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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Samuel Esau Hernandez,

Petitioner

VS.

Warden of the Mesa Verde
Detention Facility, et al,

Respondents

CASE NO. 1:25-CV-1676 KES CDB

**PETITIONER'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS;
REPLY TO OPPOSITION TO PRELIMINARY
INJUNCTION; REPLY TO OPPOSITION TO
TEMPORARY RESTRAINING ORDER**

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I. INTRODUCTION

On January 15, 2026, Respondents filed a motion to dismiss the habeas petition, along with oppositions to Petitioner's requests for a temporary restraining order and a preliminary injunction.

Petitioner hereby submits this opposition to Respondents' motion to dismiss and replies to Respondents' oppositions to the requests for a temporary restraining order and preliminary injunction.

Petitioner requests that the Court order Respondents to immediately release him and enjoin Respondents from re-detaining him in the future unless and until he is afforded a hearing on the question of whether his re-incarceration would be lawful—i.e., whether the government has demonstrated to a neutral adjudicator that he is a danger or a flight risk by clear and convincing evidence.

Petitioner further requests that the Court enjoin Respondents from imposing any additional conditions or restrictions on Petitioner, including, but not limited to, electronic monitoring or home visits that were not imposed since his release from ICE custody in 2024.

Petitioner also seeks a temporary restraining order enjoining the Respondents from transferring him outside of the Eastern District of California and the United States pending final resolution of this case.

Respondents challenges that Petitioner is an applicant for admission under 8 U.S.C. 1225(b)(2). Contrary to Respondents' belief, Petitioner is not an applicant for admission because he entered the United States without inspection in or about December 2024 and was released on his own recognizance.

Respondents re-detained Petitioner at a routine ICE check-in in September 2025.

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II. LEGAL ARGUMENT

A. THE COURT SHOULD GRANT PETITIONER'S REQUESTS FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION, AND HABEAS PETITION

The requirements for granting a Temporary Restraining Order are “substantially identical” to those for granting a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Petitioner must demonstrate that (1) he is likely to succeed on the merits of his claims; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). A sliding scale test may be applied and an injunction should be issued when there is a stronger showing on the balance of hardships, even if there are “serious questions on the merits ... so long as the plaintiff also shows a likelihood of irreparable harm and that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead- Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024).

Petitioner satisfies the applicable legal standards, and the Court should therefore grant the requested temporary restraining order, preliminary injunction, and habeas relief.

1. Petitioner Is Likely to Succeed on the Merits of His Claim.

Petitioner seeks immediate release from Respondents’ custody. He is likely to succeed on his claims that his ongoing detention by Respondents and no bond hearing before a neutral decisionmaker is unlawful.

1 **a. Right to a Hearing Prior to Re-detention**

2 In Petitioner's particular circumstances, the Due Process Clause of the Constitution
3 makes it unlawful for Respondents to re-detain him without first providing a pre-deprivation
4 hearing such that detention would now be warranted. The Due Process Clause of the Fifth
5 Amendment makes it unlawful for Respondents to detain Petitioner without first providing a
6 hearing before a neutral decision maker to determine whether detention is justified by a risk of
7 flight or danger to the community
8

9 Civil immigration detention must be justified by a permissible purpose, and must
10 be reasonably related to that purpose. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The two
11 permissible regulatory goals are "ensuring the appearance of [noncitizens] at future immigration
12 proceedings" and "preventing danger to the community." *Id.*; *see also Matter of Patel*, 17 I&N
13 Dec. 597, 666 (BIA 1976) ("[A noncitizen] generally is not and should not be detained or
14 required to post bond except on a finding that he is a threat to the national security, or that he is a
15 poor bail risk.") (internal citations omitted).

16 ICE's power to arrest a noncitizen who is at liberty is also constrained by the demands of
17 due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("the government's
18 discretion to incarcerate non-citizens is always constrained by the requirements of due process").
19 "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in
20 deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*,
21 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention,
22 or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause
23 protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J.,
24 dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or
25 arbitrary personal restraint or detention.").

1 Federal district courts in California have repeatedly recognized that the demands
2 of due process and the limitations on DHS's authority to revoke a noncitizen's bond or parole
3 both require a pre-deprivation hearing for a noncitizen on bond, like Petitioner, before ICE re-
4 detains him. *See, e.g., Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Ortega v.*
5 *Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020
6 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST,
7 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021).

8
9 **b. Petitioner's Protected Liberty Interest in His Conditional Release**

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

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

24
25 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

1 since *Morrissey*. See, e.g., *Young*, 520 U.S. at 152. Petitioner was in fact released and placed in
2 removal proceedings. See also, *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017)
3 (“a person who is in fact free of physical confinement—even if that freedom is lawfully
4 revocable—has a liberty interest that entitles him to constitutional due process before he is re-
5 incarcerated”) (citing *Young*, 520 U.S. at 152, *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S.
6 at 482).

7
8 Procedural due process constrains governmental decision that deprive individuals
9 of property or liberty interests, as defined by the Due Process Clause of the Fifth Amendment.
10 See *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) see also *Perry v. Sindermann*, 408 U.S. 593,
11 601-603(1972) (reliance on informal policies and practices may establish a legitimate claim of
12 entitlement to a constitutionally-protected interest). Infringing upon a protected interest triggers a
13 right to a hearing before that right is deprived. See *Board of Regents of State Colleges v. Roth*,
14 408 U.S. 564, 569-70 (1972).

15 Civil detention with no foreseeable end infringes upon a protected liberty interest
16 and thus violates his Constitutional rights. See *Zadvydas v. Davis*, 533 U.S. 678, 679, 121 S. Ct.
17 2491, 2493. 150 L. Ed. 2d 653 (2001) (“Freedom from imprisonment lies at the heart of the
18 liberty protected by the Due Process Clause. Government detention violates the Clause unless it
19 is ordered in a criminal proceeding with adequate procedural safeguards or a special justification
20 outweighs the individual’s liberty interest. The instant proceedings are civil and assumed to be
21 nonpunitive, and the Government proffers no sufficiently strong justification for indefinite civil
22 detention under this statute.”).

23
24 Here, Petitioner’s release is in relevant ways similar to the liberty interest in parole
25 protected in *Morrissey*. Just as in *Morrissey*, Petitioner’s release “enables [him] to do a wide

1 range of things open to persons” who have never been in custody or convicted of any crime,
2 including to live at home, work, and “be with family and friends and to form the other enduring
3 attachments of normal life.” *Morrissey*, 408 U.S. at 482.

4 Here, Petitioner was initially apprehended in December 2024 and then released
5 from custody. Without relief from this court, he faces the prospect of months, or even years, in
6 immigration custody.

7
8 **c. Petitioner’s Strong Interest in His Liberty Required a Hearing Before He**
9 **Was Incarcerated By ICE**

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

17 Under the *Mathews* test, the Court balances three factors: “first, the private interest
18 that will be affected by the official action; second, the risk of an erroneous deprivation of such
19 interest through the procedures used, and the probative value, if any, of additional or substitute
20 procedural safeguards; and finally the government’s interest, including the function involved and
21 the fiscal and administrative burdens that the additional or substitute procedural requirements
22 would entail.” *Haygood*, 769 F.2d at 1357 (citing *Mathews v. Eldridge*, 424 U.S. 319, 335
23 (1976)).

24 Importantly, the Supreme Court “usually has held that the Constitution requires some
25

1 kind of a hearing before the State deprives a person of liberty or property.” *Zinerman v. Burch*,
2 494 U.S. 113, 127 (1990) (emphasis in original). *Zinerman*, 494 U.S. at 128.

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

5 First, Petitioner’s private interest in his liberty is substantial. *See Foucha v. Louisiana*,
6 504 U.S. 71, 80 (1992) (“Freedom from bodily restraint has always been at the core of the liberty
7 protected by the Due Process Clause.”). The Supreme Court has recognized that individuals
8 released from serving a criminal sentence have a “valuable” liberty interest—even if that
9 freedom is lawfully revocable. *Morrissey*, 408 U.S. at 482; *Young*, 520 U.S. at 152. the interest
10 for an individual awaiting civil immigration proceedings is even weightier. *See, e.g., Ortega v.*
11 *Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“[G]iven the civil context” of immigration
12 detention, a noncitizen’s interest in release on bond is “arguably greater than the interest of
13 parolees in *Morrissey*.”). Here, Petitioner’s interest is even more compelling than that of the
14 average noncitizen. Petitioner has resided in the United States since December 2024.

15
16 Second, the risk of erroneous deprivation of liberty is high if ICE can unilaterally
17 detain Petitioner without a hearing before a neutral adjudicator that would determine whether
18 detention serves a permissible purpose, i.e. preventing danger or flight risk. *See Zadvydas*, 533
19 U.S. at 690. These developments show that detention is likely not warranted.

20
21 DHS’s choice to detain Petitioner without a hearing has deprived him of his liberty and
22 separated him from his family and community without any opportunity for Petitioner to contest
23 this unilateral action. *See, e.g., Alvarenga Matute v. Wofford*, No. 1:25-cv-01206-KES-SKO,
24 2025 WL 2817795 (E.D. Cal. Oct. 3, 2025) (granting TRO for petitioner detained at his
25 scheduled check-in without notice or hearing, and where compliance with release terms is in

1 dispute, and ordering immediate release and enjoining Respondents from re-detention without a
2 pre-deprivation hearing before a neutral adjudicator where Respondents bear the burden to show
3 by clear and convincing evidence that petitioner is a flight risk or danger to the community);
4 *J.O.L.R. v. Wofford*, No. 1:25-cv-01241-KES-SKO, 2025 WL 2718631 (E.D. Cal. Sept. 23,
5 2025) (same).

6
7 By contrast, the value of a deprivation hearing before a neutral decision-maker is
8 high. “A neutral judge is one of the most basic due process protections.” *Castro-Cortez v. INS*,
9 239 F.3d 1037, 1049 (9th Cir. 2001), abrogated on other grounds by *Fernandez-Vargas v.*
10 *Gonzales*, 548 U.S. 30 (2006).

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

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

24 First, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. By its
25 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

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.*, 8 U.S.C.
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.”); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7,
10 2025) (similar); *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13,
11 2025) Order Granting Ex Parte Application for TRO and OSC, Dkt. 12 at 7 (“If Respondents are
12 correct that Congress meant for § 1225 to govern all aliens present in the United States who had
13 not been admitted, it would render the exception made under §1226(c)(1)(E) unnecessary. This
14 does not stand to reason for, as Respondents aptly note, ‘a statute should be construed so that
15 effect is given to all its provisions.’” (citations omitted.) *See also Shady Grove Orthopedic*
16 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception
17 would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).
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20 Despite the clear statutory language, DHS issued a new policy on July 8, 2025 instructing
21 all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible
22 under § 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an “applicant for
23 admission” and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A).
24 “Interim Guidance Regarding Detention Authority for Applicants for Admission”, ICE, July 8,
25 2025. The new policy was implemented “in coordination with” the Department

1 of Justice. *Id.*

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

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

22 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph
23 (b)(1)—which concerns “expedited removal of inadmissible arriving [noncitizens]” encompasses
24 only the “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney
25 General designates, and only those who are “inadmissible under section 1182(a)(6)(C) or §

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

22 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens] arriving
23 from contiguous territory,” i.e. those who are “arriving on land.” 8 U.S.C. § 1225(b)(2)(C)
24 (emphasis added). This language further underscores Congress’s focus in § 1225 on those who
25

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”).

On September 5, 2025, the Board of Immigration Appeals issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

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.

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

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

16 Section 1226 therefore leaves no doubt that it applies to people who face charges of being
17 inadmissible to the United States, including those who are present without admission or parole.
18 By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered
19 the United States. The statute's entire framework is premised on inspections at the border of
20 people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the
21 Supreme Court has explained that this mandatory detention scheme applies "at the Nation's
22 borders and ports of entry, where the Government must determine whether a[] [noncitizen]
23 seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
24
25

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

4 **e. Petitioner's case falls under the authority of Section 1226(a).**

5 Under § 1226(a), an individual may be released if he does not present a danger to persons
6 or property and is not a flight risk. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Matter of*
7 *Guerra*, 24 I&N Dec. 37 (BIA 2006).

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

12 Once a determination to release an individual from custody is made, the release order
13 may be revisited when the facts or circumstances warrant revocation or reconsideration. 8 U.S.C.
14 § 1226(b). For an individual who was once in custody, the Attorney General may take that
15 individual back into custody by revoking the individual's release when the facts and
16 circumstances warrant it. Petitioner was released from custody after he was initially
17 apprehended in 2024.

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

21 Accordingly, Petitioner is subject to proceedings under 8 U.S.C. § 1226(a).

1 **2. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO and**
2 **Preliminary Injunction**

3 In the absence of a TRO and preliminary injunction, Petitioner will continue to be
4 unlawfully detained by Respondents.

5 “Freedom from imprisonment—from government custody, detention, or other forms of
6 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*
7 *v. Davis*, 533 U.S. 678, 690 (2001). Petitioner’s continued detention constitutes an ongoing
8 violation of his constitutional right to due process. Petitioner’s continued detention also brings
9 devastating consequences for his family and mental condition. Before this incident, he was
10 residing in the United States without being detained. In *Norsworthy v. Beard*, 87 F. Supp. 3d
11 1164, 1192 (N.D. Cal. 2015), the Northern District held that “[e]motional distress, anxiety,
12 depression, and other psychological problems can constitute irreparable injury.”
13

14 **3. The Balance of Equities Tips in Petitioner’s Favor and a TRO and**
15 **Preliminary Injunction is in the Public Interest.**

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

1 *7 (W.D. Va. Apr. 21, 2025) (“[W]hile the Executive Branch has broad authority to enforce
2 immigration laws, there is no public interest in allowing them to act outside the law.”).

3 Based on the foregoing, the balance of these remaining factors weighs in favor of
4 granting the requested injunctive and habeas relief.

5 **III. CONCLUSION**

6 For the foregoing reasons, the requests for temporary injunction, preliminary injunction,
7 and habeas relief should be granted.
8

9 Respectfully submitted,

10 Date: February 18, 2026

11 By: /s/ Connie Chan
12 Connie Chan
13 Attorney for Petitioner
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