IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03860 MERCHAN-PACHEO v. Noem et al

DENIIS MERCHAN-PACHEO,

Petitioner,

V.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security,
PAM BONDI, U.S. Attorney General,
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,
ROBERT GUADIAN, Denver Field Office Director, U.S. Immigration and Customs Enforcement,
JUAN BALTAZAR, Warden of Denver Contract Detention Facility,

Respondents.

MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

OTHER AUTHORITIES

INTRODUCTION

Petitioner Deniis Samuel Merchan Pacheco, a 20-year-old native and citizen of Ecuador, has been unlawfully detained by U.S. Immigration and Customs Enforcement ("ICE") in Colorado for nearly four months without a meaningful opportunity for release. He entered the United States as a 16-year-old unaccompanied child ("UAC") in 2021, who was released into the custody of his mother by the Office of Refugee Resettlement ("ORR") and has lived here continuously since, pursuing asylum.

Despite an immigration judge's ("IJ") recent order granting Petitioner release on bond on November 19, 2025, and despite Petitioner's family posting the $25,000 bond. On November 20, 2025, the Department of Homeland Security ("DHS") refused to release him, filing a form EOIR-43 (Notice of ICE Intent to Appeal Custody Redetermination) based on a baseless theory that he is an arriving alien subject to mandatory detention. Petitioner is not an arriving alien because he has been present in the United States for over four years since he was a child, and by no stretch of logic can he be deemed to be arriving in 2025. Consequently, his detention is governed by 8 U.S.C. § 1226, which entitles him to a bond hearing and release on bond pending removal proceedings, rather than by the 8 U.S.C. § 1225 mandatory detention scheme for recent border arrivals.

The automatic stay violates the Petitioner's due process right to liberty under due process because it offers no opportunity for the Petitioner to contest the stay. In fact, multiple district courts have ruled that the automatic stay provision under 8 C.F.R. § 1003.19{i)(2) violates the Fifth Amendment's right to due process and is ultra vires to the delegated by statute[1]. This Court should follow suit and grant the Petitioner a temporary

[1] [1] *See, e.g.*, Ashley v. Ridge, 288 F. Supp. 2d 662, 675 (D.N.J. 2003) (vacating the automatic stay triggered by DHS's filing of Form EOIR-43 as violative of due process and ordering release absent an emergency BIA stay); Bezmen v. Ashcroft, 245 F. Supp. 2d 446, 453–54 (D. Conn. 2003) (granting habeas; dissolving

restraining order prohibiting the Respondents from continuing to unlawfully detain Petitioner during the pendency of his Petition for Writ of Habeas Corpus.

Furthermore, the Department of Homeland Security's misclassification of Petitioner under 8 U.S.C. § 1225 is contrary to the Immigration and Nationality Act, decades of practice, and the near-unanimous view of federal courts. In addition, continuing to confine Petitioner, who is a young asylum seeker with strong family and community ties, without honoring his bond or providing prompt individualized review violates the Due Process Clause of the Fifth Amendment, *ultra vires* regulation, and violation of the *Accardi* doctrine.

For these reasons, Petitioner respectfully requests that this Court: (1) enjoin Respondents from transferring him outside this District while this matter is pending; (2) order his immediate release from custody, or, alternatively, direct Respondents to permit Petitioner to post bond in accordance with the Immigration Judge bond order within three days; and (3) grant such other and further relief as law and justice require.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

---

automatic stay invoked via Form EOIR-43 and directing release absent a BIA emergency stay); *Almonte-Vargas v. Elwood*, No. 02-CV-2666, 2002 WL 1471555, at *5 (E.D. Pa. June 28, 2002) (granting habeas; concluding the government's use of the EOIR-43 automatic-stay procedure effected unconstitutional detention); *Günaydin v. Trump*, No. 0:25-cv-01151, 2025 WL 1459154, at *9 (D. Minn. May 21, 2025) (granting habeas and ordering immediate release on the IJ's bond; holding the EOIR-43 automatic-stay procedure violates procedural due process as applied); *Mohammed v. Trump*, No. 0:25-cv-01576 (D. Minn. May 5, 2025) (ordering release after finding detention based solely on the EOIR-43 automatic stay arbitrary and constitutionally infirm); *Jacinto v. Trump*, No. 4:25-cv-03161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025) (granting habeas; finding § 1003.19(i)(2) violates due process and is ultra vires; ordering release upon posting the IJ-set bond); *Ozuna Carlon v. Kramer*, No. 4:25-cv-03178 (D. Neb. Sept. 11, 2025) (granting habeas; holding detention under the EOIR-43 automatic stay unlawful and ordering immediate release upon re-posting bond); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428 (D. Md. Aug. 24, 2025) (granting habeas; concluding the EOIR-43 automatic stay results in arbitrary detention and ordering release subject to the IJ's bond conditions); *Sampiao v. Hyde*, No. 1:25-cv-11981, 2025 WL 2607924, at *9–12 (D. Mass. Sept. 9, 2025) (granting habeas; holding the automatic stay under § 1003.19(i)(2) violates procedural due process and ordering release on the IJ's bond); *Alvarez Martinez v. Noem*, No. 5:25-cv-01007 (W.D. Tex. Sept. 8, 2025) (granting TRO; dissolving the EOIR-43 automatic stay and directing release absent a BIA emergency stay).

Petitioner repeats and incorporates by reference each Statement of Facts and Procedural History contained in the Petition for Writ of Habeas Corpus as if fully set forth herein.

STATUTORY BACKGROUND AND LEGAL FRAMEWORK

I. *HABEAS* RELIEF

To obtain *habeas corpus* relief, a petitioner must demonstrate that he is "in custody in violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241(c)(3). This Court has *habeas corpus* jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal. *See Demore v. Kim*, 538 U.S. 510, 517-18 (2003).

II. DETENTION AUTHORITY UNDER THE INA

The Immigration and Nationality Act ("INA") establishes three principal statutory bases for the detention of noncitizens in removal proceedings.

First, 8 U.S.C. § 1226(a) authorizes the discretionary detention of noncitizens in standard, non-expedited removal proceedings before an Immigration Judge ("IJ"). *See* 8 U.S.C. § 1226(a); 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are entitled to an individualized custody determination and may seek release on bond or conditional parole at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, noncitizens arrested, charged with, or convicted of certain enumerated crimes are subject to mandatory detention under § 1226(c).

Second, the INA authorizes mandatory detention of certain arriving or recently arrived noncitizens placed in expedited removal or other admission-related proceedings

under 8 U.S.C. § 1225(b). Individuals who present themselves at a port of entry are deemed "applicants for admission," 8 U.S.C. § 1225(a)(1), and must establish that they are "clearly and beyond a doubt" entitled to be admitted. Id. § 1225(b)(2)(A). Those unable to make such a showing "shall be detained" pending removal proceedings, though they may be temporarily paroled into the United States under § 1182(d)(5)(A).

Third, once a final order of removal has been entered, post-order detention is governed by 8 U.S.C. § 1231(a)–(b). That provision permits limited detention of individuals subject to a final order of removal for a period reasonably necessary to effectuate deportation.

Sections 1226(a) and 1225(b)(2) were enacted through the *Illegal Immigration Reform and Immigrant Responsibility Act* of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009-582 to 583, 3009-585. Section 1226(c) was most recently amended by the Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat. 3 (2025).

Under this statutory framework, Petitioner's custody arises under § 1226(a), as he is in standard removal proceedings before an Immigration Judge in Aurora and is not subject to a final order of removal. Nothing in § 1226(a) authorizes indefinite detention of a noncitizen who poses no danger or flight risk. Rather, detention must remain reasonably related to the government's limited purposes of ensuring appearance and protecting public safety. *See Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003).

Despite this statutory scheme, the Department of Homeland Security ("DHS") has interpreted § 1226(a) in conjunction with the Board of Immigration Appeals' decision in

Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025), to preclude Immigration Judges from exercising bond jurisdiction over noncitizens who entered without inspection. This interpretation effectively strips Petitioner—and others similarly situated—of the bond-hearing protections guaranteed by regulation, 8 C.F.R. §§ 1003.19(a), 1236.1(d), and has resulted in prolonged, unreviewed detention inconsistent with congressional intent and constitutional limits.

III. LEGAL FRAMEWORK GOVERNING APPEALS OF IMMIGRATION JUDGE BOND DECISIONS AND STAYS WHILE BOND APPEAL IS PENDING

Under 8 U.S.C. § 1226(a), DHS has authority to arrest and detain certain noncitizens "pending a decision on whether the alien is to be removed from the United States ..." However, DHS "may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General." *See* 8 U.S.C. § 1226(a)(2)(A). Upon arrest and detention pending a removal proceeding, DHS will make a determination on whether to allow the noncitizen to be released pending the posting of a bond. *See* 8 C.F.R. § 1236. "Custody and bond determinations made by the [DHS] pursuant to 8 C.F.R. § 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." 8 C.F.R. § 1003.19(a).

Once the IJ has granted a bond, the DHS is authorized to revoke it only upon a finding of materially changed circumstances warranting the noncitizen's return to custody. *See*, e.g., *Matter of Sugay*, 17 I&N at 640 (BIA found a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines...."). Once an IJ has set a bond, either party can appeal the IJ's order on bond to the Board of Immigration Appeals ("Board"). 8 C.F.R. § 1003.19(f).

A DHS appeal from an IJ order releasing a noncitizen standing alone does not stay the IJ's order. Rather, DHS must apply for a stay of custody pending the appeal. *See* 8 C.F.R. § 1003.19{i). The regulation provides two alternatives for DHS when seeking to stay an IJ bond order:

> A. *General discretionary stay authority*. The Board of Immigration Appeals has the authority to stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion. DHS is entitled to seek a discretionary stay (whether or not on an emergency basis) from the Board in connection with such an appeal at any time.
>
> B. *Automatic stay in certain cases*. In any case in which DHS has determined that an alien should not be released or has set a bond of $10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS's filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CPR I003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

8 C.F.R. § 1003.19{i)(1) & (2). In this case, DHS elected to pursue an automatic stay under paragraph 2. The filing of an automatic stay deprives the noncitizen of any process to contest the stay order before the IJ or the Board. The stay will lapse if "DHS fails to file the notice of appeal with the Board within ten business days of the issuance of the order of the IJ." *See* 8 C.F.R. § I003.6(c)(1). To maintain the automatic stay, 8 C.F.R. §

1003.6(c)(1) requires the DHS to file a notice to appeal with the BIA and include a "certification by a senior legal official that –

I. The official has approved the filing of the notice of appeal according to review procedures established by DHS; and

II. The official is satisfied that the contentions justifying the continued detention of the alien have evidentiary support, and the legal arguments are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing precedent or the establishment of new precedent.

8 C.F.R. § 1003.6{c)(l){i)-(ii). Filing the notice of appeal with the above certification ensures that the automatic stay remains in place while DHS pursues its appeal. Noncitizens are not afforded any procedure to challenge the filing of the stay or the validity of the certification. "If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal." *See* 8 C.F.R. § 1003.6(c)(4). However, the DHS can seek a discretionary stay "at a reasonable time before the expiration of the period of the automatic stay.... " *See* 8 C.F.R. § 1003.6(c)(5).

If the Board does not adjudicate the motion for a discretionary stay within the 90-day period, the stay will remain in effect for an additional 30 days to permit the Board to rule on the motion. *Id.* If the Board grants the noncitizens' release, denies the motion for discretionary stay, or fails to adjudicate the motion before the automatic stay expires, the stay is automatically stayed for an additional five days to permit DHS to decide whether to refer the case to the Attorney General. *See* 8 C.F.R. § 1003.6(d). If DHS decides to refer the case, the stay would remain in place for an additional 15 days to permit the

Attorney General time to consider the merits of the referral. Thus, the potential for prolonged custody may far exceed 90 days.

Accordingly, Petitioner's continued confinement falls outside the narrow detention authority conferred by the INA. It contravenes the statute's text, structure, and purpose, which require individualized custody review and prohibit arbitrary or indefinite detention. Furthermore, the stay filed by DHS is ultra vires and violates due process under the Fifth Amendment to the Constitution.

STANDARD OF REVIEW

Preliminary injunctions are governed by the four factors that apply set forth in *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008) ("In determining whether to stay the TRO, we consider the same factors considered in determining whether to issue a TRO or preliminary injunction." (cleaned up)). Those factors are: (1) whether the movant has a substantial likelihood or probability of success on the merits; (2) whether the movant will suffer irreparable injury if injunctive relief is not granted; (3) whether the injunctive relief would unjustifiably harm a third party; and (4) whether the public interest would be served by issuing the injunctive relief. *Frisch's Rest., Inc. v. Shoney's Inc.*, 759 F.2d 1261, 1263 (6th Cir. 1985).

ARGUMENTS

In constitutional cases, the first factor above is often dispositive. *See Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (citing *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (order). That is because "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am. v. Husted*, 697 F.3d 423,436 (6th Cir. 2012); *see also Elrod*

v. Bums, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Moreover, since no cognizable harm results from halting unconstitutional conduct, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Dm,idson Cnty.*, 274 F.3d 377,400 (6th Cir. 2001) (citation omitted).

Here, the Petitioner is detained in clear violation of his Fifth Amendment right to Due Process. A neutral IJ has found that Petitioner poses neither a danger to the community nor a significant flight risk. Nevertheless, DHS invoked the automatic stay provision to unilaterally override the IJ's custody determination, without any procedural safeguards or opportunity for the Petitioner to be heard. This ongoing deprivation of liberty, without due process, is causing irreparable harm that cannot be remedied after the fact. It is firmly in the public interest to enjoin such unconstitutional conduct.

Accordingly, a temporary restraining order is necessary to prevent the government from continuing to infringe upon Petitioner's constitutionally protected liberty interest while the Court considers the merits of his claim.

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIM THAT THE AUTOMATIC STAY PROVISION OF 8 C.F.R. § 1003.19(I)(2) VIOLATED PETITIONER'S DUE PROCESS RIGHTS UNDER THE FIFTH AMENDMENT

The Fifth Amendment's Due Process Clause prohibits the government from depriving an individual of life, liberty, or property without due process of law. The Due Process Clause applies to all "persons" within the borders of the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent."

Zadvydas v. Davis, 533 U.S. 678,693 (2001). When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). These three *Mathews* factors strongly weigh in favor of granting Petitioner's motion.

I. PETITIONER HAS A SIGNIFICANT LIBERTY INTEREST IN BEING FREE FROM CONFINEMENT

The Petitioner has a compelling interest in remaining free from government confinement an interest that "lies at the heart of the liberty" protected by the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 690; *see* also *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("The interest in being free from physical detention" is "the most elemental of liberty interests"). The impact of this deprivation is substantial insofar as continued confinement has separated Petitioner from his family, friends, and church, specifically his mother, whom he helped support with his employment. Additionally, it has prevented him from earning income to support his family, resulting in significant financial hardship. *See Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) ("The deprivation he experienced while incarcerated was, on any calculus, substantial. He was locked up in jail. He could not maintain employment or see his family or friends...."); *see* also *Gunaydin*, 2025 U.S. Dist. LEXIS 99237, at *20 ("He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss

of income earning ... lack of privacy, and most fundamentally, the lack of freedom of movement."). Given the magnitude of this constitutional interest, any deprivation of liberty must strictly comply with the requirements of due process.

II. THE AUTOMATIC STAY PROVISION CREATES A SUBSTANTIAL RISK OF ERRONEOUS DEPRIVATION

The risk of erroneously depriving the Petitioner of liberty is exceptionally high for several reasons. First, the risk of error is high because the provision allows DHS, the non-prevailing party in the bond proceedings, to unilaterally override the IJ's decision without procedural safeguards. *See Zavala v. Ridge*, 310 F.Supp.2d 1071, 1078 (N.D. Cal. 2004) ("[T]he [automatic stay] procedure additionally creates a potential for error because it conflates the functions of adjudicator and prosecutor."). Further, allowing DHS to unilaterally prolong detention despite an IJ's bond determination exceeds the scope of the Attorney General's statutory authority under 8 U.S.C. § 1226(a) and renders 8 C.F.R. § 1003.19(i)(2) "*ultra vires*." *See Anicasio*, 2025 U.S. Dist. LEXIS 157236 at *13 (noting that 8 U.S.C. § 1226(a) permits the Attorney General to delegate custody determinations to "any officer, employee, or agency of the Department of Justice ("DOJ")," and that "DHS, the party that invoked the automatic stay," is not within the DOJ).

Second, as the Minnesota District Court recently observed, "there is no requirement that the agency official invoking [the automatic stay] consider any individualized or particularized facts." *GÜNAYDIN*, 2025 U.S. Dist. LEXIS 99237 at *22-23. Nor does the provision impose any standards that DHS must meet to invoke the stay. *Id* at *23. Unlike traditional stays in federal court pending appeal, there is no requirement that DHS demonstrate irreparable harm, a likelihood of success on the merits, or any other threshold showing. *Cf Nken v. Holder*, 556 U.S. 418, 433 (2009) (A stay is "an exercise

of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.") (internal quotations omitted). The automatic stay regulation "turns these well-established procedural principles on their heads and carries a significant risk of erroneous deprivation." *GÜNAYDIN*, 2025 U.S. Dist. LEXIS 99237, at *24.

Finally, because the stay is automatic and not subject to review by an impartial adjudicator, it deprives the Petitioner of any meaningful opportunity to challenge it as required by the Fifth Amendment. *See Mathews*, 424 U.S. at 333 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"). Indeed, all DHS has to do to invoke the stay is to file Form EOIR-43 with the Immigration Court. *See* 8 C.F.R. § 1003.19(i)(2). Thus, the second *Mathews* factor weighs in favor of Petitioner.

III. DHS' INTEREST IN RETAINING ITS UNILATERAL STAY AUTHORITY IS MINIMAL

DHS' interest in preserving its unilateral authority to prevent the release of noncitizens who have already been found neither a significant flight risk nor a danger to the community is minimal. *See Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J. 2003) ("[T]he purpose of the automatic stay provisions is to prevent the [noncitizen] from fleeing and to protect the public from harm. The bond determination from the Immigration Judge has already addressed these underlying concerns."). In this case, proceedings are still ongoing, and they remain open while Petitioner's asylum application is being adjudicated. Therefore, DHS's potential interest in ensuring Petitioner returns to immigration proceedings has already been fulfilled, especially since Petitioner is actively seeking immigration relief before EOIR. *See Zadvydas*, 533 U.S. 678, 690 ("But by definition the

first justification preventing flight is weak or nonexistent where removal seems a remote possibility at best.").

The second potential justification, protecting the community, is likewise not implicated, as the IJ had previously determined that Petitioner has not committed a crime and therefore, is not dangerous to the community. *See id.* ("[W]e have upheld preventive detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections."). In short, both possible rationales for detention-flight risk and danger to the community-had already been addressed and rejected by the IJ.

To the extent DHS believes the IJ erred in granting bond, it may seek an emergency stay under 8 C.F.R. § 1003.19(i)(1). Utilizing existing procedures imposes no additional burden on DHS. Unlike the automatic stay invoked in this case, the discretionary stay requires DHS to justify the stay to the Board and affords the noncitizen an opportunity to respond. Permitting the Board to determine whether a stay of release is warranted reduces the risk of erroneous deprivation at minimal cost to the government. Accordingly, Petitioner has demonstrated that he satisfies the factors outlined in *Mathews* and, therefore, has shown a substantial likelihood of success on the merits of his procedural due process claim and *ultra vires* claim.

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

The right to be free from unconstitutional detention constitutes an irreparable injury. *See, e.g., Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 U.S. Dist. LEXIS 90261, at *6 (N.D. Cal. May 12, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably

constitutes irreparable injury.")). Courts have also found that family separation and prolonged detention qualify as irreparable injury. *See, e.g., Angelica S. v. United States HHS*, No. 25-cv-1405 (DLF), 2025 U.S. Dist. LEXIS 109051, at *27 (D.D.C. June 9, 2025) (citing *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (noting that family "[s]eparation irreparably harms plaintiffs every minute it persists"). In this case, Petitioner's unlawful detention has caused his family, friends, and church members to suffer emotional and financial hardship. Specifically, his mother and siblings, who have been in the care of a family friend since her husband abandoned her many years ago, and Petitioner was the head of the household. Accordingly, this irreparable harm warrants immediate injunctive relief.

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING THE TEMPORARY RESTRAINING ORDER

As stated above, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Dm,idson Cnty.*, 274 F.3d at 400; *see* also *Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention... "). The government suffers no cognizable harm from being enjoined from unconstitutional conduct. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Here, the IJ, after three separate bond hearings, concluded that Petitioner poses neither a danger to the community nor a flight risk. The record shows that Petitioner has demonstrated to be an outstanding member of society, has not committed a crime, and has no infractions in the United States or elsewhere.

There is no evidence of changed circumstances or imminent risk to justify continued detention. Nor is there any public or governmental interest served by preventing Petitioner from returning to his family and livelihood while this case is adjudicated. The government cannot plausibly claim harm from a temporary order requiring it to comply with constitutional mandates. Any administrative burden imposed on Respondents by temporarily halting unlawful detention is minimal and far outweighed by the substantial harm Petitioner continues to suffer each day his liberty is denied. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required."). As such, the balance of equities and the public interest weigh decisively in favor of issuing a temporary restraining order and preliminary injunction.

D. PETITIONER HAS COMPLIED WITH THE REQUIREMENTS OF FEDERAL RULE OF CIVIL PROCEDURE 65

Petitioner asks this Court to find that he has complied with the requirements of Fed. R. Civ.

P. 65, for the purpose of granting a temporary restraining order. Pursuant to Rule 65(6)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse party can be heard in opposition; and 2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, Petitioner's verified complaint has demonstrated that he would suffer immediate and irreparable injury. The undersigned has also attached a certification

regarding notice to opposing counsel (Petitioner for Habeas Corpus and Temporary Restraining Order was certified mailed to Respondents). While immediate service may not have been made on Respondent's counsel, for the purpose of Rule 65(b)(l), this Court should find that written notice sent via certified mail has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met.

Rule 65(c) also states that the court may issue a preliminary injunction or temporary restraining order only if the movant provides security in an amount the court deems appropriate to cover the costs and damages incurred by any party found to have been wrongly enjoined or restrained. Under the circumstances of this case, Petitioner respectfully asks this Court find such a requirement unnecessary, as an order requiring Respondents to release Petitioner from unconstitutional detention should not cause any likely financial damages to Respondents. *See, e.g., Enamorado*, 2025 U.S. Dist. LEXIS 90261, at *6.

CONCLUSION

For the reasons set forth above, Petitioner Deniis Merchan-Pacheco has demonstrated a clear likelihood of success on the merits of his claims, will suffer irreparable harm in the absence of immediate relief, and has shown that the balance of equities and the public interest strongly favor his release. His continued detention violates

the Immigration and Nationality Act, and the Due Process Clause of the Fifth Amendment, and the Stay filed by DHS is *ultra vires*.

Accordingly, Petitioner respectfully requests that this Honorable Court:

1. Order Petitioner's immediate release from custody, or, in the alternative, order that he be released from custody immediately upon a posting of a $25,000 bond as ordered by the Immigration Judge; and
2. Grant such other and further relief as this Court deems just and proper. For the foregoing reasons, the Court should grant Petitioner's Motion for TRO and Preliminary Injunction.

Dated: November 30, 2025

Respectfully Submitted,

/S/ Luis Angeles
Luis Angeles, Esq.
Angeles Law LLC
2112 Broadway St NE STE 225 #53
Minneapolis, MN 55413
T: (321) 334-0568
Luis@abogadoangeles.com
Attorney for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, DENIIS MERCHAN-PACHEO, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Temporary Restraining Order are true and correct to the best of my knowledge.

Dated: November 30, 2025

/s/Luis Angeles
Luis Angeles

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2025, I filed the foregoing petition electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/s/Luis Angeles
Luis Angeles