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2
3 **I. INTRODUCTION**

4 On December 2, 2025, Respondents filed their Opposition to Motion for a Temporary
5 Restraining Order (“Opposition”). In their Opposition, Respondents argue that Petitioner is not
6 likely to succeed on the merits for four reasons: Petitioner is an applicant for admission under
7 §1225(a), Petitioner’s detention is mandatory under the plain language of §1225(b)(2), Petitioner
8 has not clearly shown that the Due Process Clause requires a bond hearing under the
9 circumstances, and even if Petitioner clearly shows he is entitled to preliminary relief, that relief
10 should be the provision of a bond hearing, not immediate release. Respondents also argue that
11 Petitioner has not shown he is likely to suffer irreparable harm, and that Petitioner has not shown
12 that the balance of the equities and the public interest favor his immediate release.

13 Respondents’ arguments are without merits and contrary to law.

14
15 **II. ARUGMENTS**

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

17 Petitioner is likely to succeed on their claims that their ongoing detention by Respondents
18 under 8 U.S.C. § 1225(b)(2) and no bond hearing before an immigration judge is unlawful. The
19 text, context, and legislative and statutory history of the Immigration and Nationality Act all
20 demonstrate that 8 U.S.C. § 1226(a) governs his detention.

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

23 First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. By its
24 own terms, § 1226(a) applies to anyone who is detained “pending a decision on whether the
25 [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a). Section 1226

1 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant
2 to 8 U.S.C. § 1227(a), but also noncitizens, such as Petitioner, who is inadmissible pursuant to 8
3 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out
4 specific categories of noncitizens from being released—including certain categories of
5 inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., §
6 1226(c)(1)(A), (C).

7
8 If Respondents' position that § 1226(a) did not apply to inadmissible noncitizens such as
9 Petitioner who is present without admission in the United States were correct, there would be no
10 reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the
11 statute would only have needed to address people who are deportable for certain offenses.
12 Notably, recent amendments to § 1226 reinforce that this section covers people like Petitioner
13 who DHS alleges to be present without admission. The Laken Riley Act added language to §
14 1226 that directly references people who have entered without inspection, those who are
15 inadmissible because they are present without admission. See Laken Riley Act (LRA), Pub. L.
16 No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as
17 inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without
18 admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter
19 the United States) and who have been arrested, charged with, or convicted of certain crimes are
20 subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E).

21
22 By including such individuals under § 1226(c), Congress further clarified that § 1226(a)
23 covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged
24 as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of §
25 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. See *Rodriguez*

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

20
21 Despite the clear statutory language, DHS issued a new policy on July 8, 2025 instructing
22 all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible
23 under § 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an “applicant for
24 admission” and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).

1 See Ex. 1, “Interim Guidance Regarding Detention Authority for Applicants for Admission”,
2 ICE, July 8, 2025. The new policy was implemented “in coordination with” the Department
3 of Justice. *Id.*

4 The new policy is also inconsistent with the canon against superfluities. Under this “most
5 basic [of] interpretive canons, . . . ‘[a] statute should be construed so that effect is given to all of
6 its provisions, so that no part will be inoperative or superfluous, void or insignificant.’” *Corley v.*
7 *United States*, 556 U.S. 303, 314 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542
8 U.S. 88, 101 (2004)); see also *Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023)
9 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and making every
10 effort not to interpret a provision in a manner that renders other provisions of the same statute
11 inconsistent, meaningless or superfluous.’” (citation omitted)). But by concluding that the
12 mandatory detention provision of § 1225(b)(2) applies to Petitioner, DHS and EOIR violate this
13 rule.
14

15 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read to apply to
16 everyone who is in the United States “who has not been admitted.” Section 1226(a) covers those
17 who are present within and residing within the United States and who are not at the border
18 seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court
19 recognized, § 1225 is concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*,
20 583 U.S. 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
21 Government must determine whether a[] [noncitizen] seeking to enter the country is admissible,”
22 *id.* at 287.
23

24 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph
25 (b)(1)—which concerns “expedited removal of inadmissible arriving [noncitizens]” encompasses

1 only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney
2 General designates, and only those who are “inadmissible under section 1182(a)(6)(C) or §
3 1182(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who
4 misrepresent information to an examining immigration officer or do not have adequate
5 documents to enter the United States. Thus, subsection (b)(1)’s text demonstrates that it is
6 focused only on people arriving at a port of entry or who have recently entered the United States
7 and not those already residing here. Paragraph (b)(2) is similarly limited to people applying for
8 admission when they arrive in the United States. The title explains that this paragraph addresses
9 the “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking admission,” but
10 who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those “seeking
11 admission,” Congress confirmed that it did not intend to sweep into this section individuals like
12 Petitioner, who have already entered and are now residing in the United States. An individual
13 submits an “application for admission” only at “the moment in time when the immigrant actually
14 applies for admission into the United States.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020)
15 (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1)
16 means that anyone who is presently in the United States without admission or parole is someone
17 “deemed to have made an actual application for admission.” *Id.* (emphasis omitted). That holding
18 is instructive here too, as only those who take affirmative acts, like submitting an “application
19 for admission,” are those who can be said to be “seeking admission” within § 1225(b)(2)(A).
20 Otherwise, that language would serve no purpose, violating a key rule of statutory construction.
21 *See Shulman v. Kaplan*, 58 F.4th 404, 410-11 (9th Cir. 2023).

24 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens] arriving
25 from contiguous territory,” i.e. those who are “arriving on land.” 8 U.S.C. § 1225(b)(2)(C)

1 (emphasis added). This language further underscores Congress’s focus in § 1225 on those who
2 are arriving into the United States—not those already residing here. Similarly, the title of § 1225
3 refers to the “inspection” of “inadmissible arriving” noncitizens. *See Dubin v. United States*,
4 599 U.S. 110, 120-21 (2023) (emphasis added) (relying on section title to help construe statute).

5 Finally, the entire statute is premised on the idea that an inspection occurs near the border
6 and shortly after arrival, as the statute repeatedly refers to “examining immigration officer[s],” 8
7 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting “inspection[s]” of people “arriving in the
8 United States,” *id.* §1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
9 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”).

10 Petitioner’s detention on this basis violates the plain language of the Immigration and
11 Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who
12 previously entered and are now residing in the United States. Instead, such individuals are
13 subject to a different statute, § 1226(a), that allows for release on conditional parole or bond.
14 That statute expressly applies to people who, like Petitioner, are charged as inadmissible for
15 having entered the United States without inspection.
16

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

19 Courts have uniformly rejected DHS’s and EOIR’s new interpretation because it defies
20 the INA. As the *Rodriguez Vazquez* court and others have explained, the plain text of the
21 statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
22 Section 1226(a) applies by default to all persons “pending a decision on whether the [noncitizen]
23 is to be removed from the United States.” These removal hearings are held under § 1229a, to
24 “decid[e] the inadmissibility or deportability of a[] [noncitizen].”
25

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

9
10 Section 1226 therefore leaves no doubt that it applies to people who face charges of being
11 inadmissible to the United States, including those who are present without admission or parole.
12 By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered
13 the United States. The statute's entire framework is premised on inspections at the border of
14 people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the
15 Supreme Court has explained that this mandatory detention scheme applies "at the Nation's
16 borders and ports of entry, where the Government must determine whether a[] [noncitizen]
17 seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
18 Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like
19 Petitioner, who have already entered and were residing in the United States at the time they were
20 apprehended.

21
22 **b. The legislative history further supports the application of § 1226(a) to**
23 **Petitioner's detention.**

24 The legislative history of the Illegal Immigration Reform and Immigrant Responsibility
25 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 §

1 1226(a) applies to Petitioner. In passing the Act, Congress was focused on the perceived problem
2 of recent arrivals to the United States who did not have documents to remain. *See* H.R. Rep. No.
3 104- 469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not
4 say anything about subjecting all people present in the United States after an unlawful entry to
5 mandatory detention if arrested. This is important, as prior to IIRIRA, people like Petitioner were
6 not subject to mandatory detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney
7 General to arrest noncitizens for deportation proceedings, which applied to all persons physically
8 present within the United States). Had Congress intended to make such a monumental shift in
9 immigration law (potentially subjecting millions of people to mandatory detention), it would
10 have explained so or spoken more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457,
11 468–69 (2001). But to the extent it addressed the matter, Congress explained precisely the
12 opposite, noting that the new § 1226(a) merely “restates the current provisions in [INA] section
13 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond
14 a[] [noncitizen] who is not lawfully in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229
15 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).

17 **c. The record and longstanding agency practice reflect that § 1226 governs**
18 **Petitioner’s detention.**

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

21 Petitioner is charged, *inter alia*, with entering the United States without admission or
22 inspection in violation of 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I), which indicates
23 that he is detained pursuant to, or has been arrested under, 8 U.S.C. § 1226(a). This decision to
24 invoke § 1226(a) is consistent with longstanding practice. For decades, and across
25 administrations, DHS has acknowledged that § 1226(a) applies to individuals who are present

1 without admission after entering the United States unlawfully, but who were later apprehended
2 within the United States long after their entry. Such a longstanding and consistent interpretation
3 “is powerful evidence that interpreting the Act in [this] way is natural and reasonable.” *Abramski*
4 *v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v.*
5 *United States*, 462 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
6 interpretation and practice to reject government’s new proposed interpretation of the law at
7 issue).

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

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

21
22 **d. Petitioner’s case falls under the authority of Section 1226(a).**

23 Custody determinations for individuals in 1229a removal proceedings are governed by 8
24 U.S.C. § 1226. Under § 1226(a), an individual may be released if he does not present a danger to
25

1 persons or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter*
2 *of Guerra*, 24 I&N Dec. 37 (BIA 2006).

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

7 Once a determination to release an individual from custody is made, the release order
8 may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C.
9 § 1226(b). For an individual who was once in custody, the Attorney General may take that
10 individual back into custody by revoking the individual's release when the facts and
11 circumstances warrant it.

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

15 On or about August 6, 2023, Respondents initiated removal proceedings against Petitioner
16 pursuant to 8 U.S.C. § 1229a. Respondents alleged that Petitioner was inadmissible to the United
17 States under 8 U.S.C. § 1182(a)(6)(A)(i) and directed Petitioner to appear for a hearing before an
18 immigration court. Accordingly, Petitioner is subject to proceedings under 8 U.S.C. § 1226(a).

19 The risk of erroneous deprivation in this context is considerable. The record indicates that
20 Petitioner has never received a bond hearing. "Federal regulations provide that aliens detained
21 under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583
22 U.S. 281, 306 (2018) (citing 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1)).
23
24
25

1 **e. Petitioner's Protected Liberty Interest in His Conditional Release**

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

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

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

1 Procedural due process constrains governmental decision that deprive individuals of
2 property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment. *See*
3 *Mathews v. Eldridge*, 424 U.S. 319,332 (1976); *see also Perry v. Sindermann*, 408 U.S. 593,
4 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of
5 entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a
6 right to a hearing before that right is deprived. *See Board of Regents of State Colleges v. Roth*,
7 408 U.S. 564, 569-70 (1972).

8
9 Civil detention with no foreseeable end infringes upon a protected liberty interest and
10 thus violates his Constitutional rights. *See Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct.
11 2491, 2493. 150 L. Ed. 2d 653 (2001) (“Freedom from imprisonment lies at the heart of the
12 liberty protected by the Due Process Clause. Government detention violates the Clause unless it
13 is ordered in a criminal proceeding with adequate procedural safeguards or a special justification
14 outweighs the individual’s liberty interest. The instant proceedings are civil and assumed to be
15 nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil
16 detention under this statute.”).

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

22
23 Petitioner is currently in a relationship with his girlfriend, Belen Perata, a lawful
24 permanent resident who intends to marry him. Petitioner previously worked for 

1 , a construction company, which has offered to reemploy him upon his release from
2 custody.

3 Petitioner fled Honduras after being persecuted by Honduran police for refusing their
4 order to transport controlled substances.

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

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

14 Under the *Mathews* test, the Court balances three factors: "first, the private interest
15 that will be affected by the official action; second, the risk of an erroneous deprivation of such
16 interest through the procedures used, and the probative value, if any, of additional or substitute
17 procedural safeguards; and finally the government's interest, including the function involved and
18 the fiscal and administrative burdens that the additional or substitute procedural requirements
19 would entail." *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335
20 (1976)).

21 Importantly, the Supreme Court "usually has held that the Constitution requires some
22 kind of a hearing before the State deprives a person of liberty or property." *Zinerman v. Burch*,
23 494 U.S. 113, 127 (1990) (emphasis in original). *Zinerman*, 494 U.S. at 128.
24
25

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

3 First, Petitioner's private interest in his liberty is substantial. *See Foucha v. Louisiana*,
4 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty
5 protected by the Due Process Clause."). The Supreme Court has recognized that individuals
6 released from serving a criminal sentence have a "valuable" liberty interest—even if that
7 freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. The interest
8 for an individual awaiting civil immigration proceedings is even weightier. *See, e.g., Ortega v.*
9 *Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("[G]iven the civil context" of immigration
10 detention, a noncitizen's interest in release on bond is "arguably greater than the interest of
11 parolees in *Morrissey*"). Here, Petitioner's interest is even more compelling than that of the
12 average noncitizen. Petitioner has resided in the United States since June 11, 2019 and lives in
13 San Pablo, California. Petitioner is currently in a relationship with his girlfriend, Belen Perata, a
14 lawful permanent resident who intends to marry him. Petitioner previously worked for
15 Concretum Operis, Inc., a construction company, which has offered to reemploy him upon his
16 release from custody.
17

18 Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally detain
19 Petitioner without a hearing before a neutral adjudicator that would determine whether detention
20 serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533 U.S. at 690.
21 These developments show that detention is likely not warranted. DHS's choice to detain
22 Petitioner without a hearing has deprived him of his liberty and separated him from his family
23 and community without any opportunity for Petitioner to contest this unilateral action. *See, e.g.,*
24 *Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO, 2025 WL 2817795 (E.D. Cal. Oct.
25

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).

1 **B. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.**

2 In the absence of a TRO, Petitioner will continue to be unlawfully detained by
3 Respondents. Petitioner has now been detained since September 30, 2025.

4 “Freedom from imprisonment—from government custody, detention, or other forms of
5 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*
6 *v. Davis*, 533 U.S. 678, 690 (2001). Petitioner’s continued detention constitutes an ongoing
7 violation of his constitutional right to due process. Petitioner’s continued detention also brings
8 devastating consequences for his economic livelihood, and his family. Before this incident, he
9 was supporting his family in the United States. In *Norsworthy v. Beard*, 87 F. Supp. 3d 1164,
10 1192 (N.D. Cal. 2015), the Northern District held that “[e]motional distress, anxiety, depression,
11 and other psychological problems can constitute irreparable injury.”

12
13 **C. The Balance of Equities Tips in Petitioner’s Favor and a TRO is in the Public**
14 **Interest.**

15 The factors are considered because the government is a party. *Nken v. Holder*, 556 U.S.
16 418, 435 (2009). These factors also weigh heavily in favor of granting a preliminary injunction.
17 Because the policy preventing Petitioner from obtaining bond “is inconsistent with federal law,
18 ... the balance of hardships and public interest factors weigh in favor of a preliminary
19 injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019)
20 (Moreno I); *see also Moreno Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in
21 part permanent injunction issued in Moreno II and quoting approvingly district judge’s
22 declaration that “it is clear that neither equity nor the public’s interest are furthered by allowing
23 violations of federal law to continue”). *See Doe v. Noem*, No. 25-00023, 2025 WL 1161386, at
24 *7 (W.D. Va. Apr. 21, 2025) (“[W]hile the Executive Branch has broad authority to enforce
25

1 immigration laws, there is no public interest in allowing them to act outside the law.”).

2 Therefore, the balance of equity tips in Petitioner’s favor and a TRO is in the public interest.

3
4 **III. CONCLUSION**

5 For the foregoing reasons, Respondents’ arguments in the Opposition is without merits
6 and contrary to law. Petitioner’s motion for a temporary restraining order should be granted.

7 Respectfully submitted,

8 Date: December 5, 2025

By: /s/Connie Chan
Connie Chan
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