

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

ELISEO AGUILAR ALVARADO

*Petitioner,*

v.

Samuel J. Olson, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; Kristi NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; U.S. Dept. of Homeland Security; Eric Tollefson, Kandiyohi County Jail Sheriff.

*Respondents.*

Case No. 0:25-cv-03381

**PETITIONER'S  
MEMORANDUM OF LAW IN  
SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION**

**EMERGENCY HANDLING  
REQUESTED**

## I. INTRODUCTION

Petitioner Eliseo Aguilar Alvarado brings the instant a motion for Temporary Restraining Order (“TRO”) and Preliminary Injunction (“Motion”) seeking injunctive relief and challenging Respondents’ actions in detaining Mr. Aguilar Alvarado. He was arrested by Respondents on August 7, 2025, and remains in detention despite being granted bond by an immigration judge. There was no lawful basis for DHS to arrest and detain Mr. Aguilar Alvarado, and Respondents cannot lawfully detain someone indefinitely in spite of an immigration judge’s order to release them on bond.

Courts across the country have granted Temporary Restraining Orders to non-citizens like Mr. Aguilar Alvarado who have been unlawfully detained. In light of these developments, and in his special circumstances including his medical condition and as a father of minor daughters, emergency relief is necessary. Mr. Aguilar Alvarado seeks injunctive relief to prevent Respondents from continuing to unlawfully detain him. Mr. Aguilar Alvarado seeks declaratory and injunctive relief to remedy violations of his constitutional and statutory rights. Finally, Mr. Aguilar Alvarado’s petition is properly before this Court.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

**A. Mr. Aguilar Alvarado was unlawfully taken into ICE custody and remains detained despite being granted bond.**

On August 7, 2025, Mr. Aguilar Alvarado was arrested and taken into Immigration and Customs Enforcement (“ICE”) custody. On August 21, 2025, Immigration Judge Monte Miller (“IJ Miller”) issued a written order granting Mr. Aguilar Alvarado bond. IJ Miller found that he had jurisdiction to hear Mr. Aguilar Alvarado’s bond request, and that he warranted release on a \$5,000.00 bond. The Department of Homeland Security (“DHS”) immediately filed a Form EOIR-43 Notice of Intent to Appeal, which automatically stayed IJ Miller’s order to release Mr. Aguilar Alvarado on bond.

Mr. Aguilar Alvarado is a diabetic and has been continuously held in conditions indistinguishable from criminal confinement. Further, he is a father and has been separated from his minor USC daughter. Now, despite IJ Miller ordering DHS to release him on bond, DHS continues to hold Mr. Aguilar Alvarado, away from his family. Mr. Aguilar Alvarado has and will continue to suffer significant irreparable harm if he remains detained.

**III. ARGUMENT**

**A. Mr. Aguilar Alvarado is entitled to a temporary restraining order and preliminary injunction.**

In determining whether to grant a Temporary Restraining Order, this Court must consider four factors:

- (1) the probability that the moving party will succeed on the merits;
- (2) the threat of irreparable harm to the moving party;
- (3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction; and
- (4) whether the issuance of a TRO is in the public interest.

*See Dataphase Sys., Inc. v. C.L. Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Consideration of these four factors does not require mathematical precision but rather should be flexible enough to encompass the particular circumstances of each case. *See Dataphase*, 640 F.2d at 113. The basic question is whether the balance of equities so favors the moving party “that justice requires the court to intervene to preserve the status quo until the merits are determined.” *Id.* Although the probability of success on the merits is the predominant factor, the Eighth Circuit has “repeatedly emphasized the importance of a showing of irreparable harm.” *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002). Here, all four factors weigh heavily in favor of injunctive relief.

**1. Mr. Aguilar Alvarado is likely to succeed on the merits of his petition for writ of habeas corpus.**

Wrts of habeas corpus “may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.” 28 U.S.C. § 2241(a). “The writ of habeas corpus shall not extend to a prisoner unless...He is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(2).

*a. Mr. Aguilar Alvarado's arrest and detention are in violation of Due Process.*

*i. Noncitizens like Mr. Aguilar Alvarado are protected by the Fifth Amendment.*

The federal courts have held that noncitizens are entitled to guarantees of the Fifth Amendment. *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (“all aliens[] are clearly protected by the Fifth and Fourteenth Amendments”). Courts treat Equal Protection and Due Process rights under the Fifth Amendment in the same manner as Equal Protection Claims under the Fourteenth Amendment. *Wienberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975). Due process is only implicated when governmental decisions deprive an individual of “liberty” or “property” interests within the meaning of the Due Process Clause of the Fifth

and Fourteenth Amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67, 78 (1976); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002).

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall be...deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem”); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10, 413 (D.N.J. 1999) (holding that, in analyzing due process in the immigration context, the first factor in the procedural due process analysis, “the petitioner’s private interest in his physical liberty, must be accorded the utmost weight.”).

- ii. Respondents continue holding Mr. Aguilar Alvarado in detention in violation of Due Process and without any legitimate basis.

Immigration detention is civil and must “bear a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

Civil detention cannot be a “mechanism for retribution,” *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (internal quotation marks omitted), because “[r]etribution and deterrence are not legitimate nonpunitive governmental objectives,” *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979). And unlawful detention necessarily harms Mr. Aguilar Alvarado. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a “serious,” “detrimental impact on the individual”); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (“Liberty is the norm; every moment of [detention] should be justified.”) (alteration in original) (citation omitted).

Civil confinement of non-citizens must be limited to the underlying purpose justifying the detention. *Zadvydas*, 533 U.S. at 690. *Zadvydas* held that civil detention violates due process unless special, nonpunitive circumstances outweigh an individual's interest in avoiding restraint. 533 U.S. at 690 (**immigration detention must remain “nonpunitive in purpose and effect”**) (emphasis added).

The government's detention of Petitioner is punitive. First, the present administration has expressed and vocalized an intent to use civil detention punitively against noncitizens for the dual purposes of: (1) encouraging self-deportation, and (2) coercing foreign recalcitrant governments to issue travel documents for its citizens ordered deported from the United States by demonstrating through a systematic campaign of abuse and terror that the recalcitrant government's citizens detained in post-removal-order custody will suffer immensely in the absence of such travel documents being issued. *100 Days of Fighting Fake News*, Department of Homeland Security (Apr. 30, 2025) (“**The reality is that prison isn't supposed to be fun. It's a necessary measure to protect society and punish bad guys. It is not meant to be comfortable. What's more: prison can be avoided by self-deportation.** CBP Home makes it simple and easy. If you are a criminal alien and we have to deport you, you could end up in Guantanamo Bay or CECOT. Leave now.”)

(emphasis added);<sup>1</sup> *Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F.Supp.3d ---, 2025 WL 1692739, at \*5 (D. Minn. June 17, 2025) (“Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes.**”) (emphasis added).

The foregoing contentions are buttressed by the realization that Petitioner is detained in Kandiyohi County Jail, a facility designed to house and punish convicted criminals. Petitioner’s conditions of confinement are totally indistinguishable from those of convicted criminals, further demonstrating that Petitioner’s detention is punitive.

The procedural history of Mr. Aguilar Alvarado’s case further demonstrates that DHS is acting in a manner meant to keep him detained for as long as possible, despite knowing there is no legitimate basis for his detention. IJ Miller affirmatively found that Mr. Aguilar Alvarado was not subject to mandatory detention and did not pose a threat to the community or flight risk significant enough to deny bond. Despite having failed to present evidence sufficient to persuade a neutral arbiter to detain Mr. Aguilar Alvarado, DHS exercised its unconstitutional and *ultra vires* ability to impose an automatic stay of IJ Miller’s order under 8 C.F.R. § 1003.19(i)(2), such that

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<sup>1</sup> Found at <https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news>

Mr. Aguilar Alvarado must remain detained. Respondents have presented no evidence to justify Mr. Aguilar Alvarado's detention.

Notably, the Form EOIR-43 that DHS must file to invoke the automatic stay of IJ Miller's order requires no showing of success on the merits and no individualized explanation of the basis for DHS's intent to appeal. Thus, though Mr. Aguilar Alvarado has been granted bond, he remains detained and has no indication of the actual factual or legal basis for DHS's appeal. The automatic stay also cannot be reviewed by the immigration judge or challenged in any immigration proceedings.

Reading the INA considering canons of construction – namely canons to read the statute as a whole and to give effect to all their provisions – support reading INA § 1226 and § 1225 as referring to different classes of migrants. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at \*13–14 (W.D. Wash. Apr. 24, 2025); *see also United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 143 S. Ct. 1720, 1723, 216 L. Ed. 2d 370 (2023). Respondents impermissibly contravene the text and intent of the INA by recategorizing Mr. Aguilar Alvarado as removable under § 1225.

This exercise of an automatic stay is a violation of Mr. Aguilar Alvarado's Fifth Amendment rights. Where there is no factual basis for detention, there is no link between the deprivation of a protected Fifth Amendment liberty interest and a non-punitive state purpose. "Invoking the automatic stay

without justifying evidence twists the rule into an unfair and improper procedure, which due process does not permit.” *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1334847, at \*6 (D. Minn. May 5, 2025). Courts have granted release for similarly situated non-citizens under similar facts. Where non-citizens were already in the interior, it was appropriate for them to be placed in proceedings under INA § 1226(a), which affords them discretionary relief from deportation based on the findings of an IJ. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at \*16 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*7 (D. Mass. July 7, 2025). Permitting the government to indefinitely detain non-citizens under INA § 1226(b) would both frustrate the Congressional scheme for regulating immigration and deprive non-citizens of their Congressional prescribed procedure for adjudicating their Fifth Amendment liberty interests.

As a result, Mr. Aguilar Alvarado’s detention is for an illegitimate, deterrent and punitive purposes—not in accordance with the lawful, Congressional purposes of civil immigration detention—and should be enjoined. For the aforementioned reasons, it is likely that Mr. Aguilar Alvarado will succeed on the merits of an amended petition.

iii. All Mathews factors weigh in Mr. Aguilar Alvarado’s favor and he is thus likely to succeed

on the merits of his petition for writ of habeas corpus.

A *Mathews* analysis supports finding Mr. Aguilar Alvarado's Fifth Amendment rights and fundamental liberty interests outweigh any putative governmental interests, and are owed additional procedural protections.

*Mathews* requires weighing:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976).

The private interest here includes Mr. Aguilar Alvarado's Fifth Amendment rights. Mr. Aguilar Alvarado has participated in immigration proceedings in good faith and was granted bond before a neutral magistrate. Depriving him of the opportunity to continue his proceedings by indefinitely detaining him is a violation of his right to fair proceedings. Additionally, while there is no Constitutional right to counsel in a civil proceeding, detention

inherently interferes with a detainee's access to counsel and deprivation of access to counsel is plainly harmful to litigant since it handicaps his ability to present his case to the court. *See In re Guantanamo Bay Detainee Continued Access to Counsel*, 892 F. Supp. 2d 8, 15 (D.D.C. 2012) (finding deprivation of access to counsel seriously handicaps detainees seeking to prosecute habeas claims); *see also Al Odah v United States*, 346 F. Supp. 2s 1, 8-9 (D.D.C. 2004) holding that government procedures may not inappropriately burden a habeas petitioner's attorney-client relationship). Further, Mr. Aguilar Alvarado's Fifth and Fourteenth Amendment liberty interest in caring for his family has been violated. The parental right to care for one's child without undue state interference has long been recognized. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925) (“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *see also Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982); *see also Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 2159–60, 68 L. Ed. 2d 640 (1981) (This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to 'the companionship, care, custody and management of his or her children' is an important interest that 'undeniably warrants deference and,

absent a powerful countervailing interest, protection.”) (internal quotation modified). Mr. Aguilar Alvarado’s detention has separated him from his children and such separation from family is considered a substantial private interest. *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at \*7 (D. Minn. May 21, 2025). The first *Mathews* factor thus weighs heavily in favor of Mr. Aguilar Alvarado.

The Respondent’s course of action has substantially increased the risk of erroneous deprivation of rights and a return to standard proceedings would significantly mitigate that risk. As argued above, the automatic stay removes the individualized determination inherent to a bond hearing in immigration court. The lack of any factual analysis of whether Mr. Aguilar Alvarado posed a flight risk or danger to public safety is a procedural deficit that necessarily increases the risk of erroneous deprivation. Any procedure that includes some factual assessment particular to Mr. Aguilar Alvarado will decrease the risk of erroneous deprivation of his rights. The automatic stay also cannot be reviewed by any immigration judge or challenged in immigration proceedings. Courts have noted that this process is “anomalous” in that it allows a prosecutor to unilaterally overrule the adjudicator and thereby introduce a substantial risk of erroneous deprivation. *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at \*8 (D. Minn. May 21, 2025); *see also Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411, at \*13 (D. Minn. Aug. 15,

2025). Any procedure that includes some opportunity for review will decrease the risk of erroneous deprivation of Mr. Aguilar Alvarado's rights. Bond hearings both involve individualized risk determinations and have the opportunity to appeal. Respondent's EOIR-43 automatic stay significantly increased risk of erroneous deprivation and that risk can be cured by voiding that deviation from standard procedure. The second *Mathews* factor thus weighs heavily in favor of Mr. Aguilar Alvarado.

The Respondents have no articulable interest in detaining Mr. Aguilar Alvarado indefinitely. The existing bond determination hearing procedures are adequate to vindicate any government interest in Mr. Aguilar Alvarado's case. Indeed, the EOIR-43 automatic stay requires no further factual determination to vindicate a finding that it serves a state interest neglected in the original bond determination. Given that the Respondents have presented no evidence as to flight risk, public safety, or other grounds on which to base a government interest in his detention, it would not be proper to find there is any interest in their detaining Mr. Aguilar Alvarado. The third *Mathews* factor thus does not counterbalance Mr. Aguilar Alvarado's weighty interests, and the sum of the *Mathews* factors weigh in his favor.

Minnesota Courts have concluded similarly situated habeas petitioners were entitled to emergency relief. The Court has held that a Turkish student was wrongfully detained in violation of his Fifth Amendment right under an

automatic stay and was granted immediate release. *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), --- F.Supp.3d ---, 2025 WL 1459154, at \*5 (D. Minn. May 21, 2025). The Court holistically analyzed the private interests at stake under the first *Mathews* factor, including the fundamental liberty interest in being free from detention, the punitive conditions of the detention itself, and significant economic and academic interests of a student. *Id.*, at \*7-8. In analyzing the second *Mathews* factor, the Court noted the automatic stay introduced multiple procedural defects that violate due process, including the fact that it unilaterally overrides the decision of an IJ, the lack of any individualized factual analysis, and the lack of an opportunity for appeal. *Id.*, at \*8-9. Finally, in looking to the third *Mathews* factor, the Court was “compelled to conclude that Respondents’ interest in preserving the automatic stay regulation is almost entirely, if not entirely, reduced by the mechanisms already in place for requesting an emergency stay from the BIA.” *Id.*, at 10. The Court has also analyzed a similarly detained Bangladeshi National and found his continued detention would violate his Fifth Amendment rights, warranting immediate release. *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1334847, at \*6 (D. Minn. May 5, 2025). The Court noted the automatic stay introduced significant risk of erroneous deprivation, with no possibility of appeal. *Id.*, (“Invoking the automatic stay without justifying evidence twists the rule into an unfair and improper procedure, which due

process does not permit.”) Comparing the private interests at stake in these cases would demonstrate how heavily Mr. Aguilar Alvarado’s private interests as a parent seeking to reunite with his family should weigh. Given the established Fifth Amendment violations embedded in the automatic stay provision, the analyses in these cases further support a grant of immediate relief for Mr. Aguilar Alvarado.

iv. Mr. Aguilar Alvarado has been and continues to be prejudiced by the government’s violating his due process rights.

In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show “actual prejudice.” *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if “an alternate result may well have resulted without the violation.” *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). “To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided.” *Morales Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted). Mr. Aguilar Alvarado is clearly prejudiced by his continued, unjustified detention. He has been detained for over two weeks, and he was granted bond

by an immigration judge.

Courts have granted emergency relief to non-citizens who were subjected to indefinite detention under automatic stays, protecting them from the exact fate that befell Mr. Aguilar Alvarado. Courts have noted that the plain reading of the INA implies that similarly situated non-citizens should be granted relief from detention at the discretion of IJs. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at \*12 (W.D. Wash. Apr. 24, 2025).

The Courts granting each of these TROs across the country are holding specifically that the non-citizens face irreparable injury and are enjoining the government from detaining them, as they did to Mr. Aguilar Alvarado. The Courts have noted the irreparable harm petitioners suffer including by virtue of the length of detention and by separating non-citizens from their families. To the extent Respondents try to explain away the multiple charges as mere error on the government's part, such error was plainly not harmless.

**2. Mr. Aguilar Alvarado will continue to face irreparable harm if emergency relief is not granted.**

It is well established that deprivation of constitutional rights constitutes "irreparable injury" and justifies issuance of a temporary restraining order. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977). When an alleged deprivation of constitutional rights is involved, no

further showing of irreparable injury is necessary. *Planned Parenthood of Minnesota*, 558 F.2d at 867 (citing 11 C. Wright & A. Miller, *Federal Practice & Procedures: Civil* § 2948 at 439 (1973)); *Ng v. Bd. of Regents of the Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) (“[T]he denial of a constitutional right is a cognizable injury and an irreparable harm.”); *Hernandez*, 872 F.3d at 994–95; *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). Further, Mr. Aguilar Alvarado is irreparably harmed because indefinite detention bears no “reasonable relation” to its purpose. *Deqa M. Y.*, 2020 WL 4928321, at \*3; see *Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing “[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual” (cleaned up) (internal quotation marks omitted) (citation omitted)).

In the present case, Mr. Aguilar Alvarado’s Fifth Amendment rights are being violated because ICE agents, at the direction of Respondents, continue to detain him despite IJ Miller’s order to release him on bond. *See, supra*, section II.A. Courts across the country have held that DHS detention constitutes irreparable injury where it deprives non-citizens of their liberty, access to counsel, and access to their families. *See* section III.A.1.a.iii, *supra*.

Mr. Aguilar Alvarado faces the same irreparable harm, including loss of his ability to support his family as a result of his unconstitutional incarceration.

As noted above, Mr. Aguilar Alvarado's interests as a father are a weighty Constitutional right. The parental right to care for one's child without undue state interference has long been recognized. *Pierce v. Soc'y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35, 45 S. Ct. 571, 573, 69 L. Ed. 1070 (1925) (“The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.”); *see also Santosky v. Kramer*, 455 U.S. 745, 758–59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982); *see also Lassiter v. Dep't of Soc. Servs. of Durham Cnty., N. C.*, 452 U.S. 18, 27, 101 S. Ct. 2153, 2159–60, 68 L. Ed. 2d 640 (1981) (This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to ‘the companionship, care, custody and management of his or her children’ is an important interest that ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’”) (internal quotation modified).

Mr. Aguilar Alvarado's separation from his family with no definite date for reunification or clear termination is punitive. Harm to Mr. Aguilar Alvarado's family relationship is punitive. The manifest mental, physical, and emotional injurie Petitioner has suffered is not merely punitive, but

disproportionate to the point of cruelty and beyond any legitimate state interest.

Following the rulings in *Elrod* and *Planned Parenthood of Minnesota*, these Fifth Amendment violations involving deprivations of due process constitute irreparable injury to Mr. Aguilar Alvarado and justify issuance of a temporary restraining order. Mr. Aguilar Alvarado's liberty has been and continues to be restricted in violation of his constitutional rights.

**3. Respondents will face no injury or harm if emergency relief is granted.**

The federal courts have routinely ruled that threatened or actual violations to a person's constitutional rights outweigh any harm to the government's interest in pursuing a government action. *See Morrison v. Heckler*, 602 F. Supp. 1482 (D. Minn. 1984); *see also Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1236-7 (10th Cir. 2005).

Mr. Aguilar Alvarado's harms, discussed above, are weighty; these harms are the direct result of Respondents' conduct in denying Mr. Aguilar Alvarado due process as required under the Constitution. In fact, Mr. Aguilar Alvarado's continued detention is actually a burden for Respondents in that his unnecessary and unexplained detention is costly to the U.S. government.

Possible injuries to the government, should the restraining order be granted, are minimal and possibly nonexistent. Mr. Aguilar Alvarado is

seeking to be released from custody back to his home in the United States so that he can continue his work and care for his family. To date, Respondents have offered no justification for Mr. Aguilar Alvarado's continued and ongoing detention, particularly considering an immigration judge has already held that he is not a danger to the community or a significant flight risk. Considering his lack of severe criminal record and his primary interest in reunification with his family, it is hard to imagine how Respondents may establish either a danger to the community or a flight risk that could justify indefinite detention. Without any justification being offered for Mr. Aguilar Alvarado's detention, it is impossible to surmise the harm that might befall the government if he is released.

For the aforementioned reasons, the irreparable harm to Mr. Aguilar Alvarado that will occur should ICE fail to release him clearly outweighs any burden to Respondents in indefinitely keeping him detained. As this Court held in *Morrison*, 602 F.Supp. at 1484, the balance of harms supports the release of Mr. Aguilar Alvarado even though the federal or state government may not be able to recover lost custodial time should Respondents' constitutional interpretation prevail. This insignificant harm is outweighed by the substantial harm facing Mr. Aguilar Alvarado. Mr. Aguilar Alvarado's harms include deprivations of due process and the wrongful extended detention by ICE depriving Mr. Aguilar Alvarado of liberty. Because Mr. Aguilar Alvarado

is in Respondents' custody, he faces the extreme hardship of deprivation of his due process rights and liberty, and separation from his family and community unless this Motion is granted.

**4. The issuance of a TRO is in the public interest.**

The public—and therefore the government—has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Torres v. U.S. Dep’t of Homeland Sec.*, 2020 WL 3124216, at \*9 (C.D. Cal. Apr. 11, 2020) (“[T]he public has an interest in the orderly administration of justice[.]”). “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994)). Additionally, there is critical public interest in ensuring executive agencies act lawfully. Respondents “cannot reasonably assert that [the government] is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). An immigration judge has already considered Mr. Aguilar Alvarado’s criminal and immigration history and determined that he is not a danger to the community or a significant flight risk and should be released on bond.

The protection of individuals’ constitutional rights against governmental interference is one of the overarching concerns of our system of American

jurisprudence. The constitutional guarantee to due process is a fundamental limit on the government's power to skew, alter, or improperly affect legal proceedings related to an individual's property or liberty interest(s). To ensure the protection of Mr. Aguilar Alvarado's constitutional rights, and to protect against overzealous federal government intrusion of constitutional rights of others in similar situations, a TRO and preliminary injunction should be issued by this Court to enjoin Respondents from continuing to detain Mr. Aguilar Alvarado.

The United States criminal justice system and Constitution represent the essential blending of individual rights and the efficient administration of justice and government. One of the principal reasons for the success of the United States has been trusted in our country's legal system. If Respondents are entitled to violate the Constitution without censure, public trust in the judiciary will be harmed.

**B. Mr. Aguilar Alvarado has complied with the requirements of Rule 65.**

Finally, as set forth *supra*, Mr. Aguilar Alvarado asks this Court to find that he has complied with the requirements of Rule 65, Fed.R.Civ.P., for the purpose of granting a temporary restraining order. Respondents have been provided with a copy of the instant motion and supporting documents and are on notice. Rule 65(c) states that the court may issue a preliminary injunction

or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of this case, however, Mr. Aguilar Alvarado respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to refrain from continuing to detain Mr. Aguilar Alvarado, and/or to refrain from giving Respondents' unlawful actions legal effect, should not result in any conceivable financial damages to Respondents.

*See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

#### **IV. CONCLUSION**

For all of the foregoing reasons, Mr. Aguilar Alvarado asks this Court to grant his Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Mr. Aguilar Alvarado's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.

2. Enjoin Respondents from continuing to detain Mr. Aguilar Alvarado in their custody during the pendency of his petition for writ of habeas corpus before this Court.
3. If Mr. Aguilar Alvarado is not immediately released from Respondents' custody, enjoin Respondents from transferring Mr. Aguilar Alvarado to a detention facility out of this District where he would lose access to his counsel and support network.
4. Grant Mr. Aguilar Alvarado such other relief as the Court deems appropriate and just.

DATED: August 29, 2025

Respectfully submitted,

/s/ Gloria Contreras Edin

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