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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

Carlos Alberto Rincon Nino,

Petitioner,

v.

Warden of the Golden State Annex Detention
Facility; Current or Acting Field Office
Director, San Francisco Immigration
and Customs Enforcement Office; Current or Acting
Director of U.S. Immigration and Customs
Enforcement;
Current or Acting Secretary of the United
States Department of Homeland Security;
Current or Acting Attorney General of the
United States,

Respondents.

Case No. 1:25-cv-01714-JDP (HC)

**REPLY BRIEF IN SUPPORT OF A
TEMPORARY RESTRAINING
ORDER**

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1 INTRODUCTION

2 Carlos Alberto Rincon Nino now replies in further support of his request for a temporary
3 restraining order (TRO). Mr. Rincon Nino respectfully renews his request for immediate release
4 because the irreparable harm he has suffered and will continue to suffer in detention is grievous
5 and now prolonged at over 180 days in confinement with no evidence that he presents a flight
6 risk or a danger to his community.

7 Release is also warranted because Respondents have not articulated an interest that is
8 weightier than the Petitioner's liberty interest.

9 These extraordinary circumstances combined with the clear and grievous irreparable
10 harm to Petitioner with each passing day that he is detained warrant a grant of his immediate
11 release. If the Court declines to order his release, he respectfully asks in the alternative for an
12 order requiring: (i) the immigration court to conduct a bond hearing in his case in seven days
13 from the date the TRO is granted, (ii) that DHS bear the burden of proving by clear and
14 convincing evidence that Petitioner is a danger or a flight risk, (iii) that the hearing be conducted
15 by an immigration judge who is not seated at a detained docket immigration court, and (iv) that
16 if Petitioner is released on bond, he will not be shackled with an ankle monitor. These
17 conditions for a bond hearing are required to preserve the *status quo ante* dating to before
18 Petitioner was re-arrested and detained.

19 ARGUMENT

20 The standards for issuing a preliminary injunction and a TRO are "substantially identical."
21 *See Galindo Arzate v. Kaiser*, No. 25-CV-00942, 2025 WL 2230521, *3 (E.D. Cal. Aug. 4, 2025)
22 (citing *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001))
23 (noting the analysis for issuing a temporary restraining order and a preliminary injunction is
24 substantially the same). To warrant a TRO, a movant must show (1) they are "likely to succeed
25 on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief,"
26 (3) "the balance of equities tips in [their] favor," and that (4) "an injunction is in the public
27 interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter*
28 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)); *see Stuhlbarg Int'l Sales Co.*, 240 F.3d at
839 n.7 Even if the movant raises only "serious questions" as to the merits of their claims, the
court can grant relief if the balance of hardships tips "sharply" in their favor. *All. for the Wild*
Rockies, 632 F.3d at 1135. All factors here weigh decisively in Mr. Rincon Nino's favor.

RESPONDENTS DO NOT SERIOUSLY CONTEST THAT PETITIONER IS LIKELY TO
SUCCEED ON THE MERITS.

MR. RINCON NINO IS NOT SUBJECT TO MANDATORY DETENTION.

Mr. Rincon Nino is likely to prevail on his claim because the Respondents cannot show that he is detained under 8 U.S.C. § 1225(b). Respondents acknowledge that this court has already addressed the government's novel interpretation of the detention statutes and its application of § 1225(b) to any noncitizen who entered without inspection and have rejected both. *See* Opp. 2 (citing *Dominguez v. Noem*, 1:25-cv-1577-JDP, 2025 WL 3268507 (E.D. Cal. Nov. 24, 2025) (finding petitioners likely to succeed on their claim that they are not subject to mandatory detention under § 1225(b)(2(A))). This Court declined to credit the government's statutory arguments again more recently. In *Singh Sekhon v. Warden*, the government argued that petitioner was subject to mandatory detention under § 1225(b) where he had entered the United States without inspection, was processed by DHS officers and released into the country. No. 1:25-cv-1692-JDP, at *1-4 (E.D. Cal. Jan. 9, 2026). This Court noted that "[i]nstead of responding to petitioner's due process-based argument, respondents advance an argument premised on an assertion that petitioner is an 'applicant for admission' within the meaning of 8 U.S.C. § 1225(a) and was re-detained under 8 U.S.C. § 1225(b)(2)(A). For support, respondents rely on (1) a handful of district court decisions denying relief to similarly situated petitioners, and (2) the Board of Immigration Appeals decision *In re Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *Id.* However, the government fails to address how its statutory argument responds to the constitution-based argument raised by petitioner. Petitioner's argument is, thus, essentially un-opposed." *Id.* at 3 (internal citation omitted). The instant case is similar because Mr. Rincon Nino entered the United States without inspection, was charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i)), and thus, similarly to the petitioners in *Dominguez* and *Singh Sekhon*, cannot be detained under § 1225(b).

Respondents concede that not one but two district courts in this Circuit have certified classes of petitioners and vacated or stayed the Department of Homeland Security's direction to its sub-agencies that it should treat noncitizens who entered without inspection, like Petitioner, as subject to mandatory detention under § 1225(b). Opp. 4 (citing *Maldonado-Bautista v. Noem*, 5:25-cv-1873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025) (vacating the DHS guidance) and *Pinchi v. Noem*, 25-cv-5632, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025) (staying the guidance in the San Francisco area of responsibility). Respondents nevertheless ask this Court to find that Petitioner is mandatorily detained under § 1225(b) without offering any reason why this case is

1 different from this Court's previous findings for petitioners who were similarly situated. *See*
2 *Dominguez*, 2025 WL 3268507 and *Singh Sekhon*, No. 1:25-cv-1692-JDP.

3 Here, Respondents continue to advance the same statutory arguments previously rejected
4 by this Court and many others across the Circuit. Opp. at 2-4. Respondents argue that because
5 Mr. Rincon Nino was not admitted to the United States, he is therefore an applicant for admission
6 under § 1225(a) and subject to mandatory detention under § 1225(b). Courts across the nation
7 have found this argument unavailing. *See e.g. Dominguez*, 2025 WL 3268507, at * 6-8 (finding
8 that the government's recent interpretation of § 1225 untenable and noting that "a large majority
9 of district courts nationwide" have rejected substantially similar statutory arguments by the
10 government); *Guerrero Lepe v. Andrews*, No. 25-cv-01163-KES-SKO, slip op. at *6 (E.D. Ca.
11 Sept. 23, 2025) ("The government's proposed interpretation of the statute (1) disregards the plain
12 meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and
13 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent
14 with decades of prior statutory interpretation and practice."); *Romero v. Hyde*, No. 25-00631-
15 BEM, slip op. at *16 (D. Mass. Aug. 19, 2025) ("Respondents' real argument is that
16 notwithstanding the above, section 1225(b)(2)(A) applies ... to govern Petitioner's detention ...
17 because she is an 'applicant for admission' This argument reflects a novel interpretation of the
18 immigration detention statutes, adopted by DHS about a month ago."). *See also Espinoza v.*
19 *Kaiser*, No. 25-cv-01101-JLT-SKO, 2025 WL 2581185, at *16 ("Yet even assuming Respondents
20 are correct that § 1225(b) is the applicable detention authority for all 'applicants for admission,'
21 Respondents fail to contend with the liberty interests created by the fact that the Petitioners in this
22 case were released on recognizance *prior to the manifestation of this interpretation.*") (emphasis
23 in the original).

24 As a result, the Court should again find that Petitioner, who entered without inspection
25 according to his immigration documents, is not subject to mandatory detention and further, as
26 explained below, his detention is not justified. *See* Exh. 1 to Declaration of Bonita S. Gutierrez,
27 ECF. 15-2 (showing he was charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i)); *see*
28 *also Dominguez*, 2025 WL 3268507, at *2-8 (finding § 1225(b) does not likely apply to
petitioners who were charged under § 1182(a)(6)(A)(i)).

PETITIONER'S DETENTION, AS APPLIED HERE, VIOLATES HIS DUE PROCESS RIGHTS

Respondents argue, in essence, that because immigration detention has been *facially* upheld by the Supreme Court, that it is lawful as applied to Mr. Rincon Nino. Opp. 4 (*citing Demore v. Kim*, 538 U.S. 510, 531 (2003)). However, “[c]ivil immigration detention, which is ‘nonpunitive in purpose and effect[,]’ is justified *only* when a noncitizen presents a risk of flight or danger to the community” and where an immigrant has been previously released by immigration officials, any allegation that this has changed materially must be evaluated by a neutral decision maker before he can be re-detained. *See Galindo Arzate*, No. 25-cv-00942-KES-SKO, 2025 WL 2330521, * 5 (E.D. Ca Aug. 4, 2025) (emphasis supplied) (*citing Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). “The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing *before* he is deprived any significant protected interest.” *See id.* (internal quotations omitted) (*citing Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985), *see also Jorge M. F. v. Wilkinson*, No. 21-cv-01434-JST, 2021 WL 783561, *4 (N.D. Cal. Mar. 1, 2021) (*citing Ortega v. Bonnar*, 415 F.Supp.3d 963 (N.D. Cal. 2019) and *Ortiz Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) (granting petitioner’s request for a temporary restraining order against re-arrest by ICE without a pre-deprivation hearing)).

Courts have considered situations like Mr. Rincon Nino’s in which a noncitizen was previously released by ICE and decided that this “suggests he was determined not to present a flight risk” or a danger. *See Ortega v. Kaiser*, 25-CV-05259-JST, 2025 WL 2243616, *6-7 (N.D. Cal. Jun. 26, 2025) (*citing Tadros v. Noem*, No. 25-CV-04108, Order (D.N.J. Jun. 17, 2025) (granting habeas petition). As courts have repeatedly found, in such cases, this release gives rise to a liberty interest that cannot be taken away without procedural protections. *See Espinoza*, 2025 WL 2581185, at *15 and *Guerrero Lepe*, 25-cv-01163-KES-SKO, at *14. Further, courts across this Circuit have found that “non-citizens released from ICE custody acquire a liberty interest in their continued release.” *Singh Sekhon*, No. 1:25-cv-1692-JDP, at *4. To re-detain him, therefore, ICE officials must show a change in circumstances sufficient to warrant his detention. Here, Respondents do not argue that Mr. Rincon Nino is a danger or a flight risk. Opp. 2 (“Respondents do not contest Petitioner’s facts.”). There is no evidence in the record that ICE made any attempt to make this showing or give Mr. Rincon Nino notice of such a determination or any opportunity to respond before re-arresting him. *Id.* at *5-6.

1 THE RISK THAT PETITIONER WILL CONTINUE TO BE DETAINED AND
2 ERRONEOUSLY DEPRIVED OF HIS LIBERTY IS HIGH.

3 Respondents seek to continue detaining Mr. Rincon Nino without due process by claiming
4 that he is “an ‘applicant for admission’ and subject to mandatory detention by [ICE] under 8
5 U.S.C. § 1225(b) during the pendency of his removal proceedings.” Opp. 2. Respondents rely on
6 a handful of district court cases and the Board of Immigration Appeals decision *Matter of Yajure*
7 *Hurtado* to support this argument but as explained above, this Court has joined most district
8 courts to consider this issue by finding that non-citizens who enter the United States without
9 inspection are not subject to mandatory detention under § 1225(b). *Dominguez*, 2025 WL
3268507, at * 4-8.

10 Respondents claim, erroneously, that they can detain him now under § 1225 and he is “thus
11 ineligible for a bond hearing.” Opp. 3. Respondents ignore that once a noncitizen has been released
12 by ICE, he has a liberty interest in his continued release. *See Singh Sekhon*, No. 1:25-cv-1692-
13 JDP, at * 5 (finding that “petitioner’s initial release and time out of custody created a
14 constitutionally protected liberty interest in continued release.”). At one point, Respondents appear
15 to concede that Petitioner has a liberty interest but insist that he still has not shown that a custody
16 hearing would “decrease the risk of him being erroneously deprived of his liberty.” Opp. 6. This
17 argument fails because the fact that Respondents have argued that Mr. Rincon Nino is subject to
mandatory detention and not eligible for a bond hearing demonstrates that absent a TRO, he will
have no hope of being released from unlawful detention.

18 Thus, there is little question that unless a TRO is issued, Mr. Rincon Nino will continue to
19 be detained by ICE and held without an opportunity to contest his detention before a neutral
20 decision-maker.

21
22 THE GOVERNMENT HAS LITTLE INTEREST IN DETAINING THE PETITIONER WHERE
23 HIS REMOVAL IS NOT REASONABLY FORESEEABLE.

24 The government’s interest in detaining Mr. Rincon Nino without a hearing is “low.” *See*
25 *Galindo Arzate*, 2025 WL 2230521, at *5 (*citing Ortega*, 2025 WL 2243616, at *6) (noting that
26 another court in this district properly found that the government’s interest in re-detaining the
27 petitioner was low given that he “had complied with his supervision requirements for years.”)
28 (*citing to Diaz v. Kaiser*, No. 25-CV-05071, 2025 WL 1676854, at *2 (N.D. Cal. Jun. 14, 2025)).
This is particularly so where DHS chose to release Mr. Rincon Nino on his own recognizance in

2022, and three years later ICE re-detained him after he accrued facts that only further support the original finding that he is neither a danger nor a flight risk. During his release he applied for asylum, was granted a work permit, and built a life for himself in California, all the while maintaining a clean record and reporting to ICE as required. *See id.* (citing *Pinchi v. Noem*, No. 25-cv-05632, 2024 WL 1853763, at *5 (N.D.Cal. Jul. 4, 2025)). *See also Espinoza*, 2025 WL 2581185, at *10 (finding that where petitioners “applied for and built lives outside detention, albeit under the terms of their parole” they have “substantial liberty interests in being out of custody” and the government’s interest in detaining them without a bond hearing is “slight”).

Importantly, Respondents do not argue that Mr. Rincon Nino is a danger to his community or a flight risk. They do not contest his version of the facts showing that he has no criminal history and has not missed any reporting requirements with ICE. Opp. 2.

Respondents claim that “the government clearly has a strong interest in preventing aliens from ‘remain[ing] in the United States in violation of our law,” Opp. 6, but here ICE released Mr. Rincon Nino into the country, and he has since applied for asylum and reported to ICE. There is no evidence that he is here in violation of United States law but rather is here with the full knowledge of immigration authorities while he has pursued his case. Further, he has a right to pursue his pending asylum application, and this process can take years to resolve particularly because in the San Francisco immigration court, where Petitioner’s application will be adjudicated if he is released, there are only seven immigration judges left sitting at the bench which last year included 28 immigration judges.¹ Thus, his removal is not reasonably foreseeable.

PETITIONER SUFFERS AND WILL CONTINUE TO SUFFER IRREPARABLE HARM EACH DAY THAT HE IS DETAINED.

Respondents concede that “an alleged constitutional violation may alone constitute irreparable harm,” but attempt to diminish Petitioner’s irreparable harm caused by over six months of unlawful detention by claiming that he is unlikely to prevail on his TRO request because his detention is lawful under § 1225(b). Opp. 6-7.

This contention is squarely at odds with the findings of courts in this district and beyond. *See Pinchi*, 2024 WL 1853763, at *6 (“The likely unconstitutional deprivation of liberty that Ms.

¹ 21 immigration judges fired in San Francisco, many reportedly without explanation, ABC 7 News, Dec. 30, 2025, available at <https://abc7news.com/post/san-francisco-loses-21-immigration-judges-100-nationwide-many-reportedly-explanation/18331917/>.

Garro Pinchi faces is an immediate and irreparable harm”) (*citing Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable harm is necessary”)); *see also Galindo Arzate*, 2025 WL 2230521, at *6 (“as the Supreme Court has recognized, incarceration ‘has a detrimental impact on the individual’ because ‘it often means loss of a job’ and ‘disrupts family life.’”) (*citing Barker v. Wingo*, 407 U.S. 514, 532-22 (1972)); *see also Romero*, No. 25-00631-BEM, at *13 (“But it would be perverse to find that loss of liberty somehow suddenly stops being irreparable harm just because it is being considered in the immigration context.”). Where a noncitizen’s detention is unjustified, there can be no doubt that he suffers irreparable harm with each passing day. Here, Mr. Rincon Nino is not subject to mandatory detention under § 1225(b), as Respondents insist, and thus his detention is unlawful, and he accrues irreparable harm every day that his is detained.

IMMEDIATE RELEASE IS AN APPROPRIATE REMEDY HERE.

Respondents briefly argue that Petitioner “has failed to clearly show that he is entitled to release during his removal proceedings, as it appears that he is subject to mandatory detention.” Opp. 6. Respondents appear to say that the proper remedy is a bond hearing but in this case, his immediate release is appropriate because (i) ICE has not argued, and therefore is unlikely to be able to argue at any bond hearing, that he is a danger or a flight risk, and (ii) there is no evidence that Mr. Rincon Nino was provided notice of any alleged justification for his arrest or an opportunity to respond, and (iii) Mr. Rincon Nino has been detained for over six months, which is a presumptively prolonged period.

First, Respondents have not argued that Mr. Rincon Nino presents either a flight risk or a danger to his community. Opp. 2 (“Respondents do not contest Petitioner’s facts”). There is no evidence that ICE officials determined there was any changed circumstances since his prior release to justify his arrest in May 2025. Therefore, there is no reason to believe that ICE has any evidence to present at a bond hearing to show that he should remain detained and the most appropriate remedy is his immediate release. *See Ortiz Donis v. Chestnut*, No. 1:25-cv-1228-JLT-SAB, ECF. 14 (E.D. Cal Oct. 9, 2025) (order granting petitioner immediate release and converting petitioner’s TRO into a preliminary injunction); *Pinchi*, 2024 WL 1853763, at * 5 (ordering petitioner’s release and finding that “[g]iven the inadequacy and unreliability of the government’s proposed post-detention procedural safeguards, there is a substantial risk not only

1 that the period between her arrest and any bond hearing will have served no valid government
2 purpose but also that she will continue to be detained without a bond hearing in the absences of
3 any valid purpose.”).

4 Second, in addition to his unjustified re-arrest, there is no evidence that ICE officials
5 provided him procedural due process by giving Petitioner notice and an opportunity to respond to
6 their decision that he must be detained. This additional violation of his procedural due process
7 rights weighs in favor of his immediate release.

8 Third, Petitioner has now been in detention for over six months. The Supreme Court has
9 held that there are grave constitutional concerns about prolonging detention where a noncitizen
10 has been detained for six months or more and no removal will occur in the reasonably foreseeable
11 future. *Zadvydas*, 533 U.S., 701; *see also Rodriguez v. Marin*, No. 13-56706, ___, 12 (9th Cir.
12 Nov. 19, 2018) (order remanding to the district court to decide constitutional arguments relating
13 to immigration detention and noting “[w]e have grave doubts that any statute that allows for
14 arbitrary prolonged detention without any process is constitutional or that those who founded our
15 democracy precisely to protect against the government’s arbitrary deprivation of liberty would
16 have thought so.”)

17 Thus, on these facts, ordering Mr. Rincon Nino’s immediate release is appropriate.

18 THE PUBLIC INTEREST IS ALWAYS SERVED IN PRESERVING A PERSON’S
19 CONSTITUTIONAL RIGHTS.

20 Respondents claim that the government’s interest in enforcing immigration laws
21 “outweighs Petitioner’s private interest here.” Opp. 7. However, this contention is squarely at
22 odds with what this Court and others have said. In *Espinoza*, the court agreed with the analysis of
23 *Pinchi* that: “[T]he public has a strong interest in upholding procedural protections against
24 unlawful detention, and the Ninth Circuit has recognized that the costs to the public of
25 immigration detention are staggering.” *Espinoza*, 2025 WL 2581185, at 11 (*citing Pinchi*, at *3).
26 *See also Singh Sekhon*, No. 1:25-cv-1692-JDP, at *7; *see Ortega*, 2025 WL 2243616, at *8 (“The
27 public has a strong interest in upholding procedural protections against unlawful detention, and
28 the Ninth Circuit has recognized that the costs to the public of immigration detention are
staggering... Without the requested injunctive relief, Petitioner might be kept indefinitely in DHS
custody, subjecting both him and his family to significant hardship. Yet the comparative harm
potentially imposed on Respondents-Defendants is minimal – a mere short delay in detaining
Petitioner-Plaintiff, should the government ultimately show that detention is intended and

1 warranted.” (citing *Diaz*, 2025 WL 1676854, at 3). See also *Jorge M.F.*, 2021 WL 783561, at*3
2 (“the public has a strong interest in upholding procedural protections against unlawful detention”
3 and “the costs to the public of immigration detention are staggering”) (internal quotes omitted)
4 (citing *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Here, the stakes and interests
5 are similar. Where Mr. Rincon Nino has shown that his detention serves no valid interest as he
6 was previously found not to be a flight risk or a danger, Respondents have provided no evidence
7 to show that circumstances have materially changed, and given the enormous cost to taxpayers of
8 detaining immigrants, preserving Mr. Rincon Nino’s constitutional rights undoubtedly serves the
9 public’s interest in preventing due process violations.

10 CONCLUSION

11 For the foregoing reasons, Mr. Rincon Nino respectfully requests the Court grant a TRO
12 that (1) releases him immediately. If the Court declines to order his release, he respectfully asks
13 in the alternative for an order requiring: (i) the immigration court to conduct a bond hearing in
14 his case in seven days from the date the TRO is granted, (ii) that DHS bear the burden of clear
15 and convincing evidence that Petitioner is a danger or a flight risk, (iii) that the hearing be
16 conducted by an immigration judge not seated at a detained immigration court, and (iv) that if
17 Petitioner is released on bond, he will not be shackled with an ankle monitor. These conditions
18 on a bond hearing are required to preserve the *status quo ante* dating to before Petitioner was re-
19 arrested and detained. Mr. Rincon Nino further respectfully requests the Court issue a writ of
20 habeas corpus and declare that his detention violates the Due Process Clause of the Fifth
21 Amendment.

22 Date: January 14, 2026

Respectfully Submitted,

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