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17
18 **UNITED STATES DISTRICT COURT**
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

20 D.E.M.,

21 Petitioner,

22 vs.

23 CHRISTOPHER J. LAROSE, Warden,
24 Otay Mesa Detention Center;

25 GREGORY J. ARCHAMBEAULT,

26 San Diego Field Office Director;

27 TODD M. LYONS, Acting Director of
28 U.S. Immigration and Customs

Enforcement; KRISTI NOEM,

Secretary of the U.S. Department of
Homeland Security,

Respondents.

Case No. '25CV2521 CAB AHG

**PETITIONER'S NOTICE OF
MOTION; EX PARTE MOTION
FOR A TEMPORARY
RESTRAINING ORDER OR
PRELIMINARY INJUNCTION;
AND MEMORANDUM OF
POINTS AUTHORITIES IN
SUPPORT THEREOF**

1 **NOTICE OF MOTION AND MOTION FOR A TEMPORARY**
2 **RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

3 PLEASE TAKE NOTICE as soon as it may be heard in the United States
4 District Court for the Southern District of California, that Petitioner D.E.M. (“Mr.
5 M”)¹, will, and hereby does, move this Court for a temporary restraining order
6 pursuant to Federal Rule of Civil Procedure 65(b) or, in the alternative, for a
7 preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a) that
8 requires Respondents to release him from custody immediately.

9 Although Mr. M was present and residing in the United States for a decade
10 before his immigration arrest and despite an Immigration Judge (“IJ”) granting him
11 bond, Mr. M remains detained at the Otay Mesa Detention Center. Invoking the
12 automatic-stay provision in 8 C.F.R. § 1003.19(i)(2), DHS has appealed the IJ’s
13 bond grant, arguing that Mr. M is seeking admission to the United States and
14 therefore is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).
15 This argument is clearly contradicted by the text and history of the Immigration
16 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, which provides that individuals
17 who previously entered and are now residing in the United States are subject to §
18 1226(a), which allows for release on bond and expressly applies to individuals
19 who, like Mr. M, are charged as removable for having entered the United States
20 without inspection and being present without admission.

21 Mr. M’s ongoing detention under 8 U.S.C. § 1225(b)(2)(A) violates his due
22 process rights and is ultra vires, and it unquestionably constitutes irreparable
23 injury.

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¹ “Mr. M” is a pseudonym. Because this matter will require public filing of
27 documents related to Petitioner’s asylum claim, he requests leave to proceed under
28 pseudonym. Once the case is docketed, Petitioner will make an appropriate motion
 to that effect.

1 Accordingly, Petitioner seeks a temporary restraining order enjoining
2 Respondents from continuing to detain him. Mr. M also seeks an order prohibiting
3 Respondents from relocating Petitioner outside of California pending final
4 resolution of this litigation.

5 On September 25, 2025, at approximately 8:30 AM, I emailed U.S.
6 Attorneys Janet Cabral at Janet.Cabral@usdoj.gov and Erin Dimpleby at
7 Erin.Dimbleby@usdoj.gov with actual notice that Petitioner is filing this motion,
8 along with electronic copies of the petition and the brief accompanying this
9 motion, via email before completing this electronic filing.

10 The motion is respectfully submitted based on this Notice of Motion; the
11 Memorandum of Points and Authorities in support filed herewith; the Proposed
12 Order; the pleadings, records, and papers on file in this action; oral argument of
13 counsel; and any other matters as may be properly considered by the Court.

14
15 Dated: September 25, 2025

Respectfully submitted
By: /s/ Kelly Gregg

16
17 Kelly Gregg
18 GIBSON, DUNN & CRUTCHER LLP
19 *Pro Bono Attorney for Petitioner*
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INTRODUCTION

Despite having been granted bond by an Immigration Judge (“IJ”), Petitioner Mr. M is being unlawfully detained in the custody of Immigration and Customs Enforcement (“ICE”) at the Otay Mesa Detention Center (“OMDC”) based on the automatic-stay provision in 8 C.F.R. § 1003.19(i)(2).

The Department of Homeland Security (“DHS”) has appealed the bond grant of the IJ and argues that Petitioner is seeking admission and therefore is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A), despite the fact that Petitioner has resided in the United States for over ten years and therefore is eligible for bond under 8 U.S.C. § 1226(a).

Petitioner seeks his immediate release under appropriate conditions from his unlawful incarceration in ICE custody.

Mr. M is a 44-year-old father of three children who reside in the United States. He has lived in the United States for ten years and has extensive family ties in this country. He also has a consistent employment history in the United States and has worked for the last five years for Laguna Farms as a raspberry harvester. Mr. M has no criminal history.

ICE did not have a warrant and lacked reasonable suspicion for Mr. M’s arrest. Rather, the agents targeted him as he walked to his car to commute to work.

Mr. M requested a bond hearing, which was held on August 8. The IJ held that he had jurisdiction under 8 U.S.C. § 1226, found that Mr. M posed no danger to the community and was not a flight risk, and granted bond at \$6,500.

Yet, Mr. M remains detained by ICE at OMDC. Therefore, Mr. M respectfully requests this Court end his indefinite incarceration and issue a temporary restraining order enjoining Respondents from continuing to detain him.

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I. STATEMENT OF FACTS²

Mr. M has resided in Southern California, specifically Oxnard, California for over a decade. For the past five years he has worked in agriculture for Laguna Farms, LLC, where his employer has lauded him for his “professionalism, reliability, and . . . positive contributions to Laguna’s team.” Borkowski Decl. Ex. 3 at 15, 24. Mr. M is a dedicated father of three children who reside in the United States, including his two-year-old United States citizen son. *Id.* at 15. He possesses sole legal and physical custody over his two teenage children who both have Special Immigrant Juvenile Status and Deferred Action. Mr. M has never been convicted of or arrested for any crimes. *See id.* at 15; Ex. 8 at 138.

On July 9, 2025, Mr. M was walking to his car, parked a few blocks away from his house. He was “startled when he was arrested by people in street clothes driving in unmarked SUVs. They were wearing green bullet proof vests, and face coverings.” Borkowski Decl. Ex. 3 at 15. These masked individuals “grabbed [him], took [him] to the ground, and they kept instructing [him] to put [his] hands behind [his] back,” which he could not do because he “used [his] hands to stop the blow[s] and to cover [him]self.” *Id.* An individual “forcefully put his knees on [his] back as they arrested [him] and pulled [his] ears so that [he] would look up.” They then “threatened [him] that they were going to break [his] arms” if he didn’t put his hands—which were still pinned to the ground—behind his back. *Id.* Weeks after the arrest, Mr. M still had “scratches on the back of [his] ears due to the force they used to pull [his] head back.” *Id.*

ICE did not have a warrant for Mr. M’s arrest. In the Notice to Appear, DHS marked that Mr. M “[is] an alien present in the United States who has not been admitted or paroled.” It did not mark the box “You are an arriving alien.”

² Petitioner incorporates the facts stated in his Petition for Writ of Habeas Corpus to the present motion.

1 Borkowski Decl. Ex. 4 at 93. After his arrest, Mr. M was brought 200 hundred
2 miles from his home in Oxnard to OMDC, where he remains detained.

3 On August 1, 2025, Mr. M requested a bond hearing. His motion explained
4 that he is subject to § 1226(a) and therefore entitled to a bond hearing. Borkowski
5 Decl. Ex. 2 at 6. The Immigration Court conducted a custody redetermination
6 hearing on August 8, 2025. *Id.* Ex. 5. At the hearing, DHS argued that the IJ
7 lacked jurisdiction to redetermine Mr. M’s custody because he was detained under
8 INA § 235. *Id.* Ex. 10 at 144–45. Relying on Supreme Court, Ninth Circuit, and
9 BIA precedent, the IJ held that it would not consider “someone like [Mr. M], who
10 has been physically present in the United States for 10 years, as an applicant for
11 admission,” despite DHS’s arguments. *Id.* Ex. 8 at 136–37 (citing *Jennings v.*
12 *Rodriguez*, 583 U.S. 281, 289 (2018); *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir.
13 2020) (*en banc*); *United States v. Gambino-Ruiz*, 91 F.4th 981, 989 (9th Cir. 2024);
14 *In re M-S-*, 27 I&N Dec. 509 (A.G. 2019)). The IJ explained that “sections 235
15 and 236 of the INA each cover distinct, non-overlapping classes of” noncitizens.
16 *Id.* at 136.

17 The IJ noted that Mr. M “was not detained near the border and has been
18 present in the United States since his last entry 10 years ago.” Borkowski Decl.
19 Ex. 8 at 137. At the hearing, the IJ considered the evidence presented by Mr. M.
20 *Id.* at 137–38. The IJ noted that DHS “did not argue that [Mr. M] was a danger.”
21 *Id.* at 138. Although the IJ recognized that Mr. M “presents some risk of flight
22 because of his limited relief and manner of entry,” it determined that he
23 “possess[es] various positive factors which mitigate his risk of flight.” *Id.* at 138.
24 DHS argued that Mr. M presents a greater risk of flight because of his alleged
25 attempt to flee from officers during his arrest. *Id.* The IJ rejected this argument,
26 noting that it is not “unreasonable to assume that such an abrupt encounter with
27 several armed and masked strangers would trigger a flight reaction to avoid harm.”
28

1 *Id.* Having “considered all the information, evidence, and arguments presented by
2 the parties,” the IJ found that “[Mr. M] does not pose a danger to the community”
3 and that his risk of flight warranted imposing a \$6,500 bond. *Id.* at 136, 138.

4 Immediately after the hearing, DHS filed Form EOIR-43, indicating its
5 intent to appeal. Borkowski Decl. Ex. 6. Eleven business days after the IJ issued
6 its order, DHS filed its Notice of Appeal and a Motion to Equitably Toll 8 C.F.R.
7 § 1003.6(c)(1) Filing Deadline by One Business Day. *Id.* Ex. 7. Under that
8 section, a “stay shall lapse if DHS fails to file a notice of appeal with the Board
9 within ten business days of the issuance of the order of the immigration judge.” 8
10 C.F.R. § 1003.6(c)(1).

11 Twenty-two days after he was granted bond and seventy-eight days since he
12 was first detained, Mr. M remains detained at OMDC.

13 **II. STANDARD OF REVIEW**

14 A temporary restraining order is warranted where a Petitioner establishes
15 that (1) he is likely to succeed on the merits of his claim; (2) he will suffer
16 irreparable harm absent relief; (3) the balance of the equities tips in his favor; and
17 (4) an injunction is in the public interest. *All. for the Wild Rockies v. Cottrell*, 632
18 F.3d 1127, 1131 (9th Cir. 2011) (citing *Winter v. Nat’l Res. Def. Council*, 555 U.S.
19 7, 20 (2008)); see also *Stuhlbarg Int’l Sales Co. v. Brush & Co.*, 240 F.3d 832, 839
20 n.7 (9th Cir. 2001) (applying preliminary injunction standard to a TRO).³ Where
21 the government is the Respondent, the balance of the equities and public interest
22 factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

23 **III. ARGUMENT**

24 Mr. M’s habeas petition is likely to succeed on the merits because he is
25 detained under § 1226, the automatic stay imposed by DHS violates his
26

27 ³ If Respondents respond to this motion for a TRO, Mr. M requests the Court grant
28 a preliminary injunction instead of a TRO.

1 constitutional rights, and DHS’s actions are ultra vires.⁴ Mr. M is actively
2 suffering irreparable harm because Respondents are detaining him after an IJ
3 granted him bond. The balance of the equities and the public interest favor
4 releasing Mr. M because the government has no legitimate interest in detaining
5 him after a neutral arbiter found that he neither posed a danger to the community
6 nor a flight risk, and where DHS can use alternatives to detention to mitigate any
7 perceived risk. Mr. M has satisfied the criteria of a TRO.

8 **A. Petitioner Is Likely to Succeed on the Merits of His Claim.**

9 Mr. M’s habeas petition is likely to succeed on the merits because his
10 ongoing detention despite the IJ’s grant of bond is unlawful. The Constitution
11 guarantees that the writ of habeas corpus is “available to every individual detained
12 within the United States,” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing
13 U.S. Const., Art. I, § 9, cl. 2), including for immigration-related detention,
14 *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). A writ under 28 U.S.C. § 2241 may
15 issue if a person “in custody in violation of the Constitution or laws or treaties of
16 the United States.” 8 U.S.C. § 2241(c). Mr. M’s ongoing detention is in violation
17 of both the U.S. Constitution and its laws.

18 Multiple courts faced with similar questions regarding bond for noncitizens
19 detained under § 1226 have entered preliminary injunctions or issued writs of
20 habeas corpus. *See, e.g., Anicasio v. Kramer*, 2025 WL 2374224, at *2 (D. Neb.
21 Aug. 14, 2025) (issuing a habeas petition ordering respondents to immediately
22 release petitioner who, like Mr. M, was granted bond by an IJ); *Aguilar*

24 ⁴ DHS’s detention of Mr. M under § 1225 violates the Administrative Procedure
25 Act, 5 U.S.C. § 706(2), because it is arbitrary and capricious. Additionally,
26 because his arrest was based only on Mr. M’s apparent race and ethnicity, it was
27 unlawful, *see United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975), and any
28 evidence obtained from the arrest—including alleged admissions regarding Mr.
M’s alienage—must be excluded. Without that evidence, the government lacks
sufficient grounds to detain Mr. M, further warranting his release.

1 *Maldonado v. Olson*, No. 35-cv-03142 (D. Minn. Aug. 15, 2025) (granting a TRO
2 enjoining respondents from enforcing the automatic-stay provision during the
3 pendency of the noncitizens writ petition and releasing petitioner under bond);
4 *Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (ordering bond
5 hearings); [*Petitioner*] v. *Andrews*, No. 1:25-cv-01163, at 7 (E.D. Cal. Sept. 23,
6 2025) (collecting cases and ordering petitioner’s immediate release).

7 **1. DHS’s Misclassification of Mr. M as an Applicant for Admission**
8 **Under 1225 Violates the INA.**

9 The text, legislative history, and statutory history of the INA as well as the
10 context surrounding Mr. M’s detainment all demonstrate that Mr. M is detained
11 under 8 U.S.C. § 1226, not § 1225.

12 The plain text of § 1226 demonstrates that subsection (a) applies to Mr. M.
13 Section 1226(a) applies to anyone who is detained “pending a decision on whether
14 the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).
15 Section 1226 explicitly confirms that this authority includes not just noncitizens
16 who are deportable pursuant to 8 U.S.C. § 1227(a) but also noncitizens, such as
17 Mr. M, who are inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a)
18 provides the right to seek release, § 1226(c) prohibits release for specific categories
19 of noncitizens—including certain inadmissible noncitizens—and subjects them
20 instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C). Recent
21 amendments to § 1226—which clarify that individuals who are inadmissible under
22 § 1182(a)(6) (presence without admission) or § 1182(a)(7) (lacking valid
23 documentation to enter the United States) are subject to mandatory detention under
24 § 1226(c) if they have been arrested, charged with, or convicted of certain crimes,
25 Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025)—are premised upon
26 the understanding that § 1226 applies to individuals, like Mr. M, who are charged
27 under § 1182(a)(6) or (a)(7). *See generally* [*Petitioner*], 1:25-cv-1163 (order
28 granting preliminary injunction for immediate release where IJ denied bond based

1 solely on jurisdiction). If DHS’s position that § 1226(a) did not apply to
2 inadmissible noncitizens who are present without admission in the United States
3 were correct, there would be no reason to specify that § 1226(c) governs certain
4 persons who are inadmissible; instead, the statute would only have needed to
5 address people who are deportable for certain offenses.

6 DHS’s reading is inconsistent with the canon against superfluities. Under
7 this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed so
8 that effect is given to all its provisions, so that no part will be inoperative or
9 superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314
10 (2009); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023). By
11 concluding that § 1225(b)(2) applies to Mr. M, DHS violates this rule by rendering
12 superfluous § 1226’s text applying it to those who are present within and residing
13 within the United States and who are not at the border seeking admission.

14 As the Supreme Court recognized, § 1225 is concerned “primarily [with
15 those] seeking entry.” *Jennings*, 583 U.S. at 297. The title of § 1225 refers to the
16 “inspection” of “inadmissible arriving” noncitizens. *See Dubin v. United States*,
17 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
18 construe statute). Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding.
19 To begin, paragraph (b)(1)—which concerns “arriving [noncitizens]”—
20 encompasses only the “inspection” of certain “arriving” noncitizens and other
21 recent entrants and only those who are “inadmissible under section 1182(a)(6)(C)
22 or § 1182(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i).

23 Paragraph (b)(2) is similarly limited to people applying for admission when
24 they arrive in the United States. The title explains that it addresses the
25 “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking
26 admission,” but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). An
27 individual submits an “application for admission” only at “the moment in time
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1 when the immigrant actually applies for admission into the United States.” *Torres*,
2 976 F.3d at 927. Indeed, in *Torres*, the *en banc* Ninth Circuit rejected the idea that
3 § 1225(a)(1) means that anyone who is presently in the United States without
4 admission or parole is someone “deemed to have made an actual application for
5 admission.” *Id.* (emphasis omitted). That holding is instructive here, as only those
6 who act affirmatively, like submitting an “application for admission,” are “seeking
7 admission” within § 1225(b)(2)(A). Subparagraph (b)(2)(C) addresses the
8 “[t]reatment of [noncitizens] arriving from contiguous territory,” i.e. those who are
9 “arriving on land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). The language in
10 paragraphs (b)(1) and (b)(2) illustrates that § 1225 applies to those arriving *into* the
11 United States—not those already residing here.

12 Finally, the entire statute is premised on the idea that an inspection occurs
13 near the border and shortly after arrival, as the statute repeatedly refers to
14 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
15 conducting “inspection[s]” of people “arriving in the United States,” *id.*
16 § 1225(a)(3), (b)(1), (b)(2), (d).

17 The legislative history of the Illegal Immigration Reform and Immigrant
18 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, §§ 302–03, 110
19 Stat. 3009–546, 3009–582 to 3009–583, 3009–585, also supports a limited
20 construction of § 1225 and the conclusion that § 1226(a) applies to Mr. M. In
21 passing IIRIRA, Congress was focused on the perceived problem of recent arrivals
22 to the United States who did not have documents to remain. *See* H.R. Rep. No.
23 104-469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably,
24 Congress did not say anything about subjecting all people present in the United
25 States after an unlawful entry to mandatory detention if arrested. This is important,
26 as prior to IIRIRA, people like Mr. M were not subject to mandatory detention.
27 *See* 8 U.S.C. § 1252(a)(1) (1994). Had Congress intended such a monumental shift
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1 in immigration law (potentially subjecting millions of people to mandatory
2 detention), it would have explained so or spoken more clearly. *See Whitman v.*
3 *Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed
4 the matter, Congress explained precisely the opposite, noting that the new
5 § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1)
6 regarding the authority of the Attorney General to arrest, detain, and release on
7 bond [a noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-
8 469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210.

9 DHS’s long practice of considering people like Mr. M as detained under
10 § 1226(a) further supports this reading of the statute. For decades, and across
11 administrations, DHS has acknowledged that § 1226(a) applies to individuals who
12 are present without admission after entering the United States unlawfully but who
13 were later apprehended within the United States long after their entry. Such a
14 longstanding and consistent interpretation “is powerful evidence that interpreting
15 the Act in [this] way is natural and reasonable.” *Abramski v. United States*, 573
16 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United*
17 *States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
18 interpretation and practice to reject the government’s new proposed interpretation
19 of the law at issue). Agency regulations have long recognized that people like Mr.
20 M are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
21 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
22 fact, EOIR confirmed that § 1226(a) applies to Mr. M when it promulgated the
23 regulations governing immigration courts and implementing § 1226 decades ago.
24 Specifically, EOIR explained that “[d]espite being applicants for admission,
25 [noncitizens] who are present without having been admitted or paroled (formerly
26 referred to as [noncitizens] who entered without inspection) will be eligible for
27 bond and bond redetermination.” 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

1 Indeed, and in line with this long-standing practice, the government itself
2 charged Mr. M as an “alien present in the United States who has not been admitted
3 or paroled” rather than an “arriving alien.” Borkowski Decl. Ex. 4 at 93. The
4 same notice to appear informed petitioner that he could request an IJ review DHS’s
5 custody determination, further supporting that he was not detained under a
6 provision which would require mandatory detention such as § 1225(b)(2). *See*
7 *Anicasio*, 2025 WL 2374224, at *2 (considering the NTA in granting a writ of
8 habeas corpus to a petitioner who, like Mr. M, was detained under the automatic-
9 stay provision despite being granted bond.)

10 **2. The Automatic-Stay Provision in 8 C.F.R. § 1003.19(i)(2) Violates the**
11 **Fifth Amendment.**

12 Mr. M’s ongoing detention under the automatic-stay provision in 8 C.F.R. §
13 1003.19(i)(2) violates his substantive and procedural due process rights.

14 **a. ICE’s Continued Detention of Mr. M Violates His Substantive**
15 **Due Process Rights Under the Fifth Amendment.**

16 Continued detention despite a bond order and findings of no danger or flight
17 risk violates the Fifth Amendment’s substantive due process protections. *Zadvydas*
18 *v. Davis*, 533 U.S. 678, 690 (2001). The Fifth Amendment’s Due Process Clause
19 states that, “[n]o person shall be . . . deprived of life, liberty, or property, without
20 due process of law.” U.S. CONST. AMEND. V. Accordingly, in the United
21 States, “liberty is the norm, and detention prior to trial or without trial is the
22 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
23 Because DHS invoked the automatic-stay provision in 8 C.F.R. § 1003.19(i)(2),
24 Mr. M is being subjected to such a violation.

25 Due Process “protections apply to all ‘persons’ within the United States,
26 including [noncitizens], whether their presence here is lawful, unlawful, temporary,
27 or permanent, and to immigration detention as well as criminal detention.”
28 *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up). For

1 noncitizens in immigration detention, “[f]reedom from imprisonment—from
2 government custody, detention, or other forms of physical restraint—lies at the
3 heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690.

4 Because “[a]rbitrary civil detention is not a feature of our American
5 government,” *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018), civil
6 confinement is only permissible “in certain special and narrow non-punitive
7 circumstances,” where a “special justification” asserted by the government
8 “outweighs the individual’s constitutionally protected interest in avoiding physical
9 restraint,” *Zadvydas*, 533 U.S. at 690 (cleaned up). To find a due process violation
10 for someone in civil confinement, a court need only balance the individual’s
11 “liberty interests in freedom from incarceration” against “the legitimate interests of
12 the state.” *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1121 (9th Cir. 2003).

13 Respondents have not attempted to show any “special justification” or
14 compelling governmental interest which would outweigh Mr. M’s constitutional
15 liberty. DHS presented neither evidence nor argument to support a finding that
16 Mr. M presents a danger to the community. Its briefing before the IJ did not
17 include any argument or reference to ensuring Mr. M’s appearance at future
18 proceedings. *See* Borkowski Decl. Ex. 10. The government had the opportunity to
19 challenge the merits of Mr. M’s request for bond below, but it instead chose to
20 focus its argument on the IJ’s jurisdiction. *Id.* As such, and based on the evidence
21 in the record, the IJ determined Mr. M was not a danger or flight risk, and imposed
22 a bond and other conditions, including his continued appearance at court dates, as
23 conditions of his bond. Borkowski Decl. Ex. 8 at 138. As the Supreme Court has
24 noted, “[t]he choice . . . is not between imprisonment and the [noncitizen] ‘living at
25 large.’ It is between imprisonment and supervision under release conditions that
26 may not be violated.” *Zadvydas*, 533 U.S. at 696 (internal citations omitted). Even
27 if ICE has an interest in “assuring [Mr. M’s] presence at [a possible speculative]
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1 moment of removal,” *id.* at 699, this interest cannot justify continued
2 imprisonment if there are ample alternatives to meet this objective. Such
3 alternatives plainly exist here where Mr. M has in the past attended state court
4 proceedings for his teenage children and ensured their compliance with any
5 requirements in their removal proceedings before they were dismissed. *See*
6 Borkowski Decl. Ex. 3 at 51, 59–63.

7 The automatic-stay provision applies only in situations, like here, where an
8 IJ has already determined an individual should be released on bond. The
9 governmental interest in the continued detention of these individuals who present
10 neither a risk of danger nor of flight, in contravention of the order of a neutral
11 factfinder, does not outweigh the liberty interest at stake. Accordingly, the Court
12 should find that the government’s invocation of the automatic-stay provision to
13 detain Mr. M has violated his substantive due process rights.

14 This violation of Mr. M’s Fifth Amendment rights is likely to warrant the
15 grant of his habeas petition. In immigration habeas cases, including in this Circuit,
16 courts regularly order release upon determining that detention violates substantive
17 due process. *See, e.g., Ekeh v. Gonzales*, 197 F. App’x 637, 638 (9th Cir. 2006)
18 (ordering supervised release pursuant to *Zadvydas*); *Nguyen v. Fasano*, 84 F. Supp.
19 2d 1099, 1113 (S.D. Cal. 2000) (issuing order to show cause why the petitioner
20 should not be released).

21 **b. Mr. M’s Detention Under 8 C.F.R. § 1003.19(i)(2) Violates His**
22 **Procedural Due Process Rights Under the Fifth Amendment.**

23 The automatic-stay provision under 8 C.F.R. § 1003.19(i)(2) allows DHS to
24 override an IJ’s bond decision without judicial review or individualized findings,
25 which is exactly what happened to Mr. M. His liberty interest, protected by the
26 Fifth Amendment, should have prevented DHS from staying his release in a
27 manner that is unreasonable or fundamentally unfair. *See e.g., Zadvydas*, 533 U.S.
28 at 700; *Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1054 (N.D. Cal. 2021)

1 (noting a “noncitizen’s liberty interest in remaining out of custody on bond”);
2 *Rombot v. Souza*, 296 F. Supp. 3d 383, 389 (D. Mass. 2017). Under *Mathews v.*
3 *Eldridge*, 424 U.S. 319 (1976), Mr. M’s civil detention violates his due process
4 rights. He must therefore be released on the bond order the IJ granted.

5 The *Mathews* test balances (1) the private interest threatened by
6 governmental action; (2) the risk of erroneous deprivation of such interest and the
7 probable value of additional procedural safeguards; and (3) the government
8 interest. 424 U.S. at 335.

9 First, the interest at stake is paramount to Mr. M. See *Young v. Harper*, 520
10 U.S. 143, 146–47 (1997); see also *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969–70
11 (N.D. Cal. 2019) (holding that a noncitizen has a protected liberty interest in
12 remaining out of custody following an IJ’s bond determination). Being free from
13 physical detention by one’s own government “is the most elemental of liberty
14 interests.” *Hamdi*, 542 U.S. at 529. Mr. M’s private interest in his liberty is
15 “unquestionably substantial.” *Martinez Leiva v. Becerra*, 2023 WL 3688097, at
16 *7 (N.D. Cal. May 26, 2023) (quoting *Singh v. Holder*, 638 F.3d 1196, 1208 (9th
17 Cir. 2011)). Mr. M is being held at a detention center in the same conditions as
18 criminal inmates and is far from his family who have been unable to visit him. See
19 *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Respondent’s
20 unreasonable continued detention of Mr. M, who is a principal breadwinner for his
21 household, has also imposed significant financial and emotional hardship on him
22 and his family. Mr. M “has an overwhelming interest here—regardless of the
23 length of his immigration detention—because ‘any length of detention implicates
24 the same’ fundamental rights.” *Perera v. Jennings*, 2021 WL 2400981, at *4 (N.D.
25 Cal. June 11, 2021) (citation omitted).

26 Second, there is a large risk of erroneous deprivation of Mr. M’s liberty
27 interest through the procedures used in this case, and there are available alternative
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1 procedures which would ameliorate those risks. The risk of deprivation is high
2 because the only individuals subject to the automatic stay are those who prevailed
3 at their bond hearing. The stay provision does not require DHS to consider or
4 demonstrate any individualized facts or show a likelihood of success on the merits.
5 *See* 8 C.F.R. § 1003.19(i)(2).

6 “[A] stay of an order directing the release of a detained individual is an
7 ‘especially’ extraordinary step, because ‘[i]n our society liberty is the norm, and
8 detention prior to trial or without trial is the carefully limited exception.’”
9 *Günaydin v. Trump*, 784 F. Supp. 3d 1175, 1188 (D. Minn. 2025) (quoting
10 *Salerno*, 481 U.S. at 755). The automatic-stay regulation “turns these well-
11 established procedural principles on their heads and carries a significant risk of
12 erroneous deprivation.” *Id.* at 1189. In this case, the IJ concluded that Mr. M was
13 not a threat to public safety and determined the \$6,500 bond would mitigate any
14 small risk of flight. Nevertheless, despite a neutral decision-maker finding a bond
15 was warranted, the automatic-stay provision allowed DHS—the party who lost its
16 bond argument—to unilaterally deprive Mr. M of his liberty.

17 “A unilateral determination made by the Service attorney that effectively
18 overrules the reasoned decision of the Immigration Judge poses a serious risk of
19 error.” *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1078 (N.D. Cal. 2004). While a
20 stay usually “requires the demonstration of likelihood of success on the merits and
21 irreparable harm, the automatic stay provision does not demand any showing and,
22 in fact, was promulgated explicitly for the purpose of avoiding a case-by-case
23 determination.” *Id.* (citing 66 Fed. Reg. 54909 (Oct. 31, 2001)). sentially, the
24 automatic-stay provision “conflates the functions of adjudicator and prosecutor.”
25 *Id.* her courts considering the automatic-stay provision have found this
26 problematic as well. *See, e.g., Sampiao v. Hyde*, 2025 WL 2607924, at *10 (D.
27 Mass. Sept. 9, 2025) (granting petition for habeas corpus and the immediate release
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1 of petitioner who, like Mr. M, was granted bond by the IJ but remained detained
2 under the automatic-stay provision); *Leal-Hernandez v. Noem*, 2025 WL 2430025,
3 at *15 (D. Md. Aug. 24, 2025) (same); *Palma v. Trump*, 2025 WL 2624385, at *3
4 (D. Neb. Sept. 11, 2025) (same); *Ashley v. Ridge*, 288 F. Supp. 2d 662, 669 (D.N.J.
5 2003) (finding petitioner's continued detention under the automatic-stay provision
6 unconstitutional); *Günaydin*, 784 F. Supp. at 1188 (same).

7 As to available alternatives, the regulations already provide one: DHS may
8 request a discretionary emergency stay from the BIA. *See* 8 C.F.R. § 1003.10(i)(1)
9 (granting BIA discretionary stay authority). This procedure mitigates the concern
10 about DHS usurping the neutral adjudicatory role and provides additional
11 safeguards that the automatic-stay provision lacks.

12 The risk of the erroneous deprivation of rights is particularly high here
13 where DHS continues to detain Mr. M even though it filed its Notice of Appeal
14 after its deadline to invoke the automatic stay passed. *See* 8 C.F.R. § 1003.6(c)(1);
15 Borkowski Decl. Ex. 7. Mr. M's ongoing detention despite DHS's untimely notice
16 of appeal suggests that the DHS's theory is that it has the ability to unilaterally
17 detain individuals granted bond without even following the procedural
18 requirements proscribed in 8 C.F.R § 1003.19(i)(2) and § 1003.6(c)(1). DHS has
19 decided that by filing a motion to equitably toll the deadline in § 1003.6(c)(1), it is
20 able to continue detaining Mr. M until that motion is decided. This decision
21 stretches far beyond DHS's authority and is a clearly erroneous violation of Mr.
22 M's rights.

23 Third, the government's interest in detaining Mr. M under the automatic-
24 stay provision after a neutral adjudicator awarded him bond is both vague and
25 minimal, especially in contrast to the significant liberty interest at stake for Mr. M.
26 Any government interest, for example, in ensuring Mr. M's attendance for his
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1 immigration case has already been secured by the IJ's finding that he is neither a
2 danger nor a flight risk.

3 It is "always in the public interest to prevent the violation of a party's
4 constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012);
5 *see Rodriguez v. Robbins*, 715 F.3d 1127, 1145–46 (9th Cir. 2013) ("[T]he public
6 interest also benefits from a preliminary injunction that ensures that federal statutes
7 are construed and implemented in a manner that avoids serious constitutional
8 questions."). Conversely, the cost of providing an individualized review is low,
9 and the longer Mr. M remains detained, the weaker the government's interest in
10 detaining him without this review becomes. *See Zadvydas*, 533 U.S. at 701. Thus,
11 the government's substantially weak interest in detaining Mr. M does not outweigh
12 Mr. M's substantial liberty interest and the risk of erroneous deprivation of that
13 liberty.

14 Mr. M is likely to succeed on his constitutional claims, warranting a
15 temporary restraining order until his habeas petition can be decided.

16 **c. The Automatic-Stay Provision Is Ultra Vires.**

17 "Agency actions beyond delegated authority are 'ultra vires,' and courts
18 must invalidate them." *U.S. ex rel. O'Keefe v. McDonnell Douglas Corp.*, 132
19 F.3d 1252, 1257 (8th Cir. 1998); *see also Romero v. INS*, 39 F.3d 977, 980 (9th
20 Cir. 1994) (holding that an immigration regulation that is inconsistent with the
21 statutory scheme is invalid). Congress has permitted the Attorney General to
22 delegate detention determinations to "any other officer, employee, or agency of the
23 Department of Justice." 28 U.S.C. § 510. IJs are administrative law judges within
24 the DOJ and are thus properly delegated bond-determination authority. *See* 8
25 U.S.C. § 1101(b)(4). By contrast, DHS, the party that invoked the automatic-stay
26 provision, is not within the Department of Justice but is a separate executive
27 department. *See* 6 U.S.C. § 111.

1 By permitting DHS to unilaterally extend the detention of an individual, in
2 contravention of the findings of an agent properly delegated the authority to make
3 such a determination, 8 C.F.R. § 1003.19(i)(2) exceeds the statutory authority
4 Congress gave to the Attorney General. “Because this back-ended approach
5 effectively transforms a discretionary decision by the immigration judge to a
6 mandatory detention imposed by [DHS], it flouts the express intent of Congress
7 and is ultra vires to the statute.” *Zavala*, 310 F. Supp. at 1079. Accordingly, the
8 challenged regulation is invalid, and Mr. M’s detention on that basis is unlawful.

9 **B. Mr. M Is Actively Suffering Irreparable Harm**

10 A TRO is appropriate where a Petitioner shows that, absent relief, they face
11 irreparable harm—i.e., harm that is “immediate,” *Caribbean Marine Servs. Co. v.*
12 *Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988), and “for which there is no adequate
13 legal remedy,” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir.
14 2014). As argued *supra*, Respondents have violated Mr. M’s constitutional and
15 statutory rights under the INA. Since Mr. M’s detention on July 8, Mr. M has
16 undoubtably faced irreparable harm.

17 Detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno*
18 *Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020), *aff’d in part*,
19 *vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*,
20 52 F.4th 821 (9th Cir. 2022). Moreover, it “is well established that the deprivation
21 of constitutional rights unquestionably constitutes irreparable injury.” *Melendres*,
22 695 F.3d at 1002. “[I]f Petitioner is correct on the merits of his habeas petition,
23 then Petitioner has already been unlawfully deprived” of his rights and “each
24 additional day that Petitioner is detained without a [lawful] bond hearing would
25 cause him harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05391,
26 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (cleaned up); *Cortez v. Sessions*,
27 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018). Beyond just his physical liberty,
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1 there are “irreparable harms imposed on anyone subject to immigration detention,”
2 such as “subpar medical and psychiatric care in ICE detention facilities.”
3 *Hernandez*, 872 F.3d at 995. Mr. M has already suffered these harms, having
4 contracted COVID-19 while in OMDC around a month after the IJ granted him
5 bond and was denied access to counsel while quarantined. Borkowski Decl. ¶ 4.
6 In addition, Mr. M. did not receive appropriate medical treatment for the injuries
7 that he suffered when he was arrested on July 9. *See id.* Ex. 3 at 15. While
8 detained at OMDC, he has suffered irreparable harm in the form of extreme stress
9 and anxiety. Finally, both he and his family (which includes a child who is a U.S.
10 citizen) continue to suffer financial hardship during his detention. *Id.* Ex. 9 at 141.

11 For the reasons above, Mr. M is facing ongoing irreparable harm that will
12 continue absent relief from this Court.

13 **C. The Balance of the Equities and Public-Interest Factors Weigh in Mr.**
14 **M’s Favor.**

15 When the government is a party, the balance of the equities and the public-
16 interest factors merge. *Nken*, 556 U.S. at 435. Where granting an injunction will
17 not “substantially injure the other parties,” the balance of equities tips in plaintiff’s
18 favor. *Id.* at 434. Additionally, a petitioner’s “likelihood of success on the merits
19 of a constitutional claim also tips the merged third and fourth factors decisively in
20 his favor.” *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023).

21 Here, there will be no harm to Respondents if this Court issues a TRO
22 because the Government “cannot suffer harm from an injunction that merely ends
23 an unlawful practice.” *Rodriguez*, 715 F.3d at 1145; *see also Ramirez v. U.S. ICE*,
24 310 F. Supp. 3d 7, 33 (D.D.C. 2018); *cf. Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th
25 Cir. 1983). Because Mr. M’s detention “is inconsistent with federal law, . . . the
26 balance of hardships and public interest factors weigh in favor of a preliminary
27 injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D.
28 Wash. 2019); *see Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.

1 2013). Moreover, as discussed above, *see supra* Section III.C.2, the government's
2 interest in detaining Mr. M under the automatic-stay provision after a neutral
3 adjudicator awarded him bond is both vague and minimal.

4 **D. Prudential Exhaustion Is Not Required**

5 Because the habeas statute (28 U.S.C. § 2241) “does not specifically require
6 petitioners to exhaust direct appeals before filing petitions for habeas corpus,”
7 exhaustion “is a prudential requirement” that “a court has discretion to waive.”
8 *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004). “Exhaustion of
9 remedies is not required when resort to such remedies would be futile.” *Id.* at 541–
10 42. Because the BIA recently held that § 1225 as applies broadly to individuals
11 “present in the United States who ha[ve] not been admitted,” *In re Yajure Hurtado*,
12 29 I&N Dec. 216, 218 (BIA 2025), it would be futile for Mr. M to resort to the
13 BIA for relief. Exhaustion is not required where “irreparable injury will result.”
14 *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Because Mr. M has been
15 granted bond yet remains detained, every day that he remains at OMDC is one in
16 which his statutory and constitutional rights are being violated. *See supra* Section
17 III.D. Exhaustion is also not required when “requiring resort to the administrative
18 remedy may occasion undue prejudice to subsequent assertion of a court action.”
19 *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), *superseded on other grounds*
20 *as stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001). “[B]ecause of delays
21 inherent in the administrative process, BIA review would result in the very harm
22 that the bond hearing was designed to prevent: prolonged detention without due
23 process.” *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019)
24 (cleaned up). These exceptions warrant waiving any prudential-exhaustion
25 requirement here. Additionally, because the issues presented are questions of
26 statutory interpretation, they are “unlikely to require agency consideration to
27 generate a proper record to reach a proper decision.” *Maldonado Bautista et al. v.*
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1 *Santacruz, et al.*, No. 5:25-cv-01873 (C.D. Cal. July 28, 2025), Order Granting
2 Temporary Restraining Order, Dkt. 14 at 11.

3
4 **CONCLUSION**

5 Mr. M's compelling and time-sensitive situation exceeds the minimum
6 standard for requesting temporary relief. This Court should therefore:

- 7 1. Declare Petitioner's detention in Respondents' custody unlawful under the
8 INA and the Due Process Clause of the Fifth Amendment of the United
9 States Constitution and that Petitioner's arrest violated his rights under the
10 Fourth Amendment of the United State Constitution and that any evidence
11 obtained through his arrest is inadmissible;
- 12 2. Enjoin Respondents from enforcing the automatic-stay provision of 8
13 C.F.R. § 1003.19(i)(2) during the pendency of this Court's consideration of
14 the Petition for a Writ of Habeas Corpus;
- 15 3. Enjoin Respondents from causing Petitioner any greater harm during the
16 pendency of this litigation and his immigration court case, such as by
17 transferring him anywhere outside of the jurisdiction of the Southern
18 District of California or the Central District of California, away from his
19 counsel;
- 20 4. Order Mr. M released without requiring electronic monitoring and required
21 to post bond as per the IJ ruling;
- 22 5. If the government seeks to re-detain Mr. M, require it to provide no less
23 than seven (7) days' notice to petitioner and hold a pre-deprivation bond
24 hearing before a neutral arbiter pursuant to section 1226(a) and its
25 implementing regulations, at which petitioner's eligibility for bond must be
26 considered.

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DATED: September 25, 2025

Respectfully submitted

By: /s/ Kelly Gregg
Kelly Gregg
Gibson, Dunn, & Crutcher, LLP
Pro Bono Attorney for Petitioner

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15 *Pro Bono Attorneys for Petitioner*

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17
18 **UNITED STATES DISTRICT COURT**
19 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

20 D.E.M.,

21 Petitioner,

22 vs.

23 CHRISTOPHER J. LAROSE, Warden,
24 Otay Mesa Detention Center;

25 GREGORY J. ARCHAMBEAULT,

26 San Diego Field Office Director;

27 TODD M. LYONS, Acting Director of

28 U.S. Immigration and Customs

Enforcement; KRISTI NOEM,

Secretary of the U.S. Department of

Homeland Security,

Respondents.

Case No. '25CV2521 CAB AHG

**PETITIONER'S NOTICE OF
MOTION; EX PARTE MOTION
FOR A TEMPORARY
RESTRAINING ORDER OR
PRELIMINARY INJUNCTION;
AND MEMORANDUM OF
POINTS AUTHORITIES IN
SUPPORT THEREOF**

1 **NOTICE OF MOTION AND MOTION FOR A TEMPORARY**
2 **RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

3 PLEASE TAKE NOTICE as soon as it may be heard in the United States
4 District Court for the Southern District of California, that Petitioner D.E.M. (“Mr.
5 M”)¹, will, and hereby does, move this Court for a temporary restraining order
6 pursuant to Federal Rule of Civil Procedure 65(b) or, in the alternative, for a
7 preliminary injunction pursuant to Federal Rule of Civil Procedure 65(a) that
8 requires Respondents to release him from custody immediately.

9 Although Mr. M was present and residing in the United States for a decade
10 before his immigration arrest and despite an Immigration Judge (“IJ”) granting him
11 bond, Mr. M remains detained at the Otay Mesa Detention Center. Invoking the
12 automatic-stay provision in 8 C.F.R. § 1003.19(i)(2), DHS has appealed the IJ’s
13 bond grant, arguing that Mr. M is seeking admission to the United States and
14 therefore is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).
15 This argument is clearly contradicted by the text and history of the Immigration
16 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, which provides that individuals
17 who previously entered and are now residing in the United States are subject to §
18 1226(a), which allows for release on bond and expressly applies to individuals
19 who, like Mr. M, are charged as removable for having entered the United States
20 without inspection and being present without admission.

21 Mr. M’s ongoing detention under 8 U.S.C. § 1225(b)(2)(A) violates his due
22 process rights and is ultra vires, and it unquestionably constitutes irreparable
23 injury.

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¹ “Mr. M” is a pseudonym. Because this matter will require public filing of
27 documents related to Petitioner’s asylum claim, he requests leave to proceed under
28 pseudonym. Once the case is docketed, Petitioner will make an appropriate motion
 to that effect.

1 Accordingly, Petitioner seeks a temporary restraining order enjoining
2 Respondents from continuing to detain him. Mr. M also seeks an order prohibiting
3 Respondents from relocating Petitioner outside of California pending final
4 resolution of this litigation.

5 On September 25, 2025, at approximately 8:30 AM, I emailed U.S.
6 Attorneys Janet Cabral at Janet.Cabral@usdoj.gov and Erin Dimpleby at
7 Erin.Dimbleby@usdoj.gov with actual notice that Petitioner is filing this motion,
8 along with electronic copies of the petition and the brief accompanying this
9 motion, via email before completing this electronic filing.

10 The motion is respectfully submitted based on this Notice of Motion; the
11 Memorandum of Points and Authorities in support filed herewith; the Proposed
12 Order; the pleadings, records, and papers on file in this action; oral argument of
13 counsel; and any other matters as may be properly considered by the Court.

14
15 Dated: September 25, 2025

Respectfully submitted
By: /s/ Kelly Gregg

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17 Kelly Gregg
18 GIBSON, DUNN & CRUTCHER LLP
19 *Pro Bono Attorney for Petitioner*
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