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9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 A.E.R.T.,
12 Petitioner-Plaintiff,

13 v.

14 Minga WOFFORD, Field Office Director,
15 Mesa Verde, Office of Detention and
16 Removal, U.S. Immigrations and Customs
17 Enforcement, U.S. Department of
18 Homeland Security;

19 Sergio ALBARRAN, Acting Field Office
20 Director of the San Francisco Immigration
21 and Customs Enforcement Office

22 Todd M. LYONS, Acting Director,
23 Immigration and Customs Enforcement,
24 U.S. Department of Homeland Security;

25 Kristi NOEM, in her Official Capacity,
26 Secretary, U.S. Department of Homeland
27 Security; and

28 Pam BONDI, in her Official Capacity,
Attorney General of the United States;

Respondents-
Defendants.

No.

**PETITIONER'S NOTICE OF MOTION
AND EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER**

**POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration; Request
for Declaratory and Injunctive Relief

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NOTICE OF MOTION

Petitioner A.E.R.T. applies to this Honorable Court for a temporary restraining order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as the U.S. Attorney General, from detaining A.E.R.T. without immediately providing him a bond hearing. A.E.R.T. requests either his immediate release him or an immediate bond hearing to which he is entitled. In addition, to preserve this Court's jurisdiction, Petitioner also requests that this Court order the government not to transfer him outside of the District.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: December 11, 2025

Respectfully submitted,

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna

Attorney for Petitioner-Plaintiff A.E.R.T.

I. INTRODUCTION

On August 15, 2025, immigration authorities arrested A.E.R.T. after approaching him on the street, without a warrant, as parked his car to go to the beach with his son. He was placed into removal proceedings to appear before an Immigration Judge (“IJ”) and was charged with having entered the United States without inspection and being present without valid immigration documents. 8 U.S.C. § 1182(a)(6)(A)(i), § 1182(a)(7)(A)(i). A.E.R.T. requested a bond redetermination hearing before an immigration judge. A.E.R.T. is not a flight risk, as evidenced by his compliance and his deep ties to the community, including having his 1-year-old son and living with his girlfriend of 3 years. He is not a danger to the community, as he has no criminal convictions and was gainfully employed in three jobs. He was granted a Special Juvenile Immigrant Visa (“SIJS”) on November 23, 2022.¹ On September 29, 2025, the IJ told A.E.R.T. that they lacked jurisdiction to conduct a bond redetermination hearing.

A.E.R.T. has resided in the United States since July 2021 and lives in Rochester, New York.² He fled Honduras at the age of 14 years old because he was abused and neglected and feared persecution from gang members that murdered his brother [REDACTED]. He established a life in Rochester, New York. He lived with his son, girlfriend, and his guardian.³ A.E.R.T. worked at a clothing school at a mall, at [REDACTED] and [REDACTED]. He also attended high school and needed to complete a few classes to obtain his high school diploma.

A.E.R.T.’s summary denial of a bond hearing and indefinite detention flout the Constitution. The *only* legitimate interests that civil immigration detention serves are mitigating flight risk and preventing danger to the community. When those interests are absent, the Fifth Amendment’s Due Process Clause squarely prohibits detention. Additionally, by summarily arresting and detaining A.E.R.T. without affording him a bond hearing, the government violated Petitioner’s procedural due process rights.

As a result of his arrest and detention, A.E.R.T. is suffering irreparable and ongoing harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes irreparable

¹ See Exhibit 2, SIJS Grant Notice

² See Exhibit 6, Notice to Appear

³ See Exhibit 3, Son’s Birth Certificate

injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017). Indeed, “[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Since being detained, A.E.R.T. has suffered from sleep deprivation, lack of proper hygiene, and food deprivation. A.E.R.T. is currently detained at Mesa Verde in a large, open dormitory with approximately 100 other individuals. Many individuals are ill with flu-like symptoms. The detention has caused him severe emotional distress, and he feels sad and depressed. He deeply misses his family. He is still unable to sleep properly. A.E.R.T. is worried about missing work to support his son and mother of his child, both of which as United States Citizens.⁴ Every additional day A.E.R.T. spends in unlawful detention subjects him and others to further irreparable harm.

In light of this irreparable harm, and because he is likely to succeed on the merits of his APA and due process claims, A.E.R.T. respectfully requests that this Court issue an Ex-Parte temporary restraining order (“TRO”) either immediately releasing him from custody or requiring the government to immediately hold a bond hearing in front of a neutral decision-maker. Confronted with substantially identical facts and legal issues, courts have recently granted the exact relief Petitioner seeks. *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025); *See Alvarez-Chavez v Kaiser*, 25-cv-06984-LB, at *9 (N.D. Cal. Oct. 9, 2025); *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *10 (D. Mass. Oct. 3, 2025) (granting TRO; ordering that the government released plaintiff unless he was provided a bond hearing within seven business days of the date of the order); *See also, e.g., Barrera v. Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *1, *4–7 (W.D. Ky. Sept. 19, 2025) (ordering the release of a petitioner who was present in the U.S. for over twenty years, with three U.S. citizen children, because section 1226, not section 1225, applied; “If Congress had intended for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then it would not have recently adopted an amendment to Section 1226 that prescribes a subset of noncitizens be exempt from the discretionary bond

⁴ See Exhibit 5,  Declaration

framework.” (cleaned up and collecting cases)); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) (same; petitioner had been in the United States for more than twelve years and was “not ‘seeking admission’ into the United States”); *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 2682255, at *6–10, *13 (E.D. Va. Sept. 19, 2025) (ordering immediate release under § 1226, and rejecting argument that § 1225(b)(2) applied to someone like the petitioner who had been in the United States for several months, had not committed any crimes, and attended all required meetings with ICE officials); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS 171364, at *15–16 (C.D. Cal. July 28, 2025) (same; “respondents fail to articulate any valid justification, legal or otherwise, for the application of § 1225 to Petitioners as applicants for admission.” (cleaned up)).

To maintain this Court’s jurisdiction, the Court should also prohibit the government from transferring A.E.R.T. out of this District and removing him from the country until these proceedings have concluded.

II. STATEMENT OF FACTS AND CASE

Since mid-May 2025, DHS has initiated an aggressive new enforcement campaign targeting people who are in regular removal proceedings in immigration court, many of whom have pending applications for asylum or other relief. This coordinated operation is aimed at dramatically accelerating deportations by arresting people at the courthouse or at the ICE office and placing them into expedited removal. The Trump administration implemented a policy to drastically increase immigration arrests to a target of at least 3,000 per day. According to White House officials like Stephen Miller, this directive prioritized arrest numbers over the individuals’ criminal history, encouraging agents to conduct mass round-ups in public spaces rather than targeted investigations.

As a result, arrests of non-citizens with no criminal record surged by over 800%, and two-thirds of those deported had no criminal history. This focus on quantity over public safety led to a new and aggressive tactic: systematically arresting immigrants at courthouses and ICE appointments, regardless of the status of their legal cases. This has created a climate of fear, discouraging people from attending their mandatory hearings or ICE appointments.

1 In addition, individuals are now held for extended periods, sometimes days, in temporary
2 holding cells that are not designed for overnight or prolonged detention, often under inhumane
3 conditions. Government officials have justified these harsh conditions not as a matter of
4 necessity, but as an intentional deterrent, which is not a constitutionally permissible reason for
5 detention.

6 It is the position of the Executive Office for Immigration Review (EOIR), which houses
7 both the BIA and immigration judges, that 8 U.S.C. § 1225(b)(2)(A) applies to all individuals
8 who arrived in the United States without documents, regardless of how long they have lived in the
9 United States and regardless of how far they were apprehended from the border. However, §
10 1225(b)(2)(A) does not apply to individuals, like Petitioner, who are present in the United States.
11 Instead, such individuals are subject to detention under a different statute, 8 U.S.C. § 1226(a), and
12 eligible for release on bond. Nevertheless, earlier in July 2025, ICE released a memorandum
13 instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR,
14 to reject bond redetermination hearings for applicants who arrived in the United States without
15 documents.

16 On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, adopting DHS's
17 arguments, overruling prior agency practice, and holding that § 1225(b)(2)(A) applies to all
18 noncitizens present in the United States without admission, including long-term residents who
19 entered without inspection, subjecting them to mandatory detention during removal proceedings.
20 See *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025).

21 This reading is a violation of the statute and due process. Historically, DHS interpreted §
22 1226(a) as applying to individuals like the petitioner - those present without admission but
23 apprehended inland after unlawful entry - allowing bond hearings.

24 A.E.R.T. has resided in the United States since July 2021 and lives in Rochester, New
25 York.⁵ He fled Honduras at the age of 14 years old because he was abused and neglected and
26 feared persecution from gang members that murdered his brother on June 2, 2021. He established
27

28 ⁵ See Exhibit 6, Notice to Appear

1 a life in Rochester, New York. He lived with his son, girlfriend, and his guardian.⁶ A.E.R.T.
2 worked at a clothing school at a mall, at [REDACTED] and [REDACTED]. He also attended high school
3 and needed to complete a few classes to obtain his high school diploma.

4 A.E.R.T. was never asked to report to I.C.E. and did not have regular check-ins. Given
5 that he arrived as an unaccompanied minor he was helped by a nonprofit to apply for the special
6 immigrant juvenile visa ("SIJS"), which was granted to him on November 23, 2022.⁷

7 A.E.R.T. met his girlfriend and mother of his son in high school when he was 15 years
8 old. His girlfriend is a United States citizen, and they have been together for 3 years.⁸ In fact,
9 A.E.R.T. is still in high school and needs to complete a few courses to graduate and receive his
10 high school diploma. A.E.R.T. is also a father to a son, who is a United States citizen and was
11 born on February 24, 2024. A.E.R.T. is also the main financial provider for the family and holds
12 three jobs.

13 Being an accompanied minor, A.E.R.T. applied and was granted a special immigrant
14 juvenile visa.⁹ His guardian is his girlfriend's grandmother. A.E.R.T. lives with his girlfriend, his
15 girlfriend's grandmother/guardian, and his son in a two-bedroom apartment in Rochester, New
16 York. He has been living with them for almost two years. A.E.R.T. holds three jobs. He works in
17 a clothing store at a mall, working 30 hours a week. He also works part time at [REDACTED] and
18 does [REDACTED] with his driver's permit. A.E.R.T. was working at the clothing store for
19 4 months and was working at [REDACTED] for 3 weeks before he was detained.

20 A few weeks before his graduation in May of 2025, A.E.R.T. was detained by police
21 officers at his clothing store job. He was not cited; he was not taken to jail and has never been to
22 court nor charged for this incident. On or about in May of 2025, his girlfriend and his son were
23 waiting for him to finish work when two individuals started bothering his girlfriend. Feeling
24 protective of his girlfriend and his son, a fight broke out between him and several individuals.
25 The police arrived and briefly detained A.E.R.T. and talked to several witnesses. They searched

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27 ⁶ See Exhibit 3, Son's Birth Certificate

⁷ See Exhibit 2, SIJS Grant Notice

⁸ See Exhibit 5, [REDACTED] Declaration

⁹ See Exhibit 2.

1 A.E.R.T.'s car and his belongings and found an airsoft gun. The police took possession of the
2 imitation firearm and let A.E.R.T. and the other individuals go without being arrested or cited.

3 A.E.R.T. never received any notice from immigration nor court regarding his immigration
4 status, notice to appear in immigration court, nor any notice to appear in criminal court. A.E.R.T.
5 continued to work and provide for his family. He has a son [REDACTED]¹⁰ His
6 girlfriend of 3 years has been supportive since his detention on August 15th, 2025, and has used
7 her savings from working at McDonalds to obtain A.E.R.T. legal representation.¹¹

8 A.E.R.T. was detained on August 15th, 2025. On August 15th, 2025, A.E.R.T. started his
9 day by taking care of his son while his girlfriend worked. At around 10am, A.E.R.T. went to visit
10 her at McDonalds with their son, so they could be near her while she worked. A.E.R.T. noticed a
11 car that he had not seen in his street before when he left his apartment but thought nothing of it,
12 just thought it was out of place. After spending 45 minutes in McDonalds, A.E.R.T. drove to the
13 beach with his son around 11am. As soon as he parked, three cars, including the car he had seen
14 outside of his apartment earlier that day, cornered him. Two agents in plain clothes and with an
15 I.C.E. vest approached him and pulled him out of his car while his son sat in the car seat. As the
16 I.C.E. agents placed him in handcuffs, A.E.R.T. tried to explain to the agents that he had special
17 juvenile immigrant visa. The officers replied that it was "canceled" and that he was "illegal".

18 A.E.R.T. was detained and he did not resist, but he pled several times for the officers to
19 take his son out of the car because it was August, it was hot, and it was extremely dangerous for a
20 toddler to be left inside of a car at such high temperature. A.E.R.T. pled several times until the
21 officers took the baby out and gave the baby to A.E.R.T. to hold while he was in handcuffs. The
22 agents contacted A.E.R.T.'s girlfriend to pick up their son. Without a car, she began walking
23 towards the beach until the agents decided to pick her up.¹²

24 At the scene, the agents began questioning A.E.R.T.'s girlfriend on her immigration status
25 and she responded that she was a United States citizen and was then free to leave with the baby.

26 A.E.R.T. at no time resisted his detention and complied with all directives. He was taken

27 ¹⁰ See Exhibit 3, Son's Birth Certificate

28 ¹¹ See Exhibit 5, [REDACTED] Declaration

¹² See Exhibit 5, [REDACTED] Declaration

1 to a detention center by Lake Ontario where he was questioned for 2 hours and had his photos
2 taken. They asked if A.E.R.T. knew why he was arrested and he told them that he had a special
3 immigrant juvenile visa. The officers told him that it was revoked because of the incident that
4 occurred at the mall earlier that summer. A.E.R.T. was taken to a smaller cell and waited two
5 more hours before he was transported to another detention center, the Batavia detention facility.

6 A.E.R.T. was placed in a border patrol car and was transported to the Batavia detention
7 facility in Buffalo, New York, which was an hour-long drive. Once A.E.R.T. arrived, he was
8 processed. Officers took his clothes, let him shower, gave him a uniform, and then gave him an
9 apple, water, and chips to eat. A.E.R.T. was then placed in a concrete cell with no bed nor bench
10 to sleep in, with 10 other individuals that were all waiting to be housed. After two days of waiting
11 in a concrete cell, A.E.R.T. was rehoused to a cell with a bed, and spent 25 days in Batavia. ART
12 lost a lot of weight in Batavia. The food was not nutritious and there was no commissary.

13 After spending 25 days in Batavia detention facility, A.E.R.T. and several dozens of
14 detainees were taken to the airport. A.E.R.T. and the other detainees were bused to the last gate
15 without going through the airport security, outside of public view, and boarded a commercial
16 plane that had its logo covered. The plane ride was from New York to Louisiana.

17 When A.E.R.T. and the other detainees arrived in Louisiana, they were bused to a
18 detention center that was in a remote area concealed by trees. A.E.R.T. was again processed and
19 housed in a new detention facility that had an open space enclosed by metal doors where several
20 hundred people were detained. The space was dark and cold and intimidated A.E.R.T. At 4am
21 A.E.R.T. and other detainees were woken up to eat breakfast. Lunch was served at 12pm and then
22 dinner at 6pm. A.E.R.T. spent 2-3 days in that facility, a facility described as a prison, where the
23 water given to drink was yellow in color, before being transported by bus to the airport again.
24 From Louisiana A.E.R.T. and dozens of detainees boarded a plane that flew to Texas, A.E.R.T.
25 cannot remember the city, but explains that it was a layover before continuing to El Paso, Texas.
26 In El Paso, Texas, 30 detainees were placed in a small cell that was made for 10 people to spend
27 the night. There were no beds and everyone slept on a concrete floor.

28 From El Paso, Texas, the detainees reboarded a plane and were flown to Washington,

1 where additional detainees were picked up and boarded the plane. Lastly, the plane flew from
2 Washington to California, where the detainees were to be housed in Mesa Verde detention center
3 in Bakersfield, California. The transportation was difficult, tiring, and left many with unsatisfied
4 hunger. The only food given to A.E.R.T. during these several trips were cheese sandwiches and
5 water for breakfast, lunch, and dinner.

6 A.E.R.T. has been detained at the Mesa Verde detention facility for approximately 3
7 months. When he arrived in California, he and several hundred detainees were brought to a
8 building to be processed for about an hour before they were placed on buses to be housed. When
9 they arrived at the facility they waited 30 minutes outside in the cold before they entered a dining
10 room where everyone waited to be processed again, searched, provided new uniforms, and given
11 a cell. This process took the entire night from 5pm when A.E.R.T. arrived in California and until
12 6am the next day when he was housed in a cell and given food to eat. A.E.R.T. is currently in a
13 cell that has several bunk beds and there are approximately 400 detainees.

14 A.E.R.T.'s arrest and detention have caused him, his family, and his community
15 tremendous and ongoing harm. Since being detained, A.E.R.T. has suffered from sleep
16 deprivation, lack of proper hygiene, and food deprivation. A.E.R.T. is currently detained at Mesa
17 Verde in a large, open dormitory with approximately 100 other individuals. Many individuals are
18 ill with flu-like symptoms. The detention has caused him severe emotional distress, and he feels
19 sad and depressed. He deeply misses his family. He is still unable to sleep properly. A.E.R.T. is
20 worried about missing work and not being able to support and be with his son and mother of his
21 child.¹³ Every additional day A.E.R.T. spends in unlawful detention subjects him and others to
22 further irreparable harm.

23 A.E.R.T. is not a flight risk, as evidenced by his compliance and his deep ties to the
24 community, including his son, his girlfriend and mother of his son, and his guardian. He is not a
25 danger to the community, as he has no criminal convictions and was gainfully employed in 3
26 jobs. Further, he was granted a Special Juvenile Immigrant Visa ("SIJS") on November 23,

27
28 ¹³ See Exhibit 3, Son's Birth Certificate

2022.¹⁴

This case has substantial factual and legal support to be granted, resulting in a bond hearing for A.E.R.T. or release from custody. Intervention from this Court is therefore required.

III. LEGAL ARGUMENT

A.E.R.T. is entitled to a temporary restraining order if he establishes that he is “likely to succeed on the merits, . . . 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 temporary restraining order standards are “substantially identical”). Even if A.E.R.T. does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, A.E.R.T. overwhelmingly satisfies both standards.

Furthermore, the requirements for issuing a temporary restraining order without notice are met here. *See* Fed. R. Civ. P. 65(b). A.E.R.T. notified respondents’ counsel on October 12, 2025, that he would be filing the motion by email to the U.S. Attorney’s Office email address for habeas petition filings. A.E.R.T. also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See Pinchi v. Noem*, No. 25-cv-05632-RML, 2025 WL 1853763, at *4 (N.D. Cal. July 4, 2025) (granting ex parte temporary restraining order).

A. A.E.R.T. WARRANTS AN EX-PARTE TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*

¹⁴ See Exhibit 2, SIJS Grant Notice

1 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). A.E.R.T. is likely to
 2 remain in unlawful custody in violation of his due process rights without intervention by this
 3 Court. A.E.R.T. will continue to suffer irreparable injury if he continues to be detained without
 4 due process.

5 **B. A.E.R.T. IS LIKELY TO SUCCEED ON THE MERITS**

6 The immigration judge erred in concluding that he was mandatorily detained pursuant to 8
 7 U.S.C. § 1225(b)(2)(A). The Immigration and Nationality Act (INA) prescribes three basic forms
 8 of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the
 9 detention of noncitizens in standard non-expedited removal proceedings before an immigration
 10 judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing
 11 at the outset of their detention. *See* 8 C.F.R. § 1003.19(a); *see also* 8 C.F.R. § 1236.1(d).
 12 Noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to
 13 mandatory detention. *See* 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention
 14 of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent
 15 arrivals seeking admission referred to under § 1225(b)(2). Last, the Act also provides for
 16 detention of noncitizens who have been previously ordered removed, including individuals in
 17 withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

18 This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2). The detention
 19 provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform
 20 and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03,
 21 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently
 22 amended earlier this year by the Laken Riley Act, Pub. L. No. 119–1, 139 Stat. 3 (2025).
 23 Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general,
 24 people who entered the country without inspection were not considered detained under § 1225
 25 and that they were instead detained under § 1226(a). *See* *Inspection and Expedited Removal of*
 26 *Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*,
 27 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

28 Thus, in the decades that followed, most people who entered without inspection—unless

1 they were subject to some other detention authority—received bond hearings. That practice was
2 consistent with many more decades of prior practice, in which noncitizens who were not deemed
3 “arriving” were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. §
4 1252(a); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply
5 “restates” the detention authority previously found at § 1252(a)).

6 Respondents’ new policy turns this well-established understanding on its heads and
7 violates the statutory scheme. Indeed, this legal theory that noncitizens who entered the United
8 States without admission or parole are ineligible for bond hearings was previously rejected by a
9 District Court in the Western District of Washington, among others, finding that such individuals
10 are entitled to bond redetermination hearings before immigration judges, and rejecting the
11 application of § 1225(b)(2) to such cases. *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025
12 WL 1193850, at *12 (W.D. Wash. Apr. 24, 2025).

13 Despite this finding from a federal court, in July 2025, ICE released a memorandum
14 instructing its attorneys to coordinate with the Department of Justice, the agency housing EOIR,
15 to reject bond redetermination hearings for applicants who arrived in the United States without
16 documents. On September 5, 2025, the BIA issued *Matter of Yajure Hurtado*, adopting DHS’s
17 arguments, overruling prior agency practice, and holding that § 1225(b)(2)(A) applies to all
18 noncitizens present in the United States without admission, including long-term residents who
19 entered without inspection, subjecting them to mandatory detention during removal proceedings.
20 *See Yajure Hurtado*, 29 I&N Dec. at 220.

21 This reading is a violation of the statute and due process. Historically, DHS interpreted §
22 1226(a) as applying to individuals like the petitioner - those present without admission but
23 apprehended inland after unlawful entry - allowing bond hearings.

24 This current interpretation by the DHS defies the INA. The plain text of the statutory
25 provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. Section
26 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen] is to be
27 removed from the United States.” These removal hearings are held under § 1229a, which
28 “decid[e] the inadmissibility or deportability of a [noncitizen].” The text of § 1226 also explicitly

1 applies to people charged as being inadmissible, including those who entered without inspection.
2 See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people makes clear that, by
3 default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore
4 leaves no doubt that it applies to people who face charges of being inadmissible to the United
5 States, including those who are present without admission or parole. By contrast, § 1225(b)
6 applies to people arriving at U.S. ports of entry or who recently entered the United States. The
7 statute’s entire framework is premised on inspections at the border of people who are “seeking
8 admission” to the United States. 8 U.S.C. § 1225(b)(2)(A).

9 Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to people
10 like Petitioner who are alleged to have entered the United States without admission or parole
11 and/or who have been residing inside of the United States.

12 The government’s recent policy shift, prompted by the July 2025 DHS guidance and
13 *Yajure Hurtado*, is bereft of compelling justification and appears to be a policy-driven choice
14 rather than one that is textually compelled. This agency interpretation is entitled to no judicial
15 deference. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395–96 (2024). See also
16 *Rodriguez Vazquez v. Bostock, et al.*, 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash.
17 Sept. 30, 2025) (declaring that Bond Denial Class members were detained under 8 U.S.C. §
18 1226(a) and were not subject to mandatory detention under 8 U.S.C. § 1225(b)(2), and declaring
19 that the Tacoma Immigration Court’s practice of denying bond to Bond Denial Class members on
20 the basis of § 1225(b)(2) violated the Immigration and Nationality Act).

21 Moreover, this abrupt change implicates due process, as the Petitioner maintained a
22 protected liberty interest in a bond hearing under the prior legal regime. See *Zadvydas*, 533 U.S.
23 at 690 (prolonged detention raises significant due process concerns); *United States v. Verdugo-*
24 *Urquidez*, 494 U.S. 259, 269 (1990). To revoke the opportunity for a bond hearing without
25 individualized process, where one was previously afforded, is an arbitrary deprivation of liberty
26 that shocks the conscience. See *Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950).

27 The Eastern District of California has grappled with similar claims and facts in *Lepe v.*
28 *Andrews*. Then, this court ordered that the respondents release the petitioner immediately due to a

1 lack of flight risk or danger indicia. This court also ordered that, “if the government seeks to re-
 2 detain petitioner, it must provide no less than seven (7) days’ notice to petitioner and must hold a
 3 pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its
 4 implementing regulations, at which petitioner’s eligibility for bond must be considered.” *Lepe v.*
 5 *Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23,
 6 2025).

7 Other district courts across the country have also rejected similar reinterpretations post-
 8 *Yajure Hurtado*. See *Alvarez-Chavez v Kaiser*, 25-cv-06984-LB, at *9 (N.D. Cal. Oct. 9, 2025);
 9 *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 2809996, at *10 (D. Mass. Oct.
 10 3, 2025) (granting TRO; ordering that the government released plaintiff unless he was provided a
 11 bond hearing within seven business days of the date of the order); *See also, e.g., Barrera v.*
 12 *Tindall*, No. 3:25-cv-541-RGJ, 2025 WL 2690565, at *1, *4–7 (W.D. Ky. Sept. 19, 2025)
 13 (ordering the release of a petitioner who was present in the U.S. for over twenty years, with three
 14 U.S. citizen children, because section 1226, not section 1225, applied; “If Congress had intended
 15 for Section 1225 to govern all noncitizens present in the country, who had not been admitted, then
 16 it would not have recently adopted an amendment to Section 1226 that prescribes a subset of
 17 noncitizens be exempt from the discretionary bond framework.” (cleaned up and collecting
 18 cases)); *Singh v. Lewis*, No. 4:25-cv-96-RGJ, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025)
 19 (same; petitioner had been in the United States for more than twelve years and was “not ‘seeking
 20 admission’ into the United States”); *Hasan v. Crawford*, __ F. Supp. 3d __, 2025 WL 2682255, at
 21 *6–10, *13 (E.D. Va. Sept. 19, 2025) (ordering immediate release under § 1226, and rejecting
 22 argument that § 1225(b)(2) applied to someone like the petitioner who had been in the United
 23 States for several months, had not committed any crimes, and attended all required meetings with
 24 ICE officials); *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, 2025 U.S. Dist. LEXIS
 25 171364, at *15–16 (C.D. Cal. July 28, 2025) (same; “respondents fail to articulate any valid
 26 justification, legal or otherwise, for the application of § 1225 to Petitioners as applicants for
 27 admission.” (cleaned up)).

28 The Due Process Clause applies to “all ‘persons’ within the United States, including

1 [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”
2 *Zadvydas*, 533 U.S. at 693. “The touchstone of due process is protection of the individual against
3 arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the
4 exercise of power without any reasonable justification in the service of a legitimate government
5 objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from
6 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
7 the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

8 To comply with substantive due process, the government’s deprivation of an individual’s
9 liberty must be justified by a sufficient purpose. Therefore, immigration detention, which is
10 “civil, not criminal,” and “nonpunitive in purpose and effect,” must be justified by either
11 (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690; *see Hernandez*, 872 F.3d at 994
12 (“[T]he government has no legitimate interest in detaining individuals who have been determined
13 not to be a danger to the community and whose appearance at future immigration proceedings can
14 be reasonably ensured by a lesser bond or alternative conditions.”). When these rationales are
15 absent, immigration detention serves no legitimate government purpose and becomes
16 impermissibly punitive, violating a person’s substantive due process rights. *See Jackson v.*
17 *Indiana*, 406 U.S. 715, 738 (1972) (detention must have a “reasonable relation” to the
18 government’s interests in preventing flight and danger); *see also Mahdawi v. Trump*, No. 2:25-
19 CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering release from custody after
20 finding petitioner may “succeed on his Fifth Amendment claim if he demonstrates *either* that the
21 government acted with a punitive purpose *or* that it lacks any legitimate reason to detain him”).

22 A.E.R.T. is not a flight risk, as evidenced by his compliance with the officer’s requests
23 and his deep ties to the community, including his son, girlfriend, and guardian. He is not a danger
24 to the community, as he has no criminal convictions and was gainfully employed.

25 As immigration detention is civil, it can have no punitive purpose. The government’s only
26 interest in holding an individual in immigration detention can be to prevent danger to the
27 community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*,
28 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for

1 detaining A.E.R.T. without a bond hearing.

2 Moreover, the “fiscal and administrative burdens” that his immediate release or a lawful
3 bond hearing would impose is nonexistent in this case. *See Mathews v. Elridge*, 424 U.S. 319,
4 334-35 (1976). A.E.R.T. does not seek a unique or expensive form of process, but rather a routine
5 hearing regarding whether his release should be revoked and whether he should be incarcerated.
6 As the Ninth Circuit noted in 2017, which remains true today, “[t]he costs to the public of
7 immigration detention are ‘staggering’: \$158 each day per detainee, amounting to a total daily
8 cost of \$6.5 million.” *Hernandez*, 872 F.3d at 996.

9 Releasing A.E.R.T. from unlawful custody or providing A.E.R.T. a bond hearing would
10 decrease the risk of him being erroneously deprived of his liberty. Due process also requires
11 consideration of alternatives to detention at any custody redetermination hearing that may occur.
12 The primary purpose of immigration detention is to ensure a noncitizen’s appearance during
13 removal proceedings. *Zadvydas*, 533 U.S. at 697. Detention is not reasonably related to this
14 purpose if there are alternatives to detention that could mitigate risk of flight. *See Bell v. Wolfish*,
15 441 U.S. 520, 538 (1979). Accordingly, alternatives to detention must be considered.

16 As the above-cited authorities show, A.E.R.T. is likely to succeed on his claim that the
17 denial of a bond hearing is unlawful. And, at the very minimum, he clearly raises serious
18 questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632
19 F.3d at 1135.

20 **C. A.E.R.T. WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE**
21 **RELIEF**

22 A.E.R.T. will suffer irreparable harm were he to remain detained after being deprived of
23 his liberty and subjected to unlawful incarceration by immigration authorities without being
24 provided the constitutionally adequate process that this motion for a temporary restraining order
25 seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d
26 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail
27 awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts
28 family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l*

1 *Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the
 2 Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject
 3 to immigration detention” including “subpar medical and psychiatric care in ICE detention
 4 facilities, the economic burdens imposed on detainees and their families as a result of detention,
 5 and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872
 6 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention
 7 centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced
 8 Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of
 9 environmental health and safety standards; staffing shortages affecting the level of care detainees
 10 received for suicide watch, and detainees being held in administrative segregation in unauthorized
 11 restraints, without being allowed time outside their cell, and with no documentation that they
 12 were provided health care or three meals a day).¹⁵

13 A.E.R.T.’s arrest and detention have caused him, his family, and his community
 14 tremendous and ongoing harm. Since being detained, A.E.R.T. has suffered from sleep
 15 deprivation, lack of proper hygiene, and food deprivation. A.E.R.T. is currently detained at Mesa
 16 Verde in a large, open dormitory with approximately 100 other individuals. Many individuals are
 17 ill with flu-like symptoms. The detention has caused him severe emotional distress, and he feels
 18 sad and depressed. He deeply misses his family. He is still unable to sleep properly. A.E.R.T. is
 19 worried about missing work and not being able to support and be with his son and mother of his
 20 child. Every additional day A.E.R.T. spends in unlawful detention subjects him and others to
 21 further irreparable harm.

22 As detailed *supra*, A.E.R.T. contends that his detention, absent a bond hearing before a
 23 neutral adjudicator, violates his due process rights under the Constitution. It is clear that “the
 24 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
 25 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
 26 Thus, a temporary restraining order is necessary to prevent A.E.R.T. from suffering irreparable

27 ¹⁵ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf>
 28 (last accessed Feb. 6, 2024).

1 harm by being subject to unlawful and unjust detention.

2 **D. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR**
3 **GRANTING THE TEMPORARY RESTRAINING ORDER**

4 The balance of equities and the public interest undoubtedly favor granting this temporary
5 restraining order. First, the balance of hardships strongly favors A.E.R.T.. The government
6 cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See*
7 *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is
8 harmed in any legally cognizable sense by being enjoined from constitutional violations.”).
9 Therefore, the government cannot allege harm arising from a temporary restraining order or
10 preliminary injunction ordering it to comply with the statute and the Constitution.

11 Further, any burden imposed by requiring the ICE to release A.E.R.T. or to provide him a
12 hearing before a neutral is both *de minimis* and clearly outweighed by the substantial harm he will
13 suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s
14 interest lies on the side of affording fair procedures to all persons, even though the expenditure of
15 governmental funds is required.”).

16 A temporary restraining order is in the public interest. First and most importantly, “it
17 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
18 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
19 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
20 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
21 effectively be granted permission to detain A.E.R.T. in violation of the requirements of Due
22 Process and the statute. “The public interest and the balance of the equities favor ‘prevent[ing] the
23 violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting
24 *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits
25 from an injunction that ensures that individuals are not deprived of their liberty and held in
26 immigration detention because of bonds established by a likely unconstitutional process.”); *cf.*
27 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are
28 implicated when a constitutional right has been violated, because all citizens have a stake in

upholding the Constitution.”).

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

This is the first day Petitioner can bring this action because there is a scarcity of qualified federal and immigration attorneys in this jurisdiction, and the demand for competent lawyers far exceeds availability. The undersigned is aware of the shortage of legal services available to individuals such as Petitioner, as the undersigned office has been receiving 5-10 calls per week from prospective clients seeking assistance. The undersigned can only take a few of these cases due to already being at capacity. The same individuals will re-inquire about services’ availability even weeks later, stating they could not locate different specialized counsels. The undersigned has heard similar statements from colleagues who are also immigration and/ or federal litigation lawyers.

IV. CONCLUSION

For all the above reasons, this Court should find that A.E.R.T. warrants a temporary restraining order and a preliminary injunction ordering that Respondents (1) release him from his unlawful custody; or, (2) provide him with a bond hearing before a neutral adjudicator; and (3) refrain from transferring him out of this district. An immediate release is preferred because A.E.R.T. is not a flight risk nor a danger to society.

Dated: December 11, 2025

Respectfully submitted,

/s/ Natalia Santanna
Natalia Vieira Santanna
Attorney for Petitioner-Plaintiff