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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

YUNIERKY BURGOS BONACHEA,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security; PAMELA BONDI, in her official
Capacity as Attorney General of the United
States; TODD M. LYONS, in his official
capacity As Acting Director and
Senior Official Performing the Duties of
the Director of U.S. Immigration and
Customs Enforcement; GARRETT J. RIPA,
in his official capacity as Field Officer
Director of the Miami Field Office
and Customs Enforcement; Enforcement
and Removal Operations; and KEVIN
GUTHRIE, in his official capacity as the
director of the Florida Division of Emergency
Management, director of Alligator Alcatraz
detention facility; WARDEN of Alligator
Alcatraz.

Respondents.

Case No. 2:26-cv-00653

MOTION FOR TEMPORARY
RESTRAINING ORDER

IMMIGRATION HABEAS CASE

HEARING
REQUESTED

I. INTRODUCTION

YUNIERKY BURGOS BONACHEA, (hereinafter "Petitioner"), by and through undersigned
counsel hereby files this motion for temporary restraining order to enjoin Respondents from

removing him from the United States, moving him to a facility outside of this Court's jurisdiction, and detaining him unlawfully without any individualized custody hearing. Petitioner entered the United States on August 6, 2022, sought protection from persecution, and was placed in full removal proceedings under section 240 of the Immigration and Nationality Act (hereinafter "INA").

On August 7, 2022, Petitioner was served with a Notice to Appear (hereinafter "NTA") before an Immigration Judge at the Miami Immigration Court on June 5, 2023. On or about August 8, 2022, Petitioner was released on an Order of Release on Recognizance. *See* Exhibit A, Order of Release on Recognizance. Petitioner filed his application for asylum, withholding of removal, and protection under the Convention Against Torture. Petitioner attended all his immigration hearings and is currently awaiting a decision from the Board of Immigration Appeals (hereinafter "BIA") on his case.

On February 14, 2026, Immigration and Customs Enforcement (hereinafter "ICE") took custody of Petitioner, without a warrant, impromptu and in a public area, and placed him in immigration detention. Since Petitioner's proceedings are on appeal, he does not have a final Order of Removal. DHS has taken the position, based on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025)¹ and *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and subsequent agency guidance,

¹ The Government's reliance on *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is misplaced. *See also Matter of Valles*, 21 I&N Dec. 769, 773 (BIA 1997) (bond appeal rendered moot by subsequent custody redetermination); *Matter of Luis*, 22 I&N Dec. 747, 753 (BIA 1999) (Board may dismiss as moot, "as a matter of prudence," when a controversy is deprived of practical significance). In any event, *Yajure Hurtado* is *ultra vires* of the Board's delegated authority because it effectively rewrites binding Attorney General custody regulations—without rulemaking—by converting a narrow, regulation-based "arriving alien" bond bar into a sweeping prohibition for virtually all noncitizens charged as present without admission. Compare 8 C.F.R. §§ 1236.1(d)(1), 1003.19(h)(2)(i)(B) (IJ bond jurisdiction before a final order; categorical bar limited to "arriving aliens" and other enumerated classes) with 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) (final interim rule explaining that "inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge"). The Board has repeatedly stated that it lacks the authority to invalidate or disregard Attorney General regulations. *See, e.g., Matter of Akram*, 25 I&N Dec. 874, 875 (BIA 2012). Basic administrative law likewise forbids an agency from accomplishing a de facto amendment of a binding legislative rule through adjudication rather than notice-and-comment rulemaking. *See, e.g., Marseilles Land & Water Co. v. FERC*, 345 F.3d 916, 920 (D.C. Cir. 2003).

that Petitioner is categorically ineligible for any custody redetermination before an immigration judge and may be detained for the duration of his removal proceedings absent discretionary parole. As a result, Petitioner now faces prolonged and potentially indefinite civil detention without any meaningful opportunity for an individualized determination of whether his continued confinement is necessary or lawful. DHS has not conducted any neutral, individualized assessments of Petitioner's danger to the community, risk of flight, or suitability for less restrictive alternatives to detention. Due to Petitioner's continued detention not serving any legitimate governmental purpose, this detention being a violation of his due process rights, Petitioner has concurrently filed a Petition for *Habeas* relief.

Petitioner has been detained since February 14, 2026, without being subject to any enforceable removal order, previously being granted release on bond, and without any legal authority to remove him. Petitioner is in need of an Order temporarily enjoining Respondents from removing him from the United States and from removing Petitioner to another detention facility outside of this Court's jurisdiction.

II. ARGUMENT

A temporary restraining order is governed by a four-factor test. Courts must consider whether a petitioner has shown: (1) a likelihood of success on the merits, (2) that he is likely to suffer irreparable harm in the absence of such relief, (3) that the balance of equities tips in his

Nor does *Yajure Hurtado* warrant deference in federal habeas proceedings. Under *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 413 (2024), courts must exercise independent judgment and may not defer to an agency interpretation simply because a statute is ambiguous. Federal courts evaluating the same detention theory have thus declined to treat *Yajure Hurtado* as controlling or persuasive and have ordered bond hearings under INA § 236(a), 8 U.S.C. § 1226(a).

favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); see also *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014). If a plaintiff can demonstrate serious questions going to the merits of his claim – a lesser showing than a likelihood of success on the merits – and the balance of hardship tips sharply in his favor, an injunction may be issued, assuming the other two Winter factors have been met. *Friends of the Wild Swan*, 767 F.3d at 942.

In this case, Petitioner is waiting on the BIA to enter a decision regarding his Application for Asylum, Withholding of Removal and Withholding of removal under the Convention Against Torture. However, Petitioner was released on an Order of Recognizance, of which an officer in August of 2022 already made an initial determination that Respondent was not a danger to the community or flight risk. Continued detention without a bond hearing violates his due process rights. In addition, Petitioner has no criminal history, ties to the community, and he was released on his own recognizance in August 8, 2022 are positive equities in Petitioner's case.

A. Petitioner is likely to Succeed on the Merits of his Claims.

Petitioner's removal and prolonged detention without an opportunity for meaningful review violates his Due Process and Equal protection rights, violates the Administrative Procedure Act, violates the Accardi Doctrine with respect to section 8 C.F.R. 287.8(C)(2)(II) and violates the suspension clause.

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Noncitizens physically present in the United States, including those who entered without inspection, are "persons" within the meaning of the Fifth Amendment and entitled to full procedural due process protections. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Further, the Due Process Clause of the Fifth Amendment

contains an implicit guarantee of equal protection that prohibits the federal government from treating similarly situated individuals differently without a rational and legitimate governmental purpose. *Reno v. Flores*, 507 U.S. 292, 302 (1993); *Plyler v. Doe*, 457 U.S. 202, 210 (1982); *Bolling v. Sharpe*, 347 U.S. 497, 299 (1954). In this case, Petitioner is in removal proceedings under section 240. The fact that Petitioner is waiting for a final decision on his appeal for his Asylum application and Petitioner's full compliance with the conditions of his release demonstrate that Petitioner has a strong motivation to see his case to its finality. The fact that Petitioner has no criminal history, is not a flight risk, was previously released in August 2022 and has ties to the United States are positive equities. Petitioner's arbitrary or discriminatory detention without individualized custody determination warrants *habeas* relief, and Petitioner is likely to succeed on these reasons alone.

The Administrative Procedure Act (hereinafter "APA"), 5 U.S.C. § 706(2), requires courts to "hold unlawful and set aside" agency action that is arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law. An agency acts arbitrarily and capriciously when it fails to examine relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned relevant factors, ignores important aspects of the problem, departs from settled practice without reasoned explanation, or treats discretion as categorically unavailable where Congress has not so provided. *Judulang v. Holder*, 565 U.S. 42, 53-55 (2011). While under the *Accardi* doctrine, federal agencies are required to follow their own binding regulations, and failure to do so renders resulting agency action unlawful. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). Given Petitioner's abrupt detention, Petitioner is likely to succeed since Petitioner was not detained with a warrant, was not under any criminal investigation, was not under any civil investigation, was a passenger in a

vehicle, and Petitioner had authorization to legally work. Moreover, Petitioner's ties in the United States alone is sufficient to invoke the suspension clause. *Thuraissigiam v. U.S. Department of Homeland Security*, 917 F.3d 1097, 1115 (9th Cir. 2019) (individual arrested within the United States may invoke the Clause). As such, Petitioner's circumstances are sufficient for a temporary grant of restraining order.

B. Petitioner is likely to suffer irreparable harm in the absence of such relief.

Petitioner will suffer irreparable harm in the absence of a temporary restraining order barring his removal from the United States and removal from this Court's jurisdiction. Petitioner is still waiting for a final decision from the BIA. Being forcefully removed now from the United States would result in his application for asylum being deemed abandoned after remaining pending for several years.

C. Petitioner's equities tips in his favor for a temporary restraining Order and a grant of injunction is in the public's interest.

The balance of equities and the public interest favor the issuance of a temporary restraining order in the instant matter. As noted above, the hardship for Petitioner is severe. While he is awaiting such decision from the BIA, he was the main breadwinner of his household with a valid work authorization. He has already been in the United States, legally working, with no criminal history, and following all restrictions placed on him by Immigration. There is no legitimate reason for Petitioner's detention while he waits for the final decision from the BIA. The government cannot be harmed by a constitutionally mandated injunction. *See generally Zepeda v. INS*, 753 F.2d 719, 729 (9th Cir. 1983) (noting that the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations"). As such, a temporary grant of restraining order is warranted in this case.

III. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that he has met the criteria for a temporary restraining order. He asks the Court to enjoin Respondents from removing him until Petitioner is scheduled for his merits hearing, attends his merits hearing, and receives a final decision on his appeal for his Application for Asylum, enjoin Respondents from moving him outside of this Court's jurisdiction, and to enjoin Respondents from continuing to detain him without a hearing before a neutral adjudicator.

Respectfully submitted,

Dated this 6 day of March, 2026.

/s/Carolina Corona
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