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### INTRODUCTION

Petitioner, Santiago López Morales, is a 44-year-old citizen of Mexico who entered the United States without inspection in January 2000 and has continuously resided in the United States for more than twenty-five (25) years. Since his entry, Petitioner has established deep ties to the United States, including long-term residence, steady employment, and a U.S. citizen family. He has no criminal history, no record of violent conduct, and has consistently acted in good faith in pursuing relief under the Immigration and Nationality Act.

On September 22, 2025, the Department of Homeland Security (“DHS”) apprehended Petitioner in El Paso, Texas, and placed him into immigration detention. Petitioner is currently detained at the ERO El Paso Camp – East Montana, located at 6920 Digital Road, El Paso, Texas, under the supervision of the El Paso Field Office of Enforcement and Removal Operations. DHS subsequently issued Petitioner a Notice to Appear, charging him as inadmissible under INA § 212(a)(6)(A)(i) and placing him into § 240 removal proceedings before the Immigration Court in El Paso, Texas, where his case remains pending.

Through counsel, Petitioner sought a custody redetermination under INA § 236(a), as noncitizens in § 240 removal proceedings are presumptively eligible for discretionary bond consideration. On December 3, 2025, however, the Immigration Judge denied bond, concluding that the court lacked authority to consider release because DHS had classified Petitioner as an “applicant for admission” subject to mandatory detention under INA § 235(b), relying on the agency’s interpretation set forth in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Petitioner contested this classification, which is legally erroneous and directly foreclosed by controlling federal court authority.

As the district court held in *Maldonado Bautista v. Santacruz*, noncitizens like Petitioner—who are placed in § 240 proceedings and are not subject to §§ 1226(c), 1225(b)(1), or 1231—are detained under 8 U.S.C. § 1226(a) and may not be denied consideration for release on bond based on § 1225(b)(2). DHS and EOIR’s continued refusal to provide Petitioner with a bond hearing therefore violates the Immigration and Nationality Act, binding declaratory relief issued in *Maldonado Bautista*, and the Due Process Clause of the Fifth Amendment.

Despite his long-term residence, lack of criminal history, strong community ties, and absence of any individualized finding of danger or flight risk, Petitioner remains detained without a constitutionally adequate custody determination. His detention—civil in name but punitive in effect—has become arbitrary and unsupported by law. Each additional day of confinement causes irreparable harm, including severe emotional distress, family separation, and the loss of liberty that cannot be remedied after the fact.

Every day Petitioner remains confined causes irreparable harm, including the severe psychological impact of prolonged detention. DHS’s refusal to provide him with a meaningful opportunity for release violates the Immigration and Nationality Act, 8 U.S.C. § 1226(a), and the Due Process Clause of the Fifth Amendment, which prohibit deprivation of liberty absent a lawful and individualized justification and a violation of the *Accardi* doctrine.

Accordingly, Petitioner respectfully requests that this Court: (1) enjoin Respondents from transferring him out of this District while this action is pending; (2) direct Respondents to provide Petitioner with a constitutionally adequate bond hearing before a neutral Immigration Judge within three (3) days, at which DHS bears the burden of proof; and (3) grant such other and further relief as the Court deems just and proper.

## **STATEMENT OF FACTS**

Petitioner repeats and incorporates by reference each Statement of Facts contained in the Petition for Writ of Habeas Corpus as if fully set forth herein.

### **I. HABEAS RELIEF**

To obtain *habeas corpus* relief, a petitioner must demonstrate that he is “in custody in violation of the Constitution or laws or treaties of the United States.” See 28 U.S.C. § 2241(c)(3). This Court has *habeas corpus* jurisdiction to consider the statutory and constitutional grounds for immigration detention that are unrelated to a final order of removal. See *Demore v. Kim*, 538 U.S. 510, 517–18 (2003).

### **II. DETENTION AUTHORITY UNDER THE INA**

The Immigration and Nationality Act (“INA”) establishes three principal statutory bases for the detention of noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the discretionary detention of noncitizens placed in standard removal proceedings under 8 U.S.C. § 1229a. Individuals detained under § 1226(a) are entitled to an individualized custody determination before an Immigration Judge and may seek release on bond or conditional parole. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). By contrast, noncitizens falling within certain enumerated criminal categories are subject to mandatory detention under § 1226(c).

Second, 8 U.S.C. § 1225(b) governs mandatory detention of certain noncitizens seeking admission, including those encountered at or near the border before being admitted or paroled. See 8 U.S.C. § 1225(a)(1), (b)(2)(A). Such individuals are “applicants for admission” and may be

detained only under the admission-related framework, unless temporarily paroled under INA § 212(d)(5)(A).

Third, individuals subject to a final order of removal fall under the post-order detention scheme set forth in 8 U.S.C. § 1231(a)–(b), which authorizes detention only for a period reasonably necessary to effectuate removal.

Under this statutory framework, Petitioner’s custody arises under § 1226(a). Petitioner is in standard § 240 removal proceedings before the Immigration Court in El Paso, Texas, has no criminal history, and is not subject to a final order of removal. DHS charged Petitioner as inadmissible under INA § 212(a)(6)(A)(i) and placed him into removal proceedings pursuant to 8 U.S.C. § 1229a, placing him squarely within the discretionary custody authority of § 1226(a), not mandatory detention. Nothing in § 1226(a) authorizes prolonged or indefinite detention of a noncitizen who poses no danger or flight risk; civil detention must remain reasonably related to the government’s limited purposes of ensuring appearance and protecting public safety. See *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *Demore v. Kim*, 538 U.S. 510, 528–31 (2003).

Despite this statutory scheme, DHS has invoked the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to argue that Immigration Judges lack jurisdiction to conduct bond hearings for individuals whom DHS characterizes as “applicants for admission” under § 1225(b)(2). Relying on that interpretation, the Immigration Judge declined to exercise bond jurisdiction in Petitioner’s case, notwithstanding his placement in § 240 removal proceedings and his eligibility for custody redetermination under 8 C.F.R. §§ 1003.19(a), 1236.1(d).

This interpretation, however, has been expressly rejected by the district court in *Maldonado Bautista v. Santacruz*, which held that noncitizens in Petitioner’s position—who are not subject to § 1226(c), § 1225(b)(1), or § 1231—are detained under § 1226(a) and may not be denied consideration for release on bond based on § 1225(b)(2). DHS’s continued reliance on *Matter of Yajure Hurtado* to foreclose bond hearings therefore eliminates established statutory protections, defies binding declaratory relief, and deprives Petitioner of the individualized custody determination guaranteed by the INA.

Accordingly, Petitioner’s continued detention falls outside the lawful authority conferred by the INA. DHS’s asserted basis for custody provides no valid legal justification for detaining Petitioner without a bond hearing and results in arbitrary and punitive confinement.

#### **STANDARD OF REVIEW**

Temporary restraining orders and preliminary injunctions are evaluated under the same standard in federal courts within the Fifth Circuit. Under the framework established by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), a movant must demonstrate a likelihood of success on the merits, a likelihood of suffering irreparable harm in the absence of preliminary relief, that the balance of equities tips in the movant’s favor, and that an injunction is in the public interest. See also *Valley v. Rapides Parish School Bd.*, 118 F.3d 1047, 1051 (5th Cir. 1997) (reciting the same four-factor test). A TRO or preliminary injunction is appropriate where the petitioner demonstrates an ongoing deprivation of constitutional rights and a resulting threat of immediate, irreparable injury. Petitioner easily satisfies this standard. His continued civil detention—without any lawful statutory basis and without any individualized custody review—inflicts ongoing and irreparable harm, implicates fundamental constitutional protections against arbitrary confinement, and permits no adequate

remedy at law. Temporary injunctive relief is therefore warranted to prevent further violations of Petitioner's statutory and constitutional rights.

## ARGUMENTS

### **I. PETITIONER HAS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE STATUTORY DETENTION.**

#### **A. Petitioner's Prolonged Detention Without Bond Hearing Is Unlawful Under the INA.**

The Immigration and Nationality Act ("INA") authorizes civil immigration detention only when it serves a legitimate statutory purpose: ensuring appearance at future proceedings or protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). When detention ceases to advance those purposes or becomes arbitrary or indefinite, it exceeds the government's statutory authority.

Petitioner entered the United States without inspection in January 2000 and is currently in standard § 240 removal proceedings, which places him squarely within the discretionary custody framework of 8 U.S.C. § 1226(a). Under this provision, noncitizens are entitled to an individualized custody determination by an Immigration Judge, including an opportunity for release on bond or conditional supervision. See 8 C.F.R. §§ 1003.19(a), 1236.1(d). Petitioner has no criminal history, poses no danger, and has demonstrated consistent compliance with DHS and immigration court requirements. There is no evidence suggesting he presents a risk of flight. Yet he remains detained without any individualized custody review and with no lawful mechanism for release, despite his placement in § 240 proceedings and eligibility for bond consideration.

This prolonged detention violates not only the INA's limits on civil confinement but also the declaratory judgment issued in *Maldonado Bautista v. Santacruz*, which held that class members like Petitioner are detained under § 1226(a) and may not be denied consideration for release on bond. DHS's continued reliance on that provision to foreclose bond hearings therefore exceeds its statutory authority and violates the INA.

Because Petitioner's detention no longer serves any legitimate governmental interest and directly contravenes binding judicial authority, it has become arbitrary, excessive, and unlawful under the INA.

**B. DHS's Reliance on a Jurisdictional Technicality Has Deprived Petitioner of a Custody Review Mechanism.**

DHS asserts that Petitioner is subject to mandatory detention under § 1225(b) of the INA based on disputed allegations that he was apprehended "shortly after entry." That assertion is contradicted by the government's own actions: Petitioner was served with a Form I-200 Warrant for Arrest and placed in § 240 removal proceedings, which are governed by § 1226(a). Under these circumstances, bond jurisdiction lies with the Immigration Judge. See 8 C.F.R. §§ 1003.19(a), 1236.1(d).

Despite this framework, the Immigration Judge declined to exercise bond jurisdiction based solely on *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which DHS cited to argue that individuals whom DHS characterizes as "applicants for admission" are categorically barred from bond hearings, even when they are placed in § 240 proceedings. This categorical approach—grounded entirely in DHS's unilateral detention classification—has deprived Petitioner of any meaningful mechanism to seek release from custody.

The result is an untenable contradiction: DHS treats Petitioner as an “applicant for admission” for detention purposes while simultaneously treating him as a respondent in § 240 removal proceedings for adjudication of removability. Nothing in the INA authorizes DHS to deny access to a custody redetermination process by re-labeling a noncitizen after placing him in § 240 proceedings. Such manipulation of statutory categories circumvents Congress’s intent, which expressly provides bond jurisdiction for individuals detained under § 1226(a), and undermines the regulatory protections requiring individualized custody assessments.

As the district court made clear in *Maldonado Bautista v. Santacruz*, DHS may not rely on § 1225(b)(2) to foreclose bond hearings for noncitizens who are detained under § 1226(a) and placed in § 240 proceedings. DHS’s continued reliance on *Matter of Yajure Hurtado* to deny bond jurisdiction therefore exceeds its statutory authority and directly contravenes binding declaratory relief. This misclassification has left Petitioner in administrative limbo—detained without a bond hearing, without any individualized finding of danger or flight risk, and without the procedural protections guaranteed by the INA.

Accordingly, DHS’s position conflicts with the statutory detention scheme, unlawfully deprives Petitioner of access to a custody review mechanism, and contributes to the ongoing violation of Petitioner’s statutory and constitutional rights.

**C. Continued Detention Violates Petitioner’s Fifth Amendment Right to Due Process**

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law, a protection that extends to all persons within the United States regardless of immigration status. *Zadvydas*, 533 U.S. at 693; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).

Petitioner's continued detention—without a bond hearing, without any individualized assessment, and based solely on DHS's contested custody classification—violates these core constitutional guarantees.

The Supreme Court has emphasized that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). Applying the three-part balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Petitioner's due process claim easily prevails.

First, the private interest at stake—freedom from physical confinement—is among the most fundamental recognized in constitutional law.

Second, the risk of erroneous deprivation is exceptionally high because DHS's reclassification has never been tested through an adversarial process and has prevented any consideration of Petitioner's actual danger or flight-risk profile.

Third, the government's interest in continued detention is minimal. Petitioner has no criminal history, has resided in the United States for more than twenty-five (25) years, and has demonstrated substantial community ties. DHS has made no individualized finding that Petitioner poses a danger or a flight risk, nor has it identified any compelling governmental interest that justifies detention without process.

Where, as here, the government has failed to provide a constitutionally adequate procedure to assess the lawfulness or necessity of Petitioner's continued confinement, his detention violates the Due Process Clause of the Fifth Amendment. At a minimum, due process requires a prompt

bond hearing before a neutral adjudicator at which DHS bears the burden of establishing, by clear and convincing evidence, that continued detention is necessary.

Petitioner's current confinement—civil in name but punitive in effect—cannot be reconciled with the Due Process Clause. A temporary restraining order is therefore necessary to prevent further irreparable constitutional injury.

**II. PETITIONER WILL SUFFER IRREPARABLE HARM UNLESS THE COURT ISSUES A TEMPORARY RESTRAINING ORDER.**

Under *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), Petitioner must demonstrate that he will suffer irreparable harm in the absence of immediate injunctive relief. In the immigration detention context, courts have consistently recognized that ongoing, unlawful deprivation of physical liberty constitutes irreparable harm as a matter of law. See *Rodriguez v. Robbins*, 804 F.3d 1060, 1080–81 (9th Cir. 2015), rev'd on other grounds sub nom. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018); *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (“the deprivation of physical liberty for even one day constitutes irreparable harm”). Petitioner's continued confinement—despite the absence of any individualized custody review—inflicts exactly the sort of harm that the *Winter* standard contemplates.

P Petitioner has been detained since September 22, 2025, at the ERO El Paso Camp – East Montana, a secure civil detention facility. He is deprived of his freedom of movement, subjected to institutional control, and separated from his family and community. Each additional day of confinement compounds the constitutional injury resulting from Respondents' refusal to provide him with a bond hearing or any meaningful opportunity to challenge the legality of his detention.

Courts have recognized that “[p]rolonged detention without an individualized determination of dangerousness or flight risk inflicts irreparable injury on detainees.” *Sajous v. Decker*, 2018 WL 2357266, at 12 (*S.D.N.Y. May 23, 2018*). The harm here is neither hypothetical nor remote; it is ongoing, acute, and directly attributable to Respondents’ refusal to provide Petitioner with a custody determination. See also *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 327685, at 37 (*D. Md. Aug. 24, 2025*) (finding irreparable harm where petitioner remained detained without any lawful process or review).

Petitioner’s continued incarceration has also caused significant emotional and psychological harm. His declaration and supporting records reflect escalating anxiety, depression, insomnia, and fear stemming from the uncertainty of his circumstances, separation from family, and the stressful, punitive conditions of confinement. Such mental and emotional injuries cannot be undone after the fact, nor can they be compensated monetarily. As recognized in similar contexts, “every day of detention is another day of lost liberty that cannot be recovered.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

The public interest likewise favors immediate intervention. Preventing constitutional violations is always in the public interest. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Allowing DHS to continue detaining Petitioner indefinitely without lawful authority or individualized review undermines the integrity of the immigration system and erodes public confidence in the rule of law.

Accordingly, Petitioner has demonstrated irreparable harm of the highest order. Immediate judicial intervention is necessary to prevent further unlawful deprivation of liberty and to ensure compliance with the statutory and constitutional safeguards governing civil detention.

**III. THE BALANCE OF HARMS WEIGHS IN FAVOR OF PETITIONER.**

The final two *Winter* factors—the balance of equities and the public interest—strongly favor granting injunctive relief. Where the government is a party, these factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Together, they require the Court to consider whether the harm to Petitioner from continued detention outweighs any harm to the government arising from his release or from providing a prompt bond hearing, and whether such relief advances or undermines the public interest.

Here, the equities tilt sharply in Petitioner’s favor. Every additional day of confinement inflicts a profound deprivation of liberty and compounds the harm inherent in prolonged civil detention without any individualized custody determination. Petitioner has been detained since September 22, 2025, at the ERO El Paso Camp – East Montana, despite having no criminal history, posing no danger to the community, and having longstanding ties to the United States developed over more than twenty-five (25) years. His continued detention serves no legitimate purpose under the Immigration and Nationality Act (“INA”) and directly contradicts the government’s stated interest in detaining only those who present a genuine risk of flight or threat to public safety.

By contrast, the government faces minimal—if any—harm if relief is granted. Releasing Petitioner under reasonable supervision or providing him with a constitutionally adequate bond hearing does not impede any lawful enforcement objective. As courts have observed, “[t]he government suffers no harm when it is required to adhere to the Constitution.” *O’Donnell v. Harris County*, 892 F.3d 147, 155 (5th Cir. 2018). Administrative convenience cannot justify prolonged, unlawful detention that exceeds statutory authority or violates constitutional protections.

The public interest also strongly favors Petitioner. The public has an overriding interest in ensuring that immigration detention is conducted lawfully, in accordance with due process, and only for legitimate statutory purposes. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (warning that indefinite civil detention “would raise serious constitutional concerns”); *Beltran v. Smith*, 458 F. Supp. 3d 1139, 1145 (D. Colo. 2020) (ordering release where detention no longer served INA objectives). Upholding constitutional safeguards for individuals in civil immigration custody reinforces the integrity of the justice system and affirms that the government must operate within the bounds of law and necessity.

Balancing these considerations, both the equities and the public interest weigh decisively in favor of Petitioner’s release or, at minimum, a prompt bond hearing before a neutral adjudicator. Granting relief will prevent further irreparable harm to Petitioner and promote the public’s compelling interest in ensuring that the government complies with statutory and constitutional constraints governing civil detention.

### CONCLUSION

For the reasons set forth above, Petitioner Santiago López Morales has demonstrated a clear likelihood of success on the merits of his claims, will suffer irreparable harm absent immediate relief, and has shown that the balance of equities and the public interest overwhelmingly support granting a temporary restraining order. His continued civil detention—without a bond hearing, without any individualized custody determination, and without meaningful judicial review—violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. Accordingly, Petitioner respectfully requests that this Honorable Court:

1. Enjoin Respondents and their agents from transferring Petitioner outside the jurisdiction of this Court while this matter is pending.
2. Direct Respondents to provide him with a constitutionally adequate bond hearing before a neutral Immigration Judge within three (3) days, at which the government bears the burden of proving, by clear and convincing evidence, that continued detention is necessary; and
3. Grant such other and further relief as the Court deems just and proper.

Dated: December 15, 2025

Respectfully Submitted,

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**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, SANTIAGO LOPEZ MORALES, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for TRO are true and correct to the best of my knowledge.

Dated: December 15, 2025

Respectfully Submitted,  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 15, 2025, I filed the foregoing petition for TRO electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

Dated: December 15, 2025

Respectfully Submitted,  
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