UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

YEFERSON GONZALEZ CONTRERAS

Petitioner,

v.

Samuel L. OLSON, Field Office Director of Enforcement and Removal Operations, St. Paul Field Office, Immigration and Customs Enforcement; **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; **Pam Bondi**, in her official capacity as Attorney General of the United States; **Joel BROTT**, Sherburne County Jail Sheriff.

Respondents.

Case No. 0:25-cv-4814

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

EMERGENCY HANDLING REQUESTED

I. INTRODUCTION

Petitioner Yeferson Gonzalez Contreras ("Mr. Gonzalez Contreras" or "Petitioner") brings this motion for Temporary Restraining Order ("TRO") and Preliminary Injunction ("Motion") seeking injunctive relief and challenging Respondents' actions in detaining Petitioner. Petitioner presented himself for inspection at the United States border on or about October 26, 2024, and was paroled into the United States. He subsequently filed an asylum application.

His parole was arbitrarily terminated on or about June 12, 2025, pursuant to the mass-termination of parole which had been granted pursuant to the parole program for Cubans, Haitians, Nicaraguans, and Venezuelans ("CHNV"). Mr. Gonzalez Contreras then attended his scheduled Master Calendar Hearing ("MCH") before the Immigration Judge ("IJ") on September 9, 2025. There, the Department of Homeland Security ("DHS") moved to dismiss Mr. Gonzalez Contreras's removal proceedings. Mr. Gonzalez Contreras objected, and the IJ granted DHS's motion over his objection. As he was leaving the courtroom, he was detained by Immigration and Customs Enforcement ("ICE") and remains detained to this day.

Courts across the country have granted Temporary Restraining Orders to noncitizens like Mr. Gonzalez Contreras who have been unlawfully detained. Petitioner is now unable to have his asylum case heard, and has been unable to be heard on a bond motion to escape his unlawful detention. Petitioner seeks injunctive relief to prevent irreparable harm in the way of indefinite detention without cause. Petitioner seeks declaratory and injunctive relief to remedy violations of his constitutional and statutory rights.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner fled the dictatorial Maduro regime of Venezuela and traveled to the United States seeking asylum. Intending to properly follow the laws and regulations of the United States, he scheduled an appointment for inspection through the CBP One app. Mr. Gonzalez Contreras presented himself for inspection at the United States border on the day of his scheduled appointment, on or about October 26, 2024. On that day, he was inspected and paroled into the United States. However, he was also simultaneously issued a Form I-862 Notice to Appear ("NTA"), scheduling him for an MCH and charging him as an "arriving alien" removable pursuant to INA § 212(a)(7)(A)(i)(I), as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document.

Mr. Gonzalez Contreras proceeded to live peacefully in the United States and timely filed an asylum application on or about April 9, 2025, filing a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), with the Executive Office for Immigration Review ("EOIR"). He then presented himself to the immigration court on September 9, 2025, the day of his MCH. On that day, despite having a timely filed Form I-589, DHS moved to dismiss Mr. Gonzalez Contreras's EOIR proceedings. Mr. Gonzalez Contreras objected, seeking to have EOIR consider his asylum application. IJ Ivany dismissed Mr. Gonzalez Contreras's case, over his objections. He was then detained by ICE as he was leaving the courtroom. ICE did not set a bond for Mr. Gonzalez Contreras.

Still seeking to have his asylum application adjudicated, Mr. Gonzalez Contreras requested a credible fear interview while in custody. He also appealed the IJ's dismissal of

his case, filing a Form E-26, Notice of Appeal from a Decision of an Immigration Judge, on October 1, 2025. On October 2, 2025, ICE officers informed Counsel that because Mr. Gonzalez Contreras had appealed the dismissal of his EOIR proceedings, the United States Citizenship and Immigration Services ("USCIS") would not hear his credible fear request until the appeal is concluded before the BIA.

On October 9, 2025, Mr. Gonzalez Contreras requested a bond redetermination hearing, asking the IJ to reconsider his bond. In response, DHS filed a Form I-213, Record of Deportable/Inadmissible Alien ("Form I-213") on October 17, 2025, which indicated that Mr. Gonzalez Contreras had been placed into "Expedited Removal (I-860)." IJ Carr heard Mr. Gonzalez Contreras's motion for a bond redetermination on October 21, 2025, and denied Mr. Gonzalez Contreras's motion, holding the "Court lacks authority to consider Respondent for release on bond. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)." Following prior habeas proceedings in which the government conceded that Petitioner was subject to 8 U.S.C. § 1226, the Immigration Court denied bond a second time but rested its finding on 8 C.F.R. § 1003.19(h)(2)(i)(B) rather than 8 U.S.C. 1225. Petitioner and the Respondents reached an agreement to dismiss without prejudice and that Petitioner would be permitted to file a new habeas petition with this Court.

Mr. Gonzalez Contreras remains in custody to this day. He has not received a briefing schedule for his BIA appeal nor has the BIA remanded the case to the Immigration Judge, and Petitioner has not been given a credible fear interview.

III. ARGUMENT

A. Mr. Gonzalez Contreras is entitled to a temporary restraining order and preliminary injunction.

In determining whether to grant a Temporary Restraining Order, this Court must consider four factors:

(1) the probability that the moving party will succeed on the merits;

(2) the threat of irreparable harm to the moving party;

(3) the balance between harm to the moving party and the potential injury inflicted on other party litigants by granting the injunction; and

(4) whether the issuance of a TRO is in the public interest.

Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 114 (8th Cir. 1981); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Consideration of these four factors does not require mathematical precision but rather should be flexible enough to encompass the particular circumstances of each case. *Dataphase*, 640 F.2d at 113. The basic question is whether the balance of equities so favors the moving party "that justice requires the court to intervene to preserve the status quo until the merits are determined." *Id.* Although the probability of success on the merits is the predominant factor, the Eighth Circuit has "repeatedly emphasized the importance of a showing of irreparable harm." *Caballo Coal Co. v. Ind. Mich. Power Co.*, 305 F.3d 796, 800 (8th Cir. 2002). Here, all four factors weigh heavily in favor of injunctive relief.

1. Mr. Gonzalez Contreras is likely to succeed on the merits of his petition for writ of habeas corpus.

Writs of habeas corpus "may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). "The writ of habeas corpus shall not extend to a prisoner unless . . . He is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(2).

a. Mr. Gonzalez Contreras' detention is a violation of Due Process and arbitrary revocation of his parole violates both the APA and the Petitioner's due process rights.

Due process is implicated when governmental decisions deprive an individual of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). All persons residing in the United States are protected by the Due Process Clause of the Fifth Amendment. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Plyler v. Doe*, 457 U.S. 202, 210 (1987); *Mathews v. Diaz*, 426 U.S. 67, 78 (1976); *see also Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002). The federal courts have held that this protection extends to noncitizens. *See generally Sanchez-Velasco v. Holder*, 593 F.3d 733, 737 (8th Cir. 2010); *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) ("all aliens[] are clearly protected by the Fifth and Fourteenth Amendments"). Courts treat Equal Protection and Due Process rights under the Fifth Amendment in the same manner as Equal Protection Claims under the Fourteenth Amendment. *Wienberger v. Wiesenfeld*, 420 U.S. 636, 638 n.2 (1975).

The Due Process Clause of the Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Youngberg v. Romeo*, 457 U.S. 307 (1982). This vital liberty interest is at stake when an individual is subject to detention by ICE. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem"); *Kiareldeen v. Reno*, 71 F.Supp.2d 402, 409-10, 413 (D.N.J. 1999) (holding that in analyzing due process in the immigration context, "the petitioner's private interest in his physical liberty, must be accorded the utmost weight.").

Here, Respondents continue holding Petitioner in detention in violation of Due Process and without any legitimate basis. Immigration detention is civil and must "bear a reasonable relation to the purpose for which the individual [is detained]" so that it is "nonpunitive in purpose and effect." *Zadvydas*, 533 U.S. at 690 (cleaned up). There are only two legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Id.*; *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

Civil detention cannot be a "mechanism for retribution," *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (internal quotation marks omitted), because "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives," *Bell v. Wolfish*, 441 U.S. 520, 539 n.20 (1979). And unlawful detention necessarily harms Petitioner. *See Barker v. Wingo*, 407 U.S. 514, 532 (1972) (detention has a "serious," "detrimental impact on the

individual"); *Hernandez*, 872 F.3d at 994 (unconstitutional detention for an indeterminate period is irreparable harm); *Doe v. Becerra*, 704 F. Supp. 3d 1006, 1017 (N.D. Cal. 2023), *abrogated on other grounds by Doe v. Garland*, 109 F.4th 1188 (9th Cir. 2024) ("'Liberty is the norm; every moment of [detention] should be justified.'") (alteration in original) (citation omitted).

Civil confinement of non-citizens must be limited to the underlying purpose justifying the detention. *Zadvydas*, 533 U.S. at 690. "Once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. *Zadvydas* held that civil detention violates due process unless special, nonpunitive circumstances outweigh an individual's interest in avoiding restraint. 533 U.S. at 690 (immigration detention must remain "**nonpunitive in purpose and effect**") (emphasis added).

The government's detention of Petitioner is punitive. First, DHS has expressed and vocalized an intent to use civil detention punitively against noncitizens for the dual purposes of: (1) encouraging self-deportation, and (2) coercing foreign recalcitrant governments to issue travel documents for its citizens ordered deported from the United States by demonstrating through a systematic campaign of abuse and terror that the recalcitrant government's citizens detained in post-removal-order custody will suffer immensely in the absence of such travel documents being issued. *100 Days of Fighting Fake News*, Department of Homeland Security (Apr. 30, 2025) ("The reality is that prison isn't supposed to be fun. It's a necessary measure to protect society and **punish** bad guys. It is not meant to be comfortable. What's more: prison can be avoided by self-deportation. CBP Home makes it simple and easy. If you are a criminal alien and we have to deport

you, you could end up in Guantanamo Bay or CECOT. Leave now.") (emphasis added);[1] *Mohammed H. v. Trump*, No.: 25-CV-1576-JWB-DTS, --- F.Supp.3d ---, 2025 WL 1692739, at 5 (D. Minn. June 17, 2025) ("Punishing Petitioner for protected speech or **using him as an example to intimidate other students into self-deportation is abusive and does not reflect legitimate immigration detention purposes**") (emphasis added).

The foregoing contentions are buttressed by the realization that Petitioner is detained in Sherburne County Jail, a facility designed to house and punish convicted criminals. Petitioner's conditions of confinement are totally indistinguishable from those of convicted criminals, further demonstrating that Petitioner's detention is punitive.

The procedural history of Petitioner's case further demonstrates that DHS is acting in a manner meant to keep him detained for as long as possible, despite knowing there is no legitimate cause to support his detention, and in a manner that denies him any recourse or opportunity to be heard.

Petitioner presented himself at the border for inspection, pursuant to an inspection scheduled on the CBP One app, was charged as an "arriving alien," but after inspection, was released into the United States on humanitarian parole.[2] The filing of an NTA with

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[1] Found at https://www.dhs.gov/news/2025/04/30/100-days-fighting-fake-news.

[2] Petitioner's Form I-94 indicates that his class of admission is "DT." This class of admission corresponds to a grant of humanitarian parole based on "urgent humanitarian reasons or a significant public benefit." *See FAQs on the Effect of Changes to Parole and Temporary Protected Status (TPS) for SAVE Agencies*, U.S. Citizenship and Immigration Services, https://www.uscis.gov/save/current-user-agencies/guidance/faqs-on-the-effect-of-changes-to-parole-and-temporary-protected-status-tps-for-save-agencies (last reviewed/updated: September 15, 2025).

EOIR initiated removal proceedings "under section 240 of the Immigration and Nationality Act." He subsequently filed his Form I-589 with EOIR. His EOIR proceedings were dismissed by the IJ over Petitioner's objection, which effectively terminated his pending Form I-589 application. He was then taken into custody the same day. He appealed the dismissal of his EOIR proceedings and requested a credible fear interview. Petitioner was then informed that USCIS cannot conduct a credible fear interview because jurisdiction on his removal proceedings remains with EOIR because the dismissal of his case was on appeal, so he remains in § 240 proceedings.

Petitioner's revocation of parole and incarceration violated his due process rights and the Administrative Procedure Act. His continued incarceration violates due process as applied by denying bond despite Petitioner being in a discretionary detention category.

With regards to running counter to the structure of the INA, this Court need look no further than the Supreme Court's prior ruling which, as previously elucidated, held that § 1225(b) covers "aliens seeking admission *into* the country," while § 1226 covers "aliens *already in* the country" who are subject to removal proceedings. *Jennings*, 583 U.S. at 288–89. (emphasis added). A simple application of the Supreme Court's already standing precedent is dispositive with regards to the question of whether Respondent has improperly detained Petitioner.

Here, Petitioner was an applicant for admission when he presented himself at the border pursuant to an appointment scheduled on the CBP One app. He attended that interview, and his Form I-94 reflects his "class of admission" to be humanitarian parole with an "admit until date" of October 25, 2025. The proper time to detain Petitioner

pursuant to § 1225 would have been when he had presented himself for admission. Indeed, if an applicant for admission is determined to be inadmissible, the immigration officer "shall order the alien removed from the United States without further hearing or review unless the alien indicates . . . an intention to apply for asylum." 8 U.S.C. § 1225(b)(1)(A)(i). But here, when Petitioner presented himself for inspection, parole was deemed appropriate for humanitarian reasons. Thereafter, Petitioner has not been an applicant for admission. He is properly within the United States, where the INA "authorizes detention of certain aliens *already in the country* . . . under §§ 1226(a) and (c)." *Jennings*, 583 U.S. at 289.

The IJ's finding that Mr. Gonzalez Contreras is ineligible for bond on account of 8 C.F.R. § 1003.19(h)(2)(i)(B) for arriving aliens is incompatible with the government's concession that he was subject to 1226. The Petitioner cannot simultaneously be ineligible bond and discretionarily detained. Agency guidance or administrative decisions cannot displace the statute governing detention. *Khalid B.Q. v. Noem*, 0:25-cv-04584, *5 (D.Minn. Dec. 18 2025) (citing to *Mayamu K. v. Bondi,* Civ. No. 25-3035 (JWB/LIB), 2025 WL 3641819, 2025 WL 3641819 (D. Minn. Oct. 20, 2025) and *Eliseo A.A. v. Olson*, Civ. No. 25-3381 (JWB/DJF), Doc. No. 18 (D. Minn. October 8, 2025)).

Petitioner's parole revocation came not as a result of an individualized analysis of whether the purpose of parole had been fulfilled. Petitioner's parole was revoked in a nonspecific manner with no references to facts or how the purpose of the parole had been fulfilled and was no longer needed. Multiple Courts have found that revocation of parole requires an individualized determination and that failure to make an individualized assessment before revoking parole and detaining the noncitizen qualifies as an APA

violation. *Noori v.* LaRose, --- F.Supp.3d ----, 2025 WL 2800149, *13 (S.D. Cal. Oct. 01, 2025); *Y-Z-L-H v. Bostock*, 792 F.Supp.3d 1123, 1145–47 (D. Or. 2025); *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025). When the government implements "mass termination of parole without any assessment that the purpose of Petitioner's parole has been served" and then subsequently detains a noncitizen whose parole was not terminated as a result of an individualized assessment, both the termination of parole and subsequent detention are "unlawful." *Gabriel v. Bondi*, 2025 WL 3443584, *6-7 (D.Minn. Dec. 01, 2025).

As a result, Mr. Gonzalez Contreras's detention is for illegitimate, punitive purposes—not in accordance with the lawful, Congressional purposes of civil immigration detention—and should be enjoined. For the aforementioned reasons, it is likely that Petitioner will succeed on the merits of his petition.

b. All Mathews factors weigh in Petitioner's favor and he is thus likely to succeed on the merits of his petition for writ of habeas corpus.

A *Mathews* analysis supports finding Mr. Gonzalez Contreras's Fifth Amendment rights and fundamental liberty interests outweigh any putative governmental interests and are owed additional procedural protections. *Mathews* requires weighing

> First, the private interest that will be affected by the official action; second, 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 finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement

would entail.

Mathews, 424 U.S. at 335.

The private interest here includes Petitioner's Fifth Amendment rights and his revocation of parole. Petitioner has participated in immigration proceedings in good faith, presenting himself at the border for inspection pursuant to a CBP One appointment, timely filing a Form I-589, and attending his immigration hearing with the hope of having his asylum application adjudicated.

Petitioner's liberty interest has been severely violated. "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. 20. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (*quoting Reno v. Flores*, 507 U.S. 292, 306 (1993)).

Additionally, while there is no Constitutional right to counsel in a civil proceeding, detention inherently interferes with a detainee's access to counsel and deprivation of access to counsel is plainly harmful to litigant since it handicaps his ability to present his case to the court. *See In re Guantanamo Bay Detainee Continued Access to Couns.*, 892 F. Supp. 2d 8, 15 (D.D.C. 2012) (finding deprivation of access to counsel seriously handicaps detainees seeking to prosecute habeas claims); *see also Al Odah v. United States*, 346 F. Supp. 2d 1, 8–9 (D.D.C. 2004) (holding that government procedures may not inappropriately burden a habeas petitioner's attorney-client relationship). This injury hinders the exercise of Mr. Gonzalez Contreras's Fifth Amendment rights.

Petitioner has already been in ICE custody for over three months, with no end in sight, and with no recourse to seek a bond redetermination. Additionally, a "parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions," that "liberty [interest] is valuable and must be seen as within the protection of the [Due Process clause]" such that "its termination calls for some orderly process." *Savane v. Francis*, No. 25-CV-6666, 2025 WL 2774452, at *9 (S.D.N.Y. Sept. 28, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)) (alterations in *Savane*); *see also Gabriel v. Bondi*, 2025 WL 3443584, *7 (D.Minn. Dec. 01 2025); *Salazar v. Casey*, 2025 WL 3063629, *5-6 (C.D. Cal. Nov. 03 2025) (Finding that detention that followed unlawful revocation of parole violated a petitioner's due process rights and the APA and thus warranted immediate release); *Mata Velasquez v. Kurzdorfer*, 794 F.Supp.3d 128 146-7 (W.D.N.Y. July 16 2025) (finding that detention following arbitrary revocation of parole is unlawful and necessitates release); *see also Khalid B.Q. v. Noem*, 0:25-cv-04584, *5-6 (D.Minn. Dec. 18 2025) (granting immediate release to cure the unlawful non-specific revocation of an order of release on recognizance). Mr. Gonzalez Contreras engaged in no conduct that merits arbitrary revocation of parole, so the revocation of parole and subsequent incarceration violate Petitioner's due process rights. Thus, the first *Mathews* factor clearly weighs heavily in Petitioner's favor.

Respondent's course of action has substantially increased the risk of erroneous deprivation of rights, requiring additional or substitute procedural safeguards to cure the harm. Arbitrary revocation of parole has violated Petitioner's rights and the usage of a federal regulation to circumvent Petitioner's eligibility for bond have left him indefinitely

detained. "Clearly, there is a high risk of depriving Petitioner of his freedom if Petitioner does not receive an individualized determination regarding the revocation of his parole." *Rodriguez Martinez v. Raycraft*, 2025 WL 3511093, *8 (W.D. Mich. Dec. 08, 2025); *see also Mata Velasquez v. Kurzdorfer*, 794 F.Supp.3d 128, 153 (W.D.N.Y. 2025). The second Mathews factor thus weighs heavily in favor of the Petitioner.

Finally, Respondents have no articulable interest in subjecting the Petitioner to indefinite mandatory detention. Indeed, subjecting Petitioner to indefinite detention is *counter* to the government's interest because Petitioner has not been charged with or convicted of any crime, and had a validly filed Form I-589 alleging political persecution at the hands of the Maduro regime, which would minimize any flight risk because Petitioner would be, and is, incentivized to attend his removal proceedings, and remaining in indefinite detention costs government resources every day Petitioner remains in custody, with no demonstrable benefit. The third *Mathews* factor thus does not counterbalance Petitioner's weighty interests, and the sum of the *Mathews* factors weigh in his favor.

Courts have concluded similarly situated habeas petitioners were entitled to emergency relief.[3] Accordingly, this court must grant the petition for habeas corpus and

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[3] *See again Coal. Humane Immigr. Rights v. Noem*, 2025 WL 2192986, at *28 (D.D.C. Aug. 1, 2025) ("'arriving'" in the United States would be one who is in the process of reaching his or her destination . . . [not] someone who previously reached the United States via a port of entry, underwent inspection at that port of entry, and then was paroled."); *Rico-Tapia v. Smith*, 2025 WL 2950089 at *16 (D. Haw. Oct 10, 2025) ("Section 1225(b) does not apply to aliens who are already present in the Country"); *Zaragoza Mosqueda et al. v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) ("[t]he Court finds that . . . sections 1225(b)(2) and 1226(a)[ ]apply to different sets of noncitizens – those "seeking admission" compared to those already in the country who are arrested and detained"); *Gomez Mejia v. Woosley*, 2025 WL 2933852, at 6-7 (W.D.

issue a temporary restraining order and preliminary injunction.

2. Petitioner has been and continues to be prejudiced by the government's violating his due process rights.

In order to prevail on a claim asserting the deprivation of due process, a petitioner must also show "actual prejudice." *Puc-Ruiz v. Holder*, 629 F.3d 771, 782 (8th Cir. 2010) (citation omitted). Actual prejudice occurs if "an alternate result may well have resulted without the violation." *Id.* (citation omitted) (internal quotations omitted); *see also Lazaro v. Mukasey*, 527 F.3d 977, 981 (9th Cir. 2008) (explaining that prejudice is not necessary where agency action was *ultra vires*). "To show prejudice, [a petitioner] must present plausible scenarios in which the outcome of the proceedings would have been different if a more elaborate process were provided." *Morales Izquierdo v. Gonzales*, 486 F.3d 484, 495 (9th Cir. 2007) (citation omitted) (internal quotations omitted). Petitioner is clearly prejudiced by his continued, unjustified detention. He has been detained for three months, adjudication of his asylum application has been indefinitely delayed while he remains incarcerated following unlawful revocation of parole, and Respondents have prevented him from receiving bond despite his eligibility.

The Courts granting each of these TROs across the country are holding specifically that the non-citizens face irreparable injury and are enjoining the government from detaining them and/or requiring a bond hearing. *See e.g. Pizarro Reyes v. Raycraft*, 2025

Ky. Oct. 15, 2025) (noncitizens who have been paroled 'cannot later be designated for expedited removal'" and so are "subject to full removal proceedings within Section 1229a and detention proceedings under Section 1226" (quoting *Patel v. Tindall*, 2025 WL 2823607, at 4 (W.D. Ky. Oct. 3, 2025))).

WL 2609425, at *8 (E.D. Mich. Sept. 9, 2025); *see also Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL 2496379, at *10 (E.D. Mich. Aug. 29, 2025); *see also Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *8 (E.D. Cal. Sept. 9, 2025). The Courts have noted the irreparable harm petitioners suffer by virtue of the length of detention they are threatened with. *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) (noting the indefinite detention "would result in the very harm that the bond hearing was designed to prevent) (*citing to Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) *and Gomes v. Hyde*, No. 1:25-cv-11571, 2025 WL 1869299, at *5 (D. Mass. July 7, 2025)).

3. Petitioner will continue to face irreparable harm if emergency relief is not granted.

It is well established that deprivation of constitutional rights constitutes "irreparable injury" and justifies issuance of a temporary restraining order. *See Elrod v. Burns*, 427 U.S. 347, 373-74 (1976). *See also Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action*, 558 F.2d 861, 867 (8th Cir. 1977). When an alleged deprivation of constitutional rights is involved, no further showing of irreparable injury is necessary. *Planned Parenthood of Minnesota*, 558 F.2d at 867 (citing 11 C. Wright & A. Miller, *Federal Practice & Procedures: Civil* § 2948 at 439 (1973)); *Ng v. Bd. of Regents of the Univ. of Minn.*, 64 F.4th 992, 998 (8th Cir. 2023) ("[T]he denial of a constitutional right is a cognizable injury and an irreparable harm."); *Hernandez*, 872 F.3d at 994–95; *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable

injury is necessary"). Further, Petitioner is irreparably harmed because indefinite detention bears no "reasonable relation" to its purpose. *Deqa M. Y.*, 2020 WL 4928321, at *3; *see Rosales-Mireles v. United States*, 585 U.S. 129, 139 (2018) (recognizing "[a]ny amount of actual jail time is significant and has exceptionally severe consequences for the incarcerated individual") (cleaned up).

In the present case, Petitioner's Fifth Amendment rights are being violated because of on-going detention after the wrongful denial of his right to a pre-deprivation hearing on the merits. Courts across the country have held that DHS detention constitutes irreparable injury where it deprives non-citizens of their liberty, access to counsel, and access to their families. Petitioner has already been irreparably harmed by virtue of the loss of liberty without recourse for over three months.

Following the rulings in *Elrod* and *Planned Parenthood of Minnesota,* these Fifth Amendment violations involving deprivations of due process constitute irreparable injury to the Petitioner and justify issuance of a temporary restraining order. Petitioner's liberty has been and continues to be restricted in violation of his constitutional rights.

4. Respondents will face no injury or harm if emergency relief is granted.

Federal courts have routinely ruled that threatened or actual violations to a person's constitutional rights outweigh any harm to the government's interest in pursuing a government action. *See Morrison v. Heckler*, 602 F. Supp. 1482 (D. Minn. 1984); *see also Pacific Frontier v. Pleasant Grove City,* 414 F.3d 1221, 1236-7 (10th Cir. 2005).

Petitioner's harms, discussed above, are weighty; these harms are the direct result of Respondents' conduct in denying Petitioner due process as required under the Constitution. In fact, Petitioner's continued detention is actually a burden for Respondents in that his unnecessary and unexplained detention is costly to the U.S. government.

Possible injuries to the government, should the restraining order be granted, are minimal and possibly nonexistent. Petitioner is seeking to be released from custody back to his home in the United States so that he can continue to see his family and pursue the adjudication of his asylum application. To date, Respondents have offered no evidence to support Petitioner's continued and ongoing detention. Considering Mr. Gonzalez Contreras's interest in simply proceeding with the litigation of his application for asylum, his demonstrated history of complying with every immigration step he is expected to take to litigate said application, absence of any criminal history, and long list of community members supporting him, it is hard to imagine how Respondents may establish either a danger to the community or a flight risk that could justify indefinite detention. Without any justification being offered for Petitioner's detention, it is impossible to surmise the harm that might befall the government if he is released.

For the aforementioned reasons, the irreparable harm to Petitioner that will occur should ICE fail to release him clearly outweighs any burden to Respondents in indefinitely keeping him detained. As this Court held in *Morrison*, 602 F.Supp. at 1484, the balance of harms supports the release of Petitioner even though the federal or state government may not be able to recover lost custodial time should Respondents' constitutional interpretation prevail. This insignificant harm is outweighed by the substantial harm facing Petitioner.

Petitioner's harms include deprivations of due process and the wrongful indefinite detention by ICE depriving Petitioner of liberty. Because Petitioner is in Respondents' custody, he faces the extreme hardship of deprivation of his due process rights and liberty, and separation from his family and community unless this Motion is granted.

B. The issuance of a TRO is in the public interest.

The public—and therefore the government—has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Torres v. U.S. Dep't of Homeland Sec.*, 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) ("[T]he public has an interest in the orderly administration of justice[.]"). "It is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (cleaned up) (quoting *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994)). The public has a "substantial" 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) (citation omitted). Respondents "cannot reasonably assert that [the government] is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). Respondents "cannot suffer harm from an injunction that merely ends," at least temporarily, a likely "unlawful practice." *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015). Under law, an IJ ought to consider Petitioner's history on the merits, in light of new evidence, to make an individualized determination if he should be released on bond.

The protection of individuals' constitutional rights against governmental interference is one of the overarching concerns of our system of American jurisprudence. The constitutional guarantee to due process is a fundamental limit on the government's power to skew, alter, or improperly affect legal proceedings related to an individual's property or liberty interest(s). To ensure the protection of Mr. Gonzalez Contreras's constitutional rights, and to protect against overzealous federal government intrusion of constitutional rights of others in similar situations, a TRO and preliminary injunction should be issued by this Court to enjoin Respondents from continuing to detain him.

The United States criminal justice system and Constitution represent the essential blending of individual rights and the efficient administration of justice and government. One of the principal reasons for the success of the United States has been trusted in our country's legal system. If Respondents are entitled to violate the Constitution without censure, public trust in the judiciary will be harmed.

5. Mr. Gonzalez Contreras has complied with the requirements of Rule 65.

Finally, as set forth *supra*, Petitioner asks this Court to find that he has complied with the requirements of Rule 65, Fed.R.Civ.P., for the purpose of granting a temporary restraining order. Respondents have been provided with a copy of the instant motion and supporting documents and are on notice. *See* Decl. at ¶. Rule 65(c) states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the

circumstances of this case, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to refrain from continuing to detain Petitioner, and/or to refrain from giving Respondents' unlawful actions legal effect, should not result in any conceivable financial damages to Respondents. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps. Of Eng'rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (recognizing that the existence of an important public interest weighs in favor of dispensing with a bond).

IV. CONCLUSION

For all of the foregoing reasons, Petitioner asks this Court to grant his Motion for a Temporary Restraining Order and Preliminary Injunction to:

1. Declare that the actions of Respondents as set forth in Mr. Gonzalez Contreras's Petition, Motion, and Memorandum of Law violated the Fifth Amendment of the United States Constitution, 28 U.S.C. § 2241, and the APA.
2. Grant immediate release.
3. Require his release be subject to the same conditions as his improperly revoked grant of parole, until such time as conditions of parole have been satisfied.
4. Enjoin Respondents from continuing to detain Mr. Gonzalez Contreras in their custody during the pendency of his petition for writ of habeas corpus before this Court.

5. If Mr. Gonzalez Contreras is not immediately released from Respondents' custody, enjoin Respondents from transferring him to a detention facility out of this District where he would lose access to his counsel and support network.
6. If Mr. Gonzalez Contreras is not immediately released from Respondents' custody, declare that EOIR has jurisdiction to grant bond and order Respondents grant him a bond redetermination hearing on the merits of his release.
7. Grant Mr. Gonzalez Contreras such other relief as the Court deems appropriate and just.

DATED: December 30, 2025

Respectfully submitted,

/s/ *Gloria Contreras Edin*

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