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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PALACIOS VENTURA, Michael Jose
Alien # 

Petitioner,
v.

PAMELA BONDI, in her official capacity as Attorney
General,

KRISTI NOEM, in her official capacity as Secretary of
the Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY,

KENNETH GENALO, in his official capacity as Acting
Field Office Director of the New York Field Office for
U.S. Immigration and Customs Enforcement,

PAUL ARTETA, in his official capacity as director of the
Orange County Correctional Facility,

TODD LYONS, in his official capacity as Acting ICE
Field Office Director,
Respondents.

7:26-cv-00568

**PETITION FOR A WRIT OF
HABEAS CORPUS UNDER 28
U.S.C. § 2241**

**PETITIONER'S MEMORANDUM
OF LAW IN SUPPORT OF
MOTION FOR AN EMERGENCY
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE REGARDING
PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

1
2 Michael Jose Palacios Ventura (hereinafter “Petitioner” or “Michael”) respectfully
3 moves for a Temporary Restraining Order and an Order to Show Cause regarding a preliminary
4 injunction. The U.S. Department of Homeland Security (hereinafter “DHS”), through
5 Immigration and Customs Enforcement (hereinafter “ICE”), has unlawfully detained Michael
6 at the Orange County Correctional Facility (hereinafter “OCCF”), a federal detention facility
7 within this District, in violation of Petitioner’s statutory and constitutional rights. Petitioner
8 does not challenge the commencement of his proceedings or any removal order. Instead,
9 Michael challenges his ongoing civil detention, which is based on Respondents’ violations of
10 the Immigration and Nationality Act (hereinafter “INA”), the Administrative Procedure Act
11 (hereinafter “APA”), and the U.S. Constitution’s Fifth Amendment Due Process guarantees.
12
13

14 The relevant facts and procedural history are detailed extensively in Michael’s Petition.
15 Michael is a 20-year-old who entered the United States in 2019 at age thirteen as part of a family
16 unit with his father. At the port of entry, DHS processed Michael as an arriving applicant for
17 admission, found him inadmissible, and released him on his own recognizance. Michael
18 thereafter lived openly in the United States and has resided continuously here for 7 years.
19 During this time, Michael’s father abandoned him, Michael had no understanding of his
20 immigration proceedings, and, through no willful fault of his own, was ordered removed in
21 absentia as a child. After ICE arrested him during a traffic stop on October 9, 2025, Michael
22 immediately learned of the prior order; his guardian retained counsel; and the Immigration
23 Court granted reopening and vacated the in absentia removal order. Michael is now in active
24 removal proceedings under 8 U.S.C. § 1229(a), without a final order of removal.
25
26

27 Despite this posture, Respondents assert that Michael is subject to mandatory detention
28 without bond under 8 U.S.C. § 1225—a provision that applies only to individuals who are

1 *presently “seeking admission.”* Respondents’ position improperly converts a one-time border
2 inspection classification from childhood into a perpetual detention trigger. This allows ICE to
3 impose mandatory detention years later following an interior arrest, even after release into the
4 community and the vacatur of a removal order. The INA does not authorize this result. Section
5 1225 governs *detention at the border and during the inspection and admission process*; it does
6 not supply continuing mandatory detention authority for long-present individuals who are no
7 longer seeking physical entry into the United States. Where, as here, Michael has been released,
8 resided in the interior for years, and is now pending reopened removal proceedings, detention,
9 if authorized at all, must proceed under 8 U.S.C. § 1226(a), which provides for discretionary
10 detention and eligibility for bond.
11

12
13 This detention is unlawful under and contrary to the text and structure of the INA,
14 arbitrary and capricious under the APA, and constitutionally indefensible under the Fifth
15 Amendment’s Due Process Clause. Multiple courts within the Second Circuit, including within
16 this district, have already rejected this theory, holding that § 1225(b)(2) does not authorize
17 mandatory detention for individuals who are no longer “seeking admission,” and that such
18 persons are properly detained, if at all, under § 1226(a), with the right to seek bond.
19

20 Michael has now been detained for over 100+ days without a bond hearing.
21 Respondents’ position eliminates any meaningful temporal or geographic limits on border-
22 based detention authority and deprives Michael of a neutral forum to seek release and pursue
23 lawful relief, including Special Immigrant Juvenile Status (“SIJS”). He seeks immediate
24 judicial intervention to prevent further unlawful detention, to declare that his custody is
25 governed by § 1226(a), and to compel either his release or, at a minimum, a prompt and
26 constitutionally adequate bond hearing at which the Government bears the burden of proof by
27 clear and convincing evidence.
28

BACKGROUND

1
2 Michael entered the United States on March 26, 2019, at age thirteen (13), accompanied
3 by his father. Michael and his father fled Guatemala [REDACTED]

4 [REDACTED] Upon presenting at the Port of Entry in Presidio, Texas, the Respondents processed
5 Michael and his father as a family unit and charged Michael as inadmissible under INA §
6 212(a)(7)(A)(i)(I). Immigration records reflect that the Respondents served Michael and his
7 father with Form M-444, Information About Credible Fear Interview. Rather than detaining the
8 family, DHS released both Michael and his father on their own recognizance pending removal
9 proceedings.
10

11 At the time of his entry, Michael was a minor entirely dependent on his father and had
12 no understanding of his immigration proceedings, legal obligations, or court appearances. After
13 his father later abandoned him, Michael was left without guidance and, through no fault of his
14 own, failed to appear in court, resulting in an in absentia removal order at age thirteen. Since
15 arriving in the United States, Michael has lived in Monroe, New York, under the care of a
16 guardian. He attended school, worked, and lived peacefully for more than seven years, unaware
17 of his removal order or his lack of immigration status.
18

19 On October 9, 2025, Michael was traveling to work with coworkers when ICE officers
20 in an unmarked vehicle stopped the car, requested identification, and ran Michael's driver's
21 license. ICE officers informed Michael that he was "undocumented" and subject to a removal
22 order and immediately placed him in handcuffs. This was the first time Michael learned that he
23 had been ordered removed or lacked lawful status. Michael's guardian promptly retained
24 counsel, who filed a motion to reopen his removal proceedings. The Immigration Court granted
25 the motion to reopen and vacated the *in absentia* removal order, restoring Michael to active
26 removal proceedings under 8 U.S.C. § 1229(a) without a final order of removal.
27
28

1 Despite the vacatur of the removal order and the pendency of reopened proceedings,
2 Respondents have continued to detain Michael at the Orange County Correctional Facility. ICE
3 asserts that Michael is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) on the
4 theory that he remains an “arriving alien” detained “pending a determination of admissibility.”
5 Michael has now been detained for more than a 100+ days without any opportunity to seek
6 release on bond.
7

8 Respondents’ detention theory rests on a misapplication of § 1225(b)(2). As courts in
9 New York have recognized, § 1225 governs the detention of noncitizens seeking admission
10 during the border inspection process, while § 1226 governs pre-final-order detention of
11 individuals who have been released into the United States and are already present in the interior.
12 Michael’s current detention arises from a years-later interior arrest following release into the
13 community and the vacatur of a removal order, not from any present attempt to seek admission
14 at the border. Nevertheless, Respondents continue to deny Michael any bond hearing or
15 individualized custody determination.
16

17 The Petitioner therefore seeks either: (1) immediate release to the Petitioner’s legal
18 guardian under conditions substantially similar to those in effect prior to re-detention.
19 Alternatively, (2) order a prompt bond hearing before a neutral decisionmaker within 7 days, at
20 which: (a) The Government bears the burden by clear and convincing evidence to prove danger
21 or flight risk, (b) the adjudicator’s must consider Petitioner’s ability to pay and least-restrictive
22 alternatives to detention (including release to the Petitioner’s legal guardian and ATDs), (c) the
23 adjudicator must issue reasoned, written findings on the record, and (d) a contemporaneous
24 transcript is produced and served on the parties.
25

26 The Petitioner also requests (3) an Order to Show Cause for expedited briefing and a
27 preliminary injunction hearing at the earliest possible date; (4) a no-transfer order and quick
28

1 production of basic custody documents needed to make the hearing meaningful; (5) waive
2 security under Fed. R. Civ. P. 65(c) (or set a nominal bond), given Petitioner's indigence and
3 the strong public interest in protecting constitutional rights; and (6) grant such other and further
4 relief as the Court deems just and proper.
5

6 Without this Court's intervention, Petitioner will remain unlawfully confined due to
7 Respondents' violations of the INA, APA, and the Constitution, causing irreparable harm each
8 day. The requested Temporary Restraining Order and Order to Show Cause aim to ensure a
9 prompt and fair determination of liberty while this case proceeds.
10

11 JURISDICTION AND VENUE

12 This Court has jurisdiction over this application under 28 U.S.C. § 2241 (the federal
13 habeas statute). *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (district courts may entertain
14 habeas challenges to immigration detention); *Jennings v. Rodriguez*, 583 U.S. 281, 293-96
15 (2018). This Court also has federal question jurisdiction under 28 U.S.C. § 1331 over
16 Petitioner's claims arising under the Administrative Procedure Act, the Fifth Amendment, and
17 the Immigration and Nationality Act. The APA authorizes judicial review to compel agency
18 action unlawfully withheld and to set aside arbitrary or unlawful action. 5 U.S.C. §§ 702,
19 706(1)–(2). The Petitioner also seeks relief under the Fifth Amendment's Due Process Clause,
20 which independently supports habeas jurisdiction. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).
21

22 Venue and personal jurisdiction are properly situated in the Southern District of New
23 York because Petitioner is detained at the Orange County Correctional Facility in Orange
24 County, New York, which lies within the Southern District of New York; the district of
25 confinement is therefore the proper forum, and the immediate custodian (the OCCF warden) is
26 a proper respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004).
27

28 The petition is properly brought and should be heard forthwith under 28 U.S.C. § 2243

1 (court to “summarily hear and determine” habeas) and given priority under 28 U.S.C. § 1657(a).

2 **LEGAL STANDARD**

3 *A. Temporary Restraining Order and Preliminary Injunctions*

4 To obtain a temporary restraining order or preliminary injunction, a party generally
5 must show (1) “a likelihood of success on the merits,” (2) “irreparable harm absent injunctive
6 relief,” (3) “public interest weighing in favor of granting the injunction,” and (4) “that the
7 balance of equities supports the issuance of an injunction.” *We The Patriots USA, Inc. v.*
8 *Hochul*, 17 F.4th 266, 279–80 (2d Cir. 2021), opinion clarified, 17 F.4th 368 (2d Cir. 2021);
9 *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

10 *B. Habeas and Bail Standards*

11 The Second Circuit in *Mapp v. Reno* held that analyzing a habeas petitioner’s fitness for
12 bail depends on whether the habeas petition raises substantial claims and whether extraordinary
13 circumstances exist that make the grant of bail necessary to make the habeas remedy effective.
14 *Mapp v. Reno*, 241 F.3d 221 (2nd Cir. 2001). A serious question in a habeas petition typically
15 involves substantial legal or constitutional claims, often coupled with extraordinary
16 circumstances that necessitate judicial intervention to ensure the effectiveness of the habeas
17 remedy.
18

19
20 The above standards apply with force in immigration detention habeas cases where the
21 petitioner challenges the Government’s asserted detention authority and the absence of any
22 meaningful avenue for release. In a closely analogous statutory-authority dispute, the Southern
23 District of New York has held that § 1225(b)(2)(A) requires more than “applicant for
24 admission” status: mandatory detention under § 1225(b)(2)(A) is premised on an immigration
25 officer’s determination that a noncitizen is (1) an applicant for admission, (2) “seeking
26 admission,” and (3) not clearly and beyond a doubt entitled to be admitted, and that “seeking
27 admission” carries a present-tense meaning that does not naturally extend to long-present
28

1 individuals re-arrested in the interior. *See Campbell v. Almodovar et al.*, No. 1:2025-cv-09509,
2 Doc. 17 (S.D.N.Y. Dec. 10, 2025) (collecting cases; granting habeas relief; explaining that
3 “seeking” implies present-tense action and that “entry” implies a geographic limit at or near the
4 border).

5
6 Consistent with that approach, SDNY has repeatedly treated the Government’s post-
7 policy-change theory as an expansion of § 1225(b)(2) beyond its ordinary border-focused
8 function and has granted relief when detainees were re-arrested after residing in the United
9 States for years and were denied any bond hearing on the theory that § 1225(b)(2) applies. *See*
10 *Lopez Benitez v. Francis*, 795 F.Supp.3d 475 (S.D.N.Y. Aug. 13, 2025).

11
12 At the same time, Petitioner acknowledges that SDNY judges have reached different
13 conclusions on this statutory question. *See Chen v. Almodovar*, No. 25-cv-9670, Doc. 13
14 (S.D.N.Y. Jan. 14, 2026); *Chen v. Almodovar*, No. 25-cv-8350, Doc. 13 (S.D.N.Y. Dec. 4,
15 2025). Those decisions should not be followed here. *Chen* rests on the premise that “applicant
16 for admission” status alone is sufficient to trigger mandatory detention under § 1225(b)(2)(A),
17 but that reading collapses the statute’s distinct present-tense requirement that the noncitizen be
18 “seeking admission.” By treating “seeking admission” as a perpetual legal label rather than a
19 contemporaneous act of seeking physical entry, *Chen* effectively reads the operative statutory
20 language out of the provision, contrary to basic principles of statutory construction and
21 Supreme Court guidance that courts must give effect to every word Congress used. *See*
22 *Loughrin v. United States*, 573 U.S. 351, 358 (2014).

23
24
25 Moreover, *Chen* gives insufficient weight to the INA’s structure, which assigns § 1225
26 to border inspection and entry determinations and § 1226 to detention during removal
27 proceedings for individuals already present in the United States. That structural distinction is
28 central to the analysis adopted by other courts in this Circuit that have rejected the

1 Government's theory and held that § 1225(b)(2)(A) cannot be invoked years after release and
2 interior residence.

3
4 *C. Prudential Exhaustion*

5 There is no statutory exhaustion requirement applicable to habeas petitions challenging
6 immigration detention under 28 U.S.C. § 2241. Any exhaustion requirement is prudential and
7 subject to well-recognized exceptions. *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995). Courts
8 in the Southern District of New York routinely excuse exhaustion where “(1) available
9 remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur
10 without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain
11 instances a plaintiff has raised a substantial constitutional question.” *J.C.G. v. Genalo*, 2025
12 WL 88831, at *4 (S.D.N.Y. Jan. 14, 2025) (quoting *Howell v. INS*, 72 F.3d 288, 291 (2d Cir.
13 1995)).
14

15 Exhaustion is particularly inappropriate in immigration detention habeas cases where,
16 as here, the Government's asserted detention position categorically forecloses any bond forum,
17 making administrative pursuit futile and providing no genuine opportunity for relief, while each
18 additional day of confinement constitutes ongoing and irreparable deprivation of liberty on the
19 Petitioner.
20

21 *D. Irreparable Harm*

22 To establish irreparable harm, Petitioners “must demonstrate that absent a preliminary
23 injunction they will suffer an injury that is neither remote nor speculative, but actual and
24 imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the
25 harm.” *Ferreyra v. Decker*, 456 F.Supp.3d 538 (S.D.N.Y. Apr. 27, 2020). In the Second Circuit,
26 it is well-settled that an alleged constitutional violation constitutes irreparable harm. *Basank v.*
27 *Decker*, 613 F. Supp. 3d 776 (S.D.N.Y. Apr. 23, 2020); *See, e.g., Connecticut Dep't of Envtl.*
28 *Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (“[W]e have held that the alleged violation

1 of a constitutional right triggers a finding of irreparable injury.” (internal quotation marks and
2 citation omitted)); *Statharos v. New York City Taxi & Limousine Comm'n*, 198 F.3d 317, 322
3 (2d Cir. 1999) (“Because plaintiffs allege deprivation of a constitutional right, no separate
4 showing of irreparable harm is necessary.”); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996)
5 (clarifying that “it is the alleged violation of a constitutional right that triggers a finding of
6 irreparable harm” and a substantial likelihood of success on the merits of a constitutional
7 violation is not necessary); *Sajous v. Decker*, No. 18 Civ. 2447, 2018 WL 2357266, at *12
8 (S.D.N.Y. May 23, 2018) (finding that immigration detainee established irreparable injury by
9 alleging that prolonged immigration detention violated his constitutional due process rights).
10

11 *E. Rule 65 Procedures and Scope*

12 Fed. R. Civ. P. 65(b) permits a temporary restraining order (“TRO”) without notice only
13 if specific facts in an affidavit or verified pleading show immediate, irreparable injury before
14 the adverse party can be heard, and counsel certifies efforts to give notice and why notice should
15 not be required. Fed. R. Civ. P. 65(b)(1). A TRO without notice expires within 14 days unless
16 extended for good cause or consented to, and the Court must promptly set a preliminary-
17 injunction hearing. Fed. R. Civ. P. 65(b)(2)–(3). Rule 65(c) generally requires security;
18 however, courts have discretion to waive or reduce the bond, including for indigent parties or
19 when the public interest strongly favors the enforcement of constitutional rights. Fed. R. Civ.
20 P. 65(c). Further, any injunctive order must state reasons, be specific in terms, and describe in
21 reasonable detail the acts restrained or required without incorporation by reference. Fed. R. Civ.
22 P. 65(d); *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). In immigration-detention
23 cases, district courts may award individualized injunctive relief, but not grant class-wide
24 injunctions under 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 548–49
25 (2022) (permitting individual, case-specific relief).
26
27
28

1 The above framework applies to both the requested TRO (with notice) and the Order to
2 Show Cause regarding the preliminary injunction sought in this matter.

3 **ARGUMENT**

4 Under the four-factor test outlined in *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266,
5 279–80 (2d Cir. 2021), the Court should grant Michael’s emergency application for a TRO and
6 OSC for a preliminary injunction, as he satisfies all four factors.

7 **I. THE PETITIONER IS LIKELY TO SUCCEED ON THE MERITS**

8 **COUNT I: INA STATUTORY AUTHORITY**

9 a. Michael Is Likely to Succeed on his INA Claim Because § 1225(b)(2)(A) Does Not Authorize
10 Mandatory Detention for a Years-Later Interior Re-Detention After Release into the Community.

11 The Government’s asserted detention authority is 8 U.S.C. § 1225(b)(2)(A). By its plain
12 terms, that provision applies only when an examining officer determines that “an alien *seeking*
13 *admission*” is not clearly and beyond a doubt entitled to admission; in that circumstance, “the
14 alien shall be detained for a proceeding under section 1229a.” *Id.* The statute’s limiting phrase,
15 “*seeking admission*,” is not surplusage. By its plain terms, § 1225(b)(2)(A) applies during the
16 admissions and inspection posture, when the noncitizen is seeking entry into the U.S.

17
18 Courts in the Southern District of New York have repeatedly recognized that “seeking”
19 is a present-tense concept tied to the act of seeking physical entry, and that § 1225(b)(2)(A)
20 does not authorize mandatory detention for interior arrests occurring years after release into the
21 community. In *Campbell v. Almodovar*, the court granted habeas relief and explained that
22 “‘seeking’ implies present-tense action,” and that “entry” carries a geographic limitation “at or
23 near the border.” No. 1:25-cv-09509, Doc. 17 (S.D.N.Y. Dec. 10, 2025). SDNY courts have
24 consistently adopted this reading. *See Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 488
25 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, No. 25-cv-6373, 2025 WL 2398831, at *3–4
26 (S.D.N.Y. Aug. 19, 2025); *Munoz Materano v. Arteta*, No. 25-cv-6137, 2025 WL 2630826, at
27
28

1 *11 (S.D.N.Y. Sept. 12, 2025); *J.G.O. v. Francis*, No. 25-cv-7233, 2025 WL 3040142, at *3
2 (S.D.N.Y. Oct. 28, 2025).

3
4 The Supreme Court’s description of the INA’s detention framework confirms this
5 reading. The Court has explained that § 1225 governs detention of noncitizens seeking
6 admission during the border/inspection process, while § 1226 governs detention of noncitizens
7 already present in the United States pending removal proceedings. *Jennings v. Rodriguez*, 583
8 U.S. 281 (2018). SDNY has rejected the Government’s attempt to transform § 1225(b)(2) into
9 a perpetual, no-bond detention hook untethered from the admissions context. *See Barco*
10 *Mercado v. Francis*, No. 25-cv-6582, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025) (indexing
11 the vast majority of granted habeas petitions across the country—over 300 and counting—on
12 similar grounds here in Appendix A).

13
14 b. SDNY Has Held That “Seeking Admission” Is Not Synonymous With “Applicant for
15 Admission;” it Refers to the Act of Seeking Physical Entry, Not an Enduring Label That Triggers
16 Mandatory Detention Years Later.

17 The Government will likely argue that because Michael was issued a 2019 NTA marked
18 “arriving alien” and because § 1225(a)(1) deems certain individuals “applicants for admission,”
19 § 1225(b)(2)(A) automatically governs detention whenever DHS chooses to detain him. That
20 reading collapses “applicant for admission” and “seeking admission” into the same concept.
21 Section 1225(b)(2)(A) does not apply to all “applicants for admission” at all times; it applies
22 only when an individual is currently “seeking admission.” As discussed above, SDNY and
23 sister courts in New York and across the country have squarely rejected the Government’s
24 attempt to equate these terms. Indeed, “‘seeking admission’ cannot be synonymous with
25 ‘applicant for admission.’ It must refer to seeking physical entry at the border, not the legal
26 right to enter.” *See Alvarez Ortiz*, No. 25-cv-960, 2025 WL 3085032, at *7 (W.D.N.Y. Nov. 4,
27 2025); *Quituisaca Quituisaca v. Bondi*, No. 6:2025-cv-06527, Doc. 18 at 8 (W.D.N.Y. Nov.
28

1 24, 2025) (emphasizing that § 1225(b)(2)(A) has multiple distinct prerequisites, and that the
2 statutory language “suggests that § 1225(b)(2) applies to individuals stopped at the border—
3 not those... who were already residing in this country”).
4

5 That statutory structure matters here because Michael’s *current* detention is not
6 occurring during a border inspection or immediately adjacent processing. It arises from an
7 interior re-arrest years after DHS released him on recognizance and after the Immigration Court
8 reopened proceedings and vacated the in absentia order. The INA does not permit DHS to treat
9 a long-present resident’s interior re-detention as though he were still, in the present tense,
10 “seeking admission” at the border.
11

12 c. The Statutory Context Confirms That Congress Intended § 1225(B)(2) to Apply in
13 Border/Inspection Settings, Not to Confer a Perpetual “Mandatory Detention Over Your Head”
Power.

14 The structure of § 1225(b)(2) reinforces its limited scope and points to border-related
15 detention. Subparagraph (B) exempts “crewman” and “stowaway,” and Subparagraph (C)
16 authorizes return to a contiguous territory for certain land arrivals. Those carve-outs concern
17 modes of arrival and immediate border processing, reinforcing that Congress was addressing
18 people *currently presenting at or near entry*, not long-present interior residents. See *Quituisaca*
19 *Quituisaca*, Doc. 18 at 9.
20

21 Put simply: if Congress had intended § 1225(b)(2) to authorize mandatory detention
22 without bond for any person DHS could label an “applicant for admission” at any time in the
23 future, the “seeking admission” language and the border-arrival context would be surplusage.
24 Courts have refused to interpret the statute in a way that renders Congress’s words meaningless.
25

26 d. Applying these principles, Michael’s current detention cannot be justified under § 1225(b)(2)(A).
27 If he may be detained at all before a final order, the INA points to § 1226(a) and bond eligibility.

28 Even accepting the historical fact that Michael was processed at a port of entry in 2019,

1 charged as inadmissible under INA § 212(a)(7)(A)(i)(I), and served with a 2019 NTA as an
2 arriving alien, the relevant question for this habeas is the statutory authority for the current
3 detention episode. § 1225(b)(2)(A) is triggered by an examining officer’s determination that an
4 alien is currently “seeking admission.”
5

6 Michael is not presently “seeking admission” in any ordinary or statutory sense. He has
7 lived in the United States for years, was released on recognizance and is now in reopened §
8 1229(a) proceedings following an interior arrest, with no final order of removal. Under the
9 INA’s structure, detention of individuals already present in the country pending removal
10 proceedings is governed, if at all, by § 1226(a), which provides access to a bond process.
11 Michael is therefore likely to succeed in his claim that § 1225(b)(2)(A) does not authorize his
12 current mandatory detention.
13

14 e. Respondents’ “Arriving Alien” Regulation Does Not Confer Detention Authority and Cannot
15 Override the Statutory Requirement That the Person Be “Seeking Admission.”

16 Respondents may cite the regulatory definition, which provides that an “arriving alien”
17 remains an arriving alien even if paroled. 8 C.F.R. § 1001.1(q). But a definitional regulation
18 cannot erase a statutory element Congress included in § 1225(b)(2)(A): the individual must be
19 “seeking admission.” Whatever continuing consequences “arriving alien” status may have in
20 other contexts, it does not convert § 1225(b)(2)(A) into a boundless detention statute available
21 years after release and interior residence.
22

23 f. At a Minimum, the INA Claim Presents Substantial Questions Warranting Injunctive Relief,
24 Notwithstanding A Minority Contrary View.

25 Given the statutory text, the Supreme Court’s description of the INA’s detention
26 framework, and SDNY decisions rejecting the Government’s “§ 1225 forever” interpretation,
27 Petitioner has shown a strong likelihood of success on the merits (or, at a minimum, sufficiently
28 serious questions going to the merits to warrant injunctive relief).

COUNT II: THE ADMINISTRATIVE PROCEDURE ACT

1
2 a. Respondents’ Interpretation of § 1225(B)(2)(A) is Contrary to Law and in Excess of Statutory
3 Authority in Violation of 5 U.S.C. § 706(2)(A) and (C).

4 The APA requires courts to “hold unlawful and set aside agency action” that is “not in
5 accordance with law” or taken “in excess of statutory jurisdiction, authority, or limitations.” 5
6 U.S.C. § 706(2)(A), (C). Here, Respondents’ detention of Michael under § 1225(b)(2)(A) rests
7 on an interpretation of the statute that conflicts with its text, structure, and governing judicial
8 precedent.

9 As set forth above, § 1225(b)(2)(A) authorizes detention only when an examining
10 officer determines that “an alien seeking admission” is not clearly entitled to admission.
11 Respondents’ position treats the phrase “seeking admission” as interchangeable with the
12 regulatory labels “applicant for admission” or “arriving alien,” thereby authorizing mandatory
13 detention years after a noncitizen has been released into the interior and following an interior
14 re-arrest. That interpretation reads the phrase “seeking admission” out of the statute entirely,
15 contravening basic principles of statutory construction and exceeding the detention authority
16 Congress granted.
17

18
19 Courts in the Southern District of New York have repeatedly rejected this interpretation
20 as contrary to the INA. In *Lopez Benitez v. Francis*, the court held that DHS’s reading
21 improperly treats “seeking admission” as an enduring status rather than a present-tense concept
22 tied to the act of entry and therefore cannot justify mandatory detention following an interior
23 re-arrest. 795 F.Supp.3d 475, 487–88 (S.D.N.Y. Aug. 13, 2025). *Samb v. Joyce* expressly
24 adopted that reasoning, concluding that § 1225(b)(2)(A) does not apply where the petitioner
25 was not, at the time of detention, seeking physical entry into the United States. No. 25-cv-6373,
26 2025 WL 2398831, at *3–4 (S.D.N.Y. Aug. 19, 2025). Likewise, in *Munoz Materano v. Arteta*,
27 the court rejected DHS’s attempt to invoke § 1225(b)(2) for a years-later interior detention,
28

1 emphasizing that the statute is directed to the admissions and inspection context. No. 25-cv-
2 6137, 2025 WL 2630826, at *11 (S.D.N.Y. Sept. 12, 2025).

3
4 Most recently, the SDNY has reaffirmed that § 1225(b)(2)(A) cannot be used as a
5 perpetual detention hook, untethered from the act of seeking entry. *See J.G.O. v. Francis*, No.
6 25-cv-7233, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025); *Barco Mercado v. Francis*,
7 No. 25-cv-6582, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025) (cataloging the overwhelming
8 majority of district courts granting habeas relief on the same statutory grounds).

9
10 By continuing to detain Michael under § 1225(b)(2)(A) despite this clear statutory
11 limitation and this District’s precedent, Respondents have acted not in accordance with law and
12 in excess of statutory authority, in violation of 5 U.S.C. § 706(2)(A) and (C).

13 b. The Respondents’ Position is Also Arbitrary and Capricious Because it Lacks Reasoned
14 Decision-Making and Impermissibly Expands Detention Authority Without Explanation.

15 Agency action is arbitrary and capricious if the agency “has relied on factors which
16 Congress has not intended it to consider, entirely failed to consider an important aspect of the
17 problem, [or] offered an explanation for its decision that runs counter to the evidence before
18 the agency.” *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983); *see also Encino*
19 *Motorcars, LLC v Navarro*, 579 US 211, 222 (2016) (Agency action is arbitrary and capricious
20 where it is issued “without the reasoned explanation that was required”). The Respondents’
21 detention of Michael under § 1225(b)(2)(A) fails this standard for several reasons.

22
23 First, Respondents offer no reasoned explanation for why a statute designed to govern
24 detention during the border inspection process should apply to a years-later interior re-detention
25 following release and vacatur of a removal order. The agency’s interpretation effectively
26 converts a time-limited border detention provision into a permanent mandatory detention hook,
27 untethered from the statutory context in which Congress enacted it.
28

1 Second, Respondents’ approach ignores critical facts that directly bear on detention
2 authority, including that Michael: (1) was released as non-detained by DHS at the time of entry,
3 (2) lived in the United States for approximately seven years, (3) was ordered removed in
4 absentia as a child after parental abandonment, (4) had that order vacated, and (5) is now in
5 reopened § 1229(a) proceedings without a final order. Treating these facts as irrelevant—and
6 asserting mandatory detention without bond solely by reference to an entry-era classification—
7 reflects a failure to consider important aspects of the problem and results in detention decisions
8 divorced from individualized circumstances.
9

10 Third, the Respondents’ interpretation produces absurd and inequitable results that
11 underscore its arbitrariness: two individuals arrested in the interior under identical
12 circumstances would be treated differently for detention purposes solely based on how the
13 Respondents classified them years earlier at the border, even if both have long since been
14 released and have resided in the community. The APA does not permit such unexplained and
15 irrational line-drawing.
16

17
18 c. Respondents Cannot Justify Their Position by Citing Regulatory Definitions or Agency
19 Convenience.

20 The Respondents may attempt to justify their detention authority by citing the regulatory
21 definition of “arriving alien,” which provides that a noncitizen remains an arriving alien even
22 if paroled. 8 C.F.R. § 1001.1(q). But a definitional regulation cannot expand statutory detention
23 authority beyond what Congress authorized. Where, as here, the statute itself imposes a
24 substantive limitation—detention of an alien “*seeking* admission”—the agency may not use
25 regulatory labels to erase that limitation.

26 Nor can Respondents defend their interpretation as a matter of enforcement
27 convenience. The APA demands lawful and reasoned decision-making, not administratively
28

1 expedient shortcuts that deprive individuals of liberty without statutory authorization.

2
3 d. At a Minimum, Michael Has Demonstrated Serious Questions Going to the Merits of His APA
4 Claim.

5 Even if the Court were to conclude that the statutory question is not definitively resolved
6 at this stage, Michael has unquestionably raised serious and substantial questions about whether
7 the Respondents' detention policy is lawful under the APA. Courts in this District have
8 recognized that DHS's post-policy-shift reliance on § 1225(b)(2)(A) to deny bond to long-
9 present interior detainees represents a significant and contested expansion of detention
10 authority. That showing is more than sufficient to satisfy the "likelihood of success" or "serious
11 questions" standard applicable to TRO and preliminary injunction relief.

12 **COUNT III: FIFTH AMENDMENT DUE PROCESS**

13 a. Michael's Continued Civil Detention Without a Meaningful Opportunity to Seek Release
14 Violates Procedural Due Process.

15 The Fifth Amendment prohibits the federal government from depriving any person of
16 liberty without due process of law. U.S. Const. amend V. Immigration detention is civil, not
17 punitive, and the Constitution requires that any deprivation of liberty be accompanied by
18 procedures adequate to ensure that detention is lawful and not arbitrary. *Zadvydas v. Davis*, 533
19 U.S. 678 (2001) (recognizing due process limits on civil immigration detention); *Demore v.*
20 *Kim*, 538 U.S. 510, 523 (2003); *Reno v. Flores*, 507 U.S. 292, 306 (1993).

21 Here, the Respondents have detained Michael for more than a hundred days while
22 categorically denying him a bond hearing or an individualized custody determination. Michael
23 is not currently subject to a final order of removal; his in absentia order has been vacated, and
24 his case is pending in reopened removal proceedings under 8 U.S.C. § 1229(a). Nonetheless,
25 the Respondents maintain that Michael is mandatorily detained without bond under §
26 1225(b)(2)(A) based solely on an entry-era classification from when he was thirteen years old.
27 This posture creates an acute due process problem: the Respondents have deprived Michael of
28

1 his liberty without any meaningful opportunity to contest the legal basis for detention or to
2 demonstrate that the conditions of supervision would ensure his appearance and safety.

3
4 A fundamental requirement of due process is a meaningful opportunity to be heard “at
5 a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333
6 (1976). Under the *Mathews* balancing framework, the procedures due depend on (1) the private
7 interest affected, (2) the risk of erroneous deprivation under existing procedures and the value
8 of additional safeguards, and (3) the government’s interest. *Id.* at 335.

9
10 Each factor favors Michael: (1) Michael’s interest in freedom from physical
11 confinement is at its apex because civil immigration detention is a severe deprivation of liberty;
12 (2) the risk of erroneous deprivation is exceptionally high when detention turns on a disputed
13 statutory theory, and the Respondents deny any neutral forum to test it. Michael’s confinement
14 depends on the Respondents’ contested view that § 1225(b)(2)(A) authorizes mandatory
15 detention for interior re-detention years after release. Courts in this District have rejected that
16 interpretation and emphasized that “seeking admission” refers to seeking physical entry at the
17 border, not an indefinite status that can be invoked years later. A prompt hearing before a
18 neutral decisionmaker would directly reduce the risk of erroneous deprivation by permitting
19 meaningful review of (i) the statutory basis for custody and (ii) whether conditions of release
20 can reasonably ensure appearance and safety; and (3) the Government’s interests in ensuring
21 future court appearance and protecting the community can be adequately served through
22 individualized assessment and conditions of supervision. The Government has an interest in
23 detention only to the extent it is necessary and lawful; it has no legitimate interest in maintaining
24 custody under an unlawful statutory theory or in denying process that would accurately test that
25 authority.
26
27

28 Because the Respondents’ approach denies any meaningful release forum and relies on

1 a contested and expansive reading of detention authority, Michael is likely to succeed on his
2 claim that continued no-bond detention violates procedural due process.

3
4 b. The Absence of A Bond Forum is Especially Constitutionally Problematic in This Case, Given
Michael's Youth at Entry, Subsequent Abandonment, and Reopened Posture.

5 Due process is context-sensitive. Here, the deprivation of liberty is particularly arbitrary
6 and error-prone because the Government seeks to leverage a childhood classification into
7 permanent mandatory detention authority years later. Petitioner entered at age thirteen, was
8 released as non-detained and on recognizance, and lived openly in the community for years.
9 The in absentia order was entered while he was a minor who lacked parental guidance and
10 understanding of the process, and that order has now been vacated. Respondents nevertheless
11 continue to detain Petitioner without any individualized assessment and without any neutral
12 opportunity to seek release.
13

14 Those facts do not create a separate constitutional standard, but they heighten the risk
15 that detention is imposed without adequate safeguards and underscore why, at a minimum, due
16 process requires a prompt, individualized hearing.
17

18 c. At a Minimum, Due Process Requires a Prompt, Individualized Hearing with Meaningful
19 Procedural Protections.

20 Where liberty is at stake and detention is not tethered to a final order, due process
21 requires a meaningful, individualized review of whether detention is justified and whether less
22 restrictive alternatives can address the Government's interests. Consistent with due process
23 principles recognized in *Zadvydas* and *Mathews*, Petitioner requests that the Court order either
24 immediate release or, at a minimum, a prompt hearing before a neutral adjudicator at which the
25 Government bears the burden of justifying continued detention and the adjudicator considers
26 conditions of supervision and alternatives to detention.
27

28 **II. MICHAEL WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF**

1 a. Ongoing Loss Of Liberty From Allegedly Unlawful Civil Detention Constitutes Irreparable
2 Harm.

3 “The showing of irreparable harm is ‘perhaps the single most important prerequisite for
4 the issuance of a’ temporary restraining order.” *Barbecho v. Decker*, No. 20-cv-2821, 2020 WL
5 1876328, at *6 (S.D.N.Y. Apr. 15, 2020) (Nathan, J.) (quoting *Kamerling v. Massanari*, 295
6 F.3d 206, 214 (2d Cir. 2002) (citation modified). To establish irreparable harm, Petitioner must
7 demonstrate an injury that is neither remote nor speculative, but actual and imminent, and the
8 injury must be one requiring a remedy of more than mere money damages. *Kamerling*, 295
9 F.3d at 214. Further, in the Second Circuit, it is well-settled that an alleged constitutional
10 violation constitutes irreparable harm. *See Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996)
11 (where a constitutional deprivation is alleged, no separate showing of irreparable injury is
12 necessary); *Statharos v. N.Y.C. Taxi & Limousine Comm’n*, 198 F.3d 317, 322 (2d Cir. 1999)
13 (“Because plaintiffs allege deprivation of a constitutional right, no separate showing of
14 irreparable harm is necessary”); *Conn. Dep’t of Env’t Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d
15 Cir. 2004) (“[W]e have held that the alleged violation of a constitutional right triggers a finding
16 of irreparable injury.”
17

18
19 In immigration detention cases specifically, courts in this Circuit have found irreparable
20 harm where petitioners plausibly allege unlawful detention and the denial of any meaningful
21 avenue for release. *Basank v. Decker*, 613 F. Supp. 3d 776, 789–90 (S.D.N.Y. 2020)
22 (recognizing irreparable harm from allegedly unconstitutional immigration detention);
23 *Barbecho v. Decker*, 2020 WL 1876328, at *6 (S.D.N.Y. Apr. 15, 2020).
24

25 b. Alleged Violations of the INA, APA, and Fifth Amendment Due Process Independently Establish
26 Irreparable Harm.

27 Michael’s irreparable injury is not limited to physical confinement. He alleges ongoing
28 violations of the INA and the APA that result in a categorical denial of any bond forum, and

1 ongoing Fifth Amendment Due Process violations caused by continued detention without a
2 meaningful opportunity to seek release. In the Second Circuit, alleged constitutional violations
3 are irreparable by definition. *Jolly*, 76 F.3d at 482; *Conn. Dep't of Env't Prot.*, 356 F.3d at 231;
4 *Statharos*, 198 F.3d at 322. Each additional day of detention under an asserted no-bond regime
5 compounds the constitutional injury and cannot be cured by a later merits decision alone.
6

7 c. **Michael Is Suffering Concrete, Non-Speculative Collateral Harm That Will Not Be Cured by a**
8 **Later Ruling, Including Prejudice to His SIJS State-Court Proceedings.**

9 Beyond the deprivation of liberty, Michael's detention is preventing him from
10 completing time-sensitive steps necessary to pursue lawful relief, including Special Immigrant
11 Juvenile Status (SIJS) predicate proceedings in state family court. The inability to participate
12 meaningfully in those proceedings while detained constitutes actual and imminent harm that
13 cannot be fully remedied after final adjudication, particularly where the relief depends on state-
14 court process, scheduling, and Michael's participation. This harm is not speculative; it is
15 occurring now and jeopardizes Michael's ability to pursue Congressionally authorized
16 humanitarian relief.
17

18 d. **The Risk of Transfer Magnifies Irreparable Harm and Supports Immediate Injunctive Protection.**

19 Irreparable harm is also heightened by the realistic risk that the Respondents may
20 transfer Michael without notice, which would disrupt attorney access, impede effective
21 litigation, and potentially undermine ongoing state-court proceedings tied to his residence and
22 guardianship. A TRO is warranted to preserve the Court's ability to provide meaningful relief
23 and to prevent Respondents from mooted or frustrating judicial review through transfer.
24

25 **III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES CLEARLY FAVOR**
26 **INJUNCTIVE RELIEF**

27 Where, as here, the Government is the opposing party, "the [court's] inquiries into the
28 public interest and the balance of the equities merge." *We The Patriots USA, Inc. v. Hochul*, 17
F.4th 266, 295 (2d Cir. 2021); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009); *New York v.*

1 *U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020). The merged factor strongly
2 favors relief here because the public has a compelling interest in ensuring that federal agencies
3 comply with the statutes that limit their detention authority and provide constitutionally
4 adequate process before depriving individuals of their liberty. (recognizing that, where the
5 government is a party, the balance-of-equities and public-interest factors merge).
6

7 The equities also overwhelmingly favor Michael because the harm he faces is
8 immediate and profound: ongoing civil incarceration without the bond process to which he is
9 entitled. By contrast, the burden on the Government from complying with the INA and the
10 Constitution is minimal. As this Court has explained in an analogous immigration-detention
11 TRO, “there is little question that the balance of the equities and the public interest favors
12 granting a TRO to ensure that [the petitioner] gets the process he is due,” because “if he is not
13 a danger or a flight risk, then it is in no one’s interest to detain him,” and “any added burden on
14 the government is far outweighed by [the petitioner’s] and society’s interest in his release if his
15 detention is not warranted.” *Alvarez Ortiz v. Freden*, No. 25-cv-960, 2025 WL 3085032, at *11
16 (W.D.N.Y. Nov. 4, 2025).
17
18

19 Granting relief here advances, rather than harms, the public interest. The relief Michael
20 seeks is narrow and case-specific: immediate release, or, at a minimum, a prompt,
21 constitutionally adequate bond hearing at which the Government may attempt to justify
22 continued detention. That limited remedy preserves public safety and the orderly administration
23 of immigration law while preventing continued detention on an unlawful basis.
24

25 Finally, the requested TRO preserves the status quo necessary for meaningful judicial
26 review and does not interfere with the Government’s ultimate ability to litigate removability. It
27 merely ensures that Michael is not subjected to continued custody without lawful statutory
28 authority and constitutionally sufficient process while the Court adjudicates his claims.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his Motion for a Temporary Restraining Order and issue an Order to Show Cause why a preliminary injunction should not be entered, and specifically:

- a. Order Petitioner’s immediate release from ICE custody, including release to his legal guardian under appropriate conditions; or, in the alternative,
- b. Order a prompt bond hearing before a neutral adjudicator within seven (7) days, at which (a) the Government bears the burden of justifying continued detention by clear and convincing evidence, (b) the adjudicator considers Petitioner’s ability to pay and the least restrictive alternatives to detention, including release to his guardian, and (c) the adjudicator makes reasoned findings on the record sufficient to permit meaningful review.
- c. Issue an Order to Show Cause establishing expedited briefing and setting a preliminary injunction hearing at the earliest practicable date;
- d. Enter temporary no-transfer protection (or, at a minimum, advance notice of any proposed transfer) and order the prompt production of basic custody records necessary to make any hearing meaningful;
- e. Waive security under Federal Rule of Civil Procedure 65(c), or set a nominal bond; and
- f. Grant such other and further relief as the Court deems just and proper.

Dated: Bay Shore, New York
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Respectfully submitted,

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