IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

SAMUEL OCHOA OCHOA, Petitioner, v. KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; TODD M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; SAM OLSON, Deputy Field Office Director, Chicago Field Office, Immigration and Customs Enforcement, in his official capacity; Respondents.	Case No. 25-cv-10865 **AMENDED MOTION FOR TEMPORARY RESTRAINING ORDER**

INTRODUCTION

On June 12, 2025, while attending an immigration court hearing, Respondents unlawfully detained Petitioner Samuel Ochoa Ochoa, an asylum seeker from Venezuela seeking protection based on his sexual orientation and political opinion. This came nearly two years after Petitioner entered the country, was placed in standard removal proceedings under 8 U.S.C. § 1229a, and was released on his own recognizance. Despite Petitioner's compliance with all conditions of his release, Respondents have now detained him without a bond.

Respondents have not taken a position before this Court on the statutory basis of Petitioner's detention. However, no authority in the Immigration and Nationality Act (INA) authorizes the mandatory detention of a person in Petitioner's position.

The mandatory detention provisions in 8 U.S.C. § 1226(c) do not apply because Petitioner has not been convicted of any crimes and none of the security-related grounds for such detention apply. The mandatory detention provisions in 8 U.S.C. § 1225 are likewise inapplicable.

Detention under Section 1225(b)(1) would be invalid because its scope is limited to noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings. Though Respondents detained Petitioner so that they could place him into expedited removal proceedings, *see* Ex. C, they have not done so and, on information and belief, they no longer intend to subject him to expedited removal. Further, though his case was dismissed for that purpose, Petitioner has appealed that decision, his appeal is pending, and he has never been served an order of expedited removal. *See* Ex. E; Ex. F. He instead remains in standard removal proceedings where he is charged with a ground of inadmissibility not found in Section 1225(b)(1). *See* Ex. A. As a result, his full removal proceedings remain ongoing.

Meanwhile, Section 1225(b)(2) applies only to recent arrivals seeking to enter the country at the border or port of entry. It does not apply to individuals, like Petitioner, who were released on recognizance upon entering the United States, placed in standard removal proceedings, and detained nearly two years later while within the United States. Though the Board of Immigration Appeals (BIA) recently issued a decision addressing access to bond for people in this context, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), that decision is based on a flawed reading of the statute.

With those options aside, the only possible basis for Petitioner's detention is 8 U.S.C. § 1226(a), which allows for release on bond or conditional parole. Indeed, when the government released Petitioner on his own recognizance, it relied on the discretionary detention authority of Section 1226(a) and found that he was neither a danger to the community nor a flight risk.

However, now, the government has denied him a bond hearing, instead erroneously relying on the assertion that he is subject to mandatory detention. Therefore—without an individualized determination that Petitioner is now a danger to the community or a flight risk—his current detention is unlawful.

Finally, by detaining Petitioner in circumstances that have resulted in pervasive harassment and abuse due to his sexual orientation, his detention is unreasonable as a matter of due process.

Petitioner is entitled to a writ of habeas corpus under § 2241 and release from custody. While it considers this petition, this court should require respondents to refrain from moving Petitioner from the Clay County Detention Center, where he is currently detained or, alternatively, from the jurisdiction of the Chicago immigration court. The court should instead grant the preliminary relief of immediate release on just terms. Petitioner satisfies all factors warranting preliminary relief: He is likely to succeed on the merits, he will be irreparably harmed if not released, the government faces no risk of harm if he is released, and the public interest favors immediate release. In the alternative, should the Court deny Petitioner's request, at a minimum it should order Respondents to show cause why this habeas petition should not be granted.

FACTUAL BACKGROUND

Petitioner is a 28-year-old noncitizen, gay man from Venezuela who seeks protection in the United States after facing harassment, threats to his life, and physical attacks in Venezuela because of his political activism and sexual orientation. He fled Venezuela in 2023 and entered the United States on or about October 11, 2023. Ex. A, Notice to Appear.

Petitioner entered without inspection and turned himself into immigration authorities near El Paso, Texas. Ex. A. Less than a day later, Respondents placed him in standard removal proceedings and released him into the United States on his own recognizance. For nearly two years

after his release into this country, Petitioner was complying with all conditions of release, and he timely filed an application for asylum before the Chicago Immigration Court. Ex. B, Application for Asylum, Form I-589. But on June 12, 2025, Respondents reversed course. Without notice or any indication of change in Petitioner's personal circumstances, Respondents moved to dismiss his standard removal proceedings to place him in expedited removal proceedings under 8 U.S.C. § 1225. Ex. C., DHS Motion to Dismiss.

The Immigration Judge did not dismiss proceedings that day. Even so, federal officials detained Petitioner as he was leaving the courtroom even though the dismissal motion had not been granted and there had been no intervening adverse factors since the government's prior decision to release him on his own recognizance.

Petitioner has been detained ever since. He was in Bourbon County Jail and Hopkins County Jail in Kentucky, and in two facilities in El Paso and Webb, Texas. He was later taken to Clay County, Indiana, transferred to ICE's Broadview Processing Center outside Chicago, Illinois, and then returned to Clay County. At the initiation of this case, Petitioner was detained in Broadview; he is now in Clay County, Indiana. These frequent and routine changes in Petitioner's custody have made it difficult to seek his release before now and impeded his substantive representation as well.

Amidst these transfers, and with no notice or opportunity to oppose, Petitioner's case was moved to the Cleveland Immigration Court, which dismissed removal proceedings without a hearing. Ex. D. Counsel subsequently began representing Petitioner, sought reconsideration of the dismissal decision, and appealed the dismissal to the Board of Immigration Appeals (BIA). Ex. E. His appeal remains pending, meaning the dismissal is not administratively final. Ex. F; 8 U.S.C. § 1101(a)(47)(B); 8 C.F.R. § 1003.39.

Even though the government placed Petitioner in standard removal proceedings and released him into the United States, it is now claiming not only that it has authority to detain him but that his detention is somehow mandatory even though nothing about Petitioner's circumstances have changed in the interim. On September 15, 2025, an immigration judge cited to the BIA's decision in *Matter of Yajure Hurtado* to deny Petitioner bond.

And to aggravate matters further, Petitioner is detained in dangerous conditions. Petitioner is an openly gay man who has experiences serious harassment and discrimination relating to his sexual orientation while in immigration custody. He has raised concerns about this abuse, but the facility responded by telling Petitioner that his only alternative option would be solitary confinement. Soon thereafter, Petitioner endured multiple transfers to different facilities in close succession.

LEGAL STANDARD

The court should grant both Petitioner's emergency motion for temporary relief and his underlying motion for a writ of habeas corpus. As to the request for temporary relief, a district court may grant a motion for preliminary relief while the merits are under consideration when four factors favor the grant. Those four factors are a likelihood of success on the merits, irreparable harm to the movant without relief, the risk of harm to the non-movant (the government) if this court grants relief, and the public interest. *See Winter v. Nat'l Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020). The four factors are not prerequisites that must be met but should be balanced against each other. *Nken v. Holder*, 556 U.S. 418 (2009). In the Seventh Circuit, once the moving party establishes "some likelihood of succeeding on the merits" and that irreparable harm will occur in the absence of a TRO, the court performs a sliding scale evaluation of the factors, which requires a lesser showing on the other factors if an individual

demonstrates greater likelihood of success on the merits or that their irreparable harm outweighs any anticipated harm from a TRO. *Cassell v. Snyders*, 900 F.3d 539 (7th Cir. 2021). Because each of these factors strongly favors Petitioner, this court should grant the motion.

I. Petitioner is likely to succeed on the merits of his claims.

The appropriate standard for likelihood of success on the merits is "some likelihood." *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020); *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning . . . A likelihood does not mean more likely than not."). Petitioner easily meets this showing and is likely to prevail on the merits of his claim that his detention is unlawful. Under 28 U.S.C. § 2241(c)(3), a petitioner is entitled to a writ of habeas corpus if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States."

While Respondent has not taken a position before this Court on the statutory basis of Petitioner's detention, no authority in the INA authorizes the mandatory detention of a person in Petitioner's position.

One provision that Respondents might cite as the purported basis for Petitioner's detention (and the one that they seemed to rely on when taking him into custody initially) is 8 U.S.C. § 1225(b)(1). But that provision does not apply. Mandatory detention under Section 1225(b)(1) is limited to noncitizens charged with enumerated grounds of inadmissibility *and* placed in expedited removal proceedings. 8 U.S.C. § 1225(b)(1)(A)(i). The government recently expanded the scope of Section 1225(b)(1) to apply to noncitizens apprehended anywhere in the United States and who are unable to prove they have been in the country continuously for two years. 15 Fed. Reg. 8139 ("January 2025 Designation"). Respondents appeared to rely on this change when they sought

dismissal of Petitioner's removal proceedings and detained him, but they have not infact placed Petitioner in expedited removal. As such, Section 1225(b)(1) cannot apply here. Petitioner has never been served with an expedited removal order and, Respondents now concede that they do not intend to place him in expedited removal. *See* Ex. C. Instead, as Petitioner has appealed dismissal, he remains in standard proceedings, which remain pending. *See, e.g.*, 8 U.S.C. § 1101(a)(47)(B) (explaining that a removal order becomes final "upon the earlier of" a decision by the Board of Immigration Appeals or the expiration of the appeal period).[1]

The second option within Section 1225, which the government has pivoted to in the time since Petitioner's initial detention, is mandatory detention under Section 1225(b)(2). This provision is also inapplicable. It applies only to recent arrivals seeking to enter the country at a border or port of entry. On July 8, 2025, the government attempted to expand the reach of Section 1225(b)(2) to apply to all noncitizens deemed "applicants for admission," including individuals who entered the United States without admission and were later apprehended inside the country. U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission. On September 5, 2025, the BIA issued a published decision adopting the same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That position is wrong for several reasons.

[1] Even if Respondents *had* placed Petitioner in expedited removal proceedings (they have not) the current charges of inadmissibility are not among the enumerated grounds in Section 1225(b)(1). *See* Ex. A; Ex. E; Ex. F. Respondents' actions would be impermissible under Section 1225(b)(1) for that reason. More, a district court has recently held that people who were released into the United States like Petitioner are not amenable to expedited removal at all. *See Coalition for Humane Immigrant Rights. v. Noem,* No. 25-CV-872 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1, 2025) *appeal pending* at No. 25-5289 (D.C. Cir.).

The text of Section 1225 indicates its limited scope to noncitizens who recently arrived at a border or port of entry. This includes the statute's title, "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing" (emphasis added), and the many references to recently arrived individuals such as "crewm[e]n," "stowaway[s]," and "[noncitizens] arriving." 8 U.S.C. § 1225(b)(2)(B); § 1225(b)(2)(C).

In addition, the INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 acts as the "default rule" and "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301. Notably, Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens, who would otherwise fall under Section 1226(a), that are instead subject to mandatory detention. 8 U.S.C. § 1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents' policy, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's policy were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2). A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant[.]") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

Congressional intent and longstanding agency practice underscore the limited scope of Section 1225(b)(2). The current system existed since the passage of the Illegal Immigration

Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585; *see also* See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that people detained after entering without inspection are considered detained under Section 1226(a)). In IIRIRA, Congress made clear that Section 1226(a) "restates" the detention authority previously found at Section 1252(a), under which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

Because of these principles, numerous federal courts have rejected Respondents' efforts to rely on Section 1225(b)(2) to justify mandatory detention for someone like Petitioner. For example, after immigration judges in Tacoma, Washington stopped providing bond hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*,779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025). Other courts have reached the same conclusion, rejecting Respondents' erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance.[2] The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions contrary to Respondents' position. *See, e.g.,*

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[2] *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025).

Jimenez v. FCI Berlin, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025) ("the court is not persuaded by the B.I.A.'s analysis in [*Matter of Yajure Hurtado*]"); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

Section 1226 likewise provides no authority for Petitioner's detention. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated … criminal offenses [or] terrorist activities." *Jennings* at 289 (citing § 1226(c)(1)). Petitioner, however, has not been convicted of any crimes and none of the security-related grounds for such detention apply.

With the mandatory detention provisions set aside, Petitioner's detention is possible only under Section 1226(a), which provides for discretionary detention of individuals detained inside the country and who may be released on bond or on their own recognizance. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(d). The government has already used this release authority when, after considering Petitioner's facts and circumstances, it determined he was not a flight risk or danger to the community and released him on his own recognizance so he may apply for asylum. Now, despite no changes to the facts and circumstances considered for his release, the government has revoked his release and placed him in detention without bond. By subjecting Petitioner to mandatory detention without bond, Respondents commit several errors.

First, to the extent that Respondents purport to detain Petitioner pursuant 8 U.S.C. § 1225(b), such application would violate the INA. As discussed, 8 U.S.C. § 1225(b)(1) is limited

to noncitizens in expedited removal proceedings. Meanwhile, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at the border or ports of entry who recently entered the United States. As such, neither portion of Section 1225(b) applies. To the extent that Respondents wish to detain someone in this posture, they must do so under 8 U.S.C. § 1226(a), unless they are subject to mandatory detention under 8 U.S.C. §§ 1226(c) or 1231. But their actions here violate this provision too because, to date, Respondents have refused to consider Petitioner for bond.

Further, by revoking Petitioner's order of release on recognizance without consideration of any individualized facts and circumstances applicable to him, and without finding that he is a danger to the community or a flight risk and while his standard removal proceedings are still pending, Respondents have violated the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A). Under the APA, an action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. Of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). To avoid an abuse of discretion, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

Respondents previously considered Petitioner's facts and circumstances and determined that he was not a flight risk or danger to the community. Now, they have revoked this release and placed him in detention without bond. They have done so without articulating a rationale based on

his individualized circumstances. Nor could they, as no changes to the facts have occurred that might justify revocation of his release. Indeed, Respondents could not plausibly contend that Petitioner is a flight risk because he was arrested while voluntarily appearing as required at his immigration proceedings.

Finally, the due process prohibits the government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Once a noncitizen enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). By subjecting the Petitioner to mandatory detention, Respondents deny him due process in two ways. First, by detaining Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others, they have arbitrarily deprived him of his fundamental interest in liberty and being free from official restraint. Government decisions that are arbitrary are not compatible with due process. *See County of Sacramento v. Lewis,* 523 U.S. 833, 845 (1988). The government has previously and affirmatively released Petitioner into the United States and allowed him to remain at liberty while he applied for asylum. As a matter of due process, the government may not arbitrarily reverse that previous decision. Moreover, Respondents' decision to detain is arbitrary because it is not based on any justification, facts, or logic, including any individualized factors, that are compatible with due process. In the time since his arrival, Petitioner has been complying with his obligations to attend his immigration hearings. Further, he is not alleged to be, and is not, a flight risk or a danger to community safety.

The second aspect of due process relevant here arises from Respondent's conditions of detention. Due process bars the government from detaining a person in unreasonable conditions. *See Kingsley v. Hendrickson,* 576 U.S. 389, 391-92 (2015); *Brawner v. Scott County,* 14 F.4th 585,

594-97 (6th Cir. 2021). Petitioner's confinement is unreasonably dangerous. During his detention he has suffered harassment and threats from others because of his sexual orientation that caused him to be unable to sleep and fear for his safety. The facility demonstrated an unwillingness to meaningfully protect him and has threatened him with the use of solitary confinement and subsequently transferred him to four different detention centers in the span of two weeks. By subjecting Petitioner, a gay man, to detention conditions that expose him to daily harassment and threats, impacting his mental health and well-being, Respondents have denied Petitioner adequate protection from unreasonably dangerous detention conditions in violation of due process.

II. Petitioner will suffer irreparable harm absent injunctive relief.

Consistent with several Circuits to consider the issue, the Seventh Circuit has recognized that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm." *Preston v. Thompson,* 589 F.2d 300, 303 n. 3 (7th Cir. 1978); *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011)*; see also Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001) ("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated."); *Elrod v. Burns,* 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). A temporary restraining order is the only way to prevent deprivations of Petitioner's constitutional rights.

Further, numerous courts have recognized that continued unconstitutional detention constitutes irreparable harm. *See, e.g., Newman v. Metrish,* 300 Fed. App'x 342, 344 (6th Cir. 2008) (finding that "[the petitioner] suffered a continuing injury while incarcerated"); *Dovala v. Baldauf,* No. 1:16-cv-2511, WL 1699917 (N.D. Ohio 2021) ("[Petitioner's] continued detention constitutes

irreparable harm"); *Matacua v. Frank*, 308 F.Supp.3d 1019, 1025 (D. Minn. 2018) (finding that a "loss of liberty" is "perhaps the best example of irreparable harm.").

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court 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. Most jails offer little or no recreational or rehabilitative programs." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("[t]he deprivation [ ] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. The use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone"); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing 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 [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained").

Here, Petitioner faces irreparable harm each day he remains detained in violation of his constitutional rights. Further, Petitioner faces irreparable harm due to the harassment and threats he is suffering while detained, which the detention facilities have demonstrated an unwillingness to address other than by the imposition of additional harm in the form of solitary confinement. The continuation of these grave harms can only be prevented if the Court grants this preliminary injunction; this factor therefore weighs heavily in Petitioner's favor.

III. The remaining factors favor granting a temporary restraining order.

The third and fourth factors are in Petitioner's favor. Where, as here, the government is a

party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken*, 556 U.S. at 435. When assessing whether a TRO or preliminary injunction is warranted, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 129 S. Ct. at 376.

The Seventh Circuit recognizes that "the public has a strong interest in the vindication of an individual's constitutional rights." *O'Brien v. Town of Caledonia,* 748 F.2d 403, 408 (7th Cir. 1984). Further, the Court has recognized that the government cannot reasonably assert that it will be harmed when the record demonstrates a "strong likelihood" of constitutional violations. *Id.* at 409; *see also Zepeda v. INS,* 753 F.2d 719, 727 (9th Cir. 1983) (finding that federal respondents "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations."); *Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982) ("[Appellee] has no right to the unconstitutional application of state law."). Thus, any burden imposed by requiring the Respondents to release Petitioner from custody is both *de minimis* and clearly outweighed by the substantial harm he will suffer as long as he continues to be detained.

Absent a temporary restraining order, the government would effectively be granted permission to continue detaining Petitioner in violation of federal and constitutional law.

CONCLUSION

Based on the foregoing, Petitioner requests that this Court grant the motion for a temporary restraining order. In the alternative, he asks this Court to order Respondents to show cause within three days establishing why his habeas petition should not be granted.

Respectfully submitted,

Dated: September 18, 2025

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