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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA (Las Vegas)**
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| <p>10 SAMUEL SANCHEZ APARICIO 11 Petitioner, 12 vs. 13 KRISTI NOEM, Acting Secretary of the 14 United States Department of Homeland 15 Security; 16 PAM BONDI, Attorney General of the 17 United States; 18 MICHAEL V. BERNACKE, Salt Lake 19 City Field Office Director, Enforcement 20 and Removal Operations, U.S. Immigration 21 and Customs Enforcement; 22 REGGIE RADER, Henderson Police 23 Chief; and 24 MARIA BELLOW, Corrections Captain. 25 26 27 28 Respondents.</p> | <p>10 CASE NO. 2:25-cv-01919-RFB-DJA 11 Agency No.  12 13 REPLY TO FEDERAL 14 RESPONDENTS' OPPOSITION TO 15 PETITION FOR WRIT OF HABEAS 16 CORPUS AND COMPLAINT FOR 17 DECLARATORY AND INJUNCTIVE 18 RELIEF</p> |
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I. 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. Further, the Respondents make the same arguments with respect to jurisdiction that this Court has rejected now on several occasions. *See, e.g., E.C. v. Noem*, No. 25-CV-01789, 2025 WL 2916264, at *8 (D. Nev. Oct. 14, 2025); *Roman v. Noem*, No. 25-CV-01684, 2025 WL 2710211, at *5; *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082, at *13 (D. Nev. Sep. 17, 2025).

i. 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.”). Further, Respondents concede that 8 U.S.C. § 1252(b)(9) does “not bar claims challenging the conditions or *scope of detention* of foreign nationals in removal proceedings.” Respondent’s Response in Opposition, at 10 (emphasis added). Respondents argue that § 1252(b)(9) should be read to bar all claims

1 “challenging the decision to detain.” *Id.* This reading contradicts the clear language of the
2 statute as the decision to detain is unequivocally a part of the “scope of detention.”

3 **ii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.**

4 Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot
5 hear “any cause of claim by or on behalf of any alien arising from the decision or action by the
6 Attorney General to commence proceedings, adjudicate cases, or execute removal orders
7 against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of
8 this section to three discrete actions that an Attorney General may take: (1) the decision or
9 action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the
10 decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*,
11 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is
12 not a challenge to one of the three discrete events listed in *Reno*.

13 **iii. 8 U.S.C. § 1226(e) does not preclude jurisdiction.**

14 While Section 1226(e) of the INA precludes an alien from challenging a discretionary
15 judgment by the Attorney General or a decision that the Attorney General has made regarding
16 their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section
17 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s
18 detention without bail.” *Jennings*, 138 S. Ct. at 841.

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

3 **B. ADMINISTRATIVE EXHAUSTION IS FUTILE AND SHOULD BE WAIVED.**

4 It would be futile to wait for the BIA to decide whether the interpretation of 8 U.S.C.
5 §1252 (b)(2) is applicable to Petitioner versus 8 U.S.C. §1226(a) because the BIA has already
6 decided the issue in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Here, the
7 government’s position is inherently contradictory. On one hand, it acknowledges that the
8 BIA’s published decision “is the law of the land” Respondent’s Response in Opposition, at 16;
9 yet on the other, it insists that Petitioner must nevertheless pursue his BIA appeal to learn the
10 outcome—an outcome that is already predetermined by that very binding precedent.
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12 Even where petitioners have not yet requested a custody redetermination hearing before
13 an IJ, this Court has granted Habeas Corpus and injunctive relief. *See, e.g.*, 2025 WL
14 2916264 (“[R]equiring Petitioner to request a bond hearing only to be denied one pursuant to
15 *Hurtado* would be an exercise in futility.)

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

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10 Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of
11 migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to
12 noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court
13 found that Congress had a similar intent when it passed the IIRIRA and recognizes the
14 backdrop of precedential cases that highlight a distinction between noncitizens arriving at the
15 border and those who have resided in the country for an extended period of time. *Id.* at *15.
16 The Court also recognized that the Laken Riley Act was passed against a “backdrop of
17 longstanding agency practice applying § 1226(a) to inadmissible noncitizens already residing
18 in the country.” *Id.* at *16. Using traditional interpretive tools, courts should construe statutes
19 to work in harmony with what has come before. *Id.*

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21 With respect to the automatic stay provision under 8 C.F.R. § 1003.19(i)(2), no
22 alternative administrative remedy exists to challenge the constitutionality of this regulation.
23 The Board of Immigration Appeals lacks authority to adjudicate constitutional challenges to
24 immigration laws or procedures. *See Matter of G.K.*, 26 I&N Dec. 88, 96–97 (BIA 2013).

1 Rather, constitutional questions concerning such regulations fall within the jurisdiction of the
2 federal courts for review.

3 Whereas in *E.C.*, the Federal Respondents argued that the petitioner had not exhausted
4 administrative remedies because he had not requested a bond hearing, the Petitioner here
5 already had a bond hearing and was granted bond of \$3,500. The Petitioner here has exhausted
6 more administrative remedies than other petitioners that this Court granted Habeas Corpus and
7 injunctive relief. Each day that Petitioner remains in unconstitutional detention constitutes
8 irreparable harm, which itself provides good cause to excuse the exhaustion requirement.
9 Accordingly, this Court should adopt its previous reasoning in *E.C.* and that of the majority of
10 federal district courts, which have waived exhaustion on the basis of such irreparable injury.

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12 *See, e.g., E.C.*, 2025 WL 2916264, at *8; *Vazquez v. Feeley*, 2025 WL 2676082; *Guerrero*
13 *Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Roman v.*
14 *Noem*, 2025 WL 2710211; *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL
15 2591530 (C.D. Cal. Sep. 8, 2025). Without intervention, Petitioner will remain detained for
16 months until the BIA issues a decision—one that will almost certainly be adverse to him.

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19 **C. MR. SANCHEZ APARICIO IS LIKELY TO SUCCEED IN SHOWING
20 THAT HIS DETENTION VIOLATES DUE PROCESS OR THERE IS A
21 SERIOUS QUESTION**

22 A temporary restraining order is appropriate if a petitioner can show that: (1) he is “likely
23 to succeed on the merits”; (2) he “is likely to suffer irreparable harm in the absence of preliminary
24 relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the public
25 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit’s
26 alternative “sliding scale” approach, a temporary restraining order is appropriate if “a plaintiff
27 demonstrates . . . that serious questions going to the merits were raised and the balance of
28 hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d

1 1127, 1134–35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner’s due process
2 claims satisfy these standards.

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

9 The automatic stay provision at 8 C.F.R. § 1003.19(i)(2) has been a source of concern since
10 its implementation, as it grants the Department unilateral authority to suspend an Immigration
11 Judge’s decision and continue an individual’s detention, even when the Judge has lawfully ordered
12 that individual’s release on bond. *Ashley v. Ridge*, 288 F. Supp 2d 662, 673 (D.N.J. 2003)(finding
13 that the “continued detention of Petitioner without judicial review of the automatic stay of the bail
14 determination, despite the Immigration Judge’s decision that he be released on bond, violated
15 Petitioner’s procedural and substantive due process constitutional rights”); *Zabadi v. Chertoff*, No.
16 05-CV-1796, 2005 WL 1514122 (N.D. Cal. June 17, 2005) (finding the automatic stay provision
17 unconstitutional); *Zavala v. Ridge*, 310 F. Supp 2d 1071(N.D. Cal. 2004) (same).

18 Most recently, numerous federal courts, including this Court, have held that detaining
19 individuals like Petitioner under the automatic stay provision constitutes a violation of their
20 procedural and due process rights, which the government fails to address or acknowledge. *Vazquez*
21 *v. Feeley*, 2025 WL 2676082, *16; *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (finding the
22 automatic stay provision violates Petitioner’s due process and describing the history of the
23 automatic stay provision and its problems); see also, *Reynosa Jacinto v. Trump*, No. 25-CV-03161,
24 2025 U.S. Dist. LEXIS 160314, at *7 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, No. 25-CV-
25 3142, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025).

26 Furthermore, the government’s claim that the automatic stay is justified to prevent
27 Petitioner from fleeing directly contradicts the record. The Immigration Judge has already made
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1 that determination, evaluating Petitioner's circumstances and concluded that he poses no flight
2 risk, granting him a bond accordingly. Therefore, the government's argument in this regard is
3 baseless.

4 To determine whether Petitioner's continued detention violates his procedural due process,
5 the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here the
6 court weighs the following factors: (1) "the private interest that will be affected by the official
7 action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and
8 the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the
9 Government's interest, including the function involved and the fiscal and administrative burdens
10 that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

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

22 In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to
23 be free from incarceration, the court must review if the invocation of the automatic stay procedure
24 increases that risk. Here, Petitioner will most certainly be at risk of erroneous deprivation of his
25 liberty because he was found not to be a danger to the community or a risk of flight, and prevailed
26 before the Immigration Judge to be released upon posting a bond in the amount of \$3,500, and the
27 Department has the unilateral power to override this decision. Recently, this court found "this

1 unchecked power vested in DHS to prolong an individual's detention cannot in any circumstance
2 be a 'carefully limited exception' to an individual's right to liberty as required by the Due Process
3 Clause'"). *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *56; 2025 LX 460110; 2025 WL
4 2676082 (citing *Salerno*, 481 U.S. at 755).

5 Other courts reviewing this issue have found that a regulation permitting the losing party
6 to stay a decision allowing the Petitioner to remain detained results in an increased risk of
7 erroneous deprivation of his liberty interest. *See Ashley*, 288 Supp 2d at 671 ("It produces a
8 patently unfair situation by 'taking the stay decision out of the hands of the judges altogether and
9 giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing
10 that detention is justified.'") *see also Reynosa Jacinto v. Trump*, 25-CV-03161-JFB-RCC at *7,
11 2025 U.S. Dist. LEXIS 160314 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142
12 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025);
13 *Silva v. Larose*, No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025).

14 As to the last factor, the government's interest and burden of additional or substitute
15 procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private
16 liberty interests and risk of erroneous deprivation against the government's interest in enforcing
17 the automatic stay regulation, which includes the use of additional or substitute procedural
18 requirements.

19 **D. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS NOT
20 RELEASED FROM DETENTION.**

21 Petitioner will suffer two significant harms if a temporary restraining order is not issued in
22 this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting from
23 his unlawful detention, and (2) the harms that flow from the unlawful and continuing detention
24 such as loss of family, loss of employment, loss of home, and risk to Petitioner's health.

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1 **1. Constitutional Violations**

2 The government mischaracterizes Petitioner's argument. Petitioner does not claim that
3 mere detention constitutes irreparable injury, nor does he challenge a bond denial by an
4 Immigration Judge. Rather, Petitioner asserts that the continued deprivation of his liberty after
5 being granted bond—in clear violation of his constitutional rights—is itself the irreparable harm.
6 "It is well established that the deprivation of constitutional rights 'unquestionably constitutes
7 irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v.*
8 *Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n alleged
9 constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc.*
10 *v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General*
11 *Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991)
12 (recognizing presumption of irreparable harm when constitutional infringement alleged); *see also*
13 *Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a
14 constitutional right is involved, most courts hold that no further showing of irreparable injury is
15 necessary."). Further, as the Eleventh Circuit has held, the "unnecessary deprivation of liberty
16 clearly constitutes irreparable harm." *United States v. Bogle*, 855 F.2d 707, 710–11 (11th Cir.
17 1998). Here, Respondent's continued deprivation of Petitioner's liberty violates Petitioner's due
18 process rights and constitutes irreparable injury. Indeed, each day of confinement is a day of
19 freedom forever taken from Petitioner.

20 **2. Increased Risk of Health Concerns**

21 Petitioner's health is in grave risk of serious harm if he remains in detention. He has
22 recently developed severe, uncontrolled hypertension and has not received adequate medical
23 monitoring or timely intervention. Exh. P (Affidavit of Petitioner). He had no prior history of
24 serious illness, but under the stress and deprivation of continued confinement, he began suffering
25 severe headaches, recurrent dizziness, and gait instability. *Id.* Only a week later after his continuing
26 complaints, he was seen by a nurse, and then told his blood pressure was dangerously elevated
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1 and that he faced an acute risk of stroke if not treated immediately. *Id.* Only days after that, was
2 he finally prescribed medication. *Id.* Although he reports some relief, he is far from restored to his
3 previous health status.

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

12 **E. EQUITABLE CONSIDERATIONS AND PUBLIC INTEREST FAVOR**
13 **PETITIONER’S RELEASE.**

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

19 Moreover, the government’s interest in Petitioner’s continued detention is minimal and
20 pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here,
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24 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>.

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

1 Petitioner remains in custody despite the fact that he was found by the Immigration Judge not to
2 be a danger or a flight risk. His continued detention not only violates his constitutional rights but
3 also causes direct suffering to him, his family and his community. As the Ninth Circuit has
4 regularly held, there is no harm to the government when a court prevents the government from
5 engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013);
6 *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

7 Finally, the temporary restraining order sought here is in the public interest. The public has
8 an interest in upholding constitutional rights and the Respondents know that the “administrative
9 process” is not going to correct itself. *See Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
10 (“Generally, public interest concerns are implicated when a constitutional right has been violated,
11 because all citizens have a stake in upholding the Constitution.”); *Phelps-Roper v. Nixon*, 545 F.3d
12 685, 690 (8th Cir. 2008) (“[I]t is always in the public interest to protect constitutional rights.”).
13 Moreover, the public has an interest in accurate determinations in all legal proceedings, including
14 in the decision of whether to detain individuals during their immigration cases. The public is also
15 served by avoiding excessive expense on detention and ensuring that the government does not
16 expend its resources to detain individuals unnecessarily.

17 II. CONCLUSION

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

23 Respectfully submitted this 22nd day of October 2025.

24
25 /s/ Sylvia L. Esparza
26 Sylvia L. Esparza, Esq.
27 Attorney for Petitioner