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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)

LUCIO ALEXANDER BERNAL MUNIZ

Petitioner,

v.

MARKWAYNE MULLIN,
in his official capacity as Secretary, U.S. Department of Homeland Security; 245 Murray Lane SW, Washington, DC 20528;

U.S. DEPARTMENT OF HOMELAND SECURITY,

TODD BLANCHE,
in his official capacity as Acting Attorney General of the United States, 950 Pennsylvania Avenue, NW, Washington, DC, 20530;

U.S. DEPARTMENT OF JUSTICE,

DAVID VENTURELLA,
in his official capacity as Acting Director and Senior Official Performing the Duties of the Director

Case No.: 2:26-cv-02020

Agency No: A[redacted]

MOTION FOR TEMPORARY RESTRAINING ORDER

for U.S. Immigration and Customs Enforcement, 500 12th Street, SW, Washington, DC 20536;

ALEJANDRO ALMEIDA,
in his official capacity as Acting Field Office Director, Salt Lake City Field Office Director, U.S. Immigration & Customs Enforcement, 2975 Decker Lake Drive Suite 100, West Valley City, UT 84119-6096;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, and

JOHN MATTOS,
in his official capacity as Warden, Nevada Southern Detention Center, 2190 E. Mesquite Ave. Pahrump, NV 89060

Respondents.

Petitioner, Lucio Alexander Bernal Muniz, ("Petitioner") is presently detained by U.S. Immigration and Customs Enforcement ("ICE"). In accordance with Rule 65 of the Federal Rules of Civil Procedure and the All Writs Act, Petitioner hereby applies for a temporary restraining order ("TRO") or preliminary injunction ("PI") requiring that Respondents immediately release him from custody, or in the alternative, allow Petitioner to appear before an Immigration Judge ("IJ") for a custody redetermination (or "bond hearing").

Petitioner does not seek ex-parte consideration of this Motion. However, because Petitioner is suffering irreparable harm of continued detention, he asks that the Court expeditiously order that his Petition for Writ of Habeas Corpus be served on Respondents and for expedited briefing and consideration of this motion.

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As set forth in the accompanying Memorandum of Law, Respondents are detaining Petitioner in violation of the Immigration and Nationality Act ("INA"). In the absence of a TRO or PI, Petitioner will suffer irreparable injury through continued illegal detention.

DATED this 2nd day of July, 2026.

/s/ Melissa Corral
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MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. PRELIMINARY STATEMENT

Petitioner respectfully requests this Court's immediate action to secure his release from detention in accordance with the applicable statutes. He applies for a TRO, or in the alternative a PI, pending this Court's adjudication of his Petition for Writ of Habeas Corpus for the reasons stated below.

Petitioner does not request a review of his removability, or any other determination of the immigration court. Instead, Petitioner challenges the Department of Homeland Security's ("DHS") designation of him as an "arriving alien" ("AA"), despite his lawful admission into the country after obtaining advance parole as a noncitizen residing in the U.S. under Temporary Protected Status ("TPS"), and his continued detention due to that designation.

Because Petitioner is likely to succeed in his petition, as well as to avoid the significant irreparable harm he would suffer if Respondents continue with his detention, Petitioner requests the Court issue an order for his immediate release. In the alternative, an order requiring Respondents to provide him with a constitutionally adequate bond hearing where DHS has the burden to prove his continued detention is necessary by clear and convincing evidence.

II. FACTS

Petitioner has resided in the United States since the 1990s. On or about December 1996, Petitioner applied for political asylum. *See* **Exh. B**, *I-589, Application for Asylum, Withholding of Removal, and/or Convention Against Torture*. The IJ denied Petitioner's asylum application, but granted him voluntary departure; however, Petitioner did not leave the U.S. by the voluntary departure deadline. *See* **Exh. C**, *Order of the Immigration Judge*, dated August 26, 1997. As a

result, Petitioner was issued a removal order. *See* **Exh. D**, *Notice of Removal Order*, dated February 16, 2001.

In 2001, Petitioner applied for TPS and in 2003, his application was approved. *See* **Exh. E**, *I-821, Application for Temporary Protected Status*, dated March 30, 2001. After obtaining TPS, later in 2014, U.S. Citizenship and Immigration Services ("USCIS") issued Petitioner an advance parole document and he traveled to El Salvador. *See* **Exh. F**, *Advance Parole Approval Notice*, dated September 15, 2014. On his return, Customs and Border Patrol ("CBP) officials paroled Petitioner into the U.S. *Id.*

After his return, Petitioner filed an I-485, Application to Register Permanent Residence or Adjust Status ("I-485"), but USCIS denied his application. *See* **Exh. G**, *USCIS's Decision on Form I-485*, dated April 29, 2016. USCIS alleged Petitioner failed to disclose his prior outstanding removal order in his application for advance parole. *Id.* Petitioner appealed his denial to adjust status but was unsuccessful due to lack of appellate jurisdiction. *See* **Exh. H**, *USCIS Decision on Form I-290B*, dated June 2, 2016. Though both documents mention the possibility, neither after the I-485 denial nor the I-290B denial did USCIS issue an NTA charging Petitioner with removability. *See* **Exh. G**, *USCIS's Decision on Form I-485*, dated April 29, 2016; *see also* **Exh. H**, *USCIS Decision on Form I-290B*, dated June 2, 2016.

In 2025 and 2026, Petitioner was arrested for unlawful use or possession of drug paraphernalia twice in the City of Las Vegas. *See* **Exh. I**, *Las Vegas Municipal Court Case Docket Search*, No. 25-043099; *see also* **Exh. J**, *Las Vegas Municipal Court Case Docket Search*, No 26-036499. After release from City Jail, on or about April 15, 2026, ICE arrested Petitioner and transferred him to the Nevada Southern Detention Center ("NSDC"). *See* **Exh. A**, *NTA*.

In his NTA, DHS designated Petitioner as an arriving alien ("AA") and charged him with inadmissibility under INA § 212(a)(7(A)(i)(I), as a noncitizen who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document of identity and nationality, or other suitable travel document as required under INA § 211(a). *Id.*

The Immigration Court conducted a bond hearing on May 27, 2026 wherein Petitioner appeared *pro se*. *See* **Exh. K**, *Order of the Immigration Judge*, dated May 27, 2026. The IJ denied bond for lack of jurisdiction due to the AA designation in the NTA. *Id.* He has remained in ICE detention since. As such, Petitioner seeks this Court's action via a Writ of Habeas Corpus.

III. LEGAL STANDARDS FOR A TRO OR PRELIMINARY INJUNCTION

The standard for obtaining a TRO and preliminary injunction is the same. *Quiroga v. Chen*, 735 F. Supp. 2d 1226, 1228 (D. Nev. 2010). In considering whether to grant a TRO pursuant to Fed. R. Civ. P. 65(a), a court must consider whether "(1) [the plaintiff] is likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest." *East Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021); *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)).

"The first factor—likelihood of success on the merits—is the most important factor." *Chamber of Comm.*, 62 F.4th at 481 (quoting *California ex rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020) (en banc)). When the government is the defendant, "the balance of the equities and public interest factors merge." *Id.* (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d

1073, 1092 (9th Cir. 2014)). As such, even if the petitioner raises only "serious questions" as to the merits of his claims, the court can grant relief if the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *All. for the Wild Rockies*, 632 F.3d at 1135. Here, because Petitioner meets both the irreparable harm and likelihood of success prongs and because the requested relief is not overly burdensome on Respondents, he merits such relief.

IV. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits.

1. Petitioner has a Fifth Amendment right to due process.

Petitioner is likely to succeed on his claim that his detention violates his due process rights. "[T]he Fifth Amendment entitles noncitizens to due process in removal proceedings," including in detention incident to those proceedings. *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). Immigration detention is civil and must "bear[] a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (cleaned up). There are only two (2) legitimate purposes for immigration detention: mitigating flight risk and preventing danger to the community. *See Demore v. Kim*, 538 U.S. 510, 531 (2003) (Kennedy, J., concurring); *Zadvydas*, 533 U.S. at 690.

Neither purpose is served by Petitioner's detention. First, Petitioner is not a flight risk. Petitioner has lived in the U.S. for over thirty (30) years. Petitioner's family – which include his wife, children, and sisters – are in the U.S. *See* **Exh. L**, *Letter of Support from Roman Bernal Guzman, Petitioner's Son*. Petitioner has spent most of his life in the U.S, working and supporting his family, all while maintaining Temporary Protected Status ("TPS") for a majority of his time here and actively pursuing more stable status. *Id.*; *see also* **Exh. N,** *USCIS Benefit*

Card Details.[1] Petitioner's significant ties to his family and the United States show he is not a flight risk.

Second, Petitioner is not a danger to the community. Petitioner does not have any serious criminal convictions which would pose any risk of danger. *See* **Exh. I**, *Las Vegas Municipal Court Case Docket Search*, No. 25-043099; *see also* **Exh. J**, *Las Vegas Municipal Court Case Docket Search*, No 26-036499. He has also worked consistently throughout his time spent in the U.S. to support his family and to ensure the safety of his children. *See* **Exh. L**, *Letter of Support from Roman Bernal Guzman, Petitioner's Son*.

Petitioner's detention bears no "reasonable relation" to a legitimate government purpose and is unlawful. *Zadvydas*, 533 U.S. at 690. Petitioner does not have any criminal convictions which subject him to mandatory detention under 8 U.S.C. § 1226(c). The only reason DHS is likely detaining him is to further punish him for his minor wrongdoings. But civil detention cannot be a "mechanism for retribution," *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (cleaned up), because "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives." *Bell v. Wolfish*, 441 U.S. 520, 539 n. 20 (1979) (cleaned up). Therefore, because Petitioner's due process rights are being violated, he is likely to succeed on the merits of these proceedings, and as such this Court should grant his request for a TRO and order his immediate release or at least a prompt, constitutionally adequate bond hearing wherein DHS must prove by clear and convincing evidence that his continued detention is warranted.

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[1] This exhibit is page seven (7) of fifty-two (52) from a Freedom of Information Act ("FOIA") request Petitioner sought from USCIS. If necessary, Petitioner can provide the entire file to the Court.

2. Exhaustion is not required.

This Court has jurisdiction. "Exhaustion can be either statutorily or judicially required. If exhaustion is required by statute, 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) (noting administrative exhaustion is excused if irreparable injury would result from pursuit of administrative remedies). Neither the Habeas statute § 2241 nor the relevant sections of the INA require Petitioner to exhaust administrative remedies before filing petitions for Habeas Corpus. *See id.* (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)); *see also, e.g., Sola v. Holder*, 720 F.3d 1134, 1136 (9th Cir. 2013) (explaining that only procedural errors reviewable and correctable by the administrative tribunal must be exhausted).

This Court may waive prudential exhaustion by analyzing three (3) conditions: First, if the agency has unique expertise. *See Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). Second, if courts have reason to discourage bypassing administrative adjudication. *Id.* Third, if the agency is unlikely to correct its own errors. *Id.*

First, an IJ does not have jurisdiction to hear a request for bond when DHS designates a noncitizen as an AA in the NTA or other charging document. 8 C.F.R. § 1003.19(h)(1)(i)(B). Here, DHS designated Petitioner as an AA after ICE encountered him in Las Vegas, hundreds of miles from any border and twelve (12) years after his lawful admission. *See* **Exh. A**, *NTA*. This errant designation resulted in an automatic denial of bond, without any consideration of the merits of his case, due to a lack of jurisdiction. *See* **Exh. K**, *Order of the Immigration Judge*, dated May 7, 2026.

Furthermore, while Petitioner could seek release on conditional parole from ICE, currently there is a significant trend of ICE denying parole over fiscal year 2026, with parole

grants dropping dramatically from 365 then 198 and then twenty-five (25) from February to April. *See* Immigration and Customs Enforcement, FY26_detentionStats04092026, Detention Management, https://www.ice.gov/detain/detention-management (last visited June 24, 2026). Further, relying on a favorable exercise of discretion when ICE deliberately arrested a valid TPS holder with minimal criminal history would be, in all certainty, unproductive. As such, any attempt to release Petitioner from detention through agency action would largely be unavailing.

Second, bypassing administrative adjudication is warranted because this is a situation in which only intervention of the federal courts through habeas corpus actions will correct the legal error of Petitioner's continued detention. Without jurisdiction of the Immigration Court, ICE will be able to keep detaining Petitioner illegally for months, or even years, if he is found removable at his individual hearing and Petitioner appeals.

Third, the BIA is part of the Department of Justice ("DOJ") and as such would be likely to dismiss an appeal by Petitioner. In recent months, most of the BIA's decisions have shown its arbitrary positions and interpretations of longstanding immigration law and policy and have proven it is not a reliable arbiter of justice. Federal courts have been inundated with immigration cases, due to the BIA's biased and prejudiced decisions such as *Matter of Yajure Hurtado*, 29 I.&N. Dec. 216 (BIA 2025).

However, while Petitioner does not want to circumvent administrative procedures, Petitioner has demonstrated he is not subject to removability or unlawful detention because he has valid TPS status and his last entry to the U.S. in 2014 occurred under advance parole. *See* **Exh. F**, *Advance Parole Approval Notice*, dated September 15, 2014; *see also* **Exh. M,** *USCIS Benefit Card Details* (showing USCIS received Petitioner's TPS re-registration on March 21,

2025). Therefore, an appeal to the BIA of the IJ's decision denying Petitioner's bond request for lack of jurisdiction would be futile.

For these reasons, this Court should waive prudential administrative exhaustion and grant Petitioner's request for a TRO.

B. Petitioner Will Be Irreparably Harmed.

The Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities" and "the economic burdens imposed on detainees and their families as a result of detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, "[i]t is well established 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)). Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted that "unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez*, 872 F.3d at 999.

If this Court does not intervene, Petitioner will be irreparably harmed. First, with the Immigration Court's expedited detained dockets, there is a strong possibility Respondents will deport Petitioner despite him having legal status and before he has a chance to challenge his detention. Even if Respondents do not deport Petitioner, it is still very likely he will receive a deportation order, despite having valid TPS, which will impair if not completely usurp his ability to regulate his status in the future. Additionally, his fifth amendment rights will be violated due

to his continued detention. Petitioner faces irreparable injury to his liberty by a continued unconstitutional and unlawful detention. Petitioner is entitled to due process; as he has been a resident of the U.S. for over thirty (30) years, has maintained valid TPS for over two (2) decades, has been lawfully admitted into the U.S., has minimal criminal history, and Respondents are infringing on such rights.

Because Petitioner will be irreparably harmed, this Court should intervene, and grant Petitioner's immediate release.

C. The Balance of Equities Favors a TRO and Would Be in the Public Interest.

The balance of the equities and public interest analyses merge when the government is the opposing party, as is the case in this action. See *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009). An injunction is in the public interest, given that Petitioner seeks to protect his constitutionally protected liberty. See *Meza v. Bonnar*, No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018). "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws, [ ] the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020).

On the other hand, the burden on Respondents in releasing Petitioner from detention is minimal, especially considering Petitioner is not removable based on the charges brought upon by DHS. Further, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,'" and that "[s]upervised release programs cost much less by comparison...." *Hernandez*, 872 F.3d at 996.

The balance of equities weighs heavily in favor of granting Petitioner's request for a TRO. Petitioner faces significant disadvantages, including his lengthy detention and lack of access to resources. Most importantly, as a TPS beneficiary, Petitioner cannot legally be removed or detained by DHS under 8 U.S.C. §1254a(a)(1) and §1254a(d)(4), respectively, therefore his continued detention infringes on his liberty interests. By contrast, Respondents possess substantial institutional resources. Granting a TRO to release Petitioner and avoid his prolonged detention is necessary to protect Petitioner's constitutional rights.

Absent an order from this Court, Petitioner will be illegally detained for an indefinite period. Thus, an illegal detention would have been allowed to persist without judicial remedy. That is not in the public interest.

D. The Court Should Not Require Petitioner to Provide Security Prior to the Temporary Restraining Order.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damage sustained by any party found to have been wrongfully enjoined or restrained." However, district courts exercise this discretion to require no security in cases brought by indigent and/or incarcerated people, and in the vindication of immigrants' rights. *See e.g., Ashland v. Cooper*, 863 F.2d 691, 693 (9th Cir. 1988); *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020). Additionally, courts "may dispense with the filing of a bond when," as here, "there is no realistic likelihood of harm to the defendant from enjoining his or her conduct", *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), or plaintiff shows a high likelihood of success on

the merits. *See, e.g., People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Plan. Agency*, 766 F.2d 1319, 1325 (9th Cir. 1985), amended, 775 F.2d 998 (9th Cir. 1985).

Here, it is unlikely any harm will come to Respondents as a result of a grant of temporary relief and Respondents will incur negligible or zero financial costs. As such, Petitioner asks the Court to exercise its discretion to waive the bond requirement.

CONCLUSION

The Court should grant Petitioner's motion for a temporary restraining order or in the alternative a preliminary injunction.

DATED this 2nd day of July, 2026.

/s/ Melissa Corral
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of Petitioner because I am one of the Petitioner's attorneys. I have discussed with Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Verified Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

DATED this 2nd day of July 2026.

/s/ Melissa Corral
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EXHIBIT LIST

Tab	Document	Page
A	Notice to Appear (NTA)	PET002–PET005
B	I-589, Application for Asylum, Withholding of Removal, and/or Convention Against Torture	PET007–PET013
C	Order of the Immigration Judge, dated August 26, 1997	PET015–PET016
D	Notice of Removal Order, dated February 16, 2001	PET018
E	I-821, Application for Temporary Protected Status, dated March 30, 2001	PET020–PET024
F	Advance Parole Approval Notice, dated September 15, 2014	PET026
G	USCIS's Decision on Form I-485, dated April 29, 2016	PET028–PET039
H	USCIS Decision on Form I-290, dated November 8, 2016	PET041–PET042
I	Las Vegas Municipal Court Case Docket Search, No. 25-043099	PET044–PET045
J	Las Vegas Municipal Court Case Docket Search, No. 26-036499	PET047–PET048
K	Order of the Immigration Judge, dated May 7, 2026	PET050-PET051
L	Letter of Support from Roman Bernal Guzman (Petitioner's Son)	PET053
M	USCIS Benefit Card Details	PET055