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9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF NEVADA

11 Jose Enrique ARCE-CERVERA,

12 Petitioner-Plaintiff,

13 v.

14 Kristi NOEM, in her Official Capacity, Secretary,  
15 U.S. Department of Homeland Security;

16 Pam BONDI, in her Official Capacity, Attorney  
17 General of the United States;

18 Todd M. LYONS, Acting Director, Immigration and  
19 Customs Enforcement, U.S. Department of Homeland  
20 Security;

21 Jason KNIGHT, Salt Lake City Field Office Director  
22 for Detention and Removal, U.S. Immigration and  
23 Customs Enforcement, Department of Homeland  
24 Security; and

25 John MATTOS, Warden, Nevada Southern Detention  
26 Center.

27 Respondents-Defendants.  
28

Agency No.

A 

**MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER**

**POINTS AND  
AUTHORITIES IN  
SUPPORT OF EX  
PARTE MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER AND MOTION  
FOR PRELIMINARY  
INJUNCTION**

Challenge to Unlawful  
Incarceration; Request for  
Declaratory and Injunctive Relief

Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order ("TRO") and Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65, enjoining Respondents from continuing his unlawful detention and ordering his immediate release, or in the alternative, a constitutionally adequate bond hearing within seven (7) days at which the government bears the burden of proving, by clear and convincing evidence, that his detention is necessary. If the Court deems oral argument necessary, Petitioner requests to appear by video.

Respectfully submitted,

1

1     **I. INTRODUCTION**

2     Petitioner Jose Enrique Arce-Cervera ("Mr. Arce-Cervera"), Agency Number [REDACTED]  
3     [REDACTED] by and through undersigned counsel, respectfully moves this Court for a Temporary  
4     Restraining Order and preliminary injunctive relief to immediately halt his continued and  
5     unlawful detention by the U.S. Department of Homeland Security (DHS) and U.S. Immigration  
6     and Customs Enforcement (ICE).

7     Mr. Arce-Cervera is currently detained at the Nevada Southern Detention Center pending  
8     the outcome of his immigration proceedings, despite the government's failure to establish, by  
9     clear and convincing evidence, that he poses either a danger to the community or a flight risk, as  
10    required by the Due Process Clause of the Fifth Amendment.

11    Mr. Arce-Cervera has been in immigration custody since June 27, 2025. ICE initially  
12    encountered him while he was held at the Clark County Detention Center ("CCDC") following  
13    an arrest for which all charges were dismissed on August 11, 2025, by the Las Vegas Justice  
14    Court. Despite the dismissal of those charges and his strong ties to the community, ICE continued  
15    to detain him without a constitutionally adequate bond hearing.

16    On September 5, 2025, Mr. Arce-Cervera requested a bond redetermination hearing before  
17    the Las Vegas Immigration Court. However, the Immigration Judge declined to consider his  
18    request, concluding—based on the Board of Immigration Appeals' recent decision in *Matter of*  
19    *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)—that the court lacked jurisdiction over his bond  
20    proceeding due to his manner of entry into the United States.

21    Mr. Arce-Cervera's ongoing detention now exceeds three months, with no individualized  
22    determination of his risk to the community or likelihood of appearing for future hearings. His  
23    detention, absent procedural protections and without lawful justification, violates the Fifth  
24    Amendment. Moreover, there is no legal basis to categorize him as subject to mandatory  
25    detention, and yet ICE has refused to release him or provide a meaningful bond hearing where  
26    the government bears the burden of proof.

27    Mr. Arce-Cervera respectfully asks this Court to issue a Temporary Restraining Order  
28    enjoining DHS and ICE from continuing his detention without due process. He seeks immediate



1 release or, in the alternative, an expedited and constitutionally compliant bond hearing at which  
2 the government must prove, by clear and convincing evidence, that continued detention is  
3 necessary.

4 Absent emergency relief from this Court, Mr. Arce-Cervera will continue to suffer  
5 irreparable harm as a result of his unjust and indefinite detention.

## 6 **II. STATEMENT OF FACTS AND CASE**

7 Petitioner Jose Enrique Arce-Cervera ("Mr. Arce-Cervera") is a 28-year-old native and  
8 citizen of Mexico who entered the United States without inspection around April 2008. Since his  
9 arrival, Mr. Arce-Cervera has continuously resided in the United States for over seventeen years  
10 and has never departed. He considers the United States his home.

11 Mr. Arce-Cervera has deep and longstanding ties to the Las Vegas community. He  
12 attended both elementary and middle school in the Las Vegas area, later earning his GED on May  
13 15, 2014. After completing his education, he obtained a real estate license and has built a stable,  
14 successful career in the real estate industry. His employment history reflects his dedication to  
15 contributing positively to society and supporting his family.

16 Mr. Arce-Cervera is engaged to a U.S. citizen, Ms. Yarisol Corral, with whom he has been  
17 in a committed relationship for two years. The couple currently resides together in Las Vegas,  
18 Nevada, and they are actively planning their future, including marriage and homeownership. Mr.  
19 Arce-Cervera also plays a critical caregiving role in Ms. Corral's family, particularly for her  
20 mother, Mrs. Irma Corral, who is currently undergoing treatment for breast cancer.

21 In addition to his immediate family, Mr. Arce-Cervera maintains close relationships with  
22 his brother and sister, who also reside in the Las Vegas area, along with his nieces and nephews.  
23 He is a central figure in their lives and provides consistent emotional and practical support.

24 On June 27, 2025, the U.S. Department of Homeland Security (DHS) initiated removal  
25 proceedings against Mr. Arce-Cervera by issuing and filing a Notice to Appear (NTA). The NTA  
26 charges him as removable under INA § 212(a)(6)(A), alleging that he is present in the United  
27 States without having been admitted or paroled. The NTA further states that the date and place of  
28

1 his entry are unknown, and that he was not admitted or paroled following inspection by an  
2 immigration officer.

3 Mr. Arce-Cervera came to the attention of Immigration and Customs Enforcement (ICE)  
4 following an arrest on June 6, 2025, for an alleged incident of domestic battery involving his  
5 fiancé. Both parties have consistently maintained that the incident was a verbal dispute—common  
6 in many relationships—and not reflective of criminal behavior. The Las Vegas Justice Court  
7 formally dismissed all charges on August 17, 2025, and the case was closed. Nevertheless, ICE  
8 assumed custody of Mr. Arce-Cervera upon his release from the Clark County Detention Center  
9 and transferred him to the Nevada Southern Detention Center, where he remains detained today.

10 On September 5, 2025, Mr. Arce-Cervera requested a bond redetermination hearing  
11 before the Las Vegas Immigration Court. In support of his request, he submitted extensive  
12 documentation, including letters from family and his fiancé, attesting to his strong community  
13 ties, stable residence, lack of criminal threat, and compliance with the law. However, the  
14 Immigration Judge denied the request on September 15, 2025, concluding that he lacked  
15 jurisdiction to consider bond based on the Board of Immigration Appeals' recent decision in  
16 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That decision broadly held that  
17 individuals who entered the United States without inspection are considered "applicants for  
18 admission" and are therefore subject to mandatory detention under 8 U.S.C. § 1225(b), regardless  
19 of their length of residence or ties to the United States.

20 As a result, the Immigration Judge declined to consider any of the compelling evidence  
21 submitted on Mr. Arce-Cervera's behalf, and no individualized assessment was made as to  
22 whether his continued detention is necessary to serve any legitimate government interest. Mr.  
23 Arce-Cervera remains detained without any finding that he poses a danger to the community or  
24 is a flight risk.

25 To date, Mr. Arce-Cervera has not been afforded a constitutionally adequate bond hearing  
26 in which the government bears the burden of proving, by clear and convincing evidence, that  
27 continued detention is warranted. His prolonged detention—now extending more than three  
28



1 months—has caused significant hardship to him and his family and violates his Fifth Amendment  
2 right to due process.

3 **III. JURISDICTION**

4 This Court has jurisdiction to review Mr. Arce-Cervera's TRO Application. Further,  
5 jurisdiction is not stripped by 8 U.S.C. §§ 1252(b)(9) or 1252(g).

6 **A. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(b)(9)**

7 Section 1252(b)(9) provides:

8  
9 "Judicial review of all questions of law and fact, including interpretation and  
10 application of constitutional and statutory provisions, arising from any action  
11 taken or proceeding brought to remove an alien from the United States... shall be  
12 available only in judicial review of a final order under this section..."

13 Mr. Arce-Cervera's detention is not so intertwined with the broader removal process that  
14 it can only be reviewed after a final removal order is issued. The Supreme Court addressed this  
15 precise issue in *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018), where it rejected an overly  
16 expansive reading of the phrase "arising from" in 8 U.S.C. § 1252(b)(9). The Court warned that  
17 interpreting the statute so broadly as to include constitutional challenges to detention—merely  
18 because they are tangentially related to removal—would lead to "absurd results" and deprive  
19 noncitizens of "any meaningful opportunity for judicial review." *Id.*

20 Here, Mr. Arce-Cervera is not seeking to challenge his removal proceedings, nor the  
21 decision to initiate them. Rather, he challenges his prolonged civil detention without a  
22 constitutionally sufficient bond hearing under 8 U.S.C. § 1226(a)—a discrete legal and  
23 constitutional issue that is wholly independent of whether he is ultimately removable. Moreover,  
24 as the Court in *Jennings* made clear, § 1252(b)(9) does not apply where the petitioner is "not  
25 asking for review of an order of removal," and where the claim does not "challenge the decision  
26 to detain them in the first place or to seek removal." *Id.* at 294. Mr. Arce-Cervera's challenge  
27 arises from the denial of a bond hearing, not the initiation of removal proceedings.  
28 Accordingly, § 1252(b)(9) does not bar this Court from exercising jurisdiction over Mr. Arce-  
Cervera's TRO Application.

1                   **B. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(g)**

2                   8 U.S.C. § 1252(g) statute states:

3  
4                   “...no court shall have jurisdiction to hear any cause or claim by or on behalf of  
5                   any alien arising from the decision or action by the Attorney General to  
6                   commence proceedings, adjudicate cases, or execute removal orders...”

7                   However, the Supreme Court has explicitly interpreted § 1252(g) as a narrow  
8                   jurisdictional limitation. In *Jennings*, the Court reiterated that § 1252(g) applies only to the three  
9                   specific actions listed: the commencement of proceedings, adjudication of cases, and execution  
10                  of removal orders. *Jennings*, 583 U.S. at 293.

11                  Mr. Arce-Cervera’s claim does not arise from any of these three enumerated actions.  
12                  Instead, it challenges the government’s decision to classify him as an “applicant for admission”  
13                  and deny him access to a bond hearing under § 1226(a)—a procedural and constitutional due  
14                  process violation. As *Jennings* reaffirmed, courts should not interpret the phrase “arising from”  
15                  so broadly as to “sweep in any claim that can technically be said to ‘arise from’” removal  
16                  proceedings. *Id.* Doing so would insulate virtually all governmental actions from judicial review,  
17                  including those that raise serious constitutional questions—a result the Court expressly rejected.

18                  Accordingly, because Mr. Arce-Cervera’s TRO Application does not challenge the  
19                  government’s authority to commence proceedings, adjudicate removability, or execute a removal  
20                  order, § 1252(g) does not apply.

21                  In sum, neither § 1252(b)(9) nor § 1252(g) precludes this Court from hearing Mr. Arce-  
22                  Cervera’s constitutional claims. He is not challenging a final order of removal or the  
23                  government’s authority to initiate proceedings. Rather, he seeks urgent judicial relief from his  
24                  prolonged detention without a constitutionally required bond hearing. This Court therefore  
25                  retains jurisdiction to review his claims and grant the requested temporary restraining order.



#### 1 **IV. LEGAL STANDARD**

2 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive  
 3 relief to prevent "immediate and irreparable injury." Fed R. Civ. P. 65(b). A preliminary  
 4 injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the  
 5 plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S.  
 6 Ct. 365, 172 L. Ed. 2d 249 (2008). To obtain a preliminary injunction, a plaintiff must establish  
 7 four elements: "(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer  
 8 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its  
 9 favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. &*  
 10 *Fin. Servs. Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (*citing Winter*,  
 11 555 U.S. at 20).

12 In the Ninth Circuit, a preliminary injunction may also issue under the "serious  
 13 questions" test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)  
 14 (affirming the continued viability of this doctrine post-Winter). According to this test, "serious  
 15 questions going to the merits and a balance of hardships that tips sharply towards the plaintiff  
 16 can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a  
 17 likelihood of irreparable injury, and that the injunction is in the public interest." *Id.* at 1135.  
 18 Courts in the Ninth Circuit evaluate "these factors on a sliding scale, such that a stronger  
 19 showing of one element may offset a weaker showing of another." *Recycle for Change v. City of*  
 20 *Oakland*, 856 F.3d 666, 669 (9th Cir. 2017).

#### 21 **V. ARGUMENT**

##### 22 **Mr. Arce-Cervera warrants a Temporary Restraining Order.**

23 A temporary restraining order should be issued if "immediate and irreparable injury, loss,  
 24 or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P.  
 25 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a  
 26 preliminary injunction hearing is held. See *Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*  
 27 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Arce-Cervera  
 28 is likely to remain in unlawful custody in violation of his due process rights without intervention



1 by this Court. Mr. Arce-Cervera will continue to suffer irreparable injury if he continues to be  
2 detained without due process.

3 **A. Likelihood of Success on the Merits.**

4 Under the clear terms of the statute and well-established case law, 8 U.S.C. § 1226(a)  
5 governs the detention of individuals who, like Mr. Arce-Cervera, are physically present within  
6 the United States and are undergoing removal proceedings. Given that Mr. Arce-Cervera has lived  
7 in the United States for more than 17 years and was not apprehended at the border or upon entry,  
8 his case is governed by § 1226(a). As such, he is entitled to a bond hearing that complies with the  
9 due process protections afforded under that provision.

10 Section 1226 distinguishes between two classes of individuals in immigration detention.  
11 Section 1226(a) applies to individuals within the United States pending removal proceedings and  
12 allows for discretionary release on bond. In contrast, § 1226(c) applies to a narrow category of  
13 so-called “criminal aliens” and imposes mandatory detention under more limited circumstances.

14 Critically, individuals detained under § 1226(a) are entitled to an initial bond hearing  
15 before an immigration judge, with the opportunity to present evidence, be represented by counsel,  
16 and seek subsequent bond redeterminations if circumstances materially change. See *Rodriguez*  
17 *Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022).

18 Here however, it was alleged that Mr. Arce-Cervera is not detained under § 1226(a), but  
19 rather under § 1225(b)(2), based on the claim that he qualifies as an “applicant for admission”  
20 due to his entry without inspection. That provision mandates detention for arriving noncitizens  
21 unless they are “clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A).  
22 The government suggest that this provision applies not only to arriving aliens at ports of entry but  
23 also to individuals already physically present in the country without having been formally  
24 “admitted.”

25 This argument, however, misreads the statute. If Congress had intended § 1225 to apply  
26 universally to all individuals who entered without inspection—even those long-settled in the  
27 interior of the country—§ 1226 would serve no meaningful function, particularly with respect to  
28

1 noncitizens charged under § 1226(c). Respondents' position improperly creates an irreconcilable  
2 conflict where none exists.

3       In *Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018), the Supreme Court clarified that  
4 § 1225 applies at the Nation's borders and ports of entry, where the government determines  
5 admissibility of arriving noncitizens. In contrast, § 1226 governs individuals already inside the  
6 United States, including those who may be removable but have developed significant ties to the  
7 country. As the Court explained, § 1226 applies to “aliens who are already present in the United  
8 States but who have not been admitted and are nonetheless subject to removal,” while § 1225  
9 applies to aliens at the border seeking admission.

10       Accepting Respondents' interpretation would render large portions of § 1226 superfluous,  
11 violating the canon of statutory construction that requires giving effect to all parts of a statute.  
12 See *Corely v. United States*, 556 U.S. 303, 314 (2009) (“A statute should be construed so that no  
13 part will be inoperative or superfluous, void or insignificant.”).

14       Because Mr. Arce-Cervera is a long-term resident of the United States who was not  
15 apprehended at a port of entry, and because he does not fall within the limited scope of § 1226(c),  
16 he is plainly detained under § 1226(a) and is entitled to a bond hearing with full due process  
17 protections.

18       Accordingly, Mr. Arce-Cervera is likely to succeed on the merits of his claim that the  
19 government has wrongfully denied him a bond hearing in violation of § 1226(a) and the Fifth  
20 Amendment.

### 21       B. Irreparable Harm

22       To obtain a temporary restraining order, a petitioner must show that they are likely to  
23 suffer irreparable harm in the absence of preliminary relief. *Winter v. Natural Resources Defense*  
24 *Council, Inc.*, 555 U.S. 7, 20 (2008).

25       Mr. Arce-Cervera has been detained by U.S. Immigration and Customs Enforcement since  
26 June 27, 2025, and has been denied a bond hearing throughout that period. The Supreme Court  
27 has long recognized that “[f]reedom from imprisonment— from government custody, detention,  
28 or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause



1 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The ongoing deprivation of this  
2 fundamental liberty, without an individualized bond determination, constitutes a clear and  
3 continuing constitutional injury.

4 The Ninth Circuit has emphasized that the loss of constitutional rights “unquestionably  
5 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting  
6 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This principle squarely applies here. Mr. Arce-Cervera  
7 remains detained without due process, in violation of his Fifth Amendment rights.

8 Moreover, his detention has caused severe and ongoing harm not only to him, but also to  
9 his U.S. citizen fiancée and her family—particularly his future mother-in-law, who is battling  
10 cancer and relies on his support. As recognized in *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th  
11 Cir. 2017), such detention imposes not only liberty deprivations but also emotional, financial, and  
12 familial hardship, all of which further establish irreparable harm.

13 Mr. Arce-Cervera’s ongoing detention without a bond hearing violates well-established  
14 constitutional protections and causes him—and his loved ones—serious and immediate injury.  
15 This satisfies the second prong of the TRO standard.

### 16 **C. Balance of the Equities and Public Interest**

17 The Balance of Equities and Public Interest Strongly Favor Mr. Arce-Cervera. When the  
18 government is the opposing party, the final two TRO factors—the balance of equities and the  
19 public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In this case, both weigh  
20 decisively in favor of Mr. Arce-Cervera.

21 As outlined above, Mr. Arce-Cervera’s continued detention without a bond hearing—  
22 under the government’s current interpretation of 8 U.S.C. § 1225—likely violates federal  
23 statutory and constitutional law. A violation of federal law, particularly one that deprives a person  
24 of liberty without due process, is inherently inequitable and not in the public interest. *Valle del*  
25 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (“It is clear that it would not be equitable  
26 or in the public’s interest to allow the state to violate the requirements of federal law.”).



1 While the government undoubtedly has an interest in the consistent application of  
2 immigration policy, this interest does not extend to the unlawful denial of liberty in contravention  
3 of statutory protections. As the Ninth Circuit has recognized, “there is no public interest in the  
4 perpetuation of unlawful agency action.” *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C.  
5 Cir. 2016) (internal citation omitted).

6 Moreover, the denial of a bond hearing based on a novel and contested application of  
7 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), represents a departure from  
8 longstanding statutory interpretation and practice, not the preservation of it. Upholding the  
9 Petitioner’s statutory right to a bond hearing under § 1226(a) does not disrupt the law—it enforces  
10 it. In contrast, Mr. Arce-Cervera faces ongoing and irreparable harm each day he remains detained  
11 without the individualized assessment that the law requires. He has lived in the United States for  
12 over 17 years, has deep ties to the Las Vegas community, and poses no danger or flight risk. The  
13 equities in this case overwhelmingly favor a brief, constitutionally mandated bond hearing—not  
14 indefinite detention without due process.

15 Accordingly, both the balance of equities and the public interest support the issuance of a  
16 temporary restraining order in Mr. Arce-Cervera’s favor.

## 17 **VI. CONCLUSION**

18 For the reasons set forth above, Mr. Arce-Cervera respectfully requests that this Court  
19 issue a Temporary Restraining Order enjoining Respondents from continuing to detain him  
20 without a bond hearing. Petitioner has demonstrated a high likelihood of success on the merits,  
21 as his detention falls squarely within the scope of 8 U.S.C. § 1226(a), not § 1225, and he is  
22 therefore entitled to a constitutionally adequate bond hearing.

23 His continued incarceration without any individualized determination of flight risk or  
24 danger to the community violates both statutory authority and the Due Process Clause of the  
25 Fifth Amendment. Each day of detention without due process constitutes irreparable harm,  
26 stripping him of his liberty and imposing unnecessary emotional and financial burdens on his  
27 U.S. citizen fiancé, family members, and broader community.

28 Moreover, the balance of equities and the public interest strongly favor immediate relief.

1 There is no public benefit in the unlawful and indefinite detention of a long-term resident who  
2 poses no threat and whose continued incarceration is premised on a legally flawed interpretation  
3 of immigration statutes.

4 Accordingly, this Court should grant Mr. Arce-Cervera's request for a Temporary  
5 Restraining Order and order his immediate release, or alternatively, require the government to  
6 provide him with a prompt, constitutionally compliant bond hearing at which it bears the burden  
7 of justifying his continued detention by clear and convincing evidence.

8  
9 Dated: October 03, 2025

Respectfully submitted,

  
10  
11 Karen S. Monrreal, Esq.  
12 Attorney for Petitioner-Plaintiff  
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