

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

TOMAS ALFREDO MACARIO MORALES,

Petitioner,

v.

JOHN DOE, in his capacity as Warden of Camp East Montana Detention Facility; MARISA FLORES, in her official capacity as Acting Field Office Director, El Paso Field Office, Enforcement and Removal Operations, U.S. Immigration & Customs Enforcement; TODD LYONS, in his official capacity as Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; PAMELA BONDI, in her official capacity as Attorney General of the U.S.; SIRCE E. OWEN, in her official capacity as Acting Director of the Executive Office for Immigration Review; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF JUSTICE; and U.S. EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

Case No. 3:25-cv-00546

**MOTION FOR PRELIMINARY INJUNCTION ORDERING RELEASE PENDING
FINAL JUDGMENT**

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I. INTRODUCTION

This case is one of many challenging an interpretation of the detention authority in the Immigration and Nationality Act (INA) to which Respondents continue to adhere despite its near universal rejection by the federal courts. Earlier this year, Respondents departed from their longstanding interpretation of the INA as allowing bond hearings for noncitizens arrested while already present in the United States. Instead, they took the position that every noncitizen who entered the United States without inspection, no matter how long ago, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Courts throughout the Fifth Circuit and across the country have rejected that position and have ordered Respondents to provide immediate bond hearings to noncitizens detained under *Yajure Hurtado*. Respondents nevertheless continue to routinely arrest and imprison noncitizens—including Petitioner Tomas Alfredo Macario Morales—under the supposed authority of that case.

Mr. Macario Morales entered the United States in October 2022 after fleeing Guatemala due to repeated threats on his life. *See* Habeas Petition, Dkt. 1. He has lived in Brooklyn, New York since his arrival and intends to seek asylum in this country. *Id.* ¶¶ 1, 29. Mr. Macario Morales is in full removal proceedings before an immigration judge. *See id.* ¶ 49. The immigration court did not permit Mr. Macario Morales to request a bond hearing, stating that Mr. Macario Morales was ineligible. *Id.* ¶ 48. Given that Mr. Macario Morales entered the country without inspection in 2022, has no criminal history, and has never been placed in expedited removal, the immigration judge's refusal can rest only on the position taken by *Yajure Hurtado*. *Id.* ¶¶ 27-28, 48-49.

As the countless decisions of courts in this District and elsewhere make clear, *Yajure Hurtado* is wrong, and Mr. Macario Morales is likely to succeed on the merits of his claims. *Id.* ¶ 61. Moreover, he suffers irreparable harm each moment that he is deprived of liberty without sufficient procedure or justification. And the balance of the equities tips decidedly in Mr. Macario

Morales's favor. He therefore respectfully requests that this Court order Respondents to release him during the pendency of these proceedings or, in the alternative, to prevent his transfer out of the Western District of Texas and to order Respondents to provide him with a bond hearing within five days.

II. STATEMENT OF RELEVANT FACTS

Mr. Macario Morales is a national of Guatemala who has resided in the United States since 2022. *See* Dkt. 1 ¶¶ 2, 30-31. He is a member of the K'iche' people, who are routinely persecuted in Guatemala, where his life was threatened at knife and gun point, and he intends to seek asylum in the United States. *Id.* at ¶ 32.

In August 2025, masked, armed, anonymous federal agents working for U.S. Immigration and Customs Enforcement (ICE) surrounded a car in which Mr. Macario Morales was riding with his real estate agent and a friend. *Id.* at ¶¶ 33-39. The agents screamed at all three men, physically dragged Mr. Macario Morales out of the car, arrested him, and imprisoned him at an immigration courthouse in New York City. *Id.* at ¶ 40. From that courthouse, Defendants transferred Mr. Macario Morales to two other locations before detaining him at the so-called "Camp East Montana" on the grounds of Fort Bliss outside El Paso, Texas. *Id.* at ¶¶ 6, 10. He remains imprisoned at that location today. *Id.* at ¶ 45. Mr. Macario has no criminal history and had previously not been arrested in either the United States or Guatemala. *Id.* at ¶ 1.

Mr. Macario Morales's detention is causing him significant harm. He has a history of suicidal ideation and struggles with depression and anxiety in detention. *Id.* at ¶¶ 7, 47. Further, the food served to Mr. Macario Morales in detention—which is routinely moldy, rotten, or otherwise inedible—has caused him to vomit and lose weight. *Id.* at ¶ 46. He has not seen a medical professional in detention despite repeated requests. *Id.* at ¶ 7, 47. Moreover, at Camp East

Montana, he is housed in a tent with about 70 other people. *Id.* at ¶ 46. The tent has only six bathrooms, and the toilets regularly overflow and create a pervasive, lasting stench of sewage. *Id.* Mr. Macario Morales is in full removal proceedings before an immigration judge in El Paso. *Id.* at ¶ 4. In September 2025, Mr. Macario Morales was denied the opportunity to request a bond hearing before the immigration judge. *Id.* at ¶ 48. The immigration judge declined to hold a hearing, stating that Mr. Macario Morales is ineligible for bond. *Id.*

III. LEGAL STANDARD

A. Habeas is an Adaptable Remedy.

“The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.” *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). “[C]ommon-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances.” *Id.* at 779. Thus, as codified in 28 U.S.C. § 2241, habeas corpus has “never has been a static, narrow, formalistic remedy.” *Jones v. Cunningham*, 371 U.S. 236, 243 (1963). Rather, its “scope has grown to achieve its grand purpose[:] the protection of individuals against erosion of their right to be free from wrongful restraint[s].” *Id.*

This court has the inherent authority to release Mr. Macario Morales during the adjudication of his habeas petition. *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974); *see also Mapp v. Reno*, 241 F.3d 221, 230 (2d. Cir. 2001).

This court also has the authority to require the government to hold a bond hearing and prevent Petitioner’s transfer outside this judicial district. This expansive authority ensures that the writ remains an effective remedy. *See Mapp*, 241 F.3d at 230; *Jones*, 371 U.S. at 243 (stating that habeas relief must adjust to effectively serve “its grand purpose”). District courts within the Fifth

Circuit have recognized that such expansive authority includes the authority to release noncitizens from immigration detention pending the disposition of habeas petitions challenging immigration confinement. *See, e.g., Singh v. Gillis*, 2020 WL 4745745, at *2 (S.D. Miss. June 4, 2020) (collecting cases).

A court should not deny a preliminary injunction merely because it seeks release of the petitioner during the pendency of the adjudication, even if that looks similar to the ultimate relief. The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable injury until the court can render a decision on the merits. *See, e.g., Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). In the Fifth Circuit, the “‘status quo’ to be preserved is ‘the last peaceable uncontested status existing between the parties before the dispute developed.’” *Texas v. Biden*, 646 F. Supp. 3d 753, 771 (N.D. Tex. 2022) (quoting Charles Alan Wright & Arthur R. Miller, 11A Federal Practice & Procedure § 2948 (3d ed. 2013)). Accordingly, the status quo is not the conditions existing at the time the lawsuit was filed or the preliminary injunction motion heard. *Abuelhawa v. Noem*, 2025 WL 2937692, at *7 (S.D. Tex. Oct. 16, 2025) citing Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure § 2947 (West 3d ed September 2025 update). Under that standard, the status quo is Petitioner's freedom from the illegal and unconstitutional detention they are now subject to. *Id.*

Under Federal Rule of Civil Procedure 65, this Court can issue a preliminary injunction if the balance of four factors weighs in Petitioner’s favor. Those familiar factors are the following:

- (1) a substantial likelihood of success on the merits,
- (2) a substantial threat of irreparable injury if the injunction is not issued,
- (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and
- (4) that the grant of an injunction will not disserve the public interest.

Speaks v. Kruse, 445 F.3d 396, 399–400 (5th Cir. 2006) (quoting *Concerned Women for Am. Inc. v. Lafayette Cnty.*, 883 F.2d 32, 34 (5th Cir. 1989)). In cases against the government, the third and fourth factors merge. *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

More specifically, the Court may issue three types of preliminary remedies. First, the Court may issue preliminary injunctive relief ordering Respondents to immediately release Mr. Macario Morales pending final judgment. *See, e.g., Basank v. Decker*, 613 F. Supp. 3d 776, 795 (S.D.N.Y. 2020). Second, the Court may alternatively issue a preliminary injunction ordering Respondents to release Mr. Macario Morales on bond. *See, e.g., Suri v. Trump*, 2025 WL 1392143 (E.D. Va. May 14, 2025) (ordering release on bond). Finally, the Court may order Respondents not to transfer Mr. Macario Morales outside the Western District of Texas and grant Mr. Macario Morales a bond hearing pending final disposition of this case. *See, e.g., Kostak v. Trump*, 2025 WL 2472136, at *4 (W.D. La. Aug. 27, 2025) (ordering a bond hearing within seven days).

IV. ARGUMENT

Mr. Macario Morales satisfies all of the requirements for a preliminary injunction: As demonstrated by the decisions of courts throughout the country that have considered the legal issues he raises, he is likely to succeed on the merits of his claim. He suffers substantial and irreparable harm each time he is in detention. And the public interest strongly favors requiring Respondents to follow the plain text of the INA and the numerous court decisions rejecting their newfound reading of that text.

A. Mr. Macario Morales Is Likely to Succeed on the Merits of His Claims.

1. *Respondents' novel reading of 8 U.S.C. § 1225(b)(2)(A) contradicts the plain meaning of the INA.*

Respondents are detaining Mr. Macario Morales under the supposed authority of 8

U.S.C. § 1225(b)(2)(A). None of the other mandatory detention provisions of the INA fits his situation. He cannot be detained under 8 U.S.C. § 1225(b)(1), because he was never placed in expedited removal. He cannot be detained under 8 U.S.C. § 1231, because he has no final order of removal. He cannot be detained under 8 U.S.C. § 1226(c), because he has no criminal history at all, much less the serious criminal history necessary to trigger that provision. And Respondents are not detaining Mr. Macario Morales under the discretionary authority of 8 U.S.C. § 1226(a), because if they were, the immigration judge could not have found Mr. Macario Morales ineligible for bond. *See* 8 U.S.C. § 1226(a)(2). Respondents' position is thus necessarily that he is detained under § 1225(b)(2)(A).

Mr. Macario Morales is likely to succeed on his claim that his ongoing detention under § 1225(b)(2)(A) violates the INA. Mr. Macario Morales's detention is based on the BIA's recent holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), that any noncitizen who entered the United States without inspection at any time is subject to mandatory detention under § 1225(b)(2)(A). That decision has been universally rejected by the dozens of federal courts to address the issue. *See, e.g., Lopez-Arevelo v. Ripa*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Santiago v. Noem*, 2025 WL 2792588 (W.D. Tex. Oct. 2, 2025); *Vieira v. De Anda-Ybarra*, 2025 WL 2937880, (W.D. Tex. Oct. 16, 2025); *Gonzalez Martinez v. Noem et al.*, 2025 WL 2965859, (W.D. Tex. Oct. 21, 2025); *Hernandez-Fernandez v. Lyons et al.*, 2025 WL 2976923 (W.D. Tex. Oct. 21, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Rivera Zumba v. Bondi*, 2025 WL 2753496 (D.N.J. Sept. 26, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Lopez Santos v. Noem*, 2025 WL 2642278 (W.D. La. Sept. 11, 2025);

Pizarro Reyes v. Raycraft, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Campos Leon v. Forestal*, 2025 WL 2694763 (S.D. Ind. Sept. 22, 2025); *Barrajas v. Noem*, 2025 WL 2717650 (S.D. Iowa Sept. 23, 2025); *Belsai D.S. v. Bondi*, 2025 WL 2802947 (D. Minn. Oct. 1, 2025); *Giron Reyes v. Lyons*, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Salazar v. Dedos*, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lopez v. Hardin*, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025).

There is good reason for this consensus. Section 1225(b)(2)(A) applies only to noncitizens who are “applicant[s] for admission” and are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Thus, as the Supreme Court has made clear, § 1225(b)(2)—and, indeed, all of § 1225(b)—“applies primarily to [noncitizens] seeking entry into the United States.” *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). As the Court further recognized, a different statute—8 U.S.C. § 1226—“applies to [noncitizens] already present in the United States.” *Id.* at 303. The “default rule” for such noncitizens is found in § 1226(a), which expressly “permits the Attorney General to release those [noncitizens] on bond.” *Id.*; see 8 C.F.R. §§ 1003.19(a), 1236.1(d); see also, e.g., *Lopez Santos*, 2025 WL 2642278, at *4 (explaining that the INA “differentiat[es] between the detention of arriving [noncitizens] who are seeking entry into the United States under § 1225 and the detention of those who are already present in the United States under § 1226”).

Section 1225(b)(2)(A) bears out the Court’s reading. “Congress’ use of verb tense is significant in construing statutes,” *United States v. Wilson*, 503 U.S. 329, 333 (1992), and § 1225(b)(2)(A) uses the present participle “seeking admission.” That tense “denotes an ongoing process” that “necessarily implies some sort of present-tense action.” *Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (quotation omitted). After all, “someone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of

a film would not ordinarily then be described as ‘seeking admission’ to the theater.” *Lopez Benitez*, 2025 WL 2371588, at *7. Respondents’ longstanding regulations implementing § 1225 similarly refer to “arriving [noncitizens],” 8 C.F.R. § 235.2(c), a term defined to include only “applicant[s] for admission coming or attempting to come into the United States at a port-of-entry,” 8 C.F.R. § 1.2.

Any remaining doubt about the correctness of the distinction the Supreme Court drew in *Jennings* is dispelled by the context around § 1225(b) and § 1226(a). By its title, § 1225 applies to “[i]nspection by immigration officers,” the “expedited removal of inadmissible arriving [noncitizens],” and the “referral of those noncitizens for a “hearing.” 8 U.S.C. § 1225. The inspections to which § 1225 refers typically occur at or near the border of the United States. *Make the Rd. New York v. Noem*, 2025 WL 2494908, at *1 (D.D.C. Aug. 29, 2025) citing Designating Aliens for Expedited Removal, 69 Fed. Reg. 48877-01, 48879 (Aug. 11, 2004). Moreover, the word “‘arriving’ indicates that the statute governs ‘arriving’ noncitizens, not those present already.” *Barrerav. Tindall*, 2025 WL 2690565, at *4 (W.D. Ky. Sept. 19, 2025) (citing *Pizarro Reyes*, 2025 WL 2609425 at *5).

Furthermore, a provision in § 1226 added by Congress just this year expressly contemplates that—contrary to *Yajure Hurtado*—some noncitizens who enter without inspection are subject to detention under § 1226(a). Section 1226(c)(1)(E) states that people who are “inadmissible under” 8 U.S.C. § 1182(a)(6)(A), which covers only people who enter without inspection, are subject to mandatory detention if they are charged with, arrested for, or convicted of certain crimes. 8 U.S.C. § 1226(c)(1)(E). By creating a “‘specific exception’” to § 1226(a) requiring mandatory detention of some noncitizens who entered without inspection, Congress directly indicated its understanding that § 1226(a) “‘generally applies’” to those noncitizens

Rodriguez, 779 F. Supp. 3d at 1256–57 (quoting *Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). And Respondents’ position that *all* noncitizens who enter without inspection are subject to mandatory detention would render this recent addition to the statute superfluous. *Shoshone Indian Tribe of Wind River Rsrv. v. United States*, 364 F.3d 1339, 1349 (Fed. Cir. 2004) citing *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1882) (“It is the duty of the court to give effect, if possible, to every clause and word of a statute...”).

Even Respondents themselves long read § 1225(b) and § 1226 in the same way as the Supreme Court in *Jennings* and as Congress. The 1997 Department of Justice rule implementing § 1225 made clear that noncitizens “who are present without having been admitted or paroled ... will be eligible for bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Respondents then hewed to that position for nearly three decades. *Lopez Santos v. Noem*, 2025 WL 2642278, at *4 (W.D. La. Sept. 11, 2025) citing *Jennings*, 583 U.S. at 303.

Mr. Macario Morales entered the United States without inspection in 2022, and Respondents arrested him in New York City three years later. Given those facts, he is—under the Supreme Court’s reading of the INA, Congress’s reading of the INA, Respondents’ own longstanding reading of the INA, and the reading of the INA adopted by the overwhelming majority of courts to address the issue—not subject to detention under § 1225(b)(2)(A). He is therefore likely to succeed on the merits of his claim that his detention under § 1225(b)(2)(A) violates the INA.

2. *Mr. Macario Morales is likely to succeed on his claim that his detention violates agency regulations.*

Mr. Macario Morales is also likely to succeed on Claim Two, which alleges that his ongoing detention violates agency regulations. An administrative agency is required to adhere to its own regulations. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268

(1954). And the regulations implementing § 1225 and § 1226 require Respondents to grant bond hearings to people detained under § 1226(a) at the outset of their detention. 8 C.F.R. § 1236.1(d)(1); *see Jennings*, 583 U.S. at 306. Given that Mr. Macario Morales may be detained only under § 1226(a), Respondents' refusal to provide him with a bond hearing violates their longstanding regulations.

3. *Mr. Macario Morales is likely to succeed on the merits of his substantive due process claim.*

Mr. Macario Morales is similarly likely to succeed on the merits of his substantive due process claim. Substantive due process rights under the Fifth Amendment protect the liberty interest in “[f]reedom from imprisonment.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). That freedom “lies at the heart of the liberty that [the Due Process] Clause protects.” *Id.* Indeed, because “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quotation omitted).

Immigration detention is civil and must “bear[] a reasonable relation to the purpose for which the individual [is] [detained],” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (cleaned up); *see also Schall v. Martin*, 467 U.S. 253, 264 (1984) (requiring detention to be a proportional rather than excessive response to a legitimate state objective). Where immigration detention is not mandatory by statute, its only legitimate purposes are mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 426 (1979) (“The [government] has no interest in confining individuals involuntarily if they . . . do not pose some danger.”). Mr. Macario Morales is, as explained above, not subject to mandatory detention. And he is neither a flight risk nor a danger to the community. He has lived in New York City for three years and has ties there that

preclude any risk of flight. Mr. Macario Morales is in a committed relationship with plans to marry in the future. Furthermore, Mr. Macario Morales's complete lack of criminal history demonstrates that he does not pose a danger to the community. He is therefore likely to succeed on his Fifth Amendment substantive due process claim.

4. *Mr. Macario Morales is likely to succeed on the merits of his procedural due process claim.*

Finally, Mr. Macario Morales is likely to succeed on his procedural due process rights claim under the Fifth Amendment. Even “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *U.S. v. Salerno*, 481 U.S. 739, 746 (1987). The sufficiency of any process afforded is determined by weighing three factors: (i) the private interest that will be affected by the official action, (ii) the risk of erroneous deprivation of that interest through the available procedures, and (iii) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Each factor weighs heavily in favor of Mr. Macario Morales.

First, Mr. Macario Morales has a strong interest in freedom from arbitrary civil imprisonment. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (noting that “[t]he interest in being free from physical detention” is “the most elemental of liberty interests.”). “[C]ivil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protections.” *Addington*, 441 U.S. at 425. This is especially so where, as here, detention is unlawful.

Second, the risk of erroneous deprivation under existing procedures is extreme. Respondents have offered no evidence that Mr. Macario Morales's current detention is justified

to prevent flight or mitigate the risks of danger to the community. *See Zadvydas*, 533 U.S. at 690. Mr. Macario Morales has strong economic and community ties to his home in New York and has demonstrated that he is a law-abiding member of his community. And Respondents have offered no individualized explanation for his continued detention. *See Santiago*, 2025 WL 2792588, at *12. There is thus a grave risk of erroneous deprivation of his liberty.

Third, Respondents' interests in continuing to detain Mr. Macario Morales are minimal at best. Providing him with a bond hearing to evaluate whether his detention is warranted would not impair any legitimate interests that Respondents may have. *See, e.g., Lopez v. Sessions*, 2018 WL 2932726 (S.D.N.Y. June 12, 2018). To the contrary, providing such a hearing would comport with the requirements of the INA and Respondents' own regulations. Further, given that Respondents have routinely performed the type of custody hearing sought here, the limited administrative burden of providing such a hearing to Mr. Macario Morales carries no weight. *See Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *12 (W.D. Tex. Sept. 22, 2025).

In short, by denying Mr. Macario Morales even an opportunity to seek bond, Respondents have stripped him of his liberty without constitutionally sufficient procedures. At least one court in this District has already held as much, requiring Respondents to provide a bond hearing to a noncitizen detained under the same insupportable legal theory as Mr. Macario Morales. *See Vieira v. Anda-Ybarra*, 2025 WL 2937880 at *4 (W.D. Tex. Oct. 16, 2025). For these reasons, Mr. Macario Morales is likely to succeed on the merits of his procedural due process claim.

B. Absent This Court's Intervention, Mr. Macario Morales Will Continue to Suffer Irreparable Harm.

Mr. Macario Morales faces an immediate and ongoing threat of irreparable injury in the

absence of preliminary injunctive relief. Irreparable injury is “harm for which there is no adequate remedy at law.” *Kostak*, 2025 WL 2472136, at *3 (citing *Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013)).

Respondents’ unlawful detention of Mr. Macario Morales is sufficient, standing alone, to show irreparable harm. *See Arias Gudino v. Lowe*, 2025 WL 1162488, at *13 (M.D. Pa. Apr. 21, 2025). So, too, is their violation of Mr. Macario Morales’s due process rights. *See Kostak*, 2025 WL 2472136, at *3 n.43 (citing *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012)). More specifically, when a noncitizen is denied “a hearing that would likely result in his release,” the resulting deprivation of liberty establishes irreparable harm based on deprivation of liberty. *Rodriguez*, 779 F. Supp. 3d at 1261–62; *see also Kostak*, 2025 WL 2472136 at *3–4 (petitioner erroneously detained under § 1225(b)(2)(A) faced threat of irreparable harm).

The conditions of Mr. Macario Morales’s detention subject him to additional irreparable harm. As described in the petition and above, those conditions include depression and anxiety; the prior imposition of solitary confinement; food that makes Mr. Macario Morales vomit and has led him to lose weight; the complete lack of medical care; and unsanitary conditions. *See Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (holding that similar conditions constitute irreparable harm).

C. The Balance of the Equities and Public Interest Weigh in Mr. Macario Morales’s Favor.

The merged factor of the balance of the equities and the public interest also weighs in favor of Mr. Macario Morales. The public has a strong interest in ensuring that Respondents follow the law and provide basic due process protections. *See Valley v. Rapides Par. Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997); *Kostak*, 2025 WL 2472136, at*4. Moreover, as shown above, Mr. Macario Morales suffers irreparable harm each day he is unlawfully imprisoned.

Respondents, in contrast, “cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). And the ongoing deprivation of Mr. Macario Morales’s constitutional rights “far outweighs the burden to Respondents of conducting a bond hearing.” *Kostak*, 2025 WL 2472136, at *4. Moreover, such hearings are routine, and the cost of holding them is minimal. *Lopez-Arevelo*, 2025 WL 2691828, at *12.

Respondents might argue that, despite the minimal burden of a hearing, a preliminary injunction will harm their interest in enforcing immigration laws. While Respondents do possess such an interest, that interest does not support their position here. “Granting preliminary injunctive relief will simply require Respondents to comply with their legal obligations and afford Petitioners procedural protections in connection with Respondents’ exercise of discretion.” *Abdi v. Duke*, 280 F. Supp. 3d 373, 410 (W.D.N.Y. 2017), *vac’d in part on other grounds*, *Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019). Nor is the government losing its ability to enforce immigration laws. Mr. Macario Morales will remain in removal proceedings, and he wants to participate in those proceedings to pursue relief that would allow him to remain in the United States.

Moreover, “unnecessary detention imposes substantial societal costs.” *Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021). The needless detention of individuals not only causes those individuals to suffer but “removes from the community breadwinners, caregivers, parents, siblings and employees.” *Id.* (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020)). “Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Id.* And while those costs are hard to quantify, twenty states made clear in *Hernandez-Lara* that “States’ revenues drop because of reduced

economic contributions and tax payments by detained immigrants, and their expenses rise because of increased social welfare payments in response to the harms caused by unnecessary detention.” *Id.* (quotation omitted). The public interest thus weighs against Mr. Macario Morales’s ongoing detention.

V. CONCLUSION

For the foregoing reasons, the Court should grant this Motion and order Respondents to immediately release Petitioner pending resolution of his habeas petition on the merits, or, in the alternative, prohibit Respondents from transferring Mr. Macario Morales outside the Western District of Texas, and require Respondents to provide constitutionally adequate procedural protections, including a bond hearing. Petitioner respectfully requests an expedited hearing to address the immediate and ongoing nature of the harm.

Dated: November 14, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 14, 2025, a true and correct copy of this document was properly served on all counsel of record served in accordance with the Federal Rules of Civil Procedure.

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