UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

LUCAS CABRERA-HERNANDEZ,

Petitioner,

v.

PAMELA BONDI, Attorney General of the United States; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; TODD LYONS, Acting Director of Immigration and Customs Enforcement; Sylvester M. Ortega, Acting Director of San Antonio Field Office, U.S. Immigration and Customs Enforcement; and PERRY GARCIA, Warden, La Salle County Regional Detention Center, in their official capacities,

Respondents.

Case No. 5:25-cv-197

EXPEDITED HANDLING REQUESTED

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ORDERING RELEASE PENDING FINAL JUDGMENT AND MEMORANDUM IN SUPPORT

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MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ORDERING RELEASE PENDING FINAL JUDGMENT AND MEMORANDUM IN SUPPORT

Petitioner Lucas Cabrera-Hernandez, through Counsel, respectfully moves this Court to exercise its authority under the All Writs Act, 28 U.S.C. Sec. 1651, the habeas corpus statute, 28 U.S.C. Sec. 2241, and its inherent equitable authority to issue a temporary restraining order or in the alternative a preliminary injunction directing Respondents to release him during the pendency of these proceedings and forbidding them from further confining him during the proceedings' pendency unless he receives constitutionally adequate procedural protections, including notice and a pre-deprivation judicial hearing.

Due to the urgent circumstances and important questions of constitutional law this case presents, Mr. Cabrera-Hernandez requests an expedited hearing.

I. INTRODUCTION

Petitioner Lucas Cabrera-Hernandez brings the instant a motion for Temporary Restraining Order ("TRO") and Preliminary Injunction ("Motion") seeking injunctive relief and challenging Respondents' actions in detaining Mr. Cabrera-Hernandez. He was arrested by Respondents on July 26, 2025, and remains in detention despite being granted bond by an immigration judge. The Department of Homeland Security and the Department of Justice ("DOJ") have concluded that Mr. Cabrera-Hernandez is subject to mandatory immigration detention under the Immigration and Nationality Act ("INA") at 8 U.S.C. Sec. 1225(b)(2) because he should be deemed to be an "applicant for admission" who is "seeking admission" to the United States. This new interpretation of the INA is unlawful. There is no lawful basis for DHS to continue to detain Mr. Cabrera-Hernandez, and Respondents cannot lawfully detain

someone indefinitely in spite of an immigration judge's order to release them on bond.

Courts across the country—including in the Southern District of Texas—have granted Temporary Restraining Orders to non-citizens like Mr. Cabrera-Hernandez, who have been unlawfully mandatorily detained under this erroneous new interpretation. *See e.g. See Padron Covarrubia v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025). In light of these developments, and the emotional, psychological, and physical detriments detention has caused to Mr. Cabrera-Hernandez over the past two months, emergency relief is necessary. Mr. Cabrera-Hernandez seeks injunctive relief to prevent Respondents from continuing to unlawfully detain him.

Mr. Cabrera-Hernandez seeks declaratory and injunctive relief to remedy violations of his constitutional and statutory rights. Finally, Mr. Cabrera-Hernandez's petition is properly before this Court.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Department of Homeland Security's Change in Policy and the Department of Justice's Decision in *Matter of Yajure-Hurtado.*

This case concerns the detention authority for people who entered the United States without inspection, are not apprehended upon arrival, and are not subject to some other detention authority, like the detention authority for people in expedited removal, *see* 8 U.S.C. Sec. 1225 (b)(1), or withholding-only proceedings, Sec. 1231(a)(6). For decades, people in Mr. Cabrera-Hernandez's situation—people who have been residing in the United States, often for years—received bond hearings and were granted release on payment of bond.

Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found at 8 U.S.C. Sec. 1252(a). That statute provided for a noncitizen's detention during deportation proceedings, as well as authority to release the noncitizen on bond. *See* 8 U.S.C. Sec. 1252(a) (1994). Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.* IIRIRA maintained the same basic detention authority in the new Sec. 1226(a). Indeed, when passing IIRIRA, Congress explained that the new Sec. 1226(a) merely "restates the current provisions in [8 U.S.C. Sec. 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States." H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). Separately, Congress enacted new detention authorities for people arriving in or who recently entered the United States, including a new expedited removal scheme for those arriving or who recently entered. *See* 8 U.S.C. § 1225(b)(1) –(2). In implementing this new detention authority, the former Immigration and Naturalization Service clarified that people who entered the United States without inspection and who were not in expedited removal would continue to be detained under the same detention they always had been: Sec. 1226(a) (previously Sec. 1252(a)). *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

The distinction between Sec. 1226(a) detention and Sec. 1225(b) detention is important. Detention under Sec. 1226(a) includes the right to a bond hearing before a neutral decisionmaker—specifically, an I.J.. *See* 8 C.F.R. § 1236.1(d) At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors that show they are not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people determined to be detained under Sec.

1225(b) are subject to mandatory detention and receive no bond hearing. *See* 8 U.S.C. § 1225(b)(1) (B)(ii), (iii)(IV), (b)(2). They may only be released at the discretion of the arresting agency via humanitarian parole. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *see also* 8 U.S.C. § 1182(d)(5)(A). For decades after IIRIRA was enacted, local immigration courts, like immigration courts across the country, applied Sec. 1226(a) to the detention of people who were apprehended within the United States after having entered without inspection.

On July 8, 2025, Immigration and Customs Enforcement ("ICE") employees received a memorandum informing them of a radical change in the Agency's statutory interpretation that greatly expands the classes of noncitizens whom the Agency now deems ineligible for release on bond or release on recognizance under 8 U.S.C. 1226 (a). Filing No. 1-1, Interim Guidance Regarding Detention Authority for Application for Admission (July 8, 2025).

In defiance of decades of Agency statutory interpretation and legal precedents stating otherwise, the guidance requires ICE employees to treat all noncitizens who entered the United States without legal admission as "applicants for admission" under 8 U.S.C. Sec. 1225, regardless of the length of time since their entry into the United States, or whether they were seeking admission into the United States when ICE arrested them. *Id.* It further mandates that such noncitizens may not be released for the duration of their removal proceedings under 8 U.S.C. Sec. 1225(b). *Id.* The ICE memorandum states that the new interpretation was written in coordination with the Department of Justice "DOJ"— which is the independent agency that reviews detention and custody decisions of ICE and DHS. 8 C.F.R. §§ 3.0, 1003.

Similarly, on September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States

without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

But while DHS and DOJ have come to a coordinated conclusion that they must reverse prior interpretations of the laws at Sec. 1225(b)(2) and Sec. 1226(a), many district courts have found this interpretation to be contrary to the INA. *See Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip. op. at 5 (S.D. Tex. Oct. 25, 2025) ("As almost every district court, including another court in the Southern District of Texas, has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support application of Section 1226."); *Padron Covarrubia v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Tiburcio Garcia v. Bondi*, 25-CV-03219 (D. Minn. Aug. 29, 2025); *Ermeo Sicha v. Bernal,* 2025 WL 2494530 (D. Me. Aug. 29, 2025); *Lopez-Campos v. Raycraft,* 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)*; Benitez v. Noem*, No. 5:25-cv-02190 (C.D. Cal. Aug. 26, 2025); *Jose J.O.E. v. Bondi,* 2025 WL 2466670 (D. Minn. Aug. 27, 2025)*; Aguilar Vazquez v. Bondi,* 25-cv-03162 (D. Minn. Aug 19, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Bejarano v. Bondi*, 25-cv-03236 (D. Minn. Aug 18, 2025); *Maldonado*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Lopez*

Benitez v. Francis, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025); *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Martinez v. Hyde*, No. 25-cv-11613, 2025 WL 2084238 (D. Mass. July 24, 2025); *Ferrera Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).

B. Mr. Cabrera-Hernandez has been unlawfully detained since his August 6, 2025 order of release on bond and has suffered physical and mental harm as a result.

Mr. Cabrera-Hernandez is a noncitizen in removal proceedings whom two different Immigration Judges found to merit release on bond during the pendency of his removal proceedings. On October 22, 2013, an immigration judge found he had the jurisdiction under 8 U.S.C. Sec. 1226(a) to order his release on bond and ordered a bond of $4,500. Filing No. 1-6, Immigration Bond. Mr. Cabrera-Hernandez's case was dismissed in immigration court on May 25, 2023 and he and his U.S. citizen wife began the process of affirmatively applying for his legal permanent residency. Filing No. 1-9, I.J. Order of Dismissal; Filing No. 1-10, I-797 Receipt for I-130 dated June 9, 2023; Filing No. 1-13, I-130 Approval Notice; Filing No. 1-14, NVC Fee Payment Receipt.

Before Mr. Cabrera-Hernandez could complete the process of obtaining legal residency, Immigration and Customs Enforcement ("ICE") officials arrested him outside of his home in San Antonio, Texas, while he was on his way to work on July 26, 2025. Filing No. 1-2, NTA dated July 26, 2025. ICE officials re-detained Mr. Cabrera-Hernandez after ICE leaders made a drastic change in its interpretations of immigration detention laws under 8 U.S.C. Sec. 1225 and Sec. 1226. Filing No. 1-1, p. 2 ("This change in legal interpretation may . . . warrant re-detention of a previously released alien in a given case.").

Mr. Cabrera-Hernandez sought a custody re-determination hearing with the immigration judge ("I.J.") in his case under the INA at 8 U.S.C. 1226 (a)(2), as a person who was arrested in the interior of the United States. Filing No. 1-3, Order of the Immigration Judge (Aug. 6, 2025). At his custody re-determination hearing on August 6, 2025, the DHS attorney in his case argued that the I.J. did not have jurisdiction to make a custody re-determination, citing "plain reading" of the INA at 8 U.S.C. Sec. 1225(a), to argue Petitioner was "an applicant for admission" and thus subject to mandatory detention under 8 U.S.C. Sec. 1225(b)(2). Filing No. 1-4, pp. 3–4, Bond Memorandum of the Immigration Judge (Aug. 21, 2025).

The I.J. rejected the Agency's novel interpretation of the statute and ruled that the INA permitted her jurisdiction under 8 U.S.C. Sec. 1226(a), regarding noncitizens arrested and detained on warrant inside the United States. *Id.* The I.J. in this case noted that the DHS attorney made no effort to explain the Agency's position on jurisdiction, nor did the attorney offer any evidence indicating that Petitioner was arrested while arriving at or near the border, or any other circumstances that would make Petitioner the subject of mandatory detention under 8 U.S.C. Sec. 1225 (b). *Id.* The I.J. granted Mr. Cabrera-Hernandez's request for bond and ordered that he be released from detention following a payment of $5,000 bond. *Id.*

On the same day of the hearing, before Petitioner's wife could pay the bond, DHS filed a Notice of Intent to Appeal Custody Redetermination. Filing No. 1-7, Ex. 3, EOIR-43. In so doing, DHS blocked the order of release on bond, prevented his wife from paying the bond, and prohibited Petitioner's release. *Id.* The form that DHS submitted to deprive Mr. Cabrera-Hernandez of his liberty does not include any stated rationale for his continued detention but simply asserted authority under Title 8 of the Code of Federal Regulations, Section 1003.19(i)(2) to "automatically" prevent execution of the I.J.'s order. *Id.*

Since DHS's assertion of the automatic stay regulation, on September 5, 2025, the BIA issued a precedent decision supporting the DHS's revisionist interpretation of the detention laws at Sec. 1225(b)(2)(A) and Sec. 1226(a), binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This decision foreclosed any possibility of Mr. Cabrera-Hernandez from returning home to his wife and children during the pendency of his removal proceedings, notwithstanding the findings of two I.J.s who determined they had jurisdiction to grant Mr. Cabrera-Hernanzez release on bond, first in 2013 and again in 2025.

On October 12, 2025, the BIA issued a decision on DHS's appeal, citing *Matter of Yajure Hurtado*, echoing the July 8, 2025 guidance to all ICE employees, which were developed with DHS and DOJ coordination. Filing No. 1-8, Filing No. 1-1.

Since ICE asserted its unlawful stay of the I.J.'s order of release on bond, Mr. Cabrera-Hernandez has lost more than 20 pounds, because he has been unable to eat while in detention. *See* Filing No. 2-1, Sworn Statement of Lucas Cabrera-Hernandez, para. 3. He reports that he and the other detainees were served rotting food, and he has seen small worms in the rice and beans at the South Texas ICE Processing Center where he was originally detained. *Id.* He said he has watched other detainees become ill from eating the food. *Id.* In addition to losing weight, Mr. Cabrera-Hernandez reports that his mental health is deteriorating in detention, saying that he cries many days of the week because he misses his family and he is worried about them not having him home to help them physically, financially, and emotionally. *Id.* at para. 11. He said at least once a week he imagines killing himself because he is saddened by the family separation and because he doesn't want to continue be detained. *Id.*

In addition to the mental anguish from being separated from his U.S. citizen wife and children, he reports poor conditions at the facility contributing to his mental breakdowns. *Id.* Mr. Cabrera-Hernandez reports that the toilets were leaking in the bathroom, which was adjacent to the sleeping hall where he and about 100 other men are kept most of the day, contributing to a bad odor in the bathroom and in the sleeping hall. *Id.* at para. 5. He states that because the lights were kept constantly on—including throughout the night, because the room he shared with 100 people is loud at all hours, and because the room was kept very cold, he was unable to sleep. *Id.* at para. 6. Additionally, because his bunk bed mattress is very thin, when he gets up from bed, he feels pain all over his body and continues to be in pain most of the day. *Id.* Mr. Cabrera-Hernandez reports that he did not complain about the conditions to the guards because he witnessed the guards verbally abusing detainees who have complained about the food or the toilets. *Id.* at para. 7. Mr. Cabrera-Hernandez said he lives in fear of harm because he shares his space with many other people, some who are angry and frustrated and physically act out. *Id.* at para. 8. He reports that he witnessed five physical fights between detainees during his two months in detention. *Id.*

Each day ICE continues to unlawfully detain Mr. Cabrera-Hernandez, his mental and physical health deteriorates, and he suffers significant irreparable harm.

III. ARGUMENT

A. Mr. Cabrera-Hernandez is entitled to a temporary restraining order and preliminary injunction.

The purpose of a Temporary Restraining Order ("TRO") is to preserve the status quo and prevent irreparable harm until the court makes a final decision on injunctive relief. *Granny*

Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty., 415 U.S. 423, 439 (1974). To obtain a TRO or a preliminary injunction, an applicant must satisfy the following four elements:

(1) substantial likelihood of success on the merits;

(2) substantial threat of irreparable injury;

(3) the threatened injury outweighs any harm the order might cause to the defendant; and

(4) the injunction will not disserve the public interest.

Martinez v. Noem, No. 5:25-CV-01007-JKP, 2025 WL 2598379 at *1 "W.D. Tex. Sept. 8, 2025); *M.A.P.S. v. Garite*, No. EP-25-CV-00171-DB, 2025 WL 1622260, at *23 (W.D. Tex. June 9, 2025); *Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000). The decision of whether to grant or deny a TRO or a preliminary injunction is within the Court's discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017).

To show immediate and irreparable harm, a plaintiff must demonstrate it is likely he will suffer irreparable harm in the absence of preliminary relief. *Winter v. Nat. Res. Def Council*, 555 U.S. 7, 20 (2008). However, a "[s]pectulative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001).

"[T]he party seeking relief 'must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.'" *Ramirez v. Collier*, 595 U.S. 411, 421, 142 S. Ct. 1264, 1275, 212 L. Ed. 2d 262 (2022) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

Here, all four factors weigh heavily in favor of injunctive relief.

(1) Mr. Cabrera-Hernandez is likely to succeed on the merits of his petition for writ of habeas corpus.

Writs of habeas corpus "may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). "The writ of habeas corpus shall not extend to a prisoner unless…He is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(2)

a. Mr. Cabrera-Hernandez is not subject to mandatory detention; numerous courts have found the DHS and DOJ's novel interpretations of the INA at 8 U.S.C. Secs. 1225(b)(2) and 1226 to be unlawful.

The government's novel position that noncitizens such as Mr. Cabrera-Hernandez—who are present in the United States and not actively seeking admission at the border—are subject to mandatory detention under 8 U.S.C. Sec. 1225(b)(2) is without merit. The government's new interpretation of the INA at Sec. 1225 and Sec. 1226—announced in DHS's memo on July 8, 2025, and supported by the DOJ's BIA in its decision in *Matter of Yajure*-Hurtado—reverses more than 25 years of Agency adjudication and interpretation; and courts have consistently found this interpretation to be contrary to plain reading of the INA, historic Agency interpretation, and Congressional intent. *See Ortiz-Ortiz v. Bondi*, No. 5:25-CV-132, slip. op. at 5 (S.D. Tex. Oct. 25, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL

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i. The mandatory detention provision under 8 Sec. 1225(b)(2) is limited to "applicants for admission" who are "seeking admission" into the United States.

For decades, Section 1225 has applied only to noncitizens "seeking admission into the country"—*i.e.*, new arrivals. *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 S. Ct. 830, 838 (2018). This contrasts with Section 1226, which applies to noncitizens "already in the country." *Jennings*, 583 U.S. at 289, 138 S. Ct. at 838. Mr. Cabrera-Hernandez has been in the United States for more than 23 years. The government now attempts to reverse decades of practice to argue that noncitizens like Mr. Cabrera-Hernandez are now subject to mandatory

detention under Section 1225. But the government's position contravenes the plain language of the INA.

When interpreting a statute, "every clause and word . . . should have meaning." *United States ex rel. Polansky, M.D. v. Exec. Health Res., Inc.*, 599 U.S. 419, 432, 143 S. Ct. 1720, 1731 (2023) (internal quotation marks and citation omitted). And "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 141, 139 S. Ct. 2116, 2126 (2019) (quotation omitted). The government's position requires the Court to ignore critical provisions of the INA.

In its interpretation of Section 1225, the government disregards a key phrase in Section 1225. "[I]n 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[.]" 8 U.S.C. § 1225(b)(2)(A) (emphasis added). In other words, mandatory detention applies when "the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be admitted.'" *Id.*; *Martinez*, 2025 WL 2084238, at *2.

The phrase "seeking admission" "necessarily implies some sort of present-tense action." *Martinez*, 2025 WL 2084238, at *6; *see also Matter of M–D–C–V–*, 28 I. & N. Dec. 18, 23 (BIA 2020) ("The use of the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit . . . ."); *U.S. v. Wilson*, 503 U.S. 329, 333, 112 S. Ct. 1351, 1354 (1992) ("Congress' use of a verb tense is significant in construing statutes."). In other words, the plain language of Section 1225 applies to noncitizens *currently* seeking admission into the United States at the nation's border or another point of entry.

To ignore the plain language, which limits the application of 8 U.S.C. Sec. 1225(b)(2) to noncitizens in the process of seeking admission into the United States, is to not give effect to the meaning of words and to make the words included in the statute superfluous. *Corley v. United States*, 556 U.S. 303, 314 (U.S. 2009). It would violate the most basic of interpretive canons, which is that "'[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant ....'". *Id.* (citing *Hibbs v. Winn,* 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed.2000)).

ii. The discretionary release provision under 8 Sec. 1226(a) applies to all "aliens" in the United States, except under the limitations described in Sec. 1226(c), for certain noncitizens who have committed particular crimes.

The DOJ in its *Matter of Yajure-Hurtado* BIA decision, and the DHS in its July 8, 2025 policy memo, now argue that 8 U.S.C. Sec. 1226(a)—the authority that provides immigration judges the jurisdiction to grant conditional release or release on condition of bond to noncitizens—applies only to "aliens admitted to the United States chargeable with deportability under INA § 237 [8 U.S.C. 1227.]" Filing 1-1. This interpretation finds no source from the statute's plain language, does not stem from Congressional intent, and contradicts many years of established Agency understanding.

Section 1226(a) states: "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 (2) may release the alien on- (A) bond of at least

$1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" *Id.* (emphasis added).

The statute makes no modifiers or qualifiers to limit the subject of this law and provides that it applies to any "alien." An alien, as defined in the INA, is "any person not a citizen or national of the United States." 8 U.S.C. § 1101(a)(3). A plain reading of the statute provides that 8 U.S.C. Sec. 1226(a) should apply to all noncitizens in the United States, regardless of their manner of entry, whether they are an immigrant or are a nonimmigrant. *United States v. Mitchell*, 366 F.3d 376, 379 (5th Cir. 2004) ("[O]ur interpretation is subject to ordinary rules of statutory construction, with attention to the plain meaning of the guidelines as written.") (citing *United States v. Boudreau*, 250 F.3d 279, 285 (5th Cir.2001)).

During the 1996 Congressional session, both Sections 1225 and 1226 were included or amended in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). In the Congressional Conference Committee Report discussing Section 1226(a), the report explains the notion that the statute's application encompasses all noncitizens: "New section 236(a) [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an ***alien*** who is not lawfully in the United States." H.R. CONF. REP. 104-828, 210 (emphasis added). Congress did not state in this Conference Report that the application was limited only to noncitizens who were lawfully admitted and are now not lawfully in the United States. *Id.* It states that an *alien* is subject to the law. *Id.*

If Congress had meant to narrowly define which noncitizens unlawfully present in the United States were subject to 8 U.S.C. Sec. 1226(a), it would have done so, as they had done in the same IIRIRA legislation in 8 U.S.C. Sec. 1225, which defined who was "an applicant for

admission" subject to inspection by an immigration officer, upon arrival into the United States. *Pulsifer v. United States*, 601 U.S. 124, 133 (2024) (stating that one part of a statute can be discerned by examining the next part and read in conjunction. "Or, as we usually say in statutory construction cases, by reviewing text in context."). In Section 1225, Congress applied qualifiers, defining "an applicant for admission" as: "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 and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1).

In Section 1225(a)(1), Congress intentionally limited the class of noncitizens to whom this statute would apply. *Id.* In the same IIRIRA legislation, Congress made no such limitations in 8 U.S.C. Sec. 1226(a), even though they had the opportunity to do so. By applying standard rules of statutory interpretation, the absence of limitations in Section 1226(a) should be seen as deliberate, indicating Congressional intent that all noncitizens are to be covered under 8 U.S.C. Sec. 1226(a). *Nken v. Holder*, 556 U.S. 418, 430 (2009) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citing *INS v. Cardoza–Fonseca*, 480 U.S. 421, 432 (1987)); *see also Russello v. United States*, 464 U.S. 16, 23 (1983).

Thus, to argue that 8 U.S.C. Sec. 1226 would not apply to all noncitizens in the United States would be contrary to the plain meaning of the statute, read in context with accompanying parts of IIRIRA, and Congressional intent.

The Supreme Court in *Jennings v. Rodriguez* acknowledged the plain meaning of Sec. 1226(a), stating that it "applies to aliens already present in the United States." U.S. 281, 303 (2018). The Supreme Court also said Section 1226(a) "creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Id.*

Additionally, the government's interpretation would render newly enacted portions of the INA superfluous. "When Congress amends legislation, courts must presume it intends the change to have real and substantial effect." *Van Buren v. United States*, 593 U.S. 374, 393 (2021). Congress passed the Laken Riley Act (the "Act") in January 2025. The Act amended several provisions of the INA, including Sections 1225 and 1226. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Relevant here, the Act added a new category of noncitizens subject to mandatory detention under Section 1226(c)—those already present in the United States who are *also* subject to criminal liability for certain crimes. 8 U.S.C. § 1226(c)(1)(E). Of course, under the government's position, these individuals are already subject to mandatory detention under Section 1225—rendering the amendment redundant. Likewise, mandatory detention exceptions under Section 1226(c) are meaningful only if there is a default of discretionary detention—and there is, under Section 1226(a). *See Rodriguez*, 2025 WL 1193850, at *12. The government's position is inconsistent with Congress's intent.

Furthermore, "[w]hen Congress adopts a new law against the backdrop of a longstanding administrative construction, [the] court generally presumes the new provision should be understood to work in harmony with what came before." *Monsalvo v. Bondi*, 604 U.S. ___, 145 S. Ct. 1232, 1242 (2025). Congress adopted the Laken Riley Act against the backdrop of decades of agency practice applying Section 1226(a) to immigrants like Mr. Cabrera-Hernandez, who are

present in the United States but have not been admitted or paroled. *Rodriguez*, 2025 WL 1193850, at *15; *Martinez*, 2025 WL 2084238, at *4; 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.").

As discussed earlier in this discussion, several district courts have found the government's new interpretation of the INA at Sec. 1225 and Sec. 1226 to be contrary to the plain meaning of the law and past precedents, and have granted writ of habeas relief, preliminary injunctions, or temporary restraining orders. § III.A.1.c, *supra.*

But while the Board would argue that the Agency should be accorded deference in its interpretations of law, "courts decide legal questions by applying their own judgment." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392, 144 S. Ct. 2244, 2261, 219 L. Ed. 2d 832 (2024) (overruling *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694).

b. DHS's detention of Mr. Cabrera-Hernandez, despite an immigration judge's order that he be released on bond, based on the DHS and DOJ revisionist interpretation of mandatory detention laws, violates his procedural and substantive due process rights.

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, 113 S. Ct. 1439 (1993)). Mr. Cabrera-Hernandez's

continued detention under the erroneous interpretation of the INA at 8 U.S.C. Sec. 1225(b)(2) and 8 U.S.C. Sec. 1226 violates his rights to procedural and substantive due process.

i. The erroneous interpretation of the INA violates Mr. Cabrera-Hernandez's right to procedural due process.

To withstand scrutiny, civil detention must satisfy the guarantees of procedural due process. 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, 96 S. Ct. 893, 902 (1976). To determine whether government conduct violates procedural due process, the Court weighs three factors: (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. *Id.* at 335. Here, Mr. Cabrera-Hernandez's private interest and the risk of erroneous deprivation far outweigh the government's interest in maintaining his detention.

(1) Private Interest

Mr. Cabrera-Hernandez's private interest here is fundamental: freedom from detention. *Martinez*, No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *2 ("It is undisputed Martinez has a significant private interest in being free from detention. 'The interest in being free from physical detention" is "the most elemental of liberty interests.'") (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Moreover, when assessing the private interest, courts consider the detainee's conditions of confinement, namely, "whether a detainee is held in conditions indistinguishable from criminal incarceration." *Id.*; *see also Günaydin v. Trump*, No. 25-CV-01151

(JMB/DLM), 2025 WL 1459154 at *7 21 (citing *Hernandez-Lara v. Lyons*, 10 F.4th 19, 27 (1st Cir. 2021) and *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)).

Mr. Cabrera-Hernandez's nearly three months of unlawful detention has affected his physical and mental well-being. *See generally* Filing No. 2-1, Sworn Declaration of Lucas Cabrera-Hernandez. He has lost more than 20 pounds because he has perceived small worms in the rice and beans in detention and has seen people become physically ill after eating the food. *Id.* at para. 3. He reports that the leaking toilets in the bathroom adjacent to the sleeping quarters create a bad odor in the bathroom and the smell travels to the sleeping quarters. *Id.* at para. 4. He is unable to sleep because of the bright lights, loud noise, and cold temperatures present in the sleeping quarters at all hours. *Id.* at para. 6. He reports feeling unsafe because he has seen detainees get into physical altercations five times during his two months at the facility. *Id.* at para. 8. He has also witnessed guards being verbally abusive towards detainees who complain about the food, the toilets, or other conditions at the detention facility. *Id.* at 7.

Mr. Cabrera-Hernandez's views himself as someone who helps his family, and being in detention has damaged his ability to help his wife and three children, who depend on him for physical, emotional, and financial assistance. *Id.*, at para. 11. His family members, under stress without his physical presence at the house, are fighting more often and the fights affect the entire family. *Id.* at para. 13. As a result of He cries more days than not and contemplates suicide because he misses his wife and children. *Id.* at para. 11.

His continued detention has also prevented his ability to prepare for his immigration proceedings. As the Supreme Court has long recognized in the context of criminal proceedings, "the traditional right to freedom before conviction permits the unhampered preparation of a defense." *Stack v. Boyle*, 342 U.S. 1, 4, 72 S. Ct. 1, 3 (1951). Freedom from detention means

better access to legal counsel and the time, support, and evidence needed to build an immigration case. *See* Peter L. Markowitz, *Barriers to Representation for Detained Immigrants Facing Deportation: Varick Street Detention Facility, A Case Study*, 78 FORDHAM L. REV. 541, 542, 557, 568 (2009). During his nearly two months of illegal detention, Mr. Cabrera-Hernandez prepared and won his bond request, and had to simultaneously prepare for his immigration removal hearing, respond to DHS's appeal of the I.J.'s order of release on bond, and seek his release through a habeas petition, all while having limited access to counsel. Filing No. 1, Verified Petition.

Additionally, prolonged detention often results in immigrants abandoning meritorious claims—increasing the likelihood they will choose to self-deport. Michelle Brané & Christiana Lundholm, *Human Rights Behind Bars: Advancing the Rights of Immigration Detainees in the United States Through Human Rights Frameworks*, 22 GEO. IMMIGR. L.J. 147, 160 (2008). Mr. Cabrera-Hernandez's interest in freedom from government detention is of the highest constitutional import. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

(2) Risk of Erroneous Deprivation

DHS's and the DOJ's unlawful interpretation of the mandatory detention laws has not just imposed a risk of erroneous deprivation of his right to liberty and freedom. It has in fact erroneously deprived Mr. Cabrera-Hernandez of his liberty and freedom. Mr. Cabrera-Hernandez prevailed at his bond redetermination hearing—not once but twice, once in 2013 and this last time on August 6, 2025. An immigration judge made an independent determination that Mr. Cabrera-Hernandez merited release on bond, because she found he was not a significant public safety or flight risk. His current detention was imposed by the prosecuting agency based on a

novel—and meritless—legal theory that defies more than 20 years of Agency interpretation. The DOJ, working in conjunction with the DHS, effectively deprived Mr. Cabrera-Hernandez of the due process rights available to noncitizens who have developed long-standing ties to the United States by vacating the I.J.'s order of release on bond. Filing No. 1-8. The only stated reason for doing so is the agencies' revisionist interpretation that all noncitizens present without admission in the United States are "applicants for admission," subject to mandatory detention under 8 U.S.C. Sec. 1225(b)(2).

The high risk of erroneous deprivation of rights in this case is not just theoretical. Numerous courts have found Respondent's novel interpretation of the INA to be unlawful. As almost every district court, including another court in the Southern District of Texas, has concluded, "the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support application of Section 1226. *See Padron Covarrubia v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025). Thus, erroneous deprivation of rights in this case has been in fact.

(3) Government Interest

The government's interest in maintaining Petitioner's detention are low when compared to the liberty interests of Petitioner. *Martinez v. Noem*, 2025 WL 2598379, at *4 ("Under this factor, the Court weighs the private interests at stake and the risk of erroneous deprivation of those interests against Respondents' interests in persisting with the automatic stay and the burdens of additional or substitute requirements.) (citing *Mathews*, 424 U.S. at 335). The only reason offered for Mr. Cabrera-Hernandez's continued detention is the novel argument that he is subject to mandatory detention under Section 1225. The government never asserted that Mr. Cabrera-Hernandez is a

father of three U.S. citizens, two who are enrolled in the university, and the husband of a U.S. citizen. He has lived and worked in San Antonio, Texas for 23 years. On balance, the private interests affected and the risk of erroneous deprivation under the current procedures greatly outweigh the government's interest.

ii. Detention under the unlawful revisionist interpretations of the INA violates Mr. Cabrera-Hernandez's right to substantive due process.

The Due Process Clause provides heightened protection against government interference with certain fundamental rights. Freedom from government detention is at the heart of those protections. *Zadvydas*, 533 U.S. at 690, 121 S. Ct. at 2498–99 . Due process requires any deprivations of Mr. Cabrera-Hernandez's liberty be narrowly tailored to serve a compelling government interest. *See Dep't of State v. Munoz*, 602 U.S 899, 910, 144 S. Ct. 1812, 1821–22 (2024). Unlawful detention necessarily harms Mr. Cabrera-Hernandez. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a "serious," "detrimental impact on the individual"); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) ("'Liberty is the norm; every moment of [detention] should be justified.'") (alteration in original) (citation omitted). 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 v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 2498–99 (2001) (internal quotations marks and citations omitted).

Respondents' stated purpose in detaining Mr. Cabrera-Hernandez is enforcement of its novel interpretation of the laws pertaining to mandatory detention. But Mr. Cabrera-Hernandez is not a danger to the public nor a flight risk. *See generally* Filing No. 1-4, Bond Memorandum of the Immigration Judge (Aug. 21, 2025). DHS did not present any such evidence or argument at the bond hearing. *Id.* The I.J. ordered Mr. Cabrera-Hernandez's release on $5,000 bond after hearing from both parties. "[I]n this case, as in all instances in which the automatic stay is invoked . . ., there has already been a determination by an [I.J.] that the [noncitizen] is not a danger to the public or a significant flight risk." *Zavala*, 310 F. Supp. 2d at 1076.

The procedural history of Mr. Cabrera-Hernandez's case further demonstrates that DHS is acting in a manner meant to keep him detained for as long as possible, despite knowing there is no legitimate basis for his detention. I.J. Veronica Segovia affirmatively found that Mr. Cabrera-Hernandez was not subject to mandatory detention and did not pose a threat to the community or flight risk significant enough to deny bond. The DOJ's decision to vacate I.J. Segovia's order of bond made no determination to reverse the finding that Mr. Cabrera-Hernandez posed no threat to public safety or of flight risk. Filing No. 1-8.

The DHS detention under the suddenly reversed, erroneous interpretation of the INA violates Mr. Cabrera-Hernandez's Fifth Amendment rights. Where there is no factual basis for detention, there is no link between the deprivation of a protected Fifth Amendment liberty interest and a non-punitive stated purpose. Permitting the government to indefinitely detain non-citizens under INA § 1225(b) would both frustrate the Congressional scheme for regulating immigration and deprive non-citizens of their Congressional prescribed procedure for adjudicating their Fifth Amendment liberty interests.

As a result, Mr. Cabrera-Hernandez's detention is for an illegitimate, deterrent and punitive purposes—not in accordance with the lawful, Congressional purposes of civil immigration detention—and should be enjoined.

For the aforementioned reasons, it is likely that Mr. Cabrera-Hernandez will succeed on the merits of his petition.

(2) Mr. Cabrera Hernandez will continue to face irreparable harm if emergency relief is not granted.

Mr. Cabrera-Hernandez faces both irreparable physical and mental harm. Courts have found irreparable harm where continued detention would lead to specific negative health outcomes. *See, e.g.*, *Jones v. Tex. Dep't of Crim. Just.*, 880 F.3d 756, 760 (5th Cir. 2018) (risk of stroke or heart attack); *Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 340 (S.D. Tex. 2020) (risk of contracting COVID-19). Further, the deterioration of the mental health of vulnerable detainees constitutes irreparable harm. *See Advoc. Ctr. for Elderly & Disabled v. La. Dep't of Health & Hosps.*, 731 F. Supp. 2d 603, 625 (E.D. La. 2010). "A harm need not be inevitable or have already happened in order for it to be irreparable; rather, imminent harm is also cognizable harm to merit an injunction." *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

In this case, Mr. Cabrera-Hernandez is at serious risk of continued physical and mental deterioration, the longer he remains detained. Filing No. 2-1. He reports that he is unable to eat and has lost at least 20 pounds because he perceives the food as rotting and having small worms. *Id.* at para. 3. He is unable to sleep because of conditions at the facility, which include leaking toilets that create a bad odor that reaches the sleeping quarters, the lights being constantly kept on, cold temperatures, and inadequate and uncomfortable beds. *Id.* at para. 6. He reports being in

fear for his safety because the men he shares space with are frustrated and angry and some detainees have gotten into physical fights. *Id.* at para. 8.

Mr. Cabrera-Hernandez also reports feeling mentally and emotionally distraught about separation from his family, and not being able to help his U.S. citizen wife, who has various physical conditions and is struggling to pay the family's bills. *Id.* at para. 12, 13. He reports feeling sad and diminished about his children seeing his deteriorating physical condition when they come to see him at the detention on the weekends. *Id.* at para. 14. His wife and his middle child are fighting because his middle child is angry about his detention and is lashing out at his wife. *Id.* at para. 13. He reports feeling sad about feeling like he has lost his identity as a helper and provider for his family. *Id.* at paras. 11, 12. He reports crying many days and contemplating suicide once a week because he misses his family. *Id.* at para. 11.

Recently, the federal court at the Western District of Texas found irreparable harm "self-evident" where a petitioner's minor child "has been in the care of a family friend who is struggling to provide his minor son's basic needs." *Martinez,* No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *8. Likewise, the Court in this case should find irreparable harm because Mr. Cabrera-Hernandez is suffering mental anguish and physical deterioration and his family members are struggling financially and emotionally with the family separation.

Additionally, it is well established that deprivation of constitutional rights constitutes "irreparable injury" and justifies issuance of a temporary restraining order. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977). When an alleged deprivation of constitutional rights is involved, no further showing of irreparable injury is necessary. *Planned Parenthood of Minnesota*, 558 F.2d at 867 (citing 11 C. Wright & A. Miller, *Federal Practice &*

Procedures: Civil § 2948 at 439 (1973)); *Ng v. Bd. of Regents of the Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) ("[T]he denial of a constitutional right is a cognizable injury and an irreparable harm."); *Hernandez*, 872 F.3d at 994–95; *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

The Due Process Clause provides heightened protection against government interference with certain fundamental rights. Freedom from government detention is at the heart of those protections. *Zadvydas*, 533 U.S. 678, 690, 121 S. Ct. 2491, 2498–99 (2001). Due process requires any deprivations of Mr. Cabrera-Hernandez's liberty be narrowly tailored to serve a compelling government interest. *See Dep't of State v. Munoz*, 602 U.S 899, 910, 144 S. Ct. 1812, 1821–22 (2024). Unlawful detention necessarily harms Mr. Cabrera-Hernandez. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a "serious," "detrimental impact on the individual"); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) ("'Liberty is the norm; every moment of [detention] should be justified.'") (alteration in original) (citation omitted). 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 v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 2498–99 (2001) (internal quotations marks and citations omitted).

Furthermore, Mr. Cabrera-Hernandez is irreparably harmed because indefinite detention bears no "reasonable relation" to its purpose. *Deqa M. Y.*, 2020 WL 4928321, at *3; *see Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing "[a]ny amount of actual jail time

is significant and has exceptionally severe consequences for the incarcerated individual" cleaned up) (internal quotation marks omitted) (citation omitted)).

In the present case, Mr. Cabrera-Hernandez's Fifth Amendment rights are being violated because ICE agents, at the direction of Respondents, continue to detain him despite I.J. Segovia's order to release him on bond. Courts across the country have held that DHS detention constitutes irreparable injury where it deprives non-citizens of their liberty, access to counsel, and access to their families.

Thus, because Petitioner is already experiencing irreparable harm to his physical and mental wellbeing, and irreparable harm to his constitutional rights and liberty, this Court should find harm "self-evident" and that he has satisfied the second element to obtain a TRO or preliminary injunction. *Martinez,* No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *5)

(3) Respondents will face no injury or harm if emergency relief is granted.

The federal courts have routinely ruled that threatened or actual violations to a person's constitutional rights outweigh any harm to the government's interest in pursuing a government action. *See Martinez,* No. 5:25-CV-01007-JKP, 2025 WL 2598379, at *5) *Morrison v. Heckler*, 602 F. Supp. 1482 (D. Minn. 1984); *see also Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221, 1236-7 (10th Cir. 2005).

Mr. Cabrera-Hernandez's harms, discussed above, are weighty; these harms are the direct result of Respondents' conduct in denying Mr. Cabrera-Hernandez due process as required under the Constitution. In fact, Mr. Cabrera-Hernandez's continued detention is a burden for Respondents in that his unnecessary detention is costly and expensive to the U.S. government.

Possible injuries to the government, should the restraining order be granted, are minimal and possibly nonexistent, considering that two I.J.s have found Mr. Cabrera-Hernandez to not a

be a danger to the community or a significant flight risk. Mr. Cabrera-Hernandez is seeking to be released from custody back to his home in San Antonio, Texas so that he can continue caring for his family. To date, Respondents have offered no justification for Mr. Cabrera-Hernandez's continued and ongoing detention. During his August 6, 2025 bond hearing, the attorney representing DHS made no argument that he was a danger to the community. Filing No. 1-3. Without any justification being offered for Mr. Cabrera-Hernandez's detention, it is impossible to surmise the harm that might befall the government if he is released.

A Western District of Texas court found, on similar facts, that when weighing the government's stated interest in that case of "the enforcement of the immigration laws and the removal of criminal aliens," the petitioner's interest in liberty far outweighed any potential risks, which were already mitigated by the imposition of a bond and a finding that the petitioner in that case was not a danger to the community. *Martinez*, at *5 (W.D. Tex. Sept. 8, 2025)

For the aforementioned reasons, the irreparable harm to Mr. Cabrera-Hernandez that will occur should DHS fail to release him clearly outweighs any burden to Respondents in indefinitely keeping him detained.

(4) The issuance of a TRO or preliminary injunction is in the public interest.

The public—and therefore the government—has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Torres v. U.S. Dep't of Homeland Sec.*, 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) ("[T]he public has an interest in the orderly administration of justice[.]"). The public always has an interest in preventing the violation of a party's constitutional rights. *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Additionally, there is critical public interest in ensuring executive agencies act lawfully.

In Petitioner's case, immigration detention is civil and must "bear a reasonable relation to the purpose for which the individual [is detained]" so that it is "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690) (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017); *see also Chen v. Banieke*, No. 15-2188 (DSD/BRT), 2015 WL 4919889, at *1 (D. Minn. Aug. 11, 2015). Civil detention cannot be a mechanism for retribution, because "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives." *Kansas v. Crane*, 534 U.S. 407, 407 (2002) (internal quotation marks omitted); *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979). And unlawful detention necessarily harms Mr. Cabrera-Hernandez. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a "serious," "detrimental impact on the individual"); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), abrogated on other grounds by *Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) ("'Liberty is the norm; every moment of [detention] should be justified.'") (alteration in original) (citation omitted).

An immigration judge has already considered Mr. Cabrera-Hernandez's criminal and immigration history and determined that he is not a danger to the community or a significant flight risk and should he be released on bond. The protection of individuals' rights against governmental interference is one of the overarching concerns of our system of American jurisprudence. The constitutional guarantee to due process is a fundamental limit on the government's power to skew, alter, or improperly affect legal proceedings related to an individual's property or liberty interest(s). To ensure the protection of Mr. Cabrera-Hernandez's constitutional rights, and to protect against overzealous federal government intrusion of

constitutional rights of others in similar situations, a TRO and preliminary injunction should be issued by this Court to enjoin Respondents from continuing to detain Mr. Cabrera-Hernandez.

The United States criminal justice system and Constitution represent the essential blending of individual rights and the efficient administration of justice and government. One of the principal reasons for the success of the United States has been trusted in our country's legal system. If Respondents are entitled to violate the laws of the United States without censure, public trust in the judiciary will be harmed.

IV. RULE 65

Finally, as set forth *supra*, Mr. Cabrera-Hernandez asks this Court to find that he has complied with the requirements of Rule 65, Fed.R.Civ.P., for the purpose of granting a temporary restraining order. Respondents have been provided with a copy of the instant motion and supporting documents and are on notice. *See* Decl. at ¶. Rule 65(c) 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 this case, however, Mr. Cabrera-Hernandez respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to refrain from continuing to detain Mr. Cabrera-Hernandez, and/or to refrain from giving Respondents' unlawful actions legal effect, should not result in any conceivable financial damages to Respondents. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

V. CONCLUSION

For all of the foregoing reasons, Mr. Cabrera-Hernandez asks this Court to grant his Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents to assert he is detained under 8 U.S.C. Sec. 1225, and not under 8 U.S.C. Sec. 1226, as set forth in Mr. Cabrera-Hernandez's Amended Petition, Motion, and Memorandum of Law violated the Immigration and Nationality Act.
2. Declare that the actions of Respondents to assert he is detained under 8 U.S.C. Sec. 1225, and not under 8 U.S.C. Sec. 1226, as set forth in Mr. Cabrera-Hernandez's Amended Petition, Motion, and Memorandum of Law violated Petitioner's Fifth Amendment procedural due process rights.
3. Declare that the actions of Respondents to assert he is detained under 8 U.S.C. Sec. 1225, and not under 8 U.S.C. Sec. 1226, as set forth in Mr. Cabrera-Hernandez's Amended Petition, Motion, and Memorandum of Law violated Petitioner's Fifth Amendment substantive due process rights.
4. Enjoin Respondents from continuing to detain Mr. Cabrera-Hernandez in their custody during the pendency of his petition for writ of habeas corpus before this Court.
5. If Mr. Cabrera-Hernandez is not immediately released from Respondents' custody, enjoin Respondents from transferring Mr. Cabrera-Hernandez to a detention facility out of this District where he would lose access to his counsel and support network.
6. Grant Mr. Cabrera-Hernandez such other relief as the Court deems appropriate and just.

Respectfully submitted,

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