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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
CALIFORNIA

O.A.M.R.,
Petitioner-Plaintiff,

v.

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

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

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

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

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

Respondents-Defendants.

Case 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

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

NOTICE OF MOTION

Petitioner O.A.M.R. 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 O.A.M.R. without immediately providing him a bond hearing. O.A.M.R. requests either his immediate release 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 21, 2025

Respectfully submitted,

/s/ Natalia Vieira Santanna

Natalia Vieira Santanna

Attorney for Petitioner-Plaintiff O.A.M.R.

I. INTRODUCTION

On December 06, 2025, immigration authorities arrested O.A.M.R. After conducting a traffic stop, officers detained him when he exited the vehicle and arrested him without a warrant. He was placed into removal proceedings to appear before an 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). On December 11, 2025, O.A.M.R. requested a bond redetermination hearing before an immigration judge. EOIR has not acted upon O.A.M.R.'s request. O.A.M.R. does not present a flight risk, as demonstrated by his full compliance with the officer's requests and his strong ties to the community, including his family. Moreover, he does not pose a danger to the community, as he has no criminal history and is

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

gainfully employed. O.A.M.R. he currently has a pending Form I-918, Petition for U Nonimmigrant Status, which was filed on October 1, 2018. On June 23, 2023, U.S. Citizenship and Immigration Services issued a Bona Fide Determination Notice in connection with this petition, granting deferred action, an employment authorization document and confirming that the application was found to be bona fide and is currently under review. O.A.M.R. has resided in the United States since July 2007 and lives in Oakland, California. O.A.M.R. and family fled from El Salvador due to escalating threats from local gangs. He established a life in Oakland, California and has two United States citizen minor children. He lived with his family. O.A.M.R. worked at [REDACTED] During his free time, would spend time with his family and attend church. He has a valid California driver's license. O.A.M.R. has maintained a clean criminal record.

On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to abide by the declaratory relief and have unlawfully ordered that Petitioner be denied the opportunity to be

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

released on bond. On December 18, 2025, the court entered a final judgment declaring the DHS Policy unlawful and granted vacatur under the APA. Petitioner O.A.M.R is a member of the Bond Eligible Class, as he: a. does not have lawful status in the United States and is currently detained at the Mesa Verde Facility Detention. He was apprehended by immigration authorities on Saturday December 6th, 2025 around 8:30 A.M.; b. entered the United States without inspection over 18 years ago and was not apprehended upon arrival, *cf. id.*; and, c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

After apprehending Petitioner on 12/06/25, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

Immigration judges have informed class members in bond hearings that they have been instructed by “leadership” that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency’s prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista*, the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

As a result of his arrest and detention, O.A.M.R. is suffering irreparable and ongoing harm. The unconstitutional deprivation of “physical liberty” “unquestionably constitutes irreparable 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, O.A.M.R. has suffered from sleep deprivation, lack of proper hygiene, and food deprivation. Additionally, O.A.M.R. is unable to spend time with his family and community. Every additional day O.A.M.R. spends in unlawful

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

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, O.A.M.R. 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.

To maintain this Court’s jurisdiction, the Court should also prohibit the government from transferring O.A.M.R. out of this District and removing him from the country until these proceedings have concluded.

II. LEGAL STANDARD

O.A.M.R. 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 O.A.M.R. 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, O.A.M.R. 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). O.A.M.R. notified respondents’ counsel on December 21, 2025, that he would be filing the motion by email to the U.S. Attorney’s Office email address for habeas petition filings. O.A.M.R. also set out specific facts demonstrating that immediate and irreparable injury, loss, or damage may result before respondents can be heard in opposition. *See*

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

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).

IV. ARGUMENT

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

B. O.A.M.R. is likely to succeed in the merits

The immigration judge erred in concluding that he was mandatorily detained pursuant to 8 U.S.C. § 1225(b)(2)(A). 47. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, see 8 U.S.C. § 1226(c). Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last, the Act also provides for

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

detention of noncitizens who have been previously ordered removed, including individuals in withholding-only proceedings, see 8 U.S.C. § 1231(a)–(b).

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

Thus, in the decades that followed, most people who entered without inspection—unless they were subject to some other detention authority—received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an IJ or other hearing officer. See 8 U.S.C. § 1252(a) (1994); see also H.R. Rep. No. 104–469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a)).

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

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

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

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

This current interpretation by the DHS defies INA. The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, which "decid[e] the inadmissibility or deportability of a[] [noncitizen]." The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A).

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

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

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

Moreover, this abrupt change implicates due process, as the Petitioner maintained a protected liberty interest in a bond hearing under the prior legal regime. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (prolonged detention raises significant due process concerns); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990). To revoke the opportunity for a bond hearing without individualized process, where one was previously afforded, is an arbitrary deprivation of liberty that shocks the conscience. *See Johnson v. Eisentrager*, 339 U.S. 763, 784 (1950).

The Eastern District of California has grappled with similar claims and facts in *Lepe v. Andrews*. Then, this court ordered that the respondents release the petitioner immediately due to a lack of flight risk or danger indicia. This court also ordered that, “if the government seeks to re-detain petitioner, it must provide no less than seven (7) days’ notice to petitioner and must hold a pre-deprivation bond hearing before a neutral arbiter pursuant to section 1226(a) and its implementing regulations, at which petitioner's eligibility for bond must be considered.” *Lepe v.*

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

Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *10 (E.D. Cal. Sept. 23, 2025)

Other district courts across the country have also rejected similar reinterpretations post-Yajure Hurtado. *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 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)).

The Due Process Clause applies to “all ‘persons’ within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent.”

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

Zadvydas, 533 U.S. at 693. “The touchstone of due process is protection of the individual against arbitrary action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including “the exercise of power without any reasonable justification in the service of a legitimate government objective,” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

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

O.A.M.R. does not present a flight risk, as demonstrated by his full compliance with the officer’s requests and his strong ties to the community, including his family. Moreover, he does not pose a danger to the community, as he has no criminal history and is gainfully employed. O.A.M.R. he currently has a pending Form I-918, Petition for U Nonimmigrant Status, which was filed on October 1, 2018. On June 23, 2023, U.S. Citizenship and Immigration Services issued a

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

Bona Fide Determination Notice in connection with this petition, confirming that the application was found to be bona fide and is currently under review. As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, the government cannot plausibly assert that it has any basis for detaining O.A.M.R. without a bond hearing.

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

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

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

C. O.A.M.R. Will Suffer Irreparable Harm Absent Injunctive Relief

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

O.A.M.R. will suffer irreparable harm where he to remain detained after being deprived of his liberty and subjected to unlawful incarceration by immigration authorities without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in ICE custody are held in “prison-like conditions.” *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995. The government itself has documented alarmingly poor conditions in ICE detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).¹

Since being detained, O.A.M.R. has suffered from sleep deprivation, lack of proper hygiene, and food deprivation. Additionally, O.A.M.R. is unable to spend time with his family and community. Every additional day O.A.M.R. spends unlawful detention subjects him and others to further irreparable harm. As detailed *supra*, O.A.M.R. contends that his detention,

¹ Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed Feb. 6, 2024).

absent a bond hearing before a neutral adjudicator, violates his due process rights under the Constitution. It is clear that “the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent O.A.M.R. from suffering irreparable harm by being subject to unlawful and unjust detention.

1. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

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

Further, any burden imposed by requiring the ICE to release O.A.M.R. or to provide him a hearing before a neutral is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.”).

A temporary restraining order is in the public interest. First and most importantly, “it would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to detain O.A.M.R. in violation of the requirements of Due

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

Process and the statute. “The public interest and the balance of the equities favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are 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.

III. CONCLUSION

For all the above reasons, this Court should find that O.A.M.R. 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. A immediate release is preferred because O.A.M.R. is not a flight risk nor a danger to society.

Dated: December 21, 2025

Respectfully submitted,

/s/ Natalia Santanna

Natalia Vieira Santanna

Attorney for Petitioner-Plaintiff

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