

**Steven Lyons, Esq. (NY Bar: 1832013)**  
**Martin C. Liu & Assoc., PLLC**  
**135 Bowery, 4<sup>th</sup> Floor**  
**New York, NY 10002**  
**Tel. (212) 255-8833**  
**Fax (212) 226-0036**  
**e-mail: stevenlyons@martinliu.com**

**Attorneys for Petitioner**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

**JOSE GOMEZ MARTINEZ,**

**Petitioner,**

**v.**

**DON JONES, Director, Kay County Detention**  
**Center;**  
**TODD M. LYONS, Acting/Director,**  
**U.S. Immigration and Customs Enforcement**  
**KRISTI NOEM, Secretary of the U.S.**  
**Department of Homeland Security; and**  
**PAM BONDI, Attorney General of the**  
**United States, in their official capacities**

**Respondents.**

**Case No. \_\_\_\_\_**

---

**MOTION FOR TEMPORARY RESTRAINING  
ORDER AND ORDER TO SHOW CAUSE FOR  
A PRELIMINARY INJUNCTION**

---

## I. INTRODUCTION

Petitioner, hereby moves under Federal Rule of Civil Procedure 65 and for reasons set forth, for a temporary restraining order and order to show cause for a preliminary injunction for the immediate release of the Petitioner from ICE custody, pending further proceedings consistent with the Petition for a writ of habeas corpus; to hold an immediate bond hearing for the Petitioner; and barring the Respondents, their agents, employees and any of their agents from removing, transferring, relocating the Petitioner from this jurisdiction in violation of the Petitioner's United States Constitution's Fifth Amendment Due Process Clause rights. In support of the motion Petitioner states that:

1. To obtain injunctive relief the Petitioner must establish: (1) a substantial likelihood of success on the merits of the Petitioner's claim (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. *See Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008).

2. This relief is warranted. Petitioner is likely to succeed on the merits of his claims. Pursuant to 8 U.S.C. § 1226(a) the Respondents are currently unlawfully detaining the Petitioner at the Kay County Judicial Center detention facility in Kay County, Oklahoma. Petitioner has been in ICE custody since about

September 10, 2025, after being apprehended by CBP (U.S. Customs and Border Patrol)/ICE (U.S. Immigration and Customs Enforcement). Officers detained and arrested Petitioner at the ORD airport, in Chicago, IL while the Petitioner was traveling by plane to visit relatives in Texas, in violation of the Petitioner's Due Process rights for a bond hearing 8 U.S.C. § 1226(a).

3. Petitioner has been unlawfully and unconstitutionally deemed ineligible for a bond based on an erroneous finding that he is subject to mandatory detention under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A) rather than properly subject to discretionary detention under INA § 236. *See* July 8, 2025 memo of Todd M. Lyons, Acting Director of Immigration and Customs Enforcement (ICE) abruptly changing long-standing ICE policy from releasing noncitizens like Petitioner who entered the U.S. without inspection and after residing in the U.S. for many years are detained and arrested pursuant to a misapplication of INA § 235(b), 8 U.S.C. § 1225(b)(mandatory detention) and INA § 236(a), 8 U.S.C. § 1226(a)(inspection and release) making individuals like Petitioner statutorily ineligible for IJ (Immigration Judge) custody redetermination. *See Matter of M-S*, 27 I&N Dec. 509 (A.G. 2019; *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); and *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

4. The Petitioner's continued detention is unlawful. Petitioner is properly

subject to discretionary detention under INA § 236(a), 8 U.S.C. § 1226(a) and is not subject to expedited removal, since he has resided in the United States since 2001 – a period of 24 years – and his deprivation of liberty, is unwarranted. Injunctive relief should be granted under Rule 65. *See Garcia Cortes v. Noem*, No. 1:25-cv-02677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Salazar v. Dedos*, No. 1:25-cv-00835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Gomez Lira v. Noem*, No. 1-25-cv-00855, (D.N.M. Sept. 24, 2025). For a comprehensive survey of circuit court and district court decisions finding that INA §236(a), 8 U.S.C. § 1226(a) (non detention and release) applies not INA §235(b)(2), 8 U.S.C. § 1225(b)(2)(A) (mandatory detention and no release), *see* table attached, entitled: “Favorable 1226(a) v. 1225(b)(2)(A) Caselaw” compiled by the University of Iowa as **Exhibit E** to Declaration of Steven Lyons, Esq.

5. The Supreme Court recently analyzed the interplay between INA § 235(b), 8 U.S.C. § 1225(b) and INA § 236(a), 8 U.S.C. § 1226(a) in *Jennings v. Rodriguez*, 583 U.S. 830 (2018), 138 S. Ct. 830, 200 L. Ed 2d 122 (2018). The Court distinguished between the detention of arriving aliens who are seeking entry into the United States under 8 U.S.C. § 1225 and the detention of those who are already present in the United States under 8 U.S.C. § 1226(a).

6. The Court found that for those already present in the United States, INA

§ 236(a), 8 U.S.C. § 1226(a) already provides for bond hearings at the discretion of the Attorney General.

7. Because the Petitioner in the instant case has already been present in the United States for 24 years, the Petitioner is entitled to a bond hearing under INA § 236(a), 8 U.S.C. § 1226(a).

8. ICE misclassified and mischaracterized the Petitioner as “seeking admission” under INA § 235(b), 8 U.S.C. § 1225(b), erroneously placing the Petitioner in expedited removal proceedings.

9. Absent relief, the Petitioner will be irreparably harmed due to potential immediate and irreparable removal from the United States and risk of harm without an adjudication of rights, deprivation of liberty, lack of a meaningful review, family hardship, and access to counsel.

10. Petitioner has already been transferred from his hometown in Chicago, IL, far away from his family and access to legal counsel, to Kay County detention facility, in Newkirk, Oklahoma, when he was arrested and detained by CBP at ORD airport, in Chicago, IL, as a result of a mistaken identity for a person who had the same or similar name and alien registration number as the Petitioner or who had committed a serious crime and was removed.

11. Petitioner has been denied fundamental Due Process under the Fifth Amendment of the U.S. Constitution, and deprived of his liberty interest, without a bond hearing.

12. Petitioner has extended residency, strong family ties, came to the U.S. as a young adult and has been deprived of an individualized assessment for danger or flight risk. An indefinite detention weighs heavily in favor of harm to Petitioner if an injunction and a temporary restraining order are not issued.

13. The public interest is served when individuals are not arbitrarily held in detention and deprived of liberty.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

14. Petitioner is a native and citizen of Mexico who last entered the U.S. when he was 25-years-old, on February 5, 2001 without inspection at the U.S.-Mexico border, in Arizona.

15. On December 13, 2018, the Petitioner filed an affirmative application for asylum on Form I-589 Application for Asylum, Withholding of Removal and Relief Under the U.N. Convention Against Torture, pursuant to INA § 208, 8 U.S.C. § 1158 (asylum), INA § 241(b)(3), 8 U.S.C. § 1231(b)(3)(withholding of removal) and for refugee status, as defined in INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

16. On February 1, 2019, the Petitioner was issued an NTA (Notice to Appear) on Form 862, charging Petitioner under INA § 212(a)(6)(A)(i) as an alien present in the United States without being admitted or paroled or who has arrived in the United States at a time and place other than as designated by the Attorney General” of the United States.

17. On October 11, 2019, the Petitioner filed an application for Cancellation of Removal for Certain Non-Permanent Residents and Adjustment of Status, as relief from removal on Form EOIR 42B pursuant to INA § 240A(b)(1), 8 U.S.C. § 1229b(b)(1).

18. Petitioner’s removal case [REDACTED] is currently pending before Immigration Judge Jacinto Palomino, in Newkirk, Oklahoma (virtually located in Otero, NM). He is currently scheduled for a master calendar hearing on October 21, 2025.

19. On about September 10, 2025, the Petitioner was detained and arrested by CBP (U.S. Customs and Border Patrol) at the ORD airport, in Chicago, IL, while intending to travel and to visit relatives in Texas. Petitioner was mistaken for an individual with a similar name and the same wrongly issued alien registration number as the Petitioner ([REDACTED]), who had committed a serious crime and was deported.

20. Petitioner has not been charged with a crime, and does not possess a

criminal history. Petitioner has never been arrested, nor does he have any pending criminal matters.

21. Petitioner is married to a noncitizen and has two children, one of whom is a U.S. citizen born in the United States, and is 21-years-old; and another child who has DACA (Deferred Action for Childhood Arrivals) status.

22. Petitioner is languishing in detention and in dire conditions and is not receiving his necessary medication for chronic coughing, asthma, and sleep medication for anxiety and medication to prevent him from developing pneumonia. He has only been given Claritin and cough syrup which are insufficient and ineffective to meet his serious medical needs. His family reports that he looks gaunt.

23. Unless this Court issues a temporary restraining order and subsequent preliminary injunction staying the removal or transfer of the Petitioner, without a bond hearing, in violation of the Petitioner's Due Process rights, the Petitioner will continue to suffer irreparable harm: including the serious abridgment of the Petitioner's fundamental right to liberty, lack of meaningful review, potential removal from the United States without a full adjudication of his rights, family hardship and lack of access to counsel, should he be removed.

#### **24. LEGAL ANALYSIS**

24. The Tenth Circuit has emphasized this standard in *Dominion Video*

*Satellite, Inc. v. Echostar Satellite Corp.*, 269 F.3d 1149, 1154 (10<sup>th</sup> Cir 2001); *Wiechmann v. Ritter*, 44 F.App'x 346, 347 (10<sup>th</sup> Cir. 2002); *Padres Unidos de Tulsa v. Drummond*, 2025 WL 1444433 (W.D.Okla. May 20, 2025)(“*Drummond I*”); *United States v. Oklahoma*, 739 F.Supp. 3d 985 (W.D. Okla. 2024)

25. “Violation of constitutional rights constitute irreparable injury as a matter of law.” *Springtree Apartments, ALPIC v. Livingston Parish Council*, 207 F. Supp. 2d 507, 515 (M.D. La, 2001); 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.1 (2d Ed. 1995)(“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). This reasoning essentially collapses the “likelihood of success on the merits” and “irreparable harm” prongs of the injustice inquiry where constitutional rights are at stake. *Forum for Academic & Inst. Rights v. Rumsfeld*, 390 F.3d 219, 246 (3d. Cir. 2004).

26. The potential harm to Petitioner far outweighs any burden that Respondents will face if the Court enjoins an unconstitutional deprivation of Petitioner’s fundamental rights to Due Process and liberty.

27. The harm to Petitioner who has extended residency, strong family ties and as a young adult who has matured in the United States, poses serious due process concerns, as does lack of an individualized assessment for danger or flight risk coupled with indefinite detention.

28. A temporary restraining order and eventual preliminary injunction will not disserve the public interest, but would affirmatively promote it.

29. The public interest is ensured when individuals are not arbitrarily deprived of liberty after decades-long policy of bond availability promotes the public interest.

30. Because the Petitioner faces an imminent risk of harm if Respondents are not enjoined, this Court should:

- a. Grant injunctive relief and order Petitioner's immediate release;
- b. Grant injunctive relief for Respondents to provide Petitioner with an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) no later than Monday, October 27, 2025;
- c. Direct that should the bond hearing not be conducted that the Petitioner shall be released until it has been determined that he should be detained by the Attorney General as set forth in 8 U.S.C. § 1226(a);
- d. Direct that no security be required;
- e. Direct that the Respondents update the Court and Petitioner's attorney on the status of Petitioner's bond determination.

Date: October 17, 2025  
New York, New York

Respectfully submitted,

/s/ Steven Lyons

Steven Lyons, Esq. (NY Bar: 1832013)  
Martin C. Liu & Associates, PLLC  
135 Bowery, 4<sup>th</sup> Floor  
New York, NY 10002  
T: (212) 255-8833  
F: (212) 226- 0036  
e-mail: [stevenlyons@martinliu.com](mailto:stevenlyons@martinliu.com)