

IN THE UNITED STATES DISTRICT COURT
OF THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Daniel Alejandro HERNANDEZ CACERES,)

Petitioner,)

v.)

Thomas BERGAMI, Warden, Prairieland)
Detention Center; Joshua JOHNSON, Acting)
Director of Dallas Field Office, U.S. Immigration)
and Customs Enforcement; Todd LYONS,)
Acting Director of Immigration and Customs)
Enforcement; Kristi NOEM, Secretary of the)
U.S. Department of Homeland Security; Pam)
BONDI, Attorney General of the United States;)
in their official capacities,)

Respondents.)

Case No. 3:25-cv-3167

**PETITION FOR WRIT OF
HABEAS CORPUS**

**BRIEF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

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INTRODUCTION

This action challenges the government's authority to ignore decades of jurisprudence and declare that anyone who entered the U.S. without inspection is subject to mandatory detention pursuant to § 1225(b)(2)(A). For the last thirty years, the Immigration Courts have held that individuals, who entered without inspection, like Petitioner, qualified for bond pursuant to § 1226(a). However, the Department of Justice (DOJ) and the Department of Homeland Security (DHS) have decided to completely reject this well-established understanding of the statutory framework and reversed decades of practice by adopting a policy which holds that Immigration Courts no longer have the authority to hear bond applications or grant bond requests to noncitizens who entered the United States without inspection.

As a result of Respondents' unlawful actions, Petitioner cannot request a bond hearing because the Immigration Judge does not have jurisdiction. Petitioner is now subject to ongoing detention in violation of his Constitutional rights. Petitioner suffers irreparable harm by being detained without the opportunity to request release before a neutral arbiter, due to the deprivation of liberty without due process and the emotional harm the petitioner currently suffers while detained. Petitioner therefore brings this motion for a preliminary injunction and temporary restraining order preventing further detention without a bond hearing.

STATEMENT OF FACTS

Petitioner is a 34-year-old citizen of Venezuela. App. p.1. Petitioner entered the United States on June 9, 2021. App. p.2. Upon his entry into the United States, Petitioner was processed by the DHS, was assigned an Alien (File) Number  and the DHS allowed Petitioner to enter the country by releasing him with a Form I-220A, Order of Release on Recognizance. App. p.5-8. He has resided in the United States since then.

In order to apply to remain in the United States lawfully, Petitioner applied for asylum. App. p.12. On November 14, 2025, Petitioner was arrested by ICE at an appointment at the Dallas Field Office of ICE while he was fulfilling his obligation to report to them. App. p.5-8. Petitioner is now detained at the Prairieland Detention Center in Alvarado, Texas. App. p.9. DHS has placed Petitioner in removal proceedings before the Immigration Court pursuant to 8 U.S.C. § 1229a. App. p.2.; App. p.10-11. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection (i.e. without being admitted or paroled). App. p.2.

ICE issued a custody determination to continue Petitioner's detention without an opportunity to post bond or be released on other conditions. However, because of Respondents' policies, Petitioner cannot request a bond hearing before the Immigration Judge, because the BIA has stripped Immigration Courts of their jurisdiction, and his unlawful detention cannot be litigated before that body. App. p.13-14.

ARGUMENT

Petitioner is entitled to a temporary restraining order and preliminary injunction preventing continued detention. If Petitioner's motion is not granted, he is certain to suffer irreparable harm both to his constitutional rights. He is also substantially likely to succeed on the merits of his claim: that the government may not detain him without a bond hearing before a neutral arbiter, as required by law. Further, no public interest is served by the government's indefinite, mandatory detention of an individual who entered the United States four years ago, has an asylum application pending with the immigration agency, and no disqualifying criminal history. This Court should therefore grant petitioner's motion by enjoining the government from further detaining him without a bond hearing before a neutral arbiter.

I. Legal standard for a Temporary Restraining Order and Preliminary Injunction

In determining whether to grant a the present motion, this Court must consider four factors: (1) the probability that the moving party will succeed on the merits; (2) the threat of irreparable harm to the moving party; (3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction; and (4) whether the issuance of an injunction is in the public interest. *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, all four factors weigh in favor of granting injunctive relief.

II. Petitioner is entitled to a Temporary Restraining Order and Preliminary Injunction ordering a bond hearing

A. Petitioner is likely to prevail on the merits of his habeas petition.

1. Non-citizens like Petitioner are protected by the Fifth Amendment

Writs of habeas corpus “may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.” 28 U.S.C. § 2241(a). The writ of habeas corpus shall not extend to a prisoner unless...He is in custody in violation of the Constitution or laws or treaties of the United States. 8 U.S.C. § 2241(c).

The federal courts have held that noncitizens are entitled to guarantees of the Fifth Amendment. *Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (“all aliens[] are clearly protected by the Fifth and Fourteenth Amendments”). Courts treat Equal Protection and Due Process rights under the Fifth Amendment in the same manner as Equal Protection Claims under the Fourteenth Amendment. *Wienberger v. Wiesenfeld*, 420 U.S. 636 (1975).

Due process is only implicated when governmental decisions deprive an individual of “liberty” or “property” interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319,

332 (1976). All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67 (1976); *Yamataya v. Fisher*, 189 U.S. 86 (1903); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002).

“Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 (“A statute permitting indefinite detention of an alien would raise a serious constitutional problem”); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10, 413 (D.N.J. 1999) (holding that, in analyzing due process in the immigration context, the first factor in the procedural due process analysis, “the petitioner’s private interest in his physical liberty, must be accorded the utmost weight.”).

2. *Petitioner can demonstrate that Respondents are arbitrarily detaining him by denying him the right to a fair bond hearing in violation of due process.*

Petitioner is likely to succeed in demonstrating that he is in custody in violation of the Constitution and laws of the United States. *See* 8 U.S.C. § 2241(c)(3). In addition to violating the Constitution, Respondents are also violating the Administrative Procedure Act (“APA”), 28 U.S.C. § 2241, 5 U.S.C. §§ 701 and 101 *et. seq.* and 8 U.S.C. §§ 1101 *et. seq.* by denying him of his constitutional right to due process, arbitrarily and capriciously, thus exceeding their authority under the Immigration and Nationality Act (“INA”).

According to *Mathews v. Eldridge*, there is a three factor test to determine whether a civil detention violates a person’s due process rights. 424 U.S. 319 (1976). Those factors are: “(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 probable value, if any, of additional procedural

safeguards; and (3) the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail.” *Id.* at 335.

Petitioner cites to the holding and reasoning of another Texas district court case, *Lopez-Arevelo v. Ripa*, for its persuasive reasoning regarding fulfilling the *Mathews* factors. 2025 U.S. Dist. LEXIS 188232, 2025 WL 2691828, at *18-33 (W.D. Tex. Sept. 22, 2025). The facts of Petitioner’s case closely follow the facts of the *Lopez-Arevelo* case. As in that case, Petitioner has a cognizable interest in his freedom from detention because he has spent years at liberty in the United States. *Id.* at *29-30. Because Respondents’ novel interpretation of 1225(b)(2)(A) strips jurisdiction away from immigration judges to consider requests for bonds from individuals in Petitioner's circumstances, there also is a high risk that Petitioner has been and will continue to be erroneously deprived of his liberty. *Id.* at *30-32; *see also Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). And finally, Respondents also cannot “identify a countervailing interest” and “the decision to release [Petitioner] on his own recognizance [four] years ago, in and of itself, ‘reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.’” *Id.* at *32-33.

3. Petitioner is likely to succeed on the merits of his argument that he is detained under § 1226(a) and not § 1225(b)(2) and is therefore being arbitrarily detained in violation of his rights

The Immigration and Nationality Act (INA) prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8

U.S.C. § 1226(c). Second, 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). Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b). This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

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).

Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen’s detention during deportation proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.* IIRIRA maintained the same basic detention authority in the provision codified at 8 U.S.C. § 1226(a). Indeed, when passing IIRIRA, Congress explained that the new § 1226(a) merely “restates the current provisions in [8 U.S.C. § 1252(a)] regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (1996); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same).

Following the enactment of the IIRIRA, EOIR drafted new 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). Thus, 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.

The distinction between § 1226(a) and § 1225(b)(2) detention is important. Detention through internal enforcement under § 1226(a) includes the right to a bond hearing before an IJ. *See* 8 C.F.R. § 1236.1(d). At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors showing they are not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people detained while arriving in the U.S. are detained under § 1225(b) and are subject to mandatory detention; they receive no bond hearing. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A).

But on May 15, 2025, the BIA issued a decision in which it held that a person who enters without inspection and is arrested and detained without a warrant while arriving in the United States and subsequently placed in removal proceedings is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and is ineligible for any subsequent release on bond. *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025). Then on July 8, 2025, ICE, “in coordination with” the DOJ, announced a new policy that rejected the 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,” claims that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225, and therefore are subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended (i.e. at the border or in the interior of the United States), and affects those who have resided in the United States for

months, years, and even decades. Finally, on September 5, 2025, the BIA published a decision that adopts this same position and binds it on all Immigration Courts. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). In *Matter of Yajure-Hurado*, the BIA explicitly held that “Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are present in the United States without admission.” *Id.* In complete contradiction of decades of precedent, the Board stripped Immigration Judges of jurisdiction over bond for anyone who has entered the United States without inspection.

ICE and EOIR have adopted this position even though federal courts have rejected this exact conclusion. For example, before Respondents officially adopted this new position, and after Immigration Judges in Tacoma, Washington, stopped providing bond hearings for persons who entered the United States without inspection and who have since resided here, the U.S. District Court in the Western District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025).

DHS’s and DOJ’s interpretation defies the INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to individuals who entered the United States without inspection and were released into the interior to complete removal proceedings. 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].” The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court

explained, “[w]hen Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

Recent amendments to § 1226 reinforce that it applies to Petitioner and that he is therefore eligible for a bond hearing before an Immigration Judge. The Laken Riley Act (LRA) added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, people charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)’s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or (a)(7). “When Congress creates “specific exceptions” to a statute’s applicability, it “proves” that absent those exceptions, the statute generally applies. *Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d --- 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or at the U.S. border. The framework of § 1225(b)(2) is premised on inspections at the border of “applicant[s] for admission” who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies “at the

Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Furthermore, the INA defines "admission," to mean "the lawful entry... into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). As courts have reasoned, even though an applicant for admission has not been "admitted" to the United States, it does not mean that they always continue to be actively seeking a lawful entry (i.e. seeking admission). *Jimenez v. FCI Berlin, Warden*, 2025 WL 2639390, at *21 (D.N.H. Sept. 8, 2025). An applicant for admission can enter the country, and therefore no longer seek entry, lawfully or otherwise, but rather seek "a lawful means to remain here." *Id.* at *22. Therefore, § 1225(b)(2)(A) cannot apply to someone who has already entered the United States and has been residing here for a period of time.

That an applicant for admission can be allowed to enter the country and not seek admission is supported by the practice of DHS to release individuals on their own recognizance after a detention at the border. The Form I-220A, which is used by DHS to release an individual on their recognizance, explicitly states: "In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance..." Indeed, when a person is released on recognizance, even at the border, DHS necessarily makes a determination that the person falls under the INA detention and release scheme of § 1226(a), not § 1225(b). Many courts have agreed with this reasoning. *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025) (concluding that a noncitizen originally detained under § 1225(b) but released on conditional parole under § 1226 and later rearrested on a § 1226 warrant was entitled to bond hearing under § 1226 and its implementing regulations); *see also Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025).

Lastly, the BIA decision of *Matter of Q. Li* is also limited to individuals arriving at the border and seeking admission, and therefore cannot apply to a person who has entered the United States after DHS releases them on their own recognizance. Indeed, this BIA decision was premised on the fact that the noncitizen in the case was released on humanitarian parole under INA § 212(d)(5), not with a Form I-220A release. This type of parole is a legal fiction where the noncitizen is physically permitted to enter the country but is “treated,” for legal purposes, “as if stopped at the border.” *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020). Because she was legally still at the border (and, for the sake of argument but without conceding, still arriving and seeking admission) when her parole was terminated, she was returned to the custody from which she was paroled which was detention under § 1225(b)(2), § 1182(d)(5)(A); *Q. Li*, 29 I. & N. Dec. at 70-71.

District Courts throughout the United States have rejected the DHS’s and DOJ’s new interpretation of the statute, finding that § 1226(a), not § 1225(b), applies to individuals who entered the United States without inspection and were released into the interior to complete removal proceedings. The fact that numerous district courts have rejected the new interpretation indicates that Petitioner is likely to succeed on the merits. *See Covarrubias v. Vergara*, 2025 U.S. Dist. LEXIS 206523, 2025 WL 2950097, at *6 (S.D. Tex. Oct. 8, 2025)

4. *Petitioner requires emergency relief this Court because he has exhausted all available remedies.*

Petitioner has exhausted all available remedies. Because of the BIA decision issued on September 5, 2025, Petitioner has no remedies available other than filing a petition for habeas corpus. *Yajure Hurtado*, 29 I&N Dec. at 216. *Yajure Hurtado* stripped Immigration Courts of all jurisdiction to hear bond cases for any individual that entered the United States without inspection. *Id.* Because of this BIA decision, in complete contradiction of established precedent,

Petitioner has no further remedies available to him. It would be completely futile to request a bond hearing from the Immigration Court because the BIA has stripped it of jurisdiction for anyone who entered the United States without inspection. *Id.*

5. *Respondents' Social Media Indicates that they have turned Civil Detention into a Punitive Measure in Violation of Law.*

Immigration detention is civil and must “bear a reasonable relation to the purpose for which the individual [is detained]” so that it is “nonpunitive in purpose and effect.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017); *see also Chen v. Banieke*, No. 15-2188 (DSD/BRT), 2015 WL 4919889, at *1 (D. Minn. Aug. 11, 2015).

Civil detention cannot be a “mechanism for retribution,” *Kansas v. Crane*, 534 U.S. 407, 407 (2002) (internal quotation marks omitted), because “[r]etribution and deterrence are not legitimate nonpunitive governmental objectives,” *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979). And unlawful detention necessarily harms noncitizens like Petitioner. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a “serious,” “detrimental impact on the individual”); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) (“Liberty is the norm; every moment of [detention] should be justified.”) (alteration in original) (citation omitted).

Respondents’ social media pages indicate that Petitioner’s deprivation of a bond hearing is being used as a punitive measure to encourage self-deportation. The Department of Homeland Security’s X page (formerly known as Twitter) is now full of propaganda which ignores the due process rights afforded to noncitizens, like Petitioner. DHS’ X page repeatedly posts

inflammatory and anti-immigrant statements, such as “Illegal aliens, take a page from E.T. and PHONE HOME,” “If you are in the country illegally: LEAVE NOW and self-deport using the CBP Home app. If you don’t, you will face the consequences.” Homeland Security, X, 16 July 2025 at 5:07 p.m.; Homeland Security, X, 7 July 2025 at 11:43 a.m. DHS Secretary Noem’s X page is filled with the same propaganda: “If they don’t [self-deport], we will find them, we will deport them, and they will never return.” Secretary Kristi Noem, X, 18 March 2025 at 8:21 a.m. “If you are here illegally, use the CBP Home App to take control of your departure and receive financial support to return home. If you don’t, you will be subjected to fines, arrest, deportation and will never be allowed to return.” Secretary Kristi Noem, X, 19 May 2025 at 3:31 p.m.

DHS’ and Secretary Noem’s statements ignore the Constitutional protections that noncitizens have long held- the rights to liberty and due process of law. DHS, under the leadership of Secretary Noem, has engaged in a campaign to deprive noncitizens of their rights to liberty and due process by threatening punitive measures if they apply for defensive relief. EOIR has extended this campaign by depriving noncitizens of their right to a bond hearing as authorized by the INA.

6. *Petitioner continues to be prejudiced by the government violating his due process rights.*

In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show “actual prejudice.” *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if “an alternate result may well have resulted without the violation.” *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). “To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were

provided.” *Tamayo-Tamayo v. Holder*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted).

Petitioner is clearly prejudiced by his continued, unjustified detention. He has been detained for a few weeks so far, completely deprived of his right to an immigration bond hearing before a neutral and fair arbiter. Petitioner has no idea how long he will be detained unless this Court acts to preserve his right to be free from custody as authorized by the Immigration and Nationality Act.

B. Petitioner will continue to face irreparable harm if emergency relief is not granted.

1. Petitioner will face irreparable harm if he is not immediately released or provided a bond hearing.

It is well established that deprivation of constitutional rights constitutes “irreparable injury” and justifies issuance of a temporary restraining order. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976); *see also Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (noting that constitutional violations qualify as irreparable injuries that cannot be undone by monetary relief); *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”).

Further, Petitioner is irreparably harmed because indefinite detention bears no “reasonable relation” to its purpose. *See Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing “[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual” (cleaned up) (internal quotation marks omitted) (citation omitted)).

In the present case, Petitioner’s Fifth Amendment rights are being violated because ICE agents, at the direction of Respondents, continue to detain him without a meaningful opportunity

to request a bond hearing. He faces irreparable harm as a result, including deprivation of his liberty. Following the rulings in *Elrod*, these Fifth Amendment violations involving deprivations of due process constitute irreparable injury to Petitioner and justify issuance of a temporary restraining order. Petitioner's liberty has been and continues to be restricted in violation of his constitutional rights.

It is a gross violation for ICE and DOJ to claim that they can ignore well established precedent and simply interpret the laws as they please in order to punish noncitizens like Petitioner who assert their rights to due process by refusing to self-deport.

C. Respondents will face no injury or harm if emergency relief is granted.

The federal courts have routinely ruled that threatened or actual violations to a person's constitutional rights outweigh any harm to the government's interest in pursuing a government action. *See Morrison v. Heckler*, 602 F. Supp. 1482 (D. Minn. 1984); *see also Pacific Frontier v. Pleasant Grove City*, 414 F.3d 1221 (10th Cir. 2005). Petitioner's harms, discussed above, are weighty; these harms are the direct result of Respondents' conduct in denying Petitioner due process as required under the Constitution and the INA. In fact, Petitioner's continued detention is actually a burden for Respondents in that his arbitrary detention is costly to the U.S. government.

Possible injuries to the government, should the restraining order be granted, are nonexistent. Petitioner is moving for this Court to order the Immigration Court to provide him a bond hearing. He only seeks a return of the proper interpretation of the statute which EOIR had applied for the last three decades without issue.

For the aforementioned reasons, the irreparable harm to Petitioner that will occur should Respondents fail to provide him with a bond hearing clearly outweighs any burden to Respondents in indefinitely keeping him detained.

D. The issuance of the TRO and Preliminary Injunction is in the public interest.

The public—and therefore the government—has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Torres v. U.S. Dep't of Homeland Sec.*, 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) (“[T]he public has an interest in the orderly administration of justice[.]”). “It is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994)). Additionally, there is critical public interest in ensuring executive agencies act lawfully. Respondents “cannot reasonably assert that [the government] is harmed in any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983).

The protection of individuals’ constitutional rights against governmental interference is one of the overarching concerns of our system of American jurisprudence. The constitutional guarantee to due process is a fundamental limit on the government’s power to skew, alter, or improperly affect legal proceedings related to an individual’s property or liberty interest(s). To ensure the protection of Petitioner’s constitutional rights, a TRO and preliminary injunction should be issued by this Court to enjoin Respondents from continuing to detain him.

The United States criminal justice system and Constitution represent the essential blending of individual rights and the efficient administration of justice and government. One of the principal reasons for the success of the United States has been trusted in our country’s legal system. If Respondents are entitled to violate the Constitution without censure, public trust in the judiciary will be harmed.

III. Petitioner has complied with the requirements of Rule 65.

Finally, Petitioner asks this Court to find that he has complied with the requirements of

Rule 65, Fed.R.Civ.P., for the purpose of granting a temporary restraining order. Respondents have been provided a copy of the instant motion and supporting documents and are on notice. Rule 65(c) states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of this case, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to refrain from arresting, detaining, or transferring Petitioner, and/or to refrain from giving Respondents' unlawful actions legal effect, should not result in any conceivable financial damages to Respondents. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant his Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Petitioner's Petition, Motion, and Memorandum of Law violated the Fifth Amendment, of the United States Constitution, 28 U.S.C. § 2241, the APA, and the INA;
2. Restrain and enjoin Respondents from denying bond under § 1225(b)(2);
3. Order a bond hearing under U.S.C. § 1226(a) within 7 days in which DHS bears the burden of establishing the necessity of petitioner's continued detention and considers alternatives to detention that could mitigate flight risk;
4. Grant Petitioner such other relief as the Court deems appropriate and just.

DATED this 9th of December 2025.

Respectfully submitted,

/s/ Oscar Jesus Mendoza Esq.

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CERTIFICATE OF SERVICE

On December 9, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

DATED: December 9, 2025.

/s/ Oscar Jesus Mendoza Esq.
Attorney for Petitioner