UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MANUEL EDUARDO ORTIZ LARA

Petitioner,

v.

PAMELA BONDI, in her official capacity as U.S. Attorney General; KRISTI NOEM, in her official capacity as U.S. Secretary of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; RAUL MALDONADO, in his official capacity as Warden of the Brooklyn Metropolitan Detention Center; TODD LYONS, in his official capacity as Acting ICE Field Office Director; JUDITH ALMODOVAR, in her official capacity as Acting Field Office Director of the New York Office of U.S. Immigration and Customs Enforcement, DAREN K. MARGOLIN, in his official capacity as Director of the Executive Office of Immigration Review

Respondents.

Case No. 1:26-cv-00219

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner seeks his immediate release from immigration detention as is he currently being unlawfully detained in violation of the class-wide Declaratory Judgment in *Maldonado Bautista v. Santa Cruz*, Petitioners Fifth Amendment rights to due process of law and pursuant to Respondents' radically new reinterpretation of their statutory detention authority under the mandatory detention provisions of 8 U.S.C. § 1225 and the inapplicability of 8 U.S.C. § 1226 discretionary detention and attendant rights to a bond hearings before an Immigration Judge. The issues presented by Petitioner here are issues that have been heavily litigated in district courts around the country – including many in this district and circuit. In fact:

> The core legal issue in this case is one considered by hundreds of federal courts over recent months: whether a noncitizen at liberty, residing in the United States for years, and unexpectedly arrested and detained by ICE on the basis of a novel interpretation of the INA, must be detained until the conclusion of their removal proceedings. The judges that have considered this issue within the Eastern District of New York in the last four months have unanimously rejected the government's interpretation.

Tacuri v. Genalo, et. al., No. 25-CV-06896 (NCM), 2026 WL 35569, at *3 (E.D.N.Y. Jan. 6, 2026) (citing *Iza v. Larocco*, No. 25-cv-06915, 2025 WL 3712274, at *5–6 (E.D.N.Y. Dec. 22, 2025) (Choudhury, J.); *Y- C- v. Genalo*, No. 25-cv-06558, 2025 WL 3653496, at *3–5 (E.D.N.Y. Dec. 17, 2025) (Merle, J.); *Ye v. Maldonado*, No. 25-cv-06417, 2025 WL 3521298, at *3–6 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.); *Rodriguez-Acurio*, 2025 WL 3314420, at *12–21 (Choudhury, J.); *O.F.B. v. Maldonado*, --- F. Supp. 3d ---, No. 25-cv-06336, 2025 WL 3277677, at *3–5 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.); *Sarmiento Guerrero v. Noem*, No. 25-cv-05881, 2025 WL 3214787, at *3–6 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.); *Hyppolite v. Noem*, No. 25-cv-04304, 2025 WL 2829511, at *7–12 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.); *Artiga v. Genalo*, No. 25-cv-05208, 2025 WL 2829434, at *4–8 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.); *J.U. v. Maldonado*, --- F. Supp. 3d ---, No. 25-cv-04836, 2025 WL 2772765, at *4–9 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.)).

"More broadly, of the over two dozen district courts throughout the Second Circuit to consider the issue, all but two have sided with the view of the overwhelming majority of courts nationwide." *Id.* (citations omitted). As one district court has stated: "To put it into perspective [as of December 5, 2025], [a]t least 225 judges have ruled in more than 700 cases that this particular mandatory detention practice is illegal. And that number continues to grow each day." *Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *1 (D.R.I. Dec. 5, 2025) (citation omitted). Given that the legal issues in this case have already been determined on a class-wide basis by an Article III district court empowered to interpret and enforce the Immigration and Nationality Act and Constitution of the United States, this Court should grant Petitioner's motion for a temporary restraining order and further order his immediate release from custody and further enjoin Respondents' from again detaining Petitioner during the pendency of this action.

STATEMENT OF FACTS

Petitioner, Manuel Eduardo Ortiz Lara, is a native and citizen of the Dominican Republic born on [redacted], who has resided in the United States for approximately 11 years. Mr. Ortiz has been married to a Janett Mercedes Soto Ortiz, a Lawful Permanent Resident of the United States, for approximately 23 years. Together they have a U.S. citizen son, Adrian Manuel Ortiz Lara. Additionally, Mr. Ortiz Lara has two United States citizen grandchildren [redacted] On or about November 2014, Mr. Ortiz entered the United States without inspection and immediately relocated to the Bronx, NY, where he has lived ever since. Mr. Ortiz Lara has never been arrested or had encounters with law enforcement which would suggest he is a danger to society. On or about March 22, 2024, Mr. Ortiz's U.S. citizen son, Adrian, filed a Petition for Alien Relative, *Form* I-130, which was approved on July 6, 2025. After the approval of this immediate relative immigrant visa petition, Mr. Ortiz began consular processing

to obtain his lawful permanent residence, which includes first obtaining a provisional unlawful presence waiver, that would allow for him to travel outside of the United States briefly to then reenter the United States as a Legal Permanent Resident.[1]

On or about December 29, 2025, Mr. Ortiz Lara was innocently standing in front of a grocery store when he and several friends were approached, and then detained by, ICE officers. Mr. Ortiz Lara was then subsequently placed in removal proceedings and held in detention at the Brooklyn Metropolitan Detention Center, where he remains today. ICE did not set bond or release Mr. Ortiz Lara on conditional parole. On January 7, 2016, Petitioner was scheduled for a Master Calendar Hearing in his Removal proceedings before IJ Conroy at the Varick Street Immigration Court in New York, New York. He was represented in those proceedings by counsel Eric Hisey. While waiting to appear on behalf of Petitioner's removal proceedings, Immigration Judge Charles R. Conroy held custody determination hearings in other, related cases, where he found jurisdiction for class members in *Maldonado Bautista* and proceeded with an individualized determination of each custody redetermination hearing.

On January 9, 2026, Petitioner requested review of his custody by IJ Conroy by filing a motion for custody redetermination and release pursuant to bond. Petitioner's custody redetermination hearing was scheduled for January 14, 2026. On January 13, 2026 at 3:09 PM, Chief Immigration Judge Teresa L. Riley sent an email to all Assistant Chief Immigration Judges stating:

> Please provide the following guidance to all Immigration Judges forthwith:
>
> *Maldonado Bautista* is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*. Therefore, *Yajure Hurtado* remains binding

[1] *See*, https://www.uscis.gov/i-601a (last accessed January 14, 2026).

> precedent on agency adjudicators. For clarification, declaratory judgments differ from injunctions in that the former clarifies parties' legal rights and relationships without ordering specific actions, while the latter is a court order compelling a party to do or stop doing a specific act. A declaratory judgment is not an equitable remedy and does not, by itself, have the effect of compelling a specific action by a party.

See, Exhibit A. On January 14, 2026, prior to conducting a bond hearing, Immigration Judge Charles Conroy appeared off the record and addressed all attorneys present that day for bond hearings. IJ Conroy then proceeded to read from a piece of a paper in his hand that he would be ruling in all cases where the respondents were charged under 8 U.S.C. § 1182(a)(6)(A)(i) or 8 U.S.C. § 1182(a)(7)(A)(i)(I) ("Entry without Inspection" or "EWI") that the he did not have jurisdiction to conduct bond hearings and was required to follow the Board of Immigration Appeals ("BIA") September 5, 2025 decision in the *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The holding in *Matter of Yajure Hurtado* was based on the same statutory analysis that was rejected by the court in *Maldonado Bautista*, courts in this district and circuit, as well as the vast majority of district courts around the country. On the record, and through counsel Tito A. Saavedra, Petitioner requested IJ Conroy to state the reasons for asserting no jurisdiction for Petitioner's custody review on the record. IJ Conroy stated the reasons for declining jurisdiction, in accordance with the instruction provided by Chief Immigration Judge Teresa L. Riley. As a result, Petitioner withdrew his request for custody review and remains detained by the Respondents. Without relief from this Court, Petitioner faces the prospect of months, or even years, in immigration custody, separated from his family and community. Any appeal to the Board of Immigration Appeals is futile as Respondents have adopted an official agency policy that *Matter of Yajure Hurtado* applies over binding judgments from the federal courts. *See*, *Mejia v. Joyce*, No. 25-CV-10462 (LAK), 2025 WL 3719632, at *3 (S.D.N.Y. Dec. 23, 2025) ("Granting Mr. Mejia a bond hearing before an immigration judge would fail to remedy the statutory and constitutional

violation that has occurred here. Moreover, it would be futile because, in the absence of a statute, regulation, or a new controlling decision from the Board of Immigration Appeals ("BIA"), immigration judges will continue to be bound by the BIA's holding in *Matter of Yajure Hurtado* that "Immigration Judges lack authority to hear bond requests or to grant bond to aliens ... who are present in the United States without admission"). Accordingly, this Court should order Mr. Ortiz Lara's immediate release from custody.

JURISDCTION

28 U.S.C. § 2241 authorizes federal district courts "to grant a writ of habeas corpus whenever a petitioner is 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Wang v. Ashcroft*, 320 F.3d 130, 140 (2d Cir. 2003) (quoting 28 U.S.C. § 2241(c)(3)). Under Section 2241, "[f]ederal courts have jurisdiction to hear habeas corpus claims by noncitizens challenging the constitutionality of their detention." *Rodriguez-Acurio v. Almodovar*, --- F. Supp. 3d ---, No. 25-cv-06065, 2025 WL 3314420, at *8 (E.D.N.Y. Nov. 28, 2025) (citing *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020)).

LEGAL STANDARD

I. Standard for a Temporary Restraining Order

"It is well established that in this Circuit the standard for an entry of a TRO is the same as for a preliminary injunction." *Valenzuela Arias v. Decker*, 612 F. Supp. 3d 307, 311 (S.D.N.Y. 2020) (quoting *Andino v. Fischer*, 555 F. Supp. 2d 418, 419 (S.D.N.Y. 2008)). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "When the government is a party to the suit, [the court's] inquiries into the

public interest and the balance of the equities merge." *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 295 (2d Cir.), *opinion clarified*, 17 F.4th 368 (2d Cir. 2021). "The district court has wide discretion in determining whether to grant a preliminary injunction." *Valenzuela Arias*, 612 F. Supp. 3d at 311 (quoting *Almontaser v. N.Y.C. Dep't of Educ.*, 519 F.3d 505, 508 (2d Cir. 2008) (per curiam)).

To obtain preliminary injunctive relief, Plaintiff must show (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). [I]f a plaintiff can only show that there are serious questions going to the merits — a lesser showing than likelihood of success on the merits — then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).

II. Habeas Petitions under 28 U.S.C. § 2241

28 U.S.C. § 2241 "authorizes a district court to grant a *writ of habeas corpus* whenever a petitioner is 'in custody in violation of the Constitution or laws or treaties of the United States.'" *Wang*, 320 F.3d at 140. "When a petitioner brings a *habeas* petition [under section] 2241, the petitioner 'bears the burden of proving that he is being held contrary to law; and because the *habeas* proceeding is civil in nature, the petitioner must satisfy his burden of proof by a preponderance of the evidence.'" *Dzhabrailov v. Decker*, 2020 WL 2731966, at *3 (S.D.N.Y. May 26, 2020) (quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011)). "The equitable principles governing [section] 2241 are reflected in the plenary discretion vested in *habeas* courts

to 'hear and determine the facts and dispose of the matter as law and justice require.'" *Id.* (alterations omitted) (quoting *Pinkney v. Keane*, 920 F.2d 1090, 1093 (2d Cir. 1990)).

ARGUMENT

I. Petitioner Has Established a Significant Likelihood of Success on the Merits

A. Petitioner Has Shown a Likelihood of Success on his Claim that He is a *Maldonado Bautista* Class Member and Entitled to Bond Hearing

Mr. Ortiz Lara is a *Maldonado Bautista* class member detained pursuant to § 1226(a) because he is a: "noncitizens in the United States without lawful status who (1) have entered … the United States without inspection; (2) w[as] not … apprehended upon arrival; and (3) [is] not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." *Maldonado Bautista*, 2025 WL 3288403, at *9. Accordingly, Mr. Ortiz Lara was entitled to a bond hearing under 8 U.S.C. § 1226(a) as a *Maldonado Bautista*; a right denied to him by the Respondents. Accordingly, Mr. Ortiz Lara will prevail on his claim to be a *Maldonado Bautista* class member.

B. Petitioner Has Shown a Likelihood of Success on his Claim under 8 U.S.C. § 1226(a)

Mr. Ortiz Lara is currently and has been subject to discretionary detention under § 1226(a). Respondents wrongfully and unlawfully insist that Petitioner is subject to mandatory detention under § 1225(b) and have denied him an opportunity to seek release on bond in accordance with his rights under § 1226(a). In detaining petitioner and refusing to follow the final judgment in *Maldonado Bautista*, "DHS now appears to have departed from Supreme Court precedent and decades of established practice by taking the position that anyone physically present in the United States without having been legally "admitted"—regardless of the duration of their presence—falls under § 1225(b)(2), which mandates detention." *Castro Coneo v. Almodovar*, No. 25-CV-09850 (NSR), 2025 WL 3754079, at *3 (S.D.N.Y. Dec. 29, 2025) (citing *Alvarez*, 2025 WL 3085032, at

*1; *Romero v. Hyde*, — F. Supp. 3d —, —, 2025 WL 2403827, at *9 (D. Mass. Aug. 19, 2025) ("[R]espondents' new interpretation is contrary to the agency's own implementing regulations, its published guidance, the decisions of its immigration judges (until very recently), decades of practice, the Supreme Court's gloss on the statutory scheme, and the overall logic of our immigration system." (internal citations omitted)). "Respondent's novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226 and recent amendment to it superfluous, and is inconsistent with Supreme Court's prior statutory interpretations" *J.U. v. Maldonado*, No. 25-CV-4836 (OEM), __ F.Supp.3d. __, 2025 WL 2772765, at *7-9 (E.D.N.Y. Sept. 29, 2025)). *Amaya Quinteros v. CoreCivic*, No. 25-1672, 2025 WL 3687642 (E.D. Cal. Dec. 16, 2025) (quoting *Lepe v. Andrews*, No. 1:25-cv-1163-KES-SKO (HC), __F.Supp.3d.__, 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) (collecting cases); *Alejandro v. Olson*, No.1:25-cv-2027-JPH-MKK, 2025 WL 2896348, at *6 (S.D. Ind. Oct. 11, 2025); (collecting cases).

As the vast majority of district courts to consider this issue have held, section 1225's mandatory detention provisions are limited to individuals at or near the border. Mr. Ortiz Lara has been living and residing in the Untied States for close to 12 years and under no circumstances – real or imagined – could he be considered to be at the border of the United States. Mr. Ortiz Lara was detained by ICE agents at a grocery store in New York City – "which is not at the border." *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, 2025 WL 3687757, at *3 (D. Mass. Dec. 19, 2025) (rejecting Respondents' underlying statutory interpretation and denial of bond hearings for individuals similarly situated to Mr. Ortiz Lara, and certifying a class action limited to Massachusetts).

Section 1225(b)'s mandatory detention provisions only apply to "applicants for admission" who are actively "seeking admission" into the United States. Mr. Ortiz Lara is "clearly he is not presenting himself at the border and was not recently apprehended just after entering and thereby is not 'seeking admission' as required for mandatory detention under Section 1225(b)(2)." *Iza by Iza v. Larocco*, No. 2:25-CV-6915 (NJC), 2026 WL 31378, at *11 (E.D.N.Y. Jan. 5, 2026). Mr. Ortiz Lara "is not 'seeking admission' because he has been living in the United States since [November 2014]. Indeed, it would be illogical to find that [Mr. Ortiz Lara] is still in the process of 'arriving' in the United States when [he] has been continuously residing in the United States for more than [eleven years]." *Id.*

In fact, Mr. Ortiz Lara has a path to permanent residence in the United States which first requires him to ***depart*** the United States. Mr. Ortiz Lara is the beneficiary of an approved I-130 immigrant visa petition which requires him to leave the United States to then apply to lawfully enter the United States through consular processing[2]. If Mr. Ortiz Lara was in fact, "seeking admission," at the moment, Respondents should simply give him a green card and allow him to continue residing with his family here in the United States as his departure from the United States would not be necessary. However, because Mr. Ortiz Lara is currently *inside* of and has been residing in the United States without being admitted or paroled[3], he must *depart* the United States in order to reenter the United States.

---

[2] https://www.uscis.gov/green-card/green-card-processes-and-procedures/consular-processing

[3] *See*, 8 U.S.C. 1255(a) "The status of an alien who was inspected and admitted or paroled into the United States … may be adjusted by the Attorney General … to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed."

Since this departure triggers a new inadmissibility pursuant to 8 U.S.C. § 1182(a)(9)(B)(i)(I) or (II), Mr. Ortiz Lara must also seek a waiver of inadmissibility to seek admission to the United States. 8 U.S.C. § 1182(a)(9)(B) is titled "Aliens unlawfully present" in the United States and provides that such individuals are "deemed to be unlawfully present in the United States if the alien … is present in the United States without being admitted or paroled." § 1182(a)(9)(B)(ii). In fact, Mr. Ortiz Lara, prior to his detention, was in the process of filing a Provision Unlawful Presence Waiver, Form 601a. As the instructions to Form 601a state: "You may file this application to seek a provisional unlawful presence waiver if you: 1. Are physically present in the United States" and "[a]re the principal beneficiary of an approved Form I-130, Petition for Alien Relative" and "[b]elieve you are or will be inadmissible only for ***a period of unlawful presence in the United States***" pursuant to 8 U.S.C. § 1182(a)(9)(B)(i)(I) or (II).[4] By the government's own terms: "A provisional unlawful presence waiver is only effective *if the applicant departs the United States*, attends the immigrant visa interview scheduled by DOS at a U.S. Embassy or U.S. Consulate abroad, and the consular officer finds that the applicant is eligible for the immigrant visa." *Id.* An individual "seeking admission" simply cannot "depart" but rather only be denied admission in the first instance. Accordingly, Mr. Ortiz Lara will be successful on his claim that his is subject to § 1226(a) discretionary detention provisions.

C. Petitioner Has Shown a Likelihood of Success on his Claim on His Due Process Claim

"The ordinary mechanism that [the Court] use[s] . . . for determining the procedures that are necessary to ensure that a citizen is not deprived of life, liberty, or property, without due process of law is the test that [] articulated in *Mathews v. Eldridge*." *Hamdi v. Rumsfeld*, 542 U.S. 507, 528-29 (2004 (citations and internal quotation marks omitted)). The *Mathews* balancing test

[4] https://www.uscis.gov/sites/default/files/document/forms/i-601ainstr.pdf

considers three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the [g]overnment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

Petitioner has a clear liberty interest in his continued release. The Due Process Clause protects all persons in the United States, including noncitizens, from deprivations "of life, liberty, or property" by the federal government "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 Clause protects." *Zadvydas v*, 533 U.S. 678, 690 (2001). Indeed, "the interest in being free from imprisonment" is "the most significant liberty interest there is." *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851(2d Cir. 2020)). In fact, the Due Process Clause of the Fifth Amendment "covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (citing *Zadvydas*, 533 U.S. at 693); *see also Reno v. Flores*, 507 U.S. 292, 306 (1993); *Velasques Rincon v. Garland*, 2025 WL 3122784, at *7 (S.D.N.Y. 2025) ("[T]o apply the entry-fiction doctrine to a case like Petitioner's is to set aside the plain meaning of the Fifth Amendment altogether").

1. Private Interest That Will be Affected by the Official Action

Mr. Ortiz Lara invokes "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). Mr. Ortiz Lara's liberty cannot be abridged without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690. Here, Mr. Ortiz Lara "does not contend that greater

judicial-type procedures must be imposed upon the administrative actions of [the Respondents] than those already required by law; [rather, he] argues that the agency must comply with the procedures already in place, and its failure to do so amounts to a complete and arbitrary denial of due process." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 492 (S.D.N.Y. 2025) (*citing Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025)).

Mr. Ortiz Lara has resided in the United States for close to 12 years and has significant family ties here including his LPR wife, U.S. Citizen son and grandchildren. The first *Mathews* factor therefore heavily weighs in favor of Petitioner.

2. The Risk of an Erroneous Deprivation

Mr. Ortiz Lara has been deprived of his physical liberty without lawful statutory authority and without due process. He has been detained without any opportunity to seek his release despite his statutory right to a bond hearing before an immigration judge. *See Tumba v. Francis*, 2025 WL 3079014, at *9 (S.D.N.Y. Nov. 4, 2025); *Valdez v. Joyce*, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025) (holding that detention "with no process at all—much less prior notice, a showing of changed circumstances, or an opportunity to respond—violates due process"). The second *Mathews* factor therefore weighs in favor of Mr. Ortiz Lara.

3. The Government's Interest

Finally, the government interest factor heavily favors Mr. Ortiz Lara. The government simply lacks any interest in detaining Mr. Ortiz Lara who has no criminal history and there exists no evidence to suggest he would be danger to the community if he was released from detention.

II. Petitioner has Established a Significant Likelihood of Irreparable Harm.

Petitioner has established irreparable harm based on the deprivation of constitutional rights as a result of his continued immigration detention. An "alleged constitutional violation constitutes irreparable harm." *Torres-Jurado v. Biden*, 2023 WL 7130898, at *5 (S.D.N.Y. Oct. 29, 2023) (quoting *Basank v. Decker*, 613 F. Supp. 3d 776, 788 (S.D.N.Y. 2020) (collecting cases)); *accord Statharos v. N.Y.C. Taxi & Limousine Comm'n*, 198 F.3d 317, 322 (2d Cir. 1999). Further, "[i]t is well established that the loss of physical liberty resulting from allegedly unconstitutional detention constitutes irreparable injury, even for minimal periods of time." *Castro Coneo v. Almodovar,* No. 25-CV-09850 (NSR), 2025 WL 3754079, at *4 (S.D.N.Y. Dec. 29, 2025) (citing *Averhart*, 2021 WL 2383556, at *9. In similar cases, courts have found irreparable harm where a petitioner is being wrongfully detained pursuant to § 1225(b)(2). *See, e.g., Alvarez*, 2025 WL 3085032, at *11; *Guerrero Orellana v. Moniz*, 2025 WL 2809996, at *9 (D. Mass. Oct. 3, 2025); *Mosqueda v. Noem*, 2025 WL 2591530, at *6 (C.D. Cal. Sept. 8, 2025). Thus, Petitioner's ongoing deprivation of liberty in the absence of preliminary injunctive relief satisfies the irreparable harm requirement of the *Winters* test.

III. Balance of Equities Favors Granting Petitioner's Motion and an Injunction is in the Public Interest.

The third and fourth *Winter* factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). "It is axiomatic that the President must exercise his executive powers lawfully. When there are serious concerns that the President has not done so, the public interest is best served by 'curtailing unlawful executive action.'" *Make the Road N.Y. v. Pompeo*, 475 F. Supp. 3d 232, 269 (S.D.N.Y. 2020) (quoting *Hawaii v. Trump*, 878 F.3d 662, 700 (9th Cir. 2017), *rev'd and remanded on other grounds*, 585 U.S. 667 (2018)); *see also*, *Planned Parenthood of N.Y.C., Inc. v. U.S. Dep't of Health & Human Servs.*, 337 F. Supp. 3d 308, 343

(S.D.N.Y. 2018) ("It is evident that '[t]here is generally no public interest in the perpetuation of unlawful agency action.'") (quoting *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016)). In fact, "[t]he government also cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (internal citations and quotation marks omitted). Furthermore, "the public has a strong interest in upholding procedural protections against unlawful detention" and "the costs to the public of immigration detention are staggering." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1037 (N.D. Cal. 2025); *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"). Additionally, Respondents face no hardship as there are no administrative costs associated with Petitioner being free from detention while he pursues his removal proceedings before the Immigration Court continue on the non-detained docket where Petitioner can apply for relef allowing him to reside lawfully in the United States.. Nonetheless, "the balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's

interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"). Accordingly, the third and fourth factors favor Mr. Ortiz Lara.

IV. The Court Should Not Require Security Prior to the Temporary Restraining Order.

The court should not require a bond under Federal Rule of Civil Procedure 65. The district court "is vested with wide discretion in the matter of security," including the option "to require no bond." *Dr.'s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996); see also *State Farm Mut. Automobile Ins. Co. v. Tri-Borough NY Med. Practice P.C.*, 120 F.4th 59, 86 (2d Cir. 2024) ("Courts have the discretion . . . to require no security at all depending on the specific circumstances."). District courts routinely exercise this discretion to require no security in cases by incarcerated or detained individuals and in the vindication of immigrants' rights. *See, e.g.*, *Bass v. Richardson*, 338 F. Supp. 478, 489–90 (S.D.N.Y. 1971) ("indigents, suing individually or as class Petitioners, ordinarily should not be required to post a bond under Rule 65(c)"). Additionally, given Respondents' blatant disregard

CONCLUSION

For the reasons stated herein, the Court should order Mr. Ortiz Lara immediately released from detention.

/s/ Eric Hisey
Eric Hisey, Esq.
Barre Law, LLC
30 Broad St., 14th Floor
New York, NY 10004
Tel: (646) 894-5900
Email: ehisey@barrelaw.com