Connie Chan
Connie Chan & Associates, P.C.
405 Sansome Street, 2nd Floor
San Francisco, CA 94111
Tel: 415-956-4809
Fax: 415-956-3759
Email: cc@connieychan.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT COURT OF CALIFORNIA

LUIS ALBERTO RINCON-CASTILLO,

Petitioner,

v.

Todd LYONS, Acting Director, Immigration and Customs Enforcement; Sergio ALBARRAN, Field Office Director of Enforcement and Removal Operations, San Francisco Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Christopher CHESTNUT, Warden, California City Detention Facility,

Respondents.

Case No. 1:25-CV-01618-KES-SKO

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AND OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER

PETITIONER'S DHS NUMBER:

[redacted]

I. INTRODUCTION

On December 2, 2025, Respondents filed a response to Petitioner's Petition for Writ of Habeas Corpus and an opposition to Petitioner's Motion for Temporary Restraining Order. In their response and opposition, Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that Petitioner is not entitled to a bond hearing under 8 U.S.C. § 1225(a). Respondents' contentions and arguments are without merits and contrary to law.

Petitioner does not request a hearing for the temporary restraining and preliminary injunction.

II. LEGAL ARGUMENT

The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner has a fundamental interest in liberty and being free from official restraint. The government's detention of Petitioner without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

A. <u>The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is not subject to mandatory detention.</u>

The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is not subject to mandatory detention.

First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioner, who is inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., § 1226(c)(1)(A), (C).

If Respondents' position is that § 1226(a) does not apply to inadmissible noncitizens such as Petitioner who is present without admission in the United States were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 reinforce that this section covers people like Petitioner who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E).

By including such individuals under § 1226(c), Congress further clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining these amendments explicitly provide that § 1226(a) covers people like Petitioner because the "'specific exceptions' [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)'s default rule for discretionary detention."); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) ("if, as the Government argue[s],. . . a non-citizen's inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect." 2025 WL 2084238, at *7; Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13, 2025) Order Granting Ex Parte Application for TRO and OSC, Dkt. 12 at 7 ("If Respondents are correct that Congress meant for § 1225 to govern all aliens present in the United States who had not been admitted, it would render the exception made under § 1226(c)(1)(E) unnecessary. This does not stand to reason for, as Respondents aptly note, 'a statute should be construed so that effect is given to all its provisions.'" (citations omitted.) *See* *also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

Despite the clear statutory language, DHS issued a new policy on July 8, 2025 instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an "applicant for admission" and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). See Ex. 1, "Interim Guidance Regarding Detention Authority for Applicants for Admission", ICE, July 8, 2025. The new policy was implemented "in coordination with" the Department of Justice. *Id.*

The new policy is also inconsistent with the canon against superfluities. Under this "most basic [of] interpretive canons, . . . '[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Corley v. United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023) ("[C]ourt[s] 'must interpret the statute as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous.'" (citation omitted)). But by concluding that the mandatory detention provision of § 1225(b)(2) applies to Petitioner, DHS and EOIR violate this rule.

In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted." Section 1226(a) covers those who are present within and residing within the United States and who are not at the border seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," J*ennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," id. at 287.

Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]" encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who have already entered and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those who can be said to be "seeking admission" within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who are "arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving into the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120-21 (2023) (emphasis added) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," id. §1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning").

Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

Courts have likewise rejected *Matter of Yajure Hurtado*, which adopts the same reading of the statute as ICE.

Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner. Section 1226(a) applies by default to all persons "pending a decision on whether the [noncitizen] is to be removed from the United States." These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]."

The text of § 1226 also explicitly applies to people charged as being inadmissible, including those who entered without inspection. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such people makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7.

Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

B. <u>The legislative history further supports the application of § 1226(a) to Petitioner's detention.</u>

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

C. <u>The record and longstanding agency practice reflect that § 1226 governs Petitioner's detention.</u>

DHS's long practice of considering people like the Petitioner as detained under §1226(a) further supports this reading of the statute. Typically, in cases like that of the Petitioner.

Petitioner is charged, inter alia, with entering the United States without admission or inspection in violation of 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), which indicates that he is detained pursuant to, or has been arrested under, 8 U.S.C. § 1226(a). This decision to invoke § 1226(a) is consistent with longstanding practice. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present without admission after entering the United States unlawfully, but who were later apprehended within the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

Indeed, agency regulations have long recognized that people like Petitioner are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the regulatory basis for the immigration court's jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the regulations governing immigration courts and implementing § 1226 decades ago. Specifically, EOIR explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323.3.

In sum, § 1226 governs this case. Section 1225 and its mandatory detention provision applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission and are now present and residing in the United States.

D. Petitioner's case falls under the authority of Section 1226(a).

Custody determinations for individuals in 1229a removal proceedings are governed by 8 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

Custody determinations under § 1226(a) are individualized and based on the facts presented in those cases. Unlike § 1226(c), which can provide for categorical determinations for detention regardless of flight risk or safety risks, § 1226(a) requires a case-by-case review of the facts and circumstances.

Once a determination to release an individual from custody is made, the release order may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C. § 1226(b). For an individual who was once in custody, the Attorney General may take that individual back into custody by revoking the individual's release when the facts and circumstances warrant it.

Revocation and return to custody are authorized only based on the individualized facts and circumstances. 8 C.F.R. § 1236.1(c)(9). By regulation, revocation decisions are limited in nature and may only be made by certain authorized officials. 8 C.F.R. § 1236.1(c)(9).

On or about August 6, 2023, Respondents initiated removal proceedings against Petitioner pursuant to 8 U.S.C. § 1229a. Respondents alleged that Petitioner was inadmissible to the United States under 8 U.S.C. § 1182(a)(6)(A)(i) and directed Petitioner to appear for a hearing before an immigration court. Accordingly, Petitioner is subject to proceedings under 8 U.S.C. § 1226(a). The risk of erroneous deprivation in this context is considerable. The record indicates that Petitioner has never received a bond hearing. "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).

E. Petitioner's Protected Liberty Interest in His Conditional Release

Petitioner's liberty from immigration custody and his weighty interest in avoiding incarceration is protected by the Due Process Clause. *See Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment…lies at the heart of the liberty" that the Due Process Clause protects); *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972) (holding that a parolee has a protected liberty interest in his conditional release); *Young v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973).

In *Morrissey v. Brewer*, 408 U.S. 471, 481-82 (1972), the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. "[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* Therefore, "[b]y whatever name, the liberty is valuable and must be seen within the protection of the [Fifth] Amendment." *Id.*

This basic principle that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions since *Morrissey*. *See, e.g., Young*, 520 U.S. at 152. Petitioner was in fact released and placed in removal proceedings. *See also, Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated") (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

Procedural due process constrains governmental decision that deprive individuals of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319,332 (1976); *see also Perry v. Sindermann*, 408 U.S. 593, 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-70 (1972).

Civil detention with no foreseeable end infringes upon a protected liberty interest and thus violates his Constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct. 2491, 2493. 150 L. Ed. 2d 653 (2001) ("Freedom from imprisonment lies at the heart of the liberty protected by the Due Process Clause. Government detention violates the Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards or a special justification outweighs the individual's liberty interest. The instant proceedings are civil and assumed to be nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil detention under this statute.").

Here, Petitioner's release is in relevant ways similar to the liberty interest in parole protected in Morrissey. Just as in *Morrissey*, Petitioner's release "enables [him] to do a wide range of things open to persons'" who have never been in custody or convicted of any crime, including to live at home, work, care for his children, and "be with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482.

Petitioner is currently married to a Colombian citizen and has three children, one of whom is an eight-year-old boy who lives with his wife in the United States. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community. He is prepared to seek asylum before the immigration judge because he fears returning to Colombia. He was persecuted by the Revolutionary Armed Forces of Colombia or FARC in Colombia.

F. **Petitioner's Strong Interest in His Liberty Required a Hearing Before He Was Incarcerated By ICE**

If a petitioner identifies a protected liberty interest, the Court must then determine what process is due. "Adequate, or due, process depends upon the nature of the interest affected. The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, 408 U.S. at 481-82). To determine the process due in this context, courts use the flexible balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Under the *Mathews* test, the Court balances three factors: "first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probative value, if any, of additional or substitute procedural safeguards; and finally the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)).

Importantly, the Supreme Court "usually has held that the Constitution requires some kind of a hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). *Zinermon*, 494 U.S. at 128.

Here, the *Mathews* factors all favor Petitioner and establish that the government was required to provide Petitioner notice and a hearing prior to any incarceration.

First, Petitioner's private interest in his liberty is substantial. *See Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause."). The Supreme Court has recognized that individuals released from serving a criminal sentence have a "valuable" liberty interest—even if that freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; Young, 520 U.S. at 152. The interest for an individual awaiting civil immigration proceedings is even weightier. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("[G]iven the civil context" of immigration detention, a noncitizen's interest in release on bond is "arguably greater than the interest of parolees in *Morrissey*."). Here, Petitioner's interest is even more compelling than that of the average noncitizen. Petitioner has resided in the United States since June 07, 2022, and lives in San Jose, California. Petitioner is currently married to a Colombian citizen and has three children, one of whom is an eight-year-old boy who lives with his wife in the United States. He is Catholic and attends services at San José Church.

Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally detain Petitioner without a hearing before a neutral adjudicator that would determine whether detention serves a permissible purpose, *i.e.* preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690. These developments show that detention is likely not warranted.

DHS's choice to detain Petitioner without a hearing has deprived him of his liberty and separated him from his family and community without any opportunity for Petitioner to contest this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO, 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at his scheduled check-in without notice or hearing, and where compliance with release terms is in dispute, and ordering immediate release and enjoining Respondents from re-detention without a pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show by clear and convincing evidence that petitioner is a flight risk or danger to the community); *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23, 2025) (same).

By contrast, the value of a deprivation hearing before a neutral decision-maker is high. "A neutral judge is one of the most basic due process protections." *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006).

The record shows that Petitioner was placed in 1226(a) proceedings and has not been provided a bond hearing.

Third, the government's interest in detaining Petitioner without a hearing is low. The government cannot plausibly assert it has any basis for detaining Petitioner now, when he has lived in the community caring for his family without incident for more than three years. In any event, providing Petitioner with a hearing before this Court (or another neutral decisionmaker) to determine whether there is evidence that Petitioner currently poses any risk of flight or danger to the community imposes a de minimis, if any, burden on the government. Such a hearing is far less costly and burdensome for the government than keeping Petitioner detained at what the Ninth Circuit described as a "staggering" cost to the public of $158 each day per detainee in 2017, "amounting to a total daily cost of $6.5 million" (the current cost now is likely significantly higher). *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

III. CONCLUSION

For the foregoing reasons, Respondents' contentions and arguments are without merits and contrary to law. Petitioner's Petition for Writ of Habeas Corpus and Motion for Temporary Restraining Order Should be granted.

DATED this 4th of December, 2025.

/s/ Connie Chan
Attorney for Petitioner

WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner certifies that this Memo contains 4,818 words.

/s/ Connie Chan
Connie Chan