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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

Gustavo MORA-SILVA,

Petitioner-Plaintiff,

v.

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security;

Pam BONDI, in her Official Capacity, Attorney General of the United States;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Jason KNIGHT, Salt Lake City Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement, Department of Homeland Security; and

Darin BALAAM, Sherriff, Washoe County Detention Center.

Respondents-Defendants.

Agency No.

[redacted]

MOTION FOR TEMPORARY RESTRAINING ORDER

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

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

NOTICE OF MOTION

Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order ("TRO") and Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65, enjoining Respondents from continuing his unlawful detention and ordering his immediate release, or in the alternative, a constitutionally adequate bond hearing within seven (7) days at which the government bears the burden of proving, by clear and convincing evidence, that his detention is necessary. If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated this 21st day of January 2026

Respectfully submitted,

Karen Monrreal

Karen S. Monrreal, Esq.
Attorney for Petitioner Mr. Mora-Silva

I. INTRODUCTION

Petitioner Gustavo Mora-Silva ("Mr. Mora-Silva"), Agency Number [redacted], by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order and preliminary injunctive relief to immediately halt his continued and unlawful detention by the U.S. Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE).

Mr. Mora-Silva is currently detained at the Washoe County Detention Center pending the outcome of his immigration proceedings, despite the government's failure to establish, by clear and convincing evidence, that he poses either a danger to the community or a flight risk, as required by the Due Process Clause of the Fifth Amendment.

Mr. Mora-Silva has remained in immigration custody since October 22, 2025. ICE encountered him at the Washoe County Jail after he was arrested due to a traffic violation and a subsequent charge for resisting.

On January 5, 2026, Mr. Mora-Silva filed a request for a bond redetermination hearing before the Immigration Court in Las Vegas, Nevada. In support of his request, he submitted evidence demonstrating that he did not pose a danger to the community or a flight risk.

A bond hearing was conducted on January 16, 2026, before Immigration Judge Lindsy Roberts. At that time, the Department asserted that Mr. Mora-Silva was subject to mandatory detention pursuant to 8 U.S.C. § 1225(b) notwithstanding the Maldonado Bautista decision, thereby precluding the Court from exercising bond jurisdiction. The Immigration Judge ultimately agreed that was the position of EOIR and that she lacked jurisdiction pursuant to Matter of Yajure Hurtado. However, in the alternative, she explicitly stated that if jurisdiction were proper, she would find that Mr. Mora-Silva does not pose a flight risk nor a danger to the community. She further indicated that she would have set bond in the amount of $1,500.

Mr. Mora-Silva has now been detained for more almost three months and continues to be detained despite the Immigration Judge's explicit determination that he would merit release on bond but for the asserted jurisdictional bar. His continued detention—without proper procedural safeguards and lacking lawful justification—constitutes a violation of his rights under the Fifth

Amendment's Due Process Clause. Furthermore, there is no statutory basis for treating him as subject to mandatory detention under the circumstances of his case. Nevertheless, ICE has declined to release him and has failed to afford him a constitutionally adequate bond hearing in which the government carries the burden of demonstrating that detention is necessary.

Mr. Mora-Silva respectfully asks this Court to issue a Temporary Restraining Order enjoining DHS and ICE from continuing his detention without due process. He seeks immediate release or, in the alternative, an expedited and constitutionally compliant bond hearing at which the government must prove, by clear and convincing evidence, that continued detention is necessary.

Absent emergency relief from this Court, Mr. Mora-Silva will continue to suffer irreparable harm as a result of his unjust and indefinite detention.

II. STATEMENT OF FACTS AND CASE

Petitioner, Mr. Mora-Silva, is a 36-year-old native and citizen of Mexico who has spent the entirety of his adult life in the United States. He entered the country without inspection in or around February 2008 through Nogales, Arizona, and has remained continuously present since that time, without ever departing the United States. For more than sixteen years, Mr. Mora-Silva has established deep and enduring roots in the Reno–Sparks community.

Mr. Mora-Silva has resided continuously in Reno, Nevada since 2008, where he has maintained long-term, stable employment in the landscaping industry. He is known by employers and community members as a reliable, hardworking, and responsible individual who contributes positively to the local economy. If released from custody, he will immediately return to work with Green Diamond Landscaping, a local landscaping company. He has also consistently filed federal tax returns since 2008, demonstrating long-standing compliance with U.S. law and further evidencing his stability and reliability.

Mr. Mora-Silva maintains substantial family ties in the United States, all of which strongly anchor him to this country. He is the devoted father of four United States citizen minor children with his ex-wife: [redacted] (age 16), [redacted] (age 14), [redacted] (age 11), and [redacted] (age 2). He shares custody of his children and remains actively involved in their lives. His children depend on him for emotional support, guidance, and financial stability, and his parental responsibilities require his continued physical presence in the Reno area. His role as an engaged and committed parent powerfully underscores his motivation to comply with all immigration court obligations and to appear for future proceedings.

On October 22, 2025, Mr. Mora-Silva was arrested in Reno, Nevada, and charged under the Reno Municipal Code and Nevada Revised Statutes with obstructing or resisting a peace officer, failure to provide proof of insurance, and display of a bogus vehicle registration or plate. At the time of the arrest, he was accompanied by his fiancée and was traveling to the grocery store. He maintains that he had not committed any substantive criminal offense prior to the encounter and asserts that he was targeted by immigration enforcement.

Mr. Mora-Silva subsequently entered a plea of nolo contendere to obstructing or resisting a peace officer and failure to provide proof of insurance. The charge alleging display of a bogus vehicle registration or plate was dismissed. These offenses do not involve violence, weapons, or controlled substances and do not render him a danger to the community.

On October 28, 2025, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA"), charging Mr. Mora-Silva as removable under INA § 212(a)(6)(A) for being present without admission or parole, and INA § 212(a)(7)(A)(i)(I) for lack of valid entry documents. Following the issuance of the NTA, Immigration and Customs Enforcement detained Mr. Mora-Silva and declined to set an initial bond.

On January 5, 2026, Mr. Mora-Silva filed a request for a bond redetermination hearing before the Las Vegas Immigration Court, submitting evidence demonstrating that he is neither a danger to the community nor a flight risk. A bond hearing was held on January 16, 2026, before Immigration Judge Lindsy Roberts. DHS argued that Mr. Mora-Silva was subject to mandatory detention under 8 U.S.C. § 1225(b) and that the Court lacked jurisdiction to set bond. The Immigration Judge concluded that, pursuant to EOIR's position and *Matter of Yajure Hurtado*, she lacked bond jurisdiction. However, she made clear and explicit alternative findings: if jurisdiction were proper, she would find that Mr. Mora-Silva poses neither a danger to the community nor a flight risk and would have set bond in the amount of $1,500, which is the lowest bond that can be set.

Since his detention, Mr. Mora-Silva's family has suffered significant hardship. His four United States citizen children are experiencing emotional distress as a result of the prolonged separation from their father. His absence has disrupted their daily stability and well-being, as they rely on him for both emotional and financial support, resulting in substantial financial strain and emotional hardship.

Additionally, Mr. Mora-Silva's continued detention has severely hindered his ability to participate meaningfully in his removal defense. Restricted access to legal counsel, limited ability to review documents, and difficulty coordinating witness statements impair his ability to fully present his case. Mr. Mora-Silva himself has experienced considerable mental and emotional distress due to his separation from his children and his awareness of the hardships they face during his absence, compounded by the uncertainty surrounding his continued detention.

III. JURISDICTION

This Court has jurisdiction to review Mr. Mora-Silva's TRO Application. Further,

jurisdiction is not stripped by 8 U.S.C. §§ 1252(b)(9) or 1252(g).

A. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(b)(9)

Section 1252(b)(9) provides:

> "Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States... shall be available only in judicial review of a final order under this section…"

Mr. Mora-Silva's detention is not so intertwined with the broader removal process that it can only be reviewed after a final removal order is issued. The Supreme Court addressed this precise issue in *Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018), where it rejected an overly expansive reading of the phrase "arising from" in 8 U.S.C. § 1252(b)(9). The Court warned that interpreting the statute so broadly as to include constitutional challenges to detention—merely because they are tangentially related to removal—would lead to "absurd results" and deprive noncitizens of "any meaningful opportunity for judicial review." *Id.*

Here, Mr. Mora-Silva is not seeking to challenge his removal proceedings, nor the decision to initiate them. Rather, he challenges his prolonged civil detention without a constitutionally sufficient bond hearing under 8 U.S.C. § 1226(a)—a discrete legal and constitutional issue that is wholly independent of whether he is ultimately removable. Moreover, as the Court in *Jennings* made clear, § 1252(b)(9) does not apply where the petitioner is "not asking for review of an order of removal," and where the claim does not "challenge the decision to detain them in the first place or to seek removal." *Id.* at 294. Mr. Mora-Silva's challenge arises from the denial of a bond hearing, not the initiation of removal proceedings. Accordingly, § 1252(b)(9) does not bar this Court from exercising jurisdiction over Mr. Mora-Silva's TRO Application.

B. Jurisdiction Is Not Barred by 8 U.S.C. § 1252(g)

8 U.S.C. § 1252(g) statute states:

> "...no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders…"

However, the Supreme Court has explicitly interpreted § 1252(g) as a narrow jurisdictional limitation. In *Jennings*, the Court reiterated that § 1252(g) applies only to the three specific actions listed: the commencement of proceedings, adjudication of cases, and execution of removal orders. *Jennings*, 583 U.S. at 293.

Mr. Mora-Silva's claim does not arise from any of these three enumerated actions. Instead, it challenges the government's decision to classify him as an "applicant for admission" and deny him access to a bond hearing under § 1226(a)—a procedural and constitutional due process violation. As *Jennings* reaffirmed, courts should not interpret the phrase "arising from" so broadly as to "sweep in any claim that can technically be said to 'arise from'" removal proceedings. *Id.* Doing so would insulate virtually all governmental actions from judicial review, including those that raise serious constitutional questions—a result the Court expressly rejected.

Accordingly, because Mr. Mora-Silva's TRO Application does not challenge the government's authority to commence proceedings, adjudicate removability, or execute a removal order, § 1252(g) does not apply.

In sum, neither § 1252(b)(9) nor § 1252(g) precludes this Court from hearing Mr. Mora-Silva's constitutional claims. He is not challenging a final order of removal or the government's authority to initiate proceedings. Rather, he seeks urgent judicial relief from his prolonged detention without a constitutionally required bond hearing. This Court therefore retains jurisdiction to review his claims and grant the requested temporary restraining order.

IV. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive relief to prevent "immediate and irreparable injury." Fed R. Civ. P. 65(b). A preliminary injunction 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, 22, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). To obtain a preliminary injunction, a plaintiff must establish

four elements: "(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its favor, and (4) that the public interest favors an injunction." *Wells Fargo & Co. v. ABD Ins. & Fin. Servs. Inc.,* 758 F.3d 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (*citing Winter*, 555 U.S. at 20).

In the Ninth Circuit, a preliminary injunction may also issue under the "serious questions" test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine post-Winter). According to this test, "serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury, and that the injunction is in the public interest." *Id.* at 1135. Courts in the Ninth Circuit evaluate "these factors on a sliding scale, such that a stronger showing of one element may offset a weaker showing of another." Recycle for Change v. City of Oakland, 856 F.3d 666, 669 (9th Cir. 2017).

V. ARGUMENT

Mr. Mora-Silva warrants a Temporary Restraining Order.

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Mora-Silva is likely to remain in unlawful custody in violation of his due process rights without intervention by this Court. Mr. Mora-Silva will continue to suffer irreparable injury if he continues to be detained without due process.

A. Likelihood of Success on the Merits.

Mr. Mora-Silva respectfully requests that this Court find that he has satisfied the most

important *Winter* factor, that he is likely to succeed on the merits of his Petition for Writ of Habeas Corpus, because (1) § 1226(a), not § 1225(b)(2), applies to him, and therefore his detention without bond violates the INA and (2) Respondents' continued detention of Petitioner despite the Immigration Judge's alternative finding violates his procedural and substantive due process rights. *See Matsumoto v. Labrador*, 122 F.4th 787, 804 (9th Cir. 2024) (Likelihood of success on the merits is the most important factor in a preliminary injunction analysis); *see also Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (likelihood of success is especially important where a plaintiff seeks a preliminary injunction because of an alleged constitutional violation).

Under the clear terms of the statute and well-established case law, 8 U.S.C. § 1226(a) governs the detention of individuals who, like Mr. Mora-Silva, are physically present within the United States and are undergoing removal proceedings. Given that Mr. Mora-Silva has lived in the United States for more than sixteen years and was not apprehended at the border or upon entry, his case is governed by § 1226(a). As such, he is entitled to a bond hearing that complies with the due process protections afforded under that provision.

Section 1226 distinguishes between two classes of individuals in immigration detention. Section 1226(a) applies to individuals within the United States pending removal proceedings and allows for discretionary release on bond. In contrast, § 1226(c) applies to a narrow category of so-called "criminal aliens" and imposes mandatory detention under more limited circumstances.

Critically, individuals detained under § 1226(a) are entitled to an initial bond hearing before an immigration judge, with the opportunity to present evidence, be represented by counsel, and seek subsequent bond redeterminations if circumstances materially change. See *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1201 (9th Cir. 2022).

Here however, it was alleged that Mr. Mora-Silva is not detained under § 1226(a), but rather under § 1225(b)(2), based on the claim that he qualifies as an "applicant for admission" due to his entry without inspection. That provision mandates detention for arriving noncitizens unless they are "clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The government suggest that this provision applies not only to arriving aliens at ports of entry but

also to individuals already physically present in the country without having been formally "admitted."

1. Plain Meaning of the Statute

When evaluating the relevant provisions of the Immigration and Nationality Act, the analysis must begin with the statutory language itself. *See Torres v. Barr*, 976 F.3d 918, 923 (9th Cir. 2020) (*quoting Esquivel-Quintana v. Sessions*, 581 U.S. 385, 391 (2017)) ("As always, the starting point is the text of the statute.").

The structure and headings of 8 U.S.C. § 1225 indicate its intended scope: the statute governs the inspection process for individuals encountered at the border and the expedited removal of those deemed inadmissible upon arrival. Subsection (b)(1) describes the procedures applicable to "aliens arriving in the United States" and certain noncitizens "who have not been admitted or paroled,"—including those designated by the Attorney General who cannot establish two years of continuous physical presence in the United States prior to the inadmissibility determination. 8 U.S.C. § 1225(b)(1).

These individuals fall within the expedited removal framework outlined in subsection (b)(1). By contrast, subsection (b)(2)—which is the provision implicated here—addresses inspection and detention of "other aliens," meaning those not encompassed within subsection (b)(1)'s expedited removal categories. Paragraph (b)(2)(A) states:

> An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this chapter an applicant for admission.

In other words, § 1225(b)(2)(A) applies only to a specific subset of individuals: those undergoing inspection by an immigration officer who are considered "applicants for admission," are actively seeking entry, and are not covered by the expedited removal provisions of § 1225(b)(1). The government argues that this framework automatically includes any noncitizen

present in the United States without having been formally admitted, regardless of the length of their residence in the country.

However, the Ninth Circuit has rejected such an expansive interpretation of the term "applicant for admission." In examining § 1225(b)(1), the court explained that a noncitizen applies for admission at a discrete moment—typically at the time of entry—not indefinitely thereafter. The court cautioned that interpreting the phrase to extend for many years or even decades after entry would distort the statutory text beyond what its language can support. *See United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir. 2024) (*citing Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).

Accordingly, individuals like Mr. Mora-Silva, who have lived in the United States for a substantial portion of their lives, should not be viewed as perpetually seeking admission under the plain meaning of the statute.

Additionally, the statutory language itself demonstrates that the terms "applicants for admission" and "seeking admission" in § 1225(b)(2)(A) are not designed to apply indefinitely to every noncitizen who entered without inspection long ago. Rather, those phrases operate together to limit mandatory detention to a specific timeframe associated with inspection at or near the time of entry. Longstanding rules of statutory interpretation require that each word Congress enacted be given operative effect. *See Corley v. United States*, 556 U.S. 303, 314 (2009). The Government's reading fails that basic interpretive principle.

The INA's structure confirms Congress's focus on individuals at or near the border, not long-term residents like Petitioner. Section 1225 is entitled "inspection by immigration officers" and its subsections consistently refer to inspections conducted on "arriving" noncitizens and those assessed by "examining immigration officers." See 8 U.S.C. §§ 1225(a)(3), (b)(1), (b)(2), (b)(4),

(d). In interpreting statutes, courts must examine both the plain language and the broader statutory design. *See K Mart Corp. v. Cartier, Inc.*, 488 U.S. 281, 291 (1988); *Biden v. Texas*, 597 U.S. 785, 799–800 (2022). Viewed in context, § 1225(b)(2) applies to individuals entering, attempting to enter, or who have very recently entered the United States—not to noncitizens who have lived here for years.

This understanding aligns with Supreme Court precedent interpreting § 1225(b). The Court has explained that the provision "applies primarily to aliens seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018). A person like Mr. Mora-Silva, who entered long ago and has been continuously residing in the United States, is not attempting to enter and therefore cannot be described as "seeking admission" in the ordinary sense of the term. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (noting that a noncitizen becomes an applicant for admission when attempting to cross the border illegally).

Reading § 1225(b) as applying only to recent arrivals also aligns with the statutory scheme when compared to § 1226. Section 1226 governs the detention of noncitizens already present in the United States during removal proceedings. Jennings, 583 U.S. at 303. It sets forth the general rule: detention is discretionary and bond hearings are provided, except in limited and specifically enumerated cases. See 8 U.S.C. § 1226(a). The statute expressly references noncitizens who are inadmissible under § 1182(a)(6)(A)(i), such as those who entered without inspection. See id. § 1226(c)(1)(E). Congress's choice to include detailed exceptions for when inadmissible noncitizens must be detained — including those who entered without inspection and have committed particular offenses — demonstrates that the default rule under § 1226(a) applies to this class. *See Shady Grove Orthopedic Assocs. v. Allstate Ins. Co.*, 559 U.S. 393 (2010).

2. The Practice of the Agency

Courts may consider the government's historical implementation of a statute as an interpretive tool when confirming the statute's meaning. *See Loper Bright*, 603 U.S. at 386. Here, the Government's interpretation conflicts with long-established regulations governing immigration judges' authority to conduct bond hearings, along with many years of consistent agency enforcement. This strongly supports the conclusion that noncitizens in Petitioner's position are—and have always been—subject to discretionary custody under § 1226(a). See, e.g., 8 C.F.R. § 1003.19(h)(2) (specifying narrow limits on bond jurisdiction only for categories such as "arriving aliens" and those subject to mandatory detention under § 1226(c)).

Moreover, the Government's reading of § 1225 would dramatically expand DHS's detention authority—an interpretation with major policy implications—while upending decades of established practice applying § 1226(a) to long-term U.S. residents who entered without inspection. When an agency asserts newly discovered, sweeping powers under an older statutory provision, courts approach such claims with skepticism and expect Congress to speak clearly before granting that level of authority. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014).

Historically, individuals who have lived inside the United States for extended periods—despite entering unlawfully—have not been treated as "arriving aliens" subject to § 1225(b). Instead, those individuals have been detained (if at all) under the discretionary detention framework of § 1226(a). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) ("U.S. immigration law authorizes …") (noting the longstanding distinction in detention authorities depending on where and when the noncitizen is encountered).

The Laken Riley Act further reinforces this interpretation by amending § 1226(c) to expand the categories of inadmissible individuals subject to mandatory detention. When Congress amends a statute, courts presume the change has practical effect. *See Gieg v. Howarth*, 224 F.3d 775, 776

(9th Cir. 2001). If inadmissibility alone already triggered mandatory detention under § 1225(b)(2)(A), those amendments would serve no purpose. *See Diaz Martinez*, 2025 WL 2084238, at 7.

Section 1226(a) also provides essential procedural safeguards—neutral adjudicator review, right to counsel, ability to present evidence, appellate review, and new hearings upon changed circumstances—that are entirely absent from § 1225. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022). The presence of these protections confirms Congress intended § 1226 to apply to long-term U.S. residents facing removal—not § 1225(b)(2)(A)'s mandatory detention scheme.

B. **Irreparable Harm**

To obtain a temporary restraining order, a petitioner must show that they are likely to suffer irreparable harm in the absence of preliminary relief. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

Mr. Mora-Silva has been detained by U.S. Immigration and Customs Enforcement since October 22, 2025, and has been denied bond throughout that period. The Supreme Court has long recognized that "[f]reedom from imprisonment— from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The ongoing deprivation of this fundamental liberty, without an individualized bond determination, constitutes a clear and continuing constitutional injury.

The Ninth Circuit has emphasized that the loss of constitutional rights "unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). This principle squarely applies here. Mr. Mora-Silva remains detained without due process, in violation of his Fifth Amendment rights.

Further, Mr. Mora-Silva's continued detention has caused substantial and compounding harm both to him and to his U.S. citizen family members who depend on him on a daily basis.

His four United States citizen minor children—ages 16, 14, 11, and 2—are experiencing significant emotional distress as a result of the sudden and prolonged separation from their father. His absence has destabilized their daily lives, as they rely on him for emotional support, guidance, and financial stability.

Without their father's presence, the children's sense of security and well-being has been severely disrupted, leaving them anxious and emotionally vulnerable. Mr. Mora-Silva's detention has also placed considerable strain on the family's financial stability, as he is a primary source of support. The cumulative impact of his continued detention has created ongoing emotional and economic hardship for his children, compounding the harm caused by their prolonged separation from a consistently present and devoted parent.

The Ninth Circuit has acknowledged that civil immigration detention imposes extraordinary consequences on individuals and families alike, causing not only the loss of physical liberty but also family disintegration, emotional trauma, and economic hardship. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Those exact harms are present here. Mr. Mora-Silva's detention has ripped apart the family structure he spent nearly twenty years building, leaving his loved ones without the support and safety they previously depended on.

Because he remains detained only due to the erroneous application of law—despite a lawful finding that he is neither a danger nor a flight risk—Mr. Mora-Silva has been deprived of his liberty without access to a meaningful, constitutionally adequate review. The resulting damage to him and his family is immediate, ongoing, and irreparable.

Accordingly, the irreparable-harm requirement is unquestionably satisfied.

C. Balance of the Equities and Public Interest

The Balance of Equities and Public Interest Strongly Favor Mr. Mora-Silva. When the government is the opposing party, the final two TRO factors—the balance of equities and the public interest—merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In this case, both weigh decisively in favor of Mr. Mora-Silva.

As demonstrated above, Petitioner's continued detention without a bond hearing—whether analyzed under the government's interpretation of 8 U.S.C. § 1225—likely violates

federal statutory and constitutional protections. Detaining a person without due process offends core principles of federal law and undermines the constitutional guarantee of liberty. As the Ninth Circuit has made clear, "it would not be equitable or in the public's interest to allow the state to violate the requirements of federal law." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Accordingly, both the public interest and the balance of equities weigh in favor of granting relief.

While the government undoubtedly has an interest in the consistent application of immigration policy, this interest does not extend to the unlawful denial of liberty in contravention of statutory protections. As the Ninth Circuit has recognized, "there is no public interest in the perpetuation of unlawful agency action." *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal citation omitted).

Moreover, the government's refusal to provide a bond hearing—whether under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), relies on a novel and disputed interpretation of immigration detention statutes. This approach departs from decades of statutory practice under 8 U.S.C. § 1226(a), which has long required an individualized assessment of flight risk and danger before depriving a person of liberty. Enforcing Petitioner's right to a bond hearing does not disturb the law; it restores it.

By contrast, continuing to detain Petitioner without a bond hearing inflicts ongoing and irreparable harm. He has lived in the United States for over two decades, has strong family and community ties, and has no history indicating danger or flight risk. The balance of equities overwhelmingly favors ensuring a prompt, constitutionally required bond hearing—not allowing prolonged detention based on an untested expansion of mandatory detention under *Yajure Hurtado*.

Accordingly, both the balance of equities and the public interest support the issuance of a temporary restraining order in Mr. Mora-Silva's favor.

VI. CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court issue a Temporary Restraining Order Prohibiting Respondents from continuing to detain him without

providing him bond. Petitioner has shown a strong likelihood of success on the merits because his detention properly falls under 8 U.S.C. § 1226(a), not § 1225, *Matter of Yajure Hurtado* does not authorize his continued detention without individualized review.

Mr. Mora-Silva's continued detention—despite the Immigration Judge's alternative finding—violates the governing statutory framework and the Due Process Clause of the Fifth Amendment. Every additional day he remains incarcerated without due process inflicts irreparable harm, depriving him of his liberty and causing profound emotional, and financial hardship to his U.S. citizen and legal Permanent resident family members who rely on him for care and stability.

The balance of equities and the public interest overwhelmingly support injunctive relief. There is no legitimate public benefit in detaining a long-term resident with deep community ties, and no finding of dangerousness—particularly where his detention is based on a misapplication of immigration statutes.

For these reasons, Mr. Mora-Silva respectfully requests that this Court grant a Temporary Restraining Order and order his immediate release. In the alternative, the Court should require the government to allow Mr. Mora-Silva to post his bond to be released.

Dated this 21st day of January 2026

Respectfully submitted,

Karen Monrreal

Karen S. Monrreal, Esq.
Attorney for Petitioner, Mr. Mora-Silva