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Attorney for Petitioner

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PEDRO GARCIA DUARTE)	Case No.: 5:25-cv-03319-SPG-KES
)	
<i>Petitioner,</i>)	
)	
v.)	PETITIONER’S MOTION
)	FOR TEMPORARY
<i>WARDEN OF ADELANTO DETENTION</i>)	RESTRAINING ORDER AND
<i>FACILITY, et al.,</i>)	IMMEDIATE RELEASE
)	
)	
<i>Respondents.</i>)	
)	

INTRODUCTION

Petitioner, Pedro Garcia Duarte, by and through his counsel, Alfonso Morales, hereby moves this honorable Court for a Temporary Restraining Order (“TRO”) pursuant to Federal Rule of Civil Procedure 65, enjoining the Respondents from continuing to detain him unlawfully and ordering his immediate release from immigration custody. This emergency relief is necessary to prevent imminent and irreparable harm to Petitioner’s life, physical safety, and constitutional rights.

The Petitioner suffers from severe, urgent and ongoing medical conditions that include the need for continued management of a gastric bag and a scheduled colorectal surgery originally

set for November 24, 2025, that requires uninterrupted specialized medical care. Since his detention on November 2, 2025, the Petitioner has been repeatedly taken in and out of hospitals due to his deteriorating medial state. Petitioner was medically unable to attend his master hearing, and his case was continued until February 5, 2025. His detention has resulted in dangerous lapses in treatment and places him at imminent risk of irreversible harm.

Despite being fully informed of Petitioner's medial fragility, ICE denied his November 11, 2025, request for Humanitarian Parole without explanation. [*See, Exhibit C: Denial of Humanitarian Parole Request*]. In addition, on December 2, 2025, the Immigration Judge denied Petitioner's bond redetermination request without a hearing, claiming lack of jurisdiction. [*See, Exhibit D: "Denial of Bond/Custody Redetermination Request"*]. Petitioner has exhausted every avenue available through ICE and EOIR.

Petitioner also intends to file an application for Cancellation for Removal under §240A(b) based on his U.S. citizen minor son, who has high support needs autism and depends heavily on Petitioner for daily functioning. His blind wife and autistic child have now been left without the support they desperately require.

Respondents continue to detain Petitioner under unlawful circumstances following his warrantless and improper apprehension by officers in an unmarked vehicle dressed in military-style attire who did not identify themselves.

Given petitioner's fragile health, his inability to receive adequate treatment while detained, and ICE's refusal to release him through ordinary administrative channels, this matter presents an extreme medical and humanitarian emergency warranting the intervention of this Court.

LEGAL STANDARD

Under Fed. R. Civ. P. 65, a temporary restraining order is warranted where the movant “establishes a likelihood of success on the merits, irreparable harm in the absence of preliminary relief, that the balance of equities tips in the movant’s favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are “substantially identical”).

The Ninth Circuit also recognized that a TRO may be issued where “serious questions going to the merits [are] raised and the balance of hardships tips sharply in his favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (second alteration in original) (citation omitted). To succeed under the “serious question” test, Petitioner must also show that he is likely to suffer irreparable injury and that an injunction is in the public’s interest. *Id.* at 1132

ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

1. Petitioner’s Continued Detention Violates the INA and Due Process

Petitioner is detained under 8 U.S.C. §1226(a), which requires an individualized custody determination and affords jurisdiction to the Immigration Judge to conduct a bond hearing. ICE’s position that the Immigration Judge lacks jurisdiction is legally incorrect and has resulted in Petitioner’s detention without the procedural safeguards mandated by statute.

Petitioner is likely to succeed on the merits of his habeas petition because Respondents are detaining him under the wrong statutory framework, depriving him of the procedural

protections Congress guaranteed under §1226(a) and violating the Due Process Clause of the Fifth Amendment.

Petitioner was arrested inside the United States, issued a Notice to Appear, and placed directly into full removal proceedings under § 1229a. Under *Jennings v. Rodriguez*, § 1226 governs the detention of individuals already present in the United States in §240 proceedings, while § 1225(b) applies primarily to individuals seeking entry. 583 U.S. 830, 288–303 (2018). Petitioner was never inspected at a port of entry, never placed in expedited removal, and therefore cannot be subjected to § 1225(b)'s mandatory-detention scheme.

Courts addressing nearly identical facts have uniformly held that individuals arrested in the interior are detained under § 1226(a), not § 1225(b). See, e.g., *Mosqueda*, 2025 WL 2591530, at *6; *Salazar*, 2025 WL 2676729, at *4; *Buenrostro-Mendez*, 2025 WL 2886346, at *3. The Central District of California's TRO in *Maldonado Bautista v. Santacruz* confirmed this statutory framework and enjoined DHS from misclassifying interior-arrest individuals as § 1225(b) detainees. The court extended its conclusions to the broader Bond Eligible Class, which includes individuals, like Petitioner, who entered without inspection, were not apprehended at arrival, and are not otherwise subject to mandatory detention.

Respondents' misclassification has denied Petitioner the individualized bond hearing required under § 1226(a)'s discretionary structure. Prolonged detention without such a hearing raises serious due process concerns. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). Petitioner has lived in the United States since on or around 1985, has strong family and community ties, has no criminal history, and has submitted extensive evidence demonstrating he is neither a danger nor a flight risk. Had DHS followed the correct statutory framework, he would have been entitled to seek release before a neutral adjudicator.

Petitioner is very likely to succeed on the merits of his habeas petition because Respondents lack statutory and constitutional authority to continue detaining Petitioner without a § 1226(a) bond hearing,

B. Petitioner Faces Immediate and Irreparable Harm

Parties seeking a TRO must also show they are “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Irreparable harm exists where a petitioner faces serious medical deterioration or death in the absence of immediate court intervention constitutes the necessary showing of irreparable harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir 2012). Irreparable harm is also established where a preliminary injunction is necessary to preserve the health of someone in a detention setting. *See, e.g., Jones v. Texas Dept of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018). Courts further acknowledge that this harm is especially acute for individuals who are elderly or who have underlying medical conditions. *See United States v. Martin*, No. 19 Cr. 140-13, 2020 WL 1274857, at *2 (D. Md. Mar. 17, 2020) (explaining that the Due Process Clause is implicated where pretrial detainees face conditions that expose them to serious or potentially fatal illness, particularly when they are elderly or medically vulnerable). This principle is consistent with longstanding precedent recognizing that the deprivation of essential medical care constitutes irreparable harm. *Mayer v. Wing*, 922 F. Supp. 902, 909 (S.D.N.Y. 1996) (“[T]he deprivation of life-sustaining medical services . . . certainly constitutes irreparable harm.”).

The Petitioner requires daily management of a gastric bag, access to specialized follow-up care, and urgent colorectal surgery originally scheduled for November 24, 2025. [See, **Exhibit A**: “Copy of County of Los Angeles Colorectal Surgery Appt.”]. He also had a urology on December 12, 2025. [See, **Exhibit B**: “Copy of County of Los Angeles Urology Appt.”]. The petitioner faces ongoing and rapidly escalating medical harm that warrants immediate injunctive relief. Irreparable harm is presumed where denial of adequate medical care places an individual at risk of serious injury or death. Petitioner’s medical conditions, including the need for colorectal surgery and gastric bag management, cannot be safely met in detention. Delays and interruptions in treatment may cause irreversible damage or fatal complications.

Since entering ICE custody, Petitioner was in the west medical unit at Adelanto detention center, then his condition deteriorated, and he was sent to Los Angeles General Medical Center, where he was originally being treated. After a few weeks, his condition improved and was sent back to detention. We just found out that he is currently at the west wing medical unit in the Adelanto Detention Center, which shows that his condition is deteriorating again. Additionally, he was determined to be medically unable to attend his immigration hearing, which was pushed to February 5, 2025. Petitioner at imminent risk of irreversible harm and even death as he is experiencing serious medical harm that cannot be remedied after the fact and therefore constitute irreparable harm warranting immediate emergency relief.

In addition, Petitioner’s unlawful detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); cf. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where “preliminary injunction is necessary to ensure that

individuals . . . are not needlessly detained” because they are neither a danger nor a flight risk). This is particularly true here, where Petitioners' detention also violates the Constitution. Civil immigration detention violates due process outside of “certain special and narrow nonpunitive circumstances.” *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted).

As detailed above, Petitioners' detention falls outside those circumstances because he is detained under § 1226(a) yet has been denied the individualized custody determination that statute requires. The Due Process Clause prohibits such detention where the government has failed to provide a constitutionally adequate bond process, and the ongoing deprivation of a meaningful opportunity to seek release renders his confinement unlawful. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated irreparable harm, for he has shown that his detention violates both the statute and the Constitution. *See Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm”).

Detention also inflicts substantial harm on Petitioner by separating him from his family members. Absent a TRO, Petitioner has no hope of being reunited with family. Such “separation from family members” is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); see also, e.g., *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding “separated families” to be a “substantial injur[y] and even irreparable harm[.]”); cf. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (recognizing that “government-compelled [family] separation” causes family members “trauma” and “other burdens”).

In sum, Petitioner is suffering numerous and irreparable harms: urgent medical harm, detention itself, separation from his family. All of these circumstances warrant granting the TRO.

C. The Balance of Equities and Public Interest Decisively Favor Granting the TRO

The final two factors for a preliminary injunction, the balance of hardships and public interest “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Here, Petitioner faces weighty hardships: urgent medical issues or fatal complications, loss of liberty, separation from his blind spouse, and autistic son. The harm to Petitioner of potential loss of life or permanent disability far outweighs any burden on Respondents. Releasing Petitioner under appropriate supervision poses no meaningful risk to the government. The government, by contrast, faces no hardship, as all it must do is release a person who is legally entitled to release. Avoiding such “preventable human suffering” strongly tips the balance in favor of Petitioner. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

In addition, Petitioner's detention “is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); see also *Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in *Moreno II* and quoting approvingly district judge's declaration that “it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue”). This is because “it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v.*

Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted).

Indeed, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*, 715 F.3d at 1145. “The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal bond] process.” *Hernandez*, 872 F.3d at 996.⁴ The public interest is served when the government complies with constitutional and statutory requirements and avoids inflicting needless harm on individuals with serious medical conditions.

The balance of equities overwhelmingly favors Petitioner. Granting relief imposes minimal burden on the Government, while denying relief exposes Petitioner to ongoing unlawful detention and escalating medical risks. He presents no risk of flight and would have been a strong candidate for release had DHS not improperly denied him access to an individualized bond hearing under § 1226(a). In contrast, each additional day in detention threatens further deterioration of his health, including the risk of loss of life or permanent disability. The equities clearly weigh in Petitioner’s favor.

The public interest also supports granting a TRO. The public has a strong and well-recognized interest in ensuring that immigration detention remains lawful, humane, and consistent with statutory and constitutional limits. Public interest is not served by permitting DHS to detain individuals under an improper statutory framework or to expose them to preventable medical harm. Nor is it served by withholding the bond procedures Congress expressly established in § 1226(a). Ensuring access to due process, preventing unnecessary medical risk, and enforcing the statutory limits on civil immigration detention are all firmly aligned with public policy.

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents comply with federal law and release Petitioner.

REQUEST FOR RELIEF

For the reasons stated above, Petitioner respectfully requests that this Court:

1. Issue a Temporary Restraining Order immediately releasing Petitioner from ICE custody or
2. In the alternative, order that Petitioner receive a bond hearing within 48 hours before a neutral adjudicator;
3. Grant any additional relief the Court deems just and proper

CONCLUSION

Petitioner's life and health are in immediate jeopardy. Respondent's have failed to provide a lawful custody review, adequate medical care, or any meaningful process. A Temporary Restraining Order is necessary to prevent irreparable harm and to restore Petitioner's constitutional and statutory rights. For the foregoing reasons, Petitioner requests that the Court grant temporary restraining order, enjoining Respondents from further harming Petitioner and ordering Respondents to immediately release him from ICE custody or in the alternative, order that Petitioner receive a bond hearing within 48 hours before a neutral adjudicator.

Dated this 14 day of December 2025.

Respectfully submitted,

/s/ Alfonso Morales
Alfonso Morales, Esq.

Attorney for Pedro Garcia Duarte

CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which constitutes service on all parties or counsel by electronic means as reflected on the Notice of Electronic Filing.

/s/Alfonso Morales

Alfonso Morales

Attorney for Pedro Garcia Duarte

**INDEX IN SUPPORT
OF TRO
FOR
PETITIONER: PEDRO GARCIA DUARTE
CASE NUMBER 5:25-cv-03319**

EXHIBIT	DOCUMENTS
A	COPY OF COUNTY OF LOS ANGELES COLORECTAL SURGERY APPOINTMENT FOR PETITIONER PEDRO GARCIA WITH ENGLISH TRANSLATION
B	COPY OF COUNTY OF LOS ANGELES UROGOLGY APPOINTMENT FOR PETITIONER PEDRO GARCIA WITH ENGLISH TRANSLATION
C	DENIAL OF HUMANITARIAN PAROLE REQUEST
D	DENIAL OF BOND/CUSTODY REDETERMINATION REQUEST

EXHIBIT C

Office of Enforcement and Removal Operations

U.S. Department of Homeland Security
10400 Rancho Road
Adelanto, CA 92301



**U.S. Immigration
and Customs
Enforcement**

Alfonso Morales
Law Offices of Alfonso Morales
8131 Rosecrans Ave, Suite 200
Paramount, CA 90723



In Reference to: Parole request for GARCIA Duarte, Pedro

Dear Mr. Morales,

After review of all the relevant facts in this case, it has been determined that your request has been denied.

Sincerely,

Ryan Smith
Assistant Field Office Director

RECEIVED DEC 08 2025

EXHIBIT D



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
ADELANTO IMMIGRATION COURT

Respondent Name:

GARCIA DUARTE, PEDRO

To:

Morales, Alfonso
8131 ROSECRANS AVE
SUITE 200
PARAMOUNT, CA 90723

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

12/02/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

Denied, because

The Court has considered the orders of the United States Federal District Court for the Central District of California. See *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order Granting Plaintiff-Petitioners' Motion for Class Certification, Order Granting Petitioners' Motion for Partial Summary Judgment). The orders of the federal district court judge include, inter alia, orders regarding class certification, and an order granting partial summary judgment and declaratory relief regarding a policy issued by the Department of Homeland Security (specifically, a July 8, 2025 notice titled, "Interim Guidance Regarding Detention Authority for Applicants for Admission"), which was created by the Department of Homeland Security for implementation by the Department of Homeland Security.

Respondent is charged as a noncitizen present in the United States without having been inspected and admitted or paroled, see Notice to Appear (dated 11/5/2025), and he does not meaningfully argue otherwise. This Court, based on its independent assessment of relevant law, regulations, statutes, and caselaw, as part of the Executive Office for Immigration Review, Department of Justice, determines that it lacks jurisdiction over the request for custody redetermination. See *Matter of YAJURE HURTADO*, 29 I&N Dec. 216 (BIA 2025).

Granted. It is ordered that Respondent be:

- released from custody on his own recognizance.
- released from custody under bond of \$
- other:

Other:



Immigration Judge: BARRETT, PATRICK 12/02/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved


Appeal Due: 01/02/2026

Certificate of Service

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To: [] Alien | [] Alien c/o custodial officer | [E] Alien atty/rep. | [E] DHS

Respondent Name : GARCIA DUARTE, PEDRO | A-Number : 

Riders:

Date: 12/03/2025 By: HILTON-CHAMBERLAIN, AMANDA, Court Staff