UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALEJANDRO STALIN ROMERO MARTINEZ *Petitioner*, -against- CORY CHU, in his official capacity as acting Newark Field Office Director for U.S. Immigration and Customs Enforcement, KRISTI NOEM, in her capacity as Secretary for the United States Department of Homeland Security; PAMELA BONDI, in her official capacity as the Attorney General of the United States, *Respondents*.	Case No. 2:25-cv-16915-CCC

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

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INTRODUCTION

This case is about the continued unconstitutional detention of Petitioner Alejandro Stalin Romero Martinez ("Petitioner"). He remains imprisoned today because an Immigration Judge denied bond. In light of the BIA's September 5, 2025 published decision in *Hurtado*, absent this Court's intervention, Petitioner has nowhere to turn to vindicate his due process rights.

Petitioner satisfies the four elements necessary for granting a temporary restraining order ("TRO"). First, he is likely to succeed on the merits of his claims-282 District Courts have agreed that identically situated immigrants are eligible for bond. Second, his unconstitutional detention satisfies the irreparable harm threshold. Third, the balance of the equities tilt in his favor because his release will not harm Respondents' ability to remove him in any way. Finally, the public interest is satisfied by his release (not his detention) because no basis at law exists for his continued detention. Against this backdrop, granting a TRO in his favor—ordering release—is appropriate. On December 19, 2025 Petitioner's counsel emailed Opposing Counsel and informed him of his intention to file the instant action.

LEGAL STANDARD

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

ARGUMENT

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

The Fifth Amendment guarantees that no person in the United States shall be deprived of liberty without due process. U.S. Const. amend. V. These substantive and procedural protections apply to all people, including noncitizens, regardless of their immigration status. *Trump v. J.G.G.*, 604 U. S. _, 145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings." (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). As outlined in Petitioner's Habeas Petition, and below, Petitioner has a substantial likelihood of succeeding on the merits of his claims.

Recently, the BIA has vacated and overruled decades of analysis regarding what statutory detention scheme for people who have entered without inspection. In

Matter of Yajure Hurtado and *Matter of Q Li*, the BIA held that all noncitizens who enter without inspection are subject to mandatory detention under INA § 235(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). It created a sweeping new rule that strips most noncitizens who entered without inspection of the right to seek bond from an IJ, regardless of how long they have been residing in the country and where they were apprehended by immigration authorities. In the interest of judicial economy, the Plaintiff chooses to address this hypothetical argument, in the event that DHS chooses to ignore decades of legal analysis regarding statutory interpretation in favor of *Matter of Yajure Hurtado, Supra.* **This has been rejected by 282 District Courts to date.**

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

The detention provisions at INA § 236(a) and § 235(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 236(c) was most recently amended earlier this year by the LRA, Pub. L. No.119-1, 139 Stat. 3 (2025).

Following the enactment of the IIRIRA, the Executive Office of Immigration Review drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under INA § 235 and that they were instead detained under INA § 236(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In the decades that followed, most noncitizens who entered without inspection—unless they were subject to some other detention authority—received bond hearings. This practice was also consistent with the practice prior the enactment of the IIRIRA, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

On July 8, 2025, DHS issued a memo to all employees of Immigration and Customs Enforcement ("ICE") stating that "[t]his message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal

position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed." The memo further stated DHS' new position with regard to custody determinations as follows:

> An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

See https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-appli

As a result, according to DHS *all* noncitizens who have entered the United States without inspection and are subject to the grounds of inadmissibility, including long-time U.S. residents, are now considered to be subject to mandatory detention

under INA § 235(b) and ineligible for release on bond. Conversely, according to DHS "[t]he only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c)." *Id*.

The plain text of INA § 236 demonstrates that it, not INA § 235(b), applies to Petitioner's detention. INA § 236(a) "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citation omitted). As the Supreme Court has remarked, INA § 236(a) "sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of a[] [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (quoting INA § 236(a)). Section 236(c) carves out a statutory category of noncitizens for whom detention is mandatory, consisting of individuals who have committed certain "enumerated . . . criminal offenses [or] terrorist activities." INA § 236(c). Among the individuals carved out and subject to mandatory detention are certain categories of "inadmissible" noncitizens. *See* INA § 236(c)(1)(A), (D), (E). This is in stark contrast with mandatory detention provision under INA § 235(b)(2), which "supplement[s] § [236's] detention scheme." *Diaz,* 53 F.4th at 1197. Section 235(b)

"applies primarily to [noncitizens] seeking entry into the United States ('applicants for admission' in the language of the statute)." *Jennings*, 583 U.S. at 297; *see* INA § 235(b) (entitled "Inspection of applicants for admission").

282 District Courts across the country have rejected *Yajure Hurtado.* Thus, the plain text of INA § 236(a) applies to noncitizens like the Petitioner. The fact that INA § 236(a) is the default rule for arrest and detention and that section (c) carves out exceptions further demonstrates that the discretionary bond procedures apply to noncitizens like Petitioner who are present without being admitted or paroled and have not been implicated in any crimes set forth in subsection (c). The Supreme Court has held that when Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co*., 559 U.S. 393, 400 (2010).

The recent enactment of LRA further supports this finding. The Act added language to INA § 236(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground for entry without inspection) or INA § (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) *and* who have been arrested, charged with, or convicted of new certain crimes (not previously covered by INA § 236(c)) are

now subject to § 1226(c)'s mandatory detention provisions. *See* INA § 236(c)(1)(E). By including such individuals under INA § 236(c), Congress reaffirmed that § 236(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7). *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir. 2001) ("[w]hen Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.").

If INA § 236(a) did not apply to Petitioner—like DHS contends—vast portions of the INA § 236 would be rendered meaningless. This is because DHS contends that noncitizens like Petitioner who entered without inspection are really "applicants for admission" and therefore subject to mandatory detention under INA § 235(b)(2). Courts have made it clear that statutes must be interpreted as a whole, "giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (quoting *Rodriguez v. Sony Computer Ent. Am., LLC*, 801 F.3d 1045, 1051 (9th Cir. 2015)).

It is noteworthy that "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction," courts "generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo Velazquez v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (internal quotation marks omitted). Here, DHS' sudden reversal—particularly after Congress just recently amended INA § 236 to include the LRA provisions—further undermines

the Department's argument that the detention authority for noncitizens like Petitioner lies under INA § 235(b) instead of INA § 236(a).

As noted above, DHS' new position contends that Petitioner is subject to mandatory detention under INA § 235(b)(A) because he is an "applicant for admission." But INA § 235(b)(A) concerns a completely different category of noncitizens. In *Jennings*, the Supreme Court discussed INA § 235 as part of a process that "generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible." 583 U.S. at 287. As for INA § 236, *Jennings* described it as governing "the process of arresting and detaining" noncitizens who are living "inside the United States" but "may still be removed," including noncitizens "who were inadmissible at the time of entry." *Id.* at 288. The Court then summarized the distinction as follows: "In sum, U.S. immigration law authorizes the Government to detain certain [noncitizens] seeking admission into the country under §§ [235](b)(1) and (b)(2). It also authorizes the Government to detain certain [noncitizens] *already in the country pending the outcome of removal proceedings* under §§ [236](a) and (c)." *Id*. at 289 (emphasis added); *see also Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (a noncitizen "who *tries to enter* the country illegally is treated as an applicant for admission . . . and a [noncitizen] who is detained *shortly after unlawful entry* cannot be said to have effected an entry") (emphasis added) (cleaned up).

DHS' newfound position misconstrues the phrase "applicant for admission" to suggest that every person, other than those who have been admitted, are subject to mandatory detention. INA § 235(a)(1) defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States." INA § 235(a)(1). According to DHS, INA 235(b)(1) generally applies to arriving aliens and INA § 235(b)(2) serves as a broader catchall provision for all applicants for admission not covered by INA § 235(b)(1). In other words, DHS argues that every noncitizen who entered without parole or inspection is an "applicant for admission" pursuant to § 235(a)(1) and is therefore subject to mandatory detention. However, INA § 235(b)(2)(A) states in full that:

> Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an *alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title*. *Id*. (emphasis added).

Thus, for section 235(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." DHS' position conveniently overlooks these conditions and treats "applicants for admission" the same as those "seeking admission." The phrase "seeking admission" is undefined in the statute but necessarily implies some sort of present-tense action. *See Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020) ("The 'use of the present progressive, like use of the

present participle, denotes an ongoing process.'" (quoting *Al Otro Lado v. Wolf*, 952 F.3d 999, 1011-12 (9th Cir. 2020))). Indeed, only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within § 235(b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Doe who have already entered and are now residing in the United States. *See Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (holding that an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States.")[1] Accordingly, INA § 235(b)(2)'s reference to "applicants for admission" must be read "in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act's "broader structure . . . to determine [the statute's] meaning"). The Board's recent decision in *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025) reinforces this position. The Board held that a noncitizen who was apprehended "approximately 5.4 miles away from a designated port of entry and 100 yards north of the border" was detained under INA § 235(b) and not INA § 236(a). *Id*. at 67. In other words, the noncitizen was apprehended upon arrival. The Board

[1] In *Torres*, the en banc Court of Appeals rejected the idea that § 235(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted).

then explained that such persons are properly treated as "arriv[ing] in the United States," given that they are "detained shortly after unlawful entry," and "'[are] apprehended' just inside 'the southern border, and not at a point of entry, on the same day [they] crossed into the United States.'" *Id*. at 68 (quoting *Matter of M-D-C-V-*, 28 I. &. N. Dec. 18, 23 (BIA 2020)). Notably, the Board's decision supports the argument that INA § 236(a) "applies to [noncitizens] already present in the United States," while INA § 235(b) "applies primarily to [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen] without a warrant at the border." *Id*. at 70 (internal quotation marks omitted).

The broader statutory structure of immigration detention authority also demonstrates the inapplicability of INA § 235(b) to Petitioner's case. *See King*, 576 U.S. at 492 (explaining that an act's "broader structure" can be a useful tool "to determine [a statute's] meaning."); *see also Biden v. Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of INA provision). This is particularly true where "a provision . . . may seem ambiguous in isolation." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Associates, Ltd*., 484 U.S. 365, 371 (1988). In such situations, the statute's meaning "is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *Id.*

The broader text of INA § 235 reinforces this understanding of the two sections' structure and application. INA § 235 concerns "expedited removal of

inadmissible *arriving* [noncitizens].” INA § 235 (emphasis added). Paragraph (b)(1) encompasses only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney General designates, and only those who are “inadmissible” for having misrepresented information to an inspecting officer or for lacking documents to enter the United States. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking admission,” but whom (b)(1) does not address. *Id*. § 235(b)(2), (b)(2)(A).

By limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not intend to sweep into this section individuals like Petitioner who has already entered and are now residing in the United States. Otherwise, the language “seeking admission” in INA § 235(b)(2) serves no purpose, as the statute specifies that it is addressing a person who is both an “applicant for admission” and who is determined to be “seeking admission.” *Id*.

Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens] arriving from contiguous territory,” i.e., “the case of [a noncitizen] . . . who is arriving on land.” INA § 235(b)(2)(C). This language further underscores Congress’s temporal requirements in INA § 235 and focus on those who are arriving into the United States. Similarly, the title of § 235 refers to the “inspection” of “inadmissible arriving” noncitizens. *See, e.g., Dubin v. United States*, 599 U.S. 110,

120–21 (2023) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," INA § 235(b)(2)(A), (b)(4), and sets out procedures for "inspection[s]" of people "arriving in the United States," id. § 235(a)(3), (b)(1), (b)(2), (d).

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

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

First, the private interest affected by the government action, "Petitioner's

liberty interest in remaining free from governmental restraint[,] is of the highest constitutional import." *Zavala*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004); *see also Ashley v. Ridge*, 288 F. Supp. 2d 662, 670-71 (D.N.J. 2003) (same). Indeed, "freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). He is detained pursuant to *Yajure Hurtado*. He easily satisfies the first *Mathews* factor.

Second, the current legal precedent which has been rejected by 282 district courts —causes an erroneous deprivation of Petitioner's liberty interest in remaining free from detention. Against this backdrop, Petitioner satisfies the second *Mathews* factor.

Finally, the government's interest in maintaining the "current" procedure is minimal. The Petitioner has resided in the United States for nearly 30 years and has never been convicted of a crime. He is married to a U.S. Citizen. Opposing Counsel cannot credibly claim that the Petitioner is a danger to the community or a flight risk. Moreover, if the Petitioner was released then ICE would place an ankle monitor on him. Courts have granted TROs in similar cases, despite the government's argument that *Matter of Yajure Hurtado* prevents Immigration Judges from hearing bond requests or granting bond. *See Sabi Polo v. Chestnut*, 2025 WL 2959346 (E.D. Cal. Oct. 17, 2025)(Court granted PI, rejecting the government's reliance on the *Matter of Yajure Hurtado* and ordered release without electronic monitoring); See *also*

Rueda Padilla v. Bowen, 2025 WL 3251368 (C.D. Cal. Nov. 21, 2025)(Granted TRO finding a likelihood of success on merits of claim that detention violated procedural due process); *See Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025)(Court granted the Petitioner's TRO and ordered bond hearing); *Texis Zecua v. Lyons*, 2025 WL 3150680 (C.D. Cal. Oct. 17, 2025)(Court granted TRO, rejecting government's reliance on *Matter of Yajure Hurtado*); *See also Sanchez v. Wofford, 2025* WL 2959274 (C.D. Cal. Oct. 17, 2025)(Court granted Petitioner's TRO on the *Matter of Yajure Hurtado* matter). In *Maldonado Bautista v. Santacruz*, the District Court of California certified a class of noncitizens who are in immigration detention and being denied access to a bond hearing based on the government's allegation that they entered the United States without admission or inspection (colloquially referred to as "entered without inspection" or "EWI"). The Court granted declaratory relief to the entire class, holding that the government is unlawfully subjecting them to mandatory (meaning no-bond) detention and that class members are eligible for release on bond under the immigration laws. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). The third *Mathews* factor is satisfied.

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

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

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

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

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

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

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

Furthermore, courts have found that "the unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm." *Kostak*, 2025 WL 2472136, at *3; *see also Arias Gudino v. Lowe,* 785 F.Supp.3d 27 (M.D.Pa., 2025). Respondents' inability to show any reason why Petitioner should be detained militates in favor of finding that his detention—which wrongly commenced on or around October 24, 2025 and has been running ever since—constitutes irreparable harm.

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

Favor.

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

CONCLUSION

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

Dated: New York, NY
December 19, 2025

Respectfully submitted,

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CERTIFICATE OF NON-CONCURRENCE

Petitioner's Counsel has contacted opposing counsel on their position on this Motion on December 19, 2025. Opposing counsel has yet to respond.

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CERTIFICATE OF SERVICE

I hereby certify December 19, 2025 I electronically filed the foregoing document, supporting memorandum, and proposed order with the Clerk of the Court using the CM/ECF system.

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