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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (LAS VEGAS)**

Antonio SANTOS GODINEZ

Petitioner,

vs.

Kristi NOEM, Acting Secretary of the
United States Department of Homeland
Security;

Pamela BONDI, Attorney General of the
United States;

Jason KNIGHT, Salt Lake City Acting Field
Office Director, Enforcement and Removal
Operations, U.S. Immigration and Customs
Enforcement;

Frank D'AMICO, Corrections Captain at
Henderson Detention Center.

Respondents.

Case No.

Agency No.:



**COMBINED MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PETITION FOR WRIT
OF HABEAS AND EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER**

Combined Memorandum of Points and Authorities in Support of Petition for Writ of Habeas and
Emergency Motion for Temporary Restraining Order

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I. INTRODUCTION

Antonio Santos Godínez (“Petitioner”) seeks relief to remedy his unlawful detention. Petitioner was detained by the Department of Homeland Security (“DHS”) on February 1, 2026, and he remains detained at the Henderson Detention Center.

Petitioner is a 49-year-old individual who initially entered the United States in or around 2004 without inspection. Throughout his time in the United States, he has never been arrested and has no criminal history other than traffic violations from two decades ago which have been resolved. Petitioner and his wife are the parents of three U.S. citizen children, ages 21, 18, and 9, all of whom depend on him for care, support, and stability. Petitioner’s 21-year-old son is actively serving in the United States Army, and therefore prima facie eligible for Military Parole in Place (PIP) under INA § 212(D)(5)(A), as the parent of an active-duty member of the U.S. Military, a benefit explicitly intended to promote family unity and recognize the sacrifices made by military families. Petitioner is deeply loved by his family and plays an essential role in their daily lives.

Prior to his detention, Petitioner was steadily employed as a tile installer with TNT Tile, where he had worked since 2023, and before that he had been employed by other tile companies in the same trade. His wife is a full-time stay-at-home mother caring for their home and their children. Since Petitioner’s detention, his wife has struggled to meet basic household expenses and has been forced to rely on limited savings and financial assistance from friends and family, as she previously depended on Petitioner’s income for support. Petitioner’s detention has also

1 caused his wife severe anxiety and emotional distress due to ongoing concern for his well-being,
2 particularly in light of Petitioner's recent eye surgery and his history of vision problems.

3
4 Additionally, his 18-year-old daughter is currently enrolled at the Culinary Academy of
5 Las Vegas, where she is pursuing training to become a professional cook, while their youngest
6 child is attending 4th grade at  Elementary School. Overall, Petitioner has lived an honest,
7 responsible, and productive life in the United States.

8
9 Here, the Petitioner falls into the category of detainees to whom the Board of Immigration
10 Appeals ("BIA" or "Board") will not grant bond under *Matter of Yajure Hurtado*, 29 I. & N. Dec.
11 216 (BIA 2025). Therefore, requesting a bond redetermination hearing with the Immigration
12 Judge or filing an appeal with the BIA is a completely futile gesture.¹

13
14 Both the government's new policy and the Board's new interpretation of the statute is
15 fundamentally irrational, arbitrary and capricious, and a complete deprivation of Petitioner's right

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18
19 ¹On November 20, 2025, the U.S. District Court for the Central District of California issued a partial summary
20 judgment declaring the DHS policy affirmed by *Matter of Yajure Hurtado* is unlawful. *Bautista v. Santacruz*, 25-
21 CV-01873, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025). Despite this nationwide ruling in *Bautista*, the
22 government continues to apply their unlawful policy as evidenced by EOIR Chief Immigration Judge Teresa L.
23 Riley's January 13, 2026's leaked email directing all immigration judges to continue treating *Hurtado* as binding
24 precedent. See *Ramirez v. Noem*, 2026 U.S. Dist. LEXIS 23793, *4-5, 2026 LX 36829.

1 to seek a bond redetermination and be released from custody. Due process requires that the
2 government provide Petitioner a bond redetermination hearing, and if successful be allowed to
3 post the bond, and also enjoining the government from filing an automatic stay under 8 C.F.R.
4 §1003.19(i)(2), unless it can show why a writ should not be issued. *Singh v. Holder*, 638 F.3d
5 1196, 1203 (9th Cir. 2011). Upon judicial review of the constitutionality of the BIA's new
6 interpretation of the INA, Petitioner clearly demonstrates that he is detained in violation of the
7 law.
8

9
10 Petitioner seeks to preliminarily enjoin DHS from continuing his detention, unless he is
11 provided a bond redetermination hearing under 8 U.S.C. §1226(a) and if successful allowed to
12 post a bond without the government filing an automatic stay under 8 C.F.R. §1003.19(i)(2).
13 Petitioner will suffer immediate and irreparable harm if this Court does not enjoin his continued
14 detention, given that his continued detention violates his due process rights. *See Fed. R. Civ.*
15 *65(b)*.
16

17 Moreover, Petitioner will suffer irreparable harm, as “[i]t is well established that the
18 deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v.*
19 *Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
20 Indeed, the Ninth Circuit has made clear that “[a]n alleged constitutional infringement will often
21 alone constitute irreparable harm.” *Goldie’s Bookstore, Inc. v. Superior Ct. of the State of Calif.*,
22 739 F.2d 466, 472 (9th Cir. 1984). Here, Respondent’s continued deprivation of Petitioner’s
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1 liberty violates Petitioner's due process rights and constitutes irreparable injury. Indeed, every
2 day that Petitioner is detained is a day of freedom Petitioner cannot get back.

3
4 Petitioner meets the standard for a preliminary injunction. As shown in greater detail
5 below, it is likely he will succeed on the merits of his claim in this case. Due to the government's
6 policy and the BIA's new interpretation of the INA, he has been deprived of his right to seek a
7 bond redetermination and liberty in violation of due process. Petitioner will also be able to show
8 irreparable and immediate harm. Lastly, the balance of equities and public interest weighs in his
9 favor.
10

11 **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

12 Petitioner is a 49-year-old native and citizen of Mexico. Exh. A (Notice to Appear).
13 Petitioner initially entered the United States without inspection in or around 200. Exh. B (Sworn
14 Declaration of Erika Albarran Justo). Petitioner resides with his wife and their three U.S. citizen
15 children, ages 21, 18, and 9. Exh. C (Family Ties). Petitioner's 21-year-old son is actively serving
16 in the United States Army. Exh. D (Military Identification Card, Military Awards). He is also in
17 his second year of enrollment at the University of Nevada, Las Vegas ("UNLV"). Exh. E (UNLV
18 Identification Card). Petitioner has always helped his son financially while he serves in the
19 Military and attends school.
20

21
22 Petitioner has developed a strong network of friends and community members who can
23 attest to his good moral character, steady work ethic, and deep commitment to remaining in the
24 United States with his family. Exh. F (Character Letters).
25

1 Petitioner has never been arrested and has no criminal history, other than those relating to
2 his initial attempted entries and voluntary departures in 2001 and 2002. Exh. G (Form I-213,
3 Record of Deportable Alien).

4
5 Prior to Petitioner's detention, his wife devoted herself full time to caring for their home
6 and their children. See Exh. B. Since Petitioner's detention, however, she has struggled to meet
7 basic household expenses and has been forced to rely on limited savings and financial assistance
8 from friends and family, as she previously depended on Petitioner's income for support. *Id.* Prior
9 to his detention, Petitioner was employed as a tile installer with TNT Tile beginning in or around
10 2023. *Id.*

11
12 In addition, Petitioner's detention has caused his wife severe anxiety and emotional
13 distress due to ongoing concern for his well-being, particularly in light of Petitioner's recent eye
14 surgery and his history of vision problems. Exh. H (Eye Specialist Treatment Receipt).
15 Petitioner's detention has significantly disrupted the emotional and financial stability of the
16 household.
17

18 Further, on February 1, 2026, Petitioner was apprehended by the Department of Homeland
19 Security while en route to his employment on a suspect "targeted enforcement lead from open
20 sources and law enforcement databases" though he has no criminal history. See Exh. G. Shortly
21 after his arrest on warrant, the Department of Homeland Security served Petitioner with a Notice
22 to Appear, thereby initiating removal proceedings pursuant to INA § 240, 8 U.S.C. § 1229a. See
23 Exh. A. Petitioner is currently detained at the Henderson Detention Center.
24
25

III. LEGAL BACKGROUND

“In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Civil detention violates the Due Process Clause except “in certain special and narrow nonpunitive circumstances, where a special justification, such as harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citations omitted). In *Singh v. Holder*, 638 F.3d 1196, 1203-1204, the Ninth Circuit reiterated that the Supreme Court had determined that “civil commitment for *any* purpose constitutes a significant deprivation of liberty.” *Singh*, 638 F.3d at 1204. (internal citations omitted).

A. Mandatory and Discretionary Detention

Under these constitutional constraints, Congress has created a scheme for detention of noncitizens in removal proceedings. For decades, the Department and EOIR interpreted 8 U.S.C. § 1226(a) to authorize immigration judges to provide a custody redetermination hearing even though DHS could detain a noncitizen “pending a decision on whether [he] is to be removed from the United States.” 8 U.S.C. § 1226(a). In *Casas-Castrillon v. Dep’t of Homeland Security*, 535 F.3d 942, (9th Cir. 2008), the Ninth Circuit held that immigrants detained under §1226(a) are entitled to individualized bond hearings. 8 C.F.R. §1003.19(h)(3) provides that a noncitizen subject to detention must show by clear and convincing evidence that the noncitizen is not a danger to other persons or property and that the noncitizen is not a flight risk.

1 In contrast to § 1226(a), noncitizens who have been convicted of certain criminal
2 convictions are subject to mandatory detention under § 1226(c). *Demore v. Kim*, 538 U.S. 510,
3 513 (2003). Congress added this provision by passing the Illegal Immigration Reform and
4 Immigrant Responsibility Act of 1996 (“IIRIRA”) to address concerns that criminal noncitizens
5 frequently failed to appear at their removal proceedings. *Velasco Lopez v. Decker*, 978 F.3d 842,
6 848 (2d Cir. 2020). The new section mandated detention for noncitizens who were convicted of
7 aggravated felonies, drug trafficking, and crimes involving moral turpitude. *Demore*, 538 U.S. at
8 518–20.
9

10
11 In January 2025, Congress added a new category of noncitizens who are subject to
12 mandatory detention with the Laken Riley Act, codified as 8 U.S.C. § 1226(c)(1)(E). The new
13 section mandated detention for noncitizens who: (1) are inadmissible under 8 U.S.C.
14 § 1182(a)(6)(A), 1182(a)(6)(C), or 1182(a)(7); and (2) are charged with, are arrested for, are
15 convicted of, admit having committed, or admit committing acts that constitute the elements of
16 any burglary, theft, larceny, shoplifting, or assault of a law enforcement officer offense, or any
17 crime that results in death or serious bodily injury to another person. § 1226(c)(1)(E).
18

19 Further, 8 U.S.C. § 1225(b) requires detaining noncitizens who (1) are subject to
20 expedited removal under § 1225(b)(1), or (2) are “seeking admission” at the border under
21 § 1225(b)(2). *See Jennings*, 583 U.S. at 287 (2018) (noting that this process generally begins at
22 the Nation’s borders and ports of entry).
23

24 //

B. Automatic Stay of Custody Order Under 8 C.F.R. § 1003.19(i)(2)

The Department has significant power in limiting the application of the IJ's order. Under 8 C.F.R. § 1003.19(i)(2), the Department can file a notice of intent to appeal a noncitizen's custody determination (Form EOIR-43), which will automatically and unilaterally stay the IJ's order authorizing the noncitizen's release on bond. This Court recently found that the automatic stay is being systematically applied in cases where the Immigration Judge finds jurisdiction to hold a bond hearing and where the Immigration Judge finds that individual is not a danger to the community or a flight risk and grants a bond. This conduct would violate Petitioner's procedural and substantive due process.² *Vazquez v. Feeley*, No. 25-CV-01542, 2025 WL 2676082 (D. Nev. Sep. 17, 2025).

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² Petitioner acknowledges that the government has not yet invoked the automatic stay in his case because he has not been afforded a bond hearing. Nonetheless, the extensive litigation across multiple federal district courts shows that the government is routinely applying this procedure. It would provide little benefit to Petitioner if, after successfully demonstrating to the Immigration Judge that he is neither a danger to the community nor a flight risk, the government were to impose an automatic stay, forcing him to return to this Court and continue litigating the matter. In the alternative, Petitioner respectfully requests that the Court order a status report or hold a status conference to oversee the progression of his case and to ensure that the automatic stay is not being invoked.

C. Applicability of Equitable Relief

Petitioner warrants a preliminary injunction because the IJ and BIA's new decision interpreting 1226(a) ordering his continued detention are unlawful, and detention has already imposed irreparable hardship. A preliminary injunction is appropriate if a plaintiff can show that: (1) he is "likely to succeed on the merits"; (2) he "is likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in his favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit's "sliding scale" approach, a temporary restraining order ("TRO") or preliminary injunction is appropriate when, "a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (internal quotation omitted).

Pursuant to the Federal Rules of Civil Procedure, a TRO may be issued if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and the movant's attorney certified in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b).

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IV. ARGUMENT

A. This Court Has Jurisdiction.

This Court has jurisdiction under 28 U.S.C. § 2241; Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All-Writs Act, 28 U.S.C. § 1651.

i. 8 U.S.C. § 1226(e) does not preclude jurisdiction.

While Section 1226(e) of the INA precludes an alien from challenging a discretionary judgment by the Attorney General or a decision that the Attorney General has made regarding their detention or release, *see Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018), Section 1226(e) “does not preclude challenges to the statutory framework that permits the alien’s detention without bail.” *Jennings*, 138 S. Ct. at 841.

Moreover, Section 1226(e) does not limit habeas review over constitutional claims or questions of law. *Singh v. Holder*, 638 F.3d 1196 at 1202. As Petitioner is raising constitutional claims and questions of law—whether the automatic stay provision in this case and the BIA’s new interpretation of the INA violate the Petitioner’s right to procedural due process and substantive due process after denying him the ability to post a bond—Section 1226(e) does not preclude this Court’s jurisdiction to review Petitioner’s habeas petition.

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ii. 8 U.S.C. § 1252(b)(9) does not preclude jurisdiction.

Concerning the question of removability, 8 U.S.C. § 1252(b)(9) funnels judicial review to the appropriate federal court of appeals, which would be the Ninth Circuit here. However, where a petitioner is not seeking review of a removal order or is challenging their detention or a part of the removal process, § 1252(b)(9) is not a jurisdictional bar. *Nielsen v. Preap*, 586 U.S. 392, 402 (2019); *see also Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 19 (2020) (“§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision to seek removal, or the process by which removability will be determined.”).

iii. 8 U.S.C. § 1252(g) does not preclude jurisdiction.

Another jurisdictional bar exists in 8 U.S.C. § 1252(g), which states that courts cannot hear “any cause of claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.” § 1252(g). The Supreme Court has limited application of this section to three discrete actions that an Attorney General may take: (1) the decision or action to commence proceedings, (2) the decision or action to adjudicate cases, and (3) the decision or action to execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). Because Petitioner challenges the lawfulness of his detention, it is not a challenge to one of the three discrete events listed in *Reno*.

//

B. Administrative Exhaustion Is Futile and Should Be Waived.

Generally, if the exhaustion requirement is statutory, “it may be mandatory and jurisdictional, but courts have discretion to waive a prudential requirement.” *Laing v. Ashcroft*, 370 F. 3d 994, 998 (9th Cir. 2004). Furthermore, this court has already recognized that “[n]either the habeas statute, 8 U.S.C. § 2241, nor the relevant sections of the INS require petitioners to exhaust administrative remedies before filing petitions for habeas corpus. *Id.* (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *Vazquez v. Feeley*, 2025 U.S. Dist. LEXIS 182412, *27; 2025 LX 460110; 2025 WL 2676082 (D. Nev. Sep. 22, 2025).

Instead, the court may require prudential exhaustion under *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Prudential exhaustion may be waived if “administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004); *Hernandez v. Sessions*, 872 F.3d 976, 988; 2017 U.S. App. LEXIS 19021, *22; 2017 WL 3887819.

Applying the three *Puga* factors, this court should waive the prudential exhaustion requirement. Similarly to the Petitioner in *Arce-Cervera v. Noem*, the Court should “incorporate its prior findings...that administrative exhaustion is excused as futile.” *Arce-Cervera v. Noem*, 2025 U.S. Dist. LEXIS 212397, *15; 2025 LX 426887; 2025 WL 3017866.

There is widespread agreement among the federal courts that *Matter of Yajure Hurtado*’s new interpretation violates the INA and is unconstitutional. This Court recently found in *Vazquez*

1 v. *Feeley* that § 1226, not §1225, applies to noncitizens such as the Petitioner. That decision, along
2 with about three hundred federal court judges,³ have emphasized that the Department's
3 interpretation of § 1225 is erroneous for several reasons, such as (1) the plain meaning of the INA
4 provisions in the context of recent amendments, (2) legislative history, and (3) longstanding
5 agency practice. This Court found that "the phrases 'applicants for admission' and 'seeking
6 admission,' taken together, are limited in temporal scope, and cannot be read to apply indefinitely
7 to all noncitizens residing in the U.S. for years or decades." *Vazquez v. Feeley*, 2025 WL 2676082,
8 at *13; *Ramirez v. Noem*, No. 25-CV-02136, 2025 WL 3270137, at *2 (D. Nev. Nov. 24, 2025).
9 Several district courts in the Ninth Circuit and throughout the country have found equally. *See*,
10 e.g., *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025); *Rosado v.*
11 *Figueroa*, No. 25-CV-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025); *Zaragoza Mosqueda*
12 *et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530 (C.D. Cal. Sep. 8, 2025); *Guerrero Lepe v.*
13 *Andrews*, No. 25-CV-01163, 2025 WL 2716910 (E.D. Cal. Sep. 23, 2025); *Salcedo Aceros v.*
14 *Kaiser*, No. 25-CV-06924, 2025 WL 2637503 (N.D. Cal. Sep. 12, 2025); *Vasquez Garcia v.*
15 *Noem*, No. 25-CV-02180, 2025 WL 2549431 (S.D. Cal. Sep. 3, 2025).
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23 ³ *Ramirez v. Noem*, 2026 U.S. Dist. LEXIS 23793, *3, 2026 LX 36829.
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1 Further, the fact that the Laken Riley Act amended § 1226(c) to expand the category of
2 migrants subject to mandatory detention indicates that § 1226(a) was intended to be applied to
3 noncitizens charged as inadmissible. *Vazquez v. Feeley*, 2025 WL 2676082, at *14. The Court
4 found that Congress had a similar intent when it passed the IRRIRA and recognizes the backdrop
5 of precedential cases that highlight a distinction between noncitizens arriving at the border and
6 those who have resided in the country for an extended period of time. *Id.* at *15. The Court also
7 recognized that the Laken Riley Act was passed against a “backdrop of longstanding agency
8 practice applying § 1226(a) to inadmissible noncitizens already residing in the country.” *Id.* at
9 *16. Using traditional interpretive tools, courts should construe statutes to work in harmony with
10 what has come before. *Id.*

13 More importantly, each day that Petitioner remains in unconstitutional detention
14 constitutes irreparable harm, which itself provides good cause to excuse the exhaustion
15 requirement. Accordingly, this Court should adopt the reasoning of the majority of federal district
16 courts, which have waived exhaustion on the basis of such irreparable injury. *See, e.g., Feeley v.*
17 *Vazquez*, 2025 WL 2676082; *Guerrero Lepe v. Andrews*, No. 25-CV-01163, 2025 WL 2716910
18 (E.D. Cal. Sep. 23, 2025); *Sanchez Roman v. Noem*, No. 25-CV-01684, 2025 WL 2710211 (D.
19 Nev. Sep. 23, 2025); *Zaragoza Mosqueda et al. v. Noem*, No. 25-CV-02304, 2025 WL 2591530
20 (C.D. Cal. Sep. 8, 2025).

1 Without intervention, Petitioner will remain detained for months or years until the
2 immigration judge makes a decision, and the BIA or the Circuit Court issues a final decision on
3 the merits of his relief from removal.
4

5 **C. Petitioner Is Likely to Succeed in Showing That His Detention Violates Due**
6 **Process or There Is a Serious Question**

7 A temporary restraining order is appropriate if a petitioner can show that: (1) he is “likely
8 to succeed on the merits”; (2) he “is likely to suffer irreparable harm in the absence of preliminary
9 relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the public
10 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Under the Ninth Circuit’s
11 alternative “sliding scale” approach, a temporary restraining order is appropriate if “a plaintiff
12 demonstrates . . . that serious questions going to the merits were raised and the balance of
13 hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
14 1127, 1134-35 (9th Cir. 2011) (internal quotation marks omitted). Petitioner’s due process claims
15 satisfy these standards.
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18 Petitioner asserts that his detention violates his due process because the BIA’s new
19 interpretation in *Matter of Yajure Hurtado* that §1225(b)(2) is applicable to Petitioner, not section
20 1226(a) is incorrect and violates the INA.
21

22 To determine whether Petitioner’s continued detention violates his procedural due
23 process, the courts typically employ the test under *Mathews v. Eldridge*, 424 U.S. 319 (1976).
24 Here the court weighs the following factors: (1) “the private interest that will be affected by the
25

1 official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures
2 used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3)
3 "the Government's interest, including the function involved and the fiscal and administrative
4 burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S.
5 at 335.
6

7 In this case, Petitioner's private interest is his freedom— "the most elemental of liberty
8 interests—the interest in being free from physical detention by one's own government." *Hamdi*
9 *v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)
10 ("Freedom from imprisonment—from government custody, detention, or other forms of physical
11 restraint—lies at the heart of the liberty that the Clause protects."). This factor weighs heavily in
12 Petitioner's favor, as the government's new policy and the BIA's precedential decision, in *Matter*
13 *of Yajure Hurtado* interpreting §1225(b)(2) is applicable to Petitioner, not section 1226(a), and
14 holding that Immigration Judges have no authority to hold bond hearings for these individuals
15 like Petitioner, deprives him of his fundamental liberty interest in freedom from incarceration.
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18 Petitioner has never been arrested and has no criminal history, and there has been no
19 individualized determination that he poses a danger to the community or a risk of flight.
20 Nevertheless, he remains detained without any opportunity to seek release on bond. His continued
21 detention has imposed severe hardship on his family, including his wife and three U.S. citizen
22 children who rely on him for financial and emotional support. Detention has also exacerbated his
23 family's anxiety and distress, particularly given concerns about Petitioner's health following
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1 recent eye surgery and his history of vision problems. While detention is inherently burdensome,
2 the impact on Petitioner and his family has been especially severe and destabilizing. By contrast,
3 the government's interest in detaining Petitioner throughout the entirety of his proceedings and
4 judicial review is comparatively minimal.

5
6 In regards to the second factor, "the risk of erroneous deprivation" of Petitioner's right to
7 be free from incarceration, the court must review if the application of the new government policy
8 affirmed by *Matter of Yajure Hurtado* increases that risk. Here, Petitioner will most certainly be
9 at risk of erroneous deprivation of his liberty because he has not been afforded a bond
10 redetermination hearing where he could demonstrate that he is not a danger to the community or
11 a risk of flight, and be allowed to post a bond resulting in his release. Recently, this court found
12 a similarly situated Petitioner, that "continued detention of Petitioner without a constitutionally
13 adequate bond hearing violates Petitioner's procedural and substantive due process rights." *Arce-*
14 *Cervera v. Noem*, 2025 U.S. Dist. LEXIS 212397, *16, 2025 LX 426887, 2025 WL 3017866 (D.
15 Nev. Oct. 28, 2025).

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18 As to the last factor, the government's interest and burden of additional or substitute
19 procedural requirements, the *Mathews* test requires the court to weigh the Petitioner's private
20 liberty interests and risk of erroneous deprivation against the government's interest in applying
21 *Matter of Yajure Hurtado*, which includes the use of additional or substitute procedural
22 requirements.
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1 While Petitioner recognizes that the government has an important interest in ensuring that
2 persons in removal proceedings do not commit crimes or abscond from the law during their
3 proceedings, that interest has not been tested. The Immigration Judge has yet to conduct an
4 individualized assessment of Petitioner's criminal record and personal history to make the
5 assessment if Petitioner poses a danger to the community or a risk of flight. Moreover, as other
6 courts have recognized, perhaps there are other non-legitimate interests in keeping Petitioner in
7 mandatory detention—which paradoxically creates unnecessary financial and administrative
8 burdens for the government itself. See *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *41-
9 42; 2025 LX 303800; 2025 WL 2337099 (citing *Vasquez Perdomo v. Noem*, F. Supp. 3d, No.
10 2:25-cv-056050, 2025 WL 1915964, at *5 (C.D. Cal. July 11, 2025) (noting "[t]he government's
11 only apparent interest in taking Rosado into custody, [*42] which actually places an additional
12 fiscal and administrative burden on the government, is to fulfill a quota of arrests, i.e., 3,000
13 immigration arrests per day, set by the current administration.")). Indeed, keeping Petitioner
14 detained is far more expensive than allowing him to be released on bond. See *Vazquez v. Feeley*,
15 2025 U.S. Dist. LEXIS 182412, *61; 2025 LX 460110; 2025 WL 2676082 (citing *Hernandez v.*
16 *Sessions*, 872 F.3d 976, 996; 2017 U.S. App. LEXIS 19021, *40; 2017 WL 3887819) ("The costs
17 to the public of immigration detention are "staggering": \$158 each day per detainee, amounting
18 to a total daily cost of \$6.5 million. Supervised release programs cost much less by comparison:
19 between 17 cents and 17 dollars each day per person.") Therefore, this factor weighs in favor of
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1 finding that Petitioner's due process rights have been violated. Since all three factors of the
 2 *Mathews* test weigh in favor of Petitioner, he has established a likelihood of success on the merits.

3 **D. Petitioner Will Suffer Irreparable Harm If He Is Not Released from Detention.**

4
 5 Petitioner will suffer two significant harms if a temporary restraining order is not issued
 6 in this matter: (1) the present and ongoing violation of Petitioner's constitutional rights resulting
 7 from his unlawful detention and (2) the severe and continuing harms that flow from Petitioner's
 8 continued unlawful detention, including the breakdown of family ties, loss of income and
 9 employment, threat of losing their residence, deterioration of Petitioner's family's physical and
 10 mental health, and an exacerbation of Petitioner's existing health struggles.

11
 12 **i. Constitutional Violations**

13 "It is well established that the deprivation of constitutional rights 'unquestionably
 14 constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
 15 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Indeed, the Ninth Circuit has made clear that "[a]n
 16 alleged constitutional infringement will often alone constitute irreparable harm." *Goldie's*
 17 *Bookstore, Inc. v. Superior Ct. of the State of Calif.*, 739 F.2d 466, 472 (9th Cir. 1984); *Associated*
 18 *General Contractors of Calif., Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1412 (9th
 19 Cir. 1991) (recognizing presumption of irreparable harm when constitutional infringement
 20 alleged); *see also Federal Practice & Procedure*, § 2948.1 (2d ed. 1995) ("When an alleged
 21 deprivation of a constitutional right is involved, most courts hold that no further showing of
 22 irreparable injury is necessary."). Further, as the Eleventh Circuit has held, the "unnecessary
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1 deprivation of liberty clearly constitutes irreparable harm.” *United States v. Bogle*, 855 F.2d 707,
2 710-11 (11th Cir. 1998). Here, Petitioner’s continued deprivation of liberty without a bond
3 hearing under §1226(a) violates Petitioner’s due process rights and constitutes irreparable injury.
4 Indeed, each day of confinement is a day of freedom forever taken from Petitioner.
5

6 In the correctional setting, the stakes are high, and any delay or denial of care can convert
7 an otherwise manageable condition into a catastrophic event. Tragically, inadequate medical care
8 in jails and prisons is a well-documented systemic failure. Incarcerated persons often endure
9 delays, missed appointments, staffing shortages, and willful indifference by correctional medical
10 staff.⁴ Therefore it is not speculative to fear that Petitioner’s health will deteriorate rapidly while
11 he remains detained.
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13 Petitioner is a devoted husband and father and plays a central role in his family’s
14 emotional and financial well-being. He has consistently supported his household and provided
15 stability for his wife and their three U.S. citizen children. Since his detention, his wife has
16 struggled to meet basic household expenses and has been forced to rely on limited savings and
17 financial assistance from friends and family. Petitioner’s continued detention separates him from
18 his family, his employment, and his community, depriving his family of his love, guidance, and
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25 ⁴ Homer Venters, The Health Crisis of U.S. Jails and Prisons, *New Eng. J. Med.* 2259 (2022),
<https://www.nejm.org/doi/full/10.1056/NEJMms2211252>

1 financial support. The resulting financial strain has placed the household in significant distress
2 and uncertainty.

3 Beyond the financial hardship, the emotional toll on Petitioner and his family has been
4 severe. Petitioner's wife has experienced heightened anxiety and emotional distress due to
5 concern for his well-being and the uncertainty surrounding his detention. Petitioner himself has
6 endured the psychological harm inherent in prolonged confinement, including fear, stress, and
7 emotional strain that worsen with each passing day he remains detained. In short, Petitioner's
8 continued detention has destabilized his family, inflicting ongoing and irreparable harm that
9 compounds daily.
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12 **E. Equitable Considerations and Public Interest Favor Petitioner's Release.**

13 The last two factors under *Winter* "merge when the Government is the opposing party."
14 *Nken v. Holder*, 556 U.S. 418, 435; 129 S. Ct. 1749, 1762; 173 L. Ed. 2d 550, 567; 2009 U.S.
15 LEXIS 3121, *31; 77 U.S.L.W. 4310. First the balance of equities strongly favors Petitioner.
16 Petitioner faces irreparable harm to his constitutional rights, to his health and other harms that
17 flow from ongoing detention.
18

19 Moreover, the government's interest in Petitioner's continued detention is minimal and
20 pales in comparison to the concrete and irreparable harm that Petitioner continues to suffer. Here,
21 Petitioner remains in custody indeterminately without a bond hearing to determine if he is danger
22 to the community or a flight risk. His continued detention not only violates his constitutional
23 rights but also causes direct suffering to him, his family and his community. As the Ninth Circuit
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1 has regularly held, there is no harm to the government when a court prevents the government
2 from engaging in unlawful practices. *See Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir.
3 2013); *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983).

4
5 Finally, the temporary restraining order sought here is in the public interest. The public
6 has an interest in upholding constitutional rights. *See Preminger v. Principi*, 422 F.3d 815, 826
7 (9th Cir. 2005) (“Generally, public interest concerns are implicated when a constitutional right
8 has been violated, because all citizens have a stake in upholding the Constitution.”); *Phelps-Roper*
9 *v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008) (“[I]t is always in the public interest to protect
10 constitutional rights.”). Moreover, the public has an interest in accurate determinations in all legal
11 proceedings, including in the decision of whether to detain individuals during their immigration
12 cases. The public is also served by avoiding excessive expense on detention and ensuring that the
13 government does not expend its resources to detain individuals unnecessarily.
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V. CONCLUSION

WHEREFORE, and for the foregoing reasons, Petitioner maintains that his continued detention is unlawful. He respectfully asks this Court to issue a temporary restraining order directing the government to provide him with a bond hearing within seven (7) days under INA § 1226(a), and to enjoin the government from denying bond on the ground that he is detained under § 1225(b)(2). If the government fails to provide the required bond hearing, Petitioner further requests his immediate release.

Dated: February 12, 2026

/S/ SYLVIA L. ESPARZA

Sylvia L. Esparza, Esq.

Attorney for Petitioner

Table of Contents

Exhibit A (Notice to Appear)

Exhibit B (Sworn Declaration of Erika Albarran Justo)

Exhibit C (Family Ties)

Exhibit D (Military Identification Card, Military Awards)

Exhibit E (UNLV Identification Card)

Exhibit F (Character Letters)

Exhibit G (Form I-213, Record of Deportable Alien).

Exhibit H (Eye Specialist Treatment Receipt)