UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

DANIEL CRUZ-MARTINEZ, *Petitioner*, vs. PAMELA BONDI, UNITED STATES ATTORNEY GENERAL, *et al.*, *Respondents*.	Civ. No. 5:25-CV-01705-FB **EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** *Points and Authorities in Support of Emergency Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction (Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief)*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Public Law

Other Authorities

NOTICE OF MOTION

Petitioner Daniel Cruz Martinez ("Mr. Cruz" or "Petitioner") applies to this honorable Court for a temporary restraining order. He filed his petition for issuance of a writ of habeas corpus on December 10, 2025. Dkt. 1. The Petitioner now files this motion for Temporary Restraining Order because he shows he has good cause. It is an urgent matter because he has been scheduled for a removal hearing to take place at the South Texas Detention Center on February 4, 2026. TRO, Exh. 1, Immigration Court Hearing.

On December 12, 2025, this Court issued an order to show cause to Respondents, ordering them within 3 days of service, and ordering them "[I]n preparing their response, Respondents should consider the Court's orders in *Mendoza Euceda v. Noem*, Order, No. SA- 25-CV-1234-OLG (W.D. Tex. Nov. 17, 2025) and *Rahimi v. Thompson*, Order, No. SA-25-CV-1338-OLG (W.D. Tex. Dec. 4, 2025), and identify material differences between the facts in this case and the facts presented in those cases. Failure to do so may result in a summary order granting all relief requested in the petition other than the request for fees."

The Respondents filed their return on December 22, 2025. Dkt. 4. They do not meaningfully distinguish the precedent of this Court. They concede "[T]his Petitioner's facts are different from *Mendoza Euceda*, but the legal arguments are the same. For *Rahimi*, Respondents legal arguments are similar as they relate to 8 U.S.C. § 1225(b)." Dkt 4 at 15. Since they believe that § 1225(b)(2) applies to all noncitizens who, like Petitioner, are already in the country but entered without inspection, and this Court has rejected such argument, this Court should grant relief of habeas in the form of immediate release. *Becerra-Vargas v. Bondi,* SA-25-CV-1023-FB, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025); *Jaimes v. Lyons*, No. SA-25-CV-1700-FB at docket entry number 7 (W.D. Tex. 2025); *Inclan-Lopez v. Thompson*, 25-CV-1533-FB, 2025 WL 3766110

(W.D. Tex. 2025); *Rodriguez-Lara v. Bondi*, SA-25-CA-01581-XR, 2025 WL 3654263 (W.D. Tex. Dec. 16, 2025) (ordering immediate release because the respondents "do not claim he is being detained under Section 1226.")

Petitioner filed his traverse to the Respondent's Answer on December 29, 2025. Dkt. 7, He asks this Court now also for an order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, (1) from continuing to detain based on its incorrect interpretation of the Immigration and Nationality Act (INA), (2) ordering him immediately released from immigration detention; (3) order Respondents not to re-arrest him until he is afforded a hearing before a neutral decision-maker, as required by the Due Process clause of the Fifth Amendment, (4) enjoining Respondents from continuing to detain him unless Petitioner is provided an individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within three days of the TRO; (5) issue an order enjoining Respondents from using its same argument they now use in interpreting the bond statutes as requiring mandatory detention, based on him being allegedly subject to 8 U.S.C. § 1225(b), as a basis to refuse to accept Petitioner's bond payment, if any, where ICE would file an automatic stay of any IJ's decision granting him bond under 8 C.F.R. § 1003.19(i) ("Stay of custody order pending appeal by the government") (This injunction would not restrain ICE from pursuing a normal appeal of any IJ's bond decision) or using the same arguments would seek a discretionary stay of the IJ's custody decision under 8 C.F.R. §1003.19(i)(1) at the Board of Immigration Appeals, in effect running out the clock on his attempt to seek release on bond, and an end-run around any order of this Court finding he has demonstrated that if the IJ grants a bond, then ICE should accept it (this injunction would not restrain ICE from pursuing a normal (unstayed) appeal of any IJ's bond decision); (6) prohibit

Respondents from deporting him pending final resolution of this litigation; (7) order Respondents to file with this Court a complete copy of his administrative file maintained by the Department of Justice and the Department of Homeland Security.

As set forth in these Points and Authorities in support of this motion, Petitioner raises that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful detention, where that detention appears indefinite and which was imposed absent a pre-deprivation due process hearing.

INTRODUCTION

1. Although Petitioner was present and residing in the United States for over 9 years at the time of his 2025 immigration arrest, he was subjected to a new DHS policy—issued on July 8, 2025—which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. Dkt. 1, Exh. 2, Todd Lyons Memorandum, "ICE Interim Guidance Regarding Detention Authority for Applicants for Admission."
2. He has been detained at the South Texas Detention Center in Pearsall, Texas ever since. Dkt. 1-1. ICE Locator Results.
3. The new DHS policy was issued "in coordination with the Department of Justice (DOJ)." *See Id.* at 1.
4. The denial of a bond hearing to Petitioner and his ongoing detention on the basis of the new DHS policy violates the plain language of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*. The DHS policy has been found by this Court, as well as numerous other district courts (several hundred as of this writing (some listed here in footnote 1)) to

be unfounded and unlawful.[1] Despite the new DHS policy interpretation to the contrary, the plain language of 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and is now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on bond or conditional parole. Section 1226(a) expressly applies to people who, like Petitioner, is charged as removable for having entered the United States without inspection and being present without admission.

5. Respondents' new legal interpretation set forth in the policy is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner who is present within the United States. Respondents' new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving him of statutory and constitutional rights and constitutes irreparable injury.

6. Petitioner therefore seeks a Temporary Restraining Order enjoining Respondents from continuing to detain him based on their incorrect interpretation of the Immigration and Nationality Act. Petitioner requests immediate release from immigration detention.

---

[1] *Choglio v. Scott*, No. 2:25-cv-00437-SDN, 2025 WL 2688541, at *1 (D. Me. 2025); *Hasan v. Crawford*, No. 1:25-CV-1408 (LMB/IDD), 2025 WL 2682255 (E.D. Va. Sept. 19, 2025); *Arce v. Trump*, No. 8:25CV520, 2025 WL 2675934 (D. Neb. Sept. 18, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Palma v. Trump*, No. 4:25CV3176, 2025 WL 2624385 (D. Neb. Sept. 11, 2025); *Carlon v. Kramer*, No. 4:25CV3178, 2025 WL 2624386 (D. Neb. Sept. 11, 2025); *Perez v. Kramer*, No. 4:25CV3179, 2025 WL 2624387 (D. Neb. Sept. 11, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *Martinez v. Secretary of Noem*, No. 5:25-CV-01007-JKP, 2025 WL 2598379 (W.D. Tex. Sept. 8, 2025); *Herrera Torralba v. Knight*, No. 2:25-CV-01366-RFB-DJA, 2025 WL 2581792 (D. Nev. Sept. 5, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521 (D. Neb. Sept. 3, 2025); *Fernandez v. Lyons*, No. 8:25CV506, 2025 WL 2531539 (D. Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566 (D. Neb. Sept. 3, 2025); *Leal-Cruz v. Noem*, No. 1:25-CV-02428- JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Jacinto v. Trump*, No. 4:25CV3161, 2025 WL 2402271 (D. Neb. Aug. 19, 2025); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025); *Anicasio v. Kramer*, No. 4:25CV3158, 2025 WL 2374224 (D. Neb. Aug. 14, 2025); *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at *5–6 (D. Minn. June 17, 2025); *Günaydin v. Trump*, 784 F. Supp. 3d 1175 (D. Minn. 2025); *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al.*, 5:25-cv-01873-SSS-BFM, Dkt # 14 (C.D. Ca. Jul. 28, 2025); *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *16 (W.D. Wash. Apr. 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *9 (D. Mass. July 7, 2025).

Petitioner further requests that Respondents be restrained from re-arresting him unless and until they first provide a hearing before a neutral decision-maker, consistent with the Due Process Clause of the Fifth Amendment, establishing by clear and convincing evidence that any renewed detention would not be indefinite and that Petitioner is either a danger to the community or a flight risk.

7. Finally, Petitioner requests that Respondents be required to file with this Court a complete copy of his administrative file maintained by the Department of Justice and the Department of Homeland Security.

I. STATEMENT OF FACTS

8. Petitioner has been in the United States for over 9 years, is married to Emily Blas, a U.S. citizen, and they are raising their U.S. citizen child in San Antonio, Texas. She filed anThis detention is a substantial deprivation and burden that puts Petitioner and his family at risk without his parental and financial support.

9. Petitioner entered the U.S. without inspection in 2016, and was not apprehended. Then, in 2025, he was detained by ICE after a traffic stop in San Antonio, and he remains in civil detention in the custody of ICE at South Texas Detention Complex at Pearsall, Texas.

10. Petitioner has no criminal record.

11. His master calendar removal hearing is scheduled for February 4, 2026. TRO Exh. 1, EOIR Automated Case Information Results.

12. On September 5, 2025, the BIA published *Matter of Yajure-Hurtado*, holding that "aliens present in the United States without having been admitted or paroled, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission." 29 I&N Dec. 216 (BIA 2025).

II. PROCEDURAL BACKGROUND

13. Petitioner filed this Petition for Habeas Corpus with this Court on December 12, 2025. Dkt.1.

14. Petitioner is *ineligible for bond* with the Immigration Judge (IJ) because the IJ must follow *Matter of Yajure Hurtado, supra*. Under that decision, the Board has decreed that an IJ has no jurisdiction to re-determine a bond for someone like Petitioner, per the Board's interpretation of 8 U.S.C. §§ 1225(b) and 236, because it views him as "seeking admission" notwithstanding that he is present in the interior and has been living here continuously for nine years.

15. Without the intervention of this Court, if this motion for temporary restraining order is not granted, the IJ may order him removed to Mexico on February 4, 2026 before he can access his rights and vindicate his law suit that he is being detained unlawfully.

16. He seeks now in this motion for this Court to order Respondents to end its continuing detention of him, and immediately release him.

III. LEGAL STANDARD

17. The purpose of a TRO is to "preserv[e] the status quo and prevent[ ] irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

18. Petitioner is entitled to a temporary restraining order or preliminary injunction only if he shows: "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4)

that the grant of an injunction will not disserve the public interest." *Jones v. Tex. Dep't of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018) (per curiam) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)). The party seeking injunctive relief must meet all four requirements. *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016) (quoting *Bluefield Water Ass'n v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009)). Even if Petitioner here does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

A. Petitioner Warrants a Temporary Restraining Order

19. A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City,* 415 U.S. 423, 439 (1974).

20. Petitioner is likely to be remain in unlawful custody in violation of his due process rights and is likely to be subject to an illegal removal from the United States, without intervention by this Court. Petitioner will continue suffer irreparable injury if he continues to be detained without due process, because he will be sent far from his family, to Mexico, a country he has not known for over nine years, without having enjoyed his right here to

pursue to be released to his home, and prepare for his immigration hearings with the help of his family, who are suffering without his support, and to prepare evidence with counsel to demonstrate to the immigration judge that he merits relief. He is married to a U.S. citizen, and indeed is approved since August 7, 2025 to pursue an immigrant visa with the U.S. Department of State, TRO Exh. 2.

(i) Petitioner Is Likely to Succeed on the Merits of His Claims

21. Petitioner is likely to succeed on his claim that his ongoing detention by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before an immigration judge is unlawful. The text, context, and legislative and statutory history of the Immigration and Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs his detention.

22. The Government's denial of his requested bond hearing violates his Fifth Amendment right to due process, violates federal law and its own administrative procedures. Dkt. 1, at ¶¶ 30–44. Aliens have due process rights to life, liberty and property. *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). Since Petitioner is in governmental custody, his liberty interest is at stake. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Here, the Petitioner is not an applicant for admission, so he would be entitled to a bond hearing. Dkt. 1, at ¶¶ 30–44. Thus, if Petitioner is not an "applicant for admission," the denial of his request for a bond hearing violates his due process rights.

23. On September 5, 2025, the BIA published *Matter of Yajure-Hurtado*, holding that "aliens present in the United States without having been admitted or paroled, like this Petitioner, are subject to mandatory detention under § 1225(b)(2) as applicants for admission." 29 I&N Dec. 216 (BIA 2025); TRO Exh. 2, BIA Decision *Matter of Yajure Hurtado*, issued on Sept. 5, 2025.

24. Yet, since September 5, numerous (several hundred) federal district courts have rejected the reasoning of *Yajure-Hurtado*, expressly finding it to be contrary to law, and ordering the release of similarly situated noncitizens.[2] Courts have thus widely rejected that reading of the statute.

25. This Court is not bound by the BIA's interpretation of the INA, particularly where it conflicts with the statutory text and longstanding federal case law. Moreover, under *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), federal courts owe no deference to agency interpretations of statutes. The overwhelming weight of authority against *Yajure-Hurtado* demonstrates that, even if Respondents were correct in raising this issue, Petitioner would still be entitled at minimum to an individualized bond hearing under the governing statutory scheme.

26. Section 1225(a)(1) states:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission. 8 U.S.C. § 1225(a)(1).

The term "admitted" means "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A). Thus, the Government argues that any alien who illegally entered the United States without having been inspected by an immigration officer is an applicant for admission. Under this interpretation, because Petitioner admits having entered the United States without inspection in 2001, he would be an applicant for admission.

---

[2] *See, e.g., A.E. v. Andrews*, No. ___, 2025 WL 1424382, at *6–8 (E.D. Cal. May 16, 2025); *Lopez Benitez v. Francis*, No. ___, 2025 WL 2371588, at *6–7 (S.D.N.Y. June 9, 2025); *Lopez-Campos v. Raycraft*, No. ___, 2025 WL 2496379, at *4 (E.D. Mich. Aug. 29, 2025).

27. On the other hand, even statutory language that is unambiguous in isolation must be read in context. *See Yates v. United States*, 574 U.S. 528, 537 (2015) (plurality); *Pulsifer v. United States*, 601 U.S. 124, 133 (2024). The context clues present here point against Petitioner' classification as an applicant for admission. As other courts have determined, *e.g.*, *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025), considering § 1225 alongside its § 1226 companion demonstrates that the most natural interpretation of § 1225 is that it applies to aliens encountered as they are attempting to enter the United States or shortly after they gained entry without inspection.[3] Section 1225 repeatedly refers to aliens entering the country. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (screenings for aliens "arriving in the United States"); *id.* § 1225(b)(2)(C) (aliens "arriving on land ... from a foreign territory contiguous to the United States" may be returned to that territory pending removal proceedings); *id.* § 1225(d)(1) (immigration officers authorized to inspect "any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States"). The statute further explicitly addresses "crewm[e]n" and "stowaway[s]" in § 1225(b)(2), reflecting that Congress envisions applicants for admission as being arriving aliens. In addition, its sister statute, 8 U.S.C. § 1225a, focuses on the pre-inspection of aliens entering the country at foreign airports. In sum, § 1225 is set up with arriving aliens in mind.

28. Compare that to § 1226's broader language that realistically applies to any alien awaiting a removal decision. Considering § 1225 in its entirety, and in relation to § 1226, reveals that § 1225 is more limited than what that plain text of § 1225(a)(1) might indicate when construed in the abstract.

[3] As noted previously, several hundred federal courts concur generally with Petitioner's interpretation of the statutory language as applied in this context. *See, e.g.*, *Pizarro-Reyes*, 2025 WL 2609425, at *7 (citing cases).

29. Moreover, courts construe statutes "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009). Adopting the Government's reading would be to find recent congressional enactments superfluous. Congress passed the Laken Riley Act to amend § 1226(c) and include more classes of aliens who are ineligible for bond under § 1226(a). Laken Riley Act, Pub. L. No. 119-1, sec. 236, § 2, 139 Stat. 3, 3 (2025). One of those new classes of non-bondable aliens are aliens not admitted into the United States who were charged with specific crimes. 8 U.S.C. § 1226(c)(1)(E) (citing *id.* § 1182(a)(6)(A)). Under the Government's apparent expansive interpretation of § 1225, the amendment would have no purpose. Section 1225(b)(2) would already provide for mandatory detention of every unadmitted alien, regardless of whether the alien falls within one of the new classes of non-bondable aliens established by the Laken Riley Act.

30. In short, for purposes of Petitioner's motion for entry of a temporary restraining order and preliminary injunction, the Court should find that he is likely to succeed on the merits of his habeas petition. This factor weighs in favor of a preliminary injunction. Moreover, the government has presented no arguments that meaningfully distinguish his case from the other cases in which this Court has granted habeas relief. *Becerra-Vargas v. Bondi*, SA-25-CV-1023-FB, 2025 WL 3300141 (W.D. Tex. Nov. 26, 2025); *Jaimes v. Lyons*, No. SA-25-CV-1700-FB at docket entry number 7 (W.D. Tex. 2025); *Inclan-Lopez v. Thompson*, 25-CV-1533-FB, 2025 WL 3766110 (W.D. Tex. 2025); *see also Rodriguez-Lara v. Bondi*, SA-25-CA-01581-XR, 2025 WL 3654263 (W.D. Tex. Dec. 16, 2025) (ordering immediate release because the respondents "do not claim he is being detained under Section 1226.")

(ii) Petitioner Will Suffer Irreparable Harm

31. Petitioner has been in the United States for nine years, and has no criminal record. He has a U.S. wife and. citizen daughter. He is married to Emily Blas, and they have hired a lawyer, Luz Martinez Bernal, who has filed petitions for his green card with USCIS, which have been approved, and the only step remaining is to get an appointment with the U.S. Department of State for an interview for his immigrant visa. TRO Exh. 2. Before his arrest, Petitioner was gainfully employed, and was arrested at a traffic stop. His wife now must support the family, without his contributions. If he is deported, he will no longer be eligible for the USCIS process that he has pursued through his U.S. citizen wife, for at least ten years.

32. He will suffer irreparable harm were he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972); accord *Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Cruz*, 872 F.3d at 995. The government itself has

documented alarmingly poor conditions in ICE detention centers. S*ee, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day). *See also* "*Concerns Grow Over Dire Conditions in Immigrant Detention:* Mass immigration arrests have led to overcrowding in detention facilities, with reports of unsanitary and inhumane conditions," Miriam Jordan and Jazmine Ulloa, New York Times, July 1, 2025, available at https://www.nytimes.com/2025/06/28/us/immigrant-detention-conditions.html (visitor reported that several detainees complained that they had been given few opportunities to shower, had been limited to two bottles of drinking water per day and were unable to flush their toilets for days at a time.) *See also* National Public Radio, September 24, 2025, "The Conditions in ICE Detention Centers," available at https://www.npr.org/2025/09/24/nx-s1-5552752/the-conditions-in-ice-detention-centers; Alexandra Villareal, "It's hard to know what day it is': families tell of grim Ice detention in Texas," The Guardian, Sept. 30, 2025, https://www.theguardian.com/us-news/2025/sep/30/immigration-detainees-ice-texas-jail.

33. Further, "[i]t is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.' " *Cruz*, 872 F.3d at 994–95 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005)

(cleaned up). As discussed, if Petitioner is re-detained without a pre-detention hearing before a neutral decisionmaker, the deprivation of liberty that Petitioner faces is likely unconstitutional and is an immediate and irreparable harm. *Cruz*, 872 F.3d at 995 (holding Plaintiffs have met their burden to show irreparable harm that they "will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction"). *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263, at *8 (N.D.Cal., 2025).

34. Petitioner has worked, is raising his child, has supported his community, and has spent time with his family. Detention would irreparably harm not only Petitioner, but also irreparable harm to himself, his family, and friends.

35. As detailed supra, Petitioner contends that for his current detention to continue, it would violate his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Petitioner from suffering irreparable harm by being subject to unlawful and unjust detention.

(iii) The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

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

37. First, the balance of hardships strongly favors Petitioner. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order

or preliminary injunction ordering it to comply with the Constitution.

38. Further, any burden imposed by requiring the DHS to release Petitioner from unlawful custody and refrain from re-arrest unless and until he is provided a hearing before a neutral is both de minimis and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

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

40. Therefore, the public interest overwhelmingly favors entering a temporary restraining order

and preliminary injunction.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant a Temporary Restraining Order ordering that Respondents:

(1) Be restrained from continuing to detain Petitioner based on their incorrect interpretation of the Immigration and Nationality Act;

(2) Immediately release Petitioner from immigration detention;

(3) Not re-arrest Petitioner unless and until he is provided a hearing before a neutral decision-maker, as required by the Due Process Clause of the Fifth Amendment, establishing by clear and convincing evidence that his re-incarceration is justified because he is a danger to the community or a flight risk;

(4) Be prohibited from deporting him from the United States while this litigation remains pending; and

(5) Be ordered to file with this Court a complete copy of Petitioner's administrative file from the Department of Justice and the Department of Homeland Security.

Respectfully submitted on January 13, 2026.

/s/ Stephen O'Connor

Stephen O'Connor, Esq.
Attorney for Petitioner
Texas Bar No. 24060351
O'Connor & Associates, PLLC
7703 N Lamar Blvd, Ste. 300
Austin, TX 78752
Telephone: (512) 617 9600
Email: steve@oconnorimmigration.com

CERTIFICATE OF CONFERENCE

In accordance with Federal Rule of Civil Procedure 65(b)(1)(B), Petitioner respectfully submits this motion ex parte because immediate and irreparable injury will occur before Respondents can be heard in opposition.

/s/ Stephen O'Connor
Stephen O'Connor, Esq.
Attorney for Petitioner
Texas Bar No. 24060351
O'Connor & Associates, PLLC
7703 N Lamar Blvd, Ste. 300
Austin, TX 78752
Telephone: (512) 617 9600
Email: steve@oconnorimmigration.com

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2026, I electronically filed the foregoing Emergency Ex Parte Motion for Temporary Restraining Order with the Clerk of Court using the CM/ECF system.

/s/ Stephen O'Connor
Stephen O'Connor, Esq.
Attorney for Petitioner
Texas Bar No. 24060351
O'Connor & Associates, PLLC
7703 N Lamar Blvd, Ste. 300
Austin, TX 78752
Telephone: (512) 617 9600
Email: steve@oconnorimmigration.com