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Attorney for Petitioner
Nester Paul Hernandez-Morales

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

	) Case No. <u>'25CV2629 BAS DDL</u>
	)
	)
NESTER PAUL HERNANDEZ-	) EX PARTE APPLICATION FOR
MORALES,	) TEMPORARY RESTRAINING
Petitioner,	) ORDER AND ORDER TO SHOW
	) CAUSE RE: PRELIMINARY
v.	) INJUNCTION
PAM BONDI, Attorney General of the	)
United States, in her official capacity;	)
KRISTI NOEM, Secretary of the U.S.	)
Department of Homeland Security, in her	)
official capacity; TODD LYONS, Acting	)
Director of U.S. Immigration and Customs	)
Enforcement, in his official capacity;	)
PATRICK DIVVER, ICE Field Office	)
Director for San Diego County, in his	)
official capacity.	)
	)
Respondents.	)
	)

1 For the reasons set forth in the accompanying Memorandum of Points and
2 Authorities, Petitioner Néstor Paul Hernandez-Morales respectfully submits this Ex
3 Parte Application for a Temporary Restraining Order and Order to Show Cause re:
4 Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65, 28 U.S.C.
5 §§ 2241 and 2243, and 5 U.S.C. § 705.
6

7 Petitioner has resided in California for over twenty years. He is married and
8 the father of three U.S.-citizen children. He owns and operates a licensed
9 construction business that supports his family, employs five to nine local workers,
10 and pays taxes. He is the sole caregiver for his disabled U.S.-citizen spouse and his
11 grandson, who has severe Level 3 autism, both of whom rely on him for daily care
12 and stability.
13

14 Petitioner is the beneficiary of an approved I-130 Petition filed by his U.S.
15 Citizen wife for adjustment of status, and has a pending motion to reopen before
16 the Board of Immigration Appeals, supported by claims for asylum, withholding of
17 removal, CAT protection, and cancellation of removal based on changed country
18 conditions and family hardship (Ex. G, J,K).
19

20 On May 14, 2025, Petitioner was detained after voluntarily appearing for a
21 scheduled adjustment-of-status interview based on an approved I-130 petition. He
22 was placed in § 240 removal proceedings and transferred to the Otay Mesa ICE
23 Processing Center.
24

25 On August 18, 2025, the Immigration Judge determined that INA § 1226(a)
26 governs custody, found that Petitioner posed no danger and that any flight risk
27 could be mitigated by conditions, and ordered release on a \$1,500 bond with
28 Alternatives-to-Detention conditions (Ex. A [IJ Bond Memorandum]).

1 DHS immediately noticed its intent to appeal, triggering an automatic stay
2 under 8 C.F.R. § 1003.19(i)(2), later extended upon filing of its appeal. Relying on
3 a newly announced policy reclassifying long-term residents as “applicants for
4 admission” under § 1225(b)(2), DHS invoked the stay to block release. That stay—
5 intended only to preserve the status quo for brief review—now operates as a
6 categorical bar. ICE’s July 8, 2025 memorandum and the BIA’s precedential
7 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), entrench this
8 no-bond classification nationwide. Petitioner faces months of detention awaiting a
9 foregone BIA ruling, followed by years of appellate litigation. (Exh L,M)

10
11 These measures convert what Congress authorized as discretionary release
12 into mandatory, prolonged detention—contravening the statute, decades of agency
13 practice, and controlling Ninth Circuit precedent.

14
15 The policy contradicts the plain text of § 1226(a), was adopted without
16 statutory authority or notice-and-comment procedures, and is arbitrary, capricious,
17 and unlawful under the Administrative Procedure Act. See *East Bay Sanctuary*
18 *Covenant v. Garland*, 994 F.3d 962, 975–76 (9th Cir. 2020); *Innovation Law Lab*
19 *v. Wolf*, 951 F.3d 1073, 1081–82 (9th Cir. 2020); *Perez v. Mortgage Bankers*
20 *Ass’n*, 575 U.S. 92, 96 (2015).

21
22 Absent immediate judicial intervention, Petitioner will continue to suffer
23 irreparable injury. Each additional day of detention compounds the loss of liberty
24 and inflicts cascading harm: separation from his disabled spouse and autistic
25 grandson, disruption of his caregiving role, destabilization of his family, and
26 jeopardy to his licensed business and employees.

27
28 These injuries are not speculative—they are ongoing, concrete, and
incapable of redress through later monetary or administrative relief. See *Hernandez*

1 *v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (“[E]very day of detention is a day
2 of lost freedom.”); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing
3 liberty as the “core” constitutional protection implicated by immigration
4 detention).
5

6 Because the agency has already predetermined the outcome of Petitioner’s
7 appeal and is categorically applying its new policy to long-term residents,
8 administrative remedies are illusory. Only this Court’s intervention can forestall
9 continued unlawful detention and prevent irreparable harm.
10

11 Petitioner respectfully requests that this Court issue a Temporary Restraining
12 Order requiring his immediate release in accordance with the IJ’s August 18, 2025
13 order, or in the alternative enjoin Respondents from applying § 1225(b)(2) or 8
14 C.F.R. § 1003.19(i)(2) to categorically deny his release, as set forth in the proposed
15 order submitted concurrently with this Application.
16

17 This Application is based on the Petition for Writ of Habeas Corpus, the
18 accompanying Memorandum of Points and Authorities, and the declarations and
19 exhibits in support thereof.
20

20 Respectfully submitted,

21 Dated October 3, 2025

22 s/Donovan J Dunnion.
23 Attorney for Petitioner
24 Nester Paul Hernandez-Morales
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26
27
28

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading:

- **PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**
- **CIVIL COVER SHEET**
- **EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION**
- **EXHIBITS TO HABEAS PETITION AND EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION;**
-

is true and accurate to the best of his information and belief, and that a copy of the foregoing document has been served this day upon:

MAILING INFORMATION FOR CASE:

1. Electronic Mail Notice List

The following are those who are currently on the list to receive email notices for this case.

Date: October 3, 2025

/s/ Donovan J. Dunnion
DONOVAN J. DUNNION
Attorney for Defendant

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