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6
7 **THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF IDAHO

8 **WILMER ALONZO CARDOZA GARCIA**

9 **Petitioner,**

10 **v.**

Case No.: 2:26-cv-69-DKG

11 **PAMELA BONDI, Attorney General;**
12 **KRISTI NOEM, Secretary of Homeland**
Security;
13 **TODD LYONS, Acting Director, U.S.**
Immigration and Customs Enforcement;
14 **MICHAEL W. BANKS, Chief, U.S. Border**
Patrol;
15 **CAMMILLA WAMSLEY, Field Office**
Director, ICE Seattle Field Office;
16 **Director, ICE Spokane Field Office;**
Director, BP Spokane Field Office;
17 **ROBERT NORRIS, Sheriff, Kootenai**
County, Idaho,

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL

Agency File Number: Unknown

18 **Respondents.**

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21 **EMERGENCY MOTION FOR TEMPORARY**
RESTRAINING ORDER AND STAY OF
REMOVAL
(CASE NO. 2:26-CV-69-DKG)

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1 **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**
2 **AND STAY OF REMOVAL**

3 **I. Motion**

4 Under FRCP 65 and 5 U.S.C. §705, Petitioner, Wilmer Alonzo Cardoza Garcia, moves
5 this Court for an Emergency Temporary Restraining Order (TRO) and Stay of Removal,
6 preventing his removal from the United States and his transfer to another detention facility while
7 these proceedings are pending.

8 **II. Basis for Motion**

9 Petitioner is a citizen of Honduras who is present in the United States without lawful
10 immigration status, not in removal proceedings, and has a child who has been granted asylum as
11 a derivative. On February 4, 2026, Mr. Cardoza Garica was seized by agents with U.S. Border
12 Patrol.

13 He now faces unlawful detention, because the Department of Homeland Security (DHS)
14 and the Executive Office of Immigration Review (EOIR) have concluded that noncitizens who
15 entered the United States without inspection are subject to mandatory detention without the
16 possibility of bond.

17 DHS policy issued on July 8, 2025, instructs all Immigration and Customs Enforcement
18 (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—*i.e.*, those who
19 entered the United States without admission or inspection—to be subject to detention under
20 8 U.S.C. section 1225(b)(2)(A) and, therefore, ineligible to be released on bond.

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1 Likewise, on September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued
2 a precedent decision, binding on all immigration judges, holding that an immigration judge has
3 no authority to consider bond requests for any person who entered the United States without
4 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
5 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore,
6 ineligible to be released on bond.

7 Petitioner's detention on this basis violates the plain language of the Immigration and
8 Nationality Act (INA). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
9 previously entered and are now residing in the United States. Instead, such individuals are subject
10 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute
11 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered
12 the United States without inspection.

13 Respondents' new legal interpretation is plainly contrary to the statutory framework and
14 contrary to decades of agency practice applying § 1226(a) to people like Petitioner. Indeed, this
15 Court held in *Torres Hernandez v. Bondi, et al.*, No. 1:25-cv-00615-BLW, Dkt. No. 15 (D. Idaho
16 Nov. 19, 2025), that a similarly situated petitioner---one who entered the U.S. without inspection,
17 was not in removal proceedings, and resided in the United States---was detained pursuant to 8
18 U.S.C. § 1226(a) and ordered his immediate relief.

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III. Argument

A. Standards for Temporary Restraining Order

To grant a Temporary Restraining Order, the petitioner must meet one of two tests. The more recent test, known as the *Winter* test, requires the petitioner to prove as follows:

1. that he is likely to succeed on the merits,
2. that he is likely to suffer irreparable harm in the absence of preliminary relief,
3. that the balance of equities tips in his favor, and
4. that an injunction is in the public interest.

Sherley v. Sibelius, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The same standard applies to both temporary restraining orders and to preliminary injunctions.” *Sterling Commercial Credit-Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

The traditional test, which remains viable in the Ninth Circuit, is known as the “sliding scale” test and requires the petitioner to prove “serious questions going to the merits” and “a hardship balance that tips sharply toward the petitioner.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the petitioner must also show a likelihood of irreparable injury and that the injunction is in the public interest. “Under this approach, the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a weaker showing of another.” *Alliance for the Wild Rockies*, 632 F.3d at 1131.

Petitioner meets both of these tests.

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1 B. Petitioner is likely to succeed on the merits.

2 i. *In the District of Idaho, this detention is unlawful.*

3 This Court held in *Torres Hernandez v. Bondi, et al.*, No. 1:25-cv-00615-BLW, Dkt.
4 No. 15 (D. Idaho Nov. 19, 2025), that a similarly situated petitioner---one who entered the U.S.
5 without inspection, was not in removal proceedings, and resided in the United States---was
6 detained pursuant to 8 U.S.C. § 1226(a) and ordered his immediate relief. Though this case is
7 currently on appeal to the Court of Appeals for the Ninth Circuit, Respondents moved the court
8 to stay appellate proceedings until it resolved a case with the same legal issue. *Rodriguez Vazquez*
9 *v. Bostock, et al.*, No. 25-6842.

10 ii. *Continued detention of Petitioner without a bond hearing would violate his*
11 *right to due process.*

12 The Due Process Clause of the Fifth Amendment forbids the government from depriving
13 any “person” of liberty “without due process of law.” U.S. CONST. amend. V. All people within
14 the territorial bounds of the United States enjoy due process rights, regardless of citizenship. *See*
15 *e.g., Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (“[T]here are literally millions of [non-citizens]
16 within the jurisdiction of the United States...[and] the Fifth Amendment...protects every one of
17 these persons.”) (internal quotation marks omitted); *Yick Wo v. Hopkins*, 118 U.S. 356, 368–69
18 (1886). These protections apply equally to non-citizens facing deportation proceedings. *Demore*
19 *v. Kim*, 538 U.S. 510, 523 (2003); *see also Zadvydas*, 533 U.S. at 721 (“[B]oth removable and
20 inadmissible [non-citizens] are entitled to be free from detention that is arbitrary and capricious.”)
(Kennedy, J., dissenting).

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1 “Freedom from imprisonment—from government custody, detention, or other forms of
2 physical restraint—lies at the heart of the liberty” that the Due Process clause protects. *Zadvydas*,
3 533 U.S. at 690. Due process thus requires “adequate procedural protections” to ensure that the
4 government’s asserted justification for incarceration “outweighs the individual’s constitutionally
5 protected interest in avoiding physical restraint.” *Id.* at 690.

6 *iii. Removal of Petitioner would also violate his right to due process.*

7 Due process protects a noncitizen’s liberty and property interest in the adjudication of
8 applications for relief and benefits made available under the immigration laws. *See Arevalo v.*
9 *Ashcroft*, 344 F.3d 1, 15 (1st Cir. 2003) (recognizing protected interests in the “right to seek
10 relief” even when there is no “right to the relief itself”). Petitioner has an asylum claim based on
11 the targeted death of his family members and his relationship to his child’s mother and their son.
12 Petitioner faces a risk of erroneous and unlawful removal from the United States.

13 *iv. Most other federal courts have also held that petitioners in the same factual*
14 *posture as Petitioner were unlawfully subject to mandatory detention.*

15 On September 5, 2025, the Board of Immigration Appeals (BIA or Board) issued a
16 precedent decision, binding on all immigration judges, holding that an immigration judge has no
17 authority to consider bond requests for any person who entered the United States without
18 admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined
19 that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and, therefore,
20 ineligible to be released on bond.

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1 Petitioner's detention on this basis violates the plain language of the Immigration and
2 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
3 previously entered and are now residing in the United States. Instead, such individuals are subject
4 to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute
5 expressly applies to people who, like Petitioner, are charged as inadmissible for having entered
6 the United States without inspection.

7 Respondents' new legal interpretation is plainly contrary to the statutory framework and
8 contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

9 Subsequently, court after court has adopted the same reading of the INA's detention
10 authorities and rejected ICE and EOIR's new interpretation. See, e.g., *Gomes v. Hyde*, No. 1:25-
11 CV-11571-JEK, 2025 WL 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-
12 11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v.*
13 *Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025),
14 report and recommendation adopted, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133
15 (D. Ariz. Aug. 13, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588
16 (S.D.N.Y. Aug. 13, 2025); *Maldonado v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL
17 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW
18 (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, No. 25-11631-BEM,
19 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL
20 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025

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1 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025
2 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL
3 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F.
4 Supp. 3d ----, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-
5 cv-12486-BRM-EAS, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*,
6 No. 25-cv-02180-DMS-MM, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda*
7 *v. Noem*, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro*
8 *Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v.*
9 *Hyde*, No. 1:25-CV-11981-JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.,*
10 *Palma Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting
11 that “[t]he Court tends to agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto*
12 *v. Trump*, No. 4:25-cv-03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025)
13 (same); *Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb.
14 Aug. 14, 2025) (same).

15 C. Petitioner faces irreparable harm and a hardship balance tips sharply toward him.

16 As noted above, he has a legitimate asylum claim, which requires him to be physically
17 present in the U.S. 8 U.S.C. § 1229a(b)(4)(B); 8 C.F.R. § 1240.11(c)(3)(iii).

18 D. The balance of equities tips in favor of Petitioner, and an injunction is in the public
19 interest.

20 The remaining two factors for an injunction are the same under both legal tests, and they
21 both favor Petitioner.

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1 The balance of equities and the public interest favor the issuance of a temporary
2 restraining order in the instant matter. As noted above, the hardship for Petitioner is concrete and
3 severe. Moreover, assuming that Petitioner's removal would violate the Due Process Clause and
4 the Suspension Clause, the government cannot be harmed by a constitutionally-mandated
5 injunction. *See e.g., Zepeda v. INS*, 753 F.2d 719, 729 (9th Cir. 1983) (noting that the government
6 "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from
7 constitutional violations").

8 Finally, the public interest favors preserving Petitioner's legal rights as an asylum
9 applicant. *Id.* at 179 ("And it is squarely in the public interest to enable individuals to partake of
10 statutory and constitutional rights and meaningful judicial review where, as here, it is consistent
11 with the process prescribed by Congress.").

12 IV. Conclusion

13 Under FRCP 65, Petitioner moves this Court to issue an Emergency Temporary
14 Restraining Order and Stay of Removal:

- 15 1. Enjoining and restraining the Respondents and all of their respective officers, agents,
16 servants, employees, attorneys and persons acting on their behalf in concert or in
17 participation with them from:

18 a. Removing or deporting Petitioner from the United States while these proceedings
19 are pending;

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1 b. Transferring Petitioner to any other facility outside of Idaho during the pendency
2 of these proceedings.

3 WHEREFORE, for the reasons set forth in his Petition for Writ of Habeas Corpus, and in
4 this Motion the Petitioner respectfully requests this Court:

- 5 1. Grant this Emergency Motion for Temporary Restraining Order and Stay of Removal
6 today;
- 7 2. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary
8 Restraining Order and Stay of Removal today; and
- 9 3. Grant such other and further relief as justice may require.

10
11 Dated: February 5, 2026

FENNEMORE CRAIG, P.C.

12 By: */s/ Alycia T. Moss*

13 Alycia T. Moss

14 Attorney for Petitioner

15 Wilmer Alonzo CARDOZA GARCIA

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CERTIFICATE OF SERVICE

The undersigned hereby certified that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

US Attorney's Office for the District of Idaho

I also mailed physical copies to each of the defendant's addresses listed on the summons and to the Boise Main Office of the U.S. Attorney's Office at:

1290 West Myrtle Street

Ste. 500

Boise, ID 83702

Last, the attorney of record also emailed a courtesy copy of all documents to:

Bart.Davis@usdoj.gov

Christine.England@usdoj.gov

DATED this 5th day of February, 2026.

s/ Catherine M. Renshaw

Catherine M. Renshaw