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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RODOLFO DANIEL GOMEZ GOMEZ, Plaintiff/Petitioner, v. **JEREMY CASEY**, Facility Administrator, Imperial Regional Detention Facility; **GREGORY J. ARCHAMBEAULT**, Acting Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; **TODD M. LYONS**, Acting Director of the United States Immigration and Customs Enforcement; **KRISTI NOEM**, Secretary of the United States Department of Homeland Security; **PAMELA JO BONDI**, United States Attorney General, *in their official capacities,* Respondents.	Case No. 3:25-cv-03674-AGS-AHG **PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE**

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Petitioner Rodolfo Daniel Gomez Gomez ("Petitioner" or "Mr. Gomez Gomez"), by and through undersigned counsel, hereby applies ex parte, pursuant to Federal Rule of Civil Procedure 65(b), for a Temporary Restraining Order ("TRO") and Order to Show Cause why a preliminary injunction should not issue.

Petitioner respectfully requests that this Court:

1. Temporarily restrain Respondents from continuing to detain Petitioner under 8 U.S.C. § 1225(b)(2) or otherwise treating him as subject to mandatory detention as an "applicant for admission," and instead require Respondents to treat Petitioner's custody as governed by 8 U.S.C. §1226(a);
2. Order Respondents either (a) to release Petitioner from custody under reasonable conditions of supervision, or (b) in the alternative, to provide Petitioner with an individualized, bond-type custody redetermination hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, within seven (7) days of this Court's order, at which the government bears the burden to justify continued detention by clear and convincing evidence;
3. Enjoin the any future invocation of the automatic stay provision under 8 C.F.R. § 1003.19(i)(2) in this case by DHS on the grounds that doing so, and thus prolonging detention despite a finding of bond eligibility, would violate both procedural and substantive due process; without prejudice to Respondents' ability to seek a discretionary emergency stay from the Board of Immigration Appeals under 8 C.F.R. § 1003.19(i)(1).

4. Temporarily restrain Respondents from transferring Petitioner outside the Southern District of California, or otherwise out of the jurisdiction of this Court, while these habeas and injunctive proceedings are pending.
5. Issue an Order to Show Cause directing Respondents to show cause why the requested preliminary injunction should not issue and why the relief sought in the accompanying Petition for Writ of Habeas Corpus should not be granted.

This ex parte application is based on the accompanying Memorandum of Points and Authorities, the concurrently filed Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, the supporting declarations and exhibits, and any evidence or argument that may be presented at a hearing on this matter. The legal issues and basic framework mirror those presented in other recent challenges to DHS's new detention policy and the BIA's decision in Matter of Yajure Hurtado.

Pursuant to Rule 65(b)(1), undersigned counsel – on the advice of the Civil Division of the U.S. Attorney's Office for the Southern District of California – notified that office via email to Janet A. Cabral, Chief, Civil Division Southern District janet.cabral@usdoj.gov to apprise that office of this application, request a position thereon, and to provide courtesy copies of this and associated filings. As of the time of filing, counsel has not yet received a response.

Respectfully submitted this December 19, 2025,

By: /s/Michael S. Martin
MICHAEL S. MARTIN
Attorney for Petitioner

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CERTIFICATE OF SERVICE

2 I hereby certify that on December 19, 2025, I electronically filed the foregoing with the Clerk of
3 the Court for the United States District Court for the Southern District of California using the
Southern District's CM/ECF system. I certify that all participants in the case are registered
4 CM/ECF users and that service will be accomplished by the CM/ECF system.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed on December
19, 2025 in Tracy, CA by

6
/s/Michael S. Martin

7
Fed. R. Civ. P. 65(b)(1)(B) CERTIFICATION

8
9 I have notified the Civil Division of the U.S. Attorney's Office for the Southern District of
California of the impending filing of this ex parte application, and have sought a position on it. I
10 have also forwarded courtesy copies of the application and associated filings. On the direction of
the Civil Division, I was advised to provide this notification via email to Janet A. Cabral, Chief,
11 Civil Division Southern District (using janet.cabral@usdoj.gov). I have done so this day.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed on December
19, 2025 in Tracy, CA by

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14 /s/Michael S. Martin

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NOT DETAINED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RODOLFO DANIEL GOMEZ GOMEZ GOMEZ, Plaintiff/Petitioner, v. **JEREMY CASEY,** et al. Respondents.	Case No. 3:25-cv-03674-AGS-AHG

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE

This Memorandum accompanies Petitioner's *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction ("TRO Application").

I. INTRODUCTION

Petitioner Rodolfo Daniel Gomez Gomez is a long-time resident of the United States, a noncitizen with no criminal record, and the primary caregiver and financial supporter of his medically fragile U.S.-citizen son, [redacted]. Exh. 1. Exh. 6. Exh. 7. He entered the United States

without inspection in 2013, was apprehended only after he had crossed into the interior, and was charged as inadmissible under INA § 212(a)(6)(A)(i) in standard § 240 removal proceedings—not as an "arriving alien." Exh. 1. Exh. 3. Exh. 5.

For more than a decade, Mr. Gomez Gomez lived openly in California, complied with supervision, and prepared to litigate his applications for cancellation of removal, asylum, withholding, and CAT protection. Exh. 1. Exh. 2. Exh. 4. Exh. 8. On November 25, 2025, ICE arrested him at an interior checkpoint and now detains him at Imperial Regional Adult Detention Facility. Exh. 2. Exh. 5.

DHS and EOIR have classified Mr. Gomez Gomez as an "applicant for admission" detained under 8 U.S.C. § 1225(b)(2) and have refused—presumably based on DHS's July 8, 2025 "no-bond for EWIs" guidance and Matter of Yajure-Hurtado—to recognize Immigration Court bond jurisdiction. Exh. 2, 9. Under this policy, long-time residents like Mr. Gomez Gomez, who entered without inspection but have been living in the interior for years, are treated as if they were at the border and categorically denied bond hearings.

This interpretation of the INA is wrong as a matter of statutory text, structure, and history, conflicts with EOIR's bond regulations, and has been repeatedly rejected by federal courts. Most notably, in Lazaro Maldonado Bautista v. Santacruz, the Central District of California granted partial summary judgment and certified a nationwide "Bond Eligible Class" of noncitizens who entered without inspection, were not apprehended "upon arrival," and are not detained under §§ 1226(c), 1225(b)(1), or 1231 at the time of DHS's custody determination. The court held that detention for this class is governed by 8 U.S.C. § 1226, not § 1225, and extended this declaratory relief to the class as a whole.

Mr. Gomez Gomez is a member of that Bond Eligible Class. He (1) entered without inspection; (2) was apprehended after he had crossed into the interior, not "upon arrival"; and (3) is not detained under §1226(c), §1225(b)(1), or §1231 in connection with the current custody determination. In the alternative, even if his initial 2013 apprehension were viewed as near the border, his present detention still fits the class's logic as an interior re-arrest after years of residence.

Mr. Gomez Gomez seeks a narrowly tailored TRO that:

1. Requires Respondents to treat his detention as governed by 8 U.S.C. §1226(a), not §1225(b)(2);
2. Orders Respondents either to (a) release him under appropriate conditions of supervision, or (b) provide an individualized bond-type custody redetermination hearing before an Immigration Judge within seven days, at which the government bears the burden to justify continued detention by clear and convincing evidence; and
3. Prohibits Respondents from transferring him outside the Southern District of California while this case is pending.

Under the Winter factors, Mr. Gomez Gomez meets the standard for a TRO. He is likely to succeed on the merits (or, at minimum, raises serious questions) on his statutory, regulatory, and constitutional claims; he and his medically fragile son face irreparable harm every day he remains unlawfully detained; the balance of equities tips sharply in his favor; and the public interest is served—not harmed—by requiring DHS and EOIR to comply with the INA, EOIR's regulations, and binding classwide declaratory relief.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Mr. Gomez Gomez's Background, Entry, and Removal Proceedings

Mr. Gomez Gomez was born in El Salvador in 1995 and grew up in a rural community plagued by gang violence and impunity. Exh. 1. As described in his declaration, he suffered serious threats and attacks by gang members seeking to recruit him, as well as sexual abuse as a child. Exh. 1. After receiving a written demand that he prove his "bravery" by killing a family member, he fled north with family assistance and a smuggler. Exh. 1.

He travelled through Guatemala and Mexico and entered the United States without inspection in or about August 2013. Exh. 1. Immigration authorities apprehended him inside the United States after he had already crossed into the interior; he was not stopped at a port of entry or at the border line. Exh. 1. Exh. 5. He requested protection and was detained for roughly one month before being released on an order of supervision. Exh. 1. Exh. 5.

DHS later issued a Notice to Appear placing Mr. Gomez Gomez in standard INA §240 removal proceedings before the San Francisco Immigration Court and charging him as inadmissible under u USC §1182(a)(6)(A)(i) for being present without admission or parole. Exh. 3. DHS did not designate him as an "arriving alien." Exh. 3. Court notices confirm that his case is pending in removal proceedings, with an individual hearing set for July 8, 2026. Exh. 4.

Mr. Gomez Gomez has no criminal record. Exh. 2. He has lived in California since 2013, has complied with his supervision and check-in obligations, and has developed deep community and family ties. Exh. 1. Exh. 2.

He is pursuing cancellation of removal for nonpermanent residents and separate applications for asylum, withholding, and CAT relief, all filed with the Immigration Court. Exhs. 1, 8. Filing receipts confirm EOIR's and DHS's acceptance of his EOIR-42B and I-589. Exh. 8.

B. Family Ties and [redacted] Serious Medical Needs

Mr. Gomez Gomez's most critical tie is to his U.S.-citizen son, [redacted] born in 2021. Exh. 1. Exh. 6. [redacted] Exh. 6. Exh. 7. [redacted] Exh. 6. Exh. 7. [redacted] mother, details in her declaration that Mr. Gomez Gomez is a central caregiver: he helps with catheter care, accompanies [redacted] to UCSF and other specialty visits, provides financial support for rent, utilities, food, and transportation, and gives emotional support during painful procedures. Exh. 6. Hospital records show [redacted] recent hospitalization for acute pyelonephritis layered on chronic kidney disease, requiring IV antibiotics, imaging, and inpatient care. Exh. 7. The records underscore that any disruption in [redacted] care carries serious medical risk. Exh. 7.

C. Current Detention and Application of the July 8, 2025 Policy

On November 25, 2025, after years of compliance with check-ins, ICE arrested Mr. Gomez Gomez at an interior checkpoint in California. Exhs. 2, Exh. 5. DHS custody documentation shows his prior release on supervision in 2013 and his current detention at Imperial Regional Adult Detention Facility. Exh. 5.

1 Counsel's declaration explains that DHS and EOIR – pursuant to current practice -- are
2 treating Mr. Gomez Gomez as detained under § 1225(b)(2) based solely on his inadmissibility
3 charge. This was confirmed on December 17, 2025, when an Immigration Judge in Imperial, CA
4 specifically found that she had no bond jurisdiction in the Petitioner's case pursuant to DHS's
5 July 8, 2025 guidance and Matter of Yajure-Hurtado. Exh. 9. As a result, Mr. Gomez Gomez
6 faces potentially prolonged detention with no opportunity for an individualized custody
7 determination. Exh. 2.

8
9 **III. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER**

10 The standard for a TRO is the same as for a preliminary injunction. In the Ninth Circuit, a
11 plaintiff must show (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm
12 absent relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the
13 public interest. Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

14 Under the Ninth Circuit's "sliding scale" approach, a TRO may also issue where the
15 movant raises "serious questions going to the merits," the balance of hardships tips sharply in his
16 favor, and the other Winter factors are met. See Alliance for the Wild Rockies v. Cottrell, 632
17 F.3d 1127, 1131–35 (9th Cir. 2011).

18
19 **IV. ARGUMENT**

20 **A. Mr. Gomez Gomez Is Likely to Succeed on the Merits, or at Minimum Raises Serious Questions**

21
22 **1. The INA's Text and Structure Confirm that 8 SUC §1226(a), Not §1225(b)(2), Governs Mr. Gomez Gomez's Detention.**

23 The Petition sets out six interrelated claims: (1) Mr. Gomez Gomez's detention is
24 governed by §1226(a), not §1225(b)(2); (2) DHS and EOIR's no-bond policy violates binding
25

regulations; (3) the policy is arbitrary and capricious under the APA; (4) mandatory detention without any bond hearing violates due process; (5) Mr. Gomez Gomez is a member of the Maldonado Bautista Bond Eligible Class and entitled to enforcement of that classwide declaratory relief; (6) and that any putative invocation of the "automatic stay" provision of an IJ's release order will be unlwaful. The TRO requires only that Mr. Gomez Gomez show a likelihood of success—or at least "serious questions"—on any one of these. He meets that standard many times over.

Section 1226(a) is the general detention statute for individuals already present in the United States and placed in §240 proceedings. It authorizes arrest and detention "pending a decision on whether the alien is to be removed" and expressly allows release on bond or conditional parole, except for narrow categories specified in § 1226(c). Congress thus created a default discretionary detention regime with bond hearings for most noncitizens in removal proceedings.

Section 1225, by contrast, governs inspection of "applicants for admission" at the border and ports of entry. Its text and structure focus on individuals "arriving in the United States" and "seeking admission," including those in expedited removal and certain contiguous-territory return programs. The Supreme Court has recognized that §1225's mandatory-detention scheme operates "at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." Jennings v. Rodriguez, 583 U.S. 281, 287 (2018) (emphasis added).

DHS's July 8 guidance and the BIA's Yajure-Hurtado decision attempt to convert §1225(b)(2) into a sweeping interior detention authority by treating every noncitizen charged

1 under INA §212(a)(6)(A)(i)(8 USC §1182(a)(6)(A)(i))("alien present without permission or
2 parole") as an "applicant for admission" subject to mandatory detention—no matter how long
3 they have lived in the United States or how deeply they are embedded in the community. That
4 interpretation collapses the distinction between §§1225 and 1226 and effectively reads §1226(a)
5 out of the statute for a vast class of noncitizens, in violation of basic canons against surplusage.
6
7 The Laken Riley Act amendments reinforce that §1226(a) covers people like Mr. Gomez
8 Gomez. Congress recently added 8 USC §1226(c)(1)(E), which makes certain inadmissible
9 individuals—specifically those charged under §1182(a)(6) or (a)(7) who are arrested, charged
10 with, or convicted of specified offenses—subject to mandatory detention under § 1226(c). The
11 premise of that amendment is that individuals charged under §1182(a)(6) or (a)(7) are otherwise
12 detained under §1226(a). If §1225(b)(2) already governed everyone charged with inadmissibility
13 for entry without inspection, the Laken Riley amendment would be meaningless. Courts
14 interpreting these amendments have accordingly held that §1226(a), not §1225(b)(2), is the
15 "default rule" for noncitizens present in the United States in removal proceedings who are
16 charged with inadmissibility based on unlawful entry.
17
18 Mr. Gomez Gomez is the paradigmatic §1226(a) detainee: he entered the United States
19 years ago, lives in the interior, and is in §240 removal proceedings with pending applications for
20 cancellation and protection. Exhs. 1, 3, 4, 8. Nothing about his posture resembles the border-
21 inspection context for which §1225(b)(2) was designed.

22
23 **2. The District Court in Maldonado Bautista and Other Courts Have Already Rejected DHS's New Interpretation**

24 In Maldonado Bautista v. Santacruz, the Central District considered the very policy at
25 issue here. After full briefing, it held that the INA "unambiguously" requires detention of the

Bond Eligible Class under §1226, not § 1225, and granted partial summary judgment to petitioners. The court later certified a nationwide class and expressly extended the same declaratory relief to the class as a whole.

Numerous district courts throughout the country—relying on the text of the INA, the Laken Riley amendments, and longstanding agency practice—have reached the same conclusion in individual habeas and TRO cases challenging DHS's new policy and Yajure-Hurtado. They have held that §1226(a) governs detention for individuals like Mr. Gomez Gomez and ordered prompt bond hearings. See, e.g., Rodriguez Vazquez v. Bostock, 2025 WL 1193850 (W.D. Wash. June 6, 2025); Diaz Martinez v. Hyde, 2025 WL 2084238 (D. Mass. July 24, 2025); Gomes v. Hyde, 2025 WL 1869299 (D. Mass. July 7, 2025); Ceja Gonzalez v. Noem, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. Aug. 13, 2025) (granting TRO requiring § 1226(a) bond hearing); Miguel Santiago Ramirez v. Noem, No. 25-cv-03076 (S.D. Cal.) (granting habeas and ordering bond hearing).

Mr. Gomez Gomez's statutory claim is therefore not only plausible; it is backed by a growing consensus of federal decisions. He is likely to succeed on this claim. At the very least, he raises "serious questions," which is sufficient for TRO relief when combined with the other factors.

3. Mr. Gomez Gomez Is a Member of the Maldonado Bautista Bond Eligible Class

Under the Maldonado Bautista class definition, the Bond Eligible Class consists of noncitizens in the United States without lawful status who (1) entered without inspection, (2) were not apprehended "upon arrival," and (3) are not detained under §§ 1226(c), 1225(b)(1), or 1231 at the time of DHS's custody determination.

1 Mr. Gomez Gomez meets each element. First, he entered the United States without
2 inspection and is alleged to be inadmissible under § 212(a)(6)(A)(i). Exh. 1, Exh. 3. He was not
3 apprehended "upon arrival." His declaration and custody records show that he crossed into the
4 United States and was apprehended inside the country, after entry, not at a port of entry or at the
5 border line. Exhs. 1, 5. Next, at the time of his current custody determination, he was and is in
6 INA §240 proceedings with pending applications for cancellation, asylum, withholding, and
7 CAT, and is not detained under §§1226(c), 1225(b)(1), or 1231. Exhs. 1, 3, 4, 8.
8
9 In the alternative, even if his initial 2013 apprehension were viewed as "near" the border,
10 he still fits within the logic of the Bond Eligible Class: he was released, lived in the interior for
11 years, and was re-detained at an interior checkpoint in 2025. Exhs. 1, 2, 5. The current custody
12 determination arises from that interior re-arrest.
13 Because he is a class member, Mr. Gomez Gomez is entitled to the classwide declaratory
14 relief: DHS and EOIR must treat his detention as governed by §1226(a) and afford him access to
15 bond proceedings before an Immigration Judge. Their refusal to do so violates the court's
16 binding declaratory judgment, providing an additional, independent basis for TRO relief.
17
18 **4. DHS and EOIR's Expanded Mandatory Detention Policy Violates EOIR's Regulations and the APA**
19
20 EOIR's regulations implement §1226(a) by providing for custody and bond
21 redetermination before immigration judges. See 8 C.F.R. §§ 236.1, 1236.1, 1003.19. When
22 promulgating these rules, EOIR explicitly recognized that noncitizens present without admission
23 or parole—formerly labeled "entered without inspection"—would be "eligible for bond and bond
24 redetermination," despite being "applicants for admission" in a technical sense. 62 Fed. Reg.
25 10312, 10323 (Mar. 6, 1997).

1 For decades, DHS and EOIR implemented those regulations by treating people like Mr.
2 Gomez Gomez—noncitizens who entered without inspection but live in the interior and are in §
3 240 proceedings—as detained under § 1226(a) with access to bond hearings. Exh. 2. The July 8
4 guidance and Yajure-Hurtado attempt to nullify this regulatory framework for a large category of
5 §240 respondents, without notice-and-comment rulemaking and in direct conflict with the
6 regulations' text and history.
7
8 Agency action that conflicts with duly promulgated regulations is "not in accordance with
9 law" and must be set aside under the APA. 5 U.S.C. § 706(2)(A), (C). The no-bond policy is also
10 arbitrary and capricious because it departs from longstanding practice without reasoned
11 explanation, fails to consider reliance interests of noncitizens and their families, and rests on an
12 erroneous reading of the INA.
13
5. Mandatory Detention Without a Bond Hearing Violates Due Process
14
15 Even if § 1225(b)(2) could apply to Mr. Gomez Gomez, his categorical detention without
16 any opportunity to seek bond violates the Fifth Amendment. Civil immigration detention
17 implicates a fundamental liberty interest, and due process requires adequate procedural
18 safeguards. Zadvydas v. Davis, 533 U.S. 678, 690 (2001).
19 Under DHS's policy, Mr. Gomez Gomez is barred from seeking bond solely because of
20 the statutory label DHS has chosen to invoke. No neutral adjudicator has ever found that he is
21 dangerous or a flight risk that cannot be managed through conditions of release—even though he
22 has no criminal record, deep family and community ties, and pending relief applications. Exhs. 1,
23 2, 3, 4, 8.
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Applying Mathews v. Eldridge, 424 U.S. 319 (1976), the private interest at stake—freedom from physical confinement—is at its highest; the risk of erroneous deprivation is substantial when detention is imposed categorically without individualized assessment; and the value of an additional safeguard—a bond hearing with the government bearing the burden of proof—is obvious, as numerous district courts have recognized. The government's interests in ensuring appearance and protecting the community are fully served by the bond framework Congress enacted in §1226(a).

Demore v. Kim, 538 U.S. 510 (2003), is inapposite. It addressed a narrow class of noncitizens with specified criminal convictions detained under §1226(c) for relatively brief periods. Mr. Gomez Gomez is not a §1226(c) detainee, has no criminal record, and is held under a sweeping, judge-made expansion of §1225(b)(2).

6. Any Invocation of the Automatic Stay After an IJ Finds Bond Eligibility Violates Due Process

Even if this Court concludes that Mr. Gomez Gomez's detention is governed by § 1226(a) and orders an individualized bond hearing, Respondents may attempt to nullify that relief by invoking the automatic stay provision at 8 C.F.R. §1003.19(i)(2) subsequent to an IJ order of release. That regulation allows DHS, simply by filing a notice of intent to appeal, to automatically stay an IJ's bond grant—without any contemporaneous, individualized finding by the BIA, without notice or opportunity to be heard, and without regard to the IJ's determination that the person is not a danger or flight risk.

This mechanism is incompatible with both substantive and procedural due process once an IJ has found a noncitizen eligible for bond. Substantively, continued detention ceases to be reasonably related to the government's interests when a neutral adjudicator—applying the

standards Congress built into §1226(a)—has found the person neither dangerous nor a flight risk. At that point, detention looks less like regulatory custody and more like punishment for its own sake, in violation of the Fifth Amendment. See Zadvydas v. Davis, 533 U.S. 678, 690–91 (2001) (civil immigration detention must "bear a reasonable relation" to its purpose); Demore v. Kim, 538 U.S. 510, 527–28 (2003) (upholding only "limited" civil immigration detention tied to its regulatory goals).

Procedurally, the automatic stay regime fails the Mathews v. Eldridge balancing test: it inflicts an acute deprivation of liberty; it creates a high risk of erroneous continued detention by overturning a favorable bond decision with no new evidence or hearing; and it offers little incremental benefit to the government, which already has access to a tailored tool—an emergency stay request to the BIA under 8 C.F.R. § 1003.19(i)(1)—when it genuinely believes an IJ's bond decision endangers the public or jeopardizes appearance. See Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976); Rodriguez Diaz v. Garland, 53 F.4th 1189, 1206 (9th Cir. 2022) (applying Mathews to § 1226(a) custody procedures); Hernandez v. Sessions, 872 F.3d 976, 994–95 (9th Cir. 2017) (recognizing the severe liberty interest at stake and holding that detention procedures must adequately protect it).

Courts considering this precise mechanism have repeatedly concluded that §1003.19(i)(2) offends due process because it permits an enforcement official who lost before the IJ to unilaterally nullify that adjudication and continue detention without any new, neutral determination. See, e.g., Zavala v. Ridge, 310 F. Supp. 2d 1071, 1078–79 (N.D. Cal. 2004) (holding § 1003.19(i)(2) unconstitutional and emphasizing the availability of emergency stays under § 1003.19(i)(1)); Zabadi v. Chertoff, No. C 05-1796 WHA, 2005 WL 1514122, at *2–4

1 (N.D. Cal. June 17, 2005) (adopting Zavala and holding that § 1003.19(i)(2) violates substantive
2 and procedural due process because it creates a new class of effective mandatory detention
3 outside § 1226(c)). These decisions underscore that the regulation both creates an unjustifiably
4 high risk of erroneous deprivation and is unnecessary in light of existing, individualized stay
5 procedures.
6
7 The government cannot, consistent with due process, use an automatic, non-
8 individualized stay to erase an IJ's bond grant and continue detaining a person whom the IJ has
9 found releasable. The Constitution requires, at minimum, that any continued detention after a
10 favorable bond order rest on a case-specific determination by a neutral decisionmaker, not
11 merely on the filing of a form. Accordingly, Mr. Gomez Gomez is likely to succeed on his claim
12 that any future invocation of 8 C.F.R. § 1003.19(i)(2) to block his release after a favorable bond
13 decision would violate both substantive and procedural due process and must be enjoined.
14
B. Without a TRO, Mr. Gomez Gomez Will Suffer Irreparable Harm.
15
16 Irreparable harm is presumed where constitutional rights are being violated, and
17 especially where liberty is at stake. "Freedom from imprisonment—from government custody,
18 detention, or other forms of physical restraint—lies at the heart of the liberty" protected by due
19 process. Zadvydas, 533 U.S. at 690. Each day Mr. Gomez Gomez remains detained without
20 access to a bond hearing is another day of irreparable constitutional injury.
21 The harm here is particularly acute because of [redacted] medical condition and reliance
22 on his father's care. Exhs. 6, 7. Miriam explains that Mr. Gomez Gomez's detention has
23 disrupted [redacted] carefully calibrated care regimen, left her struggling to manage repeated
24 catheterizations and medical appointments alone, and increased their financial strain. Exh. 6.
25

1
2 any lapse in care or missed appointment can have life-altering consequences. Exh. 7.

3 Courts have repeatedly recognized that the emotional, psychological, and family-unit
4 harms associated with prolonged detention can constitute irreparable injury, especially where
5 children are involved and where detention interferes with ongoing medical care. See, e.g.,
6 Hernandez v. Sessions, 872 F.3d 976, 994–95 (9th Cir. 2017) (identifying multiple categories of
7 irreparable harm flowing from immigration detention, including effects on family and access to
8 medical care).
9
10 Moreover, delay itself is harmful. If Mr. Gomez Gomez is correct on the merits, he
11 should never have been denied access to a bond hearing under § 1226(a); every additional day of
12 detention without such a hearing deepens the injury. Requiring him to exhaust administrative
13 remedies in the face of a binding BIA precedent and a nationwide DHS policy would "occasion
14 undue prejudice" by inflicting precisely the prolonged detention his claims seek to prevent.
15

16 **C. The Balance of Equities Tips Sharply in Petitioner's Favor, and the Public Interest Favors a TRO**

17 The equities in this case are one-sided. On Mr. Gomez Gomez's side are his liberty, his
18 constitutional rights, and the urgent needs of his medically fragile U.S.-citizen child. Exh. 1.
19 Exh. 6. Exh. 7. On Respondents' side is, at most, an interest in applying a new policy that
20 numerous courts have already found inconsistent with the INA and EOIR's own regulations.
21
22 Ordering a bond hearing or release under supervision imposes minimal burdens on the
23 government. It does not guarantee Mr. Gomez Gomez's release; it simply requires DHS to justify
24 detention in an individualized proceeding under the statutory framework Congress actually
25 enacted. If the government can prove that he is a danger or flight risk that cannot be mitigated by

conditions, it can continue to detain him. If not, he will be released with appropriate supervision. That is neither extraordinary nor disruptive—it is the ordinary operation of §1226(a).

The public interest likewise favors adherence to federal law and the protection of constitutional rights. "[T]here is generally no public interest in the perpetuation of unlawful agency action," and "the public has a strong interest in the vindication of constitutional rights." See, e.g., Rodriguez v. Robbins, 715 F.3d 1127, 1145 (9th Cir. 2013). Courts evaluating similar challenges to this policy have found that the public interest favors injunctions requiring DHS to comply with the INA and EOIR's regulations.

Finally, a limited anti-transfer provision—temporarily restraining Respondents from transferring Mr. Gomez Gomez out of the Southern District of California while this case is pending—also serves the public interest by preserving this Court's jurisdiction and ensuring that the case is not mooted by a strategic transfer. Such non-transfer provisions are routinely granted in immigration TROs where necessary to protect the court's ability to adjudicate the case.

D. Prudential Exhaustion Does Not Bar TRO Relief.

Respondents may argue that Mr. Gomez Gomez must first seek relief in Immigration Court or from the BIA before coming to this Court. But any exhaustion requirement here is prudential, not jurisdictional, and the familiar exceptions—futility, irreparable harm, and inadequate remedy—apply in full.

Mr. Gomez Gomez's central challenge is to DHS's new interpretation of the INA and EOIR's implementation of that policy through Yajure-Hurtado. Exh. 2. The BIA has already adopted DHS's reading, and its precedents are binding on IJs nationwide. Requiring Mr. Gomez Gomez to litigate the same purely legal issue through the very agency that promulgated the

policy would be futile and would prolong the unconstitutional deprivation of his liberty and the harm to his child. Exhs. 6, 7.

The TRO standard does not demand such formalism. Courts addressing similar challenges have repeatedly waived prudential exhaustion for petitioners subject to the July 8 policy and Yajure-Hurtado, recognizing that delay would simply deepen the very injuries the petitioners sought to avoid. This Court should do the same

V. REQUESTED RELIEF

Because Mr. Gomez Gomez has shown a strong likelihood of success on the merits (or, at minimum, serious questions), irreparable harm, equities in his favor, and a public interest in enforcing the INA and protecting constitutional rights, he is entitled to interim relief.

Petitioner respectfully requests that the Court:

1. Temporarily restrain Respondents from detaining Mr. Gomez Gomez under 8 U.S.C. §1225(b)(2) or otherwise treating him as subject to mandatory detention as an "applicant for admission," and require Respondents instead to treat his custody as governed by 8 U.S.C. § 1226(a);
2. Order Respondents either:

   (a) to release Mr. Gomez Gomez from custody under reasonable conditions of supervision; or

   (b) in the alternative, to provide him with an individualized, bond-type custody redetermination hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. §§ 236.1, 1236.1, and 1003.19, within seven (7) days of the Court's order, at

which the government bears the burden to justify continued detention by clear and convincing evidence;

3. Enjoin Respondents from invoking the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) to prevent Petitioner's release pursuant to any Immigration Judge bond order finding him neither a danger to the community nor a flight risk, and vacate any such automatic stay already invoked, without prejudice to Respondents' ability to seek a discretionary emergency stay from the Board of Immigration Appeals under 8 C.F.R. § 1003.19(i)(1).
4. Temporarily restrain Respondents from transferring Mr. Gomez Gomez outside the Southern District of California, or otherwise out of this Court's jurisdiction, while these habeas and injunctive proceedings are pending; and
5. Issue an Order to Show Cause directing Respondents to show cause why a preliminary injunction should not issue and why the relief sought in the Petition for Writ of Habeas Corpus should not be granted.

For all of the reasons set forth above and in the Petition for Writ of Habeas Corpus, the Court should grant the requested TRO.

Respectfully submitted this December 19, 2025,

By: /s/Michael S. Martin
MICHAEL S. MARTIN
Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**
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3 I hereby certify that on December 189, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Southern District of California using the
4 Southern District's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.
5
I declare under penalty of perjury that the foregoing is true and correct. Executed on December
6 19, 2025 in Tracy, CA by
7 /s/Michael S. Martin
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