

Petitioner respectfully moves this Court to grant his Emergency Motion for a Temporary Restraining Order. The grounds for this motion are set forth in the accompanying memorandum of law, exhibits in support thereof, the Petition for Writ of Habeas Corpus, and the applicable law. A proposed order also accompanies this motion.

Respectfully submitted,

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Dated December 10, 2025

**MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY
RESTRAINING ORDER**

I. INTRODUCTION

1. Petitioner-Plaintiff Jesus Samano Aguilar is a 52 year old citizen of Mexico, who has resided in the United States since about 2002. He is currently in the physical custody of Respondents at the South Texas ICE Processing Center in Pearsall, Texas. He has been unlawfully detained since November 12, 2025. Through his previously filed Petition for Writ of Habeas Corpus, incorporated herein by reference, Petitioner challenges this unlawful detention and seeks immediate injunctive relief to remedy the ongoing constitutional violation. ***See ECF 1, Petition for Writ of Habeas Corpus***
2. As discussed in his Petition for Writ of Habeas Corpus, Petitioner's detention violates the Due Process Clause of the Fifth Amendment and the statutory language of the Immigration and Nationality Act due to the fact that he is being held without the opportunity to request release from custody. Across the country, immigration judges are accepting this erroneous legal theory and declining jurisdiction, thereby denying Petitioner any opportunity for an individualized custody determination. This deprivation of a meaningful hearing violates substantive and procedural due process.
3. Petitioner's detention also violates the Immigration and Nationality Act.
4. Immediate relief is necessary to remedy this ongoing constitutional violation, but also to alleviate the severe harm that the Petitioner and his minor daughter are dealing with due to Respondents' refusal to release him so he can care for his minor daughter. The last uncontested status—the *status quo ante*—is Petitioner's release Federal district courts throughout the country, including courts within this District and Circuit, have overwhelmingly granted relief to immigrant detainees in virtually identical circumstances.

The courts have recognized that noncitizens who entered without inspection and then resided in the United States for years cannot be deemed subject to mandatory detention under § 1225(b)(2), but are rather detained under 8 U.S.C. 1226(a). *See p. 7-8, infra*. Such detention without the opportunity to request release violates both statutory law and constitutional due process. Accordingly, Petitioner respectfully requests that this Court issue a temporary restraining order requiring his immediate release to restore the *status quo ante*, followed by a preliminary injunction maintaining his release pending final resolution of his habeas petition.

II. STATEMENT OF FACTS

5. Petitioner is a 52-year-old native and citizen of Mexico. He entered the United States without inspection about 2002, and has resided in the U.S. since that time.
6. Petitioner has a US citizen daughter named [REDACTED] who is only 15 years old. [REDACTED]'s mother died in May 2021 from stomach cancer. Petitioner's daughter was living with him. Since the Petitioner was detained, his 15-year-old daughter has had to live with a non-blood relative. Petitioner's daughter depends on him to take care of her and is her main emotional support. The daughter explains in her declaration that she is scared that she will lose her father, like she lost her mother. **See Ex A-D.**

III. ARGUMENT

Requirements for a Temporary Restraining Order

7. The factors that govern an application for a temporary restraining order are the same as those that govern a request for preliminary injunction. *Hill v. Green County Sch. Dist.*, 848 F. Supp. 697, 703 (S.D. Miss. 1994) (citing *Canal Auth. v. Callaway*, 489 F.2d 567 (5th Cir. 1974)). Under well-settled Fifth Circuit precedent, the movant must show: (1) there is

a substantial likelihood that the plaintiff will prevail on the merits; (2) there is a substantial threat that irreparable harm will result if the injunction is not granted; (3) the threatened injury to the plaintiff outweighs whatever damage the proposed injunctive relief would cause the defendant; and (4) the granting of the injunction is not adverse to the public interest. *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009) (quoting *Canal Auth.*, 489 F.2d at 572).

8. On a motion for a TRO, the movant “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *See Enrique Bernat F., S.A. v. Guadalajara, Inc.*, 210 F.3d 439, 442 (5th Cir. 2000). The decision of whether to grant or deny a TRO is within the Court's discretion. *Moore v. Brown*, 868 F.3d 398, 402 (5th Cir. 2017). To show immediate and irreparable harm, a plaintiff must demonstrate it is likely it will suffer irreparable harm in the absence of preliminary relief. *Winter v. Nat. Res. Def Council*, 555 U.S. 7, 20 (2008). However, a “[s]pectulative injury is not sufficient; there must be more than an unfounded fear on the part of the applicant.” *United States v. Emerson*, 270 F.3d 203, 262 (5th Cir. 2001). When the government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Lake Charles Diesel, Inc. v. General Motors Corp.*, 328 F.3d 192, 195 (5th Cir. 2003). As demonstrated below, all four factors weigh heavily in Petitioner's favor.

1. Mr. Samano Aguilar Is Likely to Succeed on the Merits.

9. Petitioner is likely to succeed on the merits of his claim that his detention (a) violates Due Process and (b) violates the Immigration Nationality Act's detention provisions.

Overwhelmingly, federal courts have sided with immigrant detainees challenging their detention on virtually indistinguishable grounds, on statutory and constitutional grounds, including courts in this district. *See e.g. Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *PUERTO-HERNANDEZ, Petitioner, v. LYNCH et al.*, No. 1:25-CV-1097, 2025 WL 3012033 (W.D. Mich. Oct. 28, 2025); *Castellanos v. Kaiser*, No. 25-CV-07962, 2025 WL 2689853, at *3 (N.D. Cal. Sept. 18, 2025); *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *PÉREZ PINA, v. STAMPER*, No. 2:25-CV-00509-SDN, 2025 WL 2939298 (D. Me. Oct. 16, 2025); *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530 (D. Me. Aug. 29, 2025).

10. Petitioner is also very likely to prevail on his claim that his detention violates 8 U.S.C. § 1226(a). As district courts across the country have repeatedly concluded, Respondents' "interpretation of the statute (1) disregards the plain meaning of § 1225(b)(2)(A); (2) disregards the relationship between §§ 1225 and 1226; (3) would render a recent amendment to § 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Ochoa Ochoa v. Noem*, No. 25 CV 10865, 2025 WL 2938779, at *5 (N.D. Ill. Oct. 16, 2025) (citations omitted). Federal courts across the country—including in the Western District of Texas—have consistently ruled in favor of petitioners with virtually identical facts. *See Lopez-Arevelo*, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Lopez Santos v. Noem*, No. 3:25-CV-01193, 2025 WL 2642278 (W.D. La. Sept. 11,

2025); *Kostak v. Trump*, No. 25-CV-01093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jimenez v. FCI Berlin, Warden*, No. 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (collecting twelve such decisions). Petitioner further discussed his Due Process and statutory argument in his Petition for Writ of Habeas Corpus, and hereby incorporates those arguments by reference. **ECF 1, ¶¶24-42**

2. Petitioner and his Family are Suffering Irreparable Harm

11. Unlawful detention in an immigration context is inherently a substantial threat of irreparable injury. *See Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (citing *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (finding that plaintiffs “established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally detained for an indeterminate period of time.”)
12. Petitioner’s unlawful detention has caused harm to his family members as well. He has a 15-year-old daughter who was born in the USA. Her mother died in 2021. If that was not difficult enough, since her father was detained last month, she is now living with a non-blood relative. She is only 15 years old and lost her mother; she should be living with her father. **Ex A-D**. This situation should be considered irreparable harm, which increases with each additional day that he is unconstitutionally detained.
13. To the extent Respondents would argue there is a benefit to Petitioner remaining in custody because his removal proceedings will advance faster than if he were not detained, this speculative administrative efficiency is significantly outweighed by Petitioner’s loss of liberty and the harm being caused to him and his family by his detention. The concrete harm to Petitioner vastly exceeds any inconvenience to the government.

3. Balance of the Equities and Public Interest

14. The final two factors for injunctive relief—the balance of equities and the public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009), *Mock v. Garland*, 75 F.4th 563, 577 (5th Cir. 2023). Here, the Petitioner faces harm through unlawful and arbitrary detention depriving him of his liberty, separation from his family members that are in crucial need of his support, and various other serious concerns as outlined *supra* and in the attached exhibits.
15. Petitioner anticipates that Respondents will assert a countervailing public interest in enforcement of the country’s immigration laws. “But the public also has an interest in the *government* following those laws.” *Hernandez Ramiro v. Bondi et al.*, 5:25-CV-01207-XR (W.D. Tex. Oct. 15, 2025) (citing *Kostak v. Trump*, No. 3:25-CV-1093, 2025 WL 2472136, at *2 (W.D. La. Aug. 27, 2025)). The Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice...” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution and laws”).

4. Release is Necessary to Preserve the *Status Quo Ante*

16. In granting temporary restraining orders, courts must only grant such relief as necessary to maintain the status quo. *Norman Bridge Drug Co. v. Banner*, 529 F.2d 822 (5th Cir. 1976) (“[T]he office of a temporary restraining order is to preserve, for a very brief time, the status quo, so as to avoid irreparable injury pending a hearing on the issuance of a preliminary injunction.”) The status quo is the “last uncontested status.” *United States v. F.D.I.C.*, 881 F.2d 207, 210 (5th Cir. 2010).
17. Here, the *status quo* is Petitioner's unequivocal release from detention. “The appropriate relief for an immigration detainee held in violation of their right to due process is their immediate release from custody, and to be provided with relief returning them to status quo ante, i.e., the last uncontested status which preceded the pending controversy.” *Cardin Alvarez v. Rivas*, No. CV 25-02943 PHX GMS (CDB), 2025 WL 2898389, at *21 (D. Ariz. Oct. 7, 2025). “With regard to the specifics of the relief that might be ordered, in recent weeks many federal district courts” –including the Western District of Texas– “have ordered the immediate release of immigration habeas petitioners held in custody in violation of their due process rights.” *Id.*; *See Santiago v. Noem*, No. 25-cv-361, 2025 WL 2792588, at *13 (W.D. Tex. Oct. 1, 2025); *See also J.U. v. Maldonado*, No. 25-cv-4836, 2025 WL 2772765, at *10 (E.D.N.Y. Sept. 29, 2025); *Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *11 (D.N.J. Sept. 26, 2025); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *12 (D. Mass. Sept. 9, 2025); *Rosado v. Figueroa*, 2025 WL 2337099, at *19 (D. Ariz. Aug. 11, 2025); *M.S.L. v. Bostock*, 2025 WL 2430267, at *1 (D. Or. Aug. 21, 2025); *Bermeo Sicha v. Bernal*, No. 1:25-CV-00418-SDN, 2025 WL 2494530, at *7 (D. Me. Aug. 29, 2025)

18. Alternatively, the court should order a bond hearing as a habeas remedy where the burden is on the government. Indeed “as of 2020, the ‘vast majority’—an ‘overwhelming consensus’—of courts granting immigration detainees’ habeas petitions have placed the burden on the Government to prove by clear and convincing evidence that the detainee poses a danger or flight risk.” *Lopez-Arevelo*, 2025 WL 2691828, at *12 (citing *Velasco Lopez*, 978 F.3d at 855 n.14 (citations omitted)). “Allocating the burden in this manner reflects the concern that ‘[b]ecause the alien’s potential loss of liberty is so severe ... he should not have to share the risk of error equally.’” (citing *German Santos*, 965 F.3d at 214). “And the consensus appears to be holding, with many courts in recent days ordering a bond hearing, at which the Government bears the burden of justifying the immigration habeas petitioner’s continued detention by clear and convincing evidence.” *Id.*; *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *9 (D.N.M. Sept. 17, 2025); *Morgan v. Oddo*, No. 24-cv-221, 2025 WL 2653707, at *1 (W.D. Pa. Sept. 16, 2025); *J.M.P. v. Arteta*, No. 25-cv-4987, 2025 WL 2614688, at *1 (S.D.N.Y. Sept. 10, 2025); *Espinoza*, 2025 WL 2581185, at *14; *Arostegui-Maldonado v. Baltazar*, 2025 WL 2280357, at *12 (D. Colo. Aug. 8, 2025).

IV. CONCLUSION

19. For the foregoing reasons, Petitioner respectfully requests that this Court grant his Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Grant this Emergency Motion for Temporary Restraining Order;
2. Issue a Temporary Restraining Order requiring Respondents to immediately release Petitioner from custody or, in the alternative, require the Respondents to schedule a bond hearing within two days before a neutral arbiter in which the government must show that Petitioner is a flight risk or danger to the community.
3. Waive any requirement for security under Federal Rule of Civil Procedure 65(c); and
4. Grant such other and further relief as this Court deems just and proper

Respectfully submitted on December 10, 2025,

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CERTIFICATE OF SERVICE AND NOTICE

I hereby certify that on December 10, 2025, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served by certified mail, return receipt requested, on the following:

U.S. Attorney's Office for the Western District of Texas
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Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Warden as Petitioner's immediate custodian.

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I further certify that I provided notice of the filing of this Motion by email to the following parties prior to filing the Motion:

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