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

13 Minerva Lopez Hernandez

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

NOTICE OF MOTION

1
2 Petitioner Minerva Lopez Hernandez applies to this honorable Court for a
3 temporary restraining order enjoining Respondents Department of Homeland
4 Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam
5 Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to
6 detain Petitioner based on an unlawful action by ICE, (2) ordering her immediate
7 release from immigration detention; and (3) from removing Petitioner from the
8 United States.

9 If the Court deems oral argument necessary, Petitioner requests to appear by
10 video.

11 Dated: December 2nd, 2025, Respectfully submitted,

12 /s/ Siovhana Ayala
13 Siovhana Ayala
14 Attorney for Petitioner-Plaintiff Client
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1 **I. INTRODUCTION**

2 Respondents unlawfully detain Petitioner, Minerva Lopez Hernandez, under
3 a mistaken assertion that INA § 235(b)(2) requires mandatory detention of
4 individuals who entered without inspection. Petitioner entered the United States on
5 2011 and has lived in the U.S for more than a decade. She 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. She is likely to succeed on the merits, she
16 faces immediate and irreparable harm from unlawful detention, and the equities and
17 public interest weigh heavily in her favor.

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

20 Petitioner is a native and citizen of Mexico. She entered the United States
21 without inspection on or about 2011, more than fourteen years ago and has resided
22 in the U.S ever since. During this time, she established strong family and community
23 ties.
24

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

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.

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

17 LEGAL STANDARD

19 Petitioner is entitled to a temporary restraining order if she establishes that
20 she 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 [her] 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); *Stuhlbarg 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 she raises “serious questions” as to the merits of her claims, the
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1 balance of hardships tips “sharply” in her 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 her due process rights without intervention by this
15 Court. Petitioner will continue to suffer irreparable injury if she continues to be
16 detained without due process.
17

18 **1. Petitioner is Likely to Succeed on the Merits of Her Claim That**
19 **She be Released from Detention**

20 Petitioner is likely to succeed on her claim that, in her particular
21 circumstances, her current detention is unlawful because it violates both the Due
22 Process Clause of the Fifth Amendment and the statutory framework of the
23 Immigration and Nationality Act. DHS has improperly classified Petitioner as
24 subject to mandatory detention under INA § 235(b)(2), even though she entered the
25 United States in 2011, was apprehended in the interior more than a decade later,
26 and therefore falls under INA § 236(a), which authorizes an individualized bond
27 determination before a neutral decisionmaker. By denying Petitioner any
28 opportunity to be heard on her custody, Respondents have exceeded their statutory

1 authority and deprived her of liberty without due process of law. The District of
2 Arizona has recognized that when the government seeks to revoke or stay a
3 noncitizen's release from custody, due process under the Fifth Amendment
4 requires a meaningful opportunity to be heard before the deprivation occurs. *See*
5 *Organista v. Sessions*, No. CV-18-00285-PHX-GMS (D. Ariz. Feb. 8, 2018).
6 Applying the familiar three-factor test from *Mathews v. Eldridge*, 424 U.S. 319
7 (1976), the court weighed 1) the private liberty interest at stake; 2) the risk of
8 erroneous deprivation; and 3) the burden on the government – “the fundamental
9 requirement of due process – the opportunity to be heard at a meaningful time and
10 manner.” *Organista*, No. CV-18-00285-PHX-GMS, at 4.; *City of Los Angeles v.*
11 *David*, 538 U.S. 715, 717 (2003). In weighing the *Mathews* factors, the court
12 declared that “there is no meaningful dispute that Petitioner has a liberty interest in
13 being heard before the BIA can prolong her detention.” *Organista*, No. CV-18-
14 00285-PHX-GMS, at 4.

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16 Likewise, federal district courts in California have repeatedly recognized
17 that the demands of due process and the limitations on DHS's authority to revoke a
18 noncitizen's bond or parole set out in DHS's stated practice and *Matter of Sugay*
19 both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner
20 before ICE re-detains her. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D.
21 Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3
22 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021
23 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);); *Romero v. Kaiser*, No. 22-cv-
24 02508-TSH, 2022 WL 1443250, at *3-4 (N.D. Cal. May 6, 2022) (Petitioner would
25 suffer irreparable harm if re-detained, and required notice and a hearing before any
26 re-detention); *Enamorado v. Kaiser*, No. 25-CV-04072-NW, 2025 WL 1382859, at
27 *3 (N.D. Cal. May 12, 2025) (temporary injunction warranted preventing re-arrest
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1 at plaintiff's ICE interview when he had been on bond for more than five years).
2 *See also Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, *4
3 (E.D. Cal. Mar. 3, 2025) (holding the Constitution requires a hearing before any re-
4 arrest).

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

10 **a. Petitioner Has a Protected Liberty Interest in Her**
11 **Conditional Release**

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

16 Since 2011, Petitioner has lived continuously in the U.S, where she has
17 worked, supported her family, and built enduring community ties. She was
18 apprehended more than a decade after her entry, far from the border. Despite these
19 circumstances, she was has categorized her as an "applicant for admission" under §
20 235(b)(2) and placed her in mandatory detention, denying her the opportunity for
21 an individualized bond hearing. Accordingly, she retains a weighty liberty interest
22 under the Fifth Amendment in avoiding continued incarceration. *See Young v.*
23 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–82
24 (1973); *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972).

25
26 In *Morrissey*, the Supreme Court examined the "nature of the interest" that a
27 parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that,
28 "subject to the conditions of his parole, [a parolee] can be gainfully employed and

1 is free to be with family and friends and to form the other enduring attachments of
2 normal life.” *Id.* at 482. The Court further noted that “the parolee has relied on at
3 least an implicit promise that parole will be revoked only if he fails to live up to the
4 parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
5 indeterminate, includes many of the core values of unqualified liberty and its
6 termination inflicts a grievous loss on the parolee and often others.” *Id.* In turn,
7 “[b]y whatever name, the liberty is valuable and must be seen within the protection
8 of the [Fifth] Amendment.” *Morrissey*, 408 U.S. at 482.

9 This basic principle—that individuals have a liberty interest in their
10 conditional release—has been reinforced by both the Supreme Court and the circuit
11 courts on numerous occasions. *See, e.g., Young v. Harper*, 520 U.S. at 152 (holding
12 that individuals placed in a pre-parole program created to reduce prison
13 overcrowding have a protected liberty interest requiring pre-deprivation process);
14 *Gagnon v. Scarpelli*, 411 U.S. at 781-82 (holding that individuals released on felony
15 probation have a protected liberty interest requiring pre-deprivation process). As
16 the First Circuit has explained, when analyzing the issue of whether a specific
17 conditional release rises to the level of a protected liberty interest, “[c]ourts have
18 resolved the issue by comparing the specific conditional release in the case before
19 them with the liberty interest in parole as characterized by *Morrissey*.” *Gonzalez-*
20 *Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010) (internal quotation marks and
21 citation omitted). *See also, e.g., Hurd v. District of Columbia*, 864 F.3d 671, 683
22 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if
23 that freedom is lawfully revocable—has a liberty interest that entitles her to
24 constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at
25 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).
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1 In fact, it is well-established that an individual maintains a protectable liberty
2 interest even where the individual obtains liberty through a mistake of law or fact.
3 *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887; *Johnson v. Williford*, 682 F.2d 868, 873
4 (9th Cir. 1982) (noting that due process considerations support the notion that an
5 inmate released on parole by mistake, because he was serving a sentence that did
6 not carry a possibility of parole, could not be re-incarcerated because the mistaken
7 release was not his fault, and he had appropriately adjusted to society, so it “would
8 be inconsistent with fundamental principles of liberty and justice” to return her to
9 prison) (internal quotation marks and citation omitted).

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

17
18 **b. Petitioner’s Liberty Interest Mandates Her Release from**
19 **Unlawful Custody**

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

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

19
20 Because, in this case, the provision of a bond hearing is both possible and
21 essential to preventing an erroneous deprivation of liberty, ICE is required to
22 provide Petitioner the opportunity for an individualized bond determination before
23 a neutral decisionmaker. *See Morrissey*, 408 U.S. at 481-82; *Haygood*, 769 F.2d at
24 1355-56; *Jones*, 393 F.3d at 932; *Zinermon*, 494 U.S. at 985; *see also Youngberg v.*
25 *Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir.
26 1984) (holding that individuals awaiting involuntary civil commitment proceedings
27 may not constitutionally be held in jail pending the determination as to whether they
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1 can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in
2 favor of [Petitioner’s] liberty” and requires a deprivation hearing before a neutral
3 adjudicator.

4 **i. Petitioner’s Private Interest in Her Liberty is**
5 **Profound**

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

12 Petitioner entered the United States without inspection on 2011 and has lived
13 continuously in the U.S for more than fourteen years. During this time, she has
14 worked, supported her family, and formed enduring ties in her community. She was
15 apprehended more than a decade after her entry, not at the threshold of the border.

16 As the Supreme Court recognized in *Morrissey v. Brewer*, 408 U.S. 471,
17 482–83 (1972), even conditional liberty carries profound constitutional
18 significance. A person who is free in the community “can be gainfully employed
19 and is free to be with family and friends and to form the other enduring attachments
20 of normal life.” *Id.* The Court further noted that terminating such liberty “inflicts a
21 grievous loss on the parolee and often others,” and emphasized that “[b]y whatever
22 name, the liberty is valuable and must be seen within the protection of the [Fifth]
23 Amendment.” *Id.*

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26 So too here. Petitioner’s long-standing residence, family responsibilities, and
27 deep community ties reflect a profound liberty interest that cannot lawfully be
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1 extinguished through misclassification as an “applicant for admission” under §
2 1225(b)(2). By detaining her without any opportunity for an individualized custody
3 determination, Respondents have arbitrarily deprived her of the very liberty the
4 Constitution protects..

5
6 **ii. The Government’s Interest in Continued**
7 **Incarceration of Petitioner is Low and the Burden**
8 **on the Government to Refrain from Releasing Her**
9 **is Minimal**

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

23 As immigration detention is civil, it can have no punitive purpose. The
24 government’s only interest in holding an individual in immigration detention can
25 be to prevent danger to the community or to ensure a noncitizen’s appearance at
26 immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the
27 government cannot plausibly assert that it has any basis for detaining Petitioner
28 under the mandatory detention provisions of § 235(b)(2), because she entered the

1 United States more than a decade ago and was apprehended in the interior, not at
2 the border. She properly falls under § 236(a), which authorizes a bond hearing. The
3 government's interest in detaining Petitioner at this time is extremely low.
4 Moreover, the "fiscal and administrative burdens" that her immediate release is
5 nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek
6 a unique or expensive form of process, but rather release from unlawful detention,
7 where removal is not reasonably foreseeable.

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

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

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

22 As the above-cited authorities show, Petitioner is likely to succeed on her
23 claim that the current detention is unlawful. And, at the very minimum, she clearly
24 raises serious questions regarding this issue, thus also meriting a TRO. *See*
25 *Alliance for the Wild Rockies*, 632 F.3d at 1135.
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2. Petitioner Will Suffer Irreparable Harm Absent Injunctive Relief

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

As detailed *supra*, Petitioner contends that her continued detention violates

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

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

6 **3. The Balance of Equities and the Public Interest Favor** 7 **Granting the Temporary Restraining Order**

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

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

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

22 A temporary restraining order is in the public interest. First and most
23 importantly, “it would not be equitable or in the public’s interest to allow [a party]
24 . . . to violate the requirements of federal law, especially when there are no adequate
25 remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th
26 Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.
27 2013)). If a temporary restraining order is not entered, the government would
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1 effectively be granted permission to detain Petitioner in violation of the
2 requirements of Due Process. “The public interest and the balance of the equities
3 favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream*
4 *Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also*
5 *Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that
6 ensures that individuals are not deprived of their liberty and held in immigration
7 detention because of bonds established by a likely unconstitutional process.”); *cf.*
8 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public
9 interest concerns are implicated when a constitutional right has been violated,
10 because all citizens have a stake in upholding the Constitution.”).

11 Therefore, the public interest overwhelmingly favors entering a temporary
12 restraining order and preliminary injunction.

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

14 Recent federal court decisions confirm that Respondents’ reliance on §
15 1225(b)(2) to detain Petitioner without a bond hearing is unlawful. In *Cuevas*
16 *Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025), the
17 district court expressly distinguished *Matter of Yajure Hurtado*, it rejected its
18 sweeping application of § 1225(b)(2) and held that noncitizens apprehended in the
19 interior after long residence in the United States are properly detained under §
20 236(a), not § 1225(b)(2). *Cuevas Guzman* reaffirmed the longstanding rule that
21 entry without inspection does not permanently bar a person from eligibility for bond
22 once they are living in the country. That holding directly applies here.

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

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

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

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

21 Similarly, in *Beltrán Barrera v. Tindall*, No. 3:25-cv-541 (W.D. Ky. Sept.
22 19, 2025), the court held that DHS's blanket application of § 1225(b)(2) to
23 individuals apprehended years after entering the United States was contrary to the
24 statutory text and structure of the INA. The court emphasized that Congress
25 intended § 1225 to govern only applicants for admission encountered at the border,
26 and it therefore ordered the petitioner's release under § 1226(a)

27 Finally, in *Benítez-Cornejo v. Cantu*, No. CV-25-03672-PHX-JJT (ESW) (D.
28

1 Ariz. 2025), the District of Arizona granted habeas relief on the same statutory
2 question presented here, holding that individuals arrested in Arizona after years of
3 residence fall under § 1226(a) and must receive individualized bond hearings. The
4 court rejected DHS's reliance on *Yajure Hurtado* as inconsistent with the Ninth
5 Circuit's due-process jurisprudence and the statutory framework of the INA

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

- 10 • **First Circuit:** *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025)
11 (expressly disagreeing with BIA's analysis in *Yajure Hurtado*); *Jimenez v.*
12 *FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Doe v.*
13 *Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025); *Romero v. Hyde*, 2025
14 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 2025 WL 2084238
15 (D. Mass. July 24, 2025); *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass.
16 Aug. 14, 2025); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025).
- 17 • **Second Circuit:** *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y.
18 Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025).
- 19 • **Fourth Circuit:** *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug.
20 24, 2025).
- 21 • **Fifth Circuit:** *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27,
22 2025).
- 23 • **Sixth Circuit:** *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich.
24 Sept. 9, 2025) (rejecting BIA's analysis in *Yajure Hurtado*); *Lopez-Campos*
25 *v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025).
- 26 • **Eighth Circuit:** *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb.
27
28

1 Sept. 3, 2025); *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept.
2 3, 2025); *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept. 3, 2025);
3 *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025); *Jacinto v.*
4 *Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Maldonado v. Olson*,
5 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Garcia Jimenez v. Kramer*,
6 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, 2025 WL
7 2374224 (D. Neb. Aug. 14, 2025).

- 8 • **Ninth Circuit:** *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal.
9 Sept. 9, 2025). *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal.
10 Sept. 3, 2025). *Vasquez Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal.
11 Sept. 3, 2025). *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal.
12 Aug. 15, 2025). *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11,
13 2025).

14 Because multiple courts have already recognized the unlawfulness of DHS's
15 reliance on § 1225(b)(2) to deny bond hearings. Petitioner's claim for relief thus
16 aligns with an established and growing consensus.
17

18 **IV. CONCLUSION**

19 For all the above reasons, this Court should find that Petitioner warrants a
20 temporary restraining order and a preliminary injunction ordering that Respondents
21 (1) release her from her unlawful custody; and (2) refrain from sending her to any
22 place outside of the United States.

23 Dated: December 2nd, 2025,

Respectfully submitted,

24
25 /s/ Siovhan Ayala

26 Siovhan Ayala
27 Attorney for Petitioner-Plaintiff
28