Alejandra Martinez
De Mott, Curtright, & Armendariz, LLP
Texas Bar No. 24096346
8023 Vantage Dr., Ste. 800
San Antonio, Texas 78230
(210)590-1844
Alejandra.martinez@dmcausa.com

Attorney for Petitioner Jose Juan Perez Rodriguez

**UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF ARIZONA**

| | |
|---|---|
| Jose Juan Perez Rodriguez<br><br>Petitioner,<br><br>Kristi Noem, Secretary of Homeland Security; Pamela Bondi, U.S. Attorney General; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; John E. Cantu, ICE Arizona Field Office Director; Luis Rosa, Warden of Florence Processing Center,<br><br>Respondents. | No. **2:25-cv-03921-JJT--ESW**<br><br>Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction |

DATED this 30th day of October, 2025

/s/ Alejandra Martinez
Attorney for Petitioner

**MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

The Petitioner Jose Juan Perez Rodriguez moves the Court to grant him a Temporary Restraining Order and Preliminary Injunction. Specifically, he moves the Court to order that the Petitioner be released from custody for the reasons stated in his accompanying memorandum.

Respectfully submitted,

/s/ Alejandra Martinez
Alejandra Martinez
Texas Bar No. 24096346
Alejandra.Martinez@dmcausa.com
De Mott, Curtright, Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210)590-1844 (telephone)
(210)212-2116 (facsimile)

ATTORNEY FOR PETITIONER

**CERTIFICATE OF CONFERENCE**

The undersigned has attempted to confer via telephone with an attorney from the United States Attorney's Office for the District of Arizona but has unable to conference as of the filing of this motion due to the office's closure.

/s/ Alejandra Martinez
Alejandra Martinez

10/30/2025
Date

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 For approximately 40 years, the Petitioner has lived in the United States, building a life
3 and family that includes four children, including two U.S. citizens. Yet today, he remains in
4 immigration detention—not because Congress required it, but because the government has chosen
5 to misread the law. On or around August 25, 2025, the Petitioner was redetained within the interior
6 of the United States after having been previously released on an order of recognizance and placed
7 in removal proceedings before an Immigration Judge (IJ). The government now claims that the
8 Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), relying on the Board
9 of Immigration Appeals' (BIA) recent and its deeply flawed decision in *Matter of Yajure Hurtado*,
10 29 I&N Dec. 216 (BIA 2025). In *Yajure Hurtado*, the BIA rewrote decades of settled law, holding
11 that every noncitizen who entered the country without inspection is automatically subject to
12 mandatory detention. *Id.* at 229. Courts across the nation have determined that the Respondents'
13 interpretation disregards the statute's plain language resulting in unlawful detention.[1] Absent
14
15

16 [1] *See, e.g.*, *Gomes v. Hyde*, No. 1:25-cv-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, No. 1:25-cv-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*,
17 No. 1:25-cv-05937-DEH, 2025 WL 2371588 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 2:25-cv-02157-DLR, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted sub nom. *Rocha Rosado v.
18 Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*,
19 No. 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 1:25-cv-06373-DEH, 2025 WL 2398831
20 (S.D.N.Y. Aug. 12, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-cv-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak
21 v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Otero Escalante v. Bondi*, No. 25-cv-3051-ECT-DJF, --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v.
22 Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Palma Perez v. Berg*, No. 8:25-cv-00494-JFB-RCC, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Vasquez Garcia v. Noem*, No. 3:25-cv-02180-DMS-MMP, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-02304-
23 CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Jimenez v. Berlin*, ---F. Supp. 3d---, 2025 WL 2639390, at *10 (D. Mass. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546-RJW-APP, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025);
24

immediate relief, the Petitioner will continue to suffer irreparable harm from unlawful detention. Accordingly, Petitioner moves the Court for a temporary restraining order and a preliminary injunction prohibiting the Respondents from continuing to unlawfully detain him during the pendency of his Petition for Writ of Habeas Corpus.

## I. STATEMENT OF FACTS

The Petitioner, a citizen of Mexico, entered the United States without inspection approximately 40 years ago. He is married and has four children, including two U.S. citizens. His family is suffering substantial emotional, psychological, and financial hardship because of the Petitioner's unlawful detention.

In or around July 2023 the Petitioner was apprehended within the interior of the United States by the Respondents and placed in traditional removal proceedings before an IJ. Respondents ordered the Petitioner released on his own recognizance on July 7, 2023. *See* ECF No. 1-1, Exh. A-B. In doing so, the Respondents determined that he posed no danger or flight risk and that pursuing his removal was not a priority. Despite complying with the conditions of his

---

*Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Chogllo Chafla v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541 (D. Me. Sep. 21, 2025); *Roa v. Albarran*, No. 25-cv-7802, 2025 WL 2732923 (N.D. Cal. Sep. 25, 2025); *Savane v. Francis*, No. 1:25-CV-6666-GHW, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025); *Reynosa Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. Aug. 4, 2025); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Hernandez Marcelo v. Trump*, No. 3:25-CV-00094-RGE-WPK, 2025 WL 2741230 (S.D. Iowa Sept. 10, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Luna Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799 (E.D. Va. Sep. 29, 2025); *Silva v. Larose*, No. 25-cv-2329-JES-KSC, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025); *Chang Barrios v. Shepley*, No. 1:25-cv-00406-JAW, 2025 WL 2772579 (D. Me. Sep. 29, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-03682 (KMM/EMB), 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996 (D. Mass. Oct. 3, 2025); *Cerritos Echevarria v. Bondi*, No. CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282 (D. Ariz. Oct. 3, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025); *Padron Covarrubias v. Vergara, et al.*, No. 5:25-CV-112, 2025 WL 2950097 (S.D. Tex. Oct. 8, 2025); *Sanchez-Alvarez v. Noem et al.,*, No. 1:25-CV-1090, 2025 WL 2942648 (W.D. Mich. Oct. 17, 2025); *Betancourt Soto v. Soto et al.*, No. 25-CV-16200, 2025 WL 2976572 (D.N.J. Oct. 22, 2025).

release, Respondents abruptly re-detained the Petitioner on August 25, 2025, while he was reporting at his routine check-in. The Respondents decided to detain the Petitioner without bond even though the Petitioner's circumstances had not materially changed since the Respondents released him on his own recognizance.

On September 5, 2025, the BIA issued its clearly erroneous precedential decision in *Yajure Hurtado*. Since *Yajure-Hurtado* misapplies the custody-related statutes of the Immigration and Nationality Act and violates the Petitioner's due process rights, the Petitioner filed a writ of habeas corpus with this Court. This motion for a temporary restraining order (TRO) and a preliminary injunction now follows.

## II. ARGUMENT

A TRO should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b)(1)(A). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974). The movant must establish four factors: (1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction is in the public interests. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is the opposing party, the final two factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Petitioner satisfies all four TRO factors. He is likely to succeed on the merits of his petition because his detention violates § 1226(a) which authorizes the IJ to grant release on bond and the

Fifth Amendment's Due Process Clause. Next, the second prong is easily satisfied since the Petitioner is suffering—and will continue to suffer—irreparable harm from unlawful and unconstitutional detention, including the deprivation of liberty, economic burdens, and separation from his family and community. Similarly, the third prong is met because the balance of equities strongly favors Petitioner, as halting unlawful detention imposes minimal burden on Respondents—indeed it will force them to comply with a statute passed by Congress—while allowing detention to continue inflicts profound and ongoing harm to the Petitioner. Finally, the public interest supports immediate relief, as it is always in the public interest to ensure government agencies comply with laws passed by Congress and refrain from unlawfully detaining people. As such, Petitioner is entitled to a TRO and a preliminary injunction ordering his immediate release from unlawful detention.

**A. The Petitioner is likely to succeed on the merits of his Petition for Writ of Habeas Corpus.**

**1. The statutory language and legislative history of the applicable statutes demonstrate that the Petitioner is eligible for release on bond under § 1226(a) and is not subject to mandatory detention under § 1225(b)(2).**

The Petitioner has a clear right to a custody hearing before an IJ under 8 U.S.C. § 1226(a)(2), which authorizes the IJ to grant bond to noncitizens who are detained pending the outcome of removal proceedings. The plain language of § 1226(a) and its legislative history all support the Petitioner's position. 8 U.S.C. § 1226(a) provides, in pertinent part, as follows:

> (a) Arrest, detention, and release
> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General—
> (1) may continue to detain the arrested alien; and

1 (2)may release the alien on—
2 (A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or
3 (B) conditional parole . . .

4 This statutory language is applicable to the Petitioner's case and allows for his release on bond.

5 Section 1226(a) applies to "an alien" arrested "on a warrant" who is "detained pending a
6 decision on whether the alien is to be removed from the United States." This is a specific statute
7 that is separate and apart from § 1225(b)(2)(A), which only applies to noncitizens arriving at the
8 border or a port of entry. As the Supreme Court has stated § 1226(a) "authorizes the Government
9 to detain certain aliens *already in the country* pending outcome of removal proceedings . . . ."
10 *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added). The Petitioner had been in
11 the country for decades when he was re-detained pending the outcome of his removal proceedings.
12 The NTA filed with the immigration court charges him as being subject to removal as a person
13 present in the United States without admission or parole under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.*
14 The inexorable conclusion, therefore, is that he is a noncitizen present in the country pending the
15 outcome of his removal proceeding and eligible for bond under § 1226(a).
16
17 Contrary to the findings in *Yajure-Hurtado*, 8 U.S.C. § 1225(b)(2)(A) has no application
18 to this case. That statute states, in pertinent part, that "in the case of an alien who is an *applicant*
19 *for admission*, if the examining immigration officer determines that an alien *seeking admission* is
20 not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding
21 under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A). This provision is applicable to
22 noncitizens encountered at ports of entry who lack documentation to be admitted into the country.
23 The Petitioner who entered the country illegally 40 years ago was obviously not applying for
24

admission and was not "seeking admission into the United States." Consequently, § 1225(b)(2)(A) does not require his mandatory detention. As multiple courts have explained, the Respondents' interpretation contravenes basic canons of statutory construction. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *6; *Jimenez*, 2025 WL 2639390, at *10; *Guerrero Orellana*, 2025 WL 2809996, at *7 ("After all, § 1225(b)(2)(A) requires that the noncitizen be both an 'applicant for admission' and 'seeking admission.' If the provision 'were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute.'") (alterations in original)).

The Petitioner's interpretation of the statutory language is supported by the recent passage of the Laken Riley Act (LRA), which demonstrates that Congress did not intend for § 1225(b)(2)(A) to apply to all noncitizens who entered without inspection. Section 1226(c) is an exception to § 1226(a)'s general bond authority and requires mandatory detention for specifically enumerated categories of noncitizens. Section 1226(c), until recently, required the detention of noncitizens who are inadmissible or deportable because they have committed or been sentenced for certain criminal offenses, or because they are affiliated with terrorist groups or activities. *See* §§ 1226(c)(1)(A)-(D). In January 2025, Congress enacted the LRA, which expanded this list by adding § 1226(c)(1)(E), which requires detention of individuals who (1) are inadmissible under §§ 1182(a)(6)(A), (C), or (7), *and* (2) who have been charged with, arrested for, or convicted of certain crimes, including burglary, theft, shoplifting, or crimes resulting in death or serious bodily injury. Pub. L. No. 119-1, 139 Stat. 3. The LRA would not have been necessary if all noncitizens who entered the country illegally were already subject to mandatory detention under § 1225(b)(2).

The Respondents' construction to the contrary contradicts the statutes' plain language and Congressional intent as manifested in the recent passage of the LRA.

The Petitioner's reading of the statutory language is further bolstered by the congressional reports issued at the time of the statute's enactment. Both §§ 1226(a) and 1225(b)(2) were enacted as part of the Illegal Immigration and Immigrant Responsibility Act (IIRIRA). Before the IIRIRA's passage, noncitizens who entered the country without inspection were subject to discretionary release from detention. *See Guerrero Orellana*, 2025 WL 2809996, at *9. A congressional report issued during IIRIRA's passage confirms that the revised § 1226(a) "restates the current provisions ... regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Id.* (citing H.R. Rep. No. 104-828, at 210 (1996) and H.R. Rep. No. 104-469, pt. I, at 229 (1996)). Thus, rather than eliminating bond eligibility for individuals who entered without inspection, Congress reaffirmed the Attorney General's longstanding authority to arrest and release such individuals under § 1226(a). *Id.*

The Respondents have recognized in other forums that § 1226(a) allows for release on bond for noncitizens who entered the country unlawfully. During oral argument in *Biden v. Texas*, the Solicitor General explained that "DHS's long-standing interpretation has been that 1226(a) applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." *Chogllo Chafla*, 2025 WL 2688541, at *23 (quoting Tr. of Oral Argument at 44:24–45:20, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954)); *see also Martinez v. Hyde*, 2025 WL 2084238, at *12 n.9. Likewise, the Supreme Court in *Jennings* stated that "§ 1226 applies to aliens already present in the United States" and "permits the Attorney General to release those aliens on bond." 583 U.S. at 303.

The statutory language is unambiguous and allows for the Petitioner's release on bond; but if the Court finds the statutes are ambiguous, the BIA's interpretation in *Yajure Hurtado* is not entitled to *Chevron* deference pursuant to the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 369 (2024) (overruling *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)). In *Loper Bright*, the Supreme Court held that "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority" while according only "due respect" to an agency's interpretation. *Id.* at 413, 370. The amount of "respect" owed to an agency's interpretation depends on "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift*, 323 U.S. 134, 140 (1944). The BIA's current position is inconsistent with earlier pronouncements, decades of prior practice, and the reasoning adopted by multiple federal district courts. For nearly thirty years, immigration judges, noncitizens' counsel, and attorneys for DHS uniformly understood § 1226(a) to confer bond eligibility on noncitizens who entered without inspection. The BIA's new interpretation is wrong, should receive no deference and given little respect.

**2. Detaining the Petitioner without an individualized bond hearing violates due process of law.**

The Respondents cannot deprive a person of life, liberty, or property without due process of law. U.S. Const. Amend. V. "[T]he Due Process clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. "Freedom from imprisonment—from government

custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process Clause] protects." *Id.* at 690. The Petitioner has a weighty liberty interest as his freedom even if the "government wields significant discretion." *Rosado*, 2025 WL 2337099, at *11. The Respondent's decision to hold the Petitioner without access to a bond hearing violates the Petitioner's right to procedural due process of law.

"To determine whether a civil detention violates a detainee's due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319." *Martinez v. Noem*, No. 5:25-CV-1007-JKP, 2025 WL 2598379, at *2 (W.D. Tex. Sept. 8, 2025). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

The private "interest in being free from physical detention is 'the most elemental of liberty interests.'" *Martinez*, 2025 WL 2598379, at *2 (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Since the Respondents unreasonably claim that the Petitioner is subject to mandatory detention under their new interpretation of 8 U.S.C. § 1225(b)(2), they may claim he has no legitimate liberty right. However, presuming the vast majority of district courts ruling on this issue are wrong, and the Petitioner is subject to mandatory detention, the "Respondents fail to contend with the liberty interests created by the fact that the Petitioner[ ] in this case [was] [previously] released . . . *prior to the manifestation of this interpretation*." *Lopez-Arevelo v. Ripa*, No. 3:25-CV-00337-KC, 2025 WL 2691828, at *10 (W.D. Tex. Sept. 22, 2025); *Hernandez-Fernandez v.*

*Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8 (W.D. Tex. Oct. 21, 2025). Since the Petitioner has been in the U.S. for approximately 40 years and was previously released by the Respondents from custody the Petitioner possesses a cognizable interest in his freedom from detention. *See, e.g.*, *Lopez-Arevelo*, 2025 WL 2691828, at *11; *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); *see also Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017).

The second *Mathews* factor considers whether the "challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks." *Martinez*, 2025 WL 2598379, at *3 (quoting *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025)); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 U.S. Dist. LEXIS 206751, at *9 (W.D. Tex. Oct. 21, 2025). "An individualized bond hearing ensures that an IJ can assess whether the Petitioner poses a flight risk or a danger to the community." *Sanchez Alvarez*, 2025 WL 2942648, at *8. Detaining the Petitioner without a bond hearing creates a high risk that his liberty is being erroneously deprived as it cannot be determined whether detention is warranted in his case. *See Gonzalez Martinez v. Noem et al.*, No. EP-25-CV-430-KC, 2025 WL 2965859, at *4 (W.D. Tex. Oct. 21, 2025). This is especially true when considering the prior decisions to release him and his strong family ties in the United States.

On the third *Mathews* factor relating to Government interests, the Respondents have an interest in ensuring that the Petitioner appears for his hearings and is not a danger to his community. However, its prior decision to release him is indicative of a governmental determination that the Petitioner is neither dangerous nor a flight risk. Moreover, the Government's interest in mandatory detention runs contrary to Congressional intent which plainly

allows for bond eligibility under 8 U.S.C. § 1226(a). The *Mathews* factors all weigh in favor of the Petitioner. The Court should order the Respondents to cease detaining the Petitioner without an individualized bond hearing.

**3. Should the Court find *Yajure* is correct, then it should not apply retroactively.**

In *Monteon-Camargo v. Barr*, the Fifth Circuit found that where the BIA announces a "new rule of general applicability" which "drastically change[s] the landscape," retroactive application would "contravene[] basic presumptions about our legislative system" and should in that case be disfavored unless the government can demonstrate that the advantages of retroactive application outweigh these grave disadvantages. 918 F.3d 423, 430-431 (2019) (quoting *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 849, 852 (BIA 2016)). Applying *Yajure Hurtado* to individuals like the Petitioner, who entered the United States without inspection years before the BIA's decision, would be impermissibly retroactive. The BIA's decision contradicts decades of statutory practice and administrative precedent, under which such individuals were detained under § 1226(a) and entitled to a bond hearing. Retroactively applying *Yajure Hurtado* would strip these long-established rights and impose a new disability by rendering them ineligible for bond, contrary to settled expectations. *See Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265 (1994) ("As Justice Scalia has demonstrated, . . . [e]lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted.").

**4. The Respondents' failure to follow their own regulations constitutes an *Accardi* violation.**

1 In 1997, after Congress amended the INA through the IIRIRA, the EOIR and the then-
2 Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA.
3 Specifically, under the heading of "Apprehension, Custody, and Detention of Aliens," the
4 agencies explained that "[d]espite being applicants for admission, aliens who are *present without*
5 *having been admitted or paroled* (formerly referred to as aliens who entered without inspection)
6 will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (emphasis added).
7 The agencies thus made clear that individuals who had entered without inspection were eligible
8 for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its
9 implementing regulations. Nonetheless, pursuant to *Yajure Hurtado*, EOIR has a policy and
10
11 practice of applying § 1225(b)(2)(A) to individuals like Petitioner.

12 The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued
13 detention in violation of § 1226(a) and its regulations at 8 C.F.R. §§ 236.1, 1236.1, and 1003.19,
14 which for decades have recognized that noncitizens present without admission are eligible for a
15 bond hearing. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people
16 "inside the United States" and "present in the country."). Such protection is not a mere regulatory
17 grace but is a baseline Due Process requirement. *See Hernandez-Lara v Lyons*, 10 F. 4th 19, 41
18 (1st Cir. 2021). The only exception for such noncitizens subject to § 1226(a) is where the
19 noncitizen is subject to mandatory detention under 8 U.S.C. § 1226(c) for certain crimes and
20 certain national security grounds of removability. *See Demore v. Kim*, 538 U.S. 510, 514 (2003).
21

22 Government agencies are required to follow their own regulations. *United States ex rel.*
23 *Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *United States v. Heffner*, 420 F.2d 809, 811
24 (4th Cir. 1969) ("An agency of the government must scrupulously observe rules, regulations, or

procedures which it has established. When it fails to do so, its action cannot stand and courts will strike it down."). A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g.*, *Sering Ceesay v. Kurzdorfer*, 781 F. Supp. 3d 137, 160 (W.D.N.Y. 2025) (citing *Rombot v. Souza*, 296 F. Supp. 3d 383, 388 (D. Mass. 2017)).

**B. Petitioner will suffer irreparable injury as a result of his unlawful detention.**

In the immigration context, unlawful detention alone constitutes irreparable injury. *See Gudino v. Lowe*, No. 1:25-CV-00571, 2025 U.S. Dist. LEXIS 75099, at *32 (M.D. Pa. Apr. 21, 2025) (citing *Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (finding that immigration detention can cause irreparable harm because individuals are likely to be detained unlawfully for an indefinite period and emphasizing economic harm)); *see also de Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury'") (internal citation omitted). Courts have similarly recognized that threatened removal satisfies the irreparable injury requirement, including harms such as separation from family and home, uncertainty about legal status, and difficulties establishing a life in the United States, such as access to healthcare, education, and employment. *See, e.g.*, *Nat'l TPS All. v. Noem*, 773 F. Supp. 3d 807, 836 (N.D. Cal. 2025) (describing harms from removal, including separation from family and communities, loss of authorization to work, and educational opportunities); *Matacua v. Frank*, 308 F. Supp. 3d 1019, 1025 (D. Minn. 2018) (loss of liberty due to detention is "perhaps the best example of irreparable harm"); *Carmona v. Bondi*, No. CV-25-00110-TUC-JGZ, 2025 WL

1 786514, at *3 (D. Ariz. Mar. 12, 2025) (finding that a detainee facing potential removal has shown
2 irreparable injury such that the ex parte TRO should be granted).

3 In this case, the Petitioner will continue to suffer irreparable harm from the Respondents'
4 violation of the INA, its implementing regulations, and the Fifth Amendment's Due Process
5 Clause. Indeed, the deprivation of Petitioner's fundamental liberty interest alone constitutes
6 irreparable harm. In addition, he is separated from his family and community, is unable to work
7 due to detention, and is facing ongoing uncertainty about his legal status, all of which further
8 compounds the injury. Each of these factors independently constitutes irreparable harm
9 warranting immediate injunctive relief.
10

11 **C. The remaining factors weigh in favor of a TRO and preliminary injunction.**

12 The remaining factors—the possibility of harm to other interested parties and the public
13 interest—also weigh in favor of granting a TRO and preliminary injunction and directing the
14 Petitioner's immediate release. First, Respondents will not be harmed by releasing the Petitioner.
15 On the contrary, the Petitioner's release will bring the Respondents in conformity with law, which
16 cannot be considered harmful. By enacting § 1226(a), Congress clearly indicated that noncitizens
17 present without admission may be released from custody pending the outcome of removal
18 proceedings. Therefore, the Respondents will not be prejudiced by a requirement to respect the
19 will of Congress and to abide by its own regulations and decades of administrative practice. Any
20 administrative burden imposed on Respondents by temporarily halting unlawful detention is
21 minimal and far outweighed by the substantial harm Petitioner continues to suffer each day his
22 liberty is denied. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest
23
24

lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Second, the public interest is always served when the government acts lawfully. By granting a TRO and preliminary injunction ordering the Petitioner's immediate release, the Court will order the government to follow the INA, its implementing regulations, and the Fifth Amendment, which is necessarily in the public interest. "In the absence of legitimate, countervailing concerns, the public interest clearly favors the protection of constitutional rights." *Council of Alt. Pol. Parties v. Hooks*, 121 F.3d 876, 883-84 (3d Cir. 1997); *see also Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377, 400 (6th Cir. 2001); *Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention . . . ."). The government suffers no cognizable harm from being enjoined from unconstitutional conduct. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.").

Moreover, "[a]s a practical matter, if a Plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor plaintiff." *AT&T v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 n.8 (3d Cir. 1994). Petitioner has shown a clear likelihood of success on the merits and will clearly suffer irreparable harm if the Court does not order his release from custody. As such, the balance of equities and the public interest weigh decisively in favor of issuing a temporary restraining order and preliminary injunction.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**D. Petitioner has complied with the requirements of Federal Rule of Civil Procedure 65.**

Petitioner asks this Court to find that he has complied with the requirements of Fed. R. Civ. P. 65, for the purpose of granting a temporary restraining order. Pursuant to Rule 65(b)(1), this Court "may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse party can be heard in opposition; and 2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Here, Petitioner's verified petition clearly demonstrates immediate and irreparable injury. The undersigned's motion also contains a certification regarding notice to opposing counsel. The U.S. Attorney's Office represents Respondents in civil litigation in which they are named as respondents. While proper service may not have been made on Respondent's counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met.

Rule 65(c) also states that the court may issue a preliminary injunction or temporary restraining order 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. Under the circumstances of the instant suit, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to release Petitioner from unconstitutional detention, should not result in any conceivable financial

damages to Respondents. *See, e.g.*, *Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 WL 1382859, *6 (N.D. Cal. May 12, 2025).

## III. CONCLUSION

For the foregoing reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction prohibiting the Respondents from continuing to detain him pending the resolution of his Writ of Habeas Corpus and to order that he be released. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release.").

Respectfully submitted,

/s/ Alejandra Martinez
Alejandra Martinez
Texas Bar No. 24096346
Alejandra.Martinez@dmcausa.com
De Mott, Curtright, Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210)590-1844 (telephone)
(210)212-2116 (facsimile)

ATTORNEY FOR PETITIONER

## CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 65(B)

The undersigned certifies that on October 30, 2025, a copy of this motion is being mailed to the U.S. Attorneys Office for the District of Arizona via certified mail return receipt requested at:

40 N. Central Avenue, Suite 1800
Phoenix, AZ 85004-4449

/s/ Alejandra Martinez
Alejandra Martinez