UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROY GUTIERREZ-PEREIRA,	§	
	§	
Petitioner-Plaintiff,	§	
v.	§	Case No. 4:25-cv-05981
	§	
MATTHEW W. BAKER, Assistant Field Office Director, Et. al.	§	
	§	
	§	
Respondents-Defendants.	§	

MOTION FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

Roy Gutierrez Pereira, Petitioner-Plaintiff ("Petitioner"; "Gutierrez Pereira") respectfully requests immediate action by this Court through a Temporary Restraining Order ("TRO") to avoid irreparable harm to Petitioner. Petitioner is in Respondents' custody pursuant to 8 USC § 1226. As acknowledged by the U.S. Department of Homeland Security (DHS) in their documentation (Form I-220A Order of Release on Recognizance), the statutory basis of the custody and release is pursuant to and authorized under the aforementioned statute, as further set forth below.

LEGAL AND FACTUAL BACKGROUND

A. FACTUAL BACKGROUND

A federal court has the power under 28 U.S.C. § 1651 - the All Writs Act, to issue injunctive orders in a case even before the court's jurisdiction has been established. When potential jurisdiction exists, a federal court may issue status quo orders to ensure that once its jurisdiction is shown to exist, the court will be in a position to exercise it." *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 n.19 (5th Cir. 1978).

24. Petitioner Roy Gutierrez-Pereira, a native and citizen of Cuba, born on [redacted] entered the U.S. without inspection on or about September 18, 2022, seeking asylum from Cuba. He was fleeing persecution based on political grounds.

25. Mr. Gutierrez-Pereira is married to a lawful permanent resident, Josefina Mejivar Cruz,kk here in the United States. The couple reside together at [redacted]. She has filed an I-130 petition for alien relative for him which is currently pending.

26. CBP Santa Lugo released him pursuant to the statutory authority found in 8 USC 1226a as is evidenced by the documents issued to him upon processing him for Notice to Appear/Release on his own Recognizance, which included: A Notice to Appear, Warrant for Arrest of Alien, a Notice of Custody Determination, Order of Release on Own Recognizance, Record of Deportable/Inadmissible Alien, I-862, I-200, I-286, I-220A, and I-213 which were issued on September 19, 2022.

27. The Notice to Appear issued for Plaintiff was filed with the Immigration Court in Dallas, Texas, thereby commencing removal proceedings against him. The Notice to Appear states that he is inadmissible pursuant to INA § 212(A)(6)(a)(i). His next master hearing is scheduled for January 15, 2026 at 9:30 AM.

28. He filed a timely application for political asylum, withholding of removal and protection under the Convention Against Torture on March 13, 2023. Roy Gutierrez-Pereira previously had appeared at the Enforcement and Removal Office in Dallas, Texas beginning on October 6, 2022, and then as often as required, pursuant to ERO's direction and the terms of his release on his Order of Release, pursuant to 8 USC §1226.

B. LEGAL BACKGROUND

The recent Board of Immigration Appeals decision of *Matter of Yajurure-Hurtado*, 29 I&N Dec. 216 (BIA Sept. 5, 2025) has stripped Immigration Judges of jurisdiction to provide bond hearings to the majority of aliens in removal proceedings, including those who initially entered the U.S. without inspection. This includes those who were previously classified by The U.S. Department of Homeland Security ("DHS") and the U.S. Department of Justice ("DOJ") as bond eligible and are now being reclassified to mandatory detention, which abruptly and unlawfully reversed decades of settled immigration practice in order to deny immigration bonds to potentially millions of people nationwide, including to potentially many thousands in Texas.

DHS and DOJ are systemically misclassifying people arrested *inside* the United States. These people are generally subject to the detention provisions of 8 U.S.C. § 1226, which usually (for non-criminal aliens) allows for release on bond during the pendency of immigration proceedings. Now, DHS and DOJ are misclassifying these people as subject to 8 U.S.C. § 1225, which does not allow for release on bond. This misclassification is contrary to almost 30 years of settled law and practice, and it is unlawfully premised solely upon the manner in which the person initially entered the country—in some cases, decades ago, contrary to well-settled law.

As of this time, this misclassification policy has been uniformly adopted by DHS and DOJ, and it is being applied to all civil immigration detainees and in all Immigration Courts, including people arrested, detained, and/or in immigration proceedings in Texas. *Matter of Yajurure-Hurtado*, *supra*. As a result, DHS is currently arresting vast numbers of people within Texas and unlawfully detaining them in jails without any possibility of release and without any due process protections even though they are legally required to receive a bond hearing and are eligible for release on bond *and in many cases have been in compliance with said bond orders*.

This lawless deprivation of liberty to people who had previously been on *non-detained immigration court dockets* with scheduled immigration hearings, including merits hearings set for a year or more in the future to having less than 30 days under the detained docket to prepare their cross-service (evidence) filing for the immigration court. Your plaintiff is among those whose case timeline has been rocketed, providing him with less than 30 days before his filings are all due to the immigration court before the merits hearing.

The unlawful actions of DHS and DOJ have resulted in a proliferation of independent federal lawsuits to protect the constitutional rights of noncitizens. Scores of federal judges have already ruled that DHS and DOJ are breaking the law. *See, e.g.*, Memorandum and Order (D.E. 22), *Hilario Rodriguez v. Moniz*, No. 25-12358 (D. Mass. Sept. 18, 2025) (Joun, J.); *Rodriguez*

Vasquez v. Bostock, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025). A federal district court in Washington rejected the government's interpretation of detention policy, collecting several cases where other federal courts have concluded that the BIA's stance "belies the statutory text".

Scores of district courts have disagreed with the government's new interpretation of § 235(b)(2) and subsequently granted relief to habeas petitioners (often on due process grounds). Below is a non-exhaustive list of relevant decisions:

First Circuit

- *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in Yajure Hurtado)
- *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025) o Doe v. Moniz, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) o Martinez v. Hyde, 2025 WL 2084238 (D. Mass. July 24, 2025)
- *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)

Second Circuit

- *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

Fourth Circuit

- *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

Fifth Circuit

- *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

Sixth Circuit

- *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E..D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in Yajure Hurtado)
- *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

Eighth Circuit

- *Carmona-Lorenzo v. Trump*, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- *Cortes Fernandez v. Lyons*, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- *Palma Perez v. Berg*, 2025 WL 2531566 (D. Neb. Sept 3, 2025)
- *O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)

- *Jacinto v. Trump*, 2025 WL 2402271 (D. Neb. Aug. 19, 2025
- *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- *Garcia Jimenez v. Kramer*, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- *Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)

Ninth Circuit

- *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing Yajure Hurtado)
- *Caicedo Hinestroza v. Kaiser*, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025)

Cases that outright reject the BIA's *Yajure-Hurtado* decision

- *Hyppolite v. Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025): Granted relief, finding the BIA's interpretation incorrect and that the individual was entitled to a bond hearing.
- *Guerrero Orellana v. Moniz*, —— F. Supp. 3d ——, 2025 WL 2809996 (D. Mass. Oct. 3, 2025): Found that the BIA decision was based on a flawed interpretation of the law and that a bond hearing was required.
- *Lepe v. Andrews*, —— F. Supp. 3d ——, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025): Granted relief, agreeing with the Ninth Circuit that bond hearings are required despite the BIA's decision.
- *Barrera v. Tindall*, 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025): Granted relief, finding that the BIA decision was not based on a correct understanding of the law and that a bond hearing was necessary.
- *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 2025): Directly addressed the BIA decision and found it to be a misinterpretation of the law, holding that a bond hearing is required.

See also, Sampiao v. Hyde, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (collecting cases).

Nevertheless, DHS and DOJ continue to violate the law and detain people without due process in violation of their statutory, regulatory, and constitutional rights.

Petitioner is prima facie eligible for relief from removal based on his asylum claim. DHS has served Petitioner with a Notice to Appear alleging that he was not previously admitted or paroled into the United States, and that he is present in the United States without immigration status. The Notice to Appear states that Petitioner is inadmissible pursuant to INA §

212(A)(6)(a)(i).

LEGAL STANDARD

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). This fundamental principle of our free society is enshrined in the Fifth Amendment's Due Process Clause, which specifically forbids the Government to "deprive… any "person . . . of . . . liberty . . . without due process of law." U.S. Const. Amend. V. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei,* 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

Jennings v. Rodriguez, 583 U.S. 281 (2018), while ultimately limiting some arguments against mandatory detention, the case and its lower court history reflect ongoing debate over the constitutionality of prolonged detention without a hearing; *Nken v. Holder*, 556 U.S. 418 (2009) established the standard for obtaining a stay of removal, emphasizing that the "most critical" factors are the likelihood of success on the merits and whether irreparable harm would occur if the stay were not granted; *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), affirming the fundamental nature of the liberty interest at stake in all detentions.

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision that radically expands the government's ability to detain noncitizens without any possibility of a bond hearing or release. That case, *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) is premised on a **new** reading of INA Sec. 235 (8 U.S.C. §1225), adopted by the

Department of Homeland Security (DHS) in July 2025[1], which has already been widely rejected by federal courts. *Yajure-Hurtado* deserves no deference, both under *Loper v. Bright*, 603 U.S. 369, 144 S. Ct. 2244 (2024) and conventional rules of statutory construction and constitutional due process law. It creates a **sweeping** new rule that federal courts have rejected as inconsistent with statutory context and structure, the legislative history of 8 U.S.C. §§1225 and 1226 and the Supreme Court's decision in *Jennings, supra.* DHS, pursuant to a July 8, 2025 policy guidance memorandum, announced that it "revisited its legal position on detention and release authorities," and that under this "revisited" position, **any** noncitizen present in the U.S. who has not been admitted, or who arrives in the U.S. should be subject to mandatory detention under 8 U.S.C. §1225(b), INA §225(b). In recent months, district courts across the United States have rejected this position and concluded that a noncitizen in Petitioners' situation (i.e. noncitizens who entered the U.S. without inspection) is entitled to a bond hearing under U.S.C. §1226(a), INA §226.

Mandatory detention is provided for noncitizens pursuant to 8 USC § 1225 (b)(2)(V) 235(b)(2); INA § 225(b)(IV) and 8 USC §1126(c); INA § 236(c) which exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 236(a), including noncitizens subject to certain grounds of inadmissibility, including **criminal** grounds inapplicable to your petitioner.

ARGUMENT

I. Petitioner is Likely to Succeed on the Merits.

[1] The U.S. Department of Homeland Security (DHS), pursuant to a July 8, 2025 policy guidance memorandum, announced that it "revisited its legal position on detention and release authorities," and that under this "revisited" position, any noncitizen present in the U.S. who has not been admitted, or who arrives in the U.S. should be subject to mandatory detention under 8 U.S.C. §1225(b), INA §225(b)

Petitioner is not lawfully subject to detention under §1225 after he has already been released and processed under §1226. INA §236(a) authorizes the arrest of noncitizens placed into removal proceedings under INA §240 (8 U.S.C. §1229a) and provides for bond or other release of those arrested. DHS has discretion to detain or release (on bond or parole) a person pending removal proceedings—and they previously released your petition on an Order of Supervision with which he has been compliant.

Matter of Yajure Hurtado has been given no deference by federal courts throughout the United States. It is not entitled to deference under *Loper v. Bright*, 603 U.S. 369, 144 S. Ct. 2244 (2024) (This landmark ruling overturned the 40-year-old precedent of *Chevron* deference, which required courts to defer to a federal agency's reasonable interpretation of an ambiguous statute.). The court opinions cited herein (and in the accompanying *habeas corpus* petition filed herein and relied upon for a TRO by reference further show that Respondents' arrest and detention of your petition is unlawful.

Respondents' new policy creates a sweeping new rule that strips most noncitizens who entered without inspection of the right to seek bond from an Immigration Judge. *Yajure-Hurtado* atg 218, 223 strips Immigration Judges of jurisdiction over custody redeterminations for noncitizens who entered without inspection and have not subsequently obtained lawful status.[2] Federal district courts that have recently heard cases on all fours with this one have consistently found that INA § 236, not § 235(b)(2), is the statute governing your petitioner's detention. In so finding, courts have relied on the record evidence and factual circumstances in a noncitizen's immigration proceedings, the text of both provisions of the statute, the statutory context and

[2] While noncitizens classified by DHS as detained pursuant to INA § 235(b)(2) are eligible to seek parole from custody under INA § 212(d)(5), DHS has not released people on parole in any meaningful numbers since the spring of 2025, apparently in accordance with agency policy. See Section II, Part 2.I.A & notes 109-110, American Immigration Council & Legal Aid Society, Detention under INA § 235(b): The Statutory Scheme and Strategies for Release (Sept. 2, 2025), https://www.americanimmigrationcouncil.org/practice-advisory/ina-235b-detention-practiceadvisory/.

structure, the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the legislative history of INA § 235 (as discussed below).

II. Petitioner Faces Imminent Irreparable Harm

Mandatory detention constitutes an indefinite and unconstitutional deprivation of liberty, which is universally considered an irreparable injury. As established in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the interest in being free from physical detention by the government is "the most elemental of liberty interests". Forcing a noncitizen to remain incarcerated for months or years to pursue his immigration case is a severe harm that cannot be remedied after release. "The loss or threatened infringement upon [constitutional] rights for even minimal periods of time unquestionably constitutes irreparable injury." *Cuviello v. City of Vallejo*, 944 F.3d 816, 832 (9th Cir. 2019)..."(citation modified)." Cited in the recent TRO order in *Acosta v. Albarra*n, 3:25-cv-09601 (N.D. Cal. Nov 06, 2025)

When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (citation modified). See *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (holding that a finding of irreparable harm "follows inexorably" from a "conclusion that the government's current policies are likely unconstitutional").

Mandatory detention significantly impairs a noncitizen's ability to prepare a defense, which can ultimately cause them to lose their case and be unjustly removed.

Detainees are often transferred to remote facilities far from their families and legal counsel. This separation makes communication difficult and can deprive individuals of the necessary legal assistance to navigate the complex immigration system. This harm is amplified

for detainees with mental competency issues, as their inability to access representation can threaten due process.

Forcing noncitizens into detention separates them from their families for indefinite periods, inflicting profound harm on infants, children, and spouses. This trauma is inflicted without an individualized determination that detention is necessary. The extended detention of a wage earner places immense financial pressure on a noncitizen's family.

III. Public Interest

Preventing irreparable injury to a noncitizen is not only in the individual's interest but also in the public interest, particularly when it comes to upholding fundamental constitutional principles. Allowing the government to ignore due process protections for one population, such as noncitizens, sets a dangerous precedent that threatens the rights of all persons in the United States, citizens and noncitizens alike. Circumventing due process "defies the Constitution and is against the rule of law". Upholding due process rights for noncitizens serves the public interest by preserving the rule of law.

Under the current custody arrangement, Petitioner checks-in as scheduled to the Enforcement and Removal Office. Mandatory detention is not necessary to prevent flight risk or danger to the community. Noncitizens released on bond have historically appeared for their court dates, demonstrating that individualized bond hearings are a fairer and equally effective alternative. Your petitioner has never absconded and is detained right now due to his compliance with his Order of Supervision which Respondents' lawlessly revoked.

IV. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Temporary Restraining Order

The balance of equities and public interest merge in cases against the government. *See*

Nken v. Holder, 556 U.S. 418, 436 (2009). Here, the balance overwhelmingly favors Petitioner. The public has a strong interest in preventing wrongful deprivation of liberty. *See id.*; *see also Zadvydas v. Davis, 533 U.S. 678 (2001).* Conversely, the government can make no comparable claim to harm from an injunction. *See Wages & White Lion Inv., L.L.C. v. FDA,* 16 F.4th 1130, 1143 (5th Cir. 2021) ("There is generally no public interest in the perpetuation of unlawful agency action.").

Petitioner, moreover, does not contest Respondents' ability to prosecute criminal offenses, detain noncitizens, and remove noncitizens under existing statutory guidelines. At bottom, law enforcement and immigration enforcement officials lose no authority or ability to lawfully detain such individuals, even if the wrongful misclassification of noncitizens for bond purposes is enjoined.

V. The Court Should Not Require Petitioners to Provide Security.

The Court should not require a bond under Fed. R. Civ. P. 65(c). That "is a matter for the discretion of the trial court," and a district court "may elect to require no security at all." *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). The Fifth Circuit has approved the exercise of this discretion to require no security in cases brought by indigent people and/or public-interest litigation. *See, e.g., City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981); *Steward v. West*, 449 F.2d 324, 325 (5th Cir. 1971). Alternatively, the Court should impose a nominal bond of $1 or such amount as the court deems just. The court should take into consideration that your petitioner has **complied** with his release status order given to him by these very Respondents.

CONCLUSION

The Court should grant a TRO as to the named Petitioner, providing such orders and terms as the court deems appropriate.

Date: December 15, 2025

Respectfully Submitted,

/s/ Sondra Turin
TX State Bar No.: 00797755

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CERTIFICATE OF SERVICE

On December 16, 2025, I electronically submitted the foregoing document with the clerk of the Court for the U.S. District Court, Southern District of Texas, using the electronic case filing system of the Court. I hereby certify that I have served all parties electronically or by another manner authorized by the Federal Rules of Civil Procedure, Rule 5(b)(2).

//Sondra M. Turin
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