

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

MOISES ANTONIO PARADA HERNANDEZ)
ANA PINEDA,)

Petitioners-Plaintiffs,)

v.)

JOSHUA JOHNSON, Acting Field)
Office Director, ERO Dallas;)
TODD LYONS, Acting Director, U.S.)
Immigrations and Customs Enforcement;)
SIRCE OWEN, Acting Director, Executive Office)
For Immigration Review;)
PAMELA BONDI, U.S. Attorney General;)
and KRISTI NOEM, U.S. Secretary of)
of Homeland Security,)

Respondents-Defendants.)

Case No. _____

MEMORANDUM OF LAW IN SUPPORT OF TEMPORARY RESTRAINING ORDER

TABLE OF AUTHORITIES

Cases:

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Carafas v. LaVallee, 391 U.S. 234, 237-38 (1968)

F.T.C. v. Dean Foods Co., 384 U.S. 597, 604 (1966);

Hamdi v. Rumsfeld, 542 U.S. 507 (2004)

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Statutes

All Writs Act (“AWA”),

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8 U.S.C. § 1182(a)(7) 212 (a)(7)

8 U.S.C. § 1182(c) INA 212 (c)

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8 U.S.C. § 1225(b)(2)

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Section II, Part 2.I.A & notes 109-110, American Immigration Council & Legal Aid Society, Detention under INA § 235(b): The Statutory Scheme and Strategies for Release (Sept. 2, 2025),
<https://www.americanimmigrationcouncil.org/practice-advisory/ina-235b-detention-practiceadvisory/>.

MEMORANDUM OF LAW IN SUPPORT OF TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioners-Plaintiffs (“Petitioners”) respectfully request immediate action by this Court through a Temporary Restraining Order (“TRO”) to avoid irreparable harm to Petitioners and to ensure that this Court is not potentially deprived of jurisdiction.

Petitioner-Plaintiffs are in Respondents’ Custody pursuant to 8 USC § 1226. As acknowledged by the U.S. Department of Homeland Security (DHS) in their documentation (Form I-220A Order of Release on Recognizance), the statutory basis of the custody and release is pursuant to and authorized under the aforementioned statute, as further set forth below.

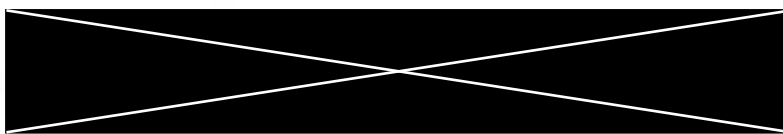
LEGAL AND FACTUAL BACKGROUND

A federal court has the power under 28 U.S.C. § 1651 - the All Writs Act, to issue injunctive orders in a case even before the court's jurisdiction has been established. When potential jurisdiction exists, a federal court may issue status quo orders to ensure that once its jurisdiction is shown to exist, the court will be in a position to exercise it.” *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 n.19 (5th Cir. 1978).

Petitioner Moises Antonio Parada-Hernandez, a native and citizen of El Salvador, resides in Dallas, TX. Parada-Hernandez is married to Petitioner Ana Pineda under the common law of Texas. They and their disabled son, [REDACTED] who is totally physically, emotionally and financially dependent upon them due to his cerebral palsy, are all in Removal Proceedings together. The EOIR Case Status on the internet shows their merits immigration court hearing is scheduled for September 14, 2027 at 8:30 before IJ Charissa Dvorack. The couple has another minor son who is a U.S. citizen.

Petitioner Moises Parada-Hernandez entered the U.S. on or about March 2, 2019, without

inspection. He passed a credible fear exam for asylum on or about March 22, 2019.

Petitioner Ana Isabel Pineda Chicas, a native and citizen of El Salvador, entered the U.S. on December 17, 2018 with their disabled son  He is non-verbal and suffers from cerebral palsy.

A Notice to Appear was issued for each of them and filed with the immigration court in Dallas, Texas, thereby commencing removal proceedings against them.

It is well established that for habeas corpus purposes under 8 USC § 2241 “in custody” does not require actual physical restraint; rather other restrictions on liberty can satisfy the custody requirement. For example, a person who challenges the conditions of release under an order of supervision may be found to satisfy the “in custody” requirement. Prior to the REAL ID Act, individuals subject to a final order of removal were considered “in custody” for purposes of the habeas corpus statute.¹ This concept of custody has remained the law in post-REAL ID habeas corpus cases.² The “in custody” determination is made at the time the habeas corpus petition is filed.³ If the petitioner is in custody then, the federal court may pass on the merits of the petition even though the individual is free from custody before the petition is acted upon, provided the petitioner may still suffer collateral consequences.⁴

On or about April 4, 2019 Petitioner Parada-Hernandez was issued the DHS Form I-220A, Order of Release on Recognizance. He was ordered to appear for any hearing or interview as directed by ICE or EOIR. He was Ordered to surrender for removal from the

¹ See, e.g., *Simmonds v. INS*, 326 F.3d 351, 354 (2d Cir. 2003); *Aguilera v. Kirkpatrick*, 241 F.3d 1286, 1291 (10th Cir. 2001); *Mustata v. U.S. Dep't of Justice*, 179 F.3d 1017, 1021 n. 4 (6th Cir. 1999); *Nakaramurack v. United States*, 68 F.3d 290, 293 (9th Cir. 1995)

² See, e.g., *Rosales v. ICE*, 426 F.3d 733, 734-36 (5th Cir. 2005).

³ *Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Carafas v. LaVallee*, 391 U.S. 234, 237-38 (1968) (“The Supreme Court has made it clear that the “in custody” determination is made at the time the habeas petition is filed.”)

⁴ *Perez v. Greiner*, 296 F.3d 123, 125 (2d Cir. 2002) (“The Supreme Court has held that a habeas petition challenging a criminal conviction is not necessarily mooted when the petitioner is released from prison, as collateral consequences of that conviction may still impinge on the petitioner post-release, and therefore a case or controversy may continue to exist.”); *Handa v. Clark*, 401 F.3d 1129, 1132 (9th Cir. 2005) (same).

United States if so ordered. He was ordered to appear at the Enforcement and Removal Office of Dallas ICE located at 8101 N. Stemmons Freeway, Dallas, TX. He was issued an Order of Release on Recognizance form I-220A on that same date. The Order commanded him to report in person to the ERO office on May 8, 2019 at 9:00 a.m. He was further ordered not to change his place of residence without first securing written permission from the Duty Officer at ERO. He was ordered to not violate any local, State or Federal laws or ordinances. He was ordered to assist ICE in obtaining any necessary travel documents. He was not to associate with any known gang members, criminal associates or be associated with any such activity. He was ordered not to commit any crimes while on this Order of Release on Recognizance. Failure to comply with these conditions “may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.”

The document titled Notice of Custody Determination, form DHS I-286, provides “Pursuant to the authority contained in section 236 of the Immigration and Nationality Act and part 236 of title 8, Code of Federal Regulations, I have determined that, pending a final administrative determination in your case, you will be (and the box next to Released is marked) the bond amount is \$0 and the box next to “on your own recognizance” is marked. The document is dated April 4, 2019 and Signed by officer R. Rodriguez.

Petitioner Moises has appeared at the Enforcement and Removal Office in Dallas, Texas as often as they require. He appeared on May 8, 2019, January 7, 2020, October 5, 2022, October 7, 2024.

Petitioner Ana Pineda was released on her own recognizance on December 25, 2018. Her form I-286 was signed by officer Y. Stokes and also provides for her release under the authority of section 236 of the INA. Her release was contingent on her enrollment and successful participation in an Alternative to Detention Program. She was required to provide an ICE

deportation officer with a letter of support from a sponsor, noting their address and telephone number; and provide ICE with proof of post-release travel arrangements relating to pickup. Electronic monitoring and a curfew may be imposed.

Petitioner Ana Isabel Pineda Chica has appeared on June 29, 2019, January 13, 2020, March 2, 2020 and is scheduled to appear on April 14, 2026 at 6:00 a.m.

Although Petitioners' detention under this program is authorized, if at all, by 8 U.S.C. § 1226(a), they cannot be jailed without an individualized bond determination.

On information and belief, based upon DHS detention of similarly-situated noncriminal noncitizens throughout the U.S., based upon a DHS July 2025 Policy Memorandum, and based upon *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) – both discussed *infra*, and both an unconstitutional departure from decades of settled law, on October 7, 2025, when Petitioner Parada-Hernandez appears for his next required ICE check-in, U.S. Immigration and Customs Enforcement ("ICE") and/or other federal agents acting on ICE's behalf will alter his custody to jail him, unlawfully invoking the inapplicable 8 U.S.C. § 1225(b)(2) thereby changing the statute under which he is in custody and making him ineligible for bond. Under *Matter of Hurtado*, he will be denied any possibility of a bond hearing, and will be required to be held in no-bond detention for an extended and indefinite period of time.

Petitioners are prima facie eligible for relief from removal based on their asylum claim. Respondent Parada Hernandez received a positive credible fear finding at his interview on March 22, 2019.

DHS has served Petitioners with Notices to Appear alleging that they were not previously admitted or paroled into the United States, and that they are present in the United States without immigration status. The Notices to Appear each state that Petitioners are inadmissible pursuant to INA § 212(A)(6)(a)(i).

LEGAL STANDARD

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). This fundamental principle of our free society is enshrined in the Fifth Amendment’s Due Process Clause, which specifically forbids the Government to “deprive[]” any “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V. “[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”).

In *Jennings v. Rodriguez*, 583 U.S. 281 (2018): while ultimately limiting some arguments against mandatory detention, the case and its lower court history reflect ongoing debate over the constitutionality of prolonged detention without a hearing; *Nken v. Holder*, 556 U.S. 418 (2009): This Supreme Court case established the standard for obtaining a stay of removal, emphasizing that the “most critical” factors are the likelihood of success on the merits and whether irreparable harm would occur if the stay were not granted; *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004): This case affirmed the fundamental nature of the liberty interest at stake in detentions.

On September 5, 2025, the Board of Immigration Appeals (BIA) recently issued a precedent decision that radically expands the government’s ability to detain noncitizens without any possibility of a bond hearing or release. That case, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025) is premised on a new reading of INA Sec. 235, adopted by the Department of

Homeland Security (DHS) in July 2025⁵, which has already been widely rejected by federal courts. *Hurtado* similarly deserves no deference. It creates a sweeping new rule which federal courts have rejected as inconsistent with statutory context and structure, the legislative history of INA 235, and the Supreme Court's decision in *Jennings*, *supra*. DHS, pursuant to a July 8, 2025 policy guidance memorandum, announced that it "revisited its legal position on detention and release authorities," and that under this "revisited" position, any noncitizen present in the U.S. who has not been admitted, or who arrives in the U.S. should be subject to mandatory detention under 8 U.S.C. §1225(b), INA §225(b). In recent months, district courts across the United States have rejected this position and concluded that a noncitizen in Petitioners' situation (i.e. noncitizens who entered the U.S. without inspection) is entitled to a bond hearing under U.S.C. §1226(a), INA §226.

Mandatory detention is provided for noncitizens pursuant to 8 USC § 1225 (b)(2)(V) 235(b)(2); INA § 225(b)(IV) and 8 USC §1126(c); INA § 236(c) which exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 236(a), including noncitizens subject to certain grounds of inadmissibility.

ARGUMENT

I. Petitioners Are Likely to Succeed on the Merits.

Petitioner Parada Hernandez is not lawfully subject to detention without bond. The mandatory custody provisions of 8 USC § 1225 (b)(2)(V) 235(b)(2); INA § 225(b)(IV) do not apply to Petitioner because he had a credible fear interview and was found credible. Once the credible fear process is complete and the noncitizen is placed into removal proceedings under §

⁵ The U.S. Department of Homeland Security (DHS), pursuant to a July 8, 2025 policy guidance memorandum, announced that it "revisited its legal position on detention and release authorities," and that under this "revisited" position, any noncitizen present in the U.S. who has not been admitted, or who arrives in the U.S. should be subject to mandatory detention under 8 U.S.C. §1225(b), INA §225(b)

240, the detention authority shifts to INA § 236(a). INA §236(a) regulates the arrest and detention of noncitizens. INA §236(a) authorizes the arrest of noncitizens placed into removal proceedings under INA §240 and provides for bond or other release of those arrested. DHS has discretion to detain or release (on bond or parole) a person pending removal proceedings — this is *not mandatory* detention. Mandatory detention applies only in limited circumstances (e.g., certain criminal offenses) under INA § 236(c) — not to asylum seekers found to have a credible fear⁶.

8 USC §1126(c); INA § 236(c) exempts specific categories of noncitizens from the default eligibility to seek release on bond in § 236(a), including noncitizens subject to certain grounds of inadmissibility. *Matter of Yajure Hurtado* is given no deference by federal courts throughout the United States. *See Loper v. Bright*, 603 U.S. 369, 144 S. Ct. 2244 (2024) (This landmark ruling overturned the 40-year-old precedent of *Chevron* deference, which required courts to defer to a federal agency's reasonable interpretation of an ambiguous statute.).

It creates a sweeping new rule that strips most noncitizens who entered without inspection of the right to seek bond from an Immigration Judge. *Yajure Hurtado* strips Immigration Judges of jurisdiction over custody redeterminations for noncitizens who entered without inspection and have not subsequently obtained lawful status.⁷ Under *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), only noncitizens who have been “admitted,” *see* INA §

⁶ Congress’ recent expansion of mandatory detention is also inapplicable here. The Laken Riley Act expands mandatory detention to include certain noncitizens who entered without admission / parole [under INA § 212(a)(6)(A)] only if they also meet the criminal or conduct trigger under the new §236(c)(1)(E), i.e. charged with, arrested for, convicted of, or admitted to committing any of several enumerated crimes.

⁷ While noncitizens classified by DHS as detained pursuant to INA § 235(b)(2) are eligible to seek parole from custody under INA § 212(d)(5), DHS has not released people on parole in any meaningful numbers since the spring of 2025, apparently in accordance with agency policy. See Section II, Part 2.I.A & notes 109-110, American Immigration Council & Legal Aid Society, Detention under INA § 235(b): The Statutory Scheme and Strategies for Release (Sept. 2, 2025), <https://www.americanimmigrationcouncil.org/practice-advisory/ina-235b-detention-practiceadvisory/>.

101(a)(13)(A), retain bond eligibility. *Id.* at 218, 223. Federal district courts that have recently analyzed which statute covers noncitizens who previously entered without inspection and were apprehended in the interior of the country have consistently found that INA § 236, not § 235(b)(2), authorizes their detention. In so finding, courts have relied on the record evidence and factual circumstances in a noncitizen's immigration proceedings, the text of both provisions, the statutory context and structure, the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and the legislative history of INA § 235 (as discussed below).

Numerous district courts have disagreed with the government's new interpretation of § 235(b)(2) and subsequently granted relief to habeas petitioners (often on due process grounds).

Below is a non-exhaustive list of relevant decisions:

- **First Circuit**

- o *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*)
- o *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025) o *Doe v. Moniz*, 2025 WL 2576819 (D. Mass. Sept. 5, 2025)
- o *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) o *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025)
- o *dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025)
- o *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025)

- **Second Circuit**

- o *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025)
- o *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025)

- **Fourth Circuit**

- o *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025)

- **Fifth Circuit**

- o *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)

- **Sixth Circuit** o *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (disagreeing with BIA's analysis in *Yajure Hurtado*)

- o *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025)

- **Eighth Circuit**

- o Carmona-Lorenzo v. Trump, 2025 WL 2531521 (D. Neb. Sept. 3, 2025)
- o Cortes Fernandez v. Lyons, 2025 WL 2531539 (D. Neb. Sept. 3, 2025)
- o Palma Perez v. Berg, 2025 WL 2531566 (D. Neb. Sept 3, 2025)
- o O.E. v. Bondi, 2025 WL 2466670 (D. Minn. Aug. 27, 2025)
- o Jacinto v. Trump, 2025 WL 2402271 (D. Neb. Aug. 19, 2025)
- o Maldonado v. Olson, 2025 WL 2374411 (D. Minn. Aug. 15, 2025)
- o Garcia Jimenez v. Kramer, 2025 WL 2374223 (D. Neb. Aug. 14, 2025)
- o Anicasio v. Kramer, 2025 WL 2374224 (D. Neb. Aug. 14, 2025)

- **Ninth Circuit**

- o Cuevas Guzman v. Andrews, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025) (distinguishing Yajure Hurtado)
- o Caicedo Hinestroza v. Kaiser, 2025 WL 2606983 (N.D. Cal. Sept. 9, 2025)

II Petitioners Face Imminent Irreparable Harm

Mandatory detention constitutes an indefinite and unconstitutional deprivation of liberty, which is universally considered an irreparable injury. As established in *Hamdi v. Rumsfeld*, the interest in being free from physical detention by the government is "the most elemental of liberty interests". Forcing a noncitizen to remain incarcerated for months or years to pursue their immigration case is a severe harm that cannot be remedied after release.

Mandatory detention significantly impairs a noncitizen's ability to prepare a defense, which can ultimately cause them to lose their case and be unjustly removed.

Detainees are often transferred to remote facilities far from their families and legal counsel. This separation makes communication difficult and can deprive individuals of the necessary legal assistance to navigate the complex immigration system. This harm is amplified for detainees with mental competency issues, as their inability to access representation can threaten due process.

Forcing noncitizens into detention separates them from their families for indefinite periods, inflicting profound harm on infants, children, and spouses. This trauma is inflicted without an individualized determination that detention is necessary. Petitioners are noncitizens held by Respondents' under an Alternative to Detention Program who face a substantial risk of prolonged and indefinite imprisonment pending the outcome of their Immigration Hearing. They have a minor son who is in proceedings with them who has cerebral palsy and requires constant supervision and care.

The extended detention of a wage earner places immense financial pressure on a noncitizen's family.

Preventing irreparable injury to a noncitizen is not only in the individual's interest but also in the public interest, particularly when it comes to upholding fundamental constitutional principles. Allowing the government to ignore due process protections for one population, such as noncitizens, sets a dangerous precedent that threatens the rights of all persons in the United States, citizens and noncitizens alike. Circumventing due process "defies the Constitution and is against the rule of law". Upholding due process rights for noncitizens serves the public interest by preserving the rule of law.

Under the current custody arrangement, Petitioners check-in as scheduled to the Enforcement and Removal Office. Mandatory detention is not necessary to prevent flight risk or danger to the community. Noncitizens released on bond have historically appeared for their court dates, demonstrating that individualized bond hearings are a fairer and equally effective alternative.

III. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Temporary Restraining Order

The balance of equities and public interest merge in cases against the government. *See*

Nken v. Holder, 556 U.S. 418, 436 (2009). Here, the balance overwhelmingly favors Petitioners. The public has a strong interest in preventing wrongful deprivation of liberty. *See id.*; *see also Zadvydas v. Davis*, 533 U.S. 678 (2001). Conversely, the government can make no comparable claim to harm from an injunction. *See Wages & White Lion Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021) (“There is generally no public interest in the perpetuation of unlawful agency action.”).

Petitioners, moreover, do not contest Respondents’ ability to prosecute criminal offenses, detain noncitizens, and remove noncitizens under existing statutory guidelines. At bottom, law enforcement and immigration enforcement officials lose no authority or ability to lawfully detain such individuals, even if the wrongful misclassification of noncitizens for bond purposes is enjoined.

IV. The All Writs Act Confers Broad Power to Preserve the Integrity of Court Proceedings.

In addition to this Court’s equitable powers, the All Writs Act (“AWA”), provides courts a powerful tool to “maintain the status quo by injunction pending review of an agency’s action through the prescribed statutory channels.” *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966); 28 U.S.C. § 1651(a); *California v. M&P Inv.*, 46 F. App’x 876, 878 (9th Cir. 2002) (finding Act should be broadly construed to “achieve all rational ends of law”) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)). If Petitioners are jailed and removed to a detention facility outside this jurisdiction, the government will argue that this Court will no longer have jurisdiction to remedy the unlawful misclassification of individuals in their custody for bond eligibility.

Whereas a traditional TRO requires a party to state a claim, an injunction based on the

AWA requires only that a party identify a threat to the integrity of an ongoing or prospective proceeding, or of a past order or judgment. *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978) (court may enjoin “conduct which, left unchecked, would have . . . the practical effect of diminishing the court’s power to bring the litigation to a natural conclusion”). Courts have explicitly relied upon the AWA in order to prevent even a risk that a respondent’s actions will diminish the court’s capacity to adjudicate claims before it. *See Michael v. INS*, 48 F.3d 657, 664 (2d Cir. 1995) (staying an order of deportation “in order to safeguard the court’s appellate jurisdiction” and preserve its ability to hear subsequent appeals by the petitioner).

V. The Court Should Not Require Petitioners to Provide Security.

The Court should not require a bond under Fed. R. Civ. P. 65. That “is a matter for the discretion of the trial court,” and a district court “may elect to require no security at all.” *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996). The Fifth Circuit has approved the exercise of this discretion to require no security in cases brought by indigent people and/or public-interest litigation. *See, e.g., City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981); *Steward v. West*, 449 F.2d 324, 325 (5th Cir. 1971). Alternatively, the Court should impose a nominal bond of \$1.

CONCLUSION

The Court should grant a TRO as to the named Petitioners

Date: October 7, 2025

Respectfully Submitted,

/s/ Sondra Turin

TX State Bar No.: 00797755

ESQUENAZI AND TURIN
2201 Main Street, Suite 1010
Dallas, Texas 75201
214-688-7080
214-598-7231 (Direct)
Sondra@TXimmigrant.com

Attorney for Petitioners-Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 7 , 2025, a true and correct copy of the foregoing document was electronically filed via the Court's CM/ECF system which sends notice of electronic filing to all counsel of record.

//s// Sondra Turin

Sondra Turin

Texas Bar No. 00797755

Esquenazi and Turin

2201 Main Street, Suite 1010

Tel: 214-688-7080

Tel: 214-598-7231 (Direct)

Sondra@tximmigrant.com