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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JORGE SERRATO HERRERA *Petitioner*, v. WARDEN ADELANTO DETENTION FACILITY, ET AL. *Respondents*.	Case No.: 5:25-cv-03199-JLS-SSC **PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER**

INTRODUCTION

Petitioner, Jorge Serrato Herrera by and through his counsel, Alfonso Morales, hereby moves this honorable Court for a temporary restraining order enjoining the Respondents from continuing to detain him and ordering his immediate release from immigration detention. This motion is based upon Federal Rule of Civil Procedure 65.

NOTICE TO OPPOSING PARTY

As of the date of this filing, no counsel has entered an appearance on behalf of Respondents in this matter. Accordingly, Petitioner's counsel is unable to provide notice of this application to opposing counsel.

LEGAL STANDARD

On a motion for a TRO, the movant "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." All. for the *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (second alteration in original) (citation omitted). To succeed under the "serious question" test, Petitioner must also show that he is likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132

Mr. Serrato satisfies all of these requirements. Accordingly, as other courts have done in other immigration detention cases, this Court should use its equitable power to order his immediate release. See *Chernykh v. Valdez*, CV 16-2184-RGK, 2017 WL 3000013 (C.D. Cal. May 22, 2017) (granting immigrant detainee's motion for preliminary injunction ordering her release pending disposition of habeas corpus petition); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 54 (D.D.C. 2002) (ordering preliminary injunction releasing immigration detainee); *Ali v. Ashcroft*, 213 F.R.D. 390, 406 (W.D. Wash. 2003) (granting injunctive relief ordering release of detainees with final removal orders), aff'd, 346 F.3d 873 (9th Cir. 2003), opinion withdrawn on denial of reh'g sub nom. *Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005), as amended on reh'g (Oct. 20, 2005).

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ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

Petitioner is likely to succeed on the merits of his habeas petition because Respondents are detaining him under the wrong statutory framework, depriving him of the procedural protections Congress guaranteed under § 1226(a) and violating the Due Process Clause of the Fifth Amendment.

Petitioner was arrested inside the United States, issued a Notice to Appear, and placed directly into full removal proceedings under § 1229a. Under *Jennings v. Rodriguez*, § 1226 governs the detention of individuals already present in the United States in § 240 proceedings, while § 1225(b) applies primarily to individuals seeking entry. 583 U.S. 830, 288–303 (2018). Petitioner was never inspected at a port of entry, never placed in expedited removal, and therefore cannot be subjected to § 1225(b)'s mandatory-detention scheme.

Courts addressing nearly identical facts have uniformly held that individuals arrested in the interior are detained under § 1226(a), not § 1225(b). See, e.g., *Mosqueda*, 2025 WL 2591530, at *6; *Salazar*, 2025 WL 2676729, at *4; *Buenrostro-Mendez*, 2025 WL 2886346, at *3. The Central District of California's TRO in *Maldonado Bautista v. Santacruz* confirmed this statutory framework and enjoined DHS from misclassifying interior-arrest individuals as § 1225(b) detainees. The court extended its conclusions to the broader Bond Eligible Class, which includes individuals, like Petitioner, who entered without inspection, were not apprehended at arrival, and are not otherwise subject to mandatory detention.

Respondents' misclassification has denied Petitioner the individualized bond hearing required under § 1226(a)'s discretionary structure. Prolonged detention without such a hearing raises serious due process concerns. See *Hernandez-Lara v. Lyons*, 10 F.4th 19, 41 (1st Cir. 2021). Petitioner has lived in the United States since 1990, when he was around one year old. He has lived in the United

States his entire life and has made strong family and community ties in this country. He has one nonviolent DUI conviction. However, he has submitted evidence demonstrating he is neither a danger nor a flight risk. Had DHS followed the correct statutory framework, he would have been entitled to seek release before a neutral adjudicator.

Because Respondents lack statutory and constitutional authority to continue detaining Petitioner without a § 1226(a) bond hearing, Petitioner is very likely to succeed on the merits of his habeas petition.

B. Petitioner Faces Immediate and Irreparable Harm

Parties seeking a TRO must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

Petitioners unlawful 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); cf. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk). This is particularly true here, where Petitioners detention also violates the Constitution. Civil immigration detention violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted).

As detailed above, Petitioners detention falls outside those circumstances because he is detained under § 1226(a) yet has been denied the individualized custody determination that statute

requires. The Due Process Clause prohibits such detention where the government has failed to provide a constitutionally adequate bond process, and the ongoing deprivation of a meaningful opportunity to seek release renders his confinement unlawful. These constitutional concerns also counsel in favor of finding that Petitioner has demonstrated irreparable harm, for he has shown that his detention violates both the statute and the Constitution. *See Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm").

Detention also inflicts substantial harm on Petitioner by separating him from his family members. Absent a TRO, Petitioner has no hope of being reunited with family. Such "separation from family members" is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted); see also, e.g., *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (finding "separated families" to be a "substantial injur[y] and even irreparable harm[]"); cf. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (recognizing that "government-compelled [family] separation" causes family members "trauma" and "other burdens").

In sum, Petitioner is suffering irreparable harms: detention itself and separation from his family. All of these circumstances warrant granting the TRO.

C. The Balance of Equities and Public Interest Decisively Favor Granting the TRO

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of liberty and separation from his family. The government, by contrast the government faces no cognizable hardship, as it would be required only to provide Petitioner with the process to which he is legally entitled, including a prompt bond

hearing. Avoiding such "preventable human suffering" strongly tips the balance in favor of Petitioner. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

In addition, Petitioners detention "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in Moreno II and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted). Indeed, Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145. "The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of . . . a likely [illegal bond] process." *Hernandez*, 872 F.3d at 996.4

The balance of equities overwhelmingly favors Petitioner. Granting relief imposes minimal burden on the Government, while denying relief exposes Petitioner to ongoing unlawful detention. Petitioner has lived in the United States since he was around one year old. He has deep community and family ties in the United States because it is the only country he knows. Although he has one nonviolent DUI conviction, he also has support from his family and congregation. He presents no risk of flight and would have been a strong candidate for release had DHS not improperly denied him access to an individualized bond hearing under § 1226(a). In contrast, each additional day of detention imposes ongoing and irreparable harm on Petitioner's emotional stability as a result of

prolonged confinement and separation from his family The equities clearly weigh in Petitioner's favor.

The public interest also supports granting a TRO. The public has a strong and well-recognized interest in ensuring that immigration detention remains lawful, humane, and consistent with statutory and constitutional limits. The public interest is not served by permitting DHS to detain individuals under an improper statutory framework. Nor is it served by withholding the bond procedures Congress expressly established in § 1226(a). Ensuring access to due process, preventing unnecessary separation from family, and enforcing the statutory limits on civil immigration detention are all firmly aligned with public policy.

Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents comply with federal law and release Petitioner.

REQUESTED RELIEF

Petitioner respectfully requests that this Court:

1. Order immediate release from ICE custody due to the combination of unlawful detention and separation from family; or
2. In the alternative, order that Petitioner receive a bond hearing within 48 hours before a neutral adjudicator;
3. Grant any additional relief the Court deems just and proper

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant temporary restraining order, enjoining Respondents from further harming Petitioner and ordering Respondents to

immediately release him from ICE custody or in the alternative, order that Petitioner receive a bond hearing within 48 hours before a neutral adjudicator.

Dated this 24 day of December 2025.

Respectfully submitted,

/s/ Alfonso Morales
Alfonso Morales, Esq.
Attorney for Jorge Serrato Herrera

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which constitutes service on all parties or counsel by electronic means as reflected on the Notice of Electronic Filing.

/s/Alfonso Morales
Alfonso Morales
Attorney for Jorge Serrato Herrera