

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RIGOBERTO GARCIA SANCHEZ

Case No. 1:25-cv-01219-KG-JFR

Petitioner,

v.

KRISTI NOEM, et al.,

Respondents.

**PETITIONER’S MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I. INTRODUCTION

Petitioner Margarito Barrera-Vargas is a 38-year-old citizen and national of Mexico. *See* Exhibit A, Notice to Appear. He entered the United States without inspection in the early 2000s. *See* Dkt. No. 13 at 11. On November 3, 2025, over 20 years after entering the United States, Petitioner was detained in the Redmond, Washington. *Id.*

After being detained, Petitioner was initially placed in removal proceedings before the Tacoma Immigration Court, but was soon brought to Chaparral, New Mexico, where his removal proceedings continued before the Otero Immigration Court. *See* Exhibit A; Exhibit B, Notice of Hearing.

Petitioner has now been detained for almost three months. *See* Dkt. No. 13 at 11. On December 7, 2025, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 USC § 2241, challenging his unlawful detention on statutory and Constitutional grounds. Dkt. No. 1. On

January 28, 2026, Petitioner filed an Amended Petition for Writ of Habeas Corpus. Dkt. No. 13. Petitioner now moves for injunctive relief pending the adjudication of his habeas petition.

II. LEGAL STANDARD

A petitioner seeking a Temporary Restraining Order (TRO) “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,” and that the balance of equities and public interest favor relief. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008). “[A]ll four...factors” must “weigh in” the petitioner’s favor, *Sierra Club. v. Bostick*, 539 Fed. App’x 885, 888 (10th Cir. 2013), but “[t]he likelihood-of-success and irreparable-harm...are the most critical.” *People’s Trust Fed. Credit Union v. Nat’l Credit Union*, 350 F. Supp. 3d 1129, 1139 (D.N.M. 2018). “The burden is on the movant, and ‘the right to relief must be clear and unequivocal’ due to the extraordinary nature of preliminary injunctions as a remedy.” *N.S. v. Albuquerque Pub. Schs. Bd. of Educ.*, No. 1:24-cv-01303-MLG-GJF, 2025 WL 3215604, at *2 (D.N.M. Feb. 3, 2025) (quoting *Greater Yellowstone Coal. v. Flowers*, 321 F.3d 1250, 1256 (10th Cir. 2003)). Further, when the requested relief mandates action (rather than prohibiting it), the movant must clear a higher hurdle to prevail. *See Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (citing *Awad v. Ziriak*, 670 F.3d 1111, 1125 (10th Cir. 2012)). Specifically, the movant “must make a ‘strong showing’” that the likelihood-of-success and balance-of-harms factors “tilt in [their] favor.” *Id* (quoting *Fish v. Kobach*, 840 F.3d 710, 723 (10th Cir. 2016)).

III. ARGUMENT

For the reasons below, (A) Petitioner is likely to succeed on his claim, (B) he will suffer irreparable harm absent a TRO, and (C) equities and public interest favor relief.

A. Petitioner is likely to succeed on the merits of his petition.

Petitioner is likely to succeed on the merits of his (1) statutory claim and (2) Fifth Amendment due process claim.

1. Petitioner is likely to succeed on his statutory claim.

Petitioner is likely to succeed on his claim that his detention is governed by 8 U.S.C. § 1226(a). The Immigration and Nationality Act (“INA”) establishes distinct detention regimes depending on whether a noncitizen is “seeking admission” to the United States. *See Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

Section 1225(b)(2)(A) applies to “applicant[s] for admission” who are “seeking admission” and “not clearly and beyond a doubt entitled to be admitted.” The “provision mandates detention and affords no bond hearing.” *Pu Sacvin v. De Anda-Ybarra*, 2025 WL 3187432, at *1 (D.N.M.) (Gonzales, J.).

By contrast, § 1226(a) authorizes the arrest and detention, “on a warrant issued by the Attorney General,” of noncitizens “pending a decision on whether [they are] to be removed.” § 1226(a). “Under federal regulations, noncitizens detained under this second detention regime are entitled to individualized bond hearings at the outset of detention.” *Pu Sacvin*, 2025 WL 3187432, at *1. “Noncitizens who entered the country years earlier are not...seeking admission and therefore fall under” § 1226(a), “rather than § 1225(b)(2)(A).” *Id.* at *3.

Here, Petitioner entered the United States over two decades ago. Dkt. No. 13 at 11. Petitioner was detained within the interior of the United States many years after he entered the country. *See id.* Because Petitioner had already effected an entry and was not seeking admission at the time of his arrest, § 1226(a) governs his detention.

Petitioner’s likelihood of success is bolstered by the fact that the vast majority of district courts to have considered the issue, including this Court, have held that Section 1226(a), rather

than Section 1225(b)(2)(A), applies to non-citizens who did not lawfully enter the United States but who have been present in the United States for a significant period of time before the challenged detention. *See, e.g., Jovel v. Noem*, No. 1:25-cv-01233-KG-DLM, 2026 WL 172723 at 2 (D.N.M. Jan. 22, 2026); *Cortez-Gonzalez v. Noem*, No. 2:25-cv-00985-MLG-KK, 2025 WL 3485771, at *4 (D.N.M. Dec. 4, 2025); *Salazar v. Dedos*, Civ. No. 25-835, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025); *see also, e.g., Loa Caballero*, 2025 WL 2977650, at *4-*7; *Buenrostro-Mendez v. Bondi*, Civ. No. 25-3726, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Sampiao*, 2025 WL 2607924, at *7-*8; *Mosqueda v. Noem*, Civ. No. 25-2304, 2025 WL 2591530, at *4-*5 (C.D. Cal. Sept. 8, 2025). Considering the above, Petitioner can demonstrate a strong likelihood of success on his statutory claim.

2. Petitioner is likely to succeed on his Due Process claim.

Petitioner is also likely to succeed on his claim that his detention violates the Fifth Amendment’s Due Process Clause. The Fifth Amendment’s Due Process Clause prohibits the Government from depriving any person of “life, liberty, or property, without due process of law[.]” U.S. Const. amend. V. “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*, 533 U.S. at 690. “It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993); *see also Zadvydas*, 533 U.S. at 693.

Courts analyze due process claims in two steps: first, whether there exists “a protected liberty interest under the Due Process Clause,” and second, whether the procedures used to deprive that interest “accord with the Constitution.” *Domingo v. Castro*, 2025 WL 2941217, at *3 (D.N.M.) (citing *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)).

Here, Petitioner has a protected liberty interest. Once a noncitizen effects entry into the United States, the Due Process Clause applies “whether [the noncitizen’s] presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Noncitizens who have not yet effected entry are not afforded the same privileges. *See Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020). The Supreme Court in *Thuraissigiam* concluded that simply “set[ting] foot on U.S. soil” is insufficient to “effect[] an entry” and trigger due process protections. 591 U.S. 103, 139-40 (2020). The Court noted that noncitizens “who have established connections in this country have due process rights in deportation proceedings” *Id.* at 107. This is consistent with previous cases recognizing noncitizens who have “effected an entry” having due process rights. *See Zadvydas*, 533 U.S. at 693; *see also Pablo Sequen v. Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630, at *7 (N.D. Cal. Oct. 15, 2025) (“[I]f a noncitizen ‘gain[s a] foothold in the United States,’ . . . or ‘begins to develop . . . ties’ in this country, ‘his constitutional status changes accordingly,’ and he ‘has a right to due process.’”) (alterations in original) (citations omitted) (first quoting *Kaplan v. Tod*, 267 U.S. 228, 230, (1925), then quoting *Landon v. Plasencia*, 459 U.S. 21, 32-33 (1982)). Noncitizens like Petitioner have, in fact, effected entry due to their connections and ties to this country. *See Pu Sacvin*, 2025 WL 3187432, at * 3 (“Mr. Pu Sacvin ‘already effected an entry’ into the United States by living here for decades.” (citing *Hernandez v. Baltazar*, No. 1:25cv03094-CNS, 2025 WL 2996643, at *5 (D. Colo. Oct. 24, 2025))). Here, Petitioner lived and worked in the United States for over two decades before his detention. *See* Dkt. No. 13 at 11. Petitioner therefore clearly has effected an entry into the United States and has a protected liberty interest under the Due Process Clause.

As Petitioner had a protected liberty interest, he was entitled to procedural safeguards before he was detained. In determining what process is due, courts consider (1) “the private interest” affected; (2) “the risk of erroneous deprivation” through the procedures used and the probable value of additional safeguards; and (3) “the Government’s interest,” including the fiscal and administrative burdens of additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Here, Petitioner’s private interest in remaining free from detention is substantial. As cited above, “[f]reedom from imprisonment...lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

There is also a significant risk of erroneous deprivation. Petitioner was detained after over 20 years in the United States without any pre-deprivation notice and without the opportunity for a bond hearing. *See* Dkt. No. 13 at 11. No assessment was made as to whether Petitioner posed a danger to society or was flight risk, creating a substantial risk of erroneous deprivation of his liberty interest. *See id.* Given that Petitioner is very likely detained under § 1226(a), Petitioner is entitled to an individualized bond hearing. *See Salazar*, 2025 WL 2676729, at *5. Petitioner’s continued detention without such review constitutes an ongoing violation of his right to due process. *Id.*

Finally, the Government’s interest in detaining Petitioner without a hearing is limited, as the administrative burden of providing a bond hearing is minimal. *See Cuya-Priale*, 2025 WL 3564145, at *3 (the “cost of providing a bond determination is not terribly burdensome”).

Petitioner has therefore demonstrated he is likely to succeed on his due process claim.

B. Petitioner will face irreparable harm without injunctive relief.

Petitioner can also show that his detention caused irreparable harm, as “infringement of a constitutional right” is per se irreparable harm. *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 805 (10th Cir. 2019). Moreover, the harm inflicted by the unlawful and unconstitutional conduct at issue here is particularly grave. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. And as long as Petitioner remains detained, he can no longer be “gainfully employed,” be “with family and friends,” “form ... other enduring attachments,” or “live[] a life generally free of the incidents of imprisonment.” *Young v. Harper*, 520 U.S. 143, 148 (1997); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Any monetary remedy for the loss of these profound but inchoate freedoms would be inadequate and very difficult to quantify. “What makes an injury ‘irreparable’ is the inadequacy of, and the difficulty of calculating, a monetary remedy after a full trial.” *Free the Nipple-Fort Collins*, 916 F.3d at 806 (citing *Awad*, 670 F.3d at 1131).

Absent the Court’s intervention, Petitioner will continue to be detained without any recourse.

C. The equities and public interest favor relief.

The final two factors for injunctive relief—the balance of hardships and public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Any burden on the Government to release Petitioner from custody is minimal compared to the harm that petitioner is suffering. Here, Petitioner’s continued detention without bond is in violation of his Fifth Amendment rights and far outweighs any burden the Respondents would suffer. “Faced with a choice between minimally costly procedures and preventable human suffering,” the “balance of hardships tips decidedly in [P]etitioner’s favor.” *Cuya-Priale*, 2025

WL 3564145, at *3 (citing *Singh v. Andrews*, 2025 WL 1918679, at *7 (E.D. Cal.)); *see also Domingo*, 2025 WL 2941217, at *4 (same). Moreover, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

Petitioner must also show that the public interest favors his release. *Winter*, 555 U.S. 7 at 20. As discussed above, the Petitioner’s continued detention without bond likely violates federal law and his due process. The “public interest is best served by ensuring the constitutional rights of persons within the United States are upheld.” *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Further, “[t]here is generally no public interest in the perpetuation of unlawful agency action,” and ‘substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.’” *Gamez Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025) (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution and laws”).

V. CONCLUSION

For the foregoing reasons, Petitioner requests that the Court grant Petitioner’s TRO, enjoining Respondents from continuing to unlawfully detain Petitioner, and ordering his immediate release. In the alternative, Petitioner requests a prompt bond hearing where Respondents have the burden to show by clear and convincing evidence that Petitioner is neither a danger to the community nor a flight risk. “[U]nder normal circumstances,” the burden at a § 1226 hearing “is on the noncitizen” to show that detention is unwarranted-but Petitioner’s “unlawful detention ... shifts that burden to the Government.” *Pu Sacvin*, 2025 WL 3187432, at

*3. A noncitizen's "strong private interest in being free from civil detention" outweighs the Government's "comparatively minimal burden to justify custody." *Id.* Given the important constitutional rights at stake for Petitioner, Petitioner asks that no bond be required. *See Winnebago Tribe of Nebraska v. Stovall*, 341 F.3d 1202, 1206 (10th Cir. 2003) (providing district courts with "wide discretion under Rule 65(c)" to determine "whether to require security").

Respectfully submitted,

/s/ Scott D. Weaver 1/29/2026

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 29, 2026, I filed the foregoing pleading electronically through the CM/ECF system and emailed a copy to the U.S. Attorney's Office of the District of New Mexico at ryan.ellison@usdoj.gov.

/s/ Scott D. Weaver 1/29/2026

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