SYLVIA L. ESPARZA, ESQ. NV #8444
Law Office of Sylvia L. Esparza
3340 Pepper Lane, Suite 105
Las Vegas, Nevada 89120
(702) 853-0233
Fax (702) 853-0234
Sylvia@sylviaesparzalaw.com
Counsel for Petitioner,
ROGELIO BERTO MENDEZ

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (LAS VEGAS)
* * *

ROGELIO BERTO MENDEZ Petitioner, vs. KRISTI NOEM, Acting Secretary of the United States Department of Homeland Security; PAM BONDI, Attorney General of the United States; THOMAS E. FEELEY, Salt Lake City Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; JOHN MATTOS, Warden at Southern Nevada Southern Detention Center. Respondents.	CASE NO. Agency No. [redacted] **COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

Combined Memorandum of Points and Authorities in Support of Petition for Writ of Habeas and Emergency Motion for Temporary Restraining Order

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I. INTRODUCTION

Rogelio Berto Mendez ("Petitioner") seeks relief to remedy his prolonged and unlawful detention. Mr. Berto Mendez was detained by ICE on June 16, 2025, and he remains detained at the Nevada Southern Detention Center in Pahrump, Nevada. An Immigration Judge (IJ) properly found Mr. Berto Mendez to not be a danger to the community and to not pose a flight risk, and the IJ granted Mr. Berto Mendez a bond in the amount of $5,000.00. However, Mr. Berto Mendez has been unable to post a bond, and he has languished in Immigration and Custom Enforcement ("ICE") custody, first as a result of the automatic stay invoked by the U.S. Department of Homeland Security ("DHS" or "Department"), and now due to the Board of Immigration Appeals' ("BIA") erroneous decision of September 30, 2025, which not only sustained the Department's appeal but also vacated the Immigration Judge's bond order and directed that Petitioner be detained without a bond.

Furthermore, Mr. Berto Menez has now been granted Cancellation of Removal for Certain Nonpermanent Residents (EOIR-42B) by the Immigration Judge and yet he remains detained, while the Department appeals that decision.

For the last twenty-three years, Mr. Berto Mendez has resided in the U.S. Petitioner and his life partner raised six children, who are all U.S. citizens. Petitioner has one 7-month-old U.S. citizen granddaughter. Petitioner is deeply loved and respected by his family. Prior to his detention, Petitioner had been employed with several construction companies, including Blackstone Construction and Hacienda Builders Inc. for the last five years. Petitioner is also a

tax payer, providing to the U.S. economy. Mr. Berto Mendez has a minimal and dated criminal record, consisting of two misdemeanor convictions—Disorderly Conduct and DUI—from over two decades ago, both of which have been resolved and closed since 2004. His most recent conviction, a misdemeanor Simple Assault and misdemeanor Drawing a Deadly Weapon stemmed from an altercation in 2021 that occurred over four years prior, has also been fully adjudicated without further legal issues. None of these offenses involve violent felonies, controlled substances, or behavior indicative of a risk to public safety. Overall, Petitioner has lived an honest and productive life.

Mr. Berto Mendez remains detained because the Department filed an appeal to the Board of Immigration Appeals ("BIA" or "Board"), which results in an automatic stay of his release. This denies Mr. Berto Mendez the ability to post bond while his removal proceedings are pending. Furthermore, the BIA recently decided *Matter of Yajure Hurtado*, which held that "immigration judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission." 29 I&N Dec. 216, 225 (BIA 2025). The Petitioner here falls into the category of detainees to whom the BIA will not grant bond under the decision, which is evidenced by the BIA recent decision dated September 30, 2025 which sustained the Department's appeal and vacated the Immigration Judge's decision, and further ordered the Petitioner to remain detained on no bond.

Both the automatic stay provision in this matter, and the Board's new interpretation of the statute is fundamentally irrational, arbitrary and capricious, and a complete deprivation of

Petitioner's right to be released from custody. Due process requires that the government release Petitioner immediately—especially since he has now successfully been granted relief from removal, unless it can show why a writ should not be issued. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Upon judicial review of the constitutionality of the automatic stay provision and the BIA's new interpretation of the INA, Mr. Berto Mendez clearly demonstrates that he is detained in violation of the law.

Mr. Berto Mendez seeks to preliminarily enjoin DHS from continuing his detention and to secure his release as he was already granted both bond and relief through Form EOIR-42B. Mr. Berto Mendez will suffer immediate and irreparable harm if this Court does not enjoin his continued detention, given that his continued detention violates his due process rights. *See* Fed. R. Civ. P. 65. Petitioner's counsel has filed an affidavit indicating that Petitioner is suffering immediate and irreparable injury and certifies that notice is being effectuated today and by filing proof of service when service is completed.

Mr. Berto Mendez will suffer irreparable harm, as "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984). Here, Respondent's continued deprivation

of Petitioner's liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, every day that Petitioner is detained is a day of freedom Petitioner cannot get back.

Mr. Berto Mendez meets the standard for a preliminary injunction or temporary restraining order. As shown in greater detail below, Petitioner has been granted both bond and relief. Due to the Department's invocation of the automatic appeal provisions, and the BIA's new interpretation of the INA, he has been deprived of his liberty in violation of due process. Mr. Berto Mendez will also be able to show irreparable and immediate harm. Lastly, the balance of equities and public interest weighs in his favor.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a 41-year-old native and citizen of Mexico. Exh. A (Notice to Appear). Petitioner last entered the United States without inspection on or about 2002 and has resided here continuously since then. Petitioner and his life partner raised six children, who are 21, 20, 18, 14, 10, and 9 years old –all are U.S. Citizens. Exh. B (U.S. Birth Certificate for children). Petitioner has been a steadfast supporter of his oldest U.S. Citizen daughter who suffers from juvenile idiopathic arthritis (JIA) since age 12. She currently requires ongoing medical care. Exh. C (Medical Records); Exh. D (Sworn Declaration from Enereida Berto Juarez). Petitioner's life partner has been struggling to keep up with their monthly expenses and is suffering bouts of depression and anxiety since his detention. Exh. E (Sworn Declaration from Olivia Juarez). Petitioner is also a loving grandfather. *See* Exh. D. Petitioner is respected and admired by his entire family. Exh. F (Letters from other relatives).

Prior to his detention, Petitioner worked steadily in construction with companies including Blackstone Construction and Hacienda Builders Inc. Exh. G (Employment Letters). Petitioner was the primary breadwinner of his family and paid for most of their household expenses. *See* Exh. E.

On or around 2004, Petitioner was convicted in Clark County, Nevada for Disorderly Conduct and DUI. On or around 2021, Petitioner was convicted in Clark County, Nevada for misdemeanor Simple Assault and misdemeanor Drawing a Deadly Weapon. Exh. H (Criminal Records). None of these offenses involve violent felonies, controlled substances, or behavior indicative of a risk to public safety. *Id.*

On June 16 2025, Petitioner was arrested and transferred to ICE custody. DHS served Petitioner with a Notice to Appear, initiating removal proceedings under 212(a)(6)(A)(i) of the INA. On July 2, 2025 Petitioner filed a bond motion. Exh. I (Bond Motion). On July 17, 2025, an Immigration Judge in Las Vegas held a custody redetermination hearing and found Petitioner not a danger to the community or a risk of flight and granted Petitioner bond in the amount of $5,000. Exh. J (IJ Decision granting bond). On July 18, 2025, DHS filed an automatic appeal via Form EOIR-43A. Exh. K (EOIR-43A). On July 29, 2025, DHS filed a Notice of Appeal (EOIR-26) to the BIA, arguing that Petitioner is an "applicant for admission" subject to mandatory detention under INA § 235(b)(2)(A) and ineligible for bond. Exh. L (EOIR-26, Notice of Appeal of Bond Decision). As a result, Mr. Berto Mendez was

unable to post bond and remained detained at the Nevada Southern Detention Center while awaiting his Individual Hearing.

On September 9, 2025, after presenting documentary evidence and sworn testimony at his Individual Merits Hearing, the IJ granted Mr. Berto Mendez's relief application, Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents. Exh. M (EOIR-42B and supporting documents); Exh. N (IJ order granting EOIR-42B). Mr. Berto Mendez remained detained. On September 19, 2025, DHS filed an appeal with the Board of Immigration Appeals, again preventing Mr. Berto Mendez from posting bond and obtaining his release. Exh O (EOIR-26, Notice of Appeal of EOIR-42B Decision). On September 30, 2025, the BIA issued a decision in Mr. Berto Mendez's bond appeal, sustaining the Department's appeal, vacating the Immigration Judge's bond order, and further ordering Mr. Berto Mendez to be held on no bond. Exh. P (BIA Bond Decision.

III. LEGAL BACKGROUND

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Civil detention violates the Due Process Clause except "in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citations omitted). In *Singh v. Holder*, 638 F.3d

1196, 1203-1204, the Ninth Circuit reiterated that the Supreme Court had determined that "civil commitment for *any* purpose constitutes a significant deprivation of liberty." *Singh*, 638 F.3d at 1204. (internal citations omitted).

A. Mandatory and Discretionary Detention

Under these constitutional constraints, Congress has created a scheme for detention of noncitizens in removal proceedings. For decades, the Department and EOIR interpreted 8 U.S.C. § 1226(a) to authorize immigration judges to provide a custody redetermination hearing even though DHS could detain a noncitizen "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). In *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942, (9th Cir. 2008), the Ninth Circuit held that immigrants detained under §1226(a) are entitled to individualized bond hearings. 8 C.F.R. §1003.19(h)(3) provides that a noncitizen subject to detention must show by clear and convincing evidence that the noncitizen is not a danger to other persons or property and that the noncitizen is not a flight risk.

In contrast to § 1226(a), noncitizens who have been convicted of certain criminal convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 513 (2003). Congress added this provision by passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to address concerns that criminal noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020). The new section mandated detention for noncitizens who

were convicted of aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at 518–20.

In January 2025, Congress added a new category of noncitizens who are subject to mandatory detention with the Laken Riley Act, codified as 8 U.S.C. § 1226(c)(1)(E). The new section mandated detention for noncitizens who: (1) are inadmissible under 8 U.S.C. § 1182(a)(6)(A), 1182(a)(6)(C), or 1182(a)(7); and (2) are charged with, are arrested for, are convicted of, admit having committed, or admit committing acts that constitute the elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement office offense, or any crime that results in death or serious bodily injury to another person. § 1226(c)(1)(E).

Further, 8 U.S.C. § 1225(b) requires detaining noncitizens who (1) are subject to expedited removal under § 1225(b)(1), or (2) are "seeking admission" at the border under § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins at the Nation's borders and ports of entry).

B. Automatic Stay of Custody Order Under 8 C.F.R. § 1003.19(i)(2)

The Department has significant power in limiting the application of the IJ's order. Under 8 C.F.R. § 1003.19(i)(2), the Department can file a notice of intent to appeal a noncitizen's custody determination (Form EOIR-43), which will automatically and unilaterally stay the IJ's order authorizing the noncitizen's release on bond. This Court recently found that the automatic stay as applied in cases such as the Petitioner's violates procedural and substantive due process. *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sep. 17, 2025).

C. Applicability of Equitable Relief

Mr. Berto Mendez warrants a preliminary injunction because the IJ and BIA's decisions ordering his continued detention are unlawful, and detention has already imposed irreparable hardship. A preliminary injunction is appropriate if a plaintiff can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, a temporary restraining order ("TRO") or preliminary injunction is appropriate when, "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation omitted).

Pursuant to the Federal Rules of Civil Procedure, a TRO may be issued if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certified in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b). In the instant case, Petitioner is not requesting an ex parte TRO, but rather an expedited briefing schedule or hearing on the matter since counsel has filed an affidavit and has provided proof of service.

IV. ARGUMENT

A. This Court Has Jurisdiction

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

i. 8 U.S.C. § 1226(e) does not preclude jurisdiction

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

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

ii. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction

Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review to the appropriate federal court of appeals, which would be the Ninth Circuit here. However, where a petitioner is not seeking review of a removal order or is challenging their detention or a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.").

iii. 8 U.S.C. § 1252(g) does not preclude jurisdiction

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

B. Administrative Exhaustion Has Been Satisfied.

Generally, if the exhaustion requirement is statutory, "it may be mandatory and jurisdictional, but courts have discretion to waive a prudential requirement." *Laing v. Ashcroft*, 370 F. 3d 994, 998 (9th Cir. 2004). Furthermore, this court has already recognized that "[n]either the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Id.* (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *27; 2025 LX 460110; 2025 WL 2676082 (D. Nev. Sep. 22, 2025).

Instead, the court may require prudential exhaustion under *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Prudential exhaustion may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988; 2017 U.S. App. LEXIS 19021, *22; 2017 WL 3887819.

In this case, administrative exhaustion has been satisfied. The BIA recently issued a decision on September 30, 2025 sustaining the Department's appeal, vacating the Immigration Judge's bond order, and further ordering the Petitioner to be held on no bond. *See* Exh. P. The BIA decision relies on its precedential decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) ("Based on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), Immigration Judges lack authority to hear

bond requests or to grant bond to aliens who are present in the United States without admission.").

Furthermore, there is also widespread agreement among the federal courts that Matter of Yajure Hurtado's new interpretation violates the INA and is unconstitutional. This Court recently found in *Vazquez v. Feeley* that § 1226, not §1225, applies to noncitizens such as the Petitioner. That decision, along with at least two dozen other federal court decisions, have emphasized that the Department's interpretation of § 1225 is erroneous for several reasons, such as (1) the plain meaning of the INA provisions in the context of recent amendments, (2) legislative history, and (3) longstanding agency practice. This Court found that "the phrases 'applicants for admission' and 'seeking admission,' taken together, are limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing in the U.S. for years or decades." *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *13; 2025 LX 460110; 2025 WL 2676082.

Several district courts in the Ninth Circuit and throughout the country have found equally. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025).

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

With respect to the automatic stay provision under 8 C.F.R. § 1003.19(i)(2), no alternative administrative remedy exists to challenge the constitutionality of this regulation. The Board of Immigration Appeals lacks authority to adjudicate constitutional challenges to immigration laws or procedures. *See Matter of G.K.*, 26 I&N Dec. 88, 96–97 (BIA 2013). Rather, constitutional questions concerning such regulations fall within the jurisdiction of the federal courts for review.

More importantly, each day that Petitioner remains in unconstitutional detention constitutes irreparable harm. Accordingly, this Court should adopt the reasoning of the majority of federal district courts, which have found similar Petitioners to be suffering irreparable injury every single day they remain detained. *See, e.g.*, *Feeley v. Vazquez*, 2025

WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Sanchez Roman v. Noem*, No. 25-CV-01684, 2025 WL 2710211 (D. Nev. Sep. 23, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025).

Without intervention, Petitioner will remain detained for many months, if not years while awaiting until the BIA issues a decision on the merits. Even if the BIA ultimately dismisses the government's appeal—the government is likely to pursue judicial review, consistent with the current administration's aggressive and punitive immigration enforcement policy, regardless if such action is supported by fact or law.

C. Mr. Berto Mendez Is Likely to Succeed in Showing That His Detention Violates Due Process or There Is a Serious Question

A temporary restraining order is appropriate if a petitioner can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's alternative "sliding scale" approach, a temporary restraining order is appropriate if "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner's due process claims satisfy these standards.

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

i. Automatic stay at 8 C.F.R. §1003.19(i)(2)

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

Most recently, numerous federal courts have held that detaining individuals like Petitioner under the automatic stay provision constitutes a violation of their procedural and due process rights. *Günaydin v. Trump*, 784 F. Supp. 3d 1175; 2025 U.S. Dist. LEXIS 99237, *12; 2025 LX 25539; 2025 WL 1459154 (finding the automatic stay provision violates Petitioner's due process and describing the history of the automatic stay provision and its problems); see also, *Reynosa Jacinto v. Trump*, 4:25-cv-03161-JFB-RCC at *7, 2025 U.S. Dist. LEXIS

160314 (D. Neb. August 19, 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025);*Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *57; 2025 LX 460110; 2025 WL 2676082.

To determine whether Petitioner's continued detention violates his procedural due process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here the court weighs the following factors: (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.

In this case, Petitioner's private interest is his freedom— "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs heavily in Petitioner's favor, as the automatic stay provision deprives him of his fundamental liberty interest in freedom from incarceration. In addition, continued detention inflicts further harms, including separation from his children, granddaughter, life partner, and community; the loss of employment; the denial of adequate healthcare; the invasion of his privacy; and the

impairment of his right to counsel due to the obstacles in maintaining communication and access. Whereas the government's interest to keep the Petitioner detained throughout his merits appeal is not as weighty.

In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to be free from incarceration, the court must review if the invocation of the automatic stay procedure increases that risk. Here, Petitioner will most certainly be at risk of erroneous deprivation of his liberty because he was found not to be a danger to the community or a risk of flight, and prevailed before the Immigration Judge to be released upon posting a bond in the amount of $5,000 and the Department has the unilateral power to override this decision. Recently, this court found "this unchecked power vested in DHS to prolong an individual's detention cannot in any circumstance be a 'carefully limited exception' to an individual's right to liberty as required by the Due Process Clause""). *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *56; 2025 LX 460110; 2025 WL 2676082 (citing Salerno, 481 U.S. at 755).

Other courts reviewing this issue have found that a regulation permitting the losing party to stay a decision allowing the Petitioner to remain detained results in an increased risk of erroneous deprivation of his liberty interest. *See Ashley*. 288 Supp 2d at 671 ("It produces a patently unfair situation by 'taking the stay decision out of the hands of the judges altogether and giving it to the prosecutor who has by definition failed to persuade a judge in an adversary hearing that detention is justified.'") *see also Reynosa Jacinto v. Trump*, 25-CV-03161-JFB-RCC at *7, 2025 U.S. Dist. LEXIS 160314 (D. Neb. August 19, 2025); *Maldonado v. Olson*,

No. 25-CV-3142 (SRN/SGE), 2025 U.S. Dist. LEXIS 158321, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025); *Silva v. Larose*, No. 25-CV-2329, 2025 WL 2770639 (S.D. Cal. Sep. 29, 2025). Similarly, there is something fundamentally unjust about a person remaining in detention despite having been granted relief from removal by the Immigration Judge. It undermines the very purpose of the judicial process when a favorable decision, intended to restore freedom and legal status, is rendered meaningless by Petitioner's continued confinement.

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

While Petitioner recognizes that the government has an important interest in ensuring that persons in removal proceedings do not commit crimes or abscond from the law during their proceedings, that interest has already been satisfied in this matter. The Immigration Judge conducted an individualized assessment of Petitioner's criminal record and personal history and determined that Petitioner poses neither a danger to the community nor a risk of flight. Moreover, the Immigration Judge has granted Petitioner's application for Cancellation of Removal for Certain Nonpermanent Residents, meeting all the legal requirements for relief in the form of lawful permanent resident status, and yet he remains detained—an absurd result.

Furthermore, as the court has recognized, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions." *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *59, 2025 LX 460110, 2025 WL 2676082 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). Perhaps there are other non-legitimate interests in keeping Petitioner in mandatory detention—which paradoxically creates unnecessary financial and administrative burdens for the government itself. See *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *41-42; 2025 LX 303800; 2025 WL 2337099 (citing *Vasquez Perdomo v. Noem*, F. Supp. 3d, No. 2:25-cv-056050, 2025 WL 1915964, at *5 (C.D. Cal. July 11, 2025) (noting "[t]he government's only apparent interest in taking Rosado into custody, [*42] which actually places an additional fiscal and administrative burden on the government, is to fulfill a quota of arrests, i.e., 3,000 immigration arrests per day, set by the current administration."). Indeed, keeping Petitioner detained is far more expensive than allowing him to be released on bond. See *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *61; 2025 LX 460110; 2025 WL 2676082 (citing *Hernandez v. Sessions*, 872 F.3d 976, 996; 2017 U.S. App. LEXIS 19021, *40; 2017 WL 3887819) ("The costs to the public of immigration detention are "staggering": $158 each day per detainee, amounting to a total daily cost of $6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.") Therefore, this factor weighs in favor of finding that Petitioner's due process rights have been violated.

Since all three factors of the *Mathews* test weigh in favor or Petitioner, he has established a likelihood of success on the merits.

D. Petitioner Will Suffer Irreparable Harm If He Is Not Released from Detention.

Petitioner will suffer two significant harms if a temporary restraining order is not issued in this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting from his unlawful detention and (2) the severe and continuing harms that flow from Petitioner's continued unlawful detention, including the breakdown of family ties, loss of income and employment, and deterioration of Petitioner's physical and mental health.

i. Constitutional Violations

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Further, as the Eleventh Circuit has held, the "unnecessary deprivation of liberty clearly constitutes irreparable harm." *United*

States v. Bogle, 855 F.2d 707, 710-11 (11th Cir. 1998). Here, Respondent's continued deprivation of Petitioner's liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, each day of confinement is a day of freedom forever taken from Petitioner.

ii. Increased Risk of Health Concerns

Petitioner is at risk of deteriorating his health if he remains in detention. *See* Exh. O. Petitioner's partner alleges that the conditions of confinement have directly endangered Petitioner's health and well-being. *Id.* He suffers from recurring headaches, insomnia, and exhaustion due to the cold, damp, and unsanitary conditions of his cell. *Id.* Requests for medical attention are met with weeks-long delays, reflecting deliberate indifference to his basic medical needs. Such conditions contravene the constitutional requirement that immigration detention remain non-punitive in nature. Each additional day of confinement worsens his physical and emotional state.

In the correctional setting, the stakes are high, and any delay or denial of care can convert an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical care in jails and prisons is a well-documented systemic failure. Incarcerated persons often endure delays, missed appointments, staffing shortages, and willful indifference by

correctional medical staff.[1] Therefore it is not speculative to fear that Petitioner's health will deteriorate rapidly while he remains detained.

Since his confinement, his wife and children have been deprived of meaningful communication with him. *Id.* Phone calls are routinely canceled without notice or explanation, and when permitted, they are brief, monitored, and emotionally inadequate. *Id.* Video calls are not allowed, effectively cutting off the family's only opportunity for face-to-face connection. *Id.* Given his spouse's work obligations and lack of childcare, in-person visits are nearly impossible. *Id.* As a result, the family's contact has been reduced to sporadic, impersonal exchanges that have caused significant emotional distress, especially to the couple's young children, who cry when calls fail and struggle to understand why their father remains locked away. *Id.*

Petitioner's detention has caused profound and compounding harm to his entire family. His life partner is struggling to meet their basic financial obligations. The loss of Petitioner's income has left the family in severe financial distress, forcing them to make impossible choices between essential expenses. Beyond the financial hardship, the emotional toll has been devastating. Petitioner has been completely separated from his life partner, children, and granddaughter, unable to see or hold them since his incarceration. His absence has created a

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[1] Homer Venters, The Health Crisis of U.S. Jails and Prisons, New Eng. J. Med. 2259 (2022), https://www.nejm.org/doi/full/10.1056/NEJMms2211252

deep void in the family. His children constantly ask when their dad will come home. In short, Petitioner's detention has this family's stability, causing pain, anxiety, and hardship that worsen with every passing day he remains in detention.

iii. Equitable Considerations and Public Interest Favor Petitioner's Release.

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

Moreover, the government's interest in Petitioner's continued detention is minimal and pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here, Petitioner remains in custody despite the fact that he was found by the Immigration Judge not to be a danger or a flight risk, and more importantly that he has succeeded on the merits of his application for relief from removal. His continued detention not only violates his constitutional rights but also causes direct suffering to him, his family and his community. As the Ninth Circuit has regularly held, there is no harm to the government when a court prevents the government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

Finally, the temporary restraining order sought here is in the public interest. The public has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826

(9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) ("[I]t is always in the public interest to protect constitutional rights."). Moreover, the public has an interest in accurate determinations in all legal proceedings, including in the decision of whether to detain individuals during their immigration cases. The public is also served by avoiding excessive expense on detention and ensuring that the government does not expend its resources to detain individuals unnecessarily.

V. CONCLUSION

WHEREFORE, and for the foregoing reasons, Petitioner asserts that his continued detention is unlawful, and he respectfully requests that this Court grant his request for a temporary restraining order and order his immediate release from custody. In the alternative, to order his release on a bond in the amount of $1,500, the minimum bond, because the Immigration Judge has already granted him relief from removal, while the government pursues its appeal.

Dated: October 23, 2025

/S/ Sylvia L. Esparza
Sylvia L. Esparza, Esq.
Attorney for Petitioner