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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Victor Arnulfo VILLAFAN-AGUILAR,

Petitioner

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,

TODD LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement,

JOHN CANTU, in his official capacity as ICE  
Field Officer Director,

JOHN DOE, in his official capacity as the  
warden of the Florence Immigration Detention  
Facility,

PAMALA BONDI, in her official capacity as  
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs  
Enforcement.

Respondents

Civil No.: **2:25-cv-04554-SMB--JFM**

EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER

IMMIGRATION HABEAS CASE

1 **PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

2 Petitioner respectfully moves this Court, pursuant to Fed. R. Civ. P. 65(b), for an Emergency  
3 Temporary Restraining Order ordering the immediate release of Petitioner and enjoining Immigration  
4 and Customs Enforcement (ICE) and the Executive Office for Immigration Review (EOIR), and their  
5 officers and agents, from taking any further action in Petitioner's removal proceedings until this Court  
6 adjudicates Petitioner's Verified Petition for Habeas Corpus Relief.  
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8 A TRO is necessary because EOIR scheduled an individual hearing date within the response  
9 and reply deadline for the habeas petition.

10 **I. INTRODUCTION**

11 Petitioner entered the United States over a decade ago and entered the United States without  
12 inspection. Ex. 1. Petitioner is a native and citizen of Mexico. *Id.* Petitioner was arrested during a  
13 routine traffic stop by ICE. Ex. 2. Petitioner has one criminal conviction of disorderly conduct.<sup>1</sup> *Id.*  
14 Upon information and belief, Petitioner has a U.S. citizen child.  
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16 Soon after his arrest, Petitioner was moved, upon information and belief, to Wyoming and had  
17 an immigration proceedings scheduled in Las Vegas, Nevada. Ex. 1. Petitioner was soon after moved  
18 to Florence, Arizona and had his immigration proceedings moved to Arizona. Exs. 3 and 4. Petitioner  
19 had a Master Calendar Hearing on December 19, 2025 and had an individual merits hearing scheduled  
20 for January 29, 2026.  
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22 Under 8 U.S.C. § 1226(a), aliens who have been apprehended within the United States and  
23 placed in removal proceedings—other than arriving aliens—are generally eligible for a bond  
24 redetermination before an immigration judge. This statutory framework authorizes immigration  
25 officers to initially arrest and detain such individuals pending the outcome of their removal  
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28 <sup>1</sup> Petitioner's conviction is a plea in abeyance, however, a plea in abeyance is a conviction for immigration purposes. 8 U.S.C. § 1101(a)(48)(A).

1 proceedings, while also permitting release on bond or conditional parole based on a discretionary  
2 custody determination. These provisions apply to noncitizens who have been living within the United  
3 States, including those who entered without inspection or overstayed a lawful admission, and are  
4 designed to provide a neutral review of custody decisions. During this process, the individual may  
5 request a bond hearing before an immigration judge, who evaluates factors such as flight risk and  
6 danger to the community. If the immigration judge determines that release is appropriate, the judge  
7 may set bond or impose conditions of supervision. Importantly, this bond-redetermination mechanism  
8 does not extend to arriving aliens, who remain subject to the separate parole framework under 8 U.S.C.  
9 § 1182(d)(5), underscoring the distinct detention and release provisions applicable to different  
10 categories of noncitizens.  
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12  
13 Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225 (BIA 2025), the Department of Justice  
14 has taken the position that certain individuals who entered the United States without inspection (EWI)  
15 may be classified as “arriving aliens” for custody purposes, despite their physical presence in the  
16 interior. In that decision, the Board interpreted the regulatory definition of an arriving alien to include  
17 noncitizens encountered after having crossed the border without lawful admission, reasoning that such  
18 individuals have not been formally admitted and therefore remain applicants for admission under 8  
19 U.S.C. § 1225. This interpretation allows DHS to process these individuals under the same detention  
20 framework applicable to arriving aliens, placing them in a category that is traditionally ineligible for  
21 bond redetermination by an immigration judge. As a result, individuals who EWI may be treated as  
22 subject to the mandatory detention and parole-only release scheme, rather than the discretionary bond  
23 review available to most non-arriving respondents. Importantly, this reading highlights DOJ’s  
24 expansive view of the arriving-alien classification and its impact on custody jurisdiction within removal  
25 proceedings.  
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1 Under longstanding statutory and regulatory frameworks, the Board of Immigration Appeals'  
2 interpretation in *Matter of Hurtado*—classifying individuals who entered without inspection as  
3 “arriving aliens”—is clearly erroneous because it conflicts with both the plain text of the Immigration  
4 and Nationality Act and the structure of the custody regulations. The INA expressly distinguishes  
5 between “arriving aliens,” who present themselves at a port of entry, and individuals apprehended *after*  
6 entering the United States, who are instead treated as applicants for admission under 8 U.S.C. §  
7 1225(a)(1) but are processed under the detention authority of 8 U.S.C. § 1226(a). The regulations  
8 reinforce this distinction by defining an arriving alien as one who is “coming to the United States” at a  
9 port of entry, not someone already present in the interior. By collapsing these categories, the BIA’s  
10 interpretation disregards decades of regulatory practice and nullifies the purpose of § 1226(a), which  
11 is to provide a bond mechanism for individuals apprehended inside the country. Moreover, the BIA’s  
12 reading produces absurd and untenable results—effectively rendering non-arriving-alien custody  
13 jurisdiction meaningless and undermining the statutory right to seek bond redetermination before an  
14 immigration judge. This demonstrates that the Board’s expansive interpretation cannot be reconciled  
15 with the statutory text, regulatory definitions, or the broader scheme Congress enacted.

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19 Petitioner is a member of the “Bond Eligible Class” certified in *Maldonado Bautista v.*  
20 *Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025) (class certification order), 2025  
21 WL 3288403. That class includes all noncitizens who entered the United States without inspection  
22 (“EWI”), were not apprehended at the time of entry, and are not subject to mandatory detention under  
23 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. Petitioner meets each of these criteria. Although Petitioner  
24 has not yet applied for bond, doing so would be futile because the Department of Justice, which  
25 oversees the immigration courts, is unlawfully failing to follow the *Maldonado Bautista* decision and  
26 is systematically denying bond to members of the Bond Eligible Class. This ongoing refusal to comply  
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1 with the class-wide order constitutes an unlawful detention in violation of 8 U.S.C. § 1226(a) and the  
2 Due Process Clause.

3 Because of the Department of Justice’s and DHS’s positions in *Matter of Hurtado* and *Matter*  
4 *of Q Li*, 29 I.&N. Dec. 66 (BIA 2025), it is effectively futile for individuals who entered without  
5 inspection to seek bond redetermination, as the policies in these cases dictate automatic ineligibility for  
6 arriving aliens. Under these interpretations, aliens who EWI are treated as arriving aliens for custody  
7 purposes, placing them squarely within the mandatory detention and parole-only framework of 8  
8 U.S.C. § 1225(b) and outside the discretionary bond review afforded to non-arriving respondents under  
9 § 1226(a). Consequently, any attempt to request bond would almost certainly be denied by DHS, and  
10 an immigration judge would lack jurisdiction to override this classification. In practice, this means that,  
11 as petitioner is an EWI, pursuing a bond application would be a fruitless exercise under current DOJ  
12 and DHS policy, and relief from detention must instead be sought through habeas actions.

13 Pursuant to *Loper Bright Enterprises v. Raimondo*, 603 U.S. \_\_\_ (2024), the Supreme Court  
14 held that federal courts must “exercise independent judgment” when interpreting statutes and may no  
15 longer defer to an agency’s reasonable interpretation simply because a statute is ambiguous. Under this  
16 ruling, the BIA’s prior interpretations—such as in *Matter of Hurtado* or *Matter of Q. Li*—cannot  
17 automatically command deference, particularly if those decisions rest on unexplained or arbitrary  
18 reasoning. By abolishing Chevron deference, *Loper Bright* empowers reviewing courts to scrutinize  
19 BIA policy choices on their merits, rather than rubber-stamping agency interpretations.

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23 **II. LEGAL STANDARD**

24 A Temporary Restraining Order (TRO) is an extraordinary remedy, but it is warranted when  
25 the movant satisfies the four-part standard set forth by the Supreme Court. To obtain a TRO, the  
26 plaintiff must show:  
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28

- 1 1. A likelihood of success on the merits,
- 2 2. Irreparable harm in the absence of relief,
- 3 3. The balance of equities favors the movant, and
- 4 4. The injunction is in the public interest.

5 *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139,  
6 156 (2010).

7  
8 Likelihood of success on the merits requires that the plaintiff demonstrate that it is “more likely  
9 than not” that the legal claim will prevail. Irreparable harm exists when the injury cannot be adequately  
10 remedied by money damages or other legal relief. *Winter*, 555 U.S. at 20.

11  
12 Balance of equities requires weighing the harm to the plaintiff against any potential harm to the  
13 defendants from issuance of a TRO. *Winter*, 555 U.S. at 24.

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15 Public interest favors compliance with statutory and regulatory requirements respecting the due  
16 process of all in the United States.

### 17 **III. ARGUMENT**

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19 Plaintiff is entitled to a Temporary Restraining Order because all four factors for injunctive  
20 relief are met: (1) likelihood of success on the merits, (2) irreparable harm, (3) balance of equities, and  
21 (4) public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008); *Monsanto Co. v. Geertson Seed Farms*,  
22 561 U.S. 139, 156 (2010).

#### 23 **A. Plaintiff Is Likely to Succeed on the Merits**

##### 24 **i. Respondent’s Refusal to Issue a Bond for Petitioner Violates Petitioner’s Due Process**

25  
26 The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the federal  
27 government from depriving any person of “life, liberty, or property, without due process of law.” U.S.  
28 Const. Amend. V. Due process protects “all ‘persons’ within the United States, including [non-

1 citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533  
2 U.S. at 693.57.

3 Here, the petitioner is being deprived of due process because DHS and DOJ categorically refuse  
4 to provide him a bond hearing, despite his placement in removal proceedings and the absence of any  
5 statutory bar to custody review. Under the INA, noncitizens in § 1226(a) proceedings are entitled to an  
6 individualized bond determination before a neutral adjudicator, and the Supreme Court has emphasized  
7 that civil immigration detention must include adequate procedural safeguards to satisfy the Fifth  
8 Amendment. Nevertheless, DHS has classified the petitioner as an “arriving alien” under *Matter of*  
9 *Hurtado* and *Matter of Q. Li* solely because he entered without inspection, and DOJ has adopted the  
10 position that immigration judges lack jurisdiction to review his custody. As a result, petitioner is denied  
11 the opportunity to be heard on whether his detention is justified—an essential element of due process  
12 under *Mathews v. Eldridge*, which requires meaningful notice and a fair opportunity to challenge  
13 government action. 424 U.S. 319 (1976). By withholding any mechanism for custody review, DHS and  
14 DOJ have effectively imposed indefinite civil confinement without the procedural protections the  
15 Constitution demands, rendering petitioner’s continued detention a clear violation of the Fifth  
16 Amendment.  
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20 ii. Respondent’s Refusal to Issue a Bond for Petitioner Violates the Immigration and  
21 Nationality Act

22 The Immigration and Nationality Act (INA) sets forth specific circumstances under which the  
23 federal government may detain noncitizens. Under 8 U.S.C. § 1225(b)(1), arriving aliens may be  
24 detained pending a determination of admissibility, and under 8 U.S.C. § 1226(a), the Attorney General  
25 may take into custody aliens who are already in removal proceedings. Additionally, 8 U.S.C. § 1226(c)  
26 mandates detention for certain criminal aliens during removal proceedings. Once an alien is no longer  
27 subject to expedited removal, has completed credible fear proceedings, or does not fall within one of  
28

1 these statutory categories, the INA provides no authority for continued detention. *Zadvydas v. Davis*,  
2 533 U.S. 678, 682 (2001); *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018).

3 Matter of *Hurtado* impermissibly expands the definition of “arriving alien” beyond the limits  
4 established by Congress, and therefore cannot serve as a basis to deny petitioner a bond hearing. The  
5 INA expressly distinguishes between individuals seeking admission at the border and those  
6 apprehended inside the United States, assigning the former to the § 1225(b) detention framework and  
7 the latter to the discretionary custody-and-bond provisions of § 1226(a). By collapsing these categories  
8 and treating entry-without-inspection as functionally equivalent to presenting at a port of entry,  
9 *Hurtado* rewrites the statutory scheme and nullifies Congress’s deliberate decision to afford bond  
10 eligibility to non-arriving respondents. Because agency interpretations that contradict clear statutory  
11 text are invalid, DOJ and DHS cannot rely on *Hurtado* to deprive petitioner of custody review.  
12 Accordingly, petitioner must be placed within the statutory framework that governs his actual  
13 circumstances—§ 1226(a)—and afforded an individualized bond hearing before a neutral adjudicator,  
14 as the INA requires.

15  
16  
17 Because the petitioner does not fall within any statutory basis for mandatory detention under  
18 the INA, his continued confinement is ultra vires, and he should be given a bond hearing immediately.

19  
20 A. Plaintiff Will Suffer Irreparable Harm

21 As an individual currently present in the United States for over ten years with a U.S. citizen  
22 child, Petitioner is prima facie eligible for EOIR-42B Cancellation of Removal. 8 U.S.C. § 1229b(b)(1).  
23 Cancellation of removal requires a high bar of evidence to show exceptional and extremely unusual  
24 hardship on the applicant’s qualifying relatives. *Id.* at (b)(1)(D). Further, ample evidence must be  
25 provided of the applicant’s physical presence in the United States and good moral character. *Id.* at  
26 (b)(1)(A) and (B).  
27  
28

1 Given the expedited timing of a detained docket in immigration court, petitioner has only  
2 twenty-seven days to prepare his petition for relief. Given that this Court issued a deadline of twenty  
3 days after the delivery of the Habeas Petition (mailed December 12, 2025)<sup>2</sup> and ten days for Petitioner  
4 to respond, it is impossible for this Court to decide on the habeas petition prior to the filing deadline of  
5 the application for relief from removal. Further, it would be extremely difficult for Petitioner to  
6 adequately assist in his defense from a detention facility over six hundred miles away from his chosen  
7 counsel.

8  
9 Further, Petitioner's Merits hearing is scheduled on the 29<sup>th</sup> of January, 2026. It is highly  
10 unlikely that Petitioner would have his habeas petition decided prior to that date, which would render  
11 this habeas petition moot creating an irreparable harm for Petitioner. Finally, as petitioner is currently  
12 being held without bond unlawfully, any further detention of Petitioner, under his due process rights,  
13 would be an irreparable harm. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (affirming that  
14 unconstitutional detention and deprivation of constitutional rights constitutes irreparable harm).  
15

16 **B. The Balance of Equities Favors Plaintiff**

17 Any temporary restraint on the government requiring Petitioner's release from detention—or,  
18 at minimum, a constitutionally adequate bond hearing—would impose minimal, if any, burden on  
19 Respondents. The government routinely releases noncitizens on bond or conditions of supervision, and  
20 it retains ample authority to monitor compliance and ensure appearance at future proceedings.  
21 Releasing a bond-eligible detainee pending resolution of this Court's review does not undermine the  
22 government's enforcement interests, particularly where detention is not statutorily mandated and where  
23 Petitioner has demonstrated eligibility for bond under the governing law.  
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<sup>2</sup> See Ex. 6.

1 In stark contrast, Petitioner faces immediate and irreparable harm from continued detention that  
2 violates both statutory and constitutional requirements. Unlawful deprivation of liberty constitutes  
3 irreparable injury in and of itself. Each additional day of unconstitutional detention inflicts harm that  
4 cannot be remedied after the fact, including the loss of physical liberty, interference with the ability to  
5 consult with counsel, prepare his case, and maintain family and community ties.  
6

7 Courts have repeatedly recognized that where a noncitizen is eligible for bond but is denied  
8 release through procedures that violate due process or governing law, the balance of equities strongly  
9 favors the detainee. Freedom from physical restraint lies at the core of the liberty protected by the Due  
10 Process Clause, and continued detention without lawful justification or adequate procedural safeguards  
11 is precisely the type of harm warranting equitable relief. *See Zadvydas v. Davis*, 533 U.S. 678, 690  
12 (2001).  
13

14 Moreover, the government's continued detention of Petitioner—despite his bond eligibility and  
15 the absence of any individualized finding that detention is necessary—serves no legitimate  
16 governmental interest. Where detention is imposed categorically or contrary to controlling law, the  
17 government cannot claim harm from being required to comply with constitutional and statutory limits  
18 on its authority. Any speculative administrative inconvenience is far outweighed by the profound  
19 liberty interests at stake.  
20

21 Accordingly, the balance of equities decisively favors Petitioner. The government suffers little  
22 to no harm from releasing a bond-eligible individual or providing a lawful bond determination, while  
23 Petitioner suffers ongoing, irreparable injury each day he remains unconstitutionally detained. This  
24 imbalance compels judicial intervention to prevent further deprivation of Petitioner's fundamental  
25 rights.  
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1           C. The Public Interest Supports a TRO

2           The public interest strongly favors adherence to the Constitution, federal statutes, and governing  
3 regulations that limit the government's authority to detain noncitizens and require individualized bond  
4 determinations where detention is not mandatory. Ensuring that immigration authorities comply with  
5 due process and statutory bond eligibility provisions serves the public's interest in lawful governance  
6 and the fair administration of the immigration system.

7  
8           Permitting the government to continue detaining a bond-eligible individual through procedures  
9 that violate constitutional and statutory requirements undermines both the rule of law and public  
10 confidence in the integrity of immigration enforcement. Detention that exceeds lawful authority or  
11 denies meaningful procedural protections is not merely a private harm; it is a public one. The public  
12 has a strong interest in ensuring that executive agencies do not circumvent legal safeguards designed  
13 to prevent arbitrary or prolonged deprivation of liberty.

14  
15           The public interest is further served when courts intervene to prevent unlawful detention and to  
16 preserve meaningful judicial review of constitutional claims. Continued detention in violation of due  
17 process frustrates the judiciary's ability to remedy ongoing constitutional harm and risks normalizing  
18 unlawful practices that affect not only Petitioner, but similarly situated detainees. By contrast, ordering  
19 Petitioner's release—or, at minimum, requiring a constitutionally adequate bond determination—  
20 promotes compliance with the law while preserving the government's legitimate enforcement interests.

21  
22           Accordingly, releasing a bond-eligible individual from unconstitutional detention aligns with  
23 the public interest in protecting fundamental liberty interests, upholding due process, and ensuring that  
24 immigration authorities operate within the bounds set by Congress and the Constitution. Judicial  
25 intervention here reinforces the principle that no person may be deprived of liberty without lawful  
26 justification and meaningful procedural safeguards, a principle that lies at the core of our legal system.

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1 **IV. CONCLUSION**

2 Because all four TRO factors are satisfied—likelihood of success, irreparable harm, favorable  
3 balance of equities, and public interest—Plaintiff respectfully requests that the Court:

- 4 1. Order Respondents to release Petitioner immediately while the Habeas Corpus petition is being  
5 adjudicated or, in the alternative, order an immediate bond hearing for Petitioner;  
6  
7 2. Issue an immediate Temporary Restraining Order enjoining Respondents from continuing his  
8 removal proceedings until the Habeas Corpus petition can be adjudicated; and  
9  
10 3. Schedule a prompt hearing on a preliminary injunction.

11 **PRAYER FOR RELIEF**

12 For the foregoing reasons, Plaintiff respectfully requests that the Court:

- 13 1. Order Respondents to release Petitioner immediately while the Habeas Corpus petition is being  
14 adjudicated or, in the alternative, order an immediate bond hearing for Petitioner;  
15  
16 2. Issue an immediate Temporary Restraining Order enjoining Respondents from continuing his  
17 removal proceedings until the Habeas Corpus petition can be adjudicated; and  
18  
19 3. Schedule a prompt hearing on a preliminary injunction;  
20  
21 4. Grant any other relief the Court deems just and proper.

22 DATED: December 8, 2025

23 Respectfully submitted,

24 /S/ ALEC S. BRACKEN  
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of December, 2025, a true and correct copy of the foregoing Amended Complaint for Declaratory and Injunctive Relief was served on the following parties in accordance with the Federal Rules of Civil Procedure:

**U.S. DOJ District of Arizona**  
40 N Central Ave. #1800  
Pheonix, AZ 85004

**Via USPS Overnight Mail**

DATED: December 19, 2025

Respectfully submitted,

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