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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (LAS VEGAS)
* * *

MANUEL PILAR TORRES Petitioner, vs. KRISTI NOEM, Acting Secretary of the United States Department of Homeland Security; PAM BONDI, Attorney General of the United States; JASON KNIGHT, Salt Lake City Acting Field Office Director, Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement; JOHN MATTOS, Warden at Southern Nevada Southern Detention Center. Respondents.	CASE NO. Agency No. [redacted] **COMBINED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS AND EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

Combined Memorandum of Points and Authorities in Support of Petition for Writ of Habeas and Emergency Motion for Temporary Restraining Order

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I. INTRODUCTION

Manuel Pilar Torres ("Petitioner") seeks relief to remedy his unlawful detention. Mr. Pilar Torres's was detained by Immigration and Customs Enforcement ("ICE") on October 29, 2025 on warrant, and he remains detained at the Nevada Southern Detention Center in Pahrump, Nevada. On November 13, 2025, an Immigration Judge ("IJ") held he did not have jurisdiction to have a custody redetermination hearing pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025) (holding that "immigration judges lack authority to hear bond requests or to grant bond to aliens … who are present in the United States without admission.") For the last twenty years, Mr. Pilar Torres has resided continuously in the U.S. Petitioner and his DACA-recipient wife have raised four U.S. citizen children. Petitioner is deeply loved and respected by his family. Prior to his detention, Petitioner had been employed at Synergy Construction working as a framer since March 2018.

Mr. Pilar Torres's only arrest occurred on October 28, 2025, by the North Las Vegas Police Department ("NLVPD") following a misunderstanding regarding a domestic dispute. Mr. Torres himself contacted the police, but he was subsequently arrested on suspicion of domestic violence. NLVPD later contacted his wife, wherein she promptly retracted any allegations of domestic violence and indicated she did not wish to proceed with charges. Other than this lone criminal history, Petitioner has lived an honest and productive life.

Furthermore, on [redacted], Mr. Pilar Torres was the victim of [redacted] He sustained several gunshot

wounds to his right leg and was immediately transported by ambulance to the hospital, where he underwent emergency surgery. Mr. Pilar Torres fully cooperated with law enforcement officers from the North Las Vegas Police Department by promptly reporting the incident and providing detailed information during the investigation. As a result, on [redacted], the North Las Vegas Police Department certified his Form I-918, Supplement B. Subsequently, on [redacted], Mr. Pilar Torres filed his U Visa application with U.S. Citizenship and Immigration Services ("USCIS"), which remains pending adjudication.

Mr. Pilar Torres attempted to seek a bond redetermination and was denied based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025). The Petitioner here falls into the category of detainees to whom the Board of Immigration Appeals ("BIA" or "Board") will not grant bond under the decision. Therefore, filing an appeal with the BIA is a completely futile gesture.

Both the government's new policy and the Board's new interpretation of the statute is fundamentally irrational, arbitrary and capricious, and a complete deprivation of Petitioner's right to seek a bond redetermination and be released from custody. Due process requires that the government provide Petitioner a bond redetermination hearing, and if successful be allowed to post the bond, and also enjoining the government from filing an automatic stay under 8 C.F.R. §1003.19(i)(2), unless it can show why a writ should not be issued. *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). Upon judicial review of the constitutionality of the BIA's

new interpretation of the INA, Mr. Pilar Torres clearly demonstrates that he is detained in violation of the law.

Mr. Pilar Torres seeks to preliminarily enjoin DHS from continuing his detention, unless he is provided a bond redetermination hearing under 8 U.S.C. §1226(a) and if successful allowed to post a bond without the government filing an automatic stay under 8 C.F.R. §1003.19(i)(2). Mr. Pilar Torres will suffer immediate and irreparable harm if this Court does not enjoin his continued detention, given that his continued detention violates his due process rights. *See* Fed. R. Civ. 65(b).

Moreover, Mr. Pilar Torres will suffer irreparable harm, as "[i]t is well established 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)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984). Here, Respondent's continued deprivation of Petitioner's liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, every day that Petitioner is detained is a day of freedom Petitioner cannot get back.

Mr. Pilar Torres meets the standard for a preliminary injunction. As shown in greater detail below, it is likely he will succeed on the merits of his claim in this case. Due to the government's policy and the BIA's new interpretation of the INA, he has been deprived of his

right to seek a bond redetermination and liberty in violation of due process. Mr. Pilar Torres will also be able to show irreparable and immediate harm. Lastly, the balance of equities and public interest weighs in his favor.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is a 39-year-old native and citizen of Mexico. Exh. A (Notice to Appear). Petitioner last entered the United States without inspection on or about 2005 and has resided here continuously since then. Petitioner and his wife are raising four boys, who are 16, 12, 7, and 5 years old –all of whom are United States Citizens. Exh. B (Family Ties). Petitioner's wife has been struggling to pay their rent and other household expenses and is suffering severe symptoms of anxiety since his detention and worries for her children who have always thrived in school earning good grades and taking on advanced courses. Exh. C (Sworn Declaration from Elizabeth Perez Borunda). Petitioner's wife further explains that since her husband's detention, the children's mental-health has noticeably declined. *Id.* They have become "quiet," they "often cry for him," and even their teachers have reported that the children are frequently alone and "don't eat." *Id.* The children repeatedly ask when their father will come home, demonstrating the emotional pain his absence has caused. *Id.*

Prior to his detention, Petitioner was employed as framer by Synergy Construction since March 2018. Exh. D (Employment Letter). Petitioner and his wife combined their earnings to support their family of six and his income is necessary to pay all of their household expenses.

Throughout his twenty years of residence in the United States, he has maintained an exemplary record, with only a single arrest on October 28, 2025, arising from a misunderstanding during a domestic dispute. *See* Exh. C (Sworn Declaration from Elizabeth Perez Borunda). Petitioner was the one who contacted law enforcement, but officers nevertheless placed him under arrest. *Id.* His wife explained to police that it was a misunderstanding and "not a serious incident," yet officers "ultimately decided to take Manuel with them." *Id.* Afterward, NLVPD contacted his wife to ask whether she wished to pursue charges, which she declined. *Id.* The matter is currently set for arraignment on December 1, 2025. Exh. E (Criminal Record).

Soon after his arrest, Petitioner was transferred to ICE custody on warrant. Exh. F (I-213, Record of Deportable Alien). DHS also served Petitioner with a Notice to Appear, initiating removal proceedings under INA § 240; 8 U.S.C. 1229a. On November 7, 2025 Petitioner filed a bond motion. Exh. G (Bond Motion). On November 13, 2025, an Immigration Judge in Las Vegas conducted a custody redetermination hearing and held that he did not have jurisdiction and declined to issue an alternative bond redetermination as though he had jurisdiction to hear the bond matter. The IJ further declined to consider any evidence submitted by Petitioner, made no individualized assessment as to the necessity of Petitioner's ongoing detention, nor made any finding as to whether Petitioner poses a danger to the community or a flight risk. Exh. H (IJ Bond Decision). As a result, Petitioner remains detained at Nevada Southern Detention Facility.

III. LEGAL BACKGROUND

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). Civil detention violates the Due Process Clause except "in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citations omitted). In *Singh v. Holder*, 638 F.3d 1196, 1203-1204, the Ninth Circuit reiterated that the Supreme Court had determined that "civil commitment for *any* purpose constitutes a significant deprivation of liberty." *Singh*, 638 F.3d at 1204. (internal citations omitted).

A. Mandatory and Discretionary Detention

Under these constitutional constraints, Congress has created a scheme for detention of noncitizens in removal proceedings. For decades, the Department and EOIR interpreted 8 U.S.C. § 1226(a) to authorize immigration judges to provide a custody redetermination hearing even though DHS could detain a noncitizen "pending a decision on whether [he] is to be removed from the United States." 8 U.S.C. § 1226(a). In *Casas-Castrillon v. Dep't of Homeland Security*, 535 F.3d 942, (9th Cir. 2008), the Ninth Circuit held that immigrants detained under §1226(a) are entitled to individualized bond hearings. 8 C.F.R. §1003.19(h)(3) provides that a noncitizen subject to detention must show by clear and convincing evidence

that the noncitizen is not a danger to other persons or property and that the noncitizen is not a flight risk.

In contrast to § 1226(a), noncitizens who have been convicted of certain criminal convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510, 513 (2003). Congress added this provision by passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") to address concerns that criminal noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*, 978 F.3d 842, 848 (2d Cir. 2020). The new section mandated detention for noncitizens who were convicted of aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at 518–20.

In January 2025, Congress added a new category of noncitizens who are subject to mandatory detention with the Laken Riley Act, codified as 8 U.S.C. § 1226(c)(1)(E). The new section mandated detention for noncitizens who: (1) are inadmissible under 8 U.S.C. § 1182(a)(6)(A), 1182(a)(6)(C), or 1182(a)(7); and (2) are charged with, are arrested for, are convicted of, admit having committed, or admit committing acts that constitute the elements of any burglary, theft, larceny, shoplifting, or assault of a law enforcement office offense, or any crime that results in death or serious bodily injury to another person. § 1226(c)(1)(E).

Further, 8 U.S.C. § 1225(b) requires detaining noncitizens who (1) are subject to expedited removal under § 1225(b)(1), or (2) are "seeking admission" at the border under

§ 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins at the Nation's borders and ports of entry).

B. Automatic Stay of Custody Order Under 8 C.F.R. § 1003.19(i)(2)

The Department has significant power in limiting the application of the IJ's order. Under 8 C.F.R. § 1003.19(i)(2), the Department can file a notice of intent to appeal a noncitizen's custody determination (Form EOIR-43), which will automatically and unilaterally stay the IJ's order authorizing the noncitizen's release on bond. This Court recently found that the automatic stay is being systematically applied in cases where the Immigration Judge finds jurisdiction to hold a bond hearing and where the Immigration Judge finds that individual is not a danger to the community or a flight risk and grants a bond. This conduct would violate Petitioner's procedural and substantive due process.[1] *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sep. 17, 2025).

[1] Petitioner acknowledges that the government has not yet invoked the automatic stay in his case because he has not been afforded a bond hearing. Nonetheless, the extensive litigation across multiple federal district courts shows that the government is routinely applying this procedure. It would provide little benefit to Petitioner if, after successfully demonstrating to the Immigration Judge that he is neither a danger to the community nor a flight risk, the government were to impose an automatic stay, forcing him to return to this Court and continue litigating the matter. In the alternative, Petitioner respectfully requests that the Court order a status report or hold a status conference to oversee the progression of his case and to ensure that the automatic stay is not being invoked.

C. Applicability of Equitable Relief

Mr. Pilar Torres warrants a preliminary injunction because the IJ and BIA's new decision interpreting 1226(a) ordering his continued detention are unlawful, and detention has already imposed irreparable hardship. A preliminary injunction is appropriate if a plaintiff can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, a temporary restraining order ("TRO") or preliminary injunction is appropriate when, "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation omitted).

Pursuant to the Federal Rules of Civil Procedure, a TRO may be issued if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certified in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b).

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IV. ARGUMENT

A. This Court Has Jurisdiction.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

i. 8 U.S.C. § 1226(e) does not preclude jurisdiction.

While Section 1226(e) of the INA precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section 1226(e) "does not preclude challenges to the statutory framework that permits the alien's detention without bail." *Jennings*, 138 S. Ct. at 841.

Moreover, Section 1226(e) does not limit habeas review over constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional claims and questions of law—whether the automatic stay provision in this case and the BIA's new interpretation of the INA violate the Petitioner's right to procedural due process and substantive due process after denying him the ability to post a bond—Section 1226(e) does not preclude this Court's jurisdiction to review Petitioner's habeas petition.

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ii. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.

Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review to the appropriate federal court of appeals, which would be the Ninth Circuit here. However, where a petitioner is not seeking review of a removal order or is challenging their detention or a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) ("§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.").

iii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.

Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot hear "any cause of claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." § 1252(g). The Supreme Court has limited application of this section to three discrete actions that an Attorney General may take: (1) the decision or action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is not a challenge to one of the three discrete events listed in *Reno*.

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B. Administrative Exhaustion Is Futile and Should Be Waived.

Generally, if the exhaustion requirement is statutory, "it may be mandatory and jurisdictional, but courts have discretion to waive a prudential requirement." *Laing v. Ashcroft*, 370 F. 3d 994, 998 (9th Cir. 2004). Furthermore, this court has already recognized that "[n]either the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Id.* (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *27; 2025 LX 460110; 2025 WL 2676082 (D. Nev. Sep. 22, 2025). Instead, the court may require prudential exhaustion under *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Prudential exhaustion may be waived if "administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988; 2017 U.S. App. LEXIS 19021, *22; 2017 WL 3887819.

Applying the three *Puga* factors, this court should waive the prudential exhaustion requirement. Similarly to the Petitioner in *Arce-Cervera v. Noem*, the Court should "incorporate its prior findings…that administrative exhaustion is excused as futile." *Arce-Cervera v. Noem, 2025 U.S. Dist. LEXIS 212397, *15; 2025 LX 426887; 2025 WL 3017866.*

There is widespread agreement among the federal courts that *Matter of Yajure Hurtado*'s new interpretation violates the INA and is unconstitutional. This Court recently found in *Vazquez v. Feeley* that § 1226, not §1225, applies to noncitizens such as the Petitioner. That decision, along with about one hundred federal court decisions,[2] have emphasized that the Department's interpretation of § 1225 is erroneous for several reasons, such as (1) the plain meaning of the INA provisions in the context of recent amendments, (2) legislative history, and (3) longstanding agency practice. This Court found that "the phrases 'applicants for admission' and 'seeking admission,' taken together, are limited in temporal scope, and cannot be read to apply indefinitely to all noncitizens residing in the U.S. for years or decades." *Vazquez v. Feeley*, 2025 WL 2676082, at *13. Several district courts in the Ninth Circuit and throughout the country have found equally. *See, e.g.*, *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025).

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[2] *Mendez v. Noem*, 2025 U.S. Dist. LEXIS 219483, at *3 n.3*.

Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court found that Congress had a similar intent when it passed the IRRIRA and recognizes the backdrop of precedential cases that highlight a distinction between noncitizens arriving at the border and those who have resided in the country for an extended period of time. *Id.* at *15. The Court also recognized that the Laken Riley Act was passed against a "backdrop of longstanding agency practice applying § 1226(a) to inadmissible noncitizens already residing in the country." *Id.* at *16. Using traditional interpretive tools, courts should construe statutes to work in harmony with what has come before. *Id.*

More importantly, each day that Petitioner remains in unconstitutional detention constitutes irreparable harm, which itself provides good cause to excuse the exhaustion requirement. Accordingly, this Court should adopt the reasoning of the majority of federal district courts, which have waived exhaustion on the basis of such irreparable injury. *See, e.g.*, *Feeley v. Vazquez*, 2025 WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Sanchez Roman v. Noem*, No. 25-CV-01684, 2025 WL 2710211 (D. Nev. Sep. 23, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025).

Without intervention, Petitioner will remain detained for months or years until the BIA or the Circuit Court issues a final decision on the merits of his relief from removal.

C. Mr. Pilar Torres Is Likely to Succeed in Showing That His Detention Violates Due Process or There Is a Serious Question

A temporary restraining order is appropriate if a petitioner can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's alternative "sliding scale" approach, a temporary restraining order is appropriate if "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner's due process claims satisfy these standards.

Petitioner asserts that his detention violates his due process because the BIA's new interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section 1226(a) is incorrect and violates the INA.

To determine whether Petitioner's continued detention violates his procedural due process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Here the court weighs the following factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal

and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

In this case, Petitioner's private interest is his freedom— "the most elemental of liberty interests—the interest in being free from physical detention by one's own government." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *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 Clause protects."). This factor weighs heavily in Petitioner's favor, as the government's new policy and the BIA's precedential decision, in *Matter of Yajure Hurtado* interpreting §1225(b)(2) is applicable to Petitioner, not section 1226(a), and holding that Immigration Judges have no authority to hold bond hearings for these individuals like Petitioner, deprives him of his fundamental liberty interest in freedom from incarceration. In addition, continued detention inflicts further harms, including separation from his wife, children, and community; the loss of employment; the denial of adequate healthcare; the invasion of his privacy; and the impairment of his right to counsel due to the obstacles in maintaining communication and access. Whereas the government's interest to keep the Petitioner detained throughout the entirety of his proceedings through judicial review is not as weighty.

In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to be free from incarceration, the court must review if the application of the new government policy affirmed by *Matter of Yajure Hurtado* increases that risk. Here, Petitioner will most

certainly be at risk of erroneous deprivation of his liberty because he has not been afforded a bond redetermination hearing where he could demonstrate that he is not a danger to the community or a risk of flight, and be allowed to post a bond resulting in his release. Recently, this court found a similarly situated Petitioner, that "continued detention of Petitioner without a constitutionally adequate bond hearing violates Petitioner's procedural and substantive due process rights." *Arce-Cervera v. Noem,* 2025 U.S. Dist. LEXIS 212397, *16, 2025 LX 426887, 2025 WL 3017866.

As to the last factor, the government's interest and burden of additional or substitute procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private liberty interests and risk of erroneous deprivation against the government's interest in applying *Matter of Yajure Hurtado*, which includes the use of additional or substitute procedural requirements.

While Petitioner recognizes that the government has an important interest in ensuring that persons in removal proceedings do not commit crimes or abscond from the law during their proceedings, that interest has not been tested. The Immigration Judge has yet to conduct an individualized assessment of Petitioner's criminal record and personal history to make the assessment if Petitioner poses a danger to the community or a risk of flight. Moreover, as other the courts have recognized, perhaps there are other non-legitimate interests in keeping Petitioner in mandatory detention—which paradoxically creates unnecessary financial and administrative burdens for the government itself. See *Rosado v. Figueroa*, 2025 U.S. Dist.

LEXIS 156344, *41-42; 2025 LX 303800; 2025 WL 2337099 (citing *Vasquez Perdomo v. Noem*, F. Supp. 3d, No. 2:25-cv-056050, 2025 WL 1915964, at *5 (C.D. Cal. July 11, 2025) (noting "[t]he government's only apparent interest in taking Rosado into custody, [*42] which actually places an additional fiscal and administrative burden on the government, is to fulfill a quota of arrests, i.e., 3,000 immigration arrests per day, set by the current administration."). Indeed, keeping Petitioner detained is far more expensive than allowing him to be released on bond. See *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *61; 2025 LX 460110; 2025 WL 2676082 (citing *Hernandez v. Sessions*, 872 F.3d 976, 996; 2017 U.S. App. LEXIS 19021, *40; 2017 WL 3887819) ("The costs to the public of immigration detention are "staggering": $158 each day per detainee, amounting to a total daily cost of $6.5 million. Supervised release programs cost much less by comparison: between 17 cents and 17 dollars each day per person.") Therefore, this factor weighs in favor of finding that Petitioner's due process rights have been violated. Since all three factors of the *Mathews* test weigh in favor or Petitioner, he has established a likelihood of success on the merits.

D. Petitioner Will Suffer Irreparable Harm If He Is Not Released from Detention.

Petitioner will suffer two significant harms if a temporary restraining order is not issued in this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting from his unlawful detention and (2) the severe and continuing harms that flow from Petitioner's continued unlawful detention, including the breakdown of family ties, loss of

income and employment, threat of losing their residence, and deterioration of Petitioner's and his family's physical and mental health.

i. Constitutional Violations

"It is well established 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)). Indeed, the Ninth Circuit has made clear that "[a]n alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Further, as the Eleventh Circuit has held, the "unnecessary deprivation of liberty clearly constitutes irreparable harm." *United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1998). Here, Petitioner's continued deprivation of liberty without a bond hearing under §1226(a) violates Petitioner's due process rights and constitutes irreparable injury. Indeed, each day of confinement is a day of freedom forever taken from Petitioner.

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ii. Increased Risk of Health Concerns

Petitioner's health is at risk of serious harm if he remains in detention. *See* Exh. I (U Visa receipt and certification). As a direct result of the crime committed against him, Petitioner continues to suffer long-term knee and hip injuries stemming from the gunshot wound he sustained years ago. These injuries become significantly more painful inside the detention facility, where the uncomfortable conditions aggravate his symptoms. The pain is further exacerbated by the fact that he has been assigned to a top bunk, which requires him to repeatedly climb up and down despite his compromised knee and hip. This not only causes additional strain and heightened pain but also places him at serious risk of further injury, including falls. He does not have regular access to even basic over-the-counter medications—such as Ibuprofen or Tylenol—which he normally relies on to manage inflammation and pain. Instead, he must submit medical requests that often receive delayed responses, leaving him without meaningful relief for extended periods. The ongoing stress, uncertainty, and physical hardship of detention have also caused Petitioner to develop increasing symptoms of anxiety further worsening his physical and emotional well-being.

In the correctional setting, the stakes are high, and any delay or denial of care can convert an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical care in jails and prisons is a well-documented systemic failure. Incarcerated persons often endure delays, missed appointments, staffing shortages, and willful indifference by

correctional medical staff.[3] Therefore it is not speculative to fear that Petitioner's health will deteriorate rapidly while he remains detained.

Petitioner's detention has caused profound and compounding harm to his entire family. His wife is struggling to meet their basic financial obligations and lives in constant fear of losing their ability to pay rent and provide food for her family. The loss of Petitioner's income has left the family in severe financial distress, forcing them to make impossible choices between essential expenses. Beyond the financial hardship, the emotional toll has been devastating. Petitioner has been completely separated from his wife and children, unable to see or hold them since his incarceration. His absence has created a deep void in the family. His minor children constantly ask when their dad will come home. In short, Petitioner's detention has this family's stability, causing pain, anxiety, and hardship that worsen with every passing day he remains in detention.

E. Equitable Considerations and Public Interest Favor Petitioner's Release.

The last two factors under *Winter* "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S. LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner.

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[3] Homer Venters, The Health Crisis of U.S. Jails and Prisons, New Eng. J. Med. 2259 (2022), https://www.nejm.org/doi/full/10.1056/NEJMms2211252

Petitioner faces irreparable harm to his constitutional rights, to his health and other harms that flow from ongoing detention.

Moreover, the government's interest in Petitioner's continued detention is minimal and pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here, Petitioner remains in custody indeterminately without a bond hearing to determine if he is danger to the community or a flight risk. His continued detention not only violates his constitutional rights but also causes direct suffering to him, his family and his community. As the Ninth Circuit has regularly held, there is no harm to the government when a court prevents the government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

Finally, the temporary restraining order sought here is in the public interest. The public has an interest in upholding constitutional rights. *See 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."); *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) ("[I]t is always in the public interest to protect constitutional rights."). Moreover, the public has an interest in accurate determinations in all legal proceedings, including in the decision of whether to detain individuals during their immigration cases. The public is also served by avoiding excessive expense on detention and ensuring that the government does not expend its resources to detain individuals unnecessarily.

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V. CONCLUSION

WHEREFORE, and for the foregoing reasons, Petitioner maintains that his continued detention is unlawful. He respectfully asks this Court to issue a temporary restraining order directing the government to provide him with a bond hearing within seven (7) days under INA § 1226(a), and to enjoin the government from denying bond on the ground that he is detained under § 1225(b)(2). If the government fails to provide the required bond hearing, Petitioner further requests his immediate release.

Dated: November 17, 2025

/S/ Sylvia L. Esparza
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