

1 Alycia T. Moss, Bar No. 7206  
2 **FENNEMORE CRAIG, P.C.**  
3 233 E Harrison Ave.  
4 Coeur d' Alene, ID 83814  
5 Tel: (208) 956-0140 / Fax: (208) 956-0139  
6 amoss@fennemorelaw.com

7 Attorney for Petitioner  
8 **SERVANDO TORRES HERNANDEZ**

9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF IDAHO

11 **SERVANDO TORRES HERNANDEZ,**  
12  
13 Petitioner,  
14 v.  
15 **PAMELA BONDI, et al.**  
16 Respondents.

Case No.

**EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER  
AND STAY OF REMOVAL**

**IMMIGRATION HABEAS CASE**

Agency File No.: None Currently

17 **EMERGENCY MOTION FOR TEMPORARY RESTRAINING**  
18 **ORDER AND STAY OF REMOVAL**

19 **I. MOTION**

20 Under FRCP 65 and 5 U.S.C. §705, the Petitioner, Servando Torres Hernandez moves this  
21 Court for an Emergency Temporary Restraining Order (TRO) and Stay of Removal, preventing  
22 his removal from the United States and his transfer to another detention facility while these  
23 proceedings are pending.

24 **II. BASIS FOR MOTION**

25 Petitioner is a citizen of Mexico who is present in the United States without lawful  
26 immigration status, not in removal proceedings, and has a U.S. citizen wife. On October 19, 2025,  
27 Mr. Torres Hernandez was seized by agents with Immigration and Customs Enforcement (ICE)  
28 during a multiagency raid at a racetrack in Wilder, Idaho.

1 He now faces unlawful detention, because the Department of Homeland Security (DHS)  
2 and the Executive Office of Immigration Review (EOIR) have concluded that aliens who entered  
3 the United States without inspection are subject to mandatory detention without the possibility of  
4 bond.

5 DHS policy issued on July 8, 2025, instructs all Immigration and Customs Enforcement  
6 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who  
7 entered the United States without admission or inspection—to be subject to detention under 8  
8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

9 Likewise, on September 5, 2025, the Board of Immigration Appeals (BIA or Board)  
10 issued a precedent decision, binding on all immigration judges, holding that an immigration judge  
11 has no authority to consider bond requests for any person who entered the United States without  
12 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board  
13 determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and  
14 therefore ineligible to be released on bond.

15 Petitioner’s detention on this basis violates the plain language of the Immigration and  
16 Nationality Act (INA). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
17 previously entered and are now residing in the United States. Instead, such individuals are subject  
18 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute  
19 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered  
20 the United States without inspection.

21 Respondents’ new legal interpretation is plainly contrary to the statutory framework and  
22 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

### 23 **III. ARGUMENT**

#### 24 **A. Standards for Temporary Restraining Order**

25 To grant a Temporary Restraining Order, the petitioner must meet one of two tests. The  
26 more recent test, known as the Winter test, requires the petitioner to prove as follows:

- 27 (1) that he is likely to succeed on the merits,
- 28 (2) that he is likely to suffer irreparable harm in the absence of preliminary relief,

1 (3) that the balance of equities tips in his favor, and

2 (4) that an injunction is in the public interest.

3 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter v.*  
4 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The same standard applies to both  
5 temporary restraining orders and to preliminary injunctions.” *Sterling Commercial Credit-*  
6 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting *Hall*  
7 *v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

8 The traditional test, which remains viable in the Ninth Circuit, is known as the “sliding  
9 scale” test and requires the petitioner to prove “serious questions going to the merits” and “a  
10 hardship balance that tips sharply toward the petitioner.” *Alliance For The Wild Rockies v.*  
11 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the petitioner must also show a  
12 likelihood of irreparable injury and that the injunction is in the public interest. “Under this  
13 approach, the elements of the preliminary injunction test are balanced, so that a stronger showing  
14 of one element may offset a weaker showing of another.” *Alliance For The Wild Rockies*, 632  
15 F.3d at 1131.

16 Petitioner meets both tests.

17 **B. Petitioner is likely to succeed on the merits and has raised serious legal questions.**

18 1. Continued Detention of Petitioner without a Bond Hearing would Violate his Due  
19 Process Rights.

20 The Due Process Clause of the Fifth Amendment forbids the government from depriving  
21 any “person” of liberty “without due process of law.” U.S. Const. amend. V. All people within  
22 the territorial bounds of the United States enjoy due process rights, regardless of citizenship. See  
23 e.g., *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“[T]here are literally millions of [non-citizens]  
24 within the jurisdiction of the United States...[and] the Fifth Amendment...protects every one of  
25 these persons.”) (internal quotation marks omitted); *Yick Wo v. Hopkins*, 118 U.S. 356, 368-69  
26 (1886). These protections apply equally to non-citizens facing deportation proceedings. *Demore*  
27 *v. Kim*, 538 U.S. 510, 523 (2003); see also *Zadvydas*, 533 U.S. at 721 (“[B]oth removable and  
28 inadmissible [non-citizens] are entitled to be free from detention that is arbitrary and capricious.”)

1 (Kennedy, J., dissenting).

2 “Freedom from imprisonment—from government custody, detention, or other forms of  
3 physical restraint—lies at the heart of the liberty” that the Due Process clause protects. *Zadvydas*,  
4 533 U.S. at 690. Due process thus requires “adequate procedural protections” to ensure that the  
5 government’s asserted justification for incarceration “outweighs the individual’s constitutionally  
6 protected interest in avoiding physical restraint.” *Id.* at 690.

7 2. Removal of Petitioner would Violate his Due Process Rights

8 Due process protects a noncitizen’s liberty and property interest in the adjudication of  
9 applications for relief and benefits made available under the immigration laws. See *Arevalo v.*  
10 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the “right to seek  
11 relief” even when there is no “right to the relief itself”). Petitioner has a U.S citizen wife and is  
12 entitled to file for non-lawful permanent resident cancellation of removal under 8 U.S.C. § 1229a  
13 (b)(1) based on exceptional and extremely unusual hardship to his wife. Petitioner faces a risk of  
14 erroneous and unlawful removal from the United States.

15 3. Most Federal Courts Have Held that Petitioners in the Same Factual Posture as  
16 Petitioner were Unlawfully Subject to Mandatory Detention

17 On September 5, 2025, the Board issued a precedent decision, binding on all immigration  
18 judges, holding that an immigration judge has no authority to consider bond requests for any  
19 person who entered the United States without admission. See *Matter of Yajure Hurtado*, 29 I. &  
20 N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention  
21 under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

22 Petitioner’s detention on this basis violates the plain language of the Immigration and  
23 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who  
24 previously entered and are now residing in the United States. Instead, such individuals are subject  
25 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute  
26 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered  
27 the United States without inspection.

28 Respondents’ new legal interpretation is plainly contrary to the statutory framework and

1 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

2 Subsequently, court after court adopted the same reading of the INA’s detention  
3 authorities and rejected ICE and EOIR’s new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-  
4 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-  
5 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*  
6 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),  
7 report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133  
8 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588  
9 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL  
10 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW  
11 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,  
12 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL  
13 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL  
14 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL  
15 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL  
16 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F.  
17 Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-  
18 cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*,  
19 No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda*  
20 *v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro*  
21 *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v.*  
22 *Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.,*  
23 *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting  
24 that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention);  
25 *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19,  
26 2025) (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D.  
27 Neb. Aug. 14, 2025) (same).

28

1 **C. Petitioner faces irreparable harm, and a hardship balance tips sharply toward him.**

2 As noted above, he has a U.S. citizen wife and can file for non-lawful permanent resident  
3 cancellation of removal. If he is removed, he will lose this opportunity for ever because 8 U.S.C.  
4 § 1229a(b)(1) requires him to be physically present in the U.S.

5 **D. The balance of equities tips in favor of Petitioner, and an injunction is in the public**  
6 **interest.**

7 The remaining two factors for an injunction are the same under both legal tests, and they  
8 both favor Petitioner.

9 The balance of equities and the public interest favor the issuance of a temporary  
10 restraining order in the instant matter. As noted above, the hardship for Petitioner is concrete and  
11 severe. Moreover, assuming that Petitioner’s removal would violate the Due Process Clause and  
12 the Suspension Clause, the government cannot be harmed by a constitutionally-mandated  
13 injunction. *See e.g., Zepeda v. INS*, 753 F.2d 719, 729 (9th Cir. 1983) (noting that the  
14 government “cannot reasonably assert that it is harmed in any legally cognizable sense by being  
15 enjoined from constitutional violations”).

16 Finally, the public interest favors preserving Petitioner’s legal rights as a Spouse of a U.S.  
17 citizen, including his right to pursue non-lawful permanent resident cancellation of removal. *Id.* at  
18 179 (“And it is squarely in the public interest to enable individuals to partake of statutory and  
19 constitutional rights and meaningful judicial review where, as here, it is consistent with the  
20 process prescribed by Congress.”).

21 **IV. CONCLUSION**

22 Under FRCP 65, the petitioner moves this Court to issue an Emergency Temporary  
23 Restraining Order and Stay of Removal:

24 1. Enjoining and restraining the Respondents and all of their respective officers,  
25 agents, servants, employees, attorneys and persons acting on their behalf in concert or in  
26 participation with them from:

27 a. Removing or deporting Petitioner from the United States while these  
28 proceedings are pending;

