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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Carlos Johany Gomez-Molina,
Petitioner,

v.

Kristi Noem, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **Sirce Owen**, Acting Director of Executive Office for Immigration Review, in her official capacity; **Luis Rosa, Jr.,** Warden of the Central Arizona Florence Correctional Complex, in his official capacity;

Respondents.

Case No.
A No. [redacted]

PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

INTRODUCTION

Petitioner Carlos Johany Gomez-Molina respectfully moves this honorable Court for an *ex parte* temporary restraining order (TRO) or, in the alternative, for a preliminary injunction, requiring Respondents to immediately release him from his unlawful detention at Florence Correctional Center in Florence, Arizona or, in the alternative, schedule him for a bond hearing within three (3) days under 8 U. S. C. § 1 226, without regard to the holding

of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025)), filed with the Habeas Petition as Exhibit 2.

The Department of Homeland Security (DHS) recently changed its long-standing position with regard to bond hearings and the status of mandatory detention. *See,* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission, filed with the Habeas Petition as Exhibit 1. And the Bureau of Immigration Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all noncitizens present in the United States without admission – no matter how long they have resided here – are still "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2)(A). *See, Yajure Hurtado*, filed with the Habeas Petition as Exhibit 2.

But this interpretation of the Immigration and Naturalization Act (INA) violates both procedural and substantive Fifth Amendment protections, ignores the plain statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal Court decisions in this District that have rejected these exact arguments. *See e.g.* October 3, 2025 Order entered by District Court Judge Dominic W. Lanza, requiring Respondents to grant Petitioner, who had been present in the United States for 24 years, a "prompt bond hearing", saying that it " agrees with the majority of courts that have concluded that § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.") *See, Francisco Echevarria v. Pam Bondi, et al.,* CV-25-03252-PHX-DWL (ESW) (D. Ariz. 10/3/2025). (gathering cases), filed with the Habeas Petition as Exhibit 3.

Here, Petitioner has been living in the United States for more than 20 years and has 3 U.S. Citizen children, all born in Phoenix, Arizona. See, Petitioner's Exhibits Filed In

Support Of Bond Hearing, filed with the Habeas Petition as Exhibit 4. Although he was convicted of a DUI in 2013, he is without a repeat of this or any other criminal conduct since then. *See,* 8/27/2025 IJ Order filed with the Habeas Petition as Exhibit 10. Further, when Respondents issued a Notice to Appear, it identified Petitioner as an "alien present in the United States" despite "arriving alien" being an option. *See,* Petitioner's Notice to Appear, filed with the Habeas Petition as Exhibit 6.

Matter of Yajure Hurtado is not binding precedent this court. And the Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400 (2024), made clear that federal courts must independently interpret statutes and no longer defer under so-called "*Chevron* deference" to agency interpretations of statutes. Therefore, this Court is in the best position to determine whether Petitioner Fauser Reino Godinez-Juarez was improperly barred for consideration for release on bond.

MEMORANDUM OF LAW

I. STATEMENT OF FACTS.

Petitioner Carlos Johany Gomez-Molina was born on [redacted] in Chiapas, Mexico. *See,* Petitioner's Mexican Passport, the first exhibit to Petitioner's Exhibits in Support of Bond Hearing, filed with the Habeas Petition as Exhibit 4. He has been living in the United States for more than 20 years. *See*, 8/27/2025 IJ Order filed with the Habeas Petition as Exhibit 10. He has 3 U.S. Citizen children, all born in Phoenix, Arizona. *See,* Petitioner's Exhibits Filed In Support Of Bond Hearing, filed with the Habeas Petition as Exhibit 4. Petitioner was convicted of a DUI in 2013, but he has had no other criminal conduct since then. *See,* 8/27/2025 IJ Order filed with the Habeas Petition as Exhibit 10.

Respondents arrested Petitioner on June 23, 2025. *See,* Petitioner's Notice to Appear, filed with the Habeas Petition as Exhibit 5. The Notice to Appear identifies him as an "alien present in the United States" even though "arriving alien" was an alternate option. *Id.* He is currently detained by ICE at Florence Correctional Center in Florence, Arizona. *See,* 12/2/2025 ICE Locator Page for Petitioner , filed with the Habeas Petition as Exhibit 6.

II. LEGAL STANDARDS

To obtain a preliminary injunction, a plaintiff must establish: "(1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (*en banc*), citing *Winter v. Natural Resources Defense Council, Inc.,* 555 U.S. 7 at 20 (2008). The legal standards applicable to TROs and preliminary injunctions are "substantially identical.'" *Babaria v. Blinken*, 87 F. 4th 963, 976 (9th Cir. 2023), citing to *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017) (*per curiam*) (*quoting Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)).

The Court considers the elements on a "sliding scale" pursuant to the Ninth Circuit's "serious question" test. "A preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1134-35 (9th Cir. 2011) (*citing Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*)) (internal quotations omitted). Likelihood of success on the merits is the most important factor. Where a movant fails to meet this requirement, the "court need not consider the other factors in the absence of serious questions going to the

merits." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal citations and quotations omitted).

A. Petitioner Is Likely To Succeed On The Merits Of His Argument That He Is Wrongfully Detained Because He Is Not Subject To Mandatory Detention Under § 1225(B)(2).

DHS argues that Petitioner is subject to "mandatory detention" under § 1225 (b)(2)(A) by virtue of being an "applicant for admission" under § 1225 (a)(1), pursuant to a July 8, 2025 change in DHS policy. *See,* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed with the Habeas Petition as Exhibit 1. In essence, DHS now argue that *any* noncitizen not previously admitted to the United States is subject to mandatory detention, without the possibility of a bond hearing. However, Petitioner is likely to succeed on his claims that he is detained under 8 U.S.C. § 1226(a). He has been residing in the United States for almost 20 years, since he last entered the United States in 2005 and has never sought admission.

Further, the plain text of § 1226 demonstrates that its subsection (a) applies to Petitioner. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226 goes on to explicitly confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible. Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182) apply to those who have not been admitted to the United States. *See, e.g., Barton v. Barr, 590 U.S. 222, 234 (2020).*

While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens who may not be released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g., id.* § 1226(c)(1)(A), (C). Even if § 1226(a) did not cover inadmissible noncitizens—there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses.

Notably, recent amendments to § 1226 dramatically reinforce this argument. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See Laken Riley Act* (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that, by default, § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,* 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted," 8 U.S.C. § 1225(a)(1). Section 1226(a) covers those who are not now seeking admission but instead are already residing in the United States—including those who are charged with inadmissibility—while § 1225(b)(2) covers only those "seeking admission," i.e., those who are apprehended upon arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore § 1226(a)'s plain text and structure and render meaningless § 1226's language that specifically addresses individuals who have entered without inspection. The text of § 1225 reinforces this interpretation. As the Supreme Court has recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at 297, i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," id. at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here.

Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of

other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who have already entered and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr,* 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the *en banc* Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within § 1225(b)(2)(A).

Otherwise, that language would serve no purpose, violating a key rule of statutory construction. See Shulman, 58 F.4th at 410–11. Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who are "arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving into the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United

States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

B. The Record And Longstanding Practice Reflect That § 1226 Governs Petitioner's Detention.

Here, DHS's long practice of considering people living in the United States for more than two years as detained under § 1226(a) further supports this reading of the statute. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

Indeed, in 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

In sum, § 1226 governs this case. Section 1225 applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission and have been residing in the United States for more than 2 years.

C. Caselaw Holds That An Alien Present In The U.S. For More Than 2 Years Is Not An "Arriving Alien".

Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C.§ 1226(a) is the "default" provision for aliens already present in the United States. In *Jennings v. Rodriguez,* 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory right to periodic bond hearings. It held that "U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held that "§ 1226 applies to aliens ***already present*** in the United States. Section 1226(a) creates a ***default rule*** for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings,* 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis,* 533 U.S. 678 (2001), the Supreme Court stated that "[w]hile removal proceedings are in progress, ***most aliens may be released on bond or paroled***. 8 U. S. C. §§ 1226(a) (1994 ed., Supp. V)." *Id.* at 683 (emphasis added).

The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default detention statute for noncitizens in removal proceedings and applies to noncitizens "[e]xcept as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*,

765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

In Arizona, *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) collects many of the District Court cases across the country holding against the government in this regard. *See,* 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed with the Habeas Petition as Exhibit 3. However at least 14 additional cases in the Arizona District Court have found against the government's position in the last three months:

1) Order granting habeas in *Millan-Osuna v. Cantu, et al.,* Case No. 25-cv-04019-MTL--JFM (D. Ariz. 11-26-25)("Respondents' view represents the minority position—in the weeks since Judge Lanza considered the issue in *Echevarria*, dozens of other courts have reached the same conclusion.... Petitioner must receive a bond hearing under 8 U.S.C. § 1226(a)."), filed with the Habeas Petition as Exhibit 12;

2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.,* Case No. 25-cv-03794-MTL (D. Ariz. 11-26-25)("Having reviewed the recent decisions adopting the minority view, the Court agrees with the conclusion reached by Judge Lanza in *Echevarria*."), filed with the Habeas Petition as Exhibit 13;

3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.,* Case No. 25-cv-04175-SHD (D. Ariz. 11-24-25)("In the OSC, the Court observed that Petitioner's case was virtually indistinguishable from Francisco Echevarria... in which Judge Lanza determined individuals like Petitioner are governed by § 1226 and not § 1225(b)(2)(A)."), filed with the Habeas Petition as Exhibit 14;

4) Order granting habeas in *Padron-Carreron v. Noem, et al.,* Case No. 25-cv-04204-DWL (D. Ariz. 11-24-25)("having carefully reviewed the recent decisions adopting the minority view, the Court respectfully declines to revisit the conclusion it reached in *Echevarria*."), filed with the Habeas Petition as Exhibit 15;

5) Order granting habeas in *Rodriguez Plascencia v. Bondi, et al.,* Case No. 25-cv-03794-MTL (D. Ariz. 11-21-25)("having carefully reviewed the recent decisions adopting the minority view, the Court respectfully declines to revisit the conclusion it reached in Echevarria."), filed with the Habeas Petition as Exhibit 16;

6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.,* Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)("dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention"), gathering cases, filed with the Habeas Petition as Exhibit 17;

7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)("the vast majority of courts concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention"), gathering cases, filed with the Habeas Petition as Exhibit 18;

8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.,* Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)("dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention"), gathering cases, filed with the Habeas Petition as Exhibit 19;

9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)("in accord with numerous other courts addressing the same issue—'Respondents' narrow focus on the language of § 1225(a)(1) fails to take account of the entirety of the statutory scheme…" *citing to Echevarria v. Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3, 2025)), filed with the Habeas Petition as Exhibit 20;

10) Order granting habeas in *Garcia-Rosales v. Noem, et al.,* No. 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents point to two district court opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts have reached the same conclusion as *Echevarria* and held individuals like Petitioner are not subject to mandatory detention under 1225(b)(2)(A)"), filed with the Habeas Petition as Exhibit 21;

11) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.,* No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)("individuals like Petitioner are not "arriving aliens" subject to mandatory detention but, rather, are subject tot he general removal statute, 8 U.S.C. § 1226(a)"), filed with the Habeas Petition as Exhibit 22;

12) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et. al.,* Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)("petitioner, who had been present in the United States for years, was not an applicant for admission under 1225(b)(2)(A) or subject to mandatory detention"); filed with the Habeas Petition as Exhibit 23.

13) Order granting habeas corpus in *Bo Li v. Cantu, et al.,* No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)("Respondents maintain he is subject to mandatory

detention under 1225(b)(2). Again, Respondents are mistaken."); filed with the Habeas Petition as Exhibit 24.

D. BIA's Determinations Are Not Entitled To Deference.

Obviously, decisions by the BIA are not binding on the Federal Judiciary, and vice-versa. *Matter of K-S-,* 20 I&N Dec. 715 (BIA 1993). The legal relationship between federal courts and the BIA was fundamentally restructured on June 28, 2024, when the Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo,* 603 U.S. 369 (2024), which expressly overruled *Chevron [24] Chevron v. Natural Resources Defense Council, 467 U.S. 837 (1984).* deference to agency interpretations of statutes. The majority opinion, authored by Chief Justice John Roberts, held that Federal Courts must "exercise their independent judgment in deciding whether an agency has acted within its statutory authority". *Loper Bright,* 603 U.S. at 207.

Thus, determining whether or not DHS's new internal policy of treating all noncitizens as "applicants for admission" under § 1225 (a)(1) and thereby subject to "mandatory detention" under 8 U.S.C. § 1225 (b)(2)(A) is properly decided by the Federal Courts. The recent decision of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) is not binding on this Court.

E. Petitioner Will Suffer Irreparable Harm Absent An Injunction.

Parties seeking preliminary injunctive relief 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).

Since Petitioner's detention he has been detained at the Florence Correctional Center in Florence, Arizona, similar to a criminal detention, under the pretense that his detention is mandatory. The Supreme Court has established that the "loss of freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns,* 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner's ongoing loss of liberty, he has demonstrated significant irreparable harm. This factor weighs in his favor.

F. The balance of hardships and public interest weigh heavily in Petitioner's favor.

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: loss of liberty, separation from family, significant stress and anxiety, and difficulty in communicating with his attorney.

The government, by contrast, faces minimal hardship: the administrative costs associated with three bond hearings. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." What is more, because the policy preventing Petitioner from obtaining bond "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). Indeed, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145."

CONCLUSION

For all the foregoing reasons, Petitioner Carlos Johany Gomez-Molina respectfully requests the Court grant this motion for a Temporary Restraining Order and require Respondents to immediately release him from his unlawful detention at Florence Correctional Center in Florence, Arizona or, in the alternative, schedule him for a bond hearing within three (3) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Dated: 9th day of December, 2025
Attorney for Respondent

By: */s/ Erica Sanchez*
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LIST OF NEW EXHIBITS	
Exhibit 25	Rule 65(b) Declaration of Erica Sanchez, Counsel to Petitioner
Exhibit 26	Declaration of Petitioner Carlos Johany Gomez-Molina

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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Carlos Johany Gomez-Molina, **Petitioner,** **v.** **Kristi Noem**, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting of the Director of U.S. Immigration and Customs Enforcement, in his official capacity; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona Field Office, in his official capacity; **Sirce Owen**, Acting Director of Executive Office for Immigration Review, in her official capacity; **Luis Rosa, Jr.,** Warden of the Central Arizona Florence Correctional Complex, in his official capacity; **Respondents.**	**Case No.** **A No.** [redacted]

Rule 65(b) Declaration of Attorney Erica Sanchez

I, Erica Sanchez, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge, information, and belief:

1. I am counsel for Petitioner, Carlos Johany Gomez-Molina.

2. I file this Declaration in Support of Petitioner's *Ex Parte* Motion for A Temporary Restraining Order or, in the Alternative, a Preliminary Injunction.

3. In an attempt to confer with Respondents' counsel before filing the Ex Parte Motion in compliance with Fed.R.Civ.Pro. 65(b)(1)(A), I sent an email on November 22, 2025 to Katherine R. Branch, Assistant United State Attorney, at katherine.branch@ usdoj.gov, attaching copies of the Habeas Petition and *Ex Parte* Motion.

5. Attached is a copy of that email.

6. Accordingly, I did attempt to meet and confer with opposing counsel before filing the *Ex Parte* Motion in compliance with Fed.R.Civ.Pro. 65(b)(1)(A) but was unable to resolve the matter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of December, 2025 2025, at Phoenix, County of Maricopa, State of Arizona.

By: */s/ Erica Sanchez*
Erica Sanchez, Esq.

Outlook

Notice of Filing Habeas Petition and Ex Parte Application for Carlos Gomez-Medina

From Erica Sanchez <erica@shefer.legal>
Date Tue 12/9/2025 1:57 PM
To katherine.branch@usdoj.gov <katherine.branch@usdoj.gov>

2 attachments (511 KB)
GOMEZ-MOLINA TRO 12-9.pdf; GOMEZ-MOLINA HABEAS 12-9.pdf;

Dear Ms. Katherine R. Branch,

I represent Mr. Carlos Johany Gomez-Molina (A[redacted]). In an effort to provide notice pursuant to Federal Rule of Civil Procedure 65(b)(1)(B), I am writing to inform you that I intend to file an Ex Parte Application for Temporary Restraining Order, together with a Petition for Writ of Habeas Corpus, on his behalf.

The motion seeks immediate release from unlawful detention at the Florence Correctional Complex, Arizona on the basis that immediate and irreparable harm will occur before the government can be heard.

Attached please find:

1. The Habeas Petition (draft), and
2. The Ex Parte Motion for Temporary Restraining Order (draft).

If you wish to respond or confer, please contact me as soon as possible. Due to the time-sensitive nature of this matter, I expect to file the motion with the Court within a day, unless I hear otherwise.

Regards,

Erica Sanchez
Attorney for Petitioner

LITERAL ENGLISH TRANSLATION OF DECLARATION

I, Carlos Johany Gomez Molina, declare under penalty of perjury under 28 U.S.C. Section 1746 that the following is true and correct to the best of my knowledge and belief. I have also reviewed the habeas corpus petition to be filed in my name by my attorney and affirm that all the facts contained in it are true and correct.

PAGE 1
Dear Judge, through this document I address you thanking you for your kindness and the pleasant time you give us as an eminence of this country.
On the 23rd of June at 6:20 in the morning I left my house on my way to work. I had to drive because my wife could not drive since she had just given birth to my son two weeks ago. After a few minutes from my house, the lights of a patrol car behind me turned on in some apartments. Then the state police arrived and told me that he had stopped me only for a vehicle inspection. Then he asked me for the car insurance and the registration and a driver's license. I gave him the insurance, registration, and an ID, because I did not have a driver's license. Then he told me that he was going to give me the ticket for the infraction, but over the radio they told him that he had to take me to the county jail. At that moment my wife arrived at the place and the state police officer told me to say goodbye to her. I did not know why he was telling me that. Then in tears he took me to the Pasco County Detention in Florida.
At the Pasco County jail they told me that I was going to be detained for 24 hours and that if my family paid my bond I was going to be released. My family paid my bond but I was not released. I spent all day and night until around 4:30 a.m. they called my number and took me out of the cell and took me to the ICE offices just to tell me that I was going to be transferred to an ICE office. They transferred me to an ICE office in Tampa, Florida. I was very sad and desperate because I could not communicate with my family. Then they gave me the opportunity to make a one-minute call. I explained to my wife everything that was happening and she was surprised.

PAGE 2
Then the immigration officers called my name and began to handcuff me on the hands, the waist, and the feet as if I were a criminal. Then they gathered me with other people (approximately 35 people) and transferred us on a white bus without air conditioning for more than 6 hours until arriving in Miami, Florida.
When we arrived they removed the chains. When they opened the doors it was very full of people and there was not a single place to sit or stand. I had to get into a corner for several hours. I was worried, sad, depressed, and feverish. They finally gave me 3 minutes to call. I told my wife I was in Miami.
At midnight they brought us a snack and an orange juice. The next morning, since there were not enough cells, they had us lying in the hallways for two nights and two days. Then they placed 75 of us in a cell made for 95. We had no space. We could not sleep or use the bathroom because people were sleeping on the floor.

PAGE 3
An officer was taking us out two by two. Hours passed and people got sick but the officers ignored them. An older man with fever and body pain turned purple. We knocked for help and they finally took him. They later said he tested positive for coronavirus. Many others were sick.
A person fainted and fell on another, fracturing his ribs. We asked to be moved but they did not care. It was very hot and difficult to breathe. We could not bathe. We were dirty and smelled bad. One night I felt sick with fever and nausea. They ignored me. I slept on the cold floor without blankets.
Saturday they processed us: photos, fingerprints, medical check. I told a nurse I was sick. She gave me pills. That night they took me to medical.

PAGE 4
They tested me; I came out positive for coronavirus. They took me to punishment cells for 7 days. I had

no communication with my family. I did not know if it was day or night. They passed food and pills through a small window. In other cells criminals yelled all day. I was treated like one for only going to work.
On July 6 they let me out and I could speak with my wife and son. They were devastated. We waited for court on July 21 or 22. On July 12 at 6 p.m. they moved me suddenly with 100 people and said we were going to Arizona. They chained us and took us to an airport at 11 p.m., then Texas, then Louisiana, then Arizona. They removed chains at 1 a.m.

PAGE 5
We spent more than 24 hours with chains. My hands and feet hurt. I asked to call my family but they did not let me until the next day. When I spoke with them they were very depressed.
I had a bond hearing on August 12. They granted bond but appealed. We waited until almost the end of October. My wife and children kept suffering. My son was starting school, the baby was three months old.
On October 20 they set bond again. My family paid on October 21 but ICE appealed again the same day. My son is devastated, depressed, losing weight, having trouble in school. He needs me.

PAGE 6
My wife is suffering because she does not have enough help to keep the landscaping company running. She must pay workers, bills, mortgage, insurance, electricity, gasoline, food. She must care for the baby and my son so he does not get depressed.
Only God knows the purpose of each life. I beg your Honor to have mercy for this humble person who has been humiliated and mistreated for working to give my children a better life and save for their studies.
Every human is not perfect. Only with God can we give love, kindness, faith, peace, humility. I thank God to obey the laws of this country.
Thank you, your Honor, for your valuable time.
Sincerely,
Carlos Johanny Gomez Molina

CERTIFICATE OF TRANSLATION

I, Christina Caicedo, certify that I am fluent in English and Spanish and competent to translate between both languages. I certify that this is a true, accurate, and complete literal translation of the handwritten Spanish declaration.

Translator Information:
Name: Christina Caicedo
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/s/ Christina Caicedo
Dated: 11/23/2025