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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

PEDRO ROMO NAVARRO, Petitioner, v. Renaldo CASTRO, Warden of SOUTH TEXAS ICE PROCESSING CENTER; Sylvester ORTEGA, Field Office Director of Enforcement and Removal Operations, San Antonio Field Office, Immigration and Customs Enforcement; 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. **MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I. INTRODUCTION

Petitioner Pedro Romo Navarro ("Petitioner" or "Mr. Navarro") is a 45-year-old citizen of Mexico who entered the United States without inspection at age seventeen and has since lived and worked continuously in Dallas, Texas. Mr. Navarro is a well-respected construction worker and local expert in residential framing. Most importantly, Mr. Navarro is a devoted husband, father, and grandfather. Since 1997, for the past twenty-eight years, Mr. Navarro has lived and worked continuously in Dallas, Texas. He is a pillar in his family, and he provides essential support to his wife, children, and grandchildren, all of whom are U.S. citizens.

Mr. Navarro is currently in the custody of Immigration and Customs Enforcement ("ICE") at the South Texas Ice Processing Center in Pearsall, Texas. He was transferred into ICE custody from Dallas County jail, where he had been detained after a police officer noticed Mr. Navarro riding a bicycle without a front light, and initiated a stop. Mr. Navarro was charged with Evading Arrest, and the charge was reduced and resolved as a Class C Disorderly Conduct offense.

Mr. Navarro is being unlawfully detained in ICE custody pursuant to a decision by the Board of Immigration Appeals ("BIA") that deems any noncitizen who entered the country without inspection is "seeking admission" to this country under 8 U.S.C. § 1225(b)(2)(A) and thus ineligible for a bond hearing. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

Even though Mr. Navarro has lived in this country for over 28 years, Respondents now consider him as someone "seeking admission" to the United States and subject to mandatory immigration detention. In accordance with this new interpretation of 8 U.S.C. § 1225(b)(2)(A), an Immigration Judge summarily denied Mr. Navarro the opportunity to seek a custody review on the basis that he is ineligible to be released on bond.

Respondents' new interpretation of who is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) is contrary to the statutory framework of the Immigration and Nationality Act ("INA"), decades of agency practice, legislative history, and Supreme Court precedents, which apply 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2)(A), to individuals like Mr. Navarro who have previously entered and are now residing in the United States. Under § 1226(a), Mr. Navarro is subject to discretionary detention and entitled to a bond hearing before an Immigration Judge. Accordingly, Mr. Navarro seeks a writ of habeas corpus requiring that he be released from ICE custody unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven days.

Mr. Navarro meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court requiring the government to either release him from detention or provide him with a prompt bond hearing, where the government bears the burden of demonstrating, by clear and convincing evidence, that he poses either a flight risk or a danger to the community.

II. STATEMENT OF FACTS AND THE CASE

Mr. Navarro is a forty-five-year-old citizen of Mexico and a devoted husband, father, and grandfather to a family of U.S. citizens. In 1997, at the young age of seventeen, he entered the United States without authorization. He set roots in Dallas, Texas, started building his career in construction, and developed his trade as a residential framing expert. Over the last twenty-eight years, Mr. Navarro has lived and worked in Dallas. He has dedicated himself to his family, community, and profession. He is consistently described by others as hardworking, detail oriented, and a highly requested general contractor. *See* Ex. F, ¶ 5; Ex. G, ¶ 3-4.

In 2002, Mr. Navarro married his wife Carolina, a U.S. citizen. Together, they have two U.S. citizen daughters: Elizabeth and Carolina Romo. Elizabeth and Carolina Romo have

daughters who are Mr. Navarro's U.S. citizen grandchildren. Mr. Navarro is an involved father who manages, despite difficulties, to travel regularly to spend time with his daughters in Houston, where they have both lived for many years. *See* Ex. A, ¶ 12-13. In addition to being an involved father, Mr. Navarro provides financial support to his family members. He has not only helped his daughters during financial struggles but has provided for them without being asked to do so. *See* Ex. A, ¶ 6-8, Ex. B, ¶ 6-7. Mr. Navarro also has extended family in the United States, including nieces, a nephew, and a cousin, who are all U.S. citizens. According to his family, he is a pillar, who is gentle, nurturing, trustworthy, and accountable. *See* Ex. A-D.

Mr. Navarro was taken into custody by ICE in 2025 after a police officer saw him riding a bicycle without a front light and initiated a traffic stop. Because Mr. Navarro did not come to a full stop immediately, the officer arrested him and took him into custody. Mr. Navarro was charged with Evading Arrest and held at Dallas County Jail. Mr. Navarro's charge was reduced and resolved as a Class C Disorderly Conduct offense in July 2025. He was subsequently transferred to ICE custody and placed in removal proceedings pursuant to section 212(a)(6) of the INA (8 U.S.C. § 1182(a)(6)) for being present in the United States without authorization.

On August 26, 2025, with the assistance of pro bono counsel, Mr. Navarro requested a bond hearing before an immigration judge to review his custody status. The Immigration Judge Veronica M. Segovia summarily denied Mr. Navarro's request for a bond hearing on September 15, 2025, citing lack of jurisdiction pursuant to the BIA's recent decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which was issued on September 5, 2025. That decision held that anyone who entered the United States unlawfully (i.e. without admission or parole) should be treated as an "arriving" alien and subject to mandatory detention under 8 U.S.C. 1225(b), regardless of how long the individual has resided in the United States.

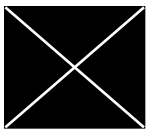
Mr. Navarro currently remains unlawfully detained at the South Texas ICE Processing Center in Pearsall, Texas. As each day passes, he continues to be deprived of his statutory right to a custody review and bond hearing pursuant to 8 U.S.C. § 1226(a), which authorizes an immigration judge to release Mr. Navarro pursuant to an evaluation of whether he poses a flight risk or a danger to the community.

Collectively, Mr. Navarro's family and friends affirm that he is not a danger to the community and that he is committed to complying with all immigration laws while pursuing his immigration case. See Ex. A-G. Indeed, Mr. Navarro has every reason to show up for his immigration court hearings, as he has a meritorious pathway to lawful immigration status. He is eligible to apply for Cancellation of Removal for Non-Legal Permanent Residents under 8 U.S.C. § 1229b(b), as his U.S. citizen wife is a qualifying relative, he has been living in the United States for over ten years, and his criminal history does not bar him from the relief. Ex. H. Additionally, his wife and daughters are eligible to petition for lawful status on his behalf, which would allow him to consular process to obtain a visa, if he obtains a provisional waiver for his unlawful presence, a process that could be largely completed in the United States.

Without relief from this court, however, Mr. Navarro faces months, or even years, of unlawful detention while pursuing his valid claim to immigration relief, needlessly separated from his family and community.

III. LEGAL STANDARD

The Supreme Court has explained that temporary restraining order or preliminary injunction is warranted when a party 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); *see also Canal Auth. of State of Fla. v. Callaway,* 489 F.2d 567, 572 (5th Cir. 1974) (explaining that, to establish their right to a temporary restraining order or preliminary injunction, petitioners must show: "(1) a substantial likelihood that Petitioner will prevail on the merits, (2) a substantial threat that Petitioner will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to Petitioner outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest"). The decision to grant injunctive relief is within the discretion of the district court. *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985).

IV. ARGUMENT

Mr. Navarro satisfies all three factors for a temporary restraining order and preliminary injunction. First, there is a substantial likelihood that he will prevail on the merits. Numerous district courts across the country have already addressed the legal issue raised here and have held in favor of petitioners challenging the unlawful denial of bond hearings under *Matter of Yajure Hurtado.* Second, there is a substantial threat that Mr. Navarro will suffer irreparable harm by remaining detained for an indefinite time, potentially throughout his removal proceeding, if a TRO or injunction is not granted. Third, the balance of equities tips in his favor, as the threatened injury outweighs any harm that a TRO or preliminary injunction may cause Respondents. Finally, the public interest favors requiring Respondents to follow the law.

A. There is a Substantial Likelihood that Mr. Navarro Will Prevail on the Merits

Mr. Navarro is likely to prevail the merits of his case. Specifically, he is likely to prevail on the following arguments: (1) his detention is pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b), based on the plain language of the statute and Supreme Court precedents, entitling him

to a bond hearing; (2) the BIA's recent decision in *Matter of Yajure Hurtado*, on which the immigration judge relied in denying Mr. Navarro a bond hearing, is arbitrary, capricious, and contrary to law in violation of the Administrative Procedure Act; (3) Mr. Navarro's detention without a bond hearing violates procedural due process; and (4) Mr. Navarro's detention without a bond hearing violates substantive due process.

1. The Proper Statutory Provision Governing Mr. Navarro's Detention is 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b).

The INA prescribes four basic forms of detention. First, 8 U.S.C. § 1226 authorizes the discretionary detention of noncitizens in regular removal proceedings, meaning removal proceedings under 8 U.S.C. § 1229a. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." Individuals detained under § 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 U.S.C. 1226(a)(2) (authorizing the release of a noncitizen detained under 1226(a) on "bond of at least $1500" or "conditional parole"); *see also* 8 C.F.R. §§ 1003.19(a) (addressing the immigration judge's authority to review custody and bond determinations made by DHS), 1236.1(d) (addressing the immigration judge's authority to release a noncitizen on bond).

Second, 8 U.S.C. § 1226(c) requires the mandatory detention of certain categories of noncitizens who have been convicted of certain crimes. The Laken Riley Act expanded § 1226(c) to also include certain individuals who have been arrested for, charged with, or who admit committing specific crimes. Third, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking

admission referred to under § 1225(b)(2). Fourth, 8 U.S.C. § 1231(a) provides for detention of noncitizens who have been ordered removed.

The issue in the present case is whether Mr. Navarro belongs in the first category, as someone detained pursuant to § 1226(a) and entitled to a bond hearing, or in the third category, as someone seeking admission and subject to mandatory detention under § 1225(b)(2). Mr. Navarro is not subject to mandatory detention under 8 U.S.C. § 1226(c) because he has not been convicted of an inadmissible offense, nor has he been arrested or charged for any offense enumerated in the Laken Riley Act. He also does not have an order of removal that would trigger detention under 8 U.S.C. § 1231(a).

Mr. Navarro was placed in regular removal proceedings under 8 U.S.C. § 1229a, and he was initially detained pursuant to § 1226(a), which is why he requested a bond hearing (i.e. a custody redetermination hearing) in immigration court. However, after the BIA's decision in *Matter of Yajure Hurtado*, the immigration judge determined that Mr. Navarro was subject to mandatory detention under § 1225(b)(2), because he had entered the country without admission or parole, even though he entered over two decades ago.

The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA, EOIR promulgated interim regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited

Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

In the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

On July 8, 2025, however, ICE announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[1] claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

Mr. Navarro's detention without a bond hearing pursuant to *Matter of Yajure Hurtado* is unlawful, because that BIA decision conflicts with Supreme Court precedent. *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (explaining how 8 U.S.C. § 1226(a) applies to "certain aliens

[1] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

already in the country"); *Johnson v. Arteaga-Martinez,* 596 U.S. 573, 579 (2022) (citing 8 U.S.C. § 1226 as "govern[ing] the detention of certain noncitizens present in the country who were inadmissible at the time of entry"). The Supreme Court's reading of § 1226(a) must govern. *See Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

Federal district courts in the Fifth Circuit, including three decisions in the Western District of Texas, have already rejected the BIA's recent interpretation in *Matter of Yajure Hurtado* as contrary to Supreme Court precedents. *See Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) (holding that the government's position that § 1225 applied 'because Petitioner is present in the United States without being admitted' contradicts Supreme Court precedent); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278,*5 (W.D. La. Sept. 11, 2025) ("Respondents' position that § 1225 applies 'because Petitioner is present in the United States without being admitted' is contrary to the Supreme Court's analysis of the application of § 1225 to arriving aliens."); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *10–*12 (W.D. Tex. Sept. 22, 2025); *Buenrostro-Mendez v. Bondi*, No. CV H-25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7 (W.D. Tex. Oct. 16, 2025); *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8–*10 (W.D. Tex. Oct. 21, 2025).

Other federal courts across the country have also adopted the same reading of the INA's detention authorities and rejected the BIA's new interpretation. *See, e.g., Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379, at *7 (E.D. Mich. Aug. 29, 2025) (holding that §1226(a), not § 1225(b)(2)(A), applied to a noncitizen apprehended in a traffic stop twenty-five years after entering the United States without authorization); *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jose J.O.E. v. Bondi*,

No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025).

The text of § 1226 explicitly addresses people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)(ii) makes clear that only specific subcategories of individuals who entered without inspection—those who are "charged with, [] arrested for, [] convicted of, admit[] having committed, or admit[] committing acts which constitute the essential elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any crime that results in death or serious bodily injury to another person"—are subject to mandatory detention. By default, then, individuals who

entered without inspection and who are not specifically mentioned in subparagraph (E)(ii), remain eligible for release pursuant to § 1226(a). As the Supreme Court has stated, when Congress creates "specific exceptions" to a framework in a statute, it "proves" that absent those exceptions, the general framework in the statute applies. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010).

Had Congress intended for § 1225(b)(2) to apply to all applicants for admission, subjecting them all to mandatory detention, the entire Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025), which introduced the language in 8 U.S.C. § 1226(c)(1)(E)(ii), would be superfluous. Furthermore, the plain language of § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. That statutory provision's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Someone like Mr. Navarro, who has been in the United States for decades, cannot be placed in this category.

"As almost every district court to consider this issue has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades" support finding that § 1226 applies to these circumstances." *Buenrostro-Mendez*, No. CV H-25-3726, 2025 WL 2886346, at *3. "Many courts have . . . found it appropriate to give the Government a short window in which to complete the bond hearing, or else release the petitioner." *Lopez-Arevelo*, 2025 WL 2691828, at *13. For example, a court in the Southern District of Texas ordered the respondents to "either hold a bond hearing under § 1226 within 14 days of [its] order . . . or release [the petitioner]." *Buenrostro-Mendez*, No. CV H-25-3726, 2025 WL 2886346, at *4. Petitioner respectfully requests that this Court do the same.

2. The BIA's Decision in *Matter of Yajure Hurtado*, on Which the Immigration Judge Relied in Denying Mr. Navarro a Bond Hearing, is

Arbitrary, Capricious, and Contrary to Law in Violation of the Administrative Procedure Act.

Federal courts have jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

The BIA's decision in *Matter of Yajure Hurtado* is arbitrary, capricious, and contrary to law in violation of the APA. As discussed above, this decision upended decades of practice and is inconsistent with both Supreme Court precedents and the plain language of the INA, leading numerous district courts to reject it. Likewise, the immigration judge's perfunctory decision denying Mr. Navarro a bond hearing based on *Matter of Yajure Hurtado* is arbitrary, capricious, and contrary to law.

3. Mr. Navarro's Detention Without a Bond Hearing Violates Procedural Due Process.

Procedural due process constrains governmental decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause of the Fifth Amendment. Because Mr. Navarro's detention has not been unaccompanied by any of the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause, for example any meaningful process to contest his detention, his detention violates his procedural due process rights. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

The Supreme Court has long made clear that, where the government seeks to deprive an individual of a "particularly important individual interest[]," it must bear the burden of justifying

this deprivation by clear and convincing evidence. *See, e.g.*, *Addington v. Texas*, 441 U.S. 418, 424 (1979). In cases like Mr. Navarro's, a "clear and convincing" evidence standard provides the appropriate level of procedural protection. *See id.* at 423.

Mr. Navarro has a significant private interest in not being detained. Freedom from detention is considered the "most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the very liberty that [the Due Process Clause] protests." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). To be detained without the possibility of a bond hearing leaves Mr. Navarro without any possibility of release during his removal proceedings.

The second *Mathews* factor also favors Mr. Navarro. When Mr. Navarro filed for a bond hearing on August 26, 2025, he was considered detained under 1226(a) and eligible for a bond hearing. The BIA's unilateral decision ten days later, on September 5, 2025, in *Matter of Yajure Hurtado,* to extend a different statutory provision to Mr. Navarro's circumstances, now leaves his liberty at risk. As in other recent cases, the Immigration Judge declined to exercise jurisdiction, finding Mr. Navarro subject to mandatory detention pursuant to the BIA's decision in *Yajure Hurtado*. Mr. Navarro was therefore denied any hearing where he could contest his detention, creating a high risk that he has been, and will continue to be, erroneously deprived of his liberty. Providing Mr. Navarro with a simple bond hearing would greatly reduce the risk of an erroneous deprivation of his liberty.

The third *Mathews* factor concerns the government's interest in the proceedings, as well as any financial or administrative burdens associated with permissible alternatives. The government has an interest in ensuring that federal laws are applied consistently, properly, and in a manner that upholds the Constitution. Utilizing the wrong statute to detain someone does not further those

interests and undermines Congress's legislative intent. Furthermore, it would not be burdensome on the government to apply 1226(a)'s discretionary detention scheme to Mr. Navarro, as immigration judges routinely hold bond hearings where they analyze flight risk and danger to the community. Providing Mr. Navarro with a bond hearing would be far more cost effective and less administratively burdensome than keeping him detained.

At least three decisions in the Western District of Texas have concluded that the *Mathews* factors weigh in favor of petitioners challenging their detention under 1225(b)(2) pursuant to *Matter of Yajure Hurtado*. *See Hernandez-Fernandez*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *8–*10; *Lopez-Arevelo*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *10–*12; *Vieira v. De Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 WL 2937880, at *7.

These courts have also determined that the burden of proof at the bond proceeding should be placed on the government. As two decisions in the Western District of Texas recently recognized, "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828, at *12 (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 855 n.14 (2d Cir. 2020); *Hernandez-Fernandez*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *10 (same). These decisions noted that the consensus appears to be holding in courts across the country. *See Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar*, —— F. Supp. 3d ——, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

Finally, even if the holding in *Matter of Yajure Hurtado* were somehow permissible, its retroactive application to Mr. Navarro's case would still be improper. The Fifth Circuit Court of Appeals has previously rejected retroactive application of substantial changes in BIA case law. *See Monteon-Camargo v. Barr,* 918 F.3d 423, 431 (5th Cir. 2019), *as revised* (Apr. 26, 2019) ("We conclude that the definition of [crimes involving moral turpitude] announced in *Diaz-Lizarraga* may be applied only to crimes committed after that decision issued. The BIA erred in applying its new definition to Monteon-Camargo's conviction of attempted theft."). Under the Fifth Circuit's test for retroactive application of an agency decision, a court must "balance the ills of retroactivity against the disadvantages of prospectivity." *Microcomputer Technology Institute v. Riley*, 139 F.3d 1044, 1050 (5th Cir. 1998). Notable among these ills is that retroactivity can "compromise the familiar due process considerations of fair notice, reasonable reliance, and settled expectations." *Monteon-Camargo,* 918 F.3d at 430-31 (internal quotation marks omitted). This is particularly true when "the change in the Board's guidance . . . [is] significant." *Id.* at 431. Like the BIA decision at issue in *Monteon-Camargo*, *Matter of Yajure Hurtado* "drastically chang[ed] the landscape." *Id.* Applying the new rule of general applicability announced in *Matter of Yajure Hurtado* to prior conduct "contravenes basic presumptions about our legislative system." *Id.* For decades, people who arrived without inspection were placed in standard removal proceedings and received bond hearings. In light of the substantial change imposed by *Matter of Yajure Hurtado*, several district courts have rejected retroactive application of that decision. *See, e.g.*, *Ballestros v. Noem*, No. 3:25-CV-594-RGJ, 2025 WL 2880831, at *3-4 (W.D. Ky. Oct. 9, 2025); *Patel v. Noem*, No. 3:25-CV-373-RGJ, 2025 WL 2823607, at *4-5 (W.D. Ky. Oct. 3, 2025); *Moral Chavez v. Director of Detroit Field Office*, No. 4:25-CV-02061-SL, 2025 WL 2959617, at *8 (N.D. Ohio Oct. 20, 2025). This Court should do the same.

4. Mr. Navarro's Detention Without a Bond Hearing Violates Substantive Due Process.

Mr. Navarro's detention also violates his substantive right to due process. To comport with substantive due process, civil immigration detention must bear a reasonable relationship to its two regulatory purposes— (1) to ensure the appearance of noncitizens at future hearings and (2) to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-91. As discussed above, Mr. Navarro has strong familial ties to the United States and has consistently been employed in construction for his entire adult life. *See* Ex. F-G. Mr. Navarro has been an integral part of his U.S. citizen children's and grandchildren's lives. He is also very close with his nieces and nephews. *See* Ex. D-F. Upon his release from custody, Mr. Navarro is committed to continue supporting his family his family while pursuing his valid claims to immigration relief. *See* Ex. A-B. His recent Class C ticket is a minor, non-violent incident that is an outlier to his many years of good conduct in the U.S. There is therefore no reason to believe that he would fail to appear at future hearings, nor would he be a danger to his community. The government thus has no legitimate interest in detaining him. *See Demore v. Kim*, 538 U.S. 510, 533 (2003) (O'Connor, J., concurring).

B. Mr. Navarro Will Suffer Irreparable Harm Absent Injunctive Relief

Mr. Navarro will suffer irreparable harm if his unlawful detention without a bond hearing continues. Each day that Mr. Navarro is detained in violation of his constitutional rights, he faces irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976). This due process violation alone is sufficient to meet this standard.

Mr. Navarro has also provided cogent evidence of individualized harm resulting from his continued detention, further supporting an irreparable harm finding. He is separated from his family, including his wife, children, and grandchildren, while being held in prison-like conditions.

As the Supreme Court has explained, "[t]he time spent in jail . . . 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). Removal proceedings can last for many months or even years, making the length of Mr. Navarro's detention, and his separation from his family, indefinite.

Detention during removal proceedings can also negatively impact the outcome of a case. Detention deters individuals from submitting applications for relief, makes it more difficult communicate with counsel, and creates substantial obstacles to compiling the evidence needed to support an application. A TRO or preliminary injunction is necessary to prevent Mr. Navarro from suffering the irreparable harm associated with detention.

C. The Balance of Equities and Public Interest Weigh Heavily in Mr. Navarro's Favor.

The balance of hardships and the public interest both tip strongly in Mr. Navarro'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 v. Holder*, 556 U.S. 418, 435 (2009). 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 v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice, and the public interest is best served by ensuring that statutes and constitutional rights are upheld. *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 having to comply with the INA or with the Due Process Clause of the Constitution. If a TRO

or preliminary injunction is not entered, the government would effectively be granted permission to detain Mr. Navarro without a bond hearing, in violation of law.

Further, any burden imposed by requiring DHS to refrain from detaining Mr. Navarro without a bond hearing is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he continues to be 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."). Courts granting temporary restraining orders in immigration habeas cases have routinely found that these factors weigh in a petitioner's favor. *See, e.g., Pham v. Becerra,* No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (noting the administrative burden of a bond hearing is minimal when weighed against a petitioner's severe hardships); *Xuyue Zhang v. Barr*, 612 F. Supp. 3d 1005, 1017 (C.D. Cal. 2020) ("the public interest benefits from a preliminary injunction that expedites a bond hearing to ensure that no individual is detained in violation of the Due Process Clause."). Therefore, the balance of equities and public interest both overwhelmingly favor granting a TRO or preliminary injunction requiring Mr. Navarro to either be released or granted a prompt bond hearing, where the government bears the burden of proof.

D. In the Alternative, Mr. Navarro Requests that Respondents be Enjoined from Transferring Him Out of This District While the Case is Pending.

If the Court does not order immediate release or a prompt bond hearing, Mr. Navarro respectfully requests that, at a minimum, this Court enjoin Respondents from transferring him outside the Western District of Texas during the pendency of his habeas case. Enjoining transfer outside the Western District would preserve this Court's jurisdiction over this matter, facilitate judicial review of Mr. Navarro's significant constitutional and statutory claims, and preserve judicial resources by avoiding the necessity of refiling this case elsewhere.

CONCLUSION

For all the above reasons, this Court should find that Mr. Navarro warrants a TRO or preliminary injunction ordering that Respondents either release him from unlawful detention or promptly grant him a bond hearing where the government bears the burden of proof.

DATED this 6th day of November, 2025.

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