UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

Jesús Eduardo Cano-Sida Petitioner, v. JOEL GARCIA, *in his official capacity* as Field Office Director of the ICE El Paso Field Office of Enforcement and Removal Operations, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; TODD M. LYONS, *in his official capacity* as Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, *in her official capacity* as Secretary, U.S. Department of Homeland Security; and PAMELA JO BONDI, *in her official capacity* as Attorney General of the United States; Respondents.	Case No. 3:25-cv-00726-LS PETITIONER'S MOTION FOR AND MEMORANDUM IN SUPPORT OF TEMPORARY RESTRAINING ORDER

Petitioner, Jesus Eduardo Cano-Sida, respectfully moves this Court for an emergency order preventing his continued unlaw detention, transfer, and removal from the United States in violation of his rights.

I.

INTRODUCTION

Petitioner is a native and citizen of Mexico who currently holds valid Deferred Action for Childhood Arrivals ("DACA") protection and deferred action pursuant to a pending U

nonimmigrant visa petition, both of which are immigration benefits available to noncitizens who entered the United States at a young age and to noncitizen victims of certain qualifying crimes who meet the requirements established by U.S. Citizenship and Immigration Services ("USCIS"). He was targeted by ICE and arrested at his home on September 16, 2025, due to a charge, now dismissed, for public affray.

Petitioner remains detained despite being deferred action status under two government programs, in violation of his Fifth Amendment rights. He respectfully petitions this court for immediate release.

II.

STATEMENT OF FACTS

Petitioner last entered the United States on or about June 30, 2005, with a B-2 visitor visa at the age of five (5), and has resided continuously in the United States since that time. Petitioner is engaged to a United States citizen and maintains extensive family ties in the United States, including his parents, siblings, and numerous extended relatives.

Petitioner currently holds valid DACA protection for the period of September 23, 2025, through September 22, 2027. *See* Exhibit A, Approval Notice of Form I-821D (DACA). He is also a bona fide applicant for U nonimmigrant status who has been granted deferred action pursuant to a Bona Fide Determination ("BFD"). In connection with his U visa–based deferred action, Petitioner was issued an Employment Authorization Document valid from February 25, 2025, through February 23, 2029. *See* Exhibit B, Approval Notice of Form I-765 (employment authorization category "(c)(14)"); *see also* 8 C.F.R. § 274a.12(c)(14) (authorizing employment for individuals who have been granted deferred action upon a showing of economic necessity).

In 2018, while residing in Albuquerque, New Mexico, Petitioner was the victim of a violent crime and fully cooperated with law enforcement throughout the investigation and

prosecution. The perpetrator was charged with robbery, aggravated assault, stalking, and battery, and ultimately convicted—pursuant to a plea agreement—of Attempt to Commit a Felony, to wit: Armed Robbery. Petitioner's cooperation was instrumental in securing the conviction. Because Petitioner was a minor at the time, his parents were listed as derivative beneficiaries on his U visa application and likewise hold deferred action and valid employment authorization.

Petitioner has never engaged in unauthorized employment. He has consistently maintained lawful employment, timely filed taxes, and contributed positively to his community. His only arrest occurred on September 9, 2025, for an alleged public affray. Petitioner has no criminal convictions and no history of violence. After Petitioner's counsel, David Chacon, conferred with the arresting officer regarding the circumstances of the incident, the charge was dismissed in its entirety on October 27, 2025. The Notice of Dismissal, signed by Officer Anija Pearson (APD Man. No. 8620), confirms that no charges remain pending. *See* Exhibit C, Notice of Dismissal, Docket Sheet, and Affidavit of David Chacon, Esq.

Petitioner also received a citation without an arrest on April 17, 2020, for possession of marijuana and possession of drug paraphernalia. Petitioner's guilt was never adjudicated, and the citation was dismissed without prejudice on August 31, 2020. *See* Exhibit D, Case Details. Over more than twenty (20) years of residence in the United States, Petitioner has no other criminal history, and his DACA applications have continued to be approved.

On October 14, 2025, Petitioner, through prior counsel, filed a request for release on bond during the pendency of his removal proceedings. On that same date, the Immigration Judge denied bond and found Petitioner to be a danger to the community based solely on the then-pending charge for public affray. At the time of the initial bond hearing, the charge remained pending, and Petitioner was unable to testify regarding the circumstances of his arrest due to the unresolved criminal matter.

The circumstances surrounding the arrest demonstrate that Petitioner's actions were defensive in nature and arose from his attempt to protect his younger brother, German, from harm. While at a local establishment, German's former partner approached him and, without provocation, struck him inside the venue. Petitioner and his brother immediately left the premises to avoid further confrontation; however, the aggressor followed them outside, continuing to shout and behave aggressively. Petitioner attempted to de-escalate the situation, but when the individual again advanced toward German, Petitioner struck him once in defense of his brother.

Petitioner did not initiate the altercation and acted solely out of concern for his sibling's safety in the face of escalating aggression. It is also relevant that German's former partner has a documented history of abusive behavior toward him, and that Petitioner himself has experienced prior trauma. In that moment, Petitioner reacted instinctively to protect a family member. Although Petitioner acknowledges that responding physically was a lapse in judgment, this isolated incident does not reflect his character and stands as a singular, uncharacteristic event.

The incident involving Petitioner's defense of his brother and the citation constitute the sole adverse factors in this case. In light of Petitioner's more than twenty (20) years of continuous residence in the United States without any prior arrests or criminal history, the dismissal of the sole charge by the arresting officer, and substantial evidence of Petitioner's good moral character, there is no basis to conclude that Petitioner poses any future danger to the community.

Petitioner's ties to the United States are extensive and well documented. He has lived in this country since childhood, is engaged to a United States citizen, and has close family members residing here. These significant equities—together with his long-standing community

involvement and lack of criminal convictions—strongly support the conclusion that Petitioner's release would not endanger the community.

On October 29, 2025, Petitioner filed an appeal of the Immigration Judge's bond decision with the Board of Immigration Appeals ("BIA"), which remains pending. On November 5, 2025, Petitioner filed a motion for a new bond determination based on materially changed circumstances, namely the dismissal of the public affray charge. To date, the Immigration Judge has failed to rule on that motion. As a result, Petitioner continues to be subjected to unlawful and prolonged detention notwithstanding his valid DACA protection and deferred action pursuant to his pending U nonimmigrant visa petition. This continued detention violates Petitioner's statutory and constitutional rights and warrants habeas relief.

III.

LEGAL STANDARDS

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "The proper legal standard for preliminary injunctive relief requires a party to demonstrate (1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (*citing Winter*, 555 U.S. at 20). If the first two factors are met, the third and fourth factors merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

IV.

ARGUMENT

1. **Petitioner is Likely to Prevail on the Issue of Whether His Ongoing Detention is Unlawful.**

Petitioner has deferred action status under DACA and his pending U-visa; he cannot be removed from the United States. *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025). The code in the Employment Authorization Document is "c14." That is the code for "deferred action." 8 C.F.R. §2741.12(c)(14). That is based on a U Visa bona fide determination. 8 U.S.C. §1182(p)(6). When such a determination is made, the recipient cannot be removed from the United States. *Id.* As the purpose of detention is to effect removal, it follows that Petitioner also cannot be detained. *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *3 (S.D. Tex. June 5, 2025). *See also Enriquez-Perdomo v. Newman*, 149 F.4th 623, 627 (6th Cir. 2025) (noting that detention while in deferred action status is unlawful giving rise to an action on habeas); *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash.Aug. 4, 2025) ("deferred action status prevents removal. As a result, the Court concludes that the Government has no legal basis to detain Sepulveda Ayala and that Sepulveda Ayala has met his burden on his habeas petition."). As such, Petitioner is likely to prevail on his unlawful detention claim.

Similarly, under DACA in order "'to prevent [these] low priority individuals from being removed from the United States,' ICE 'exercise[s] prosecutorial discretion [ ] on an individual basis ... by deferring action for a period of two years, subject to renewal.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 10 (2020). Those who meet DACA's rigorous criteria are thus "granted 'affirmative … relief' from removal." *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 863 (6th Cir. 2022) (citing *Regents*, 591 U.S. at 10).

Under *Deferred Action for Childhood Arrivals*, 87 Fed. Reg. 53,152 (Aug. 30, 2022) (codified at 8 C.F.R. §§ 236.21–236.23) defines deferred action as "a form of enforcement discretion not to pursue the removal of certain [noncitizens]," or a "temporary forbearance from removal." 8 C.F.R. § 236.21(c)(1). Per DHS's regulations, DACA recipients are also treated by DHS as lawfully present for the period deferred action is in effect, and are thereby entitled to certain associated benefits, such as a work authorization if they demonstrate economic need. 8 C.F.R. § 236.23(d) (2024); 87 Fed. Reg. at 53,177–80; *see also Texas v. United States*, 809 F.3d 134, 166 (5th Cir. 2015), *aff'd by an equally divided Court*, 579 U.S. 547 (2016) ("Deferred action … is much more than nonenforcement: It … affirmatively confer[s] 'lawful presence' and associated benefits ….").

Petitioner's arrest and continued detention are unlawful because they violate his rights under the Fifth Amendment's Due Process Clause. The Due Process Clause prohibits the deprivation of life, liberty, or property without due process of law. U.S. Const. amend. V. At its core, procedural due process requires that an individual facing a serious deprivation of liberty receive notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

These constitutional protections extend fully to noncitizens present in the United States. *See Trump v. J.G.G.*, 604 U.S. 670, ___ (2025) (per curiam) ("It is well established that the Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (internal quotation marks and citation omitted); *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").Freedom from physical restraint—whether through imprisonment, detention, or other forms of government

custody—lies at the core of the liberty interests protected by the Due Process Clause. *Zadvydas*, 533 U.S. at 687–88.

"Courts have held that a DACA recipient must be provided with due process before their DACA is terminated. *See Inland Empire - Immigrant Youth Collective v. Nielsen*, No. 17-cv-2048, 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018); *Medina v. U.S. Dep't of Homeland Sec.*, No. 17-cv-218, 2017 WL 5176720, at *9 (W.D. Wash. Nov. 8, 2017). Although DACA is a discretionary benefit, not an entitlement, once DACA is conferred, a recipient has a protected property interest in retaining that benefit. *See Inland Empire*, 2018 WL 4998230, at *19; *see also Texas*, 126 F.4th at 422 (citations omitted) (staying recission of DACA as to existing applicants because "'DACA has had profound significance to recipients and many others in the [now-twelve] years since its adoption'" and has thus created "immense reliance interests."). "A core benefit of DACA is that it allows recipients to live, study, and work in the United States without fear of arrest or deportation. It would be incongruous to find that DACA recipients acquire a constitutionally protected interest in their DACA benefit, but not one of its essential facets: their liberty." *See Santiago v. Noem*, 3:25-cv-00361 (W. D. Texas. Oct. 01, 2025).

Under *Matthews,* the following three factors have to tip in Petitioner's favor: (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 safeguard;" and (3) "the [g]overnment's interest, including . . . the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

As to the first *Mathews* factor, Petitioner received both DACA and a bona fide determination of his U visa status. Because a DACA approval and bona fide U visa determinations confer deferred action and work authorization, Petitioner risks the loss of a

substantial property interest. *Sepulveda*, 794 F. Supp. 3d at 908. Further, "deferred action is an immigration benefit that prevents removal," so Petitioner also risks the loss of his liberty interest. *Ayala v. Bondi*, No. 2:25- cv-01063-JNW-TLF, 2025 WL 2209708, at *3 (W.D. Wash. Aug. 4, 2025). In *AADC*, the Supreme Court described deferred action as meaning "no action will thereafter be taken to proceed against an apparently deportable alien, even on grounds normally regarded as aggravated." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999) ("*AADC*") "This definition reflects the fundamental nature of deferred action, regardless of the specific program or context in which it is granted." *Ayala*, 2025 WL 2209708, at *3.; *Ariz. Dream Act Coal. v. Brewer*, 81 F. Supp. 3d 795, 800 (D. Ariz. 2015) (defining deferred action, generally, as "a form of prosecutorial discretion" by which the Secretary of Homeland Security "decide[s] not to pursue the removal of a person unlawfully in the United States"); *De Sousa v. Dir. of U.S. Citizenship & Immigr. Servs.*, 755 F. Supp. 3d 1266, 1270 (N.D. Cal. 2024) (citing 8 U.S.C. §§ 1184(p)(3)(B), (p)(6); 8 C.F.R. § 274a.12(a)(19)). ("'Deferred action' refers to an 'exercise in administrative discretion' under which 'no action will thereafter be taken to proceed' with the applicant's removal from the United States."); (*Bustos-Alonso v. Chestnut*, No. 1:25-CV- 01570-DJC-AC, 2025 WL 3254621, at *4 (E.D. Cal. Nov. 21, 2025) (same). And even though "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion," *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005), once a benefit has been conferred, it may not then be taken away without sufficient procedural due process, *Bell v. Burson*, 402 U.S. 535, 539 (1971).

Petitioner therefore faces the imminent loss of his employment authorization and deferred action status, both of which constitute substantial property interests. The loss of Petitioner's deferred action status also implicates a core liberty interest, as it subjects him to physical detention and removal—harms that cannot be adequately remedied after the fact. Petitioner's

property and liberty interests are thus profound, and the first *Mathews* factor weighs heavily in his favor.

The second *Mathews* factor likewise strongly favors Petitioner. The risk of erroneous deprivation "through the procedures used" is extraordinarily high because no procedures were used at all. Petitioner has not received a pre-deprivation notice, an opportunity to be heard, and an adjudicative process before Respondents' actions effectively nullified his work authorization and deferred action status, resulting in his detention and placement in removal proceedings. Courts have repeatedly recognized the serious risk of erroneous deprivation under such circumstances. *See F.R.P. v. Wamsley*, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025) (finding a "serious risk of erroneous deprivation" where "there are serious questions as to whether [a detained U visa holder] is removable at all"); *Maldonado v. Noem*, No. 4:25-CV-2541, 2025 WL 1593133, at *1 (S.D. Tex. June 5, 2025) (holding that ICE's attempt to remove a petitioner with a bona fide U visa determination "effectively nullif[ied] his deferred action" and violated due process).

Because Respondents have not provided a pre-deprivation notice, hearing, or any other procedural safeguard, the risk of erroneous deprivation is severe. Accordingly, the second *Mathews* factor weighs decisively in Petitioner's favor.

With respect to the third *Mathews* factor, the government's burden of providing adequate and lawful procedural safeguards—including any attendant administrative or financial costs—is minimal. "The effort and cost required to provide Petitioner with procedural safeguards is minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025). By contrast, the failure to provide such safeguards imposes significant and unnecessary costs. As the Ninth Circuit has recognized, "[t]he costs to the public of immigration detention are 'staggering.'" *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). "Supervised release programs cost much less by

comparison." *Id.* Accordingly, the third *Mathews* factor also weighs strongly in Petitioner's favor.

In sum, Respondents are violating Petitioner's Fifth Amendment due process rights by detaining him without prior notice or an opportunity to be heard. In doing so, Respondents effectively nullified Petitioner's DACA and bona fide U visa determination and its attendant protections—including his work authorization and deferred action status—without affording the process required by the Constitution.

2. **Petitioner will Suffer Irreparable Harm**

The harm that flows from the violation of Petitioner's constitutional rights is unquestionably irreparable. *See K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 113 (3d Cir. 2013). The deprivation of a noncitizen's liberty is, in and of itself, irreparable harm. *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV.3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). ("[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process."); *Bautista*, No. 2025 U.S. Dist. LEXIS 171364, *24.

As the Supreme Court has recognized, incarceration "has a detrimental impact on the individual" because "it often means loss of a job" and "disrupts family life." *Barker v. Wingo*, 407 U.S. 514, 532–33 (1972). "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*, 533 U.S. at 690. Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020)

(Moreno II), aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022).

Thus, due to Petitioner's continued detention, he faces irreparable harm absent a temporary restraining order.

3. **The Balance of Equities and Public Interest**

The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention of the Petitioner with DACA and U-visa deferred action without notice and an opportunity to be heard likely violated federal law and his due process. "There is generally no public interest in the perpetuation of unlawful agency action," and "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up). Petitioner has established that the public interest factor weighs in his favor because Petitioner's detention despite of having deferred action and without providing him with any notice and opportunity to be heard deprives him of due process and is in violation of federal laws. *Awad v. Ziriax*, 670 F.3d 1111, 1116 (10th Cir. 2012) ("It is always in the public interest to prevent the violation of a party's constitutional rights.").

Detaining noncitizens with valid deferred action "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); *See also Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in Moreno and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to

continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted).

Here, Petitioner's continued detention is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer.

V.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his motion for temporary restraining order to immediately release him from detention, block his transfer outside the Western District of Texas, removal from the United States, and grant such other and further relief, as the Court deems appropriate and just.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Brenda M. Villalpando, certify that on December 24, 2025, I served a copy of Petitioner's Motion For and Memorandum in Support of Temporary Restraining Order to the following email addresses:

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VERIFICATION

On this 24rd day of December of 2025, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. I make this verification in lieu of Petitioner, Jesus Eduardo Cano-Sida because the Petitioner is currently detained and due to the urgent nature of the relief requested. I am authorized to make this verification as a member of the legal team representing Petitioner, Jesus Eduardo Cano-Sida.

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