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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)

* * *

SAMUEL SANCHEZ APARICIO Petitioner, vs. KRISTI NOEM, Acting Secretary of the United States Department of Homeland Security; PAM BONDI, Attorney General of the United States; THOMAS E. FEELEY, Salt Lake City Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; REGGIE RADER, Henderson Police Chief; and MARIA BELLOW, Corrections Captain. Respondents.	CASE NO. Agency No. [redacted] **COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

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I. INTRODUCTION

Samuel Sanchez Aparicio ("Petitioner") seeks relief to remedy his prolonged and unlawful detention. Mr. Sanchez Aparicio's was detained by ICE on August 7, 2025, and he remains detained at the Henderson Detention Center in Henderson, Nevada. An Immigration Judge (IJ) properly found Mr. Sanchez Aparicio to not be a danger to the community and to not pose a flight risk, and the IJ granted Mr. Sanchez Aparicio a bond in the amount of $3,500.00. However, Mr. Sanchez Aparicio has been unable to post a bond, and he has languished in Immigration and Custom Enforcement ("ICE") custody due to the automatic stay invoked by the U.S. Department of Homeland Security ("DHS" or "Department").

For the last twenty-seven years, Mr. Sanchez Aparicio has resided in the U.S. Petitioner and his wife raised two boys who have lawful status. One of Petitioner's sons is a lawful permanent resident, and the other is a U.S. citizen. Petitioner has three U.S, citizen grandchildren who adore their "abuelito" and a lawful permanent resident brother who is on dialysis and relies on Petitioner for emotional and financial support. Petitioner is deeply loved and respected by his family. Prior to his detention, Petitioner had been employed at Concrete Solutions working as a laborer for the past five years. Petitioner paid his taxes and is a home owner. Petitioner has one sole arrest for Driving Under the Influence and a traffic violation that occurred on August 6, 2025, for which a complaint has yet to be filed. Other than this lone criminal history, Petitioner has lived an honest and productive life.

Mr. Sanchez Aparicio remains detained because the Department filed an appeal to the Board of Immigration Appeals ("BIA" or "Board"), which results in an automatic stay of his release. This denies Mr. Sanchez Aparicio the ability to post bond while his removal proceedings are pending. Furthermore, the BIA recently decided *Matter of Yajure Hurtado*, which held that "immigration judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission." 29 I&N Dec. 216, 225 (BIA 2025). The Petitioner here falls into the category of detainees to whom the BIA will not grant bond under the decision. Therefore, despite a pending BIA appeal, the BIA is certain to decide that the Petitioner is not eligible for a bond.

Both the automatic stay provision in this matter, and the Board's new interpretation of the statute is fundamentally irrational, arbitrary and capricious, and a complete deprivation of Petitioner's right to be released from custody. Due process requires that the government release Petitioner upon posting the bond in the amount of $3,500.00 unless it can show why a writ should not be issued. *Diouf v. Napolitano,* 634 F.3d 1081, 1091–92 (9th Cir. 2011) *(Diouf II)*; *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Upon judicial review of the constitutionality of the automatic stay provision and the BIA's new interpretation of the INA, Mr. Sanchez Aparicio clearly demonstrates that he is detained in violation of the law.

Mr. Sanchez Aparicio seeks to preliminarily enjoin DHS from continuing his detention and to secure his release while his case is pending throughout the entirety of his removal proceedings. Mr. Sanchez Aparicio will suffer immediate and irreparable harm if this Court

does not enjoin his continued detention, given that his continued detention violates his due process rights. *See* Fed. R. Civ. 65(b).

Moreover, Mr. Sanchez Aparicio will suffer irreparable harm, as "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984). Here, Respondent's continued deprivation of Petitioner's liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, every day that Petitioner is detained is a day of freedom Petitioner cannot get back.

Mr. Sanchez Aparicio meets the standard for a preliminary injunction. As shown in greater detail below, it is likely he will succeed on the merits of his claim in this case. Due to the Department's invocation of the automatic appeal provisions, and the BIA's new interpretation of the INA, he has been deprived of his liberty in violation of due process. Mr. Sanchez Aparicio will also be able to show irreparable and immediate harm. Lastly, the balance of equities and public interest weighs in his favor.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a 57-year-old native and citizen of Mexico. Exh. A (Notice to Appear). Petitioner last entered the United States without inspection on or about 1997 and has resided

here continuously since then. Petitioner and his wife raised two boys, who are 27 and 21 years old, both have legal status. Exh. B (U.S. Birth Certificate for Alonso Jesus Sanchez Silva; Lawful Permanent Resident card for Braulio Arturo Sanchez Silva). Petitioner has been a steadfast supporter of his lawful permanent resident brother who is incapacitated and undergoing dialysis treatment. Exh. C (LPR Card); Exh. D (Medical Records); Exh. E (Sworn Declaration from Gustavo Sanchez Aparicio). Petitioner's wife has been struggling to pay their mortgage and other household expenses and is suffering bouts of depression and anxiety since his detention. Exh. F (Sworn Declaration from Valentina Silva Caldera); Exh. G (Unpaid Mortgage Statements). Petitioner is also a loving grandfather to three (3) U.S. citizen children. Exh. H (Letter from Stephanie Romo). Petitioner is respected and admired by his entire family. Exh. I (Letters from other relatives).

Prior to his detention, Petitioner was employed by Concrete Specialty earning $23 per hour for the past five years. Exh. J (Employment Letter). Petitioner was the primary breadwinner of his family and paid for most of their household expenses. Petitioner is a homeowner and pays his taxes. *See* Exh. F.

On August 6, 2025, Petitioner was arrested in Clark County, Nevada for a misdemeanor DUI offense and traffic violation. Exh. K (Criminal Records). This is the Petitioner's only arrest in twenty-seven years and no complaint has been filed. *Id.*

Soon after his arrest, Petitioner was transferred to ICE custody. DHS served Petitioner with a Notice to Appear, initiating removal proceedings under INA § 240, 8 U.S.C. 1229a. On

August 27, 2025 Petitioner filed a bond motion. Exh. L (Bond Motion). On September 3, 2025, an Immigration Judge in Las Vegas held a custody redetermination hearing and found Petitioner not a danger to the community or a risk of flight and granted Petitioner bond in the amount of $3,500. Exh. M (IJ Decision). On September 5, 2025, DHS filed an automatic appeal via Form EOIR-43A. Exh. N (EOIR-43A). On September 17, 2025, DHS filed a Notice of Appeal (EOIR-26) to the BIA, arguing that Petitioner is an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A) and ineligible for bond. Exh. O (EOIR-26). As a result, Petitioner remains detained at Henderson Detention Center despite the Immigration Judge's order granting him a bond.

Since his detention, Petitioner has recently developed severe, uncontrolled hypertension and has not received adequate medical monitoring or timely intervention. Exh. P (Sworn Declaration of Samuel Sanchez Aparicio).

III. LEGAL BACKGROUND

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Civil detention violates the Due Process Clause except "in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citations omitted). In *Singh v. Holder*, 638 F.3d 1196, 1203-1204, the Ninth Circuit reiterated that the Supreme Court had determined that

"civil commitment for *any* purpose constitutes a significant deprivation of liberty." *Singh*, 638 F.3d at 1204. (internal citations omitted).

A. Mandatory and Discretionary Detention

Under these constitutional constraints, Congress has created a scheme for detention of noncitizens in removal proceedings. For decades, the Department and EOIR interpreted 8 U.S.C. § 1226(a) to authorize immigration judges to provide a custody redetermination hearing even though DHS could detain a noncitizen "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). In *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942, (9th Cir. 2008), the Ninth Circuit held that immigrants detained under §1226(a) are entitled to individualized bond hearings. 8 C.F.R. §1003.19(h)(3) provides that a noncitizen subject to detention must show by clear and convincing evidence that the noncitizen is not a danger to other persons or property and that the noncitizen is not a flight risk.

In contrast to § 1226(a), noncitizens who have been convicted of certain criminal convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 513 (2003). Congress added this provision by passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to address concerns that criminal noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020). The new section mandated detention for noncitizens who

were convicted of aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at 518–20.

In January 2025, Congress added a new category of noncitizens who are subject to mandatory detention with the Laken Riley Act, codified as 8 U.S.C. § 1226(c)(1)(E). The new section mandated detention for noncitizens who: (1) are inadmissible under 8 U.S.C. § 1182(a)(6)(A), 1182(a)(6)(C), or 1182(a)(7); and (2) are charged with, are arrested for, are convicted of, admit having committed, or admit committing acts that constitute the elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement office offense, or any crime that results in death or serious bodily injury to another person. § 1226(c)(1)(E).

Further, 8 U.S.C. § 1225(b) requires detaining noncitizens who (1) are subject to expedited removal under § 1225(b)(1), or (2) are "seeking admission" at the border under § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins at the Nation's borders and ports of entry).

B. Automatic Stay of Custody Order Under 8 C.F.R. § 1003.19(i)(2)

The Department has significant power in limiting the application of the IJ's order. Under 8 C.F.R. § 1003.19(i)(2), the Department can file a notice of intent to appeal a noncitizen's custody determination (Form EOIR-43), which will automatically and unilaterally stay the IJ's order authorizing the noncitizen's release on bond. This Court recently found that the automatic stay as applied in cases such as the Petitioner's violates procedural and substantive due process. *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sep. 17, 2025).

C. Applicability of Equitable Relief

Mr. Sanchez Aparicio warrants a preliminary injunction because the IJ and BIA's decisions ordering his continued detention are unlawful, and detention has already imposed irreparable hardship. A preliminary injunction is appropriate if a plaintiff can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, a temporary restraining order ("TRO") or preliminary injunction is appropriate when, "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation omitted).

Pursuant to the Federal Rules of Civil Procedure, a TRO may be issued if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certified in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b).

IV. ARGUMENT

A. This Court Has Jurisdiction.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

i. 8 U.S.C. § 1226(e) does not preclude jurisdiction.

While Section 1226(e) of the INA precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section 1226(e) "does not preclude challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 138 S. Ct. at 841.

Moreover, Section 1226(e) does not limit habeas review over constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional claims and questions of law—whether the automatic stay provision in this case and the BIA's new interpretation of the INA violate the Petitioner's right to procedural due process and substantive due process after denying him the ability to post a bond—Section 1226(e) does not preclude this Court's jurisdiction to review Petitioner's habeas petition.

ii. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.

Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review to the appropriate federal court of appeals, which would be the Ninth Circuit here. However,

where a petitioner is not seeking review of a removal order or is challenging their detention or a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.").

iii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.

Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot hear "any cause of claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g). The Supreme Court has limited application of this section to three discrete actions that an Attorney General may take: (1) the decision or action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is not a challenge to one of the three discrete events listed in *Reno*.

B. Administrative Exhaustion Is Futile and Should Be Waived.

Generally, if the exhaustion requirement is statutory, "it may be mandatory and jurisdictional, but courts have discretion to waive a prudential requirement." *Laing v. Ashcroft*, 370 F. 3d 994, 998 (9th Cir. 2004). Furthermore, this court has already recognized that

"[n]either the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Id.* (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *27; 2025 LX 460110; 2025 WL 2676082 (D. Nev. Sep. 22, 2025). Instead, the court may require prudential exhaustion under *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Prudential exhaustion may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988; 2017 U.S. App. LEXIS 19021, *22; 2017 WL 3887819.

Applying the three *Puga* factors, this court should waive the prudential exhaustion requirement. Similarly to the Petitioner in *Vazquez v. Feeley*, the Petitioner has already exhausted his administrative remedies by requesting review of his custody redetermination and has "successfully established that he should be released on bond." *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *28; 2025 LX 460110; 2025 WL 2676082. Since the Petitioner is asking the court to enforce the order, it is illogical to ask the Petitioner to appeal his order and wait for the BIA to affirm the IJ's decision. *Id.*

It would also be futile to wait for the BIA to decide whether the interpretation of 8 U.S.C. §1252 (b)(2) is applicable to Petitioner versus 8 U.S.C. §1226(a) because the BIA has already decided the issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

There is widespread agreement among the federal courts that Matter of Yajure Hurtado's new interpretation violates the INA and is unconstitutional. This Court recently found in *Vazquez v. Feeley* that § 1226, not §1225, applies to noncitizens such as the Petitioner. That decision, along with at least two dozen other federal court decisions, have emphasized that the Department's interpretation of § 1225 is erroneous for several reasons, such as (1) the plain meaning of the INA provisions in the context of recent amendments, (2) legislative history, and (3) longstanding agency practice. This Court found that "the phrases 'applicants for admission' and 'seeking admission,' taken together, are limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing in the U.S. for years or decades." *Vazquez v. Feeley*, 2025 WL 2676082, at *13. Several district courts in the Ninth Circuit and throughout the country have found equally. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025).

Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court

found that Congress had a similar intent when it passed the IRRIRA and recognizes the backdrop of precedential cases that highlight a distinction between noncitizens arriving at the border and those who have resided in the country for an extended period of time. *Id.* at *15. The Court also recognized that the Laken Riley Act was passed against a "backdrop of longstanding agency practice applying § 1226(a) to inadmissible noncitizens already residing in the country." *Id.* at *16. Using traditional interpretive tools, courts should construe statutes to work in harmony with what has come before. *Id.*

With respect to the automatic stay provision under 8 C.F.R. § 1003.19(i)(2), no alternative administrative remedy exists to challenge the constitutionality of this regulation. The Board of Immigration Appeals lacks authority to adjudicate constitutional challenges to immigration laws or procedures. *See Matter of G.K.*, 26 I&N Dec. 88, 96–97 (BIA 2013). Rather, constitutional questions concerning such regulations fall within the jurisdiction of the federal courts for review.

More importantly, each day that Petitioner remains in unconstitutional detention constitutes irreparable harm, which itself provides good cause to excuse the exhaustion requirement. Accordingly, this Court should adopt the reasoning of the majority of federal district courts, which have waived exhaustion on the basis of such irreparable injury. *See, e.g.*, *Feeley v. Vazquez*, 2025 WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Sanchez Roman v. Noem*, No. 25-CV-01684, 2025

WL 2710211 (D. Nev. Sep. 23, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025).

Without intervention, Petitioner will remain detained for months until the BIA issues a decision—one that will almost certainly be adverse to him.

C. Mr. Sanchez Aparicio Is Likely to Succeed in Showing That His Detention Violates Due Process or There Is a Serious Question

A temporary restraining order is appropriate if a petitioner can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's alternative "sliding scale" approach, a temporary restraining order is appropriate if "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner's due process claims satisfy these standards.

Petitioner asserts that his detention violates due process because (1) the automatic stay provision at 8 C.F.R. §1003.19(i)(2) violates his procedural and substantive due process rights and (2) the BIA's new interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section 1226(a) is incorrect and violates the INA.

i. Automatic stay at 8 C.F.R. §1003.19(i)(2)

The automatic stay provision at 8 C.F.R. § 1003.19(i)(2) has been a source of concern since its implementation, as it grants the Department unilateral authority to suspend an Immigration Judge's decision and continue an individual's detention, even when the Judge has lawfully ordered that individual's release on bond. *Ashley v. Ridge*, 288 F. Supp 2d 662, 673 (D.N.J. 2003)(finding that the "continued detention of Petitioner without judicial review of the automatic stay of the bail determination, despite the Immigration Judge's decision that he be released on bond, violated Petitioner's procedural and substantive due process constitutional rights"); *Zabadi v. Chertoff*, No 05-CV-1796 (N.D. Cal. June 17, 2005)(finding the automatic stay provision unconstitutional); *Zavala v. Ridge*, 310 F. Supp 2d 1071(N.D. Cal. 2004)(same).

Most recently, numerous federal courts have held that detaining individuals like Petitioner under the automatic stay provision constitutes a violation of their procedural and due process rights. *Günaydin v. Trump*, 784 F. Supp. 3d 1175; 2025 U.S. Dist. LEXIS 99237, *12; 2025 LX 25539; 2025 WL 1459154 (finding the automatic stay provision violates Petitioner's due process and describing the history of the automatic stay provision and its problems); see also, *Reynosa Jacinto v. Trump*, 4:25-cv-03161-JFB-RCC at *7, 2025 U.S. Dist. LEXIS 160314 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025);*Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *57; 2025 LX 460110; 2025 WL 2676082.

To determine whether Petitioner's continued detention violates his procedural due process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976).

Here the court weighs the following factors: (1) "the private interest that will be affected by the official action"; (2) "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 (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

In this case, Petitioner's private interest is his freedom— "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs heavily in Petitioner's favor, as the automatic stay provision deprives him of his fundamental liberty interest in freedom from incarceration. In addition, continued detention inflicts further harms, including separation from his children, grandchildren, wife, sibling, and community; the loss of employment; the denial of adequate healthcare; the invasion of his privacy; and the impairment of his right to counsel due to the obstacles in maintaining communication and access. Whereas the government's interest to keep the Petitioner detained throughout his appeal is not as weighty.

In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to be free from incarceration, the court must review if the invocation of the automatic stay

procedure increases that risk. Here, Petitioner will most certainly be at risk of erroneous deprivation of his liberty because he was found not to be a danger to the community or a risk of flight, and prevailed before the Immigration Judge to be released upon posting a bond in the amount of $3,500, and the Department has the unilateral power to override this decision. Recently, this court found "this unchecked power vested in DHS to prolong an individual's detention cannot in any circumstance be a 'carefully limited exception' to an individual's right to liberty as required by the Due Process Clause""). *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *56; 2025 LX 460110; 2025 WL 2676082 (citing Salerno, 481 U.S. at 755).

Other courts reviewing this issue have found that a regulation permitting the losing party to stay a decision allowing the Petitioner to remain detained results in an increased risk of erroneous deprivation of his liberty interest. *See Ashley*. 288 Supp 2d at 671 ("It produces a patently unfair situation by 'taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified.'") *see also Reynosa Jacinto v. Trump*, 25-CV-03161-JFB-RCC at *7, 2025 U.S. Dist. LEXIS 160314 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025); *Silva v. Larose*, No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025).

As to the last factor, the government's interest and burden of additional or substitute procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private

liberty interests and risk of erroneous deprivation against the government's interest in enforcing the automatic stay regulation, which includes the use of additional or substitute procedural requirements.

While Petitioner recognizes that the government has an important interest in ensuring that persons in removal proceedings do not commit crimes or abscond from the law during their proceedings, that interest has already been satisfied in this matter. The Immigration Judge conducted an individualized assessment of Petitioner's criminal record and personal history and determined that Petitioner poses neither a danger to the community nor a risk of flight. Moreover, as the court has recognized, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *59, 2025 LX 460110, 2025 WL 2676082 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). Perhaps there are other non-legitimate interests in keeping Petitioner in mandatory detention—which paradoxically creates unnecessary financial and administrative burdens for the government itself. See *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *41-42; 2025 LX 303800; 2025 WL 2337099 (citing *Vasquez Perdomo v. Noem*, F. Supp. 3d, No. 2:25-cv-056050, 2025 WL 1915964, at *5 (C.D. Cal. July 11, 2025) (noting "[t]he government's only apparent interest in taking Rosado into custody, [*42] which actually places an additional fiscal and administrative burden on the government, is to fulfill a quota of arrests, i.e., 3,000

immigration arrests per day, set by the current administration."). Indeed, keeping Petitioner detained is far more expensive than allowing him to be released on bond. See *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *61; 2025 LX 460110; 2025 WL 2676082 (citing *Hernandez v. Sessions*, 872 F.3d 976, 996; 2017 U.S. App. LEXIS 19021, *40; 2017 WL 3887819) ("The costs to the public of immigration detention are "staggering": $158 each day per detainee, amounting to a total daily cost of $6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.") Therefore, this factor weighs in favor of finding that Petitioner's due process rights have been violated. Since all three factors of the *Mathews* test weigh in favor or Petitioner, he has established a likelihood of success on the merits.

D. Petitioner Will Suffer Irreparable Harm If He Is Not Released from Detention.

Petitioner will suffer two significant harms if a temporary restraining order is not issued in this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting from his unlawful detention and (2) the severe and continuing harms that flow from Petitioner's continued unlawful detention, including the breakdown of family ties, loss of income and employment, threat of losing the family home, and deterioration of Petitioner's physical and mental health.

i. Constitutional Violations

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)

(quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Further, as the Eleventh Circuit has held, the "unnecessary deprivation of liberty clearly constitutes irreparable harm." *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1998). Here, Respondent's continued deprivation of Petitioner's liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, each day of confinement is a day of freedom forever taken from Petitioner.

ii. Increased Risk of Health Concerns

Petitioner's health is at risk of serious harm if he remains in detention. *See* Exh. O. He had no prior history of serious illness, but under the stress and deprivation of continued confinement, he began suffering severe headaches, recurrent dizziness, and gait instability. *Id.* Only a week later after his continuing complaints, he was he seen by a nurse, and then told his blood pressure was dangerously elevated and that he faced an acute risk of stroke if not treated

immediately. *Id.* Only days after that, was he finally prescribed medication. *Id.* Although he reports some relief, he is far from restored to his previous health status.

Uncontrolled hypertension is well-established to cause a cascade of life-threatening complications—stroke, myocardial infarction, heart failure, renal failure, vascular damage, and even death.[1] In the correctional setting, the stakes are high, and any delay or denial of care can convert an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical care in jails and prisons is a well-documented systemic failure. Incarcerated persons often endure delays, missed appointments, staffing shortages, and willful indifference by correctional medical staff.[2] Therefore it is not speculative to fear that Petitioner's health will deteriorate rapidly while he remains detained.

Petitioner's detention has caused profound and compounding harm to his entire family. His wife is struggling to meet their basic financial obligations and lives in constant fear of losing their home. The loss of Petitioner's income has left the family in severe financial distress, forcing them to make impossible choices between essential expenses. Beyond the financial hardship, the emotional toll has been devastating. Petitioner has been completely separated from his wife, children, and grandchildren, unable to see or hold them since his

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[1] American Heart Association, Health Threats from High Blood Pressure (2024), https://www.heart.org/en/health-topics/high-blood-pressure/health-threats-from-high-blood-pressure.

[2] Homer Venters, The Health Crisis of U.S. Jails and Prisons, New Eng. J. Med. 2259 (2022), https://www.nejm.org/doi/full/10.1056/NEJMms2211252

incarceration. His absence has created a deep void in the family. His grandchildren constantly ask when their grandfather will come home.

The suffering extends beyond his immediate household. Petitioner's brother, who is confined to a wheelchair and depends on dialysis treatments several times a week, relied on Petitioner for daily companionship and emotional support. Without him, his brother's physical and mental health has also been affected. In short, Petitioner's detention has this family's stability, causing pain, anxiety, and hardship that worsen with every passing day he remains in detention.

E. Equitable Considerations and Public Interest Favor Petitioner's Release.

The last two factors under *Winter* "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S. LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner. Petitioner faces irreparable harm to his constitutional rights, to his health and other harms that flow from ongoing detention.

Moreover, the government's interest in Petitioner's continued detention is minimal and pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here, Petitioner remains in custody despite the fact that he was found by the Immigration Judge not to be a danger or a flight risk. His continued detention not only violates his constitutional rights but also causes direct suffering to him, his family and his community. As the Ninth Circuit has regularly held, there is no harm to the government when a court prevents the

government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

Finally, the temporary restraining order sought here is in the public interest. The public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) ("[I]t is always in the public interest to protect constitutional rights."). Moreover, the public has an interest in accurate determinations in all legal proceedings, including in the decision of whether to detain individuals during their immigration cases. The public is also served by avoiding excessive expense on detention and ensuring that the government does not expend its resources to detain individuals unnecessarily.

V. CONCLUSION

WHEREFORE, and for the foregoing reasons, Petitioner asserts that his continued detention is unlawful, and he respectfully requests that this Court grant his request for a temporary restraining order and order his immediate release from custody, upon posting a bond in the amount of $3,500 while his removal proceedings are pending.

Dated: October 8, 2025
/S/ Sylvia L. Esparza

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