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

FREDY ALEXANDER GARCIA GARCIA,

Petitioner-Plaintiff,

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General;

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

MATHEW W. BAKER, in his official capacity as Acting Field Office Director of the Houston Office of U.S. Immigration and Customs Enforcement;

MARTIN FRINK, in his official capacity as Warden of the Houston Contract Detention Facility;

Defendant-Respondents

Civil Action No. _____

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

PETITIONER-PLAINTIFF FREDY GARCIA GARCIA'S EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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NOTICE OF MOTION

Petitioner-Plaintiff Fredy Alexander Garcia Garcia ("Mr. Garcia" or "Petitioner") respectfully moves the Court for the entry of a temporary restraining order ("TRO") and preliminary injunction ordering his release, and restraining Respondents from detaining or transferring Mr. Garcia pending the Court's final adjudication of his Petition. *See* Fed. R. Civ. P. 65. As detailed in the accompanying Memorandum of Law, all four relevant factors weigh heavily in favor of injunctive relief. Accordingly, Mr. Garcia asks the Court to enter the accompanying Proposed Temporary Restraining Order, and order Respondents to promptly show cause why a preliminary injunction should not issue.

INTRODUCTION

The U.S. Department of Homeland Security ("DHS"), through Immigration and Customs Enforcement ("ICE"), has been and is currently detaining Mr. Garcia at the Houston Contract Detention Facility, in violation of his statutory and constitutional rights. Mr. Garcia has filed a petition for a writ of habeas corpus to secure his release from detention and enjoin Respondents from detaining him. *See* Petition for a Writ of Habeas Corpus filed on December 17, 2025 ("Petition" or "Pet."). Mr. Garcia hereby moves the Court for the issuance of a temporary restraining order ("TRO") and a preliminary injunction ("PI") restraining Respondents from detaining him pending the Court's final adjudication of his Petition.[1]

Petitioner has repeatedly sought release from his unlawful ICE detention through multiple channels, yet ICE has consistently denied these requests. Moreover, ICE and DHS Respondents

[1] Should this Court schedule a hearing on the present motion and/or the underlying Petition, Mr. Garcia and his counsel are readily available with the exception of December 27, 2025 – January 2, 2026, January 6, 2026, and January 15, 2026 – January 21, 2026.

have failed to provide *any* statutory basis or notice of custody determination for their ongoing detention of Mr. Garcia, despite his repeated requests for such justification.

Though Respondents have not provided the basis for his detention, they appear to consider Mr. Garcia as subject to mandatory detention under DHS's newfound practice of applying 8 U.S.C. § 1225 (Section 235 of the Immigration and Nationality Act ("INA")) (hereinafter "Section 1225") to noncitizens already present in the United States. This approach contradicts the plain language and statutory framework of the INA, departs from decades of agency practice applying 8 U.S.C. § 1226 (Section 236 of the INA) (hereinafter "Section 1226") to noncitizens like Mr. Garcia who are already present in the United States, and is contrary to the DHS Respondents' treatment of Petitioner during his nine years of residence in the country.

As a result of this policy, Mr. Garcia is unlikely to be released from detention absent judicial intervention, even though he is entitled to such relief under Section 1226. Such detention without explanation or individualized determination by a neutral decisionmaker pursuant to Section 1226(a) violates Mr. Garcia's substantive and procedural due process rights guaranteed under the Constitution. For these reasons, Mr. Garcia is likely to succeed on the merits of his Petition. Without emergency injunctive relief, he will continue to suffer irreparable harm from ongoing unlawful detention. The statutory and constitutional violations at issue strongly tip the balance of equities in favor of granting Petitioner injunctive relief.

BACKGROUND

The relevant facts and procedural history are detailed in Mr. Garcia's Petition. *See* Pet. at ¶¶ 22–36. Petitioner is a twenty-year-old asylum seeker. He was brought to the United States by his father at the age of eleven to [redacted] Petitioner and his father entered without inspection on or around November 14, 2016. Shortly thereafter, DHS encountered and processed Petitioner, placed him in removal proceedings under 8

U.S.C. § 1229a (Section 240 of the INA), then released him on his own recognizance pursuant to Section 1226(a). *See* Ex. 1, Warrant for Arrest of Alien (Nov. 15, 2016); Ex. 2, Notice of Custody Determination (Nov. 15, 2016); Ex. 4, Notice to Appear (Nov. 15, 2016); Ex. 5, Order of Release on Recognizance (Nov. 16, 2016).[2]

Mr. Garcia had since remained at liberty, residing in Galveston, Texas for nearly the last decade. He lived with his father, stepmother, stepsister, and half-brother, maintaining stable housing. He has maintained employment in Texas in the construction, landscaping, and restaurant industries. Mr. Garcia has never had any dealings with drugs, firearms, or violence. During his nine years living in Texas, he has established strong ties with the community, including attending school as a child, working in his community, and consistently engaging with his friends, family, and community members. *See* Freeman Decl. at ¶ 5; Ex. 8, Decl. of Fernando Racedo at ¶¶ 6–8.

The DHS Respondents have been aware of Mr. Garcia's presence in the United States since releasing him on his own recognizance in 2016. Mr. Garcia applied for asylum, withholding of removal, and relief under the Convention Against Torture on May 2, 2018. *See* Freeman Decl. at ¶ 11. Based on his pending asylum application, Mr. Garcia applied for and was granted work authorization from USCIS on April 8, 2022, which was renewed on January 4, 2025. Ex. 6, Employment Authorization Documents (Apr. 8, 2022 and Jan 4. 2025). He attended a merits hearing for his asylum application on February 23, 2024, more than seven years after he first arrived in the United States. Freeman Decl. at ¶ 13. While his application was denied following that hearing, Petitioner has since appealed that decision, and his appeal remains pending. Ex. 7,

[2] All cited exhibits are exhibits to the Declaration of Madeleine Freeman accompanying Mr. Garcia's Petition ("Freeman Decl."). A separate Declaration of Madeleine Freeman is also filed with this Motion ("Federal Rule of Civil Procedure 65(b) Declaration of Madeleine Freeman"). That latter declaration satisfies the requirement of Federal Rule of Civil Procedure 65(b), permitting this court to issue the TRO without the need for prior written or oral notice to Respondents.

Receipt Notice of EOIR-26, Application for Appeal (May 23, 2024). Throughout his immigration proceedings, Petitioner has consistently cooperated with the government.

On or about Saturday, October 25, 2025, Mr. Garcia was arrested by the Galveston Port Police Department for the *de minimis* offense of public intoxication. Ex. 9, Incident Report (Oct. 25, 2025). On or about October 27, 2025, Mr. Garcia's bond was posted by ICE, and he was transferred to their custody. Ex. 10, Letter of Confinement (Oct. 28, 2025). Apart from one prior misdemeanor conviction as a juvenile for driving while intoxicated, Mr. Garcia has not been convicted of any crime related to the underlying arrest in October, and Respondents have failed to provide any notice or individualized determination to justify holding Mr. Garcia in their custody at this time. Upon information and belief, Mr. Garcia remains in detention at the Houston Contract Detention Facility.

Mr. Garcia, through his counsel, has on numerous occasions requested the statutory basis for his detention and release from custody. ICE has refused to release Mr. Garcia and has failed to provide any purported justification for his detention other than URL links to executive orders. *See* Pet. ¶¶ 30–32; Ex. 12, Emails with Officer Jimenez (Nov. 5, 2025–Nov. 17, 2025); Ex. 13, Letter to Officer Jimenez Requesting Parole (Nov. 13, 2025); Ex. 14, Email from Officer Jimenez (Dec. 8, 2025). At every turn, and despite repeated requests from Mr. Garcia, ICE and the DHS Respondents have failed to provide a warrant for Mr. Garcia's arrest, a notice of his custody determination, or *any* statutory or regulatory basis for his continued detention.

Mr. Garcia filed a request for a bond hearing on December 2, 2025 and attended a bond hearing before the Conroe Immigration Court on December 9, 2025. Notably, the ICE attorney representing the government filed a Form I-213, Record of Deportable/Inadmissible Alien, which had been prepared on October 27, 2025 in conjunction with his recent apprehension. The Form

I-213 states that Mr. Garcia "will remain in ICE custody pending an Immigration court hearing." *See* Ex. 11, Record of Deportable/Inadmissible Alien (Oct. 27, 2025).[3] At the bond hearing, Immigration Judge Caborn denied Mr. Garcia's request for custody redetermination due to a lack of jurisdiction, citing the BIA's recent decision in *Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) ("*Yajure Hurtado*"), which endorses a novel interpretation of law by DHS that significantly expands the scope of mandatory detention. Ex. 16, Order of the Immigration Judge (Dec. 9, 2025). Because the immigration court concluded that it lacked jurisdiction, Judge Caborn did not reach the merits, and therefore did not evaluate whether Mr. Garcia was a potential flight risk or a danger to the community. *See* Freeman Decl. at ¶ 25.

As of this filing, Mr. Garcia has been detained by ICE for 52 days and still lacks any explanation for the legal basis of his detention. In detention, Mr. Garcia is unable to work, to take care of his mental health outside of the facility, or to easily meet with his *pro bono* counsel regarding his pending asylum appeal and the case at hand. Every additional day that Mr. Garcia remains in detention, he suffers serious, irreparable harm and is denied his constitutional right to liberty. Mr. Garcia's detention is squarely in violation of both his constitutional and statutory rights.

LEGAL STANDARD

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 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).

[3] Mr. Garcia was not provided access to counsel during his arrest or initial detainment, and counsel has not been able to verify the accuracy of Mr. Garcia's alleged statements reflected on the Form I-213.

To obtain a temporary restraining order or preliminary injunction, a party generally must show: "(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 Crim. Just.,* 880 F.3d 756, 759 (5th Cir. 2018) (per curiam) (quoting *Byram v. Landreth,* 566 F.3d 442, 445 (5th Cir. 2009)); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). 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 Inc. v. City of Starkville,* 577 F.3d 250, 253 (5th Cir. 2009)). Where the Government is the opposing party, the final two factors in this analysis—the balance of the equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). As detailed below, Mr. Garcia's circumstances overwhelmingly satisfy this standard and should be granted injunctive relief.

ARGUMENT

I. Mr. Garcia is Likely to Succeed on the Merits of his Petition

Mr. Garcia is likely to succeed on the merits of his Petition because his detention is both arbitrary and unlawful, violating his statutory and constitutional rights. DHS has continuously failed to cite any statutory authority under the INA or other applicable law for Petitioner's continued confinement. Any basis Respondents may now attempt to assert is inapplicable. Respondents' anticipated reliance on Section 1225(b)(2)(A), which governs mandatory detention for noncitizens seeking admission to the United States, is misplaced; the applicable provision is Section 1226(a) and any contention to the contrary by the government is clearly incorrect. Moreover, ICE's unlawful and arbitrary continued detention of Mr. Garcia violates the Fifth Amendment's guarantee of due process.

a. Petitioner's Detention Violates his Statutory Rights

Mr. Garcia is likely to succeed in demonstrating that he is subject to discretionary, not mandatory, detention pursuant to Section 1226(a). *See* Pet. ¶¶ 37–60.

i. 8 U.S.C. 1226 Applies to Noncitizens Already in the Interior

U.S. immigration law provides two avenues for detention of noncitizens: Section 1225 and Section 1226. Section 1225 establishes the legal framework for the inspection and processing of individuals seeking entry into the United States, focusing on border enforcement and recent arrivals. More specifically, Section 1225(b)(2)(A) imposes mandatory detention on noncitizens who are "seeking admission" to the United States.

Conversely, Section 1226—specifically Section 1226(a)—establishes the legal framework for detention of noncitizens already present in the U.S. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018) (stating that Section 1225 governs "an alien seeking to enter the country" whereas Section 1226 governs aliens "once inside the United States"). Under Section 1226(a), noncitizens must receive an individualized determination of their risk of flight or danger to the community to justify detention.

DHS recently issued interim guidance treating nearly all noncitizens arrested inside the U.S. as applicants for admission subject to mandatory detention under Section 1225(b)(2)(A). *See, e.g.*, *Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *3 n.3 (S.D. Tex. Oct. 7, 2025); *Granados Gonzalez v. Bondi*, No. 25-cv-04756, at 2–3 (S.D. Tex. Nov. 3, 2025); *Ventura Martinez v. Trump*, 2025 WL 3124847, at *1 (W.D. La. Oct. 22, 2025); *see also ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, AM. IMMIGR. LAWS. ASS'N, https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance). This novel and legally unsupported policy that attempts to subject all persons with long-term presence

in the interior to mandatory detention was recently endorsed by the BIA in *Matter of Yajure Hurtado*. 29 I&N Dec. at 218-19.

However, this Court is not bound by the BIA's decision, which reflects ICE's misinterpretation of the INA and conflicts with both the INA's plain text and longstanding federal precedent. That is especially so when the agency's view is a radical departure from binding law, historical practice, and has not remained "consistent over time." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86 (2024).

Moreover, since this decision, numerous 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. *See* Pet. ¶ 46 n.6 (collecting cases); *Maldonado Bautista v. Santacruz*, 2025 WL 3289861 (C.D. Cal Nov. 20, 2025) (holding that *Yajure Hurtado* does not foreclose the custody redetermination of certain noncitizen petitioners who entered the United States without inspection and are subject to INA Section 1226(a)); *Padron Covarrubias v. Vergara*, 2025 WL 2950097, at *3 (S.D. Tex. Oct. 8, 2025) ("As almost every district court, including . . . the Southern District of Texas, has concluded, 'the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades' support application of Section 1226.'") (quoting *Buenrostro-Mendez*, 2025 WL 2886346, at *3).

ii. 8 U.S.C. 1226 Clearly Governs Mr. Garcia's Detention

Mr. Garcia's detention clearly falls under Section 1226. ICE's newly adopted policy, as applied to Mr. Garcia, lacks any foundation in fact, law, or established agency practice.

First, DHS's own documentation from Mr. Garcia's 2016 apprehension demonstrate that it has always treated him as subject to Section 1226. *See* Ex. 1, Warrant for Arrest of Alien (Petitioner is "liable to being taken into custody as authorized by [Section 1226]"); Ex. 2, Notice of Custody Determination (custody determined "[p]ursuant to the authority contained in [Section

1226]"); Ex. 5, Order of Release on Recognizance ("In accordance with Section [1226] . . . you are being released on your own recognizance").

In addition, documentation from his 2025 apprehension, though not naming Section 1226 explicitly, strongly suggests that the government considered him eligible for a bond hearing pursuant to Section 1226. Ex. 11, Record of Deportable/Inadmissible Alien (Oct. 27, 2025) ("GARCIA-GARCIA will remain in ICE custody *pending an Immigration court hearing*.") (emphasis added). Those admissions are dispositive. *See, e.g.*, *Sampiao v. Hyde*, 2025 WL 2607924, at *1 (D. Mass. Sept. 9, 2025) ("Because [petitioner] was arrested on a warrant under Section 1226, his detention continues to be governed by Section 1226(a)'s discretionary framework.").

Second, it is a well-established matter of law that Section 1226 "applies to aliens already present in the United States," *Jennings*, 583 U.S. at 303, such as Mr. Garcia, who has—until now—lived freely in Texas for nine years. As a noncitizen present in the United States, Petitioner cannot be properly characterized as a noncitizen "seeking admission" at the border of the country. *See Padron Covarrubias,* 2025 WL 2950097, at *4 (holding that petitioner apprehended after decades of working and residing in the United States was not "seeking admission" under Section 1225(b)(2)(A), despite being considered an "applicant for admission" under Section 1225(a)(1), but was already present in the country and subject to Section 1226(a)) (citing *Rodriguez Vazquez v. Bostock*, 2025 WL 2782499, at *17–19 (W.D. Wash Sept. 30, 2025)); *Lopez Santos v. Noem*, 2025 WL 2642278, at *3–5 (W.D. La. Sept. 11, 2025) (finding petitioner present in the country for over twenty years not to be an "arriving alien", thus subject to 1226(a) not 1225); *Hyppolite v. Noem*, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (holding that petitioner who was "allowed to enter the country nearly three years ago, and who has followed all laws and

procedures that accompanied his continued presence within the United States ever since that time," was detained pursuant to Section 1226(a), not Section 1225(b)(2)); *Cordero Pelico v. Kaiser*, 2025 WL 2822876, at *8 (N.D. Cal. Oct. 3, 2025)); *Cruz Gutierrez v. Thompson*, 2025 WL 3187521, at *3–4 (S.D. Tex. Nov. 14, 2025); *Hernandez Hervert v. Bondi*, No. 25-cv-1763, at 6–7 (W.D. Tex. Nov. 14, 2025).

Here, as DHS Respondents are well aware, Mr. Garcia has been present in the country for *nine* years. Yet, ICE only chose to detain him this past October, without providing any explanation of a changed circumstance to justify detention and without citing any statutory authority.

iii. 8 U.S.C. 1225 Clearly Does Not Apply to Mr. Garcia

Finally, Section 1225 clearly does not apply to Mr. Garcia. Considering Section 1225 alongside its Section 1226 companion demonstrates that the most natural interpretation of Section 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. *See Pizarro Reyes v. Raycraft,* 2025 WL 2609425, at *4–5 (E.D. Mich. Sept. 9, 2025). Section 1225 repeatedly refers to aliens *arriving* in the country. *See* Section 1225(b)(1)(A)(i) (screenings for aliens "arriving in the United States"); Section 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); Section 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").

Furthermore, "[t]he title of § 1225 is revealing: 'Inspection by immigration officers; expedited removal of inadmissible *arriving* aliens; referral for hearing.'" *Pizarro Reyes,* 2025 WL 2609425, at *5 (emphasis added). "The use of 'arriving' to describe noncitizens strongly indicates that the statute governs the *entrance* of noncitizens to the United States." *Id.* (emphasis in original). The statute further explicitly addresses "crewm[e]n" and "stowaway[s]" in

Section 1225(b)(2)(B), reflecting that Congress envisions Section 1225(b)(2) as applying only to noncitizens arriving at the border. Similarly, Section 1225(a) of the statute focuses on the pre-inspection of aliens entering the country at foreign airports. Considering Section 1225 alongside the broader language of Section 1226 makes clear that Section 1225 was constructed to address border encounters.

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 DHS's recent reading of Section 1225 would be to find recent congressional enactments superfluous.

For example, Congress passed the Laken Riley Act to amend Section 1226(c) and include more classes of aliens who are ineligible for bond under Section 1226(a). Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 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. INA Section 1226(c)(1)(E) (citing 8 U.S.C. § 1182(a)(6)(A)). Under DHS's apparent expansive interpretation of Section 1225, the amendment would have no purpose. Under DHS's purported interpretation, 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.

Thus, Mr. Garcia is likely to succeed on the merits because his detention is unlawful. DHS cites no statutory authority, and Section 1225(b)(2)(A) does not apply to him.

b. Mr. Garcia's Detention Violates his Procedural Due Process Rights

Mr. Garcia is likely to succeed on his claim that his detention violates his right to procedural due process. *See* Pet. ¶¶ 61–75. In determining whether an individual's procedural due process rights have been violated, courts weigh three factors: (1) "the private interest that will be affected

by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Mr. Garcia clearly prevails under the *Mathews* test.

First, Mr. Garcia's private interest in being free from detention—"the most elemental of liberty interests"—is at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Mr. Garcia "was detained without any pre-detention, individualized determination as to whether he posed a flight risk or any risk of dangerousness," nor is there any explanation of "any material change in circumstances" warranting Mr. Garcia's detention. *Hyppolite*, 2025 WL 2829511, at *13; *Lopez-Arevelo v. Ripa*, 2025 WL 2691828, at *11 (W.D. Tex. Sept. 22, 2025). Moreover, ICE's detention of Mr. Garcia without the procedural guardrails inherent to custody determinations or opportunities for custody redetermination due under Section 1226(a) implicate his essential liberty interest.

Second, the continued detention of Mr. Garcia risks erroneous deprivation of his liberty interest under *Mathews*. *See Hasan v. Crawford*, 2025 WL 2682255, at *12 (E.D. Va. Sept. 19, 2025) (citing *Maldonado v. Olson*, 2025 WL 2374411, at *13 (D. Minn. Aug. 15, 2025)). Neither ICE nor the DHS Respondents have provided any justification for his continued detention. Even assuming, *arguendo*, that Respondents purport to detain Mr. Garcia under Section 1225(b)(2), such detention is improper because he is not subject to mandatory detention under that provision. *See supra* section I.a. Moreover, because requesting any administrative redress is "almost certainly a futile exercise," after the BIA's decision in *Yajure Hurtado*, "there is a high risk that [Petitioner]

has been and will continue to be erroneously deprived of his liberty." *Lopez-Arevelo*, 2025 WL 2691828, at *11.

Mr. Garcia's personal circumstances further demonstrate the "extremely high" risk inherent to an erroneous deprivation of his liberty here: Mr. Garcia has no history of violence, has resided in the United States since he was eleven years old, attended his immigration hearings, has timely filed for asylum and is awaiting the outcome of that process, has extensive community ties, is very close to his family with whom he lives, and serves as an active member of his community. *See Hyppolite*, 2025 WL 2829511, at *13 (finding "extremely high" risk of erroneous deprivation of petitioner's liberty interest when petitioner had applied for asylum and was held in indefinite detention without a bond hearing). Indeed, Mr. Garcia's detention has ripped from him the "free[dom] to be with family and friends and [the opportunity] to form the . . . enduring attachments of normal life." *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Cutting Mr. Garcia off from his "core values of unqualified liberty"—here, Mr. Garcia's ability to wake up in his own home surrounded by his family—creates a "grievous loss." *Id.*

Moreover, DHS has provided essentially no procedural safeguards to Mr. Garcia. In such circumstances, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025); *Vasquez Chinchilla v. De Anda-Ybarra*, 2025 WL 3268459, at *5 (W.D. Tex. Nov. 24, 2025) ("the value of additional safeguards is high given that it will allow an immigration judge conducting a bond hearing to make a determination on specific facts whether continued detention is necessary to ensure presence at removal hearings and safety for the community"). At minimum, procedural due process requires that DHS afford Mr. Garcia an individualized custody or bond hearing under Section 1226(a) to determine whether detention is justified, which it is not.

Finally, the extreme risk of erroneous deprivation of Mr. Garcia's liberty interest heavily outweighs any interest of DHS—which is minimal—in subjecting Petitioner to continued detention, or the burden of any substitute procedures. Any purported interest by DHS in avoiding unnecessary government resource expenditure is unfounded. Indeed, courts have repeatedly held that, in circumstance such as these, "additional resources that the government will need to expend to justify continued detention at bond hearings will be minimal—and will likely be outweighed by costs saved by reducing unnecessary detention." *Black v. Decker*, 103 F.4th 133, 154–55 (2d Cir. 2024); *see also Vasquez Chinchilla*, 2025 WL 3268459, at *5 (finding fiscal or administrative burdens to the government to be "diminished given the government had conducted [bond] hearings until a change in the agency's interpretation of the law"); *Lopez-Arevelo*, 2025 WL 2691828, at *12 (finding cost [of conducting bond hearings] to government unpersuasive after decades of practice).

DHS may purport that it has an interest in "ensuring the appearance of aliens at future immigration proceedings" or "preventing danger to the community." *Hyppolite*, 2025 WL 2829511, at *14 (internal quotations omitted). Such interests are equally weak. Mr. Garcia is a non-violent individual who has consistently complied with immigration proceedings and requirements with assistance of his *pro bono* counsel for many years. Indeed, prior to his detention, DHS allowed Petitioner to remain at liberty on his own recognizance for over nine years during his ongoing immigration proceedings, which indicates that it *never* viewed Mr. Garcia as a flight risk or danger to the community. *See, e.g., Lopez-Arevelo*, 2025 WL 2691828, at *11 ("[T]he decision to release [Petitioner] on his own recognizance . . . 'reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk,'" lessening the government's interest in detention). Those circumstances have not changed. Moreover, any

purported government interest of protecting the public interest or executing removal orders is adequately served by separate mandatory detention procedures—specifically Sections 1225 and 1226(c)—applicable to certain categories of noncitizens under which Petitioner categorically does not fall. *See Hasan*, 2025 WL 2682255, at *12 (finding same); Section 1225; Section 1226(c).

For these reasons, Mr. Garcia is likely to succeed on his claim that his detention violates his right to procedural due process. *See, e.g.*, *Vasquez Chinchilla*, 2025 WL 3268459, at *3–5 (granting habeas petition on analogous procedural due process grounds); *Lala Barros v. Noem,* 2025 WL 3154059, at *3–5 (W.D. Tex. Nov. 10, 2025) (same); *Hernandez-Fernandez v. Lyons*, 2025 WL 2976923, at *7–10 (W.D. Tex. Oct. 21, 2025) (same); *Gonzalez Martinez v. Noem*, 2025 WL 2965859, at *3–5 (W.D. Tex. Oct. 21, 2025) (same); *Lopez-Arevelo*, 2025 WL 2691828, at *7–12; *De Leon Hernandez v. Bondi*, 2025 WL 3217037, at *2–3 (W.D. La. Nov. 18, 2025) (same).

c. Mr. Garcia's Detention Also Violates his Substantive Due Process Rights

Mr. Garcia is also likely to succeed on his claim that his detention violates his right to substantive due process. *See* Pet. ¶¶ 76–80. "Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001); U.S. Const. amend. V. "[G]overnment detention violates the [Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (cleaned up). This guarantee extends to noncitizens present in the United States. *Id.* at 693.

To comply with substantive due process, the government's deprivation of an individual's liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and effect," must be justified by either (1) flight risk

or (2) dangerousness. *Id*. at 690; *Faure v. Decker*, 2015 WL 6143801, at *3 (S.D.N.Y. Oct. 19, 2015) (ordering release or a bond hearing where there was "no evidence" that the habeas petitioner "poses a danger to the public or would flee during the pendency of the removal proceedings"). When these rationales are absent, immigration detention serves no legitimate government purpose and becomes impermissibly punitive, violating a person's substantive due process rights. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must have a "reasonable relation" to the government's interests in preventing flight and danger).

As discussed *supra* I.b., ICE and DHS Respondents have provided no justification to deny Mr. Garcia his liberty. ICE has failed to identify *any* statutory authority to justify Mr. Garcia's detention—despite repeated requests—further underscoring the entirely arbitrary and unlawful nature of this confinement. The arbitrary nature of the deprivation in this case is particularly blatant where ICE presented no indication that Petitioner posed a flight risk or danger to the community. ICE's decision to detain Mr. Garcia—without individualized findings, statutory authority, or any special justification—constitutes arbitrary government action in violation of the Fifth Amendment's Due Process Clause.

II. Mr. Garcia Will Continue to Suffer Irreparable Harm Absent Injunctive Relief

Mr. Garcia has already suffered irreparable harm due to the unlawful deprivation of his liberty interest and will continue to suffer irreparable harm for as long as he remains unlawfully detained. Courts have recognized that mandatory detention "likely in violation of the statutory scheme" creates an irreparable harm. *Ventura Martinez*, 2025 WL 3124847, at *3 (quoting *S.D.D.B. v. Johnson*, 2025 WL 2845170, at *10 (M.D.N.C. Oct. 7, 2025)). Moreover, an "unconstitutional deprivation of liberty, even on a temporary basis, constitutes irreparable harm." *Kostak v. Trump*, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Pineda Parada v. Rice*, 2025

WL 3146250, at *3 (W.D. La. Nov. 4, 2025) (citing *Book People, Inc. v. Wong*, 91 F.4th 318, 340–41 (5th Cir. 2024)).

Mr. Garcia has been in the United States with his family since he was a child and has no history of violence. Galveston is all Mr. Garcia knows—it is where he has established his home with a strong support system and community. If Mr. Garcia continues to be detained, he will remain away from his father, stepmother, stepsister, and half-brother with whom he lives in Galveston, Texas and who have provided stability and support to Mr. Garcia over the last decade. Mr. Garcia has held various jobs over the years in the construction, landscaping, and restaurant industries. Immediately prior to his detention, Mr. Garcia was employed by Fernando Racedo, his U.S. citizen bond sponsor, to perform construction and remodeling work, and Mr. Racedo has attested to Mr. Garcia's integrity and responsibility. *See* Freeman Decl. at ¶¶ 4–5; Ex. 8, Racedo Decl. at ¶ 10. By separating him from his work, community, and loved ones, continued and indefinite detention irreparably harms not only Mr. Garcia, but also his family and friends.

Furthermore, Mr. Garcia's indefinite detention places him at a significant disadvantage in preparing for the appeal of his asylum case and in defending against the *de minimis* charge of public intoxication. In detention, Mr. Garcia "lacks the same unfettered access to attorneys, witnesses, evidence, and even basic technology like computers or cellphones, as he would have on bond." *Pizarro Reyes,* 2025 WL 2609425, at * (citing *Rodriguez Vazquez v. Bostock,* 779 F. Supp. 3d 1239, 1254 (W.D. Wash. 2025) (finding further unnecessary detention harmed plaintiff's ability to gather evidence and prepare case against deportation)).

Accordingly, Mr. Garcia is subjected to irreparable harm by being deprived of his freedom despite posing no flight risk and no danger to the community and by the risk of inadequate access to his attorneys.

III. Both the Public Interest and Balance of Equities Clearly Favor Injunctive Relief

Where the Government is the opposing party, the final two factors in the temporary restraining order and preliminary injunction analysis—the balance of the equities and the public interest—merge. *Nken*, 556 U.S. at 435. Neither equity nor the public interest is furthered by wrongfully detaining Mr. Garcia without an individualized determination or the opportunity for release on bond. *Ventura Martinez*, 2025 WL 3124847, at *3 (citing *Rodriguez*, 779 F. Supp. 3d at 1263). Mr. Garcia's "threatened injury, [his] continued detention without a bond hearing in violation of [his] Fifth Amendment rights, far outweighs the burden to Respondents of conducting a bond hearing." *Kostak*, 2025 WL 2472136, at *4. "This is particularly true as, until recently, these bond hearings were afforded with regularity." *Pineda Parada*, 2025 WL 3146250, at *3.

Mr. Garcia is detained contrary to his constitutional and statutory rights, despite posing no flight risk or danger to the community. In fact, Mr. Garcia has never had any dealings with drugs, firearms, or violence and his current detention has no nexus to any violent act. He has consistently complied with all requirements related to his immigration proceedings and is a valued member of his community. *See* Ex. 13, Letter to Officer Jimenez at 2–4. Each day Mr. Garcia spends unlawfully detained extends the ongoing violation of his constitutional rights. Considering that Mr. Garcia's liberty interest is at stake, and that detention serves no purpose because he is not a flight risk or a danger to the community, the balance of hardships tips decidedly in his favor.

Similarly, the public interest is best served by granting Mr. Garcia's motion for a TRO. *First*, "there is a public interest in ensuring people's constitutional rights are upheld." *Pineda Parada*, 2025 WL 3146250, at *3 (quoting *Kostak*, 2025 WL 2472136, at *4). *Second*, "the public has no interest in incarcerating people who have no basis to be detained." *Ventura Martinez*, 2025 WL 3124847, at *3. *Third*, granting "injunctive relief serves the public interest, as it will require the Government to ensure compliance with its own laws." *Kostak*, 2025 WL 2472136, at *4 (citing

Doe v. Noem, 2025 WL 1141279, at *9 (W.D. Wash. Apr. 17, 2025) ("The public has a vested interest in a federal government that follows its own regulations.")). There is simply no public interest served by detaining individuals like Mr. Garcia who are lawfully present in the United States and striving to contribute to their communities.

For these reasons, the balance of equities and public interest strongly favor granting injunctive relief.

CONCLUSION

For the foregoing reasons, Fredy Alexander Garcia Garcia respectfully submits that this Court should issue a temporary restraining order and a preliminary injunction ordering that Respondents be restrained from continuing to detain Mr. Garcia based on their incorrect interpretation of the Immigration and Nationality Act; immediately release Mr. Garcia from immigration detention and refrain from detaining him pending the Court's final adjudication of his Petition; be enjoined from further detaining Mr. Garcia without notice and a pre-deprivation hearing before a neutral decision maker pursuant Section 1226(a); and be enjoined from moving Mr. Garcia outside the jurisdiction of this Court and the United States.

Date: December 17, 2025

Respectfully Submitted,

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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.

Date: December 17, 2025

Respectfully Submitted,

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