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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Bayron Rovidio Marin,
Petitioner,

v.

Kristi NOEM, Secretary, U.S.
Department of Homeland Security;
Pamela BONDI, U.S. Attorney General;
Todd LYONS, Acting Director,
Immigration and Customs Enforcement;
Ernesto SANTACRUZ JR., Acting
Director, Los Angeles Field Office,
Immigration and Customs Enforcement,
Enforcement and Removal Operations;
IMMIGRATION AND CUSTOMS
ENFORCEMENT; U.S. DEPARTMENT
OF HOMELAND SECURITY,
Respondents.

Case No.

**PETITIONER'S EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE**

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioner hereby moves the Court for emergency relief in the form of a temporary restraining order directing Respondents to release Petitioner from their custody and remove all restraints on his liberty – including removing the guards or other security personnel in or near Petitioner's hospital room at Harbor-UCLA Medical Center.

Petitioner seeks this emergency relief because he is detained without being

1 charged with a violation of civil immigration law, and in violation of 8 C.F.R. 8
2 C.F.R. § 287.3, and without statutory authority. Petitioner's continued detention
3 deprives Petitioner of his statutory and constitutional due process rights and is
4 causing immediate and irreparable injury in the form of the unlawful deprivation of
5 his liberty.

6 Petitioners further move for the issuance of an order to show cause as to why
7 a preliminary injunction should not issue.

8 This application is supported by the Memorandum of Points and Authorities,
9 accompanying exhibits, as well as any additional submissions that may be
10 considered by the Court.

11 Respondents oppose this TRO Application.

12
13 Dated: September 30, 2025

Respectfully submitted,

14 s/ Jean Reisz
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CERTIFICATE OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, L.R. 7-19.1, and L.R. 65-1, I hereby certify that on September 30, 2025 at 8:00 AM, I spoke by telephone with Daniel Beck, AUSA, Chief, Complex and Defensive Litigation Section, U.S. Attorney's Office, Central District of California. Prior to our conversation, on September 29th, I emailed Mr. Beck a summary of the parties and claims. Mr. Beck indicated that Respondents opposed a TRO.

I will provide a copy of the Application for a Temporary Restraining Order, Memorandum of Points and Authorities, Supporting Exhibits, and Petition for Writ of Habeas Corpus to Mr. Beck by emailing copies to Daniel.Beck@usdoj.gov shortly after filing the pleadings via CM/ECF.

Dated: September 30, 2025

Respectfully submitted,

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SECURITY,

Respondents.

Case No.

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE**

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	ii
INTRODUCTION.....	1
STATEMENT OF FACTS.....	3
ARGUMENT.....	5
I. Petitioner Is Likely to Succeed on the Merits of Their Claims.....	6
A. Petitioner’s detention is not authorized.....	6
B. Petitioner is not subject to mandatory detention pursuant to § 1225(b)(2).....	7
1. The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is not subject to mandatory detention.....	8
2. The legislative history further supports the application of § 1226 to Petitioner’s detention.....	15
3. The record and longstanding agency practice reflect that § 1226 would govern Petitioner’s detention.....	16
II. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.....	18
III. The Balance of Equities Tips in Petitioner’s Favor and a TRO is in the Public Interest.....	19
CONCLUSION.....	20
WORD COUNT CERTIFICATION.....	21
CERTIFICATE OF SERVICE.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Abramski v. United States</i> , <u>573 U.S. 169</u> (2014).....	17
<i>All. for the Wild Rockies v. Cottrell</i> , <u>632 F.3d 1127</u> (9th Cir. 2011).....	5
<i>Arrazola-Gonzalez v. Noem</i> , No. 5:25-cv-01789-ODW-DFM, <u>2025 WL 2379285</u> (C.D. Cal. Aug. 15, 2025).....	8
<i>Arreola Armenta v. Noem</i> , 5:25-cv-2416-JFW-SP (C.D. Cal. Sept. 16, 2025).....	7
<i>Bankamerica Corp. v. United States</i> , <u>462 U.S. 122</u> (1983).....	17
<i>Benitez v. Noem</i> , 5:25-cv-2190-RGK-AS (C.D. Cal. Aug. 26, 2025).....	8
<i>Ceja Gonzalez v. Noem</i> , No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025).....	8, 10
<i>Corley v. United States</i> , <u>556 U.S. 303</u> (2009).....	11
<i>Diaz Martinez v. Hyde</i> , <u>2025 WL 2084238</u> (D. Mass. July 24, 2025).....	10
<i>Dubin v. United States</i> , <u>599 U.S. 110</u> (2023).....	13
<i>Flathead-Lolo-Bitterroot Citizen Task Force v. Montana</i> , <u>98 F.4th 1180</u> (9th Cir. 2024).....	5
<i>Gomes v. Hyde</i> , No. 1:25-CV-11571-JEK, <u>2025 WL 1869299</u> (D. Mass. July 7, 2025).....	10
<i>Hernandez v. Sessions</i> , <u>872 F.3d 976</u> (9th Cir. 2017).....	18
<i>Hibbs v. Winn</i> , <u>542 U.S. 88</u> (2004).....	11
<i>Jennings v. Rodriguez</i> , <u>583 U.S. 281</u> (2018).....	12
<i>King v. Burwell</i> , <u>576 U.S. 473</u> (2015).....	14
<i>Maldonado Bautista. v. Santacruz</i> , No. 5:25-cv-01873-SSS-BFM	

1	(C.D. Cal. July 28, 2025).....	8, 19
2	<i>Melendres v. Arpaio</i> , <u>695 F.3d 990</u> (9th Cir. 2012).....	18
3		
4	<i>Moreno Galvez v. Cuccinelli</i> , <u>492 F. Supp. 3d 1169, 1181</u> (W.D. Wash.	
5	2020) (<i>Moreno II</i>), <i>aff'd in part, vacated in part on other grounds,</i>	
6	<i>remanded sub nom. Moreno Galvez v. Jaddou</i> , <u>52 F.4th 821</u>	
	(9th Cir. 2022).....	18, 19
7	<i>Nken v. Holder</i> , <u>556 U.S. 418</u> (2009).....	19
8		
9	<i>Rodriguez v. Robbins</i> , <u>715 F.3d 1127</u> (9th Cir. 2013).....	20
10	<i>Rodriguez Vazquez v. Bostock</i> , <u>779 F.Supp.3d 1239</u> (W.D. Wash. June 6,	
11	2025).....	10
12	<i>San Carlos Apache Tribe v. Becerra</i> , <u>53 F.4th 1236</u> (9th Cir. 2022).....	14
13	<i>Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.</i> , <u>559 U.S.</u>	
14	<u>393</u> (2010).....	10
15	<i>Shulman v. Kaplan</i> , <u>58 F.4th 404</u> (9th Cir. 2023).....	11, 13
16		
17	<i>Sixtos Chavez v. Noem</i> , No. 3:25-cv-2325-CAB-SBC	
18	(S.D. Cal. Sept. 24, 2025).....	8
19	<i>Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.</i> , <u>240 F.3d 832</u>	
20	(9th Cir. 2001).....	6
21	<i>Torres v. Barr</i> , <u>976 F.3d 918</u> (9th Cir. 2020) (en banc).....	13
22	<i>Valle del Sol Inc. v. Whiting</i> , <u>732 F.3d 1006</u> (9th Cir. 2013).....	19, 20
23	<i>Warsoldier v. Woodford</i> , <u>418 F.3d 989</u> (9th Cir. 2005).....	18
24		
25	<i>Whitman v. Am. Trucking Ass'ns</i> , <u>531 U.S. 457</u> (2001).....	16
26	<i>Winter v. Nat. Res. Def. Council</i> , <u>555 U.S. 7</u> (2008).....	5
27	<i>Yajure Hurtado, Matter of</i> , <u>29 I. & N. Dec. 216</u> (BIA 2025).....	2
28		

Zadvydas v. Davis, 533 U.S. 678 (2001).....7, 18

Zaragoza Mosqueda v. Noem, No. 5:25-cv-2304-CAS-BFM
(C.D. Cal. Sept. 8, 2025).....8

Statutes and Regulations

8 U.S.C. § 1101.....2

8 U.S.C. § 1182(a).....2

8 U.S.C. § 1182(a)(6)(A)(i).....2

8 U.S.C. § 1225(a)(1).....14

8 U.S.C. § 1225(a)(3).....14

8 U.S.C. § 1225(b)(1).....16, 18

8 U.S.C. § 1225(b)(1)(A)(i).....16

8 U.S.C. § 1225(b)(2).....*passim*

8 U.S.C. § 1225(b)(2)(A).....*passim*

8 U.S.C. § 1225(b)(2)(C).....13

8 U.S.C. § 1226(a).....*passim*

8 U.S.C. § 1226(c).....9

8 U.S.C. § 1226(c)(1)(A).....9

8 U.S.C. § 1226(c)(1)(E).....9, 10

8 U.S.C. § 1227(a).....8

8 U.S.C. § 1252(a)(1) (1994).....16

8 C.F.R. § 287.3.....1, 6

8 C.F.R. § 287.3 (b).....6

8 C.F.R. § 287.3 (c).....1

8 C.F.R. § 287.3 (d).....6

Other Authority

Illegal Immigration Reform and Immigrant Responsibility Act of 1996
(IIRIRA), Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009-546.....15

Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).....9

H.R. Rep. No. 104-469.....15, 16

H.R. Rep. No. 104-828.....16

INTRODUCTION

Petitioner Bayron Rovidio Marin seeks a Temporary Restraining Order that requires Respondents to release him from custody and remove all restraints on his liberty – including removing the guards or other security personnel in or near Petitioner's hospital room at Harbor-UCLA Medical Center.

Respondents have detained Petitioner without bond and without civil immigration charges since his warrantless arrest at the Carson Car Wash in Carson, California on August 27, 2025. *See* Ex. A, Declaration of Cynthia Santiago ("Santiago Decl."), p. 1. Petitioner is detained at the Harbor-UCLA Medical Center in Carson, CA after being transported there to treat severe injuries related to his arrest. *Id.* Petitioner has been detained over one month without a release on bond or issuance of an NTA in violation of 8 C.F.R. § 287.3. The regulation requires Respondents determine whether to release a noncitizen on bond or recognizance and issue an NTA within 48 hours of a warrantless arrest or within a reasonable time period in the event of an emergency. 8 C.F.R. § 287.3 (c). Petitioner's detention in violation of 8 C.F.R. § 287.3 and in violation of his statutory and constitutional due process rights constitutes irreparable injury.

Although Petitioner has not be charged with an immigration violation, Petitioner believes he is being subjected to a new DHS policy and practice issued on July 8, 2025 which instructs all ICE employees to consider anyone arrested

1 within the United States and charged with being inadmissible under 8 U.S.C. §
2 1182(a)(6)(A)(i) to be an “applicant for admission” under 8 U.S.C. § 1225(b)(2)(A)
3 and therefore subject to mandatory detention. The new DHS policy was issued “in
4 coordination with the Department of Justice (DOJ).” *See* Ex. B, ICE Interim
5 Guidance Regarding Detention Authority for Applicants for Admission.¹
6

7
8 The DHS policy violates the plain language of the Immigration and
9 Nationality Act (INA), 8 U.S.C. § 1101 et seq. Despite the DHS policy’s
10 assertions to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals
11 like Petitioner who has not had previous contact with immigration officials and was
12 residing in the United States at the time of his arrest. Ex. A, Santiago Decl., p. 1.
13 Instead, such individuals are subject to a different statute, § 1226(a), that allows for
14 release on bond or conditional parole.
15

16
17 DHS policy is plainly contrary to the statutory framework and to decades of
18 agency practice applying § 1226(a) to people like Petitioner who are present within
19 the United States. Respondents’ new policy and the resulting ongoing detention of
20 Petitioner without bond deprives Petitioner of his statutory and constitutional rights
21 and unquestionably constitutes irreparable injury.
22

23
24
25 ¹ On September 5, 2025, the Board of Immigration Appeals (BIA or Board), issued
26 a precedent decision, binding on all immigration judges, endorsing the rationale set
27 forth in DHS’s “Interim Guidance Regarding Detention Authority for Applicants
28 for Admission” and holding that an immigration judge has no authority to consider
bond requests for any person who entered the United States without admission. *See*
Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025).

Petitioner therefore seeks a Temporary Restraining Order enjoining Respondents from continuing to detain him.

STATEMENT OF FACTS

Petitioner resides in California. Ex. A, Santiago Decl., p. 1. On August 27, 2025, Petitioner was arrested and detained during an immigration raid at the Carson Car Wash in Carson, California. Ex. A, Santiago Decl. ¶ 3, p. 1. The arrest was conducted by uniformed Customs and Border Protection ("CBP") officers and unidentified plainclothes federal agents. *Id.* No warrant was presented to Petitioner prior to or during his arrest and detention. Ex. A, Santiago Decl., ¶ 4, p. 1. Petitioner had no prior contact with immigration officials and has no Alien Number. *Id.*

During the arrest on August 27, 2025, Petitioner suffered severe injuries resulting in a broken leg requiring surgeries. Santiago Decl., ¶ 5, p. 1. While handcuffed, Petitioner was transported that same day by immigration authorities to the emergency room at Harbor-UCLA Medical Center in Carson, California. *Id.*

Upon Petitioner's admission to Harbor-UCLA Medical Center on August 27, 2025, federal agents refused to leave Petitioner's bedside, following him from public areas into non-public patient treatment areas. Ex. A, Santiago Decl., ¶ 6, p. 1. Federal agents placed Petitioner's arm and leg in cuffs secured to the bedframe, despite Petitioner having suffered an immobilizing injury to his right leg and presenting no security risk to hospital staff or federal agents. *Id.*

1 Petitioner was admitted under a hospital "blackout" procedure designed for
2 patients under law enforcement custody. As part of this procedure, Petitioner has
3 been kept under the false name "Har Maine UNK Thirteen" rather than his true
4 name. Ex. A, Santiago Decl., ¶ 7, p. 1.

6 On or about August 27, 2025, CBP transferred responsibility for guarding
7 Petitioner to Immigration and Customs Enforcement's ("ICE") Los Angeles Field
8 Office, which deployed private contractors employed by Spectrum Detention
9 Services ("Spectrum"), a private security contractor working under ICE's direction
10 and authority. Ex. A, Santiago Decl., ¶ 8, pp. 1-2; see also Ex. C Detainee Locator
11 Printout.

14 From August 27, 2025, through the date of filing (September 30, 2025), at
15 least two and up to four uniformed guards have remained in Petitioner's hospital
16 room twenty-four hours a day, seven days a week. Ex. A, Santiago Decl., ¶ 9, p. 2.
17 The guards have consisted primarily of Spectrum contractors, with occasional ICE
18 agents present during particular shifts. *Id.*

21 Petitioner remains under constant guard in his patient room, with guards
22 monitoring him while he sleeps, eats and uses the restroom, and controlling
23 Petitioner's access to medical personnel and attorneys. Ex. A, Santiago Decl., ¶
24 10(a), p. 2. Respondents have not permitted Petitioner to visit with family or place
25 or receive phone calls, including to attorneys. *Id.* On September 17, 2025,
26 Attorney Nicolas Thompson-Lleras and Attorney Cynthia Santiago had a phone
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1 conversation with the ICE-ERO supervisor on duty at the Los Angeles Field Office,
2 Sergeant Vela, regarding Petitioner's detention and processing. Ex., A Santiago
3 Decl., ¶ 17, p. 3. Sergeant Vela confirmed that ICE did not have any information on
4 Petitioner, nor had an A number been assigned. Sergeant Vela further confirmed
5 that Petitioner was under ICE custody. *Id.*
6

7
8 As of September 30, Respondents continue to detain Petitioner without
9 providing charging documents or a warrant for his arrest.
10

11 ARGUMENT

12 The requirements for granting a Temporary Restraining Order are
13 “substantially identical” to those for granting a preliminary injunction. *Stuhlbarg*
14 *Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).
15

16 Petitioner must demonstrate that (1) he is likely to succeed on the merits of
17 their claims; (2) he is likely to suffer irreparable harm in the absence of preliminary
18 relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the
19 public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). A sliding
20 scale test may be applied and an injunction should be issued when there is a
21 stronger showing on the balance of hardships, even if there are “serious questions
22 on the merits ... so long as the plaintiff also shows a likelihood of irreparable harm
23 and that the injunction is in the public interest.” *All. for the Wild Rockies v.*
24 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-Lolo-Bitterroot*
25 *Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024). Petitioner
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1 satisfies the criteria and a TRO should be granted.

2 **I. Petitioner Is Likely to Succeed on the Merits of His Claims.**

3
4 Petitioner is likely to succeed on his claims that his ongoing detention by
5 Respondents without civil immigration charges, in violation of 8 C.F.R. § 287.3,
6 without statutory authority, and in violation of his statutory and constitutional rights
7 to due process is unlawful.
8

9 **A. Petitioner's detention is not authorized.**

10 The regulation governing warrantless arrests of noncitizens requires a two-
11 step process. First, immigration authorities must make a prima facie determination
12 that an arrested noncitizen "was entering, attempting to enter, or is present in the
13 United States in violation of immigration laws." 8 C.F.R. § 287.3(b). Second, and
14 critically, within 48 hours of arrest—or within a reasonable period in the event of
15 an emergency or extraordinary circumstances—authorities must determine whether
16 to continue detention or release the noncitizen "on bond or recognizance and
17 whether a notice to appear and warrant of arrest... will be issued." 8 C.F.R. §
18 287.3(d).
19

20 These requirements are not merely procedural formalities. They protect
21 fundamental liberty interests by ensuring that warrantless detention does not
22 become indefinite detention without charges or judicial process. Arbitrary civil
23 detention is antithetical to American government. *Rodriguez v. Marin*, 909 F.3d
24 252, 256 (9th Cir. 2018). Yet Respondents have detained Petitioner for over 30
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1 days without issuing an NTA or charging him with a violation of civil immigration
2 law. That is an unreasonable period of time, even if Petitioner's injuries constituted
3 an emergency at the time of his arrest. "The purpose of detention is to effectuate
4 removal," and there is no justification for detention that is not related "to the
5 purpose for which the individual [was] committed." *Zadvydas*, 533 U.S. at 690
6 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).
7

8
9 Here, Respondents have not initiated removal proceedings. Respondents have
10 filed no charges and have not alleged Petitioner is subject to expedited removal or
11 mandatory detention for having been arrested for, charged with, or convicted of
12 certain crimes. There is no "purpose" to which this detention relates.
13

14 **B. Petitioner is not subject to mandatory detention pursuant to 1225(b)(2).**
15

16 To the extent DHS has determined that Petitioner is subject to mandatory
17 detention pursuant to its recent policy that would treat Petitioner as an "arriving
18 alien", such a determination is unlawful. *See* Ex. B, "Interim Guidance Regarding
19 Detention Authority for Applicants for Admission," ICE, July 8, 2025.
20

21 The text, context, and legislative and statutory history of the Immigration and
22 Nationality Act all demonstrate that 8 U.S.C. § 1226(a) would govern his detention.
23

24 Since Respondents adopted their new policy, dozens of federal courts
25 have rejected DHS's (and the BIA's) new interpretation of the INA's detention
26 authorities, including at least six cases in the Central District of California. *See*
27 *Arreola Armenta v. Noem*, 5:25-cv-2416-JFW-SP (C.D. Cal. Sept. 16, 2025);
28

1 *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-BFM, [2025 WL 2591530](#)
2 (C.D. Cal. Sept. 8, 2025); *Benitez v. Noem*, 5:25-cv-2190-RGK-AS (C.D. Cal. Aug.
3 26, 2025); *Ceja Gonzalez v. Noem*, 5:25-cv-2054-ODW-BFM (C.D. Cal. Aug. 13,
4 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW-DFM, [2025 WL](#)
5 [2379285](#) (C.D. Cal. Aug. 15, 2025); and *Maldonado Bautista v. Santacruz*, No.
6 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025). A partial list of other federal
7 courts rejecting the DHS's and BIA's interpretations is contained in the Petition for
8 Writ of Habeas Corpus at ¶ 47. *But see, Sixtos Chavez v. Noem*, No. 3:25-cv-2325-
9 CAB-SBC (S.D. Cal. Sept. 24, 2025) (denying TRO and accepting government's
10 interpretation of § 1225(b)(2)).

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15 **1. The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner**
16 **is not subject to mandatory detention.**

17 First, the plain text of § 1226 demonstrates that subsection (a) would apply to
18 Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending
19 a decision on whether the [noncitizen] is to be removed from the United States.” [8](#)
20 [U.S.C. § 1226\(a\)](#). Section 1226 explicitly confirms that this authority includes not
21 just noncitizens who are deportable pursuant to [8 U.S.C. § 1227\(a\)](#), but also
22 noncitizens, who are inadmissible pursuant to [8 U.S.C. § 1182\(a\)](#). While § 1226(a)
23 provides the right to seek release, § 1226(c) carves out specific categories of
24 noncitizens from being released— including certain categories of inadmissible
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1 noncitizens—and subjects them instead to mandatory detention. *See, e.g.*, §
2 1226(c)(1)(A), (C).
3

4 If Respondents’ position that § 1226(a) did not apply to inadmissible
5 noncitizens who are present without admission in the United States were correct,
6 there would be no reason to specify that § 1226(c) governs certain persons who are
7 *inadmissible*; instead, the statute would only have needed to address people who are
8 *deportable* for certain offenses. Notably, recent amendments to § 1226 reinforce
9 that this section covers people like Petitioner to the extent DHS has determined
10 Petitioner is present without admission. The Laken Riley Act added language to §
11 1226 that directly references people who have entered without inspection, those
12 who are inadmissible because they are present without admission. *See* Laken Riley
13 Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the
14 LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the
15 inadmissibility ground for presence without admission) or § 1182(a)(7) (the
16 inadmissibility ground for lacking valid documentation to enter the United States)
17 *and* who have been arrested, charged with, or convicted of certain crimes are
18 subject to § 1226(c)’s mandatory detention provisions. *See* 8 U.S.C. §
19 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further
20 clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In
21 other words, if someone is *only* charged as inadmissible under § 1182(a)(6) or
22 (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply,
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1 then § 1226(a) governs that person’s detention. *See Rodriguez Vazquez v. Bostock*,
2 779 F. Supp. 3d 1239, 1259 (W.D. Wash. 2025), explaining these amendments
3 explicitly provide that § 1226(a) covers people like Petitioner because the “‘specific
4 exceptions’ [in the LRA] for inadmissible noncitizens who are arrested, charged
5 with, or convicted of the enumerated crimes logically leaves those inadmissible
6 noncitizens not criminally implicated under Section 1226(a)’s default rule for
7 discretionary detention.”; *Diaz Martinez v. Hyde*, 2025 WL 2084238 at *7 (D.
8 Mass. July 24, 2025) (“if, as the Government argue[s], . . . a non-citizen’s
9 inadmissibility were alone already sufficient to mandate detention under section
10 1225(b)(2)(A), then the 2025 amendment would have no effect.” 2025 WL
11 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at
12 *7 (D. Mass. July 7, 2025) (similar); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-
13 ODW-BFM (C.D. Cal. August 13, 2025) Order Granting Ex Parte Application for
14 TRO and OSC, Dkt. 12 at 7 (“If Respondents are correct that Congress meant for §
15 1225 to govern all aliens present in the United States who had not been admitted, it
16 would render the exception made under § 1226(c)(1)(E) unnecessary. This does not
17 stand to reason for, as Respondents aptly note, ‘a statute should be construed so that
18 effect is given to all its provisions.’” (citations omitted.) *See also Shady Grove*
19 *Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing
20 that a statutory exception would be unnecessary if the statute at issue did not
21 otherwise cover the excepted conduct).

1 Despite the clear statutory language, DHS issued a new policy on July 8,
2 2025 instructing all Immigration and Customs Enforcement (ICE) employees to
3 consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present
4 without admission - to be an “applicant for admission” and therefore subject to
5 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). See Ex. B, “Interim
6 Guidance Regarding Detention Authority for Applicants for Admission,” ICE, July
7 8, 2025.

8 The new policy is also inconsistent with the canon against superfluities.
9 Under this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed
10 so that effect is given to all of its provisions, so that no part will be inoperative or
11 superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314
12 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101
13 (2004)); see also *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)
14 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
15 making every effort not to interpret a provision in a manner that renders other
16 provisions of the same statute inconsistent, meaningless or superfluous.’” (citation
17 omitted)). But by concluding that the mandatory detention provision of §
18 1225(b)(2) would apply to Petitioner, DHS violates this rule.

19 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read
20 to apply to everyone who is in the United States “who has not been admitted.”
21 Section 1226(a) covers those who are present without admission and residing
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1 within the United States and who are not at the border seeking admission. The text
2 of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
3 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
4 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
5 Government must determine whether a[] [noncitizen] seeking to enter the country is
6 admissible,” *id.* at 287.
7

8
9 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
10 paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving
11 [noncitizens]”—encompasses only the “inspection” of certain “arriving”
12 noncitizens and other recent entrants the Attorney General designates, and only
13 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C.
14 § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent
15 information to an examining immigration officer or do not have adequate
16 documents to enter the United States. Thus, subsection (b)(1)’s text demonstrates
17 that it is focused only on people arriving at a port of entry or who have recently
18 entered the United States and not those already residing here. Paragraph (b)(2) is
19 similarly limited to people applying for admission when they arrive in the United
20 States. The title explains that this paragraph addresses the “[i]nspection of other
21 [noncitizens],” i.e., those noncitizens who are “seeking admission,” but who (b)(1)
22 does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those “seeking
23 admission,” Congress confirmed that it did not intend to sweep into this section
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1 individuals like Petitioner, who have already entered and are now residing in the
2 United States. An individual submits an “application for admission” only at “the
3 moment in time when the immigrant actually applies for admission into the United
4 States.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in
5 *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that
6 anyone who is presently in the United States without admission or parole is
7 someone “deemed to have made an actual application for admission.” *Id.* (emphasis
8 omitted). That holding is instructive here too, as only those who take affirmative
9 acts, like submitting an “application for admission,” are those who can be said to be
10 “seeking admission” within § 1225(b)(2)(A). Otherwise, that language would serve
11 no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at
12 410–11.

17 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
18 [noncitizens] *arriving* from contiguous territory,” i.e. those who are “*arriving* on
19 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
20 underscores Congress’s focus in § 1225 on those who are arriving into the United
21 States—not those already residing here. Similarly, the title of § 1225 refers to the
22 “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*,
23 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
24 construe statute).

1 Finally, the entire statute is premised on the idea that an inspection occurs
2 near the border and shortly after arrival, as the statute repeatedly refers to
3 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
4 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
5 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
6 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
7 meaning”).
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10 The new DHS policy ignores all this and instead focuses on the definition of
11 “applicant for admission” at § 1225(a)(1) (*see* Ex. B, “Interim Guidance Regarding
12 Detention Authority for Applicants for Admission”, ICE, July 8, 2025), which
13 defines an “applicant for admission” as a person who is “present in the United
14 States who has not been admitted or who arrives in the United States.” 8 U.S.C. §
15 1225(a)(1). But as the Ninth Circuit has explained, “when deciding whether
16 language is plain, [courts] must read the words in their context and with a view to
17 their place in the overall statutory scheme.” *San Carlos Apache Tribe v. Becerra*,
18 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that
19 context underscores that the definition in (a)(1) is limited by other aspects of the
20 statute to those who undergo an initial inspection at or near a port of entry shortly
21 after arrival—and that it does not apply to those who are arrested in the interior of
22 the United States months or years or decades later.
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1 Significantly, in deeming that all noncitizens who entered without inspection are
2 necessarily encompassed by the mandatory detention provision at § 1225(b)(2), the
3 DHS policy ignores that the provision does not simply address applicants for
4 admission. Instead, the language “applicant for admission” in (b)(2)(A) is further
5 qualified by clarifying the subparagraph applies only to those “seeking
6 admission”—in other words, those who have applied to be admitted or paroled. The
7 new policy ignores this text, just as it ignores the statutory language in § 1226 that
8 expressly encompasses persons who have entered the United States and are present
9 without admission. Thus, Petitioner prevails regardless of the scope of §
10 1225(a)(1)’s definition of “applicant for admission.” This is because classification
11 as an “applicant for admission,” is not sufficient to render someone subject to
12 mandatory detention under § 1225(b)(2). The “applicant for admission” must *also*
13 be “seeking admission,” and that is clearly not the case for Petitioner.
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18 **2. The legislative history further supports the application of §**
19 **1226(a) to Petitioner’s detention.**
20

21 The legislative history of the Illegal Immigration Reform and Immigrant
22 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, §§ 302–03,
23 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited
24 construction of § 1225 and the conclusion that § 1226(a) would apply to Petitioner.
25 In passing the Act, Congress was focused on the perceived problem of recent
26 arrivals to the United States who did not have documents to remain. *See* H.R. Rep.
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No. 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about subjecting all people present in the United States after an unlawful entry to mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioner were not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for deportation proceedings, which applied to all persons physically present within the United States). Had Congress intended to make such a monumental shift in immigration law (potentially subjecting millions of people to mandatory detention), it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the opposite, noting that the new § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States*.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

3. The record and longstanding agency practice reflect that § 1226 would govern Petitioner’s detention.

DHS’s and EOIR’s long practice of considering people like the Petitioner as detained under §1226(a) further supports this reading of the statute. Typically DHS issues a Form I-286, Notice of Custody Determination, or Form I-200 stating that

1 the person is detained under § 1226(a) or has been arrested under that statute. This
2 decision to invoke § 1226(a) is consistent with longstanding practice. For decades,
3 and across administrations, DHS has acknowledged that § 1226(a) applies to
4 individuals who are present without admission after entering the United States
5 unlawfully, but who were later apprehended within the United States long after
6 their entry. Such a longstanding and consistent interpretation “is powerful evidence
7 that interpreting the Act in [this] way is natural and reasonable.” *Abramski v.*
8 *United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also*
9 *Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on
10 “over 60 years” of government interpretation and practice to reject government’s
11 new proposed interpretation of the law at issue).

12 Although Respondents have not alleged that Petitioner is in violation of
13 immigration law, to the extent Respondents believe he is inadmissible for being
14 present without admission, § 1226 governs this case and Respondents should
15 conduct a custody determination to determine whether to release Petitioner on bond
16 or recognizance. Section 1225 and its mandatory detention provision applies only to
17 individuals arriving in the United States as specified in the statute, while § 1226
18 applies to those who have previously entered and are now present and residing in
19 the United States.

20 ///

21 ///

**II. Petitioner Will Suffer Irreparable Harm in the
Absence of a TRO.**

In the absence of a TRO, Petitioner will continue to be unlawfully detained and his liberty restrained by Respondents without the filing of charges or issuance of an NTA, and without any authority to detain him, including pursuant to § 1225(b)(2). Petitioner has now been detained at the hospital for over 30 days without charges, the issuance of an NTA, or a determination that he presents a risk of flight of danger to others.

“Freedom 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 v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the government's current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the

1 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
2 the absence of the injunction—that Plaintiffs have also carried their burden as to
3 irreparable harm.”); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-
4 BFM (C.D. Calif. July 28, 2025), Order Granting Temporary Restraining Order,
5 Dkt. 14 at 9 (“[T]he Court finds that the potential for Petitioners’ continued
6 detention without an initial bond hearing would cause immediate and irreparable
7 injury, as this violates statutory rights afforded under § 1226(a).”)

10 **III. The Balance of Equities Tips in Petitioner’s Favor and** 11 **a TRO is in the Public Interest.**

12 Because the government is a party, these two factors are considered together.
13
14 *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that the public
15 interest factor weighs in his favor because his claims assert that he is detained in
16 violation of federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029
17 (9th Cir. 2013). Because the policy preventing Petitioner from being released or
18 obtaining bond “is inconsistent with federal law, . . . the balance of hardships and
19 public interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez*
20 *v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also*
21 *Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent
22 injunction issued in *Moreno II* and quoting approvingly district judge’s declaration
23 that “it is clear that neither equity nor the public’s interest are furthered by allowing
24 violations of federal law to continue”). This is because “it would not be equitable or
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1 in the public's interest to allow the [government] . . . to violate the requirements of
2 federal law, especially when there are no adequate remedies available." *Valle del*
3
4 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in
5 original) (citation omitted). Indeed, Respondents "cannot suffer harm from an
6 injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d
7 1127, 1145 (9th Cir. 2013).

9 CONCLUSION

10 For the foregoing reasons, the Court should grant Petitioner's Application for
11
12 a Temporary Restraining Order and Order to Show Cause.

13
14 DATED: September 30, 2025

Respectfully submitted,

By: s/ Jean Reisz

Jean Reisz

Niels W. Frenzen

USC Gould School of Law

Immigration Clinic

Attorneys for Petitioner

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains
4,714 words, which complies with the word limit of L.R. 11-6.1.

s/ Jean Reisz

Jean Reisz
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Sept. 30, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by email to the following individual:

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8 213-740-8933; 213-821-3108

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 Bayron Rovidio Marin,
10 Petitioner,

11 v.

12 Kristi NOEM, Secretary, U.S.
13 Department of Homeland Security;
14 Pamela BONDI, U.S. Attorney General;
15 Todd LYONS, Acting Director,
16 Immigration and Customs Enforcement;
17 Ernesto SANTACRUZ JR., Acting
18 Director, Los Angeles Field Office,
19 Immigration and Customs Enforcement,
20 Enforcement and Removal Operations;
21 IMMIGRATION AND CUSTOMS
22 ENFORCEMENT; U.S. DEPARTMENT
23 OF HOMELAND SECURITY,
24 Respondents.

Case No.

**PETITIONER'S EXHIBITS IN
SUPPORT OF APPLICATION
FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

INDEX OF EXHIBITS

Exhibit		Page
A	Declaration of Attorney Cynthia Santiago	1
B	“Interim Guidance Regarding Detention Authority for Applicants for Admission,” ICE, July 8, 2025	5
C	ICE Detainee Locator Printout	7

EXHIBIT A

I, Cynthia Santiago, declare:

1. I am a duly licensed Attorney in California.
2. I represent the Petitioner Bayron Rovidio Marin Oliva in his immigration and other collateral matters, not including the present matter.
3. On August 27, 2025, Petitioner was arrested and detained in an immigration raid at the Carson Car Wash, in Carson, California by uniformed Customs and Border Protection ("CBP") officers as well as by other unidentified plainclothes federal agents.
4. At no point prior or during Petitioner's arrest and initial detention did federal agents present a warrant. Petitioner has had no prior contact with immigration officials and has no Alien Number.
5. During the raid, Petitioner suffered a catastrophic injury resulting in a broken leg. He was handcuffed and transported that same day, August 27th, 2025, by immigration authorities to the emergency room at Harbor-UCLA Medical Center in Carson, California.
6. Upon Petitioner's admission to the hospital on August 27th, 2025, federal agents refused to leave Petitioner's bedside, even as he was transferred from the public areas of the hospital to the non-public patient treatment areas. Federal agents placed Petitioner's arm and leg in cuffs secured against the bedframe, even though Petitioner had suffered an immobilizing injury to his right leg and presented no security risk to either hospital staff or the federal agents.
7. Petitioner was admitted under a hospital "blackout" procedure meant for patients under law enforcement custody—a procedure which includes, *inter alia*, keeping the patient-in-custody under a pseudonym. This Petitioner's case, the hospital has kept him under the false name "Har Maine UNK Thirteen."
8. It is our understanding that on or about August 27th, CBP handed over the responsibility of guarding Petitioner to Immigration and Customs

Enforcements' ("ICE") Los Angeles Field Office, which deployed private contractors employed by Spectrum Detention Services ("Spectrum"), a private security contractor working under the ICE's direction and authority.

9. Since August 27th, 2025 and up to the date of this filing, at least two, and up to four, uniformed ICE agents have remained in Petitioner's room twenty-four hours a day, seven days a week. The ICE agents have mostly been Spectrum contractors, with the occasional federal ICE agent present during a particular shift.
10. Petitioner remains under constant guard in his patient room, with agents monitoring him:
 - a. While he sleeps, eats, and uses the restroom;
 - b. While he meets with members of his care team, including doctors and nurses, who discuss Petitioner's private medical information in front of the Spectrum contractors; and
 - c. While he prays or attempts to have reflective time to himself.
11. On August 29, 2025, I was informed that Petitioner was in the hospital with deportation officers in his hospital room. I arrived at Harbor-UCLA Medical Center and requested to visit Petitioner as his Counsel; however, I was told by the Hospital house nurse that ICE was not allowing visits. I requested to speak to the supervisor and was refused information. I was escorted out of the 6th floor by duty nurse and eventually left the hospital without being able to visit with Petitioner.
12. On August 30, 2025, I arrived at Harbor-UCLA Medical Center to re-attempt contact with Petitioner. After meeting with my co-counsel on Petitioner's case, attorney Nicolas Thompson-Lleras, we finally managed to contact the ICE-ERO supervisor on duty at the ICE Los Angeles Field Office over the phone, an individual who identified himself as Sergeant Vela (or alternatively, Supervisor Vela). Sergeant Vela confirmed to the guarding agents that an attorney visit would be permitted.

13. Attorney Nicolas Thompson Lleras and I were permitted to enter Petitioner's room on the 6th floor of Harbor County Hospital. The two deportation officers stood guard and did not leave the room to allow confidential Attorney visits.

14. Since August 30th, 2025, I have visited Petitioner approximately seventeen times. At no point in time has Petitioner been presented with:

- a. Charging documents;
- b. A Form I-213 Record of Deportable/Inadmissible ALIEN;
- c. A judicial warrant for his arrest and/or setting forth a legal justification for ICE's presence in Petitioner's private hospital room; or
- d. A judicial order.

15. Petitioner has been subjected to questioning by the deportation officers, occasionally while in pain or under the influence of medication, about his place of birth, his family's immigration status, his life, and about other sensitive aspects of his life.

16. Petitioner is currently under restrictive conditions, imposed by ICE, that far exceed those of any patient at Harbor-UCLA Medical Center not under custody, including:

- a. No right to place or receive phone calls, including to attorneys; and
- b. No right to visit with family.

17. On September 17, 2025, Attorney Nicolas Thompson Lleras and I had a phone conversation with Sergeant Vela about the detention and processing of the client, where Sergeant Vela confirmed that ICE did not have any information on the Petitioner nor an A number assigned. Sargeant Vela also confirmed that although Petitioner was under ICE custody, he would not be formally processed—a reference to the formal start of his removal case—until he was transported to Room B-18, the ICE processing center in downtown Los Angeles.

18. On September 23, 2025, at 6:07 p.m., attorney Nicolas Thompson-Lleras emailed the Los Angeles ICE Field Office at the losangeles.outreach@ice.dhs.gov, requesting proof of a judicial warrant for

Petitioner's arrest and/or access to his private medical room. As of the time of this filing, no response has been given.

19. On September 23, 2025, I spoke to deportation officer Avalos who was in Petitioner's hospital room on guard and requested documentation regarding charges, or a warrant regarding Petitioner's detention. I was directed to contact ICE-ERO Los Angeles.

20. As of the time of this filing, Petitioner continues to remain under ICE custody in his patient room at UCLA-Harbor Medical Center with no warrant and no civil immigration charges filed against him.

I declare under penalty of perjury that the foregoing is true and correct and that the declaration was made on September 28, 2025 at Gardena, California.


A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a diagonal stroke, is positioned above a solid horizontal line.

Cynthia Santiago, Esq

EXHIBIT B

To All ICE Employees
July 8, 2025

Interim Guidance Regarding Detention Authority for Applicants for Admission

As you are all well aware, the U.S. Department of Homeland Security's (Department or DHS) detention authority under the immigration laws is extraordinarily broad and equally complex. The Department's authority to detain, and its authority or lack of authority to release, an alien from immigration detention varies based upon the circumstances of the case. This message serves as notice that DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities. DHS has determined that section 235 of the Immigration and Nationality Act (INA), rather than section 236, is the applicable immigration detention authority for all applicants for admission. The following interim guidance is intended to ensure immediate and consistent application of the Department's legal interpretation while additional operational guidance is developed.

Custody Determinations

An "applicant for admission" is an alien present in the United States who has not been admitted or who arrives in the United States, whether or not at a designated port of arrival. INA § 235(a)(1). **Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) and may not be released from ICE custody except by INA § 212(d)(5) parole.** These aliens are also ineligible for a custody redetermination hearing ("bond hearing") before an immigration judge and may not be released for the duration of their removal proceedings absent a parole by DHS. For custody purposes, these aliens are now treated in the same manner that "arriving aliens" have historically been treated. **The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under INA § 236(a) during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237, with the exception of those subject to mandatory detention under INA § 236(c).**

Moving forward, ICE will not issue Form I-286, *Notice of Custody Determination*, to applicants for admission because Form I-286 applies by its terms only to custody determinations under INA § 236 and part 236 of Title 8 of the Code of Federal Regulations. With a limited exception for certain habeas petitioners, on which the Office of the Principal Legal Advisor (OPLA) will individually advise, if Enforcement and Removal Operations (ERO) previously conducted a custody determination for an applicant for admission still detained in ICE custody, ERO will affirmatively cancel the Form I-286.

Because the position that detention is pursuant to INA § 235(b) is likely to be litigated, however, OPLA will need to make alternative arguments in support of continued detention before the Executive Office for Immigration Review. Accordingly, ERO and Homeland Security Investigations (HSI) should continue to develop and obtain evidence, including conviction records, to support OPLA's arguments of dangerousness and flight risk in those bond proceedings.

Re-detention

This interpretation does not impose an affirmative requirement on ICE to immediately identify and arrest all aliens who may be subject to INA § 235 detention. Rather, the custody provisions at INA § 235(b)(1)(B)(ii), (iii)(IV), and (b)(2)(A) are best understood as prohibitions on release once an alien enters ICE custody upon initial arrest or re-detention.

This change in legal interpretation may, however, warrant re-detention of a previously released alien in a given case. Until additional guidance is issued, ERO and HSI should consult with OPLA prior to rearresting an alien on this basis.

Parole Requests by Previously Released Aliens

It is expected that ICE will see an increase in applicants for admission previously released under INA § 236(a) requesting documentation of parole pursuant to INA § 212(d)(5) in order to establish eligibility for certain immigration benefits, including employment authorization and adjustment of status. DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position. Accordingly, ERO and HSI are not required to "correct" the release paperwork by issuing INA § 212(d)(5) parole paperwork.

EXHIBIT C

**U.S. Immigration
and Customs
Enforcement**

Report Crimes: Email or Call 1-866-DHS-2-ICE

Home Who We Are **What We Do** Newsroom Information Library Contact ICE

Search Results: 1

BAYRON-ROVIDIO MARIN-OLIVA

Country of Birth : Guatemala

Status : In ICE Custody

Current Detention Facility: [Call ICE For Details](#)

** Click on the Detention Facility name to obtain facility contact information*

Related Information

Helpful Info

[Status of a Case](#)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Sept. 30, 2025, I served a copy of Exhibits in Support of TRO Application by email to the following individual:

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s/ Jean Reisz

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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 Bayron Rovidio Marin,
10 Petitioner,

11 v.

12 Kristi NOEM, Secretary, U.S.
13 Department of Homeland Security;
14 Pamela BONDI, U.S. Attorney General;
15 Todd LYONS, Acting Director,
16 Immigration and Customs Enforcement;
17 Ernesto SANTACRUZ JR., Acting
18 Director, Los Angeles Field Office,
19 Immigration and Customs Enforcement,
20 Enforcement and Removal Operations;
21 IMMIGRATION AND CUSTOMS
22 ENFORCEMENT; U.S. DEPARTMENT
23 OF HOMELAND SECURITY,
24 Respondents.

Case No.

[Proposed]

**TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE**

25 The Court finds that the ongoing detention of Petitioner without the issuance
26 of a Notice to Appear or charges of violating immigration law and on the basis of
27 the new DHS policy that Petitioner is subject to mandatory detention under 8
28 U.S.C. § 1225(b)(2)(A) violates federal law. All four factors in *Winter v. Nat. Res.*
Def. Council, 555 U.S. 7 (2008) weigh in favor of a TRO.

The Court therefore hereby Orders Respondents to release Petitioner and

1 remove all restraints on his liberty – including removing the guards or other
2 security personnel in or near Petitioner’s hospital room at Harbor-UCLA Medical
3 Center.

4 It is further Ordered that Respondents shall show cause as to why the Court
5 should not issue a preliminary injunction in this case. The Respondents’ response,
6 if any, to this order to show cause shall be filed by _____. Petitioner’s reply, if
7 any, to Respondents’ response shall be filed by _____.

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10 Dated: _____

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12 United States District Court Judge
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