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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROLANDO RAFAEL INCLAN LOPEZ, *Petitioner-Plaintiff* v. **BOBBY THOMPSON**, Warden, South Texas Detention Center **MIGUEL VERGARA,** Acting/Director of the San Antonio Field Office U.S. Immigration and Customs Enforcement; **KRISTI NOEM,** Secretary of the U.S. Department of Homeland Security; and **PAMELA BONDI,** Attorney General of the United States, in their official capacities, *Respondents-Defendants*	Case No. 5:25-cv-01533-FB **PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner respectfully moves this Court to grant his Emergency Motion for a Temporary Restraining Order. The grounds for this motion are set forth in the accompanying memorandum of law, exhibits in support thereof, the Petition for Writ of Habeas Corpus, and the applicable law. A proposed order also accompanies this motion.

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

1. Petitioner Rolando Rafael Inclan Lopez is in the physical custody of Respondents at the South Texas ICE Processing Center in Pearsall, Texas. He has been unlawfully detained since September 17, 2025, following more than three years of release on his own recognizance. Through his previously filed Petition for Writ of Habeas Corpus, incorporated herein by reference, Petitioner challenges this unlawful detention and seeks immediate injunctive relief to remedy the ongoing constitutional violation. ***See* ECF 1, Petition for Writ of Habeas Corpus**

2. Petitioner's detention violates the Due Process Clause of the Fifth Amendment in two fundamental respects. First, after DHS released Petitioner on his own recognizance on April 15, 2022, pursuant to 8 U.S.C. § 1226(a)—a release that lasted over three years—DHS re-detained him in September 2025 without any individualized determination of dangerousness or flight risk. This arbitrary re-detention, unaccompanied by any change in circumstances, violates basic due process. Second, without cause, DHS reversed its prior position and claimed he was subject to mandatory detention under 8 U.S.C. § 1225(b)(2), a provision that does not apply to noncitizens arrested on warrant while residing in the United States. Across the country, immigration judges are accepting this erroneous legal theory and declining jurisdiction, thereby denying Petitioner any opportunity for an individualized custody determination. This deprivation of a meaningful hearing violates substantive and procedural due process.

3. Petitioner's detention also violates the Immigration and Nationality Act. DHS's own document—from April 2022—unequivocally cites § 1226(a) as the authority for

Petitioner's detention and release. Section 1226(a) provides for discretionary detention with the right to a bond hearing. Yet Respondents now claim, in contravention of their own written determinations, that Petitioner is subject to mandatory detention under § 1225(b)(2), which applies only to 'applicants for admission' who are detained immediately upon attempting entry. This sudden reversal—applied to a noncitizen who has resided in the United States for nearly four years and was detained while complying with the conditions of his previous release—has no basis in law.

4. Immediate relief is necessary to remedy this ongoing constitutional violation. The last uncontested status—the *status quo ante*—is Petitioner's release on recognizance, which persisted without incident from April 2022 until his arbitrary re-detention in September of 2025. During those three years, Petitioner filed for asylum, obtained work authorization, maintained steady employment, started a family, welcomed a U.S. citizen son, paid taxes, and complied with all ICE check-in requirements. Indeed, he was re-detained only because he voluntarily appeared at the ICE field office at a check-in date. Nothing in the record suggests Petitioner poses a danger to the community or a flight risk. To the contrary, the record demonstrates his deep ties to the United States and his commitment to complying with immigration processes.

5. Federal district courts throughout the country, including courts within this District and Circuit, have overwhelmingly granted relief to immigrant detainees in virtually identical circumstances. These courts have recognized that noncitizens who are released under § 1226(a), reside in the United States for years, and are then re-arrested cannot suddenly be deemed subject to mandatory detention under § 1225(b)(2). *See p. 7-8, infra.* Such detention violates both statutory law and constitutional due process. Accordingly,

Petitioner respectfully requests that this Court issue a temporary restraining order requiring his immediate release to restore the *status quo ante*, followed by a preliminary injunction maintaining his release pending final resolution of his habeas petition.

II. STATEMENT OF FACTS

6. Petitioner is a 25-year-old native and citizen of Cuba. He entered the United States without inspection near San Luis, Arizona, on April 11, 2022, and was taken into custody after turning himself in to immigration authorities. Four days later, he was issued a Notice to Appear, along with an Order of Release on Recognizance, when he was in fact released on his own recognizance pursuant to 8 USC 1226(a). **ECF 1, Attachment #1, Tab C.** He proceeded to check-in with DHS repeatedly without incident.
7. On September 17, 2025, Petitioner traveled in person to the San Antonio Field Office to remain in compliance with his previous release. Instead of processing him as previously done, without cause or warning, ICE took him into custody.
8. Petitioner pled with immigration officials to not re-detain him, explaining that in addition to complying with all the conditions of his previous release, (a) he had already filed an I-589 application for asylum, well before his one year filing deadline, and was then set for an Individual Hearing on the merits before an Immigration Judge at the San Antonio Immigration Court; (b) he then obtained his work permit and driver's license; (c) he was employed in construction in order to support himself and his family; (d) on October 28, 2023, Petitioner and his partner welcome a U.S. citizen son, whom he was responsible to support and care for; (e) Petitioner has filed and paid taxes each year since obtaining employment authorization; and (f) Petitioner's U.S. Lawful Permanent Resident (LPR) father, Rolando Inclan Garlobo, was experiencing post traumatic stress after being the

victim of a brutal physical assault and armed robbery that resulted in a concussion, on [redacted], while at work in Austin, Texas, and relied on Petitioner for support. *See* **Ex B, p. 5-8, Sworn Declaration of Rolando Inclan Garlobo.**

9. Petitioner has renewed his request to be re-released with his assigned ICE deportation officer based on Petitioner's observations of his child's and father's conditions deteriorating without Petitioner's financial and emotional support. Unfortunately, these pleas haven gone unanswered and Petitioner remains detained by ICE for over two months now, and will not be released by DHS pursuant to recent decisions issued by IJ's asserting that the EOIR has no jurisdiction to release him.

III. ARGUMENT

Requirements for a Temporary Restraining Order

10. The factors that govern an application for a temporary restraining order are the same as those that govern a request for preliminary injunction. *Hill v. Green County Sch. Dist.*, 848 F. Supp. 697, 703 (S.D. Miss. 1994) (citing *Canal Auth. v. Callaway*, 489 F.2d 567 (5th Cir. 1974)). Under well-settled Fifth Circuit precedent, the movant must show: (1) there is a substantial likelihood that the plaintiff will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs whatever damage the proposed injunctive relief would cause the defendant; and (4) the granting of the injunction is not adverse to the public interest. *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Canal Auth.*, 489 F.2d at 572).

11. On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that

the balance of equities tips in his favor, and that an injunction is in the public interest." *See Enrique Bernat F., S.A. v. Guadalajara, Inc.,* 210 F.3d 439, 442 (5th Cir. 2000). The decision of whether to grant or deny a TRO is within the Court's discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017). To show immediate and irreparable harm, a plaintiff must demonstrate it is likely it will suffer irreparable harm in the absence of preliminary relief. *Winter v. Nat. Res. Def Council*, 555 U.S. 7, 20 (2008). However, a "[s]pectulative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant." *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Lake Charles Diesel, Inc. v. General Motors Corp*, 328 F.3d 192, 195 (5th Cir. 2003). As demonstrated below, all four factors weigh heavily in Petitioner's favor.

1. Mr. Inclan Lopez Is Likely to Succeed on the Merits.

12. Petitioner is likely to succeed on the merits of his claim that his detention (a) violates Due Process and (b) violates the Immigration Nationality Act's detention provisions. Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention on virtually indistinguishable grounds, on statutory and constitutional grounds, including courts in this district. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*,, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser,* No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389,

at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

13. Petitioner is also very likely to prevail on his claim that his detention violates 8 U.S.C. § 1226(a). First, Respondents' own documents and actions establish that § 1226(a) governs Petitioner's detention. When Petitioner was initially detained and released in April 2022, the Order of Release on Recognizance issued provided that he was released "[i]n accordance with section 236 of the [INA] and the applicable provisions of Title 8 of the Code of Federal Regulations." **ECF 1, Attachment #1, Tab C.** The same is true for Petitioner's current arrest and detention. All documents are devoid of any reference to § 1225. In all, "the government's treatment of Petitioner since his arrival in the United States in [April 2022], establishes that Petitioner was detained pursuant to the government's discretionary authority under § 1226(a)." *See J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *5 (E.D.N.Y. Sept. 29, 2025).

14. As district courts across the country have repeatedly concluded, Respondents' "interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (citations omitted). Federal courts across the country—including in the Western District of Texas—have consistently ruled in favor of

petitioners with virtually identical facts. *See Lopez-Arevelo*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11, 2025); *Kostak v. Trump*, No. 25-CV-01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jimenez v. FCI Berlin*, Warden, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions). Petitioner further discussed his Due Process and statutory argument in his Petition for Writ of Habeas Corpus, and hereby incorporates those arguments by reference. **ECF 1, ¶¶29-49**

2. Petitioner and his Family are Suffering Irreparable Harm

15. Unlawful detention in an immigration context is inherently a substantial threat of irreparable injury. *See* Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017) (citing Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (finding that plaintiffs "established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time.") Moreover, Petitioner is suffering additional harm due to his prolonged separation from his young U.S. citizen child and Lawful Permanent Resident father who, very recently, was the victim of a senseless brutal attack and continues to suffer post traumatic stress related to the assault. Neither Petitioner nor his child will ever be able to recover this critical bonding time during the child's infancy and Petitioner's father continues to struggle to recover without the Petitioner, his condition exacerbated by the added worries associated with his son's unlawful and senseless detention.

16. To the extent Respondents would argue there is a benefit to Petitioner remaining in custody because his removal proceedings will advance faster than if he were not detained,

this speculative administrative efficiency is significantly outweighed by Petitioner's loss of liberty and separation from his infant child and father currently experiencing trauma from a random act of violence against him. The concrete harm to Petitioner vastly exceeds any inconvenience to the government.

3. Balance of the Equities and Public Interest

17. The final two factors for injunctive relief—the balance of equities and the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009), Mock v. Garland, 75 F.4th 563, 577 (5th Cir. 2023). Here, the Petitioner faces harm through unlawful and arbitrary detention depriving him of his liberty, separation from his family members that are in crucial need of his support, and various other serious concerns as outlined *supra* and in the attached exhibits.

18. Petitioner anticipates that Respondents will assert a countervailing public interest in enforcement of the country's immigration laws. "But the public also has an interest in the *government* following those laws. " *Hernandez Ramiro v. Bondi et al.*, 5:25-CV-01207-XR (W.D. Tex. Oct. 15, 2025) (citing Kostak v. Trump, No. 3:25-CV-1093, 2025 WL 2472136, at *2 (W.D. La. Aug. 27, 2025)). The Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice . . . ." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in

ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

4. Release is Necessary to Preserve the *Status Quo Ante*

19. In granting temporary restraining orders, courts must only grant such relief as necessary to maintain the status quo. N*orman Bridge Drug Co. v. Banner,* 529 F.2d 822 (5th Cir. 1976) ("[T]he office of a temporary restraining order is to preserve, for a very brief time, the status quo, so as to avoid irreparable injury pending a hearing on the issuance of a preliminary injunction.") The status quo is the "last uncontested status." *United States v. F.D.I.C.*, 881 F.2d 207, 210 (5th Cir. 2010).

20. Here, the *status quo* is Petitioner's unequivocal release on recognizance which lasted for over three years from April 2022 until September 2025. "The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy." *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). "With regard to the specifics of the relief that might be ordered, in recent weeks many federal district courts" –including the Western District of Texas– "have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights." *Id; See Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 1, 2025); *See also J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL

2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267, at *1(D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025)

21. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed "as of 2020, the 'vast majority'—an 'overwhelming consensus'—of courts granting immigration detainees' habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk." *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez,* 978 F.3d at 855 n.14 (citations omitted). "Allocating the burden in this manner reflects the concern that '[b]ecause the alien's potential loss of liberty is so severe ... he should not have to share the risk of error equally.'" (citing *German Santos*, 965 F.3d at 214). "And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner's continued detention by clear and convincing evidence." *Id.* ; *Velasquez Salazar v. Dedos,* No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo,* No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); Espinoza, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar,*, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

IV. CONCLUSION

22. For the foregoing reasons, Petitioner respectfully requests that this Court grant his Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant this Emergency Motion for Temporary Restraining Order;

2. Issue a Temporary Restraining Order requiring Respondents to immediately release Petitioner from custody and return him to his prior status of release on recognizance pursuant to 8 U.S.C. 1226;

3. Waive any requirement for security under Federal Rule of Civil Procedure 65(c); and

4. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND NOTICE

I, Mark Kinzler, hereby certify that on November 25, 2025, I served a copy of the foregoing Petitioner's Emergency Motion for Temporary Restraining Order and attached exhibits to the following parties by certified mail:

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I further certify that I provided notice of the filing of this Motion by email to the following parties prior to filing the Motion:

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROLANDO RAFAEL INCLAN LOPEZ,

Petitioner-Plaintiff

v.

BOBBY THOMPSON, Warden, South Texas Detention Center

MIGUEL VERGARA, Acting/Director of the San Antonio Field Office U.S. Immigration and Customs Enforcement;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; and

PAMELA BONDI, Attorney General of the United States, in their official capacities,

Respondents-Defendants

Case No. 5:25-cv-01533-FB

[PROPOSED] ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER A

THIS MATTER comes before the Court on Petitioner's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. Having considered the motion, the memorandum and exhibits in support thereof, and any subsequent submissions related to the motion, the Complaint, and the applicable law, the Court ORDERS as follows:

1. Petitioner's Motion for a Temporary Restraining Order is GRANTED.
2. The Court further ORDERS that Respondents, and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them, must immediately release Petitioner from custody and return him to his prior status of release on recognizance pursuant to 8 U.S.C. 1226;
3. No security bond is required under Federal Rule of Civil Procedure 65(c).

It is so ORDERED.

DATED this _____ day of _____, 2025.

_____
UNITED STATES DISTRICT JUDGE