UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Adrian Lizandro Lojano Naula

Petitioner,

-against-

KRISTI NOEM, in her capacity as Secretary for the United States Department of Homeland Security; CORY CHU, Field Office Director of New Jersey, Immigration and Customs Enforcement, in his official capacity, PAMELA BONDI, in her official capacity as the Attorney General of the United States,

Respondents.

Case No. 2:25-cv-16700 (ES)

Hon. Esther Salas U.S.D.J.

MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION- ON NOTICE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTION **1**

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY **1**

LEGAL STANDARD **3**

ARGUMENT **3**

I. Petitioner Is Likely to Succeed on the Merits of His Claims. 3

Pursuant to *Moreno Madrid v. Acuna, infra* the Respondents' Documents state that the Petitioner was detained and released pursuant to INA 236(a) and the Petitioner was re-detained pursuant to 236(a). 5

In the event that the Court chooses to ignore DHS' record which clearly states that the Petitioner was never paroled and was released pursuant to INA 236(a), the Petitioner is still eligible for release. 7

Petitioner's Procedural Due Process Claim Is Likely to Survive. 12

Petitioner's Substantive Due Process Claim Is Likely to Survive. 14

II. The Petitioner's Continued Detention Will Cause Him Irreparable Harm. 15

III. The Balance of Equities and the Public Interest Tilt Sharply in Petitioner's Favor. 17

IV. The Court Should Not Require Security Prior to the Issuing of a TRO. 17

CONCLUSION **18**

CERTIFICATE OF SERVICE **19**

TABLE OF AUTHORITIES

Cases

Angstadt ex rel. Angstadt v. Midd-West Sch., 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002) 16
Arias Gudino v. Lowe, 785 F.Supp.3d 27 (M.D.Pa., 2025) 16
Ashley v. Ridge, 288 F. Supp. 2d 662, 670-71 (D.N.J. 2003) 13
Barrera v. Tindall, No. 3:25-cv-541, 2025 WL 2690565, (W.D. Ky. Sept. 19, 2025) 8
Brennan-Centrella v. Ritz-Craft Corp. of Pa., 942 F.3d 106, 111 (2d Cir. 2019) 10
Castañon-Nava v. DHS, No. 25-3050, 2025 WL 3552514 (7th Cir. Dec. 11, 2025) 10
Coalition for Humane Immigrant Rights v. Noem, No. 25-cv-872, 2025 WL 2192986 (D.D.C. Aug. 1, 2025) 10, 11
Continental Group, Inc. v. Amoco Chems. Corp., 614 F.2d 351, 356 (3d Cir. 1980) 15
Dep't of State v. Munoz, 602 U.S 899, 910 (2024) 14
Dice v. Clinicorp, Inc., 887 F. Supp. 803, 809 (W.D. Pa. 1995) 16
dos Santos v. Noem, 2025 WL 2370988 (D.Mass. Aug. 14, 2025) 12
Hope v. Warden York County Prison, 956 F.3d 156, 160 (3d Cir. 2020) 3
Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 801 (3d Cir. 1989) 16
Jimenez v. FCI Berlin, Warden, 2025 WL 2639390 (D.N.H. Sept. 8, 2025) 11
Kostak v. Trump, No. 25-cv-1093, 2025 WL 2472136, (W.D. La. Aug. 27, 2025) 16, 17
Martinez v. Hyde, No. 25-cv-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) 8
Mathews v. Eldridge, 424 U.S. 319, 333 (1976) 12
Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) 1, 13, 14
Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, (C.D. Cal. Nov. 25, 2025) 14
M.K. v. Arteta, No. 25-cv-9918(LAK), 2025 U.S. Dist. LEXIS 265542 (S.D.N.Y. Dec. 23, 2025) 11
Moreno Madrid v. Brian Acuna et al., No. 25-cv-01572, (W.D. La. Dec. 12, 2025) 5, 6
Nken v. Holder, 556 U.S. 418, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009) 3
O.F.B. v. Maldonado, No. 25 Civ. 6336 (HG), 2025 WL 3277677, (E.D.N.Y. Nov. 25, 2025) 11
Pipa-Aquise v. Bondi, No. 25-1094, 2025 WL 2490657, at *1 (E.D. Va. Aug. 5, 2025) 8
Reno v. Flores, 507 U.S. 292, 306 (1993) 4
Rico-Tapia vs. Smith, et al., Case 1:25-cv-00379-SASP-KJM (October 10, 2025) 6, 7
Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206 (9th Cir. 2022) 12
Rodriguez-Acurio v. Almodovar, No. 25 Civ. 6065, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) 10
Rojas v. Almodovar, No. 25-cv-7189, 2025 WL 3034183, (S.D.N.Y. Oct. 30, 2025) 9
Rueda Padilla v. Bowen, 2025 WL 3251368 (C.D. Cal. Nov. 21, 2025) 13
Sabi Polo v. Chestnut, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025 13
Sanchez v. Wofford, 2025 WL 2959274 (C.D. Cal. Oct. 17, 2025) 14
Schrader v. DA of York Cty., 74 F.4th 120 (3d Cir. 2023) 3
Texis Zecua v. Lyons, 2025 WL 3150680 (C.D. Cal. Oct. 17, 2025) 14

Trump v. J.G.G., 604 U. S., 145 S. Ct. 1003, 1006 (2025) 3
Tumba v. Francis, No. 25-cv-8110, 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025) 9
United States ex rel. Polansky v. Exec. Health Resp., Inc., 599 U.S. 419, 432 (2023) 9
United States v. Wilson, 503 U.S. 329, 333 (1992) 8
Vargas Lopez v. Trump. No. 8:25-CV-00526, 2025 WL 2780351(D. Neb. Sept. 30, 2025)6
Velasco Lopez v. Decker, 978 F.3d 842, 857 (2d Cir. 2020) 17
Vieira v. de Anda-Ybarra, No. 25-cv-432, 2025 WL 2937880 (W.D. Tx. Oct. 16, 2025) 8
Yates v. United States, 574 U.S. 528, 552 (2015) (Alito, J., concurring in judgment) 7
Zadvydas v. Davis, 533 U.S. 678, 690 (2001) 13
Zambelli Fireworks Mfg. Co. v. Wood, 592 F.3d 412, 426 (3d Cir. 2010) 17
Zaragoza Mosqueda v. Noem, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) 14
Zavala v. Ridge, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) 12

Statutes

8 U.S.C. § 1225 passim
8 U.S.C. § 1225(b)(1) passim
8 U.S.C. § 1226 passim
8 U.S.C. § 1229a 3
8 U.S.C. § 1231(a)–(b) 4
8 U.S.C. § 235(b) passim
8 U.S.C. § 235(b)(1) 11
8 U.S.C. § 235(b)(2) passim
8 U.S.C. § 236(a) passim
8 U.S.C. § 236(c) 4

Regulations

8 C.F.R. § 1003.19(a) 4
8 C.F.R. § 1236.1(d) 4

INTRODUCTION

This case is about the continued unconstitutional detention of Petitioner Adrian Lizandro Lojano Naula ("Petitioner"). He remains imprisoned today because an Immigration Judge denied bond. In light of the BIA's September 5, 2025 published decision in *Matter of Yajure Hurtado*, absent this Court's intervention, Petitioner has nowhere to turn to vindicate his due process rights. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

Petitioner satisfies the four elements necessary for granting a temporary restraining order ("TRO"). First, he is likely to succeed on the merits of his claims-282 District Courts have agreed that identically situated immigrants are eligible for bond. *See* ECF No. 9-5. Second, his unconstitutional detention satisfies the irreparable harm threshold. Third, the balance of the equities tilt in his favor because his release will not harm Respondents' ability to remove him in any way. Finally, the public interest is satisfied by his release (not his detention) because no basis at law exists for his continued detention. Against this backdrop, granting a TRO in his favor—ordering release—is appropriate. On December 30, 2025 Petitioner's counsel emailed Opposing Counsel and informed him of his intention to file the instant action.

STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY

This Court is well aware of the facts relating to Petitioner's unlawful

detention as this matter is fully briefed. Petitioner demonstrates numerous positive attributes throughout his life, showcasing his dedication, integrity, and strong work ethics. Petitioner has consistently paid taxes, reflecting his commitment to contributing to society. Petitioner has been residing in the United States since 2014. Petitioner has two United States Citizen children. He has a six year old daughter and a three year old son. He has numerous letters of support from his community. Exhibit A . They describe his good nature and the detrimental impact his continued incarceration has on his family.

Petitioner entered the United States on April 22, 2014. He was arrested at the border and processed for Expedited Removal. On May 14, 2014, Petitioner established his torture claim during an interview with USCIS. Petitioner posted bond pursuant to the Notice of Custody Determination which specifically details that he was released pursuant to INA 236. ECF No. 9-1

On October 9, 2025, Petitioner was arrested pursuant to the Form I-213. According to the I-213, Petitioner was arrested pursuant to an I-200 Warrant of Arrest. ECF No. 9-3. However, a blank I-200 has been attached as Exhibit B which states that the Immigrant is detained pursuant to INA Section 236. Exhibit B.

Petitioner filed this habeas petition on October 17, 2025. *See* ECF No. 1. On October 21, the Court issued an Order to Answer, directing Respondents to file an answer to the Petition by November 11. *See* ECF No. 2. On October 28, Petitioner filed a motion for leave to file an amended petition. *See* ECF No. 3. On November

4, the Court issued an Order to Answer, directing Respondents to file an answer to the Amended Petition by November 25. *See* ECF No. 5. On November 20, the Respondents notified the Court that Petitioner was transferred from Delaney Hall Detention Facility to El Paso Camp East Montana, El Paso, Texas. *See* ECF No. 6.

Petitioner now separately seeks a TRO to enjoin Respondents from detaining him.

LEGAL STANDARD

Courts grant preliminary injunctive relief, including a TRO, where the moving party can show: "(1) a substantial likelihood [a] cause will succeed on the merits, (2) a substantial threat of irreparable injury if the injunction is not granted, (3) the threatened injury outweighs the threatened harm the injunction may do to the opposing party, and (4) granting the injunction will not disserve the public interest." *Hope v. Warden York County Prison,* 956 F.3d 156, 160 (3d Cir. 2020). In cases against the government, the third and fourth prongs merge. *Schrader v. DA of York Cty.*, 74 F.4th 120 (3d Cir. 2023) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

ARGUMENT

I. Petitioner Is Likely to Succeed on the Merits of His Claims.

The Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process. U.S. Const. amend. V. These substantive and procedural protections apply to all people, including noncitizens, regardless of

their immigration status. *Trump v. J.G.G.*, 604 U. S. __, 145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). As outlined in Petitioner's Habeas Petition, and below, Petitioner has a substantial likelihood of succeeding on the merits of his claims. *See* ECF No. 3.

The INA prescribes three basic forms of detention for noncitizens in removal proceedings. First, INA § 236 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an IJ. *See* INA § 236; 8 U.S.C. § 1229a. Individuals in INA § 236(a) detention are entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* INA § 236(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under INA § 235(b)(1) and for other *recent arrivals* seeking admission referred to under INA § 235(b)(2). Finally, the Act also provides for detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

The detention provisions at INA § 236(a) and § 235(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546,

3009–582 to 3009–583, 3009–585. Section 236(c) was most recently amended earlier this year by the LRA, Pub. L. No.119-1, 139 Stat. 3 (2025).

Following the enactment of the IIRIRA, the Executive Office of Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under INA § 235 and that they were instead detained under INA § 236(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. Respondents seek to set us back in time to April 22, 2014, when Petitioner was first encountered at the border and erase his release pursuant to INA 236. *See* ECF No.8.

Pursuant to Moreno Madrid v. Acuna, infra the Respondents' Documents state that the Petitioner was detained and released pursuant to INA 236(a) and the Petitioner was re-detained pursuant to 236(a).

Similar to the Petitioner in *Moreno Madrid v. Acuna*, the Respondents' own records detail that the Petitioner's detention falls under 1226(a). "Petitioner's argument heavily relies on "Respondents' own administrative record, where, by their own admission, deemed Petitioner detained under § 1226(a)." *Moreno Madrid v. Brian Acuna et al.,* No. 25-cv-01572, (W.D. La. Dec. 12, 2025) Exhibit C.

On May 14, 2014, Petitioner established his torture claim during an

interview with USCIS. Petitioner posted bond pursuant to the Notice of Custody Determination which specifically details that he was released pursuant to INA 236. The NTA issued on October 20, 2025, states that Petitioner is "an alien present in the United States who has not been admitted or paroled." ECF No. 9-4. However DHS, in their response to the Habeas petition, stated that "On May 13, 2014, ICE paroled Petitioner into the country under its discretionary authority under INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A)." ECF No. 8 at 6.

According to a plain reading of the sample I-200, the Respondents detained the Petitioner pursuant to INA 236(a). The Respondents made a clear choice to detain Petitioner pursuant to INA 236(a) and should not be allowed to "switch tracks" back to the original statutory basis of detention. at *8. *Moreno Madrid v. Brian Acuna et al.,* No. 25-cv-01572, (W.D. La. Dec. 12, 2025) Exhibit C.

Support for Petitioner's detention classification under § 1226(a) is the United States District Court of Nebraska's holding in *Vargas Lopez v. Trump*. No. 8:25-CV-00526, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). In *Vargas Lopez*, the court noted that "one express requirement to fall within [8 U.S.C.] § 1226(a)—and a critical one here—is that the alien was arrested on a warrant issued by the Attorney General." *Id*. at *6. In that case, petitioner argued his detention under §1225(b)(2) was unlawful because he was detained under §1226. *Id*. at *4. However, petitioner did not allege that he was arrested pursuant to a warrant issued by the Attorney General nor submitted any warrant to the record, the "critical"

express requirement for the detention to fall within §1226(a). *Id*. at *7. As the petitioner bears the burden of demonstrating by a preponderance of the evidence that his detention is unlawful, the *Vargas Lopez* court emphasized the petitioner's failure to produce his arrest warrant was "fatal" to petitioner's argument his detention falls under § 1226(a). *Id*.

Here, the I-213 issued by the Respondent, clearly states that the Petitioner was arrested pursuant to a Warrant of Arrest. ECF No 9-3. Unlike the Petitioner in *Vargas Lopez*, who did not allege anywhere in his petition that he was arrested on a warrant, here the Respondent's own records issued to the Petitioner consistently state that he was arrested pursuant to a Warrant of Arrest.

In the event that the Court chooses to ignore DHS' record which clearly states that the Petitioner was never paroled and was released pursuant to INA 236(a), the Petitioner is still eligible for release.

Respondents erroneously claim that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(ii). ECF No. 8. But the plain text of 8 U.S.C. § 1225(b)(1)(B)(ii) makes it clear that this provision does not apply to Petitioner.

Section 1225 applies to people arriving at U.S. ports of entry or who recently entered the United States. The section's title states: "Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing." 8 U.S.C. § 1225 (emphasis added). A "title is especially valuable [where] . . . it reinforces what the text's nouns and verbs independently suggest." *Yates v. United*

States, 574 U.S. 528, 552 (2015) (Alito, J., concurring in judgment). As multiple courts have noted, the word "'arriving' indicates that the statute governs 'arriving' noncitizens, not those present already. This is supported by the text of the statute itself" *Barrera v. Tindall*, No. 3:25-cv-541, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *5 (E.D. Mich. Sept. 9, 2025). Furthermore, the text of Section 1225 repeatedly refers to "inspections," and that term refers to determinations of admissibility made at the time of entry for people who have very recently arrived in the United States. 8 U.S.C. § 1225(a)(1) (inspection of noncitizens who are applicants for admission); *Vieira v. de Anda-Ybarra*, No. 25-cv-432, 2025 WL 2937880, at *5 (W.D. Tx. Oct. 16, 2025) (discussing the well-established distinction between individuals seeking admission and those who have already effected entry).

Section 1225(b)(1)(B)(ii) applies only to "aliens arriving in the United States and certain other aliens who have not been admitted or paroled." 8 U.S.C. § 1225(b)(1) (heading) (emphasis added). Congress' reliance on the word "arriving" in this heading matters for interpretation of this provision. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). A present participle "denotes an ongoing process" that "necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (quotation

omitted). "Word are to be given the meaning that proper grammar and usage would assign them." Antonin Scalia & Bryan Garner, *Reading the Law: The Interpretation of Legal Texts* 140 (2012).

At the time of his abrupt detention on October 9, 2025, Petitioner was not arriving in the United States. In May 2014, ICE released Petitioner under bond pursuant to Section 236. ECF 9-1. Following his release in May 2014, Petitioner "lived here freely" for eleven years. *Rojas v. Almodovar,* No. 25-cv-7189, 2025 WL 3034183, at *9 (S.D.N.Y. Oct. 30, 2025). "[F]ollowing the cardinal rule of statutory interpretation that 'every clause and word of a statute should have meaning,'" Section 1225(b)(1)(B)(ii) has no bearing on Petitioner's case because he was already living freely in the United States pursuant to his release on October 9, 2025, and he was not arriving at the U.S. border at that time. *Tumba v. Francis*, No. 25-cv-8110, 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025) (quoting *United States ex rel. Polansky v. Exec. Health Resp., Inc.*, 599 U.S. 419, 432 (2023)).

Once Petitioner was paroled "into the United States," 8 U.S.C. § 1182 (emphasis added), the government can only detain him as a matter of discretion under Section 1226, and Section 1225(b)(1)(B)(ii) no longer has bearing on his case. *See Tumba*, 2025 WL 3079014, at *3 (recognizing, "Section 1226 'generally governs the process of arresting and detaining [non- citizens who have already entered the United States] pending their removal'") (quoting *Jennings*, 583 U.S. at 297). As this Court has recently ruled, "Respondents' reading of Section 1225

would . . . all but read Section 1226 off the books." *Tumba*, 2025 WL 3079014, at *4.

Notably, Section 1226 does list several categories of noncitizens who are subject to mandatory detention. *See* 8 U.S.C. § 1226(c)(1). This list does not include law-abiding noncitizens who have never been paroled, but who DHS retroactively claims were paroled in spite of the record. The omission of this category of noncitizens supports the inference that Congress did not intend them to be subject to mandatory detention. *See Brennan-Centrella v. Ritz-Craft Corp. of Pa.*, 942 F.3d 106, 111 (2d Cir. 2019) ("As a matter of statutory construction, we presume that the legislature follows the principle of expressio unius est exclusio alterius—that is, 'mention of one impliedly excludes others.'").

Federal courts have consistently held, based on the plain text of Section 1225 and congressional purpose, that this provision cannot be used to detain a law-abiding parolee like Petitioner who has been living freely in the United States. *See Rodriguez-Acurio*, 2025 WL 3079014, at *14; s*ee also Coalition for Humane Immigrant Rights v. Noem*, No. 25-cv-872, 2025 WL 2192986), at *22, 30 (D.D.C. Aug. 1, 2025) (concluding that "the only way to make sense of the statutory scheme Congress created is to see that parolees fall under neither [provision of Section 1225(b)(1)]" and that "[a]ny other result conflicts with other aspects of the statute and regulations, Congress's evident purpose, and the ordinary meaning of the statute's words"); *Castañon-Nava v. DHS*, No. 25-3050, 2025 WL 3552514

(7th Cir. Dec. 11, 2025)(concluding "[b]ased upon the text and structure" of Sections 1225 and 1226 that "ICE's authority to detain a noncitizen discovered within the country derives from § 1226(a) and not from § 1225(b)"). Courts have reached this conclusion even where the asylum seeker's temporary parole has expired. *See O.F.B. v. Maldonado*, No. 25 Civ. 6336 (HG), 2025 WL 3277677, at *5 (E.D.N.Y. Nov. 25, 2025) (citing cases); *see also Coalition*, 2025 WL 2192986, at *23 ("for at least some purposes, parole has ongoing legal effect even after it expires or is terminated"); *M.K. v. Arteta*, No. 25-cv-9918(LAK), 2025 U.S. Dist. LEXIS 265542 (S.D.N.Y. Dec. 23, 2025)(In *M.K. v. Arteta*, *infra*, the Court held that INA Section 235(b)(1) applies only to noncitizens "arriving in the United States", which refers to those in the process of entering the country, not those who have lived in the U.S. for some time. The Court rejected respondents' argument that M.K. remained subject to Section 235(b)(1) indefinitely, noting that the statutory text and structure do not support such an interpretation); *Rico-Tapia vs. Smith, et al.,* Case 1:25-cv-00379-SASP-KJM (October 10, 2025)(An immigrant who was paroled by DHS was re-detained years later the Court held that "As Section 1225(b) does not apply to aliens who are *already present in the country*, it does not apply to Rico-Tapia); *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390 (D.N.H. Sept. 8, 2025)(An immigrant was released pursuant to an Order of Release on Recognizance after expedited removal proceedings and was arrested years later by DHS. The Court held 8 USC § 1225(b)(1) did not apply because Jimenez was

no longer "arriving in the United States"); *dos Santos v. Noem, 2025* WL 2370988 (D.Mass. Aug. 14, 2025)(petitioner was detained at the border and passed his credible fear interview. The Court determined that petitioner's detention was governed by 8 USC § 1226(a) because he was arrested on a warrant and previously released on bond under that statute).

Petitioner's Procedural Due Process Claim Is Likely to Survive.

Procedural due process requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). In determining whether due process has been violated, the Court should weigh: (1) the private interest affected by the government action; (2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and (3) the government's interest in maintaining the current procedures, including the governmental function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail. *Mathews*, 424 U.S. 319 at 335; *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and noting that, "when considering due process challenges to [discretionary noncitizen detention] other circuits . . . have applied the *Mathews* test"). Each of these factors weigh in Petitioner's favor.

First, the private interest affected by the government action, "Petitioner's liberty interest in remaining free from governmental restraint[,] is of the highest

constitutional import." *Zavala*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004); *see also Ashley v. Ridge*, 288 F. Supp. 2d 662, 670-71 (D.N.J. 2003) (same). Indeed, "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *See* ECF No.1 and 9. He is detained pursuant to *Yajure Hurtado*. He easily satisfies the first *Mathews* factor.

Second, the current legal precedent which has been rejected by 282 district courts —causes an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. *See* ECF No. 9-5. Against this backdrop, Petitioner satisfies the second *Mathews* factor.

Finally, the government's interest in maintaining the "current" procedure is minimal. The Petitioner resided in the United States for more than 11 years and has never been convicted of a crime. Opposing Counsel can not credibly claim that the Petitioner is a danger to the community or a flight risk. Moreover, if the Petitioner was released then ICE would place an ankle monitor on him. Courts have granted TROs in similar cases, despite the government's argument that *Matter of Yajure Hurtado* prevents Immigration Judges from hearing bond requests or granting bond. *See Sabi Polo v. Chestnut*, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025)(Court granted PI, rejecting the government's reliance on the *Matter of Yajure Hurtado* and ordered release without electronic monitoring); *See also Rueda Padilla v. Bowen*, 2025 WL 3251368 (C.D. Cal. Nov. 21, 2025)(Granted TRO

finding a likelihood of success on merits of claim that detention violated procedural due process); *See Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)(Court granted the Petitioner's TRO and ordered bond hearing); *Texis Zecua v. Lyons*, 2025 WL 3150680 (C.D. Cal. Oct. 17, 2025)(Court granted TRO, rejecting government's reliance on *Matter of Yajure Hurtado*); *See also Sanchez v. Wofford, 2025* WL 2959274 (C.D. Cal. Oct. 17, 2025)(Court granted Petitioner's TRO on the *Matter of Yajure Hurtado* matter). In *Maldonado Bautista v. Santacruz*, the District Court of California certified a class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection (colloquially referred to as "entered without inspection" or "EWI"). The Court granted declaratory relief to the entire class, holding that the government is unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members are eligible for release on bond under the immigration laws. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The third *Mathews* factor is satisfied.

Because Petitioner squarely meets all prongs of the *Mathews* test, he is more than likely to succeed on the merits of his procedural due process claim.

Petitioner's Substantive Due Process Claim Is Likely to Survive.

Due process requires any deprivations of Petitioner's liberty to be narrowly

tailored to serve a compelling government interest. *Dep't of State v. Munoz*, 602 U.S 899, 910 (2024). Government detention violates due process in civil proceedings except in "special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotations marks and citations omitted). The IJ here denied bond pursuant to *Hurtado*. Respondents have no special or compelling justification to continue detaining Petitioner, and certainly not an interest that outweighs his own in avoiding a restraint on his liberty. *Id.* at 1077 ("The regulation, which permits unilateral government detention of individuals without a case-by-case determination after a reasoned finding that they do not pose a threat to safety or a risk of flight, violates the Due Process Clause because no special justification exists that outweighs the individual's constitutionally protected interest in avoiding physical restraint."); *Ashley*, 288 F.Supp. 2d at 669 (similar). Petitioner is thus likely to succeed on the merits of his substantive due process claim.

II. The Petitioner's Continued Detention Will Cause Him Irreparable Harm.

Petitioner will suffer irreparable harm in the absence of a TRO. "Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Continental Group, Inc. v.*

Amoco Chems. Corp., 614 F.2d 351, 356 (3d Cir. 1980). The Third Circuit has defined irreparable injury as "potential harm which cannot be redressed by a legal or equitable remedy following a trial." *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 801 (3d Cir. 1989). A court may not grant preliminary injunctive relief unless "[t]he preliminary injunction [is] the only way of protecting the plaintiff from harm." *Id*. The relevant inquiry is whether the party moving for the injunctive relief is in danger of suffering the irreparable harm at the time the preliminary injunctive relief is to be issued. *Id*. Generally, irreparable harm must be harm that cannot be remedied by a legal or equitable remedy following trial, and must be actual and imminent, and not speculative or remote. *See Angstadt ex rel. Angstadt v. Midd-West Sch.*, 182 F. Supp. 2d 435, 437 (M.D. Pa. 2002); *see also Dice v. Clinicorp, Inc.*, 887 F. Supp. 803, 809 (W.D. Pa. 1995).

Furthermore, courts have found that “the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm.” *Kostak*, 2025 WL 2472136, at *3; *see also Arias Gudino v. Lowe,* 785 F.Supp.3d 27 (M.D.Pa., 2025). The Attorney General has made no such determination. As a practical matter, that means Respondents still *have not* determined that Petitioner should be detained; indeed, they only argue that they are entitled to continue detaining him. Respondents’ inability to show any reason why Petitioner should be detained militates in favor of finding that his detention—which wrongly commenced on or around October 9, 2025 and has been running ever since—constitutes irreparable

harm.

III. The Balance of Equities and the Public Interest Tilt Sharply in Petitioner's Favor.

Petitioner will likewise succeed on the third and fourth TRO factors. Indeed, the balance of equities—between continued unlawful detention and requiring compliance with the law—tips sharply in Petitioner's favor. *See Kostak*, 2025 WL 2472136, at *4. Granting the TRO would also serve the public interest in that "it will require the Government to ensure compliance with its own laws." *Id.* It will also serve "the public's interest in seeing that individuals who need not be jailed are not incarcerated [. . .]." *Velasco Lopez v. Decker*, 978 F.3d 842, 857 (2d Cir. 2020).In the end, Respondents have "no interest in the continued incarceration of an individual who it cannot show to be either a flight risk or a danger to h[er] community." *Velasco Lopez*, 978 F.3d at 857.

IV. The Court Should Not Require Security Prior to the Issuing of a TRO.

Rule 65(c) requires a movant to provide [*31] 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." Fed. R. Civ. P. 65(c). However, the Court has discretion to waive the bond requirement when there is no risk of monetary loss to Defendants and the balance of equities weighs in its favor. *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 426 (3d Cir. 2010). Because

Respondents will not incur any costs or damages if the requested relief is granted, Petitioner asks the Court to not require him to post security.

CONCLUSION

Petitioner asks this Court to grant his motion and enjoin Respondents from detaining him and order his immediate release.

Dated: New York, NY
January 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2026 I electronically filed the foregoing document, supporting memorandum, and proposed order with the Clerk of the Court using the CM/ECF system.

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