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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 ALVARADO GONZALEZ, EDUARDO,
16 Petitioner,

Case No.: 2:25-cv-01599-JAD-NJK

17 vs.

18 **PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

19 **John Mattos**, Warden of the Southern Detention
Center,

20 **Jason Knight**, Director of the Salt Lake City
U.S. Immigration and Customs Enforcement Field
Office,

21 **Kristi Noem**, Secretary of the U.S.
Department of Homeland Security; and

22 **Pam Bondi**, US Attorney General,

23
24 Respondents

1 Petitioner, Eduardo Alvarado Gonzalez, by and through undersigned counsel, respectfully
2 submits this Motion for a Temporary Restraining Order to enjoin Respondents from continuing
3 to detain him unlawfully and order his immediate release.
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6 FACTUAL BACKGROUND

7 Petitioner Eduardo Alvarado Gonzalez is a 43-year-old native of Mexico. He is currently
8 illegally being detained by the U.S. Department of Homeland Security, Immigration and
9 Customs Enforcement, at the Nevada Southern Detention facility. The government Respondents
10 allege they may continue to detain him under 8 U.S.C. § 1225 and are causing irreparable harm
11 in their continued unlawful detention.
12

13 Mr. Alvarado Gonzalez entered the U.S. without inspection from Mexico in the year
14 2003. Since that time he has lived in the U.S. without departing, he has married and has three
15 US Citizen children. He maintains a strong work history and is the primary support for his family
16 of five. On August 8, 2025, Mr. Alvarado Gonzalez was taken into ICE custody after being
17 found at the Canyon County Jail in Caldwell, Idaho. All criminal charges against Mr. Alvarado
18 Gonzalez were dropped and he was released from criminal custody pursuant to an "ICE Hold."
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20 Mr. Alvarado Gonzalez is *prima facie* eligible for adjustment of status to that of a U.S.
21 Lawful Permanent Resident pursuant to 8 U.S.C 1255(i). His application was filed with the
22 U.S. Department of Homeland Security, Citizenship and Immigration Services on March 7,
23 2025, and has been pending since that time. He has been granted employment authorization until
24 April 29, 2030. In battling his unlawful detention, his wife has accumulated tens of thousands of
25 dollars of debt.
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27 ARGUMENT

1 The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the
2 Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins
3 governmental action, the party must demonstrate that “he is likely to succeed on the merits, that
4 he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of
5 equities tip in his favor, and that an injunction is in the public interest.” *Winter v. Natural*
6 *Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008). *Stormans, Inc. v. Selecky*, 586 F.3d 1109,
7 1127 (9th Cir. 2009).

8 Here, because Mr. Alvarado Gonzalez meets both the irreparable harm and likelihood of
9 success prongs and because the requested relief is not overly burdensome on Respondents-
10 Defendants, he merits injunctive relief.

11 **I. MR. ALVARADO GONZALEZ WILL SUFFER IRREPARABLE HARM IF HE IS
12 REMOVED**

13 Here, Mr. Alvarado Gonzalez satisfies the irreparable harm prong in several ways.
14 First, his allegations of constitutional violations permit a *per se* finding of irreparable harm. In
15 his petition and complaint, Mr. Alvarado Gonzalez raised specific allegations of violations of his
16 Fifth Amendment right to due process, both substantive and procedural. *See* ECF No. 1, Pet. for
17 Writ of Habeas Corpus.

18 Second, Mr. Alvarado Gonzalez satisfies irreparable harm by demonstrating that but for
19 this Court’s granting of equitable relief, there is a substantial chance he cannot be returned to the
20 position he previously occupied. He will lose his eligibility for his statutory benefit clearly held
21 under 8 U.S.C. 1255(i). Mr. Alvarado Gonzalez cannot be returned to the position that he
22 currently occupies with respect to his I-485 application. As is discussed *infra*, Mr. Alvarado
23 Gonzalez must be physically in the United States to pursue his application. Since deportation
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1 will result in the loss of his right to pursue his I-485, he does face significant irreparable injury
2 absent a injunctive relief.

3 **II. MR. ALVARADO GONZALEZ IS LIKELY TO SUCCEED ON HIS PETITION.**

4 Having demonstrated a likelihood of irreparable harm, Mr. Alvarado Gonzalez must
5 demonstrate a likelihood of success on the merits of his petition.

6 **A. Mr. Alvarado Gonzalez is Likely to Succeed on His Claims that his Ongoing Detention
7 and Imminent Removal Violates his Fifth Amendment Right to Substantive Due Process
8 and Procedural Due Process**

9 The government may not deprive a person of life, liberty, or property without due process
10 of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody,
11 detention, or other forms of physical restraint---lies at the heart of the liberty that the Clause
12 protects.” Zadvydas v. Davis, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L.Ed.2d 653 (2001).
13 Mr. Alvarado Gonzalez is entitled to due process protections. See Reno v. Flores, 507 U.S. 292,
14 306 (1993); United States v. Mendoza-Lopez, 481 U.S. 828 (1987). Mr. Alvarado Gonzalez has
15 a fundamental interest in liberty and being free from official restraint.

16 A wrongful detention can ripen into a due process violation if “it was or should have been
17 known [by the Respondents] that the [Petitioner] was entitled to release.” Cannon v. Macon
18 County, 1 F.3d 1558 (11th Cir. 1993). 42 U.S.C. § 1983 provides that “Every person who, under
19 color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes
20 to be subjected, any citizen of the United States or other person within the jurisdiction thereof to
21 the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,
22 shall be liable to the party injured.” 42 U.S.C. § 1983.

1 The Ninth Circuit has previously found in cases before habeas courts where a “substantial
2 liberty interest” is at stake, “the government must prove by clear and convincing evidence that
3 continued detention is justified.” *Singh v. Holder*, 638 F.3d 1196, 1203-1204 (9th Cir. 2011)
4 (citing *Casas-Castrillim v. Department of Homeland Security*, 535 F.3d 942 (9th Cir. 2008)).
5 ICE’s choice to detain Mr. Alvarado Gonzalez is an action or inaction that has prevented Mr.
6 Alvarado Gonzalez from contacting present counsel is a violation of his Constitutional rights and
7 is sufficient to show that they knowingly violated his Constitutional rights and should understand
8 he should be released. Therefore, Petitioner’s detention violates his right to substantive and
9 procedural due process guaranteed by the Fifth Amendment of the U.S. Constitution.
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13 **B. Mr. Alvarado Gonzalez is Likely to Succeed on the Claims that his Ongoing Detention
14 and Imminent Removal Would Violate the 8 U.S.C. 1226(a).**

15 Mr. Alvarado Gonzalez’s statutory rights were violated by ICE’s erroneous rejection to
16 set bond. United States Code provides that, “[o]n a warrant issued by the Attorney General, an
17 alien may be arrested and detained pending a decision on whether the alien is to be removed
18 from the United States . . . [and] the Attorney General (2) may release the alien on – (B)
19 ICE has maintained that Mr. Alvarado Gonzalez is ineligible for bond and have refused to
20 release him even though he is not a flight risk nor a danger to the community. A finding of no
21 flight risk and no danger to community has already been made by the Canyon County Third
22 Judicial District Court. Additionally, Mr. Alvarado Gonzalez is eligible for U.S. Lawful
23 The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens
24 residing in the United States who are subject to the grounds of inadmissibility because they
25 previously entered the country without being admitted. Such noncitizens are detained under §
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1 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c),
2 or § 1231. Mr. Alvarado Gonzalez is not subject to any of these provisions.

3 Therefore, the application of § 1225(b)(2) to Mr. Alvarado Gonzalez violates the Immigration
4 and Nationality Act.

5 **C. Mr. Alvarado Gonzalez is Likely to Succeed on the Claim that his Continued Detention
6 is in violation of the Administrative Procedure Act.**

7 The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens
8 residing in the United States who are subject to the grounds of inadmissibility because they
9 originally entered the United States without inspection. Such noncitizens are detained under §
10 1226(a), unless they are subject to another detention provision, such as § 1225(b)(1), § 1226(c)
11 or § 1231. Nonetheless, Petitioner has been subject to mandatory detention under that statute.

12 The application of § 1225(b)(2) to Petitioner is arbitrary, capricious, and not in
13 accordance with law, and as such, it violates the APA. See 5 U.S.C. § 706(2). The Due
14 Process Clause has been interpreted by the Supreme Court as a “protection of the individual
15 against arbitrary action by the government.” *Cnty. of Sacramento*, 523 U.S. at 845; *see also*
16 *Addington v. Texas*, 441 U.S. 418, 427 (1979) (“The individual should not be asked to share
17 equally with society the risk of error when the possible injury to the individual is significantly
18 greater than any possible harm to the state.”); *Martinez v. McAleenan*, 385 F.Supp.3d 349, 357
19 (S.D.N.Y June 14, 2019) (“[T]he due process right to be heard ‘has little reality or worth unless
20 one is informed that the matter is pending and can choose for himself whether to appear or
21 default, acquiesce or contest.’”) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S.
22 306, 314 (1950)).

1 Under the APA, “final agency action for which there is no other adequate remedy in a
2 court [is] subject to judicial review.” 5 U.S.C. § 704. The reviewing court “shall...hold unlawful
3 and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse
4 of discretion, or otherwise not in accordance with law,” or “unsupported by substantial
5 evidence.” U.S.C. §§ 706(2)(A), (E). A court reviewing agency action “must assess . . . whether
6 the decision was based on a consideration of the relevant factors and whether there has been a
7 clear error of judgment;” it must “examin[e] the reasons for agency decisions—or, as the case
8 may be, the absence of such reasons.” *Judulang v. Holder*, 565 U.S. 42, 53 (2011) (quotations
9 omitted).

10 In *Bowen v. Massachusetts*, the Supreme Court explained that judicial review of
11 administrative actions “should not be construed to defeat the central purpose of providing a
12 broad spectrum of judicial review of agency action” and that any alternative remedy by the
13 agency will not be adequate under §704 where the remedy offers only “doubtful and limited
14 relief.” 487 U.S. 879, 901, 903 (1988);

15 In determining whether an agency action may be set aside by a reviewing Court, it must
16 be determined whether the decision was “arbitrary, capricious, an abuse of discretion, or
17 otherwise not in accordance with the law.” 5 U.S.C. §706(2)(A). The Court must also consider
18 whether the agency “examine[d] the relevant data and articulated a satisfactory explanation for
19 its action including a rational connection between facts found and the choice made.” *Motor*
20 *Vehicle Mfrs. Ass'n of U.S., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

21 Respondents-Defendants’ sudden decision to revoke XXXX’s OSUP—which he was
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1 granted by the Government, was in full and complete compliance with, and served as the basis
2 for his grant of an employment authorization document (EAD)—and process him for deportation
3 is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5
4 U.S.C. §706(2)(A).

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6 **III. INJUNCTIVE RELIEF WOULD NOT SEVERELY HARM THE GOVERNMENT**
7 **AND IS THE PUBLIC INTEREST.**

8 Mr. Alvarado Gonzalez merits a injunctive relief because a it would not significantly
9 impede the government and is in the public interest. In inquiries concerning the government’s
10 efforts to remove a noncitizen, the government and public interest factors merge as the
11 government is both the opposing litigant and public interest representative. *See Nken v. Holder*,
12 556 U.S. 418, 435 (2009).

13

14 Here, temporarily restraining the Respondents-Defendants from effectuating Mr.
15 Alvarado Gonzale’s continue unlawful detention would not be detrimental to the government’s
16 interests because the requested relief is temporary, narrowly tailored, and will only last pending
17 the instant motion. The government will not lose their deportation case against Mr. Alvardo
18 Gonzalez, and it would open up bed-space for dangerous criminal alien who cannot otherwise be
19 detained due to the government’s limit resources.

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21 Rather, an order for the maintenance of the status quo may simply “enable
22 Respondents[-Defendants] to fully brief the Petition without the time pressure of a looming
23 removal date.” *S.N.C. v. Sessions*, 325 F. Supp. 3d 401, 412 (S.D.N.Y. 2018); *see also Torres-*
24 *Jurado v. Biden*, 2023 WL 7130898 at *5 (Rejecting the government’s argument that a stay of
25 removal is in not in the public interest and reasoning that “it is Defendants’ own actions, in
26 granting the ICE Stay, that have occasioned the delay here. The brief delay caused by a
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1 temporary stay here does not interfere with the public interest when Plaintiff has been allowed to
2 live in the United States for eighteen years without Defendants executing the final removal
3 order.”). Additionally, the government’s interest in the adjudication of Mr. Alvarado Gonzalez’s
4 application for Adjustment of Status which cannot occur once he is physically removed.
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6 Mr. Alvarado Gonzalez’s petition and complaint is further supplemented by its general,
7 demonstrated interest in ensuring removals from the United States are safely carried out. *See*
8 *Rosario v. I.N.S.*, 962 F.2d 220, 221 (2d Cir. 1992) (noting the public has an interest in the court
9 “ensur[ing] that whatever compassionate conditions are written into law are carefully adhered
10 to[.]”).
11

12 **IV. THE BALANCE OF EQUITIES TIPS IN THE MOVANT’S FAVOR**

13 In assessing whether the plaintiffs have met this burden, the district court has a duty to
14 balance the interests of all parties and weigh the damage to each. *Stormans, Inc. v. Selecky*, 586
15 F.3d 1109, 1138 (9th Cir. 2009). The court must evaluate the interim harm the defendants are
16 likely to sustain if the injunction is granted and compare it with the harm the plaintiff is likely to
17 suffer if an injunction does not enter. *De Vico v. United States Bank*, 2012 U.S. Dist. LEXIS
18 155622, at *22 (C.D. Cal. Oct. 29, 2012).

20 In this case, the equities tip in favor of Mr. Alvarado Gonazlez: he would be allowed to
21 return to his family and home of the last 22 years, he would be able to return to his employment
22 and supporting himself and his family, would be allowed to seek Adjustment of Status for which
23 he is statutorily eligible under Federal Law, he would return to being a valuable member of the
24 Idaho community. The equities do not tip in the favor of the government respondents: they will
25 be found liable for Mr. Alvarado Gonzalez’s illegal detention and forced to release him
26 regardless; they continue to waste limited government resources to feed and house and individual
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1 who has been found to not be a danger to the community nor a flight risk. They will continue to
2 acquire additional time and cost for legal defense during Mr. Alvarado Gonzalez's deportation
3 and appeal of that deportation, for an undefined amount of time given the ever-lengthening
4 deportation docket.

5 Equities clearly tip in favor of Mr. Alvarado Gonzalez.

7 **NO SECURITY SHOULD BE REQUIRED UPON A GRANT OF A TEMPORARY**
8 **RESTRANING ORDER**

9 Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary
10 injunction or a temporary restraining order only if the movant gives security in an amount that
11 the court considers proper to pay the costs and damages sustained by any party found to have
12 been wrongfully enjoined or restrained.” However, “Rule 65(c) invests the district court with
13 discretion as to the amount of security required, if any.” *Jorgensen v. Cassiday*, 320 F.3d 906,
14 919 (9th Cir. 2003) (internal quotation marks and citation omitted).

16 District courts routinely exercise this discretion to require no security in cases brought by
17 indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383
18 (N.D. Cal. 1983) (state prisoners); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42
19 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

21 **CONCLUSION**

22 For the foregoing reasons, Petitioner respectfully requests that the Court enjoin
23 Respondents from continuing to detain him unlawfully and order his release.

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2 Respectfully submitted this 23th day of October 2025,
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6
7 /s/Hardeep Sull

8 HARDEEP SULL

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10 /S/ Nicole Derden

11 NICOLE DERDEN

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14 *Attorneys for Petitioner Eduardo Alvarado Gonzalez*