

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

CARLOS MARTINEZ CRUZ

A 

*Petitioner,*

v.

KRISTI NOEM, et al.,

*Respondents.*

Case No. 1:26-cv-312-DDD

MEMORANDUM IN SUPPORT OF  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND/OR A  
PRELIMINARY INJUNCTION

On January 26, 2026, Petitioner Carlos Martinez Cruz (“Mr. Martinez”) filed a petition for a writ of habeas corpus on the basis that his immigration detention is unlawful and violates the Immigration and Nationality Act (“INA”) and his Constitutional rights. *See* ECF No. 1. Despite more than fifteen hundred district court cases and a class action finding that the government is unlawfully holding individuals under an improper legal theory, Mr. Martinez has remained in Immigration and Customs Enforcement (“ICE”) custody for over two months without any opportunity to apply for bond. Mr. Martinez now seeks a temporary restraining order, or in the alternative a preliminary injunction, directing Respondents to release him from detention or, in the alternative, to conduct a bond hearing pursuant to 8 U.S.C. § 1226(a).

**RELEVANT FACTS**

Mr. Martinez is a native of Mexico who entered the United States over twenty years ago without inspection or admission. Prior to his detention, he lived outside of Tallahassee, Florida with his United States citizen wife and four United States citizen children. He owns and works at a construction company. His only criminal history involves two convictions for driving without a

license. Mr. Martinez is not a flight risk or a danger to society. Yet, on November 12, 2025, he was taken into ICE custody after his work truck was pulled over in Tallahassee, Florida. Mr. Martinez did not receive a traffic citation and was never informed of the reason why he was stopped. He is currently held at the Denver Contract Detention Facility. ECF No. 1-1, ICE Detainee Locator.

In September 2025, the Board of Immigration Appeals' ("BIA") issued a decision interpreting 8 U.S.C. § 1225(b)(2)(A) to require mandatory detention without a bond redetermination by an immigration judge, of any noncitizen who has not been inspected or admitted, no matter how long the individual has been in the United States. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). This analysis, which is being applied to detain Mr. Martinez, has been overwhelmingly rejected by courts across the country.

#### ARGUMENT

Mr. Martinez seeks a temporary restraining order and/or preliminary injunction pursuant to Federal Rule of Civil Procedure 65 and the All Writs Act seeking his immediate release or, alternatively, precluding ICE from transferring him outside of the District of Colorado pending resolution of his habeas petition.

This Court has the authority to issue this injunction under the All Writs Act. The All Writs Act, 28 U.S.C. § 1651(a), empowers the federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." Courts in this district have recently invoked the All Writs Act to prevent the transfer of individuals detained within the judicial district unless and until the Court issues a contrary order. *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 948 (D. Colo. 2025) (citing *Battooie v. Ceja*, 2025 WL 1836695, at \*2 (D. Colo. July 3, 2025)); see also *Rivero Busto v. Lyons*, 1:25-cv-3143, ECF Nos. 21, 28 (D.

Colo. Jan. 20, 2026), *D.B.U. v. Trump*, 2025 WL 11065556 (D. Colo. Apr. 14, 2025); *Vizguerra-Ramirez v. Choate*, No. 1:25-cv-881 (D. Colo. Mar. 21, 2025).

To obtain a preliminary injunction, the moving party must demonstrate: (1) a substantial likelihood of success on the merits of the case; (2) that they are likely to suffer irreparable harm in the absence of the requested relief; (3) that the harm outweighs a harm to the opposing party; and (4) that the injunction would not adversely affect the public interest. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024); *Arostegui-Maldonado*, 794 F. Supp. 3d at 936. The third and fourth factors, harm to the opposing party and the public interest, “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Mr. Martinez easily meets this standard.

**A. Mr. Martinez is likely to succeed on the merits**

*I. Detention Authority under the INA*

Mr. Martinez is likely to succeed on the merits of his claim that his continued detention violates his substantive and procedural due process rights as well as the INA. The government has recently changed its interpretation and application of the INA’s detention scheme, now detaining individuals who have spent decades in the United States under the supposed authority of 8 U.S.C. § 1225(b)(2). This interpretation is contrary to almost thirty years of interpretation of the law.

Section 1225(a) provides that a noncitizen “present in the United States who has not been admitted or who arrives in the United States ... shall be deemed for purposes of this chapter an applicant for admission.” 8 U.S.C. § 1225(a)(1). The INA defines an applicant for admission as a noncitizen “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 a [noncitizen] who is brought to the United States after having been interdicted in international or United States waters).”

8 U.S.C. § 1225(a)(1). Applicants for admission are divided into two categories: those covered by § 1225(b)(1) and those covered by § 1225(b)(2). *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

An applicant for admission is subject to expedited removal under § 1225(b)(1) if the individual is initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, 8 U.S.C. § 1225(b)(1)(A)(i), or he (1) “lacks a valid entry document; (2) has not ‘been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility’; and (3) is among those whom the Secretary of Homeland Security has designated for expedited removal.” *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109 (2020) (citing 8 U.S.C. § 1225(b)(1)(A)(iii)(I)-(II)); *see also* Notice, Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139, 8139 (Jan. 24, 2025) (designating the entire subset of noncitizens described in 8 U.S.C. § 1225(b)(1)(A)(iii)(II) subject to expedited removal: i.e., noncitizens “determined to be inadmissible under [8 U.S.C. §§ 1182(a)(6)(C) or (a)(7)] who have not been admitted or paroled into the United States and who have not affirmatively shown . . . that they have been physically present in the United States continuously for the two-year period immediately preceding the date of the determination of inadmissibility”). When a noncitizen meets the criteria of this subsection, the immigration “officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum.” 8 U.S.C. § 1225(b)(1)(A)(i).

Applicants for admission can avoid expedited removal by either indicating “an intention to apply for asylum” or “a fear of persecution,” in which case that individual is referred to an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(i)-(ii). “If an immigration officer determines after that interview that the alien has a credible fear of persecution, ‘the alien shall be detained for further consideration

of the application for asylum.” *Jennings*, 583 U.S. at 287 (quoting 8 U.S.C. § 1225(b)(1)(B)(ii)). Persons who make no such claims or are “found not to have such a fear” “shall be detained ... until removed.” 8 U.S.C. § 1225(b)(1)(A)(ii), (B)(iii)(IV).

The INA also provides for mandatory detention for certain applicants for admission who are subject to inspection at or near the border but who do not fall under the expedited removal provisions of 8 U.S.C. § 1225(b)(1). Specifically, if an inspecting immigration officer determines that the noncitizen “seeking admission is not clearly and beyond doubt entitled to be admitted” into the United States, the individual “shall be detained for a [removal] proceeding.” 8 U.S.C. § 1225(b)(2)(A); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-2720-RMR, 2025 WL 2962908, at \*6 (D. Colo. Oct. 17, 2025) (recognizing that § 1252(b)(2)(A) is “a catchall provision” that applies to noncitizens seeking admission who are not otherwise covered by § 1252(b)(1), but concluding that such “catch-all” status “does not mean that § 1225(b)(2) applies to all other noncitizens in the United States who have not been admitted.”); *Hasan v. Crawford*, 800 F. Supp. 3d 641, 652 (E.D. Va. 2025).

However, for those individuals with an established presence in the United States, the INA mandates that “an immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of a [noncitizen].” 8 U.S.C. § 1229a(a)(1). Removal proceedings under 8 U.S.C. § 1229a(a)(1) “shall be the sole and exclusive procedure” for consideration of admission to or removal from the United States unless otherwise specified in the INA. 8 U.S.C. § 1229a(a)(3). During the pendency of these standard removal proceedings under 8 U.S.C. § 1229a, § 1226 provides for the detention of noncitizens already in the United States, even those who entered illegally or without inspection. While § 1226(c) mandates the detention of certain classes of criminal noncitizens, § 1226(a) sets forth a discretionary detention scheme, allowing that a

noncitizen “may be arrested and detained pending a decision on whether the alien is to be removed from the United States[.]” 8 U.S.C. § 1226(a). After an arrest, the noncitizen may continue to be detained, released on conditional parole, or released on a bond of at least \$1,500. *Id.* Once a noncitizen is detained, DHS makes an initial custody determination. 8 C.F.R. § 236.1(g). The noncitizen may have the initial custody determination reviewed by an immigration judge, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), and ultimately by the Board, *see* 8 C.F.R. § 1236.1(d)(3).

The Supreme Court recognized the distinction between these two statutory detention schemes, explaining that § 1225 applies primarily to aliens seeking entry into the United States (“applicants for admission” in the language of the statute), while § 1226(a) “applies to aliens already present in the United States.” *Jennings*, 583 U.S. at 303; *Mendoza Gutierrez*, 2025 WL 2962908, at \*6; *Salazar v. Dedos*, No. 1:25-cv-00835-DHU-JMR, 2025 WL 2676729, at \*3 (D.N.M. Sept. 17, 2025) (“The INA contemplates two detention regimes for noncitizens pending removal proceedings.”).

2. *DHS’s Application of 8 U.S.C. § 1225(b)(2) to Mr. Martinez is Not Statutorily Authorized.*

Mr. Martinez is likely to succeed in his claim that the government is unlawfully detaining him pursuant to 8 U.S.C. § 1225(b)(2). Mr. Martinez is not an applicant for admission who is seeking admission to the United States. Rather, he has lived, worked and raised his family in the United States for many years. Respondents are unlawfully holding him pursuant 8 U.S.C. § 1225(b)(2), which is not a valid source for his detention. This Court should order his release. *Martinez v. Noem*, 2025 WL 3471575, at \*6 (W.D. Tex. Nov. 26, 2025) (“Respondents do not assert any other basis for detaining Petitioner. . . . Absent an assertion by Respondents that they are detaining Petitioner under § 1226, the Court has no need to consider whether § 1226 is a valid basis for Petitioner’s current detention.”).

Critically, 8 U.S.C. § 1225(b)(2)(A) contains three “criteria”: (1) that the noncitizen is an “applicant for admission”; (2) that the noncitizen is actively “seeking admission”; and (3) that the “examining immigration officer determines ‘is not clearly and beyond a doubt entitled to be admitted.’” *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025) (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 214 (D. Mass. 2025), and 8 U.S.C. § 1225(b)(2)(A)). None of these terms apply to individuals like Mr. Martinez.

First, the INA clarifies that “[t]he term ‘application for admission’ has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa,” making clear that the term applies primarily to those applying to enter the United States, not those who have been in the United States for years. *Mendoza Gutierrez*, 2025 WL 2962908, at \*6; 8 U.S.C. § 1101(a)(4). Second, the phrase “seeking admission” in 8 U.S.C. § 1225(b)(2)(A), is not “mere surplusage” and has independent meaning in § 1225(b)(2)(A). *Lopez Benitez*, 795 F. Supp. 3d at 488 (citing *Martinez v. Hyde*, 792 F. Supp. 3d at 217 (describing respondents as treating the phrase “seeking admission” as mere surplusage of the “applicant” requirement in § 1225(b)(2)(A)); *see also Mendoza Gutierrez*, 2025 WL 2962908, at \*7. The government’s interpretation equating “applicant for admission” to one who is also “seeking admission” reads the phrase “seeking admission” out of the statute and controverts the plain language of the statute. *Martinez*, 792 F. Supp. 3d at 217; *Lopez Benitez*, 795 F. Supp. 3d at 488 (“[R]ather than stating that mandatory detention is required for any ‘applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted,’ § 1225(b)(2)(A) (emphasis added), the statute would instead provide for mandatory detention for any ‘applicant for admission, if the examining immigration officer determines that [the] alien ~~seeking admission~~ is not clearly and beyond a doubt

entitled to be admitted.”) (strikethrough in original); *see also Hasan*, 800 F. Supp. 3d at 656 (“In *Jennings*, the Court explained that § 1225(b) governs “aliens seeking admission into the country” whereas § 1226(a) governs “aliens already in the country” who are subject to removal proceedings.) (citing *Jennings*, 583 U.S. at 289)). Third, when Mr. Martinez was arrested and taken into custody by ICE, he was not being examined for inspection into the United States, and thus no officer has deemed him “clearly and beyond a doubt entitled to be admitted” to the United States. 8 U.S.C. § 1225(b)(2)(A). Accordingly, the plain text of the statute clearly indicates that Mr. Martinez is not an individual subject to § 1225(b)(2)(A).

Respondents’ interpretation and application of § 1225(b)(2) would also nullify the recent amendments to the INA in the Laken Riley Act, now codified within 8 U.S.C. § 1226(c). *Mendoza Gutierrez*, 2025 WL 2962908, at \*7. Among other things, the Laken Riley Act mandates detention for noncitizens who are subject to certain inadmissibility grounds the same grounds that Respondents argue mandatory detention under § 1225(b)(2) – and meet certain criminal criteria. 8 U.S.C. § 1226(c)(1)(E). Such a statute would be entirely redundant if a noncitizen’s inadmissibility alone rendered him subject to mandatory detention under § 1225(b)(2)(A). *Id.* (citing *Romero v. Hyde*, No. CV 25-11631-BEM, 2025 WL 2403827, at \*11 (D. Mass. Aug. 19, 2025); *see also Ortiz Donis v. Chestnut*, 1:25-CV-01228 JLT SAB, 2025 WL 2879514, at \*9 (E.D. Cal. Oct. 9, 2025) (“[T]he Government’s interpretation would ‘nullify’ a recent amendment to the immigration statutes.”)). “When Congress adopts a new law against the backdrop of a longstanding administrative construction, [the] court generally presumes the new provision should be understood to work in harmony with what came before.” *Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025); *see also Lopez Benitez*, 795 F.Supp.3d at 490 (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (“[T]he canon against surplusage is strongest when an interpretation,” such

as this one, “would render superfluous another part of the same statutory scheme.”)). Thus, it is “presumptively dubious” that Congress would intend the 2025 amendments to have no effect. *Martinez*, 792 F. Supp. 3d at 221 (citing *Matter of M-S-*, 27 I. & N. Dec. 509, 516 (A.G. 2019) (“[S]ection [1225] (under which detention is mandatory) and section [1226] (under which detention is permissive) can be reconciled only if they apply to different classes of aliens.”)).

Mr. Martinez’s detention under 8 U.S.C. § 1225(b)(2) is contrary to law. This Court should join the hundreds of courts throughout the country and hold that the government is unlawfully detaining Mr. Martinez without legal justification. Because § 1225(b)(2) is not a valid source of detention and Respondents have failed to articulate any claim that they are detaining him under 8 U.S.C. § 1226(a), the Court should grant the petition and order Mr. Martinez’s release as he is not subject to detention under § 1225(b)(2). *See, e.g., Martinez*, 2025 WL 3471575, at \*6; *J.U. v. Maldonado*, -- F. Supp. 3d --, 2025 WL 2772765, at \*10 (E.D.N.Y. Sept. 29, 2025) (“Given the deprivation of Petitioner’s liberty, formerly granted and approved by Respondent, the absence of any deliberative process prior to or contemporaneous with the deprivation, and the statutory and constitutional rights implicated, a writ of habeas corpus is the only form of relief and the most appropriate remedy.”). If this Court determines that release is not the proper remedy, it should hold that § 1226(a) is the proper statute of detention. *See Flores Marin v. Baltazar*, 2025 WL 3677019 (D. Colo. Dec. 18, 2025); *Hernandez Vazquez v. Baltazar*, 1:25-cv-3049 (D. Colo. Oct. 23, 2025); *Loa Caballero v. Baltazar*, 2025 WL 2977650 (D. Colo. Oct. 22, 2025); *Moya Pineda v. Baltazar*, No. 1:25-cv-2966 (D. Colo. Oct. 20, 2025); *Mendoza Gutierrez*, 2025 WL 2962908; *Garcia Cortes v. Noem*, 2025 WL 2652880 (D. Colo. Sept. 16, 2025); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947 at \* 6 (D. Minn. Oct. 1, 2025) (noting that “the government’s proposed interpretation of § 1225(b) [is] at odds with the context and structure of the provisions governing detention of

noncitizens who are arriving at the border and those who are already present in the country”); *Zumba v. Bondi*, 2025 WL 2753496 at \* 3 (D.N.J. Sept. 26, 2025) (noting that “up until July 8 the predominant form of detention authority for petitioner and other noncitizens arrested in the interior of the United States was § 1226(a)”); *Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Lepe v. Andrews*, No. 25-cv-01163, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); *Roman v. Noem*, No. 25-cv-01684, 2025 WL 2710211 (D. Nev. Sept. 23, 2025); *Giron Reyes v. Lyons*, No. 25-cv-4048, 2025 WL 2712427 (N.D. Iowa Sept. 23, 2025); *Singh v. Lewis*, No. 25-cv-0096, 2025 WL 2699219 (W.D. Ky. Sept. 22, 2025); *Hasan*, 800 F. Supp. 3d 641; *Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082 (D. Nev. Sept. 17, 2025); [collecting additional cases]; *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025). The Court should also grant the petition in light of the declaratory judgment entered in a nationwide class action in the Central District of California on the issue. *Bautista v. Santacruz*, 2025 WL 3713987, at \*32 (“[A]ll members of the Bond Eligible Class are entitled to relief in the form of declaratory relief, which declares the DHS Policy unlawful, and grants vacatur under the APA, which sets aside the DHS Policy.”).

3. *DHS's Application of 8 U.S.C. § 1225(b)(2) to Mr. Martinez violates both his procedural and substantive due process rights.*

In claiming that Mr. Martinez’s detention is pursuant to 8 U.S.C. § 1225(b)(2), the government intentionally has precluded him from seeking bond. Mr. Martinez is likely to succeed on the merits of his claim that this interpretation of the INA is a clear violation of his procedural and substantive due process rights. As an individual living within the United States for more than two decades, Mr. Martinez is entitled to due process of law. U.S. Const. amend. V; *see generally Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

In a procedural due process claim, it is not the deprivation of liberty that is unconstitutional; it is the deprivation of liberty without adequate procedural safeguards. In procedural due process claims, the deprivation by [government] action of a constitutionally protected interest in “life, liberty, or property” is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law. *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). While the Supreme Court has been clear that for noncitizens “on the threshold of initial entry . . . [w]hatever the procedure authorized by Congress is, it is due process.” *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953), it is well established that noncitizens who “once passed through our gates, even illegally” are entitled to greater constitutional protections. *Id.*; see also *Zadvydas*, 553 U.S. at 693.

After living in this country for many years, Mr. Martinez is not on the threshold of initial entry and is entitled to greater constitutional protection than those at the threshold of initial entry. Thus, the court should engage in the three-factor balancing test to determine a procedural due process violation, weighing: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, or additional or substitute procedural safeguards”; and (3) “the Government’s interest.” *Mathews*, 424 U.S. at 335.

Here, each of these factors weigh in Mr. Martinez’s favor and support a finding that he may not be detained without an opportunity to seek release on bond before an immigration judge. First, Mr. Martinez has a strong private interest in remaining free from detention. Indeed, the Supreme Court has affirmed that even for noncitizens, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due

Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. And the Supreme Court, recognizing the strong private interest in remaining free from detention, has held “that detention violates the [Due Process] Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Id.* (cleaned up).

Second, this case demonstrates the high risk of erroneous deprivation that would result from allowing DHS to detain noncitizens like Mr. Martinez without any opportunity to challenge his detention before the administrative agency. Without release or a bond hearing, there is a high probability that Mr. Martinez will remain detained even though his continued detention serves no non-punitive purpose as it is unnecessary to protect the community or to ensure his appearance at removal proceedings. Mr. Martinez has been present in the United States for well over a decade and have no significant criminal history. He has a family and a business. His detention is both erroneous and wholly unnecessary.

Finally, while the government has an interest in ensuring Mr. Martinez’s appearance at any future removal proceedings and protecting the community, the bond procedures established under § 1226(a) adequately serve both interests by allowing an immigration judge to make an individualized assessment of a noncitizen’s flight risk and the danger they may pose to the community. And the government cannot plausibly justify denying a bond hearing based on “administrative burdens” when it has, for the past three decades, consistently provided bond hearings to noncitizens like Mr. Martinez who has established a presence in the United States after previously entering without inspection. Mr. Martinez is likely to succeed on his procedural due process claim.

Likewise, Mr. Martinez is likely to succeed on his substantive due process claim as well. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects.” *Zadvydas*, 533 U.S. at 690.

The “Fifth and Fourteenth Amendments’ guarantee of ‘due process of law’ [] include[s] a substantive component, which forbids the government to infringe certain ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). Substantive due process “prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *United States v. Salerno*, 481 U.S. 739, 746 (1987). This substantive due process right to be free from arbitrary detention extends to noncitizens detained during removal proceedings. *Zadvydas*, 533 U.S. at 690 (permitting detention in non-punitive circumstances only where “special justification . . . outweighs the individual’s constitutionally protected interest in avoiding physical restraint.”). Mr. Martinez has a fundamental interest in liberty and being free from official restraint. His detention without a bond hearing before a neutral arbitrator to determine whether that continued detention is necessary to ameliorate any flight risk or protect the community violates his substantive due process rights.

**B. Mr. Martinez will suffer irreparable injury absent an injunction.**

“The second preliminary-injunction factor asks whether irreparable injury will befall the movants without an injunction.” *Arostegui-Maldonado*, 794 F. Supp. 3d at 942 (citing *Free the Nipple—Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 805 (10th Cir. 2019)). Mr. Martinez suffers irreparable harm each day that he remains detained and separated from his family.

“Federal courts have long recognized that the infringement of a constitutional right is an irreparable injury.” *Mendoza Gutierrez*, 2025 WL 2962908, at \*9 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.”); *Free the Nipple—Fort Collins*, 916 F.3d at 805 (“Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.”); *Awad v. Ziriox*, 670 F.3d 1111, 1131 (10th Cir. 2012) (“When an alleged constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” (citation omitted))). Respondents’ decision to detain Mr. Martinez without a bond hearing violates the INA and his procedural and substantive due process rights. Without this Court’s intervention, Respondents will continue to infringe upon Mr. Martinez’s Fifth Amendment rights. And as has been held in the District of Colorado “[b]ecause Defendants are denying [Petitioner] a hearing that would likely result in his release, he has established irreparable harm absent injunctive relief.” *Mendoza Gutierrez*, 2025 WL 2962908, at \*9 (citing *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1262 (W.D. Wa. 2025) (internal quotations omitted)). Thus, Mr. Martinez easily meets the second preliminary injunction factor.

### **C. Balance of Equities and Public Interest**

The final two factors of the preliminary injunction test “merge when the Government is the opposing party.” *Nken*, 556 U.S. at 435. Here the balance of equities and public interest tilt sharply in favor of the issuance of a preliminary injunction because “the public has a significant stake in the Government’s compliance with the law.” *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). While there is a recognized “public interest in prompt execution of removal orders,” *Nken*, 556 U.S. at 436, *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1185 (D. Colo. 2024) (noting a public interest “in ensuring removable noncitizens appear for their scheduled removal

proceedings and an interest in protecting the community”), “that does not mean that Respondents enjoy an unfettered right to detain noncitizens in contravention of the law or in violation of the noncitizens’ Fifth Amendment rights.” *Mendoza Gutierrez*, 2025 WL 2962908, at \*10 (citing *Demore v. Kim*, 538 U.S. 510, 523 (2003) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.” (internal quotation marks omitted)). Moreover, “the public has no interest in incarcerating people who have no basis to be detained.” *Martinez v. Trump*, No. 25-1445, 2025 WL 3124847, at \*3 (W.D. La. Oct. 22, 2025). Mr. Martinez has established a likelihood of success on both his statutory and constitutional claims. Thus, there is no public interest to be served here where the government seeks to hold a noncitizen individual who has lived in the United States for well over two decades, has no significant criminal history, and provides for his family without any chance for a neutral arbitrator to review his case.

For the foregoing reasons, Mr. Martinez requests that the Court enter a temporary restraining order, or in the alternative a preliminary injunction, directing Respondents to release him from detention or, in the alternative, to conduct a bond hearing pursuant to 8 U.S.C. § 1226(a) within 7 days of this Court’s order.

**NO BOND IS WARRANTED UNDER RULE 65(c)**

Finally, the Court should not require Mr. Martinez to provide security prior to issuing an injunction. Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” As in *Arosegui-Maldonado*, Respondents will not be harmed by this order nor would they suffer harm if the order was overturned. 794 F. Supp. 3d at 950. “[G]iven the important constitutional rights at issue in this case,” no bond should be required.

**CONCLUSION**

For the foregoing reasons, Mr. Martinez requests the Court issue an order requiring his immediate release, or in the alternative, ordering an immigration judge to conduct a bond hearing under 8 U.S.C. § 1226(a). Mr. Martinez also requests an order precluding Respondents from transferring him out of the district pending resolution of this petition.

January 26, 2026

Respectfully submitted,

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