Siovhan Ayala
AYALA LAW OFFICE, PC
70 W. Franklin St. / P.O. Box 18986
Tucson, AZ 85701 / 85731
siovhansheridan@gmail.com
520.202.0391
Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Hector Rodriguez Plascencia

Petitioner-Plaintiff,

v.

Pam Bondi, in her Official Capacity, Attorney General of the United States; et al.

Respondents-Defendants.

Case No. [redacted]

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Petitioner Hector Rodriguez Plascencia applies to this honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain Petitioner based on an unlawful action by ICE, (2) ordering his immediate release from immigration detention; and (3) from removing Petitioner from the United States.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: November 5, 2025

Respectfully submitted,

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner-Plaintiff Client Name

I. INTRODUCTION

Respondents unlawfully detain Petitioner, Hector Rodriguez Plascencia, under a mistaken assertion that INA § 235(b)(2) requires mandatory detention of individuals who entered without inspection. Petitioner entered the United States on 1998 and has lived in Arizona for more than two decades. He is not an "arriving alien" at the border but a long-term resident, properly detained under INA § 236(a), which authorizes bond hearings.

The Board of Immigration Appeals' recent decision in *Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025*), does not compel a different result. Federal habeas courts are not bound by BIA precedent, and numerous courts, including in this Circuit have rejected DHS's attempt to expand § 235(b)(2) to the interior. Because DHS has improperly invoked § 235(b)(2), Petitioner has been deprived of the opportunity for an individualized bond hearing and remains in unlawful detention in violation of the INA, the APA, and the Constitution.

Petitioner meets the TRO standard. He is likely to succeed on the merits, he faces immediate and irreparable harm from unlawful detention, and the equities and public interest weigh heavily in his favor.

II. STATEMENT OF FACTS AND CASE

Petitioner is a native and citizen of Mexico. He entered the United States without inspection on or about 1998, more than twenty seven years ago and has resided in the U.S for more than twenty seven years. During this time, he established strong family and community ties.

Petitioner applied for release on bond before the Immigration Court. His request was denied on the ground that DHS has classified him as subject to

mandatory detention under INA § 235(b)(2), making him categorically ineligible for a bond hearing.

Historically, individuals in Petitioner's position—those who entered without inspection but were apprehended years later inside the United States—were detained under § 236(a) and provided bond hearings before an Immigration Judge. For decades, immigration judges adjudicated such custody matters under § 236(a). Indeed, the BIA in *Yajure* acknowledged this longstanding practice, noting that immigration courts have historically granted bond hearings to noncitizens apprehended in the interior who had entered without inspection. *Id.* at 225.

Petitioner has been detained without the opportunity for a bond hearing. He has requested relief through counsel, but DHS continues to maintain that his custody is mandatory and that the court has no jurisdiction. Without judicial intervention, he faces indefinite detention without due process, despite his long-standing residence in the United States and his eligibility for release on bond under § 236(a).

LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . 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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the

balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies the standards for a temporary restraining order.

III. ARGUMENT

A. PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Petitioner is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. Petitioner will continue to suffer irreparable injury if he continues to be detained without due process.

1. Petitioner is Likely to Succeed on the Merits of His Claim That He be Released from Detention

Petitioner is likely to succeed on his claim that, in his particular circumstances, his current detention is unlawful because the Due Process Clause and the statute.

The District of Arizona has recognized that when the government seeks to revoke or stay a noncitizen's release from custody, due process under the Fifth Amendment requires a meaningful opportunity to be heard before the deprivation occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of

erroneous deprivation; and 3) the burden on the government – "the fundamental requirement of due process – the opportunity to be heard at a meaningful time and manner." *Organista*, No. CV-18-00285-PHX-GMS, at 4.; *City of Los Angeles v. David*, 538 U.S. 715, 717 (2003). In weighing the *Matthews* factors, the court declared that "there is no meaningful dispute that Petitioner has a liberty interest in being heard before the BIA can prolong his detention." *Organista*, No. CV-18-00285-PHX-GMS, at 4.

Likewise, federal district courts in California have repeatedly recognized that the demands of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner *before* ICE re-detains him. *See, e.g.*, *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would suffer irreparable harm if re-detained, and required notice and a hearing before any re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest at plaintiff's ICE interview when he had been on bond for more than five years). *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-arrest).

Courts analyze procedural due process claims such as this one in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any

deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Petitioner Has a Protected Liberty Interest in His Conditional Release

Petitioner's liberty from immigration custody is protected by the Due Process Clause: "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

Since 1998, Petitioner has lived continuously in the U.S, where he has worked, supported his family, and built enduring community ties. He was apprehended more than two decades after his entry, far from the border. Despite these circumstances, DHS has categorized him as an "applicant for admission" under § 235(b)(2) and placed him in mandatory detention, denying him the opportunity for an individualized bond hearing. Accordingly, he retains a weighty liberty interest under the Fifth Amendment in avoiding continued incarceration. See *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court further noted that "the parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn,

"[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Morrissey*, 408 U.S. at 482.

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See, e.g.*, *Young v. Harper*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process); *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony probation have a protected liberty interest requiring pre-deprivation process). As the First Circuit has explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and citation omitted). *See also*, *e.g.*, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles her to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

In fact, it is well-established that an individual maintains a protectable liberty interest even where the individual obtains liberty through a mistake of law or fact. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations support the notion that an inmate released on parole by mistake, because he was serving a sentence that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release was not his fault, and he had appropriately adjusted to society, so it "would

be inconsistent with fundamental principles of liberty and justice" to return her to prison) (internal quotation marks and citation omitted).

Here, when this Court "'compares the release in Petitioner's case, with the liberty interest in parole as characterized by *Morrissey*,'" they bear similar features in liberty interests. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner's release "enables him to do a wide range of things open to persons,'" including to live at home, work, care for his family, for whom he is the financial provider, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

b. Petitioner's Liberty Interest Mandates His Release from Unlawful Custody

"Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). This Court must "balance [Petitioner's] liberty interest against the [government's] interest in the efficient administration of" its immigration laws to determine what process he is owed to ensure that ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in *Mathews v. Eldridge*, this Court must consider three factors in conducting its balancing test: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (*citing Mathews v.*

Eldridge, 424 U.S. 319, 335 (1976)).

The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a "special case" where post-deprivation remedies are "the only remedies the State could be expected to provide" can post-deprivation process satisfy the requirements of due process. *Zinermon*, 494 U.S. at 985. Moreover, only where "one of the variables in the *Mathews* equation—the value of deprivation safeguards—is negligible in preventing the kind of deprivation at issue" such that "the State cannot be required constitutionally to do the impossible by providing deprivation process," can the government avoid providing pre-deprivation process. *Id.*

Because, in this case, the provision of a bond hearing is both possible and essential to preventing an erroneous deprivation of liberty, ICE is required to provide Petitioner the opportunity for an individualized bond determination before a neutral decisionmaker. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil commitment proceedings may not constitutionally be held in jail pending the determination as to whether they can ultimately be recommitted). Under *Mathews*, "the balance weighs heavily in favor of [Petitioner's] liberty" and requires a deprivation hearing before a neutral adjudicator.

i. Petitioner's Private Interest in His Liberty is Profound

The private interest at stake, freedom from physical restraint, is "at the core of the liberty protected by the Due Process Clause." *Foucha v. Louisiana*, 504 U.S.

71, 80 (1992); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

Petitioner entered the United States without inspection on 1998, and has lived continuously in the U.S for more than twenty-seven years. During this time, he has worked, supported his family, and formed enduring ties in his community. He was apprehended more than two decades after his entry, not at the threshold of the border.

As the Supreme Court recognized in *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972), even conditional liberty carries profound constitutional significance. A person who is free in the community "can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." Id. The Court further noted that terminating such liberty "inflicts a grievous loss on the parolee and often others," and emphasized that "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." Id.

So too here. Petitioner's long-standing residence, family responsibilities, and deep community ties reflect a profound liberty interest that cannot lawfully be extinguished through misclassification as an "applicant for admission" under § 1225(b)(2). By detaining him without any opportunity for an individualized custody determination, Respondents have arbitrarily deprived him of the very liberty the Constitution protects..

ii. The Government's Interest in Continued Incarceration of Petitioner is Low and the Burden

on the Government to Refrain from Releasing Him is Minimal

The government's interest in maintaining mandatory detention and without allowing a bond hearing hearing is low, and when weighed against Petitioner's significant private interest in his liberty, the scale tips sharply in favor of enjoining Respondents from keeping him in unlawful custody. It becomes abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the process he seeks—a bond proceeding to which he is entitled to—is a standard course of action for the government. Providing Petitioner with a bond hearing before this Court (or a neutral decisionmaker) to determine whether there is clear and convincing evidence that Petitioner is a flight risk or danger to the community would impose only a *de minimis* burden on the government, because the government routinely provides this sort of hearing to individuals like Petitioner. Continuing to detain him under § 235(b)(2), despite his eligibility for a bond hearing under § 236(a), is unlawful

As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining Petitioner under the mandatory detention provisions of § 235(b)(2), because he entered the United States more than two decades ago and was apprehended in the interior, not at the border. He properly falls under § 236(a), which authorizes a bond hearing The government's interest in detaining Petitioner at this time is extremely low. Moreover, the "fiscal and administrative burdens" that his immediate release is nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek

a unique or expensive form of process, but rather release from unlawful detention, where removal is not reasonably foreseeable.

As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to the public of immigration detention are 'staggering': $158 each day per detainee, amounting to a total daily cost of $6.5 million." *Hernandez*, 872 F.3d at 996.

Releasing Petitioner from unlawful custody and enjoining Petitioner's continued detention is far *less* costly and burdensome for the government than keeping him detained. *Hernandez*, 872 F.3d at 996.

Due process also requires consideration of alternatives to detention at any custody redetermination hearing that may occur. The primary purpose of immigration detention is to ensure a noncitizen's appearance during removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered in determining whether Petitioner's continued incarceration is warranted.

As the above-cited authorities show, Petitioner is likely to succeed on his claim that the current detention is unlawful. And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135.

2. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

Petitioner will suffer irreparable harm were he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016).

As the Supreme Court has 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." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized 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 detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[1]

As detailed *supra*, Petitioner contends that his continued detention violates his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Petitioner from suffering irreparable harm by being subject to unlawful and unjust detention.

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

[1] Available at https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed Feb. 6, 2024).

The balance of equities and the public interest undoubtedly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Petitioner. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Further, any burden imposed by requiring the ICE to release Petitioner from unlawful custody is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

A temporary restraining order is in the public interest. First and most importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain Petitioner in violation of the requirements of Due Process. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration

detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

IV. CONCLUSION

For all the above reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction ordering that Respondents (1) release him from his unlawful custody; and (2) refrain from sending him to any place outside of the United States.

Dated: November 5 2025

Respectfully submitted,

/s/ Siovhan Ayala
Siovhan Ayala
Attorney for Petitioner-Plaintiff