ of Habeas Corpus and add his current Warden as a Respondent.**

Following Respondents' transfer of Petitioner to an immigration detention facility in Laredo, Texas, Petitioner immediately sought to file an amended petition naming Norbal Vasquez, Warden of the Rio Grande Processing Center ("RGPC") as a Respondent in this action. *See* ECF Dkt. 9. As set out in Petitioner's motion, leave should be "freely give[n]," especially considering Norbal Vasquez's custodial control over Petitioner and Petitioner's inability to anticipate that Respondents would transfer him to Laredo just days after this litigation was initiated. FED. R. CIV. P. 15(a)(2); ECF Dkt. 9. Permitting the amendment and adding Respondent

Vasquez to this litigation will resolve legal issues related to the proper respondent in habeas corpus litigation challenging civil immigration detention.

The following briefly sets out the legal issues concerning the proper respondent in habeas corpus litigation challenging civil immigration detention and states Petitioner's position that an exception to the traditional "immediate custodian" should apply in this case.

The federal habeas corpus statute provides that the proper respondent is "the person who has custody over" the petitioner. 28 U.S.C. § 2242. In *Rumsfeld v. Padilla* the Supreme Court articulated the "immediate custodian" rule, writing that the proper respondent is "the warden of the facility where the prisoner is being held," not "the Attorney General or some other remote supervisory official." *Padilla*, 542 U.S. 426, 435 (2004). The Court "decline[d] to resolve" whether this rule applies in habeas corpus cases filed by "an alien detained pending deportation." *Id.*, at 435 n.8. Accordingly, district courts in the Fifth Circuit have declined to dismiss more remote officials who maintain custodial authority over petitioners in habeas corpus litigation involving challenges to immigration detention. *See, e.g., Gutierrez-Soto v. Sessions*, 317 F.Supp.3d 917, 927 (W.D. Tex. 2018) (noting circuit split on this issue and lack of authority from the Fifth Circuit); *Fuentes-De Canjura v. McAleenan*, EP-19-CV-00149-DCG, 2019 WL 4739411, at *3-*4 (W.D. Tex. Sept. 26, 2019); *M.A.P.S. v. Garite*, --- F.R.D. ---, 2025 WL 1479504, at *6 (W.D. Tex. May 22, 2025) (declining to apply "immediate custodian" rule in class action litigation); *but see da Silva v. Nielsen*, No. 5:18-MC-00932, 2019 WL 13218461, at *6 (S.D. Tex. Mar. 29, 2019) (applying "immediate custodian" rule).

For the following reasons, this case merits application of an exception to the "immediate custodian" rule. RGPC is a privately operated facility that contracts with the U.S. Department of Homeland Security ("DHS") to detain non-citizens in removal proceedings. Proposed

Respondent Vasquez does not have independent authority to "produce the body" of Petitioner, *Padilla*, 542 U.S. at 435, or release Petitioner from the current Respondents' custody and "does not have any information to answer for federal authorities." *Calderon v. Sessions,* 330 F.Supp.3d 944, 952-53 (S.D.N.Y. 2019); *see also Jarpa v. Mumford*, 211 F.Supp.3d 706, 724 (D. Md. 2016) ("[A]fter finding [petitioner's] continued detention unreasonable, this Court must consider the association between the substantive relief an immigrant detainee seeks and the person with the requisite authority to provide such relief."). This litigation challenges the application of DHS's new joint policy with the U.S. Department of Justice, which oversees the Executive Office for Immigration Review ("EOIR") and Board of Immigration Appeals ("BIA"), that re-classifies certain non-citizens as subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See, e.g.,* ECF Dkt. 5, at ¶26. The warden cannot provide the relief that Petitioner seeks in this case. *See* ECF Dkt. 5, at 14 (requesting release "in accordance with the terms set out in the Immigration Judge's ("IJ") August 14, 2025, bond order"). The current Respondents, namely the Attorney General and DHS officials, have the legal authority to provide this relief and are proper Respondents in this action. *See, e.g., Farez-Espinoza v. Chertoff*, 600 F.Supp.2d 488, 493-95 (S.D.N.Y. 2009) (finding Attorney General and DHS Secretary to be proper respondents and citing similar cases). Regardless, the Court can simplify this issue by granting Petitioner's motion for leave, ECF Dkt. 9, and permitting the addition of Norbal Vasquez, Warden of RGPC, as a Respondent in this action.

**4. The Court should grant Petitioner's pending Motion for Order to Show Cause.**

The Court orders that Petitioner remain detained and encourages Respondents to seek a discretionary stay from the Board of Immigration Appeals ("BIA"). ECF Dkt. 11, at 3. Petitioner reasonably anticipates that Respondents will do so. On Friday, September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) which confirms DHS's and

DOJ's joint policy re-interpreting 8 U.S.C. §§ 1226(a) and 1225(b)(2)(A) to require that non-citizens who entered without inspection and who have resided in the United States for many years be subject to mandatory detention. If applied in Petitioner's case, this decision begs the question of whether Respondents are lawfully detaining Petitioner under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1225(b)(2)(A). Petitioner alleges that 8 U.S.C. § 1226(a) is the correct legal basis for his detention and that he is entitled to release in accordance with the IJ's individualized bond decision. ECF Dkt. 5, at ¶¶17-52. District courts around the country agree. *See* ECF Dkt. 8, at 13 n.5; *see also Kostak v. Trump*, No. 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025). Petitioner respectfully submits that his petition raises meritorious claims for relief and requests that the Court order Respondents to show cause as to the proper statutory basis of his detention.

Dated: September 8, 2025

Respectfully submitted,

*/s/ Carlos M. Garcia*

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

As of the date of filing, counsel for Respondents has not filed an appearance in this action. Counsel for Petitioner will deliver a copy of the foregoing motion by email and certified mail to counsel for Respondents.

*/s/ Peter McGraw*
Peter McGraw