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5

6 UNITED STATES DISTRICT COURT  
7 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
8

9 A.C.,  
10 Petitioner-Plaintiff,  
v.  
11 Christopher J. LAROSE, Warden, Otay Mesa  
Detention Center  
12  
13 Gregory J. ARCHAMBEAULT, Acting Field  
Office Director of San Diego Office of Detention  
14 and Removal, U.S. Immigrations and Customs  
Enforcement; U.S. Department of Homeland  
15 Security;  
16 Todd M. LYONS, Acting Director, Immigration  
and Customs Enforcement, U.S. Department of  
17 Homeland Security;  
18  
19 Kristi NOEM, in her Official Capacity,  
Secretary, U.S. Department of Homeland  
20 Security; and  
21 Pamela BONDI, in her Official Capacity,  
Attorney General of the United States;  
22  
23 Respondents-Defendants.  
24

Case No. 3:26-cv-00208-RBM-AHG

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

**POINTS AND AUTHORITIES  
IN SUPPORT OF EX PARTE  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
MOTION FOR PRELIMINARY  
INJUNCTION**

**NOTICE OF MOTION**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for emergency relief in the form of a temporary restraining order (1) enjoining Respondents from relocating Petitioner outside of the Southern District of California or removing him from the United States while this action is pending, (2) directing Respondents to immediately release Petitioner from their custody upon posting a \$2,000 bond pursuant to the Immigration Judge’s alternative findings, or, alternatively, (3) order for the Respondents to provide the Petitioner with an individualized bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days. The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Rachel Lerman with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction compelling Respondents to release him from custody upon posting of a \$2,000 bond.

Dated: January 14, 2026

Respectfully Submitted

/s/ Warren Craig  
Warren Craig  
Attorney for Mr. C.

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16 *Garcia v. Noem*, 2025 WL 2549431, at \*8 (S.D. Cal. Sept. 3, 2025)..... 6

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff, A.C.,<sup>1</sup> by and through undersigned counsel, hereby files this motion  
3 for a temporary restraining order and preliminary injunction to require the Respondents to  
4 immediately release Mr. C upon posting of a \$2,000 or, in the alternative, to provide Mr. C with  
5 an individualized bond hearing within seven days.

6 Immigration records allege that Mr. C is a citizen of Guatemala who entered the United  
7 States without inspection. He was not apprehended at the border and has been living in the interior  
8 of the United States. In October 2025, Mr. C was at his place of employment at a car wash in  
9 Hamden, Connecticut when Immigration and Customs Enforcement (“ICE”) officers conducted  
10 a raid. Mr. C was arrested and detained. He was initially taken to a third location where ICE  
11 officers questioned him as to his name, country of origin, and immigration status. He was  
12 subsequently transferred first to the Hartford, Connecticut ICE office and then to a detention  
13 center in Massachusetts. He was then transferred to the Otay Mesa Detention Center in San Deigo,  
14 California where he remains to date.

15 On December 31, 2025, Mr. C appeared for a bond hearing before the Otay Mesa  
16 Immigration Court. The Immigration Judge denied his bond due to no jurisdiction. The  
17 Immigration Judge made alternative findings that if a Court had jurisdiction in the future, a bond  
18 of \$2,000 would be appropriate.

19 Mr. C. is likely to succeed on the merits of his claim as presented in his accompanying  
20 petition for writ of habeas corpus. Furthermore, as discussed below, such ongoing violation of  
21 Mr. C.’s constitutional and statutory rights will cause Mr. C. immediate and irreparable injury,  
22 and the balance of equities and the public interest strongly favors remedying this ongoing  
23 constitutional and statutory violation by granting a temporary protective order requiring the  
24 Respondents to release Mr. C upon posting of a \$,2000 bond or to provide Mr. C. with an  
25 individualized bond hearing within seven days of the Court’s order. To prevent loss of access to  
26 local counsel, Mr. C. also requests the Court grant a temporary restraining order preventing the  
27

28 <sup>1</sup> Mr. A.C. is currently identifying himself using his initials (A.C.) and will file a motion to proceed under a pseudonym.

1 Respondents from removing or transferring Mr. C. outside of the jurisdiction of the Southern  
2 District of California while this matter is pending. *See Domingo-Ros v. Archambeault*, 2025 WL  
3 1425558, at \*5 (S.D. Cal May 18, 2025).

4 **II. STATEMENT OF FACTS AND CASE**

5 Immigration records state that Mr. C. is a citizen of Guatemala who entered the United  
6 States without inspection. *See* Declaration of Rachel Lerman at ¶ 4. Mr. C. was not apprehended  
7 at the border. *Id.* Mr. C is a 25-year-old young man and has zero criminal history. *See* Exh. 2  
8 (Form I-213) at 15.

9 On October 15, 2025, Mr. C was working at a car wash in Hamden, Connecticut when  
10 ICE officers suddenly appeared. *Id.* Mr. C. was arrested along with his colleagues and taken to a  
11 nearby staging location for officers to “determine alienage and immigration status”. *Id.* at 2. That  
12 same day, Mr. C was served with a Notice to Appear (“NTA”) alleging that he had entered the  
13 United States at an unknown date and unknown place and that he was not then admitted or paroled  
14 after inspection by an immigration officer. *See* Exh. 1. Mr. C. was transported to the Plymouth  
15 County Correctional Center in Plymouth, Massachusetts where he was detained in Department of  
16 Homeland Security (“DHS”) custody. Lerman Declaration at ¶ 7. He appeared *pro se* for his first  
17 master calendar hearing at the Chelmsford, Massachusetts Immigration Court. *Id.* at ¶ 8.

18 On or around November 15, 2025, Mr. C. was transferred from Massachusetts to Otay  
19 Mesa. *Id.* at ¶ 9. However, his case remained docketed at the Chelmsford Immigration Court. *Id.*  
20 at ¶ 10. On or around December 11, 2025, Mr. C’s *pro bono* counsel attempted to request a bond  
21 hearing at the Chelmsford Immigration Court. *Id.* The request was subsequently dismissed as no  
22 action required. *Id.* On December 19, 2025, after venue had been changed, Mr. C’s *pro bono*  
23 counsel once again requested a bond hearing. *Id.* The Otay Mesa Immigration Court scheduled  
24 Mr. C for a bond hearing on December 31, 2025. *Id.* at ¶ 12.

25 On December 31, 2025, the Immigration Judge (“IJ”) denied Mr. C’s request for release  
26 on bond. *See* Exh. 3 (IJ Bond Order). The IJ decision states that the “Court is without jurisdiction,  
27 pursuant to Matter of YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025).” *Id.* However, during  
28 the hearing, the IJ made alternative findings as to Mr. C’s flight risk and danger to the community.

1 *See id.* On the order, the IJ wrote, “[s]hould it be determined at a later date that the Court has  
2 jurisdiction, the Court makes the following alternative findings: Bond to be posted in the amount  
3 of \$2000 . . . .” *Id.*

4 Mr. C has been unlawfully detained without access to a fair bond proceeding for close to  
5 three months. Before his arrest on October 15, 2025, Mr. C had never been arrested or detained,  
6 and it has been difficult for him to be detained for this long. *See* Lerman Declaration at ¶ 13.

7 Intervention from this Court is therefore required to ensure that Mr. C. is not unlawfully  
8 subject to continued detention without an individualized bond hearing. Such unlawful conduct  
9 would cause Mr. C. to suffer immediate and irreparable harm.

10 **III. LEGAL STANDARD**

11 Mr. C. is entitled to a temporary restraining order if he establishes that he is “likely to  
12 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief,  
13 that the balance of equities tips in [his] favor, and that an injunction is in the public interest.”  
14 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D.*  
15 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and  
16 temporary restraining order standards are “substantially identical”). Even if Mr. C. does not show  
17 a likelihood of success on the merits, the Court may still grant a temporary restraining order if he  
18 raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in  
19 his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v.*  
20 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). The purpose of a temporary restraining order is to prevent  
21 irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc.*  
22 *v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423,  
23 439 (1974). As set forth in more detail below, Mr. C.’s unlawful detention without an  
24 individualized bond hearing violates his right to procedural due process, along with 8 U.S.C. §  
25 1226(a) and its implementing regulations. Further, Mr. C. will continue to suffer irreparable injury  
26 each day that he remains detained without such a hearing. Furthermore, the balance of equities  
27 and the public interest tip in his favor.

1 **IV. ARGUMENT**

2 **1. Mr. C. is Likely to Succeed on the Merits of His Claim That His**  
3 **Unlawful Detention Without an Individualized Bond Hearing**  
4 **Violates His Right to Due Process.**

5 Mr. C. is likely to succeed on his claim that, in the particular circumstances involving his  
6 unlawful detention, the Due Process Clause of the Constitution prevents the Respondents from  
7 continuing to detain Mr. C. without bond absent an individualized bond hearing where jurisdiction  
8 is proper under 8 U.S.C. § 1226(a).

9 “It is well established that the Fifth Amendment entitles [noncitizens] to due process of  
10 law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*  
11 *Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody,  
12 detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process  
13 Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J.,  
14 dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or  
15 arbitrary personal restraint or detention.”). This fundamental due process protection applies to all  
16 noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J.,  
17 dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from  
18 detention that is arbitrary or capricious”).

19 Due process requires “adequate procedural protections” to ensure that the government’s  
20 asserted justification for physical confinement “outweighs the individual’s constitutionally  
21 protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (internal quotation  
22 marks omitted). In the immigration context, the Supreme Court has recognized only two valid  
23 purposes for civil detention—to mitigate the risks of danger to the community and to prevent  
24 flight. *Id.*; *Demore*, 538 U.S. at 528.

25 The Immigration and Nationality Act (“INA”) prescribes three basic forms of detention  
26 for the vast majority of noncitizens in removal proceedings conducted pursuant to 8 U.S.C. §  
27 1229a. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in § 1229a removal  
28 proceedings before an Immigration Judge (“IJ”). Individuals covered by § 1226(a) detention are  
generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a),

1 1236.1(d), while certain noncitizens who have been arrested, charged with, and/or convicted of  
2 certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

3 Second, the INA provides for mandatory detention of noncitizens subjected to an  
4 expedited removal order imposed pursuant to 8 U.S.C. § 1225(b)(1) and for certain other  
5 noncitizen applicants for admission to the U.S. who are deemed not clearly entitled to be admitted.  
6 *See* 8 U.S.C. § 1225(b)(2). Last, the INA provides for detention of noncitizens who have been  
7 ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)-  
8 (b).

9 This case concerns the detention provisions at 8 U.S.C. §§ 1226(a) and 1225(b)(2). The  
10 detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration  
11 Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§  
12 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226 was most recently  
13 amended in early 2025 by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Following  
14 the enactment of the IIRIRA in 1996, EOIR drafted new regulations applicable to proceedings  
15 before immigration judges explaining that, in general, people who entered the country without  
16 inspection – also referred to as being “present without admission” - were not considered detained  
17 under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited  
18 Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum  
19 Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

20 Thus, in the decades that followed, most noncitizens who entered without inspection and  
21 were placed in standard § 1229a removal proceedings received bond hearings before IJs, unless  
22 their criminal history rendered them ineligible for bond pursuant to § 1226(c). That practice was  
23 consistent with many more decades of practice prior to IIRIRA, in which noncitizens who were  
24 not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See*  
25 8 U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that §  
26 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

27 This practice both pre-and post-enactment of IIRIRA in 1996 is consistent with the fact  
28 that noncitizens present within the United States – as opposed to noncitizens present at the border

1 and seeking admission—have constitutional rights. As noted above, “[T]he Due Process Clause  
2 applies to all ‘persons’ within the United States, including aliens, whether their presence here is  
3 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

4 On July 8, 2025, ICE, “in coordination with” the Department of Justice, announced a new  
5 policy that rejected the well-established understanding of the statutory framework and reversed  
6 decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority  
7 for Applicants for Admission,”<sup>2</sup> claims that all noncitizens who entered the United States without  
8 inspection shall now be deemed “applicants for admission” and subject to mandatory detention  
9 under 8 U.S.C. § 1225(b)(2)(A). The policy applies regardless of when a person is apprehended,  
10 and it affects those who have resided in the United States for months, years, and even decades.

11 On September 5, 2025, the BIA adopted this same position in a published decision, *Matter*  
12 *of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The Board held that all noncitizens who entered  
13 the United States without admission or parole are subject to mandatory detention under §  
14 1225(b)(2)(A) and are ineligible for IJ bond hearings. Since Respondents adopted their new  
15 policies, dozens of federal courts have rejected their new interpretation of the INA’s detention  
16 authorities. Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same  
17 reading of the statute as ICE. Even before ICE or the BIA introduced these nationwide policies,  
18 IJs in the Tacoma, Washington Immigration Court stopped providing bond hearings for persons  
19 who entered the United States without inspection and who have since resided here. There, the  
20 U.S. District Court in the Western District of Washington found that such a reading of the INA is  
21 likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended  
22 upon arrival to the United States. *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D.  
23 Wash. 2025).

24 Subsequently, court after court has adopted the same reading of the INA’s detention  
25 authorities and rejected ICE and EOIR’s new interpretation, including cases in the Southern  
26 District of California. *See, e.g., Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL  
27

28 <sup>2</sup> Available at <https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents>.

1 2549431 (S.D. Cal. Sept. 3, 2025); *Sandoval v. LaRose*, No. 25-CV-3408 JLS (VET), 2025 WL  
2 3552748 (S.D. Cal. Dec. 10, 2025); *Cruz-Flores v. Noem*, No. 25-CV-3263 JLS (VET), 2025 WL  
3 3526830 (S.D. Cal. Dec. 9, 2025); *Diego-Mateo v. Noem*, No. 25-CV-3223 JLS (MSB), 2025 WL  
4 3471321 (S.D. Cal. Dec. 3, 2025). Outside of the Southern District of California, numerous courts  
5 have held likewise. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299 (D.  
6 Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238 (D.  
7 Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL  
8 2337099 (D. Ariz. Aug. 11, 2025), report and recommendation adopted, No. CV-25-02157-PHX-  
9 DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV.  
10 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-  
11 03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-  
12 BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH),  
13 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF,  
14 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR,  
15 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025  
16 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), 2025  
17 WL 2466670 (D. Minn. Aug. 27, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-  
18 EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-  
19 12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-  
20 JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also Palma Perez v. Berg*, No. 8:25CV494,  
21 2025 WL 2531566, at \*2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to agree” that §  
22 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-03161-JFB-  
23 RCC, 2025 WL 2402271 at \*3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, No. 4:25-  
24 cv-03158-JFB-RCC, 2025 WL 2374224 at \*2 (D. Neb. Aug. 14, 2025) (same).

25 Numerous courts have rejected DHS’s and EOIR’s new interpretation because it defies  
26 the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory  
27 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like the Petitioner.  
28 Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen]

1 is to be removed from the United States.” Removal hearings are held pursuant to § 1229a, to  
2 “decid[e] the inadmissibility or deportability of [a noncitizen].” The text of § 1226(a) also  
3 explicitly applies to individuals charged as being inadmissible, including those who entered  
4 without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to inadmissible  
5 individuals makes clear that, by default, such individuals are afforded a bond hearing under  
6 subsection (a). Section 1226 therefore leaves no doubt that it applies to noncitizens present in the  
7 United States who face charges of being inadmissible to the United States, including those who  
8 are present without admission or parole.

9 By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently  
10 entered the United States and are encountered at or near the border. The statute’s entire framework  
11 is premised on inspections at the border of people who are “seeking admission” to the United  
12 States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory  
13 detention scheme applies “at the Nation’s borders and ports of entry, where the Government must  
14 determine whether [a noncitizen] seeking to enter the country is admissible.” *Jennings v.*  
15 *Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the mandatory detention provision of §  
16 1225(b)(2) does not apply to people like Mr. C, who did not arrive at a port of entry and was not  
17 apprehended upon attempting to enter the United States but rather was residing in the United  
18 States at the time he was apprehended.

19 According to the plain language of the statute, Mr. C’s detention is governed by 8 U.S.C.  
20 § 1226(a). Thus, Ms. C is likely to succeed in his argument that he is unlawfully subjected to  
21 mandatory detention under § 1225(b)(2) because it violates the plain text of the statute and its  
22 implementing regulations, as numerous district courts in this district and across the nation have  
23 held. Further, by denying him Mr. C his statutory right to a bond hearing, the Respondents have  
24 also violated Mr. C’s right to due process. Therefore, the Court should order for Mr. C to be  
25 released upon posting of the \$2,000 bond pursuant to the Immigration Court’s alternative findings  
26 or, in the alternative, order for the Respondents to provide him with an individualized bond  
27 hearing within seven days.

1  
2 **2. Mr. C. will Suffer Irreparable Harm Absent Injunctive Relief.**

3 Mr. C. will suffer irreparable harm if he continues to be subject to unlawful detention  
4 without being provided the statutory and constitutionally adequate process that this application  
5 for a temporary restraining order seeks. Detainees in DHS custody are held in “prison-like  
6 conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016), vacated on other grounds by  
7 *Nielsen v. Preap*, 139 S. Ct. 954 (2019). As the Supreme Court has explained, “[t]he time spent  
8 in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it  
9 disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972);  
10 *accord Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984).  
11 Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on  
12 anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE  
13 detention facilities, the economic burdens imposed on detainees and their families as a result of  
14 detention, and the collateral harms to children of detainees whose parents are detained.”  
15 *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has  
16 documented alarmingly poor conditions in DHS detention centers. *See, e.g.*, DHS, Office of  
17 Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in  
18 Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety  
19 standards; staffing shortages affecting the level of care detainees received for suicide watch, and  
20 detainees being held in administrative segregation in unauthorized restraints, without being  
21 allowed time outside their cell, and with no documentation that they were provided health care or  
22 three meals a day).<sup>3</sup>

23 Finally, as detailed above, Mr. C. contends that his continued detention absent an  
24 individualized bond hearing before an Immigration Judge would violate his due process rights  
25 under the Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably  
26 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting  
27 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to

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<sup>3</sup> Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>.

1 prevent Mr. C. from suffering irreparable harm by being subject to unlawful detention.

2 **3. The Balance of Equities and the Public Interest Favor Granting the**  
3 **Temporary Restraining Order**

4 The balance of equities and the public interest also strongly favor granting this temporary  
5 restraining order. First, the balance of hardships strongly favors Mr. C. The government cannot  
6 suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda*  
7 *v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed  
8 in any legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the  
9 government cannot allege harm arising from a temporary restraining order or preliminary  
10 injunction ordering it to comply with the Constitution.

11 Second, any burden imposed by requiring an individualized bond hearing for Mr. C. is  
12 both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he remains  
13 subject to prolonged detention. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)  
14 (“Society’s interest lies on the side of affording fair procedures to all persons, even though the  
15 expenditure of governmental funds is required.”).

16 Finally, a temporary restraining order is in the public interest. Importantly, “it would not  
17 be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal  
18 law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*,  
19 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029  
20 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively  
21 be granted permission to continue detaining Mr. C. indefinitely in violation of the requirements  
22 of the Due Process Clause. “The public interest and the balance of the equities favor ‘prevent[ing]  
23 the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting  
24 *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits  
25 from an injunction that ensures that individuals are not deprived of their liberty and held in  
26 immigration detention because of bonds established by a likely unconstitutional process.”); *cf.*  
27 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns  
28 are implicated when a constitutional right has been violated, because all citizens have a stake in

1 upholding the Constitution.”).

2 Therefore, the public interest overwhelmingly favors entering a temporary restraining  
3 order and preliminary injunction.

4 **V. CONCLUSION**

5 For all the above reasons, this Court should find that Mr. C. warrants a temporary  
6 restraining order and a preliminary injunction ordering that Respondents immediately release Mr.  
7 C upon posting of a \$2,000 bond as set in alternative findings by the Immigration Judge. In the  
8 alternative, the Court should order for the Respondents to provide Mr. C. an individualized bond  
9 hearing within seven days.

10 To prevent loss of access to local counsel, Mr. C. also requests the Court grant a temporary  
11 restraining order preventing the Respondents from removing or transferring Mr. C. outside of the  
12 jurisdiction of the Southern District of California while this matter is pending.

13 Dated: January 14, 2026

Respectfully submitted,

14 /s/ Warren Craig

15 Warren Craig

16 Attorney for Mr. C.