IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Rigoberto MORENO GOMEZ, Petitioner, v. Samuel OLSON, Field Office Director of Enforcement and Removal Operations, Chicago Field Office, Immigration and Customs Enforcement; Todd M. LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Respondents,	Case No. 1:25-cv-13220 Judge Robert Blakey

MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Rigoberto Moreno Lopez is in the custody of Respondents. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office

for Immigration Review (EOIR) of the Department of Justice (DOJ) have erroneously concluded Petitioner is subject to mandatory detention.

Respondents have not yet taken a specific position before this Court on the statutory basis of Petitioner's detention. However, no authority in the Immigration and Nationality Act (INA) authorizes the mandatory detention of a person in Petitioner's position.

The mandatory detention provisions in 8 U.S.C. § 1226(c) do not apply because Petitioner has not been convicted of any crimes, and none of the security-related grounds for detention apply.

The mandatory detention provisions in 8 U.S.C. § 1225 are likewise inapplicable. Detention under Section 1225(b)(1) would be invalid because its scope is limited to noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings, neither of which apply to Petitioner. Section 1225(b)(2) applies only to recent arrivals seeking to enter the country at the border or port of entry. It does not apply to individuals, like Petitioner, who were detained in the interior of the U.S. after having lived in the U.S. for 22 years. Though the Board of Immigration Appeals (BIA) recently issued a decision addressing access to bond for people in this context, *see Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), it is based on a flawed reading of the statute.

With those options aside, the only possible basis for Petitioner's detention is 8 U.S.C. § 1226(a), which allows for release on bond or conditional parole. However, the government has denied Petitioner a bond hearing based on their erroneous assertion that he is subject to mandatory detention under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Therefore, without an individualized determination that Petitioner is now a danger to the community or a flight risk, his current detention is unlawful.

Finally, by detaining Petitioner in circumstances that are indistinguishable from criminal

incarceration, his detention is unreasonable as a matter of due process.

Petitioner is entitled to a writ of habeas corpus under § 2241 and release from custody. While it considers this petition, this court should continue to require respondents to refrain from moving Petitioner from the jurisdiction of the Chicago immigration court, namely Illinois, Wisconsin, and Indiana.

The court should also grant the preliminary relief of immediate release on just terms. Petitioner satisfies all factors warranting preliminary relief: He is likely to succeed on the merits, he will be irreparably harmed if not released, the government faces no risk of harm if he is released, and the public interest favors immediate release. In the alternative, should the Court deny Petitioner's request, at a minimum it should order Respondents to show cause why this habeas petition should not be granted.

FACTUAL BACKGROUND

Petitioner is a 41-year-old Mexican national who has been residing in the United States since his entry without inspection in 2003. Petitioner resides in Chicago, Illinois, and is the father to two U.S. citizen children aged 16 and 18 years old. Petitioner has never been detained by immigration officials and there are no previous immigration proceedings against him.

On October 29, 2025, ICE officers arrested Petitioner in Skokie, Illinois while he was working as a landscaper. It appears that he was arrested without a warrant and in violation of the *Nava* consent decree pending in front of Judge Cummings. ICE officers took him to the ICE Processing Center in Broadview, Illinois.

LEGAL STANDARD

The court should grant both Petitioner's emergency motion for temporary relief and his underlying motion for a writ of habeas corpus. As to the request for temporary relief, a district

court may grant a motion for preliminary relief while the merits are under consideration when four factors favor the grant. Those four factors are a likelihood of success on the merits, irreparable harm to the movant without relief, the risk of harm to the non-movant (the government) if this court grants relief, and the public interest. *See Winter v. Nat'l Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008); *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020). The four factors are not prerequisites that must be met but should be balanced against each other. *Nken v. Holder*, 556 U.S. 418 (2009). In the Seventh Circuit, once the moving party establishes "some likelihood of succeeding on the merits" and that irreparable harm will occur in the absence of a TRO, the court performs a sliding scale evaluation of the factors, which requires a lesser showing on the other factors if an individual demonstrates greater likelihood of success on the merits or that their irreparable harm outweighs any anticipated harm from a TRO. *Cassell v. Snyders*, 900 F.3d 539 (7th Cir. 2021). Because each of these factors strongly favors Petitioner, this court should grant the motion.

I. Petitioner is likely to succeed on the merits of his claims.

The appropriate standard for likelihood of success on the merits is "some likelihood." *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020); *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc) (internal quotation marks omitted) ("[L]ikelihood of success on the merits" means that a plaintiff has "a reasonable chance, or probability, of winning. A likelihood does not mean more likely than not."). Petitioner easily meets this showing and is likely to prevail on the merits of his claim that his detention is unlawful. Under 28 U.S.C. § 2241(c)(3), a petitioner is entitled to a writ of habeas corpus if the petitioner "is in custody in violation of the Constitution or laws or treaties of the United States."

While Respondent has not yet taken a specific position before this Court on the statutory basis of Petitioner's detention, no authority in the INA authorizes the mandatory detention of a

person in Petitioner's position.

First, detention under Section 1225(b)(1) would be invalid because its scope is limited to noncitizens charged with enumerated grounds of inadmissibility and placed in expedited removal proceedings, neither of which apply to Petitioner. The second option within Section 1225 is mandatory detention under Section 1225(b)(2). This provision is also inapplicable. It applies only to recent arrivals seeking to enter the country at a border or port of entry. On July 8, 2025, the government attempted to expand the reach of Section 1225(b)(2) to apply to all noncitizens deemed "applicants for admission," including individuals who entered the United States without admission and were later apprehended inside the country. U.S. Immigration and Customs Enforcement, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention- authority-for-applications-for-admission. On September 5, 2025, the BIA issued a published decision adopting the same position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). That position is wrong for several reasons. The text of Section 1225 indicates its limited scope to noncitizens who recently arrived at a border or port of entry. This includes the statute's title, "Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing" (emphasis added), and the many references to recently arrived individuals such as "crewm[e]n," "stowaway[s]," and "[noncitizens] arriving." 8 U.S.C. § 1225(b)(2)(B); § 1225(b)(2)(C).

In addition, the INA's entire framework is premised on Section 1225 governing detention of "arriving [noncitizens]" while Section 1226 acts as the "default rule" and "applies to [noncitizens] already present in the United States." *Jennings*, 583 U.S. at 288, 301. Notably, Section 1226(c) includes carve outs for certain categories of inadmissible noncitizens who would otherwise fall under Section 1226(a) but are instead subject to mandatory detention. 8 U.S.C. §

1226(c)(1)(A), (D), (E). The inclusion of these carve outs in Section 1226(c) indicates that, contrary to Respondents' policy, there are noncitizens who have not been admitted and that are not governed by Section 1225's mandatory detention scheme. Indeed, if the government's policy were correct, it would render these portions of Section 1226(c) superfluous since those same individuals would already be subject to mandatory detention under Section 1225(b)(2). A fundamental principle of statutory construction is that courts must interpret statutes to give meaning to all provisions and avoid reading out or rendering superfluous any single provision. *Corley v. United States*, 556 U.S. 303, 314 (2009) ("one of the most basic interpretive canons . . . [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[.]") (cleaned up). The government's current reading of Section 1225(b)(2) violates this principle.

Congressional intent and longstanding agency practice underscore the limited scope of Section 1225(b)(2). The current system existed since the passage 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; *see also* See 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (explaining that people detained after entering without inspection are considered detained under Section 1226(a)). In IIRIRA, Congress made clear that Section 1226(a) "restates" the detention authority previously found at Section 1252(a), under which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other officer. *See* 8 U.S.C. § 1252(a) (1994); H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

Because of these principles, numerous federal courts, including this court, have rejected Respondents' efforts to rely on Section 1225(b)(2) to justify mandatory detention for someone like Petitioner. For example, after immigration judges in Tacoma, Washington stopped providing bond

hearings for persons who entered the United States without inspection, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*,779 F. Supp. 3d 1239 (W.D. Wash. Apr. 24, 2025).

Other courts, including this court, have reached the same conclusion, rejecting Respondents' erroneous interpretation of the INA both prior to and since ICE implemented its July 8, 2025, interim guidance.[1] The BIA's decision in *Yajure Hurtado* has not slowed the steady flow of decisions contrary to Respondents' position. *See, e.g., Ochoa Ochoa v. Noem et al,* 1:25-cv-10865 (N.D. Il. Oct. 16, 2025) (rejecting *Matter of Yajure Hurtado* as it is non-binding and unpersuasive under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024) given the BIA's inconsistent views); *Patel v. Crowley*, No. 25 C 11180, 2025 WL 2996787, (N.D.Ill. Oct. 24, 2025) (finding the decision in *Matter of Yajure Hortado* unpersuasive for several reasons, including the BIA's inconsistent view, its conflict with implementing regulation, and district courts' overwhelming rejection of its expansive interpretation of 1225(b)); *Jimenez v. FCI Berlin*, No. 25-CV-326-LM-AJ, 2025 WL 2639390, at *10 n.9 (D.N.H. Sept. 8, 2025) ("the court is not persuaded by the

[1] *See, e.g., Torres Maldonado v. Olson, et al,* 1:25-cv-12762 (N.D. Il. Oct 24, 2025); *Sanchez v. Holt,* 1:25-cv-12453 (N.D. Il. Oct 24, 2025); *Ochoa Ochoa v. Noem et al,* 1:25-cv-10865 (N.D. Il. Oct. 16, 2025) *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025); *Martinez v. Hyde*, CV 25-11613-BEM, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Garcia Jimenez v. Kramer*, No. 4:25-cv-03162-JFB-RCC, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Aguilar Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v Noem*, 5:25-cv-01789-ODW-DFM, 2025 WL 2379285 (C.D. CA Aug 15, 2025); *Jacinto v. Trump, et al.*, 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 (D. Neb. August 19, 2025); *Leal-Hernandez v. Noem*, 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Minn. Aug. 24, 2025); *Herrera Torralba v. Knight*, 2:25-cv-03166-RFB-DJA, 2025 WL 2581792 (D. Nev. Sep. 5, 2025).

B.I.A.'s analysis in [*Matter of Yajure Hurtado*]"); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *6-8 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis and according no deference under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 413 (2024)); *Sampiao v. Hyde*, 2025 WL 2607924, at *8 n.11 (D. Mass. Sept. 9, 2025) (same); *Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *9 (N.D. Cal. Sept. 12, 2025) (same).

Section 1226 likewise provides no authority for Petitioner's detention. Section 1226(c) "carves out a statutory category" of noncitizens from Section 1226(a) for whom detention is mandatory, comprised of individuals who have committed certain "enumerated ... criminal offenses [or] terrorist activities." *Jennings* at 289 (citing § 1226(c)(1)). Petitioner, however, has not been convicted of any crimes and none of the security-related grounds for such detention apply.

With the mandatory detention provisions set aside, Petitioner's detention is possible only under Section 1226(a), which provides for discretionary detention of individuals detained inside the country and who may be released on bond or on their own recognizance. *See* § 1226(a)(2); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

By subjecting Petitioner to mandatory detention without bond, Respondents commit multiple errors. First, to the extent that Respondents purport to detain Petitioner pursuant 8 U.S.C. § 1225(b), such application would violate the INA. As discussed, 8 U.S.C. § 1225(b)(1) is limited to noncitizens in expedited removal proceedings. Meanwhile, the mandatory detention provision at 8 U.S.C. § 1225(b)(2) applies only to noncitizens arriving at the border or ports of entry who recently entered the United States. As such, neither portion of Section 1225(b) applies to Petitioner. To the extent that Respondents wish to detain someone in this posture, they must do so under 8 U.S.C. § 1226(a), unless they are subject to mandatory detention under 8 U.S.C. §§ 1226(c) or 1231. Their actions here violate this provision too because, to date, Respondents have

refused to consider Petitioner for bond.

Second, the Due Process Clause prohibits the government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V. Once a noncitizen enters this country, whether the presence is "lawful, unlawful, temporary, or permanent," the Due Process Clause applies. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). By subjecting the Petitioner to mandatory detention, Respondents deny him due process in two ways. First, by detaining Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others, they have arbitrarily deprived him of his fundamental interest in liberty and being free from official restraint. Government decisions that are arbitrary are not compatible with due process. *See County of Sacramento v. Lewis,* 523 U.S. 833, 845 (1988). Respondents' decision to detain is arbitrary because it is not based on any justification, facts, or logic, including any individualized factors, that are compatible with due process. Petitioner, in fact, is not a flight risk or a danger to community safety.

The second aspect of due process relevant here arises from Respondent's conditions of detention. Due process bars the government from detaining a person in unreasonable conditions. *See Kingsley v. Hendrickson,* 576 U.S. 389, 391-92 (2015); *Brawner v. Scott County,* 14 F.4th 585, 594-97 (6th Cir. 2021). Petitioner's confinement is indistinguishable criminal incarceration. This detention prevents him from supporting himself and his family and deprives him of any privacy and freedom of movement.

II. Petitioner will suffer irreparable harm absent injunctive relief.

Consistent with several Circuits to consider the issue, the Seventh Circuit has recognized that "[t]he existence of a continuing constitutional violation constitutes proof of an irreparable harm." *Preston v. Thompson,* 589 F.2d 300, 303 n. 3 (7th Cir. 1978); *Ezell v. City of Chicago*, 651

F.3d 684, 699 (7th Cir. 2011); *see also Bonnell v. Lorenzo,* 241 F.3d 800, 809 (6th Cir. 2001) ("[W]hen reviewing a motion for preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated."); *Elrod v. Burns,* 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). A temporary restraining order is the only way to prevent deprivations of Petitioner's constitutional rights.

Further, numerous courts have recognized that continued unconstitutional detention constitutes irreparable harm. *See, e.g., Newman v. Metrish,* 300 Fed. App'x 342, 344 (6th Cir. 2008) (finding that "[the petitioner] suffered a continuing injury while incarcerated"); *Dovala v. Baldauf,* No. 1:16-cv-2511, WL 1699917 (N.D. Ohio 2021) ("[Petitioner's] continued detention constitutes irreparable harm"); *Matacua v. Frank,* 308 F.Supp.3d 1019, 1025 (D. Minn. 2018) (finding that a "loss of liberty" is "perhaps the best example of irreparable harm.").

Irreparable physical and mental harm is inevitable for those incarcerated. As the Supreme Court explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) ("[t]he deprivation [ ] experienced [by immigrants] incarcerated [is], on any calculus, substantial. [They] are locked up in jail. [They cannot] maintain employment or see [their] family or friends or others outside normal visiting hours. The use of a cell phone [is] prohibited, and [they] have no access to the internet or email and limited access to the telephone"); *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (recognizing in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic

burdens imposed on [persons in detention] and their families as a result of detention, and the collateral harms to children of [persons in detention] whose parents are detained"). Here, Petitioner and his family face irreparable harm each day he remains detained in violation of his constitutional rights. The continuation of these grave harms to him and his family can only be prevented if the Court grants this preliminary injunction; this factor therefore weighs heavily in Petitioner's favor.

III. The remaining factors favor granting a temporary restraining order.

The third and fourth factors are in Petitioner's favor. Where, as here, the government is a party to a case, the final two injunction factors—*i.e.*, the balance of equities and the public interest—merge. *Nken*, 556 U.S. at 435. When assessing whether a TRO or preliminary injunction is warranted, the Court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 129 S. Ct. at 376.

The Seventh Circuit recognizes that "the public has a strong interest in the vindication of an individual's constitutional rights." *O'Brien v. Town of Caledonia,* 748 F.2d 403, 408 (7th Cir. 1984). Further, the Court has recognized that the government cannot reasonably assert that it will be harmed when the record demonstrates a "strong likelihood" of constitutional violations. *Id.* at 409; *see also Zepeda v. INS,* 753 F.2d 719, 727 (9th Cir. 1983) (finding that federal respondents "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations."); *Martin-Marietta Corp. v. Bendix Corp.*, 690 F.2d 558, 568 (6th Cir. 1982) ("[Appellee] has no right to the unconstitutional application of state law."). Thus, any burden imposed by requiring the Respondents to release Petitioner from custody is both *de minimis* and clearly outweighed by the substantial harm he will suffer as long as he continues to be detained.

Absent a temporary restraining order, the government would effectively be granted

permission to continue detaining Petitioner in violation of federal and constitutional law.

CONCLUSION

Based on the foregoing, Petitioner requests that this Court grant the motion for a temporary restraining order (i) continuing to enjoin Respondents from moving Petitioner outside of the United State or transferring him to any federal judicial district other than those of the States of Illinois, Indiana, or Wisconsin, and (ii) issue a writ of habeas corpus requiring that Respondents immediately release Petitioner. Or if not released immediately, in the alternative, order Respondents to provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within five days in which the government shall bear the burden by clear and convincing evidence of dangerousness or flight risk to justify continued detention.

If this motion is not granted, Petitioner asks this Court to order Respondents to show cause within three days establishing why his habeas petition should not be granted. 28 U.S.C. § 2243.

Respectfully submitted,

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