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Andres Barrera Lopez

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

Andres Barrera Lopez, Alien # [redacted]

[redacted]

Petitioner,

v.

Pamela Bondi, in her official capacity as Attorney General;

U.S. Department of Justice;

Kristi Noem, in her official capacity as Secretary of the Department of Homeland Security;

U.S. Department of Homeland Security;

David Rivas, in his official capacity as Warden of San Luis Regional Detention Facility;

John Cantu, in his official capacity as ICE Field Office Director,

Respondents.

Case No.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

HEARING REQUESTED

I. INTRODUCTION

On October 15, 2025, Andres Barrera Lopez (Petitioner), filed a petition for a writ of habeas corpus challenging his unlawful detention.

II. NOTICE TO RESPONDENTS

Undersigned counsel Sabrina Damast emailed counsel for Respondents, Katherine Branch and Theo Nickerson, on October 15, 2025, to provide notice of this motion. *See* Exhibit E.

III. FACTUAL BACKGROUND

Petitioner entered the United States in approximately October 2000. In approximately 2009, he departed the United States, and he returned on or about May 10, 2013. He has resided continuously in the United States since that time.

Petitioner is married to a U.S. citizen, Selena Jazmin Rodriguez, and he has seven children: Andrea Yeraldin (26 years old – currently lives in Mexico), Brayan (24 years old – currently in Mexico), Elizabeth (22 years old – U.S. citizen), C[redacted] (age 15 years old – lawful permanent resident), K[redacted] (13 years old – lawful permanent resident), A[redacted] (10 years old – U.S. citizen), and S[redacted] (2 years old – U.S. citizen). *See* Exhibit D (filed with habeas petition). Petitioner's father, Felipe Barrera Bibian, is a lawful permanent resident. *Id.* His wife, children, and father reside in Oxnard, California. He also has one U.S.-citizen

sibling (Liliana Barrera Lopez) and one lawful permanent resident sibling (Andriana Vargas).

Prior to his detention, Petitioner was gainfully employed as a maintenance worker for Arts Labor Services in Camarillo, California. He has worked for the same employer for over 15 years. Petitioner has no criminal record. He was detained by ICE during a workplace raid on or about July 10, 2025. He is being housed at the San Luis Regional Detention Center in San Luis, Arizona.

The Department of Homeland Security (DHS) subsequently filed a Notice to Appear in the Otay Mesa Immigration Court, commencing removal proceedings against Petitioner and charging him with being present in the United States without admission or parole pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). *See* Exhibit A.

On August 12, 2025, Immigration Judge (IJ) Jose Penalosa, Jr., granted Petitioner a bond in the amount of $1,500. *See* Exhibit B. The Department of Homeland Security (DHS) subsequently filed a stay of that order pursuant to 8 C.F.R. § 1003.19(i)(2). *See* Exhibit C. The DHS later appealed the bond decision to the Board of Immigration Appeals. The filing of the stay prevented Petitioner from posting bond and being released from ICE custody, despite his wife attempting to pay the bond at least six times.

IV. ARGUMENT

A temporary restraining order is governed by a four-factor test. This Court must consider whether Petitioner has shown: (1) a likelihood of success on the merits, (2) that he is likely to suffer irreparable harm in the absence of such relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); *see also Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014). If Petitioner can demonstrate serious questions going to the merits of his claim – a lesser showing than a likelihood of success on the merits – and the balance of hardship tips sharply in his favor, an injunction may be issued, assuming the other two *Winter* factors have been met. *Friends of the Wild Swan*, 767 F.3d at 942.

A temporary restraining order preserves the *status quo ante litem*, which refers to the "last uncontested status which preceded the pending controversy." *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th Cir. 2024); *Shilling v. United States*, 2025 WL 926866, at *11 (W.D. Wash. Mar. 27, 2025) (granting preliminary injunction).

Here, Petitioner meets both the irreparable harm and likelihood of success prongs, and the requested relief is not overly burdensome on Respondents. Accordingly, Petitioner merits issuance of a TRO.

A. Petitioner Has Shown he is Likely to Succeed on the Merits of his Claim.

Petitioner's ongoing detention is unlawful because he was granted a bond by an immigration judge, but the DHS has invoked an unlawful regulation - 8 C.F.R. § 1003.19(i)(2) – to prevent him from posting that bond and being released from their custody. In addition, Petitioner is detained under 8 U.S.C. § 1226(a), and any argument that he is detained under 8 U.S.C. § 1225(b) is without merit and cannot be used to justify his continued detention or any future re-detention.

i. The Automatic Stay Provision at 8 C.F.R. § 1003.19(i)(2) is *Ultra Vires* and Violates Petitioner's Due Process Rights

An immigration judge ordered Petitioner's release from custody, conditioned on the payment of a $1500 bond. *See* Exhibit B. However, because the DHS filed an EOIR 43, Notice of ICE Intent to Appeal Custody Redetermination, Petitioner has been blocked from paying that bond and has remained in ICE custody for more than three months.

The regulation at 8 C.F.R. § 1003.19(i)(2) provides that "[i]n any case in which DHS has determined that an alien should not be released . . . any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order." This regulation, which permits the DHS to unilaterally block the effectiveness of a bond

order issued by an immigration judge (a designee of the Attorney General) is in direct conflict with 8 U.S.C. § 1226(a)(2)(A), which grants the Attorney General the authority to release a non-citizen on a monetary bond of at least $1500. The regulation, thus, is *ultra vires*, insomuch as it eliminates the discretionary authority conferred on immigration judges by Congress to release non-citizens on bond and exceeds the statutory authority conferred on DHS. *See e.g.*, *Zabadi v. Chertoff*, 2005 WL 151422, *1 (N.D. Ca. June 17, 2005); *see also Jacinto v. Trump*, --- F.Supp.3d ----, 2025 WL 2402271, *5 (D. Neb. Aug. 19, 2025) ("By permitting DHS to unilaterally extend the detention of an individual, in contravention of an agent (the IJ) properly delegated the authority to make such a determination, 8 C.F.R. § 1003.19(i)(2) exceeds the statutory authority Congress gave to the Attorney General."); *Zavala v. Ridge*, 310 F.Supp.2d 1071, 1079 (N.D. Ca. March 1, 2004); *Campos Leon v. Forestal*, 2025 WL 2694763, *4 (S.D. Ind. Sept. 22, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 at *13, 14, 15 (D. Md. Aug. 24, 2025) (discretionary stay regulation is ultra vires because it "renders both the discretionary nature of Petitioner's detention and the IJ's authority a nullity").

In addition, the automatic stay regulation violates Petitioner's due process rights. Generally, "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990). Non-citizens have a recognized liberty interest in being free from

government detention. *See Gunaydin v. Trump*, 784 F.Supp.3d 1175, 1187 (D. Minn. May 21, 2025) (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

Once a non-citizen has a protected liberty interest, the *Mathews* test applies to determine what procedural protections are due before immigration officials can re-detain the non-citizen. Under that test, this Court must weigh: (1) the private interested affected; (2) the risk of erroneous deprivation and probable value of procedural safeguards; and (3) the government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

First, the private interest at stake is clearly weighty – Petitioner's liberty has been severely curtailed for three months as he has remained in ICE custody despite being ordered released on a bond by an immigration judge.

Second, the risk of erroneous deprivation is high, as the DHS was not required to make even a prima facie showing that the IJ's bond decision was erroneous before unilaterally blocking it from going into effect. "[T]he challenged regulation permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions. Such a rule is anomalous in our legal system[]." *Gunaydin*, 784 F.Supp.3d at 1187.

Third, Respondents have minimal interest in keeping Petitioner detained pending appeal of the IJ's bond order. The Supreme Court has recognized only

two permissible non-punitive purposes for immigration detention: ensuring a noncitizen's appearance at immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003). But an IJ has already determined that Petitioner is neither a flight risk nor a danger to the community, undercutting Respondents' asserted interest in keeping him detained. Respondents may argue that they have an interest in keeping Petitioner detained pending appeal of the bond order given the intervening precedent in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). However, for the reasons discussed below, this decision is in direct conflict with the statute and regulations, and thus, is an impermissible interpretation of DHS's detention authority.

Accordingly, all three *Mathews* factors weigh in Petitioner's favor, and this Court should find that the automatic stay provision is both ultra vires and violates Petitioner's due process rights.

ii. Petitioner is Detained under 8 U.S.C. § 1226(a)

On September 5, 2025, the Board of Immigration Appeals published its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), in which the Board determined that IJs lack jurisdiction to grant bond to any non-citizen who entered the United States without admission because such non-citizens are detained

under 8 U.S.C. § 1225(b) rather than under 8 U.S.C. § 1226(a). The IJ noted this intervening authority in his bond memorandum, though he also provided an analysis as to why he believed (prior to the issuance of the *Yajure Hurtado* decision) that Petitioner was detained under 8 U.S.C. § 1226(a), rather 8 U.S.C. § 1225(b). *See* Exhibit B.

Section 1225(b)(2)(A) (which provides for mandatory detention of certain "applicants for admission") does not apply to individuals like Petitioner who previously entered and are now present and residing in the United States. Instead, such individuals are subject to 8 U.S.C. § 1226(a), which allows for release on conditional parole or bond. That statute expressly applies to people who are detained pending a decision on whether to be remove them, subject to specific carveouts (not applicable to Petitioner) in 8 U.S.C. § 1226(c).

Notably, recent amendments to 8 U.S.C. § 1226 added by the Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025) reinforce that individuals who entered without inspection and are present without admission are detained pursuant to 8 U.S.C. § 1226. Specifically, pursuant to the LRA amendments, individuals who are charged with removability under 8 U.S.C. § 1226(a)(6)(i) (present without admission or parole) and who have been arrested, charged with, or convicted of certain crimes, are subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(E).

It would have been unnecessary to add this provision – which acts an exception to the general rule that non-citizens present without admission or parole (like Petitioner) are eligible for release on bond if those non-citizens have certain criminal history – if all non-citizens present without admission were subject to mandatory detention under 8 U.S.C. § 1225(b)(2), even if they have no arrest history. *See e.g.*, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*, 559 U.S. 393, 400 (2010) (noting that Congress' decision to carve out certain exceptions to the class action rules would be unnecessary if the default rules did not permit class actions in the first place).

The decision in *Yujare Hurtado* also conflicts with the regulations that specify which non-citizens are ineligible for bond. 8 C.F.R. § 1003.19(h)(2) lists five categories of noncitizens who may not receive bond: (1) respondents in exclusion proceedings, § 1003.19(h)(2)(i)(A); (2) "arriving aliens" in removal proceedings, § 1003.19(h)(2)(i)(B); (3) noncitizens described in section 237(a)(4) of the INA, § 1003.19(h)(2)(i)(C); (4) noncitizens subject to mandatory detention under section 236(c)(1) of the INA, § 1003.19(h)(2)(i)(D); and (5) noncitizens in deportation proceedings under former section 242(a)(2) of the INA, § 1003.19(h)(2)(i)(E). Individuals who entered without being admitted, like Petitioner, do not fall into any of these categories.

The decision to allow IJs to grant bond to inadmissible noncitizens (except for arriving aliens) was deliberately made by then-Attorney General Janet Reno following the passage of the IIRIRA. In a proposed rule issued in early 1997, the Justice Department provided that all "[i]nadmissible aliens in removal proceedings" would be ineligible for bond. *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to "[a]rriving aliens, as described in § 1.1(q) of this chapter, including aliens paroled pursuant to section 212(d)(5) of the INA, in removal proceedings."[1] *Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10361 (March 6, 1997). As the Attorney General explained, "[t]he effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." *Id.* at 10323.

Relatedly, the Attorney General also specifically considered how to define the term "arriving alien." In the proposed rule, the Attorney General described the definition of "arriving alien" as applying to "aliens arriving at a port-of-entry,

[1] This provision was originally promulgated as 8 C.F.R. 236.1(c)(5)(i) and was later transferred to 8 C.F.R. 1003.19(h)(2)(i)(B).

aliens interdicted at sea, and aliens previously paroled upon arrival." 62 Fed. Reg. at 445. The Attorney General stated that the phrase potentially "could also include other classes of aliens, e.g., those apprehended crossing a land border between ports-of-entry," and she invited comments on the proper scope of the definition. *Id.* The Attorney General received numerous comments in response, including from those who suggested expanding the definition to include noncitizens who had been present in the country for less than 24 hours without being inspected or admitted, or who were apprehended within a certain distance of the border. 62 Fed. Reg. at 10303. But the Attorney General elected not to modify the proposed definition of "arriving alien," *id.*, which remains materially identical today.

Thus, Respondents' application of mandatory detention to all non-citizens who entered without being admitted is an attempt to perform an end run around the regulations that bind them, and which limit mandatory detention to the five classes of individuals described above.

Indeed, federal courts across the country have rejected Respondents' position on this issue. *See e.g.*, *Rosa v. Figueroa*, 2025 WL 2337099, *7 (D. Az. Aug, 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Az. Aug. 13, 2025); *Hasan v. Crawford*, --- F.Supp.3d ----, 2025 WL 2682255, *8-9 (E.D. Va. Sept. 19, 2025) (noting that Respondents' interpretation of 8 U.S.C. § 1225(b) "would render superfluous those provisions of

§ 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E)"); *Jimenez v. FCI Berlin*, --- F.Supp.3d ----, 2025 WL 2639390, *8 (D. N.H. Sept. 8, 2025) ("But if the government's interpretation is correct – that all applicants for admission are subject to mandatory detention under § 1225 – then it is not clear under what circumstances § 1226(a)'s authorization of detention on a discretionary basis would ever apply") (internal citation omitted); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, *4 (N.D. Ca. Aug. 21, 2025); *Lopez Benitez v. Francis*, --- F.Supp.3d ----, 2025 WL 2371588, *5 (S.D.N.Y. Aug, 13, 2025); *Martinez v. Hyde*, --- F.Supp.3d ----, 2025 WL 2084238, *9 (D. Ma. July 24, 2025); *Gomes v. Hyde*, 2025 WL 1869299, *8 (D. Ma. July 7, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285, *2 (C.D. Ca. Aug. 15, 2025); *Maldonado v. Olson*, 2025 WL 2374411, *13 (D. Minn. Aug. 15, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025, *10 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136, *3 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, 2025 WL 2496379, *8 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431, *6 (S.D. Cal. Sept. 3, 2025). This Court should follow the weight of decisions on this issue and find that Petitioner is detained pursuant to 8 U.S.C. § 1226(a).

Accordingly, this Court should order Petitioner released on the bond previously granted by the IJ. In addition, should the Board of Immigration Appeals

sustain DHS's appeal of the IJ's bond order, this Court should enjoin from Respondents from re-detaining Petitioner on the basis that he must be detained under 8 U.S.C. § 1225(b).

B. Petitioner will Suffer Irreparable Harm Absent Issuance of a Temporary Restraining Order.

In the absence of a TRO, Petitioner is at risk of continued unlawful detention. Deprivation of Petitioner's due process rights constitutes irreparable injury. *See e.g.*, *Sun v. Santacruz*, 2025 WL 2730235, *7 (C.D. Ca. Aug. 26, 2025) (citing *Hernandez*, 872 F.3d at 994). In addition, Petitioner's detention is preventing him from working and supporting his family in the United States, which includes his wife, his five children, and his father.

C. The Balance of Equities Tip in Petitioner's Favor and the Public Interest Favors Issuance of a Temporary Restraining Order.

The balance of equities and public interest merge in cases against the government. *See Nken v. Holder,* 556 U.S. 418, 436 (2009). Here, the balance favors Petitioner.

Here, the likelihood of Petitioner's success on the merits, combined with the established constitutional framework that requires the government to proceed lawfully when detaining non-citizens, strongly tips the balance of equities in Petitioner's favor. "There is generally no public interest in the perpetuation of

unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *See League of Women Voters of United States v. Newby,* 838 F.3d 1, 12 (D.C. Cir. 2016) (internal quotation marks and citations omitted).

Petitioner's constitutional right to be free of unlawful detention weighs heavily in the public interest. As the invocation of the automatic stay provision violates his due process rights and any attempt to justify his detention under 8 U.S.C. § 1225(b) is contrary to the statute, there can be no public interest in continuing his detention. *See e.g.*, *Washington v. DeVos*, 481 F.Supp.3d 1184, 1197 (W.D. Wash. 2020).

Respondents cannot show here how the government's interests overcome the irreparable injury to Petitioner. As noted above, the hardship for Petitioner is concrete and severe, while the imposition on the government is minimal. An immigration judge has already determined that Petitioner is neither a flight risk nor a danger to the community. There is a minimal chance that the Board of Immigration Appeals, if properly reviewing that determination under the provisions of 8 U.S.C. § 1226(a), will overturn that determination. The continued deprivation of Petitioner's liberty, when weighed against the minimal imposition of release pending a review of the flight and danger determinations, tip sharply in favor of the issuance of a TRO.

V. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY

The Court should not require a bond under Fed. R. Civ. P. Rule 65(c). This rule permits a court to grant preliminary injunctive relief "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." FRCP 65(c). But it is well established that Rule 65(c) does not impose a mandatory requirement for a bond, but rather "invests the district court 'with discretion as to the amount of security required, *if any*.'" *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). In particular, "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Johnson v. Courturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Here, there is no realistic likelihood of harm to Respondents if the Court grants the requested TRO, and it would pose a significant hardship on Petitioner who is incarcerated to have a bond imposed. The Court should exercise its discretion and waive the requirement to post a bond under Rule 65(c).

VI. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that he has met the criteria for a temporary restraining order. He asks the Court to order Respondents

to immediately allow him to post the bond ordered by the immigration judge, and to immediately release him pursuant to that bond payment, with no additional conditions on his release other than those included in the immigration judge's bond order. Further, this Court should enjoin Respondents from detaining Petitioner on the basis of 8 U.S.C. § 1225(b).

RESPECTFULLY SUBMITTED this 15th day of October, 2025

/s/ Sabrina Damast
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TABLE OF EXHIBITS

Exhibit A: Notice to Appear (filed with the habeas petition)

Exhibit B: IJ's Bond Memorandum (filed with the habeas petition)

Exhibit C: DHS Stay of Bond Order (filed with the habeas petition)

Exhibit D: Proof of Petitioner's Family Ties (filed with the habeas petition)

- Marriage Certificate of Selena Jazmin Rodriguez and Andres Barrera Lopez
- U.S. Passport of Selena Jazmin Rodriguez (Petitioner's wife)
- Birth Certificate of E[redacted] (Petitioner's daughter)
- Birth Certificate of A[redacted] (Petitioner's daughter)

- Birth Certificate of S[redacted] (Petitioner's daughter)
- Birth Certificate and Lawful Permanent Resident Card of C[redacted] (Petitioner's son)
- Birth Certificate and Lawful Permanent Resident Card of K[redacted] (Petitioner's daughter)
- Lawful Permanent Resident Card of Adriana B. Vargas (Petitioner's sister)
- Naturalization Certificate of Liliana Barrera Lopez (Petitioner's sister)
- Lawful Permanent Resident Card of Felipe R. Barrera Bibian (Petitioner's father)

Exhibit E: Email to Assistant U.S. Attorneys (providing notice of this motion)