

1 SYLVIA L. ESPARZA, ESQ. NV #8444
2 Law Office of Sylvia L. Esparza
3 3340 Pepper Lane, Suite 105
4 Las Vegas, Nevada 89120
5 (702) 853-0233
6 Fax (702) 853-0234
7 Sylvia@sylviaesparzalaw.com
8 Counsel for Petitioner,
9 Alexis Ivan Venegas Banuelos

7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA (LAS VEGAS)**

9 Alexis Ivan VENEGAS BANUELOS

10 Petitioner,

11 vs.

12
13 Kristi NOEM, Secretary of the
14 United States Department of Homeland
15 Security;

16 Pamela BONDI, Attorney General of the
17 United States;

18 Jason KNIGHT, Salt Lake City Acting
19 Field Office Director, Enforcement and
20 Removal Operations, U.S. Immigration and
21 Customs Enforcement;

22 John MATTOS, Warden at Southern
23 Nevada Southern Detention Center.

24 Respondents.

Case No.
Agency No.



**COMBINED MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PETITION FOR WRIT
OF HABEAS AND EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER**

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I. INTRODUCTION

Alexis Ivan Venegas Banuelos (“Petitioner”) seeks relief to remedy his unlawful detention. Mr. Venegas Banuelos was detained by Immigration and Customs Enforcement (“ICE”) on November 24, 2025, and he remains detained at the Nevada Southern Detention Center in Pahrump, Nevada.

Mr. Venegas Banuelos is a 23-year-old individual who was brought to the United States when he was 10 months old and has lived here ever since. He knows no other home or way of life beyond the country in which he was raised. While in school, Mr. Venegas Banuelos faced lifelong educational and social challenges, having required special-education services through an Individualized Educational Program (“IEP”) and ultimately leaving high school to enter the workforce. Despite these obstacles, he has built a steady work history in construction and window-washing and is known by his family as a caring, dependable son and brother. His criminal history is minimal, limited to an arrest for DUI and traffic violations.

Mr. Venegas Banuelos also has a history of depression and anxiety, which worsened earlier this year following the unexpected end of a five-year relationship. During that period, he turned to alcohol as an unhealthy coping mechanism—not as part of any ongoing substance issue, but as a young man struggling with emotional instability, social anxiety, and longstanding learning difficulties.

These mental-health vulnerabilities have made detention especially damaging for him. The isolation and uncertainty have significantly exacerbated his symptoms, leaving him

1 overwhelmed and emotionally fragile. What may be challenging for many detainees has
2 become uniquely destabilizing for Mr. Venegas Banuelos, who lacks the cognitive and
3 emotional resources to cope with prolonged confinement.
4

5 Mr. Venegas Banuelos' criminal history consists of an arrest on November 23, 2025,
6 by the North Las Vegas Police Department ("NLVPD") for Driving Under the Influence and
7 traffic violations. Other than this criminal history, Petitioner has lived an honest and productive
8 life.
9

10 The Petitioner here falls into the category of detainees to whom the Board of
11 Immigration Appeals ("BIA" or "Board") will not grant bond under *Matter of Yajure Hurtado*,
12 29 I. & N. Dec. 216 (BIA 2025). Therefore, filing an appeal with the BIA is a completely futile
13 gesture.
14

15 Both the government's new policy and the Board's new interpretation of the statute is
16 fundamentally irrational, arbitrary and capricious, and a complete deprivation of Petitioner's
17 right to seek a bond redetermination and be released from custody. Due process requires that
18 the government provide Petitioner a bond redetermination hearing, and if successful be allowed
19 to post the bond, and also enjoining the government from filing an automatic stay under 8
20 C.F.R. §1003.19(i)(2), unless it can show why a writ should not be issued. *Singh v. Holder*,
21 638 F.3d 1196, 1203 (9th Cir. 2011). Upon judicial review of the constitutionality of the BIA's
22 new interpretation of the INA, Mr. Venegas Banuelos clearly demonstrates that he is detained
23 in violation of the law.
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1 Mr. Venegas Banuelos seeks to preliminarily enjoin DHS from continuing his
2 detention, unless he is provided a bond redetermination hearing under 8 U.S.C. §1226(a) and
3 if successful allowed to post a bond without the government filing an automatic stay under 8
4 C.F.R. §1003.19(i)(2). Mr. Venegas Banuelos will suffer immediate and irreparable harm if
5 this Court does not enjoin his continued detention, given that his continued detention violates
6 his due process rights. *See* Fed. R. Civ. 65(b).

7
8 Moreover, Mr. Venegas Banuelos will suffer irreparable harm, as “[i]t is well
9 established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable
10 injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*,
11 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that “[a]n alleged
12 constitutional infringement will often alone constitute irreparable harm.” *Goldie’s Bookstore,*
13 *Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984). Here, Respondent’s
14 continued deprivation of Petitioner’s liberty violates Petitioner’s due process rights and
15 constitutes irreparable injury. Indeed, every day that Petitioner is detained is a day of freedom
16 Petitioner cannot get back.

17
18
19 Mr. Venegas Banuelos meets the standard for a preliminary injunction. As shown in
20 greater detail below, it is likely he will succeed on the merits of his claim in this case. Due to
21 the government’s policy and the BIA’s new interpretation of the INA, he has been deprived of
22 his right to seek a bond redetermination and liberty in violation of due process. Mr. Venegas
23

1 Banuelos will also be able to show irreparable and immediate harm. Lastly, the balance of
2 equities and public interest weighs in his favor.

3
4 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

5 Petitioner is a 23-year-old native and citizen of Mexico. Exh. A (Affidavit of Maria
6 Banuelos). Petitioner last entered the United States without inspection on or about 2003 when
7 he was a baby and has resided in the United States continuously since then. Petitioner resides
8 with his mother and siblings who have legal status. See Exh. B (Family Ties). Petitioner's
9 mother has been struggling to pay their bills as she relied on Petitioner's financial
10 contributions. Petitioner's mother is also suffering severe symptoms of anxiety since his
11 detention and worries for her son as he has a history of mental health crisis and special
12 educational needs. See Exh. A; See Exh. C, (Evidence of Special Education).

13
14 Prior to his detention, Petitioner was employed as a drywall installer by Southern Nevada
15 Drywall Systems. See Exh. A. Even though he did not graduate from high school, he promptly
16 entered the workforce and has been supporting himself and assists his family with their
17 household expenses. *Id.* Petitioner is loved by his friends and family. See Exh. D (Letters from
18 Friends and Family). Petitioner was recently arrested on November 23, 2025, for Driving
19 Under the Influence. This matter is currently set for arraignment on January 27, 2026. See Exh.
20 E (Criminal Record).

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23 Soon after his arrest, Petitioner was transferred to ICE custody and to date has not been
24 served with a Notice to Appear and has not been brought before an immigration judge to
25

1 address his status. *See* Exh. F (EOIR Case Printout dated December 12, 2025). As a result,
2 Petitioner remains detained at Nevada Southern Detention Facility.

3 **III. LEGAL BACKGROUND**

4
5 “In our society liberty is the norm, and detention prior to trial or without trial is the
6 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Civil
7 detention violates the Due Process Clause except “in certain special and narrow nonpunitive
8 circumstances, where a special justification, such as harm-threatening mental illness,
9 outweighs the individual’s constitutionally protected interest in avoiding physical restraint.”
10 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citations omitted). In *Singh v. Holder*, 638 F.3d
11 1196, 1203-1204, the Ninth Circuit reiterated that the Supreme Court had determined that
12 “civil commitment for *any* purpose constitutes a significant deprivation of liberty.” *Singh*, 638
13 F.3d at 1204. (internal citations omitted).

14 **A. Mandatory and Discretionary Detention**

15
16 Under these constitutional constraints, Congress has created a scheme for detention of
17 noncitizens in removal proceedings. For decades, the Department and EOIR interpreted 8
18 U.S.C. § 1226(a) to authorize immigration judges to provide a custody redetermination hearing
19 even though DHS could detain a noncitizen “pending a decision on whether [he] is to be
20 removed from the United States.” 8 U.S.C. § 1226(a). In *Casas-Castrillon v. Dep’t of*
21 *Homeland Security*, 535 F.3d 942, (9th Cir. 2008), the Ninth Circuit held that immigrants
22 detained under § 1226(a) are entitled to individualized bond hearings. 8 C.F.R. § 1003.19(h)(3)
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1 provides that a noncitizen subject to detention must show by clear and convincing evidence
2 that the noncitizen is not a danger to other persons or property and that the noncitizen is not a
3 flight risk.
4

5 In contrast to § 1226(a), noncitizens who have been convicted of certain criminal
6 convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510,
7 513 (2003). Congress added this provision by passing the Illegal Immigration Reform and
8 Immigrant Responsibility Act of 1996 (“IIRIRA”) to address concerns that criminal
9 noncitizens frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*,
10 978 F.3d 842, 848 (2d Cir. 2020). The new section mandated detention for noncitizens who
11 were convicted of aggravated felonies, drug trafficking, and crimes involving moral turpitude.
12 *Demore*, 538 U.S. at 518–20.
13

14 In January 2025, Congress added a new category of noncitizens who are subject to
15 mandatory detention with the Laken Riley Act, codified as 8 U.S.C. § 1226(c)(1)(E). The new
16 section mandated detention for noncitizens who: (1) are inadmissible under 8 U.S.C.
17 § 1182(a)(6)(A), 1182(a)(6)(C), or 1182(a)(7); and (2) are charged with, are arrested for, are
18 convicted of, admit having committed, or admit committing acts that constitute the elements
19 of any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or
20 any crime that results in death or serious bodily injury to another person. § 1226(c)(1)(E).
21

22 Further, 8 U.S.C. § 1225(b) requires detaining noncitizens who (1) are subject to
23 expedited removal under § 1225(b)(1), or (2) are “seeking admission” at the border under
24
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1 § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins
2 at the Nation’s borders and ports of entry).

3 **B. Automatic Stay of Custody Order Under 8 C.F.R. § 1003.19(i)(2)**

4 The Department has significant power in limiting the application of the IJ’s order. Under
5 8 C.F.R. § 1003.19(i)(2), the Department can file a notice of intent to appeal a noncitizen’s
6 custody determination (Form EOIR-43), which will automatically and unilaterally stay the IJ’s
7 order authorizing the noncitizen’s release on bond. This Court recently found that the
8 automatic stay is being systematically applied in cases where the Immigration Judge finds
9 jurisdiction to hold a bond hearing and where the Immigration Judge finds that individual is
10 not a danger to the community or a flight risk and grants a bond. This conduct would violate
11 Petitioner’s procedural and substantive due process.¹ *Vazquez v. Feeley*, No. 25-CV-01542,
12 2025 WL 2676082 (D. Nev. Sep. 17, 2025).
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19 ¹ Petitioner acknowledges that the government has not yet invoked the automatic stay in his case because he has
20 not been afforded a bond hearing. Nonetheless, the extensive litigation across multiple federal district courts
21 shows that the government is routinely applying this procedure. It would provide little benefit to Petitioner if,
22 after successfully demonstrating to the Immigration Judge that he is neither a danger to the community nor a flight
23 risk, the government were to impose an automatic stay, forcing him to return to this Court and continue litigating
24 the matter. In the alternative, Petitioner respectfully requests that the Court order a status report or hold a status
25 conference to oversee the progression of his case and to ensure that the automatic stay is not being invoked.

IV. ARGUMENT

A. This Court Has Jurisdiction.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

i. 8 U.S.C. § 1226(e) does not preclude jurisdiction.

While Section 1226(e) of the INA precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s detention without bail.” *Jennings*, 138 S. Ct. at 841.

Moreover, Section 1226(e) does not limit habeas review over constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional claims and questions of law—whether the automatic stay provision in this case and the BIA’s new interpretation of the INA violate the Petitioner’s right to procedural due process and substantive due process after denying him the ability to post a bond—Section 1226(e) does not preclude this Court’s jurisdiction to review Petitioner’s habeas petition.

1 **ii. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.**

2 Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review
3 to the appropriate federal court of appeals, which would be the Ninth Circuit here. However,
4 where a petitioner is not seeking review of a removal order or is challenging their detention or
5 a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586
6 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*,
7 591 U.S. 1, 19 (2020) (“§ 1252(b)(9) does not present a jurisdictional bar where those bringing
8 suit are not asking for review of an order of removal, the decision to seek removal, or the
9 process by which removability will be determined.”).

10 **iii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.**

11 Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot
12 hear “any cause of claim by or on behalf of any alien arising from the decision or action by the
13 Attorney General to commence proceedings, adjudicate cases, or execute removal orders
14 against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of
15 this section to three discrete actions that an Attorney General may take: (1) the decision or
16 action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the
17 decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*,
18 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is
19 not a challenge to one of the three discrete events listed in *Reno*.
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1 **B. Administrative Exhaustion Is Futile and Should Be Waived.**

2 Generally, if the exhaustion requirement is statutory, “it may be mandatory and
3 jurisdictional, but courts have discretion to waive a prudential requirement.” *Laing v. Ashcroft*,
4 370 F. 3d 994, 998 (9th Cir. 2004). Furthermore, this court has already recognized that
5 “[n]either the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require
6 petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Id.*
7 (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *Vazquez v. Feeley*, 2025
8 U.S. Dist. LEXIS 182412, *27; 2025 LX 460110; 2025 WL 2676082 (D. Nev. Sep. 22, 2025).
9

10 Instead, the court may require prudential exhaustion under *Puga v. Chertoff*, 488 F.3d
11 812, 815 (9th Cir. 2007). Prudential exhaustion may be waived if “administrative remedies are
12 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,
13 irreparable injury will result, or the administrative proceedings would be void.” *Laing v.*
14 *Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988; 2017
15 U.S. App. LEXIS 19021, *22; 2017 WL 3887819.
16

17 Applying the three *Puga* factors, this court should waive the prudential exhaustion
18 requirement. Similarly to the Petitioner in *Arce-Cervera v. Noem*, the Court should
19 “incorporate its prior findings...that administrative exhaustion is excused as futile.”
20 *Arce-Cervera v. Noem*, 2025 U.S. Dist. LEXIS 212397, *15; 2025 LX 426887; 2025 WL
21 3017866.
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1 There is widespread agreement among the federal courts that *Matter of Yajure Hurtado*'s
2 new interpretation violates the INA and is unconstitutional. This Court recently found in
3 *Vazquez v. Feeley* that § 1226, not § 1225, applies to noncitizens such as the Petitioner. That
4 decision, along with about one hundred federal court decisions,² have emphasized that the
5 Department's interpretation of § 1225 is erroneous for several reasons, such as (1) the plain
6 meaning of the INA provisions in the context of recent amendments, (2) legislative history,
7 and (3) longstanding agency practice. This Court found that "the phrases 'applicants for
8 admission' and 'seeking admission,' taken together, are limited in temporal scope, and cannot
9 be read to apply indefinitely to all noncitizens residing in the U.S. for years or decades."
10 *Vazquez v. Feeley*, 2025 WL 2676082, at *13; *Ramirez v. Noem*, No. 25-CV-02136, 2025 WL
11 3270137, at *2 (D. Nev. Nov. 24, 2025). Several district courts in the Ninth Circuit and
12 throughout the country have found equally. *See, e.g., Rodriguez Vazquez v. Bostock*, 779 F.
13 Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v. Figueroa*, No. 25-CV-02157, 2025 WL 2337099
14 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL
15 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL
16 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924, 2025 WL
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25 ² *Mendez v. Noem*, 2025 U.S. Dist. LEXIS 219483, at 3 n.3.

1 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v. Noem*, No. 25-CV-02180, 2025 WL
2 2549431 (S.D. Cal. Sep. 3, 2025).

3 Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of
4 migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to
5 noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court
6 found that Congress had a similar intent when it passed the IRRIRA and recognizes the
7 backdrop of precedential cases that highlight a distinction between noncitizens arriving at the
8 border and those who have resided in the country for an extended period of time. *Id.* at *15.
9 The Court also recognized that the Laken Riley Act was passed against a “backdrop of
10 longstanding agency practice applying § 1226(a) to inadmissible noncitizens already residing
11 in the country.” *Id.* at *16. Using traditional interpretive tools, courts should construe statutes
12 to work in harmony with what has come before. *Id.*

13 More importantly, each day that Petitioner remains in unconstitutional detention
14 constitutes irreparable harm, which itself provides good cause to excuse the exhaustion
15 requirement. Accordingly, this Court should adopt the reasoning of the majority of federal
16 district courts, which have waived exhaustion on the basis of such irreparable injury. *See, e.g.,*
17 *Feeley v. Vazquez*, 2025 WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025
18 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Sanchez Roman v. Noem*, No. 25-CV-01684, 2025
19 WL 2710211 (D. Nev. Sep. 23, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304,
20 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025).

1 Without intervention, Petitioner will remain detained for months or years until the
2 government issues a Notice to Appear and the Immigration Judge makes a decision, and the
3 BIA or the Circuit Court issues a final decision on the merits of his relief from removal.
4

5 **C. Mr. Venegas Banuelos Is Likely to Succeed in Showing That His Detention**
6 **Violates Due Process or There Is a Serious Question**

7 A temporary restraining order is appropriate if a petitioner can show that: (1) he is “likely
8 to succeed on the merits”; (2) he “is likely to suffer irreparable harm in the absence of
9 preliminary relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in
10 the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the
11 Ninth Circuit’s alternative “sliding scale” approach, a temporary restraining order is
12 appropriate if “a plaintiff demonstrates . . . that serious questions going to the merits were
13 raised and the balance of hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild*
14 *Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation marks omitted).
15
16 Petitioner’s due process claims satisfy these standards.

17
18 Petitioner asserts that his detention violates his due process because the BIA’s new
19 interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not
20 section 1226(a) is incorrect and violates the INA.
21

22 To determine whether Petitioner’s continued detention violates his procedural due
23 process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976).
24 Here the court weighs the following factors: (1) “the private interest that will be affected by
25

1 the official action"; (2) "the risk of an erroneous deprivation of such interest through the
2 procedures used, and the probable value, if any, of additional or substitute procedural
3 safeguards"; and (3) "the Government's interest, including the function involved and the fiscal
4 and administrative burdens that the additional or substitute procedural requirement would
5 entail." *Mathews*, 424 U.S. at 335.
6

7 In this case, Petitioner's private interest is his freedom—"the most elemental of liberty
8 interests—the interest in being free from physical detention by one's own government." *Hamdi*
9 *v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
10 ("Freedom from imprisonment—from government custody, detention, or other forms of
11 physical restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs
12 heavily in Petitioner's favor, as the government's new policy and the BIA's precedential
13 decision, in *Matter of Yajure Hurtado* interpreting §1225(b)(2) is applicable to Petitioner, not
14 section 1226(a), and holding that Immigration Judges have no authority to hold bond hearings
15 for these individuals like Petitioner, deprives him of his fundamental liberty interest in freedom
16 from incarceration. Due to his mental health history, including depression, anxiety, and the
17 social and educational challenges he has faced since childhood, detention has been especially
18 devastating for him. The isolation and uncertainty of confinement have intensified his
19 symptoms, leaving him overwhelmed, fearful, and emotionally vulnerable. What may be a
20 difficult experience for many is, for him, an oppressive and destabilizing environment that he
21 is uniquely ill-equipped to cope with given his intellectual limitations and fragile mental health.
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1 Whereas the government’s interest to keep the Petitioner detained throughout the entirety of
2 his proceedings through judicial review is not as weighty.
3

4 In regards to the second factor, “the risk of erroneous deprivation” of Petitioner’s right
5 to be free from incarceration, the court must review if the application of the new government
6 policy affirmed by *Matter of Yajure Hurtado* increases that risk. Here, Petitioner will most
7 certainly be at risk of erroneous deprivation of his liberty because he has not been afforded a
8 bond redetermination hearing where he could demonstrate that he is not a danger to the
9 community or a risk of flight, and be allowed to post a bond resulting in his release. Recently,
10 this court found a similarly situated Petitioner, that “continued detention of Petitioner without
11 a constitutionally adequate bond hearing violates Petitioner’s procedural and substantive due
12 process rights.” *Arce-Cervera v. Noem*, 2025 U.S. Dist. LEXIS 212397, *16, 2025 LX 426887,
13 2025 WL 3017866 (D. Nev. Oct. 28, 2025).
14
15

16 As to the last factor, the government’s interest and burden of additional or substitute
17 procedural requirements, the *Mathews* test requires the court to weigh the Petitioner’s private
18 liberty interests and risk of erroneous deprivation against the government’s interest in applying
19 *Matter of Yajure Hurtado*, which includes the use of additional or substitute procedural
20 requirements.
21

22 While Petitioner recognizes that the government has an important interest in ensuring
23 that persons in removal proceedings do not commit crimes or abscond from the law during
24 their proceedings, that interest has not been tested. The Immigration Judge has yet to conduct
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1 an individualized assessment of Petitioner’s criminal record and personal history to make the
2 assessment if Petitioner poses a danger to the community or a risk of flight. Moreover, as other
3 courts have recognized, perhaps there are other non-legitimate interests in keeping Petitioner
4 in mandatory detention—which paradoxically creates unnecessary financial and administrative
5 burdens for the government itself. See *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344,
6 *41-42; 2025 LX 303800; 2025 WL 2337099 (citing *Vasquez Perdomo v. Noem*, F. Supp. 3d,
7 No. 2:25-cv-056050, 2025 WL 1915964, at *5 (C.D. Cal. July 11, 2025) (noting “[t]he
8 government's only apparent interest in taking Rosado into custody, [*42] which actually places
9 an additional fiscal and administrative burden on the government, is to fulfill a quota of arrests,
10 i.e., 3,000 immigration arrests per day, set by the current administration.”). Indeed, keeping
11 Petitioner detained is far more expensive than allowing him to be released on bond. See
12 *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *61; 2025 LX 460110; 2025 WL 2676082
13 (citing *Hernandez v. Sessions*, 872 F.3d 976, 996; 2017 U.S. App. LEXIS 19021, *40; 2017
14 WL 3887819) (“The costs to the public of immigration detention are "staggering": \$158 each
15 day per detainee, amounting to a total daily cost of \$6.5 million. Supervised release programs
16 cost much less by comparison: between 17 cents and 17 dollars each day per person.”)
17 Therefore, this factor weighs in favor of finding that Petitioner’s due process rights have been
18 violated. Since all three factors of the *Mathews* test weigh in favor of Petitioner, he has
19 established a likelihood of success on the merits.
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1 *States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1998). Here, Petitioner's continued
2 deprivation of liberty without a bond hearing under §1226(a) violates Petitioner's due process
3 rights and constitutes irreparable injury. Indeed, each day of confinement is a day of freedom
4 forever taken from Petitioner.
5

6 In the correctional setting, the stakes are high, and any delay or denial of care can convert
7 an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical
8 care in jails and prisons is a well-documented systemic failure. Incarcerated persons often
9 endure delays, missed appointments, staffing shortages, and willful indifference by
10 correctional medical staff.³ Therefore it is not speculative to fear that Petitioner's health will
11 deteriorate rapidly while he remains detained.
12

13 Petitioner shares a close and supportive relationship with his mother and siblings. He is
14 an integral part of the family unit and has consistently contributed to the household's financial
15 stability. His income has helped cover essential living expenses, and his family relies on him
16 both emotionally and economically. Petitioner's continued detention separates him from his
17 mother, his siblings and his employment and other members of the community. His family
18 suffers in his absence, is deprived of the love, and financial support he contributes to the family.
19 The conditions of confinement impose further harms, including incarceration in jail-like
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25 ³ Homer Venters, The Health Crisis of U.S. Jails and Prisons, *New Eng. J. Med.* 2259 (2022),
<https://www.nejm.org/doi/full/10.1056/NEJMms2211252>

1 facilities, inadequate medical care, and other substandard living conditions. His mother is
2 struggling to meet their household financial obligations and is concerned with her ability to
3 pay rent and provide food for her family. The loss of Petitioner's income has left the family
4 in financial distress. Beyond the financial hardship, the emotional toll has been devastating.
5 Petitioner has been completely separated from his family.
6

7 Further, Petitioner has a history of depression and anxiety. He has struggled with his
8 mental health for many years, experiencing periods of emotional instability that have made
9 daily functioning more difficult, particularly during times of stress or family hardship. The
10 isolation and uncertainty of confinement have intensified symptoms of Petitioner's existing
11 mental health issues, including anxiety and depression, leaving him overwhelmed, fearful, and
12 emotionally vulnerable. In short, Petitioner's detention has shaken this family's stability,
13 causing pain, anxiety, and hardship that worsen with every passing day he remains in detention.
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16 **E. Equitable Considerations and Public Interest Favor Petitioner's Release.**

17 The last two factors under *Winter* "merge when the Government is the opposing party."
18 *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S.
19 LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner.
20 Petitioner faces irreparable harm to his constitutional rights, to his health and other harms that
21 flow from ongoing detention.
22

23 Moreover, the government's interest in Petitioner's continued detention is minimal and
24 pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer.
25

1 Here, Petitioner remains in custody indeterminately without a bond hearing to determine if he
2 is danger to the community or a flight risk. His continued detention not only violates his
3 constitutional rights but also causes direct suffering to him, his family and his community. As
4 the Ninth Circuit has regularly held, there is no harm to the government when a court prevents
5 the government from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127,
6 1145 (9th Cir. 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

8 Finally, the temporary restraining order sought here is in the public interest. The public
9 has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826
10 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right
11 has been violated, because all citizens have a stake in upholding the Constitution.”); *Phelps-*
12 *Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (“[I]t is always in the public interest to
13 protect constitutional rights.”). Moreover, the public has an interest in accurate determinations
14 in all legal proceedings, including in the decision of whether to detain individuals during their
15 immigration cases. The public is also served by avoiding excessive expense on detention and
16 ensuring that the government does not expend its resources to detain individuals unnecessarily.

19 V. CONCLUSION

20 WHEREFORE, and for the foregoing reasons, Petitioner maintains that his continued
21 detention is unlawful. He respectfully asks this Court to issue a temporary restraining order
22 directing the government to provide him with a bond hearing within seven (7) days under INA
23 § 1226(a), and to enjoin the government from denying bond on the ground that he is detained
24

1 under § 1225(b)(2). If the government fails to provide the required bond hearing, Petitioner
2 further requests his immediate release.
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4
5 Dated: December 12, 2025

6 */S/ SYLVIA L. ESPARZA*

7 Sylvia L. Esparza, Esq.

8 Attorney for Petitioner
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