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8  
9 UNITED STATES DISTRICT COURT  
10  
11 FOR THE DISTRICT OF ARIZONA  
12

13 Balbino Mayora Cruz

14 Petitioner-Plaintiff,

15 v.

16 Pam Bondi, in her Official Capacity,  
17 Attorney General of the United States; et  
18 al.

19 Respondents-Defendants.  
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Case No.



**MOTION FOR  
TEMPORARY  
RESTRAINING ORDER**

**POINTS AND  
AUTHORITIES IN  
SUPPORT OF EX PARTE  
MOTION FOR  
TEMPORARY  
RESTRAINING ORDER  
AND MOTION FOR  
PRELIMINARY  
INJUNCTION**

Challenge to Unlawful Incarceration;  
Request for Declaratory and  
Injunctive Relief



1 **I. INTRODUCTION**

2 Respondents unlawfully detain Petitioner, Balbino Mayora Cruz, under a  
3 mistaken assertion that INA § 235(b)(2) requires mandatory detention of  
4 individuals who entered without inspection. Petitioner entered the United States on  
5 2001 and has lived in U.S for more than two decades. He is not an “arriving alien”  
6 at the border but a long-term resident, properly detained under INA § 236(a), which  
7 authorizes bond hearings.

8 The Board of Immigration Appeals’ recent decision in *Matter of Yajure*  
9 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), does not compel a different result. Federal  
10 habeas courts are not bound by BIA precedent, and numerous courts, including in  
11 this Circuit have rejected DHS’s attempt to expand § 235(b)(2) to the interior.  
12 Because DHS has improperly invoked § 235(b)(2), Petitioner has been deprived of  
13 the opportunity for an individualized bond hearing and remains in unlawful  
14 detention in violation of the INA, the APA, and the Constitution.

15 Petitioner meets the TRO standard. He is likely to succeed on the merits, he  
16 faces immediate and irreparable harm from unlawful detention, and the equities and  
17 public interest weigh heavily in his favor.

18  
19 **II. STATEMENT OF FACTS AND CASE**

20 Petitioner is a native and citizen of Mexico. He entered the United States  
21 without inspection on or about 2001, more than twenty four years ago and has  
22 resided in the U.S ever since. During this time, he established strong family and  
23 community ties.  
24

25 Petitioner applied for release on bond before the Immigration Court. His  
26 request was denied on the ground that he was classified as subject to mandatory  
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1 detention under INA § 235(b)(2) under *Matter of Yajure.*, making him categorically  
2 ineligible for a bond hearing on November 20, 2025.

3 Historically, individuals in Petitioner's position; those who entered without  
4 inspection but were apprehended years later inside the United States, were detained  
5 under § 236(a) and provided bond hearings before an Immigration Judge. For  
6 decades, immigration judges adjudicated such custody matters under § 236(a).  
7 Indeed, the BIA in *Yajure* acknowledged this longstanding practice, noting that  
8 immigration courts have historically granted bond hearings to noncitizens  
9 apprehended in the interior who had entered without inspection. *Id.* at 225.  
10

11 Petitioner has been detained without the opportunity for a bond hearing. He has  
12 requested relief through counsel, but DHS continues to maintain that his custody is  
13 mandatory and that the court has no jurisdiction. Without judicial intervention, he  
14 faces indefinite detention without due process, despite his long-standing residence  
15 in the United States and his eligibility for release on bond under § 236(a).  
16

### 17 **LEGAL STANDARD**

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19 Petitioner is entitled to a temporary restraining order if he establishes that he  
20 is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the  
21 absence of preliminary relief, that the balance of equities tips in [his] favor, and that  
22 an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555  
23 U.S. 7, 20 (2008); *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,  
24 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary  
25 restraining order standards are "substantially identical"). Even if Petitioner does not  
26 show a likelihood of success on the merits, the Court may still grant a temporary  
27 restraining order if he raises "serious questions" as to the merits of his claims, the  
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1 balance of hardships tips “sharply” in his favor, and the remaining equitable factors  
2 are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir.  
3 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies the  
4 standards for a temporary restraining order.

### 5 **III. ARGUMENT**

#### 6 **A. PETITIONER WARRANTS A TEMPORARY RESTRAINING** 7 **ORDER**

8 A temporary restraining order should be issued if “immediate and irreparable  
9 injury, loss, or irreversible damage will result” to the applicant in the absence of an  
10 order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to  
11 prevent irreparable harm before a preliminary injunction hearing is held.  
12 *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local*  
13 *No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Petitioner is likely to remain in  
14 unlawful custody in violation of his due process rights without intervention by this  
15 Court. Petitioner will continue to suffer irreparable injury if he continues to be  
16 detained without due process.

#### 17 **1. Petitioner is Likely to Succeed on the Merits of His Claim That** 18 **He be Released from Detention**

19 Petitioner is likely to succeed on his claim that, in his particular  
20 circumstances, his current detention is unlawful because the Due Process Clause  
21 and the statute.

22 The District of Arizona has recognized that when the government seeks to  
23 revoke or stay a noncitizen’s release from custody, due process under the Fifth  
24 Amendment requires a meaningful opportunity to be heard before the deprivation  
25 occurs. *See Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8,  
26 2018). Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S.  
27 319 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of  
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1 erroneous deprivation; and 3) the burden on the government – “the fundamental  
2 requirement of due process – the opportunity to be heard at a meaningful time and  
3 manner.” *Organista*, No. CV-18-00285-PHX-GMS, at 4.; *City of Los Angeles v.*  
4 *David*, 538 U.S. 715, 717 (2003). In weighing the *Mathews* factors, the court  
5 declared that “there is no meaningful dispute that Petitioner has a liberty interest in  
6 being heard before the BIA can prolong his detention.” *Organista*, No. CV-18-  
7 00285-PHX-GMS, at 4.

8 Courts analyze procedural due process claims such as this one in two steps:  
9 the first asks whether there exists a protected liberty interest under the Due Process  
10 Clause, and the second examines the procedures necessary to ensure any  
11 deprivation of that protected liberty interest accords with the Constitution. *See*  
12 *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

13 **a. Petitioner Has a Protected Liberty Interest in His**  
14 **Conditional Release**

15 Petitioner’s liberty from immigration custody is protected by the Due Process  
16 Clause: “Freedom from imprisonment—from government custody, detention, or  
17 other forms of physical restraint—lies at the heart of the liberty that [the Due  
18 Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

19 Since 2001, Petitioner has lived continuously in the U.S, where he has  
20 worked, supported his family, and built enduring community ties. He was  
21 apprehended more than two decades after his entry, far from the border. Despite  
22 these circumstances, DHS has categorized him as an “applicant for admission”  
23 under § 235(b)(2) and placed him in mandatory detention, denying him the  
24 opportunity for an individualized bond hearing. Accordingly, he retains a weighty  
25 liberty interest under the Fifth Amendment in avoiding continued incarceration. *See*  
26 *Young v. Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778,  
27 781–82 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972).  
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1 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a  
2 parolee has in “his continued liberty.” 408 U.S. at 481-82. The Court noted that,  
3 “subject to the conditions of his parole, [a parolee] can be gainfully employed and  
4 is free to be with family and friends and to form the other enduring attachments of  
5 normal life.” *Id.* at 482. The Court further noted that “the parolee has relied on at  
6 least an implicit promise that parole will be revoked only if he fails to live up to the  
7 parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although  
8 indeterminate, includes many of the core values of unqualified liberty and its  
9 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,  
10 “[b]y whatever name, the liberty is valuable and must be seen within the protection  
11 of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

12 This basic principle—that individuals have a liberty interest in their  
13 conditional release—has been reinforced by both the Supreme Court and the circuit  
14 courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding  
15 that individuals placed in a pre-parole program created to reduce prison  
16 overcrowding have a protected liberty interest requiring pre-deprivation process);  
17 *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony  
18 probation have a protected liberty interest requiring pre-deprivation process). As  
19 the First Circuit has explained, when analyzing the issue of whether a specific  
20 conditional release rises to the level of a protected liberty interest, “[c]ourts have  
21 resolved the issue by comparing the specific conditional release in the case before  
22 them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*  
23 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and  
24 citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683  
25 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if  
26 that freedom is lawfully revocable—has a liberty interest that entitles her to  
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1 constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at  
2 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

3 In fact, it is well-established that an individual maintains a protectable liberty  
4 interest even where the individual obtains liberty through a mistake of law or fact.  
5 *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873  
6 (9th Cir. 1982) (noting that due process considerations support the notion that an  
7 inmate released on parole by mistake, because he was serving a sentence that did  
8 not carry a possibility of parole, could not be re-incarcerated because the mistaken  
9 release was not his fault, and he had appropriately adjusted to society, so it “would  
10 be inconsistent with fundamental principles of liberty and justice” to return her to  
11 prison) (internal quotation marks and citation omitted).

12 Here, when this Court ““compares the release in Petitioner’s case, with the  
13 liberty interest in parole as characterized by *Morrissey*,”” they bear similar features  
14 in liberty interests. *See Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*,  
15 Petitioner’s release “enables him to do a wide range of things open to persons,””  
16 including to live at home, work, care for his family, for whom he is the financial  
17 provider, and “be with family and friends and to form the other enduring  
18 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

20 **b. Petitioner’s Liberty Interest Mandates His Release from**  
21 **Unlawful Custody**

22 “Adequate, or due, process depends upon the nature of the interest affected.  
23 The more important the interest and the greater the effect of its impairment, the  
24 greater the procedural safeguards the [government] must provide to satisfy due  
25 process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc)  
26 (citing *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Petitioner’s]  
27 liberty interest against the [government’s] interest in the efficient administration of”  
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1 its immigration laws to determine what process he is owed to ensure that ICE does  
2 not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth  
3 in *Mathews v. Eldridge*, this Court must consider three factors in conducting its  
4 balancing test: “first, the private interest that will be affected by the official action;  
5 second, the risk of an erroneous deprivation of such interest through the procedures  
6 used, and the probative value, if any, of additional or substitute procedural  
7 safeguards; and finally the government’s interest, including the function involved  
8 and the fiscal and administrative burdens that the additional or substitute procedural  
9 requirements would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v.*  
10 *Eldridge*, 424 U.S. 319, 335 (1976)).

11 The Supreme Court “usually has held that the Constitution requires some  
12 kind of a hearing *before* the State deprives a person of liberty or property.”  
13 *Zinerman v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a  
14 “special case” where post-deprivation remedies are “the only remedies the State  
15 could be expected to provide” can post-deprivation process satisfy the requirements  
16 of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one of the  
17 variables in the *Mathews* equation—the value of deprivation safeguards—is  
18 negligible in preventing the kind of deprivation at issue” such that “the State cannot  
19 be required constitutionally to do the impossible by providing deprivation process,”  
20 can the government avoid providing pre-deprivation process. *Id.*

22 Because, in this case, the provision of a bond hearing is both possible and  
23 essential to preventing an erroneous deprivation of liberty, ICE is required to  
24 provide Petitioner the opportunity for an individualized bond determination before  
25 a neutral decisionmaker. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at  
26 1355-56; *Jones*, 393 F.3d at 932; *Zinerman*, 494 U.S. at 985; *see also Youngberg v.*  
27 *Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.  
28

1 1984) (holding that individuals awaiting involuntary civil commitment proceedings  
2 may not constitutionally be held in jail pending the determination as to whether they  
3 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in  
4 favor of [Petitioner’s] liberty” and requires a deprivation hearing before a neutral  
5 adjudicator.

6 **i. Petitioner’s Private Interest in His Liberty is**  
7 **Profound**

8 The private interest at stake, freedom from physical restraint, is “at the core  
9 of the liberty protected by the Due Process Clause.” *Foucha v. Louisiana*, 504 U.S.  
10 71, 80 (1992); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom  
11 from imprisonment—from government custody, detention, or other forms of  
12 physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
13 protects.”).

14 Petitioner entered the United States without inspection on 2001 and has lived  
15 continuously in the U.S for more than twenty-four years. During this time, he has  
16 worked, supported his family, and formed enduring ties in his community. He was  
17 apprehended more than two decades after his entry, not at the threshold of the  
18 border.

19 As the Supreme Court recognized in *Morrissey v. Brewer*, 408 U.S. 471,  
20 482–83 (1972), even conditional liberty carries profound constitutional  
21 significance. A person who is free in the community “can be gainfully employed  
22 and is free to be with family and friends and to form the other enduring attachments  
23 of normal life.” *Id.* The Court further noted that terminating such liberty “inflicts a  
24 grievous loss on the parolee and often others,” and emphasized that “[b]y whatever  
25 name, the liberty is valuable and must be seen within the protection of the [Fifth]  
26 Amendment.” *Id.*  
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1 So too here. Petitioner’s long-standing residence, family responsibilities, and  
2 deep community ties reflect a profound liberty interest that cannot lawfully be  
3 extinguished through misclassification as an “applicant for admission” under §  
4 1225(b)(2). By detaining him without any opportunity for an individualized custody  
5 determination, Respondents have arbitrarily deprived him of the very liberty the  
6 Constitution protects..

7  
8 **ii. The Government’s Interest in Continued**  
9 **Incarceration of Petitioner is Low and the Burden**  
10 **on the Government to Refrain from Releasing Him**  
11 **is Minimal**

12 The government’s interest in maintaining mandatory detention and without  
13 allowing a bond hearing is low, and when weighed against Petitioner’s significant  
14 private interest in his liberty, the scale tips sharply in favor of enjoining  
15 Respondents from keeping him in unlawful custody. It becomes abundantly clear  
16 that the *Mathews* test favors Petitioner when the Court considers that the process he  
17 seeks—a bond proceeding to which he is entitled to—is a standard course of action  
18 for the government. Providing Petitioner with a bond hearing before this Court (or  
19 a neutral decisionmaker) to determine whether there is clear and convincing  
20 evidence that Petitioner is a flight risk or danger to the community would impose  
21 only a *de minimis* burden on the government, because the government routinely  
22 provides this sort of hearing to individuals like Petitioner. Continuing to detain him  
23 under § 235(b)(2), despite his eligibility for a bond hearing under § 236(a), is  
24 unlawful

25 As immigration detention is civil, it can have no punitive purpose. The  
26 government’s only interest in holding an individual in immigration detention can  
27 be to prevent danger to the community or to ensure a noncitizen’s appearance at  
28 immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the

1 government cannot plausibly assert that it has any basis for detaining Petitioner  
2 under the mandatory detention provisions of § 235(b)(2), because he entered the  
3 United States more than two decades ago and was apprehended in the interior, not  
4 at the border. He properly falls under § 236(a), which authorizes a bond hearing.  
5 The government's interest in detaining Petitioner at this time is extremely low.  
6 Moreover, the "fiscal and administrative burdens" that his immediate release is  
7 nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek  
8 a unique or expensive form of process, but rather release from unlawful detention,  
9 where removal is not reasonably foreseeable.

10 As the Ninth Circuit noted in 2017, which remains true today, "[t]he costs to  
11 the public of immigration detention are 'staggering': \$158 each day per detainee,  
12 amounting to a total daily cost of \$6.5 million." *Hernandez*, 872 F.3d at 996.

13 Releasing Petitioner from unlawful custody and enjoining Petitioner's  
14 continued detention is far *less* costly and burdensome for the government than  
15 keeping him detained. *Hernandez*, 872 F.3d at 996.

16 Due process also requires consideration of alternatives to detention at any  
17 custody redetermination hearing that may occur. The primary purpose of  
18 immigration detention is to ensure a noncitizen's appearance during removal  
19 proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this  
20 purpose if there are alternatives to detention that could mitigate risk of flight. *See*  
21 *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention  
22 must be considered in determining whether Petitioner's continued incarceration is  
23 warranted.

24  
25 As the above-cited authorities show, Petitioner is likely to succeed on his  
26 claim that the current detention is unlawful. And, at the very minimum, he clearly  
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1 raises serious questions regarding this issue, thus also meriting a TRO. *See*  
2 *Alliance for the Wild Rockies*, 632 F.3d at 1135.

3 **2. Petitioner Will Suffer Irreparable Harm Absent**  
4 **Injunctive Relief**

5 Petitioner will suffer irreparable harm were he to remain detained after being  
6 deprived of his liberty and subjected to unlawful incarceration by immigration  
7 authorities without being provided the constitutionally adequate process that this  
8 motion for a temporary restraining order seeks. Detainees in ICE custody are held  
9 in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016).  
10 As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a  
11 detrimental impact on the individual. It often means loss of a job; it disrupts family  
12 life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972);  
13 *accord Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th  
14 Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the  
15 irreparable harms imposed on anyone subject to immigration detention” including  
16 “subpar medical and psychiatric care in ICE detention facilities, the economic  
17 burdens imposed on detainees and their families as a result of detention, and the  
18 collateral harms to children of detainees whose parents are detained.” *Hernandez*,  
19 872 F.3d at 995. The government itself has documented alarmingly poor conditions  
20 in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG),  
21 Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years  
22 2020-2023 (2024) (reporting violations of environmental health and safety  
23 standards; staffing shortages affecting the level of care detainees received for  
24 suicide watch, and detainees being held in administrative segregation in  
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1 unauthorized restraints, without being allowed time outside their cell, and with no  
2 documentation that they were provided health care or three meals a day).<sup>1</sup>

3 As detailed *supra*, Petitioner contends that his continued detention violates  
4 his due process rights under the Constitution. It is clear that “the deprivation of  
5 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*  
6 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,  
7 373 (1976)). Thus, a temporary restraining order is necessary to prevent Petitioner  
8 from suffering irreparable harm by being subject to unlawful and unjust detention.

9  
10 **3. The Balance of Equities and the Public Interest Favor  
Granting the Temporary Restraining Order**

11 The balance of equities and the public interest undoubtedly favor granting  
12 this temporary restraining order.

13 First, the balance of hardships strongly favors Petitioner. The government  
14 cannot suffer harm from an injunction that prevents it from engaging in an unlawful  
15 practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot  
16 reasonably assert that it is harmed in any legally cognizable sense by being enjoined  
17 from constitutional violations.”). Therefore, the government cannot allege harm  
18 arising from a temporary restraining order or preliminary injunction ordering it to  
19 comply with the Constitution.

20 Further, any burden imposed by requiring the ICE to release Petitioner from  
21 unlawful custody is both *de minimis* and clearly outweighed by the substantial harm  
22 he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th  
23 Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all  
24 persons, even though the expenditure of governmental funds is required.”).

25  
26 A temporary restraining order is in the public interest. First and most

27  
28 <sup>1</sup> Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>  
(last accessed Feb. 6, 2024).

1 importantly, “it would not be equitable or in the public’s interest to allow [a party]  
2 . . . to violate the requirements of federal law, especially when there are no adequate  
3 remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th  
4 Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.  
5 2013)). If a temporary restraining order is not entered, the government would  
6 effectively be granted permission to detain Petitioner in violation of the  
7 requirements of Due Process. “The public interest and the balance of the equities  
8 favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream*  
9 *Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also*  
10 *Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that  
11 ensures that individuals are not deprived of their liberty and held in immigration  
12 detention because of bonds established by a likely unconstitutional process.”); *cf.*  
13 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public  
14 interest concerns are implicated when a constitutional right has been violated,  
15 because all citizens have a stake in upholding the Constitution.”).

16  
17 Therefore, the public interest overwhelmingly favors entering a temporary  
18 restraining order and preliminary injunction.

19 **Federal Courts have rejected DHS’s position.**

20 Recent federal court decisions confirm that Respondents’ reliance on §  
21 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*  
22 *Guzman v. Andrews*, 2025 WL 2617256, at \*3 n.4 (E.D. Cal. Sept. 9, 2025), the  
23 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its  
24 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the  
25 interior after long residence in the United States are properly detained under §  
26 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that  
27 entry without inspection does not permanently bar a person from eligibility for bond  
28

1 once they are living in the country. That holding directly applies here.

2 Similarly, in *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at \*7 (C.D.  
3 Cal. Sept. 8, 2025), the court recognized that the BIA's interpretation in *Yajure*  
4 forecloses administrative relief, rendering exhaustion futile. The same is true for  
5 Petitioner, who cannot meaningfully seek bond redetermination before EOIR given  
6 that the IJ held that he had no jurisdiction.

7 Finally, in *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash.  
8 2025), the district court issued a preliminary injunction requiring ICE to provide a  
9 bond hearing to a petitioner detained under § 1225(b)(2), holding that custody in  
10 such circumstances falls under § 1226(a). That decision confirms that habeas relief  
11 is the proper vehicle and that this Court has the authority to order the same remedy  
12 for Petitioner.

13 These cases establish that DHS's reliance on § 1225(b)(2) for long-term  
14 residents like Petitioner is inconsistent with statutory text, contrary to constitutional  
15 protections, and already rejected by multiple courts within this Circuit.

16 In *Singh v. Lewis*, No. 4:25-cv-96 (W.D. Ky. Sept. 22, 2025), the district  
17 court granted a habeas petition and ordered release, finding that DHS's  
18 reclassification of interior arrests under § 1225(b)(2) violated both the INA and due  
19 process. The court rejected the government's reliance on *Matter of Yajure Hurtado*,  
20 concluding that "an individual is not 'seeking admission' when he never attempted  
21 to do so," and held that detention must proceed under § 1226(a). The court further  
22 found that the automatic-stay regulation at 8 C.F.R. § 1003.19(i)(2) unlawfully  
23 deprived the petitioner of liberty without due process and ordered his immediate  
24 release upon posting bond.

25 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept.  
26 19, 2025), the court held that DHS's blanket application of § 1225(b)(2) to  
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1 individuals apprehended years after entering the United States was contrary to the  
2 statutory text and structure of the INA. The court emphasized that Congress  
3 intended § 1225 to govern only applicants for admission encountered at the border,  
4 and it therefore ordered the petitioner's release under § 1226(a)

5 Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D.  
6 Ariz. 2025), the District of Arizona granted habeas relief on the same statutory  
7 question presented here, holding that individuals arrested in Arizona after years of  
8 residence fall under § 1226(a) and must receive individualized bond hearings. The  
9 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth  
10 Circuit's due-process jurisprudence and the statutory framework of the INA

11 Aside from the Ninth Circuit, numerous district courts have disagreed with  
12 the BIA's analysis in *Matter of Yajure Hurtado* and granted habeas relief to  
13 petitioners similarly situated to Petitioner, recognizing that custody in such cases  
14 properly falls under § 236(a).

- 15 • **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)  
16 (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v.*  
17 *FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v.*  
18 *Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025  
19 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238  
20 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.  
21 Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).
- 22 • **Second Circuit:** *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.  
23 Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).
- 24 • **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug.  
25 24, 2025).
- 26 • **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27,  
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2025).

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- 2 • **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (rejecting BIA’s analysis in *Yajure Hurtado*); *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).
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- 5 • **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025).
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- 14 • **Ninth Circuit:** *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025).
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20 Because multiple courts have already recognized the unlawfulness of DHS’s  
21 reliance on § 1225(b)(2) to deny bond hearings. Petitioner’s claim for relief thus  
22 aligns with an established and growing consensus.

#### 23 **IV. CONCLUSION**

24 For all the above reasons, this Court should find that Petitioner warrants a  
25 temporary restraining order and a preliminary injunction ordering that Respondents  
26 (1) release him from his unlawful custody; and (2) refrain from sending him to any  
27 place outside of the United States.  
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Dated: November 26, 2025,

Respectfully submitted,

/s/ Siovhan Ayala  
Siovhan Ayala  
Attorney for Petitioner-Plaintiff