UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

ULLOA MONTOYA, Angel Maternidad [redacted],

Petitioner,

v.

PAMELA BONDI, in her official capacity as Attorney General,

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security,

U.S. DEPARTMENT OF HOMELAND SECURITY,

RAUL MALDONADO, in his official capacity as Warden of the Brooklyn Metropolitan Detention Center,

TODD LYONS, in his official capacity as Acting ICE Field Office Director,

JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of the New York Office of U.S. Immigration and Customs Enforcement,

Respondents.

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Petitioner, Angel Maternidad Ulloa Montoya (hereinafter "Petitioner" or "Angel"), respectfully moves for a temporary restraining order and an order to show cause regarding a preliminary injunction. The U.S. Department of Homeland Security (hereinafter "DHS"), through Immigration and Customs Enforcement (hereinafter "ICE"), has unlawfully detained Angel at the Brooklyn Metropolitan Detention Center (hereinafter "MDC"), a federal detention facility within this District, in direct violation of Petitioner's statutory and constitutional rights. Furthermore, Angel's detention, based on his designation as an Unaccompanied Alien Child (hereinafter "UAC") upon entry into the U.S., violates the Administrative Procedure Act (hereinafter "APA") and the Trafficking Victims Protection Reauthorization Act (hereinafter "TVPRA"). Petitioner is not challenging the commencement of his proceedings or any removal order (none has been issued). Instead, Angel challenges his ongoing civil detention, which lacks the individualized, least-restrictive-setting analysis required by Congress for "age-outs" and is based on an erroneous statutory classification that denies him a fair or meaningful bond process. This misclassification, along with violations of the APA and TVPRA, has resulted in Angel's prolonged and unlawful detention. Angel has filed a petition for a writ of habeas corpus to secure his release and prevent Respondents from re-detaining him. He now requests that the Court issue a temporary restraining order

(hereinafter "TRO") and a preliminary injunction (hereinafter "PI") to prevent Respondents from detaining him while his Petition is being decided.

BACKGROUND

The relevant facts and procedural history are further detailed extensively in Angel's Petition. The Petitioner, Angel Maternidad Ulloa Montoya ("Angel"), is an 18-year-old native and citizen of Honduras (DOB: [redacted]) who entered the United States near Roma, Texas, on February 25, 2024, at age 17, without a parent or legal guardian available to provide care. He was placed under the custody of the Office of Refugee Resettlement (ORR). ORR verified Angel's status as a UAC, completed intake and a medical screening, and approved a verified family sponsor to whom the Petitioner was released on March 18, 2024. The Petitioner remained in removal proceedings and attended Master Calendar hearings in January and May 2025.

At his third Master Calendar hearing on August 28, 2025, the Petitioner appeared at the Immigration Court, where the Immigration Judge ("IJ") granted the Petitioner additional time to find an attorney and scheduled the next hearing for January 22, 2026. However, upon leaving the courtroom, Immigration and Customs Enforcement (ICE) agents seized the Petitioner and detained him. The following day, August 29, 2025, ICE transferred Angel to the Brooklyn Metropolitan Detention Center ("MDC"), where he has now been held in civil immigration detention for over 78 days.

While at the MDC, Angel experienced a four-day facility lockdown starting September 12, 2025, during which he was confined only to his cell and unable to shower. An account error prevented outbound phone calls and commissary access for approximately twenty days after booking. He suffered allergic reactions following medical intake and repeatedly sought dental care until he was finally seen on October 14, 2025, without Spanish interpretation. He reports incidents of sexual harassment by other detainees that led to those individuals being moved out of his unit. He also continues to experience sleep disturbances, panic symptoms, headaches, and anxiety, which are consistent with mental health deterioration due to confinement in an adult jail.

Through counsel, Angel filed a motion for a bond hearing with the immigration court, which was held on October 2, 2025. Angel with counsel appeared for the bond hearing. No Spanish interpreter was provided, and as Angel does not speak or understand English, he was unable to follow the proceedings or speak to the Court. At this proceeding, counsel made several arguments. First, that Petitioner was eligible for bond, as he was apprehended and detained under § 1226, not § 1225. Second, that due to his initial designation as a UAC at the time of entry, under the Trafficking Victims Protection Reauthorization Act (hereinafter "TVPRA"), even after the Petitioner aged out of the category, the Department of Homeland Security (hereinafter "DHS"), had an obligation to the Petitioner to: (1) consider placement in the least restrictive setting available after

taking into account the noncitizens danger to self, danger to the community, and risk of flight, and (2) provide such noncitizens alternatives to detention programs, utilizing a continuum of alternatives based on the noncitizens' need for supervision. The Judge, however, denied Petitioner's request for bond based on lack of jurisdiction under *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

The Judge's finding of lack of jurisdiction comes after ICE began taking the erroneous position that noncitizens who entered without inspection (EWIs) should be subject to mandatory detention due to ICE's incorrect designation as applicants for admission under § 1225. The Government asserts that a noncitizen, like Angel should be detained pursuant to INA § 235(b)(2)(A) (codified at 8 U.S.C. § 1225(b)(2)(A))—a section of the INA that does not contemplate the possibility of bond—rather than INA § 236(a) (codified at 8 U.S.C. § 1226(a))—a section that does allow for bond[1]. ICE has taken this position based on the agency's recent broad reinterpretation of decades-old law, claiming that anyone who enters the country without inspection must now be detained without the chance to seek bond. This stance has been reinforced in Immigration Court following the BIA's precedential decision adopting ICE's interpretation of INA

[1] *See* "ICE Says Many In Immigration Detention No Longer Qualify For Bond Hearings," *CBS News* (Jul. 15, 2025) https://www.cbsnews.com/news/ice-immigration-detention- bond-hearings/ ; "ICE declares millions of undocumented immigrants ineligible for bond hearings," *The Washington Post* (Jul. 15, 2025) https://www.washingtonpost.com/immigration/2025/07/14/ice-trump-undocumented- immigrants-bond-hearings/

Sections 1225 and 1226. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). That decision, like ICE's position, is incorrect and has also been rejected by many federal district courts.

The Petitioner's ongoing detention has resulted in severe emotional, medical, and financial hardship. Immediate equitable relief is necessary to stop the ongoing APA and TVRPA violations and the Fifth Amendment due process harm that taints the reasonableness of his custody.

The Petitioner therefore seeks either: (1) immediate release to either Petitioner's newly appointed legal guardian or to his previously approved ORR sponsor pursuant to the sponsorship agreement, and conditions substantially similar to those in effect prior to re-detention. Alternatively, (2) compel Respondents, within 7 days (or such shorter time as the Court deems just), to complete and file on the docket a written, individualized custody determination that complies with § 1232(c)(2)(B) (as amended by VAWA 2013), expressly: (a) analyzing the least restrictive setting available, considering ATD options (including release to the identified sponsor, release on recognizance/supervision, and other non-custodial measures), addressing danger to self, danger to the community, and risk of flight with record citations, and providing non-boilerplate, on the record findings after notice to Petitioner and Counsel with Spanish interpretation. If Respondents fail to file a compliant decision promptly, order immediate release to Petitioner's legal guardian or to the ORR sponsor. In the

further alternative, (3) order a prompt bond hearing before a neutral decisionmaker within 7 days, at which: (a) The Government bears the burden by clear and convincing evidence to prove danger or flight risk, (b) the adjudicator's must consider Petitioner's ability to pay and least-restrictive alternatives to detention (including release to the sponsor or legal guardian and ATDs), (c) the adjudicator must issue reasoned, written findings on the record, and (d) a contemporaneous transcript is produced and served on the parties.

The Petitioner also requests (4) an Order to Show Cause for expedited briefing and a preliminary injunction hearing at the earliest possible date; (5) a no-transfer order and quick production of basic custody documents needed to make the hearing meaningful; (6) waive security under Fed. R. Civ. P. 65(c) (or set a nominal bond), given Petitioner's indigence and the strong public interest in protecting constitutional rights; and (7) grant such other and further relief as the Court deems just and proper.

Without this Court's intervention, Petitioner will remain unlawfully confined due to Respondents' APA and TVPRA violations, statutory misclassification, and Fifth Amendment due process violations, resulting in irreparable harm each day. The requested Temporary Restraining Order and Order to Show Cause aim to ensure a prompt and fair determination of liberty while this case proceeds.

JURISDICTION AND VENUE

This Court has jurisdiction over this application under 28 U.S.C. § 2241 (federal habeas statute). *See Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (district courts may entertain habeas challenges to immigration detention); *Jennings v. Rodriguez*, 583 U.S. 281, 293-96 (2018). This Court also has federal question jurisdiction under 28 U.S.C. § 1331 over Petitioner's claims arising under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701–706, and the TVPRA, 8 U.S.C. § 1232(c)(2)(B). The APA authorizes judicial review to compel agency action unlawfully withheld and to set aside arbitrary or unlawful action. 5 U.S.C. §§ 702, 706(1)–(2). The Petitioner also seeks relief under the Fifth Amendment's Due Process Clause, which independently supports habeas jurisdiction. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).

Venue and personal jurisdiction are properly situated in the Eastern District of New York because Petitioner is detained at MDC Brooklyn in Kings County, New York, which lies within the Eastern District of New York; the district of confinement is therefore the proper forum, and the immediate custodian (the MDC warden) is a proper respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004).

The petition is properly brought and should be heard forthwith under 28 U.S.C. § 2243 (court to "summarily hear and determine" habeas) and given priority under 28 U.S.C. § 1657(a).

LEGAL STANDARD

To obtain a temporary restraining order or preliminary injunction, a party generally must show (1) "a likelihood of success on the merits," (2) "irreparable harm absent injunctive relief," (3) "public interest weighing in favor of granting the injunction," and (4) "that the balance of equities supports the issuance of an injunction." *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 279–80 (2d Cir. 2021), opinion clarified, 17 F.4th 368 (2d Cir. 2021); *Winter v. Nat'l Res. Def. Council*, Inc., 555 U.S. 7, 20 (2008); *DermSource, Inc. v. CityMedRX, LLC*, No. 23-cv-281 (JS), 2023 WL 265905, at *3 (E.D.N.Y. Jan. 18, 2023) ("In this Circuit the standard for issuing a TRO and a preliminary injunction are the same"); *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.,* 190 F. Supp. 2d 577, 580 (S.D.N.Y. 2002) ("The standard[s] for granting a temporary restraining order and a preliminary injunction . . . are identical."); Fed. R. Civ. P. 65.

Further, the Second Circuit in *Mapp v. Reno* held that analyzing a habeas petitioner's fitness for bail depends on whether the habeas petition raises substantial claims and whether extraordinary circumstances exist that make the grant of bail necessary to make the habeas remedy effective. *Mapp v. Reno,* 241 F.3d 221 (2nd Cir. 2001) (citing *Basank v. Decker*, 613 F.Supp.3d 776 (2020)). This principle was reiterated in *Mahdawi v. Trump*, where the court emphasized that a habeas petitioner seeking release on bail under the court's inherent authority must demonstrate both substantial questions in the habeas petition and exceptional circumstances that necessitate bail to ensure the effectiveness of the

habeas remedy. 781 F.Supp.3d 214 (2025). A serious question in a habeas petition typically involves substantial legal or constitutional claims, often coupled with extraordinary circumstances that necessitate judicial intervention to ensure the effectiveness of the habeas remedy.

To establish irreparable harm, Petitioners "must demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Ferreyra v. Decker*, 456 F.Supp.3d 538 (2020). In the Second Circuit, it is well-settled that an alleged constitutional violation constitutes irreparable harm. *Basank v. Decker*, 613 F. Supp. 3d 776 (S.D.N.Y. April 23, 2020); *See*, e.g., *Connecticut Dep't of Envtl. Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) ("[W]e have held that the alleged violation of a constitutional right triggers a finding of irreparable injury." (internal quotation marks and citation omitted)); *Statharos v. New York City Taxi & Limousine Comm'n*, 198 F.3d 317, 322 (2d Cir. 1999) ("Because plaintiffs allege deprivation of a constitutional right, no separate showing of irreparable harm is necessary."); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (clarifying that "it is the alleged violation of a constitutional right that triggers a finding of irreparable harm" and a substantial likelihood of success on the merits of a constitutional violation is not necessary); *Sajous v. Decker*, No. 18 Civ. 2447, 2018 WL 2357266, at *12 (S.D.N.Y. May 23, 2018) (finding that immigration detainee established

irreparable injury by alleging that prolonged immigration detention violated his constitutional due process rights).

Fed. R. Civ. P. 65(b) permits a temporary restraining order ("TRO") without notice only if specific facts in an affidavit or verified pleading show immediate, irreparable injury before the adverse party can be heard, and counsel certifies efforts to give notice and why notice should not be required. Fed. R. Civ. P. 65(b)(1). A TRO without notice expires within 14 days unless extended for good cause or consented to, and the Court must promptly set a preliminary-injunction hearing. Fed. R. Civ. P. 65(b)(2)–(3). Rule 65(c) generally requires security; however, courts have discretion to waive or reduce the bond, including for indigent parties or when the public interest strongly favors the enforcement of constitutional rights. Fed. R. Civ. P. 65(c). Further, any injunctive order must state reasons, be specific in terms, and describe in reasonable detail the acts restrained or required without incorporation by reference. Fed. R. Civ. P. 65(d); *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974) (per curiam). In immigration-detention cases, district courts may award individualized injunctive relieclass-widenot grant class wide injunctions under 8 U.S.C. § 1252(f)(1); *Garland v. Aleman Gonzalez,* 596 U.S. 543, 548–49 (2022) (permitting individual, case-specific relief).

The above framework applies to both the requested TRO (with notice) and the Order to Show Cause regarding the preliminary injunction sought in this matter.

ARGUMENT

Under the four-factor test outlined in *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 279–80 (2d Cir. 2021), the Court should grant Angel's emergency application for a TRO and OSC for a preliminary injunction as he satisfies all four factors[2].

I. THE PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

Angel is likely to succeed on the merits for several reasons. First, his detention violates the APA and TVPRA based on his UAC designation upon entry and the requirements for "age outs" under that designation. Further, ICE has taken an unprecedented and unsupported position that IJs have no authority to grant noncitizens, such as Angel, bond, asserting that all noncitizens who entered without inspection are considered applicants for admission and are therefore detained pursuant to §1225(b). The BIA has subsequently endorsed ICE's position in *Matter of Yajure Hurtado* and cited that case as controlling. ICE's position lacks a basis in fact, law, and longstanding historical practice.

Angel can demonstrate that he is subject to detention pursuant to § 1226, not § 1225 as ICE and the BIA contend, and thus his bond hearing was improperly

[2] An increasing number of district courts have granted TROs and preliminary injunctions in cases analogous to Angel's. See, e.g., *Hinestroza v. Kaiser*, No. 25-cv-7559, 2025 WL 2606983, at *2 (N.D. Cal. Sept. 9, 2025) (granting TRO to immediately release petitioners pending a pre-detention hearing before a neutral decisionmaker); *Vazquez v. Feeley*, No. 25-cv-1542, 2025 WL 2676082, at *23 (D. Nev. Sept. 17, 2025) (granting PI to release petitioner from custody); *Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025) (granting TRO enjoining Respondents from continuing to detain petitioner absent a bond hearing); *Arrazola-Gonzalez v. Noem*, No. 25-cv-1789, 2025 WL 2379285, at *3 (C.D. Cal. Aug. 15, 2025) (granting TRO to conduct bond hearing); Kostak v. Trump, No. 25-cv-1093, 2025 WL 2472136, at *4 (W.D. La. Aug. 27, 2025) (granting TRO and PI to provide petitioner a bond hearing); *Barrajas v. Noem*, No. 25-cv-322, 2025 WL 2717650, at *6 (S.D. Iowa Sept. 23, 2025) (granting TRO to provide petitioner a bond hearing).

denied. An increasing number of district courts have granted TROs and preliminary injunctions analogous to Angel's, both in situations where bond had already been granted and where a bond hearing was denied altogether[3].

A. DHS violated the APA, TVPRA, and the Fifth Amendment by re-detaining Angel without notice, hearing, or any evidence of changed circumstances

The APA, codified at 5 U.S.C. §§ 551–559, governs administrative law procedures. The APA authorizes federal courts to (1) decide all relevant questions of law; (2) interpret constitutional and statutory provisions; and (3) determine the meaning or applicability of an agency's action. According to *Lopez Bright v. Raimondo*, the APA requires courts to exercise their independent judgment in deciding whether an agency acted within its statutory authority, and "may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. 369, 395, 401 (2024). The APA directs courts to "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1); and to "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in

[3] See *Lopez Benitez v. Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Rodriguez v. Bostock*, 2025 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025). *Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411, at *16 (D. Minn. Aug. 15, 2025) (granting TRO and PI to release petitioner who had been granted bond); *Hinestroza v. Kaiser*, No. 25- cv-7559, 2025 WL 2606983, at *2 (N.D. Cal. Sept. 9, 2025) (granting TRO to immediately release petitioners pending a pre-detention hearing before a neutral decisionmaker); *Vazquez v. Feeley*, No. 25-cv-1542, 2025 WL 2676082, at *23 (D. Nev. Sept. 17, 2025) (granting PI to release petitioner from custody); *Arrazola-Gonzalez v. Noem*, No. 25-cv-1789, 2025 WL 2379285, at *3 (C.D. Cal. Aug. 15, 2025) (granting TRO to conduct bond hearing); *Kostak v. Trump*, No. 25-cv-1093, 2025 WL 2472136, at *4 (W.D. La. Aug. 27, 2025) (granting TRO and PI to provide petitioner a bond hearing); *Barrajas v. Noem*, No. 25- cv-322, 2025 WL 2717650, at *6 (S.D. Iowa Sept. 23, 2025) (granting TRO to provide petitioner a bond hearing).

accordance with law," 5 U.S.C. § 706(2)(A). *See also* § 706(2)(B)–(D) (constitutional violations, excess of statutory authority, procedural defects). Moreover, "a claim under § 706(1) can proceed only where a plaintiff asserts that *an agency failed to take a discrete agency action that it is required to take.*" *Norton v. S. Utah Wilderness All.* ("*SUWA*"), 542 U.S. 55, 64 (2004) (emphasis added).

B. DHS's failure to conduct an individualized TVPRA age-out placement analysis is unlawful under §§ 706(1) and 706(2) of the APA

Congress created a youth-protective custody structure for people who entered as unaccompanied children and turned 18 while in federal custody. The TVPRA and 2013 Violence Against Women Act ("VAWA") amendment requires that when DHS receives an age-out from ORR, "the Secretary [of Homeland Security] *shall consider* placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight," and these age-outs "*shall be eligible*" for alternatives to detention, such as placement with sponsors or in supervised settings. 8 U.S.C. § 1232(c)(2)(B) (emphasis added).

Where DHS fails to take the specific action that the statute requires (i.e., make and document an individualized LRS/ATD decision), a court can compel action under 5 U.S.C. § 706(1). If DHS neglects to consider the statutory factors or defaults to adult detention without individualized analysis, courts should set

aside the agency's action as "arbitrary, capricious, [or] not in accordance with law" under § 706(2). *See*, e.g., *Arevalo Lopez v. Sessions,* 2018 WL 2932726 (SDNY July 12, 2018) (which granted habeas relief and ordered release on TVPRA/APA grounds for an age-out re-detained by ICE without a least-restrictive/ATD decision) and *Garcia Ramirez v. ICE*, 18-cv-00508, Doc. 367 (D.D.C. Sept. 21, 2021) (class-wide APA liability; requiring written, TVPRA-compliant decisions and barred ICE from defaulting to detention practices for age-outs)[4].

Angel was designated as a UAC upon entry and transferred to ORR custody under the TVPRA §1232(b)(3), which by statute applies to UACs and requires the Government to abide by Congress's directives that youths designated UACs be placed in the least restrictive setting. Codified at 45 C.F.R. 410. Under 8 C.F.R. §236.3(d)(3), "[w]hen an alien previously determined to have been a UAC is no longer a UAC because he or she turns 18 years old, relevant ORR and ICE procedures shall apply. In ICE's 2021 report to Congress, it acknowledges its obligation to make a custody determination as to where the age-out will be placed under §1232(c)(2)(B). As it states, ICE's two statutory obligations are: (1) it "*shall* consider placement in the least restrictive setting available after taking into

[4] *See* **Exhibit I,** *Legal Groups File Emergency Motion to Stop ICE From Jailing Immigrant Teens in Adult Detention,* AMERICAN IMMIGRATION COUNCIL (Oct. 3, 2025) (As referenced in Petitioner's memorandum in support of writ of habeas, the D.D.C. granted an emergency motion to enforce a permanent injunction that forces ICE to conduct LRS/ATD analysis), https://www.americanimmigrationcouncil.org/press-release/legal-groups-challenge-ice-jailing-immigrant-teens/?emci=499d3ee8-dea2-f011-8e61-604%E2%80%A6

account the alien's danger to self, danger to the community, and risk of flight," and (2) [s]uch "aliens *shall* be eligible to participate in alternative to detention programs, utilizing a continuum of alternatives based on the alien's need for supervision. The TVRPA requires UAC age-outs to be placed in the least restrictive setting to prioritize family reunification. Despite this, ICE has detained Angel and placed him in the most restrictive setting possible while denying him a fair and impartial opportunity to request bond, in direct violation of statutory law.

This pattern of unlawful conduct is exactly what decisions by Second Circuit district courts enforcing the TVPRA mandate condemn. *See Arevalo Lopez v. Sessions*, 2018 WL 2932726 (SDNY June 12, 2018) (habeas granted; DHS's failure to apply § 1232(c)(2)(B) to an age-out released under a Sponsorship Agreement is "not in accordance with law"; court ordered immediate release to the approved sponsor). The remedy for an APA violation is injunctive relief compelling Angel's immediate release to his ORR sponsor or his newly appointed guardian, ensuring compliance, and setting aside unlawful action.

C. DHS's § 1225(b) classification is arbitrary and capricious under the APA.

Under the APA, the scope of review under the standard for arbitrary and capricious action requires that the agency "must examine the relevant data and articulate a satisfactory explanation for its action." *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983). Agency action is arbitrary and capricious if

the agency "relied on factors which Congress has not intended it to consider, *entirely failed to consider an important aspect of the problem*, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id* (emphasis added). *See also Encino Motorcars, LLC v Navarro*, 579 US 211, 222 (2016) (Agency action is arbitrary and capricious where it is issued "without the reasoned explanation that was required").

Under *State Farm*, an agency acts arbitrarily if it "entirely failed to consider an important aspect of the problem" or offers an explanation that "runs counter to the evidence." 463 U.S. 29, 43 (1983). After *Loper Bright*, courts no longer defer to an agency's mere assertion regarding statutory scope. Applying § 1225(b)(2)(A) to a youth who entered, was processed into ORR custody, lived with an approved sponsor for over a year and a half, and was then re-detained at a courthouse in the interior of the U.S. disregards the text and structure that distinguish § 1225 from § 1226, and ignores the government's own 1997 explanation of bond practices for non-arriving inadmissible respondents. This is classic arbitrary and capricious error. *See also Velasco Lopez* (affirming district court order imposing constitutionally adequate procedures under § 1226(a)) and *Hechavarria* (clarifying which detention statute applies)

D. DHS's misclassification and re-detention of Petitioner is a violation of his Fifth Amendment Due Process rights

Angel is likely to succeed in his claim that his detention violates his Fifth Amendment substantive and procedural due process rights. The Fifth Amendment constrains civil immigration detention and states that "No person shall be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent," and it safeguards both the substantive liberty interest in freedom from physical confinement and the procedural right to a meaningful opportunity to challenge that confinement. *See Zadvydas v. Davis*, 533 U.S. 678, 690, 693, 721 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Reno v. Flores*, 507 U.S. 292, 306 (1993). In this context, detention is constitutionally permissible only for the recognized purposes of preventing flight and protecting the community, and only when procedures are sufficient to ensure that the government's justification outweighs the individual's liberty interest. *Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 528.

In determining whether an individual's procedural due process rights have been violated, courts weigh three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest,

including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). Here, after a year and a half of living with family under the ORR's legal custody, the Respondents seized Angel at court and placed him in one of the most restrictive adult facilities in the region, without a TVPRA-compliant analysis or any process addressing flight risk, danger to the community, or alternatives. It is without a doubt that Angel's interest in being free from detention — "the most elemental of liberty interests"—is at stake. *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004).

Angel has been detained without any pre-detention or individualized determination of whether he is a flight risk or poses any danger. Additionally, DHS must have considered Angel's least restrictive setting options and alternatives to detention before they re-detained him as a UAC age-out. DHS failed to consider this, and Angel has now been held at MDC for over 78 days without a proper determination of his detention or a neutral bond hearing. His detention at the MDC is "indistinguishable from criminal incarceration," a further consideration weighing in his favor under the first *Mathews* factor. *Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255, at *11 (E.D. Va. Sept. 19, 2025) (quoting *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. 2025)).

Moreover, Angel's detention creates "a substantial risk of erroneous deprivation," *Mathews*, 424 U.S. at 335. Angel's personal circumstances – his

designation as a UAC age-out after recently turning 18, his misclassification as an applicant for admission under § 1225, his lack of criminal history, his consistent compliance with immigration court appearances, his residence in New York for the past year and a half, and his family ties – demonstrate the "extremely high" risk inherent to erroneous deprivation. *See Hyppolite v. Noem*, 2025 WL 2829511, at *13 (EDNY Oct. 6, 2025) (finding "extremely high" risk of erroneous deprivation based on nearly identical considerations).

Finally, these considerations far outweigh any purported interest DHS and ICE may have in continuing to detain Angel. "The government's interest in detaining people on a discretionary, case-by-case basis under § 1226(a) includes 'ensuring the appearance of aliens at future immigration proceedings' and 'preventing danger to the community.'" *Hyppolite*, 2025 WL 2829511, at *14 (quoting *Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025)). These interests could and have historically been adequately served by an individualized determination by an IJ that a noncitizen is not a danger or flight risk and should be released on bond. They are also addressed by separate mandatory detention provisions applicable to certain categories of noncitizens, such as those who have committed specific crimes. *See* 8 U.S.C.§ 1226(c). For these reasons, Angel is likely to succeed in his claim that his detention violates his procedural due process rights.

Further, the Respondents have not provided any changed circumstances to

justify Angel's detention, or their overbroad misinterpretation of § 1225, which has curtailed his liberty. Angel does not have a criminal history; no evidence or arguments have been presented to find that he is a danger to the community or a flight risk. In fact, Angel was apprehended while dutifully attending his Master Calendar appearance at the Immigration Court. His detention now directly conflicts with the protections specified in the Constitution and disregards the statutory safeguards in place for individuals like him. Therefore, Angel's mandatory detention infringes on his Fifth Amendment due process rights.

E. DHS Misclassified the Petitioner under §1225; §1226(a) properly governs due to the geographical and temporal nature of his arrest far from a port of entry

Angel is likely to succeed in demonstrating that he is subject to detention under INA § 1226(a)—and should have been granted a bond hearing—not under INA § 1225(b)(2)(A), as ICE contends. Congress established two distinct detention pathways, and the Supreme Court has clearly defined the line: immigration law "authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also authorizes the Government to detain certain aliens already in the country while awaiting removal proceedings under §§ 1226(a) and (c)." *See Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) Therefore, Section 1226(a) is the default for individuals "pending a decision on whether [they are] to be removed," i.e., standard § 1229a cases before an IJ; it requires arrest "on a warrant" and allows for bond. 8 U.S.C. § 1226(a).

Section 1225(b)(2) pertains to those "seeking admission"—a present-tense, border-stage process tied to inspection. *See* 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997) (post-IIRIRA rulemaking recognizing interior EWI arrests are generally under § 1226). The structure reinforces this: § 1226(c)(1)(E) expressly references inadmissibility grounds, which would be surplusage unless § 1226(a) generally applies to inadmissible noncitizens arrested in the interior.

Although there is a clear distinction between § 1225 and § 1226, DHS contends that § 1225 applies. However, under *Loper Bright v. Raimondo*, courts must independently construe statutes and may not defer to novel agency readings simply because the text is ambiguous. 603 U.S. 369, 395, 401 (2024). DHS's 2025 pivot—adopted by the BIA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025)—treats virtually all persons present without admission as perpetual "arriving" applicants under § 1225(b)(2), erasing §1226(a)'s warrant/bond regime and the § 1226(c) carve-outs that assume § 1226(a) coverage. That sweeping view conflicts with the text, structure, and long-standing practice—and many courts have rejected it for interior arrests.

As applied here, Petitioner was arrested in New York (far from a port of entry), is in §1229a proceedings, and has no expedited-removal paperwork. The NTA expressly designated him as "an alien present in the United States who has not been admitted or paroled." On this record, § 1226(a) governs and affords IJ bond jurisdiction. Misclassification under § 1225(b)(2) is unlawful and is the but-

for cause of the denial of his bond process. Furthermore, it is a well-established matter of law that "§ 1226 applies to aliens already present in the United States," *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2001). Angel has been living in the U.S. for over a year and a half and was detained in New York after appearing at his Master Calendar hearing. As he was detained within the interior of the country, he was detained pursuant to § 1226(a), not § 1225(b). see also, e.g., *Hyppolite v. Noem*, No. 25-cv-4304 (NRM), 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (holding that petitioner who was "allowed to enter the country nearly three years ago, and who has followed all laws and procedures that accompanied his continued presence within the United States ever since that time," was detained pursuant to INA § 1226(a), not § 1225(b).

ICE's recent theory that nearly all noncitizens in the United States who were not previously admitted or entered illegally are suddenly subject to §1225(b)'s mandatory detention scheme is also inconsistent with the INA's own provisions and binding Supreme Court precedent. *See*, e.g., *Hyppolite*, 2025 WL 2829511, at *9 (finding the same); *J.U. v. Maldonado*, No. 25-cv-4836 (OEM), 2025 WL 2772765, at *7–8 (E.D.N.Y. Sept. 29, 2025) (same); *Hasan v. Crawford*, No. 25-cv-1408, 2025 WL 2682255, at *8–9 (E.D. Va. Sept. 19, 2025) (same).

ICE's interpretation runs afoul of several well-established canons of statutory construction; most notably, it would make the Laken Riley Act entirely

superfluous, which Congress added by amendment just this year. The Lake Riley Act subjects certain inadmissible noncitizens to mandatory detention if they are charged with committing specific crimes. "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995). However, ICE's sudden interpretation of §1225 mandating detention of any alien who has not been admitted—regardless of where they are detained, how long they've been in the U.S., or their criminal history—would render the Laken Riley Act superfluous and unnecessary, which cannot be assumed to be Congress's intent.

As this Court is not bound by the BIA's decision in accordance with ICE's misinterpretation of the law and due to the sudden deviation from historical and statutory approach in ICE's new policy, Angel is likely to succeed on the merits.

II. ANGEL WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

"The showing of irreparable harm is 'perhaps the single most important prerequisite for the issuance of a' temporary restraining order." *Barbecho v. Decker*, No. 20-cv-2821, 2020 WL 1876328, at *6 (S.D.N.Y. Apr. 15, 2020) (Nathan, J.) (quoting *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (citation modified).

To establish irreparable harm, Petitioner must demonstrate an injury that is neither remote nor speculative, but actual and imminent, and the injury must be

one requiring a remedy of more than mere money damages. *Kamerling*, 295 F.3d at 214. Further, in the Second Circuit, it is well-settled that an alleged constitutional violation constitutes irreparable harm. *Basank v. Decker*, 613 F. Supp. 3d 776 (S.D.N.Y. April 23, 2020). In *Jolly v. Coughlin*, Petitioner alleged his substantive due process rights had been violated and as such, no further showing of irreparable injury was necessary. 76 F.3d 468, 482 (2d Cir. 1996). "Second, irreparable harm exists where, as here, petitioners 'face imminent risk to their health, safety, and lives.'" Id. (quoting *Henrietta D. v. Giuliani*, 119 F. Supp. 2d 181, 214 (E.D.N.Y. 2000).

Petitioner has already suffered irreparable harm due to the ongoing unlawful deprivation of his liberty interest and will continue to suffer irreparable harm as long as he is unlawfully detained. Angel, at just 18 years old, finds himself detained at MDC alongside individuals convicted of heinous crimes in a facility known for its inhumane conditions[5]. He has endured harsh conditions at MDC for over 78 days; the facility is known for barbaric and inhumane treatment with frequent lockdowns. Angel has experienced a lockdown that lasted 4 days, during which he was confined to his cell full-time[6]. He was forced to eat and use the bathroom in that small cell, unaware of what was happening around him. He

[5] **Exhibit H**, see also Katie Rose Quandt and Maeve Brennan, Lockdowns, Violence, and "Barbaric Conditions" in a Federal Jail Known for its Famous Detainees, The Appeal (June 30, 2025), https://theappeal.org/brooklyn-metropolitandetention-center-solitary-watch/

[6] **Exhibit E**, Affidavit by Angel Ulloa Montoya.

is suffering from exhaustion, restless sleep, decreased appetite, and overall emotional distress and uncertainty. He has also been the victim of sexual harassment by other inmates. He has been deprived of his opportunity for a fair and neutral bond hearing. During his detention, Angel has been separated from his family and relatives – he is 18 years old and has been deprived of access to his support system, such as his older sister. His detention has taken an increasingly heavy toll on his mental health; he is currently experiencing intense distress and hopelessness, which has led to his desire to give up fighting any of his cases despite being clearly eligible for relief in the form of Special Immigrant Juvenile Status. His detention has also led to his losing his job and wages, while the ongoing proceedings have added extra expenses for his relatives.

Accordingly, Angel's ongoing unlawful detention is causing him irreparable harm by violating his fundamental right to freedom, and this harm worsens due to his declining mental and physical health and separation from his family.

III. THE PUBLIC INTEREST AND BALANCE OF EQUITIES CLEARLY FAVOR INJUNCTIVE RELIEF

It is well-settled law that "[w]here the Government is the opposing party, the final two factors in the temporary restraining order analysis—the balance of the equities and the public interest—merge." *Barbecho*, 2020 WL 1876328, at *7 (citing *Planned Parenthood of New York City, Inc. v. U.S. Dep't of Health & Human Servs.*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018). Furthermore, when a plaintiff claims

constitutional violations, the balance of hardships clearly favors the plaintiff, despite arguments that granting a preliminary injunction could impose financial or administrative burdens on the Government. *Sajous v. Decker*, No. 18-cv-2447, 2018 WL 2357266, at *13 (S.D.N.Y. May 23, 2018) (Nathan, J.) (citing Mitchell, 748 F.2d at 808).

The equities strongly favor the Petitioner's liberty interest. Angel has endured over 78 days of civil confinement without a prompt and meaningful bond process. Angel's rights are clearly at stake, and therefore, "the balance of hardships tips decidedly in [his] favor." Id. at *13. Additionally, the public interest is best served by granting the Petitioner's motion for a TRO. Detention during the pendency of removal proceedings is intended to serve two regulatory purposes goals: "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas v. Davis*, 533 U.S. at 690, 121 S.Ct. 2491 (cleaned up); see also *Matter of Guerra,* 24 I&N Dec. 37, 40 (BIA 2006) (when determining whether to release a noncitizen from detention, an Immigration Judge considers whether the individual "is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk"). Thus, such detention can never be punitive, either by design or effect. *Zadvydas*, 533 U.S. at 690, 121 S.Ct. 2491.

Angel's current detention is punitive in both design and effect, as no other justification has been provided for his prolonged civil detention without the opportunity to post bond. The Petitioner has a fundamental interest in liberty and

remaining free from official restraint. The government's detention of the Petitioner without a bond redetermination hearing to evaluate whether he is a flight risk or a danger to others infringes on his right to due process. Angel was taken into custody by federal agents in court shortly after his Master Calendar hearing, which shows that he was voluntarily attending his immigration proceedings and provides no basis for DHS to assume he would not continue to comply with those proceedings in the future. Additionally, given Angel's age and lack of criminal history, there is no reason to believe he poses a danger to the community or is a flight risk. Despite these factors not applying to the Petitioner, the government still detained Angel without justification.

Furthermore, releasing Angel or providing a proper and independent review under his correct classification under § 1226 and as an "age-out" would not impair DHS or ICE's ability to enforce immigration laws, as his removal proceedings will continue regardless. Therefore, enforcing immigration laws would not be hindered if Angel is released or subjected to an appropriate, independent review of his restrictions. For these reasons, the balance of equities and public interest overwhelmingly favor granting injunctive relief.

CONCLUSION

Angel has shown (1) a strong likelihood of success on multiple constitutional grounds; (2) ongoing, non-compensable injury from 78+ days of civil confinement without a meaningful bond process; (3) equities that tip sharply in his favor; and (4) a compelling public interest in constitutional compliance.

Narrow, individualized relief is warranted.

For the reasons set out above, Petitioner respectfully requests that the Court orders his: (1) immediate release to either Petitioner's legal guardian or to his previously approved ORR sponsor pursuant to the sponsorship agreement, and conditions substantially similar to those in effect prior to re-detention. Alternatively, (2) compel Respondents, within 7 days (or such shorter time as the Court deems just), to complete and file on the docket a written, individualized custody determination that complies with § 1232(c)(2)(B) addressing danger to self, danger to the community, and risk of flight with record citations, and providing non-boilerplate, on the record findings after notice to Petitioner and Counsel with Spanish interpretation. If Respondents fail to file a complaint decision promptly, order immediate release to Petitioner's legal guardian or to the sponsor. In the further alternative (3), order a prompt bond hearing before a neutral decisionmaker within 7 days, at which: (a) The Government bears the burden by clear and convincing evidence to prove danger or flight risk, (b) the adjudicator's must consider Petitioner's ability to pay and least-restrictive alternatives to detention (including release to the sponsor or legal guardian and ATDs), (c) the adjudicator must issue reasoned, written findings on the record, and (d) a contemporaneous transcript is produced and served on the parties. The Petitioner also requests an (4) Order to Show Cause for expedited briefing and a preliminary injunction hearing at the earliest possible date; (5) a no-transfer order

and quick production of basic custody documents needed to make the hearing meaningful; (6) waive security under Fed. R. Civ. P. 65(c) (or set a nominal bond), given Petitioner's indigence and the strong public interest in protecting constitutional rights; and (7) grant such other and further relief as the Court deems just and proper.

Dated: Bay Shore, New York
November 17, 2025

Respectfully submitted,

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Certificate of Compliance with Word Count

I, Joshua R. Stickell, Esq., counsel for Petitioner, certify that, using the word-count function of Microsoft Word, this filing contains **6,602 words**, excluding the case caption, tables, signature block, and certificates.

The document was prepared in 14-point Times New Roman, double-spaced (except for headings and block quotations).

Dated: November 15, 2025,
Bay Shore, New York

Respectfully submitted,

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