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6 UNITED STATES DISTRICT COURT
7
8 EASTERN DISTRICT OF CALIFORNIA

9
10 H.F.,¹

No.

11 PETITIONER-PLAINTIFF,

12 V.

13 SERGIO ALBARRAN, Acting Director, San
14 Francisco Field Office, U.S. Immigration and
Customs Enforcement;

15 TODD LYONS, Acting Director, U.S.
16 Immigration and Customs Enforcement;

17 KRISTI NOEM, Secretary of the U.S.
18 Department of Homeland Security,

19 PAM BONDI, Attorney General of the United
States,

20 MINGA WOFFORD, Warden of Mesa Verde
21 Detention Center,

22 RESPONDENTS-DEFENDANTS.

**PETITIONER-PLAINTIFF'S MOTION
FOR A TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

23
24
25
26
27 ¹ Petitioner respectfully informs the Court that he is simultaneously filing a motion to proceed
28 under pseudonym.

1 For the reasons explained in the accompanying Memorandum of Points and Authorities,
2 Petitioner hereby makes this Application for a Temporary Restraining Order and Preliminary
3 Injunction pursuant to Federal Rule of Civil Procedure 65 and and Rule 231 of the Local Rules of
4 the Court. Petitioner has been detained in the custody of Immigration and Customs Enforcement
5 ("ICE") since October 27, 2025.
6

7 Petitioner challenges his detention and arrest on Fifth Amendment grounds, as well as on
8 statutory and regulatory grounds. Petitioner requests that the Court issue a temporary restraining
9 order and order to show case re: preliminary injunction in the form of the proposed order submitted
10 concurrently with this Application. This Application is based on the Complaint, Memorandum of
11 Points and Authorities, and the declaration in support thereof. Petitioner hereby moves this Court for
12 an order that Respondents be enjoined from continuing to unlawfully detain him and immediately
13 order his release or, in the alternative, direct Respondents to provide Petitioner with a bond hearing
14 before a neutral decisionmaker pursuant to 8 U.S.C. § 1226(a) within seven days.
15

16 Undersigned counsel emailed Civil Chief Edward Olsen in the civil division for the United
17 States Attorney's Office for the eastern District of California on December 9, 2025 at 5:31PM with a
18 draft of Petitioner's petition for writ of habeas corpus and informed him that both the habeas petition
19 and motion for a temporary restraining order will be filed today.
20

21
22 Dated: December 10, 2025

Respectfully Submitted,

23 /s/Lina Baroudi

24 Lina Baroudi

25 *Attorney for Petitioner-Plaintiff*

26 H.F.
27
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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff ("Petitioner"), H.F., is a citizen and national of Iran and was
3 unlawfully detained pursuant to 8 U.S.C. § 1225(b)(2) upon leaving the criminal courthouse
4 where he had just been sentenced and released based on time already served. Petitioner was
5 initially detained upon entry into the United States in 2021 and released on recognizance
6 pursuant to 8 U.S.C. § 1226(a). Nonetheless, on October 27, 2025, ICE detained Petitioner under 8
7 U.S.C. § 1225(b)(2). Petitioner challenges the legality of his mandatory detention and requests a
8 Temporary Restraining Order for his immediate release from ICE custody or, in the alternative, a
9 bond hearing before a neutral decisionmaker, pursuant to 8 U.S.C. § 1226(a), within seven days.
10

11 **II. STATEMENT OF FACTS AND THE CASE**

12 Petitioner is an Iranian citizen who entered the U.S. without inspection with his spouse
13 and child on December 25, 2021, at or near Tecate, California.² Shortly thereafter, they were
14 apprehended by ICE and taken into immigration custody, where they were briefly detained. The
15 following day, Petitioner was released on his own recognizance and provided with the following
16 documents: Form I-200 (Warrant for Arrest of Alien) pursuant to 8 U.S.C. § 1226, Form I-220A
17 (Order of Release on Recognizance), Form I-286 (Notice of Custody Determination) pursuant to
18 8 U.S.C. § 1226, and Form I-862 (Notice to Appear) for removal proceedings under 8 U.S.C. §
19 1229a.
20

21 Shortly after entering the United States, Petitioner and his spouse began experiencing
22 marital discord. Petitioner's spouse falsely accused him of multiple allegations involving her and
23 their child, which lead to his arrest in August 2022. Petitioner has maintained his innocence
24 throughout his criminal proceedings. Three years later, Petitioner pleaded no contest to two
25

26
27 ² Since the couple is no longer together and their immigration cases are not consolidated, the
28 immigration history of Petitioner's spouse and child are irrelevant for purposes of this petition.

1 counts of Cal. Penal Code § 136.1(b)(1) (nonviolently dissuading a witness) in the California
2 Superior Court. The District Attorney dismissed all other charges. On October 27, 2025,
3 Petitioner was sentenced to 120 days of county jail and 3 years formal probation for the first
4 count and 30 days and probation, terminated upon release, for the second count.³ Because of the
5 pre-trial detention time he had already served, Petitioner was released from custody that same
6 day.
7

8 Waiting for him at the courthouse, ICE immediately detained Petitioner and
9 transferred him to the Mesa Verde ICE Processing Facility. Since then, ICE has made a
10 determination to continue Petitioner's detention without an opportunity to post bond or be
11 released on other conditions, including release on his prior order of release on recognizance.

12 On July 8, 2025, ICE, "in coordination with" with the Department of Justice, announced a
13 new policy that rejected well-established understanding of the statutory framework and reversed
14 decades of practice.
15

16 The new policy, entitled "Interim Guidance Regarding Detention Authority for
17 Applicants for Admission," claims that all persons who entered the United States without
18 inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The
19 policy applies regardless of when a person is apprehended, and affects those who have resided in
20 the United States for months, years, and even decades.
21

22 On September 5, 2025, the BIA adopted this same position in a published decision,
23 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the Board held that all
24 noncitizens who entered the United States without admission or parole are subject to detention
25 under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.
26

27 ³ On November 12, 2025, the court reduced the second count to a misdemeanor under Cal. Penal
28 Code § 17b.

1 In his Notice to Appear, Petitioner is charged with, *inter alia*, having entered the United
2 States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Pursuant to *Matter of*
3 *Yajure Hurtado, supra*, the immigration judge is unable to consider Petitioner's bond request or
4 review ICE's determination to keep him detained.

5 As a result, Petitioner remains in detention. Without relief from this Court, he faces the
6 prospect of months, or even years, in immigration custody, separated from his community and
7 support network.
8

9 **III. LEGAL STANDARD**

10 Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to
11 succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that
12 the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v.*
13 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush &*
14 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary
15 restraining order standards are "substantially identical"). Even if Petitioner does not show a
16 likelihood of success on the merits, the Court may still grant a temporary restraining order if he
17 raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his
18 favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632
19 F.3d 1127 (9th Cir. 2011). As set forth in more detail below, Petitioner overwhelmingly satisfies
20 both standards.
21

22 **IV. ARGUMENT**

23 **A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS.**

24 **1. Petitioner is Likely to Succeed on the Merits of His Claim That His Detention**
25 **Violates the Immigration and Nationality Act.**
26

27 Petitioner seeks his immediate release because he is unlawfully and unconstitutionally
28

1 deemed ineligible for bond based on an erroneous finding that he is subject to mandatory detention
2 under 8 U.S.C. § 1225(b)(2)(A). A plain reading of the statute makes clear that Petitioner, who had
3 been initially detained and ordered released in December 2021, and subsequently apprehended in
4 the interior, cannot be detained under 8 U.S.C. § 1225(b)(2)(A), but rather, must be detained under
5 § 1226(a).
6

7 In examining the relevant provisions of §§ 1225 and 1226, the Court considers “whether
8 the language at issue has a plain and unambiguous meaning with regard to the particular dispute in
9 the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). The Court’s “job is to interpret
10 the words consistent with their ‘ordinary meaning . . . at the time Congress enacted the statute.’”
11 *Wis. Cent. Ltd v. U.S.*, 585 U.S. 274, 277 (2018) (quoting *Perrin v. U.S.*, 444 U.S. 37, 42 (1979));
12 see also *New Prime Inc. v. Oliveira*, 586 U.S. 105, 113 (2019) (If courts could “freely invest old
13 statutory terms with new meanings, we would risk amending legislation” and “upsetting reliance
14 interests in the settled meaning of a statute”) (internal quotations and citations omitted). Of course,
15 the words of a statute “cannot be construed in a vacuum. It is a fundamental canon of statutory
16 construction that the words of a statute must be read in their context and with a view to their place
17 in the overall statutory scheme.” *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012)
18 (quoting *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989)).
19
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21 In *Jennings v. Rodriguez*, the Supreme Court analyzed the interplay between Section 1225
22 and Section 1226. 583 U.S. 281 (2018). The Supreme Court noted that Section 1225(b) applies
23 primarily to “aliens seeking entry into the United States.” *Jennings*, 583 U.S. at 297. The statute
24 itself contemplates “arriving” and “seeking” as the present tense of someone at the port of entry,
25 “where the Government must determine whether an alien seeking to enter the country is
26 admissible.” *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.) (citing
27 *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018)). For non-citizens already present inside the
28

United States, “Section 1226(a) creates a default rule for those aliens by permitting the Attorney General to release them on bond, ‘except as provided in subsection (c) of this section.’” *See Jennings*, 583 U.S. at 303.

A line must be drawn between how §§ 1225 and 1226 function when it comes to detention of noncitizens, and it is straightforward: detention authority under § 1225 is exercised at or near the port of entry for those seeking admission, and detention authority under § 1226 must be used when a non-citizen is arrested in the interior of the United States. *See Martinez v. Hyde*, 792 F. Supp. 3d 211, 221 (D. Mass. 2025) (The line historically drawn between these two sections, making sense of their text and overall statutory scheme, is that section 1225 governs detention of non-citizens “seeking admission into the country,” whereas section 1226 governs detention of non-citizens “already in the country.”); *see also Lopez-Campos v. Raycraft*, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A), applies to a noncitizen who has resided in this country for over twenty-six years and was already within the United States when apprehended and arrested during a traffic stop, and not upon arrival at the border.”); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that § 1226(a), not § 1225(b)(2), governs detention of a noncitizen who had resided in the United States for 15 years).

Petitioner was apprehended shortly after entering the United States, and the Respondents applied the statute as it has been applied for years – he was processed to process h on October 27, 2025, he was not apprehended while seeking admission at the port of entry but while he was at a court hearing. Therefore, Petitioner should not have been detained under §1225(b)(2).

2. Petitioner is Likely to Succeed on the Merits of His Claim That Due Process Requires That He Be Afforded a Hearing Before a Neutral Adjudicator Prior to Any Re-Detention by ICE.

In *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal. July 24, 2025), the court held,

... even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody [he] has a protected liberty interest in remaining out of custody. *See Romero v. Kaiser*, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega*, 415 F. Supp. 3d at 969 (“Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.”).

Id. (emphasis added). *See also Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) (“The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government’s legitimate goals.”). “Even assuming Respondents are correct that § 1225(b) is the applicable detention authority for all ‘applicants for admission,’ Respondents fail to contend with the liberty interest created by the fact that the Petitioner in this case was released on recognizance in April 2019, prior to the manifestation of this interpretation.” *Paz Aguilera v. Albarran et al.*, No. 1:25-CV-01619 JLT SAB, 2025 WL 3485016, at *10 (E.D. Cal. Dec. 4, 2025)

Petitioner is likely to succeed on his claim that fundamental principles of due process require that he cannot be mandatorily detained under § 1225(b), and that ICE cannot re-detain him without first providing him a bond hearing under § 1226, before a neutral adjudicator, where the government bears the burden to demonstrate that he is a danger or a flight risk.

Courts analyze these procedural due process claims in two steps: (1) whether there exists a protected liberty interest, and (2) the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). The Due Process Clause of the Constitution prevents

1 Respondents from arresting Petitioner without providing a pre-deprivation hearing before a neutral
2 adjudicator where the government demonstrates by clear and convincing evidence that there has
3 been a material change in circumstances such that he is now a danger or a flight risk.

4 **a. Petitioner Has a Protected Liberty Interest in His Release**

5 Petitioner's liberty from immigration custody, a form of civil detention, is protected by the
6 Due Process Clause: "Freedom from imprisonment – from government custody, detention, or other
7 forms of physical restraint – lies at the heart of the liberty that [the Due Process] Clause protects."
8 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Individuals – including noncitizens – released from
9 incarceration have a liberty interest in their freedom. *Id.*, 533 U.S. at 696 (recognizing the liberty
10 interest of noncitizens on OSUPs); *Getachew v. INS*, 25 F.3d 841 (9th Cir. 1994) (noting that "[i]t
11 is well-established that the due process clause applies to protect immigrants"). This is further
12 reinforced by *Morrissey v. Brewer*, 408 U.S. 471 (1972), in which the Supreme Court recognized
13 the protected liberty rights under the Due Process Clause of a criminal detainee who was released
14 on parole from incarceration. *Id.* at 481-82. The Court noted that, "subject to the conditions of his
15 parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form
16 the other enduring attachments of normal life"—thus, those released on parole have a protected
17 liberty interest, even where that liberty is subject to conditions. *Id.* at 482. *See also Young v.*
18 *Harper*, 520 U.S. 143, 152 (1997) (holding that individuals placed in a pre-parole program created
19 to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation process);
20 *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973) (holding that individuals released on felony
21 probation have a protected liberty interest requiring pre-deprivation process). In fact, so
22 fundamental to due process is the concept of liberty that it is even well established that an
23 individual maintains a protectable liberty interest where the individual obtains liberty through a
24 mistake of law or fact. *See id.*; *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010);
25
26
27
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1 *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations
2 support the notion that an inmate released on parole by mistake, because he was serving a sentence
3 that did not carry a possibility of parole, could not be re-incarcerated because the mistaken release
4 was not his fault, and he had appropriately adjusted to society, so it “would be inconsistent with
5 fundamental principles of liberty and justice” to return him to prison) (internal quotation marks
6 and citation omitted).

8 Here, when this Court “‘compar[es] the specific conditional release in [Petitioner’s case],
9 with the liberty interest in parole as characterized by *Morrissey*,” it is clear that they are strikingly
10 similar. See *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release will
11 “enable[] [him] to do a wide range of things open to persons” including to “be with family and
12 friends and to form the other enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482.
13 This is especially so where Petitioner has been maintaining his innocence for the three years that
14 he was in criminal custody. In ICE custody, Petitioner is no longer a criminal detainee, but a civil
15 detainee, and thus the due process considerations of his liberty should be even weightier than the
16 courts have already found apply in the criminal context. Precedent from the Supreme Court and the
17 Ninth Circuit make clear that he has a strong liberty interest in his release from detention.

19 **b. Petitioner’s Liberty Interest Mandated a Due Process Hearing Before**
20 **any Re-Detention**

21 “Adequate, or due, process depends upon the nature of the interest affected. The more
22 important the interest and the greater the effect of its impairment, the greater the procedural
23 safeguards the [government] must provide to satisfy due process.” *Haygood v. Younger*, 769 F.2d
24 1350, 1355-56 (9th Cir. 1985) (en banc) (citing *Morrissey*, *supra*, 408 U.S. at 481-82). This Court
25 must “balance [Petitioner’s] liberty interest against the [government’s] interest in the efficient
26 administration of” its immigration laws in order to determine what process he is owed to ensure that
27

1 ICE does not unconstitutionally deprive him of his liberty. *Id.* at 1357. Under the test set forth in
2 *Mathews v. Eldridge*, 424 U.S. 319, 332-35 (1976) this Court must consider three factors in
3 conducting its balancing test: “first, the private interest that will be affected by the official action;
4 second, the risk of an erroneous deprivation of such interest through the procedures used, and the
5 probative value, if any, of additional or substitute procedural safeguards; and finally the
6 government’s interest, including the function involved and the fiscal and administrative burdens that
7 the additional or substitute procedural requirements would entail.” *Haygood*, 769 F.2d at 1357
8 (citing *Mathews*, 424 U.S. at 335). The Supreme Court “usually has held that the Constitution
9 requires some kind of a hearing *before* the State deprives a person of liberty or property.” *Zinerman*
10 *v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). Only in a “special case” where post-
11 deprivation remedies are “the only remedies the State could be expected to provide” can a post-
12 deprivation process satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover,
13 only where “one of the variables in the *Mathews* equation – the value of predeprivation safeguards –
14 is negligible in preventing the kind of deprivation at issue” such that “the State cannot be required
15 constitutionally to do the impossible by providing predeprivation process,” can the government
16 avoid providing pre-deprivation process. *Id.* Because, in this case, the provision of a pre-deprivation
17 hearing is both possible and valuable to preventing an erroneous deprivation of liberty, ICE was
18 required to provide Petitioner notice and a hearing prior to any re-incarceration. *See Morrissey*, 408
19 U.S. at 481-82; *Haygood*, 769 F.2d at 1355-56; *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004);
20 *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457 U.S. 307, 321-24 (1982); *Lynch v.*
21 *Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that individuals awaiting involuntary civil
22 commitment proceedings may not constitutionally be held in jail pending the determination as to
23 whether they can ultimately be recommitted). Under *Mathews*, “the balance weighs heavily in favor
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1 of [Petitioner's] liberty" and required a pre-deprivation hearing before a neutral adjudicator, which
2 ICE failed to provide.

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6 **i. Petitioner's Interest in His Liberty is Profound**

7 Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal
8 sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In addition, the
9 principles espoused in *Hurd v. District of Columbia*, 864 F.3d 671 (D.C. Cir. 2017) and *Johnson*,
10 *supra* – that a person who is in fact free of physical confinement, even if that freedom is lawfully
11 revocable, has a liberty interest that entitles him to constitutional due process before he is re-
12 incarcerated – apply with even greater force to individuals like Petitioner, who are facing civil (not
13 criminal) detention. *See, e.g., United States v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
14 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the courts
15 have held that the parolee cannot be re-arrested without a due process hearing in which they can
16 raise any claims they may have regarding why their re-incarceration would be unlawful. *See*
17 *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner, as a civil detainee,
18 retains a truly weighty liberty interest even though he was under conditional release prior to his re-
19 arrest. What is at stake in this case for Petitioner is one of the most profound individual interests
20 recognized by our legal system: whether ICE may unilaterally nullify a prior release decision and be
21 able to take away his physical freedom, i.e., his "constitutionally protected interest in avoiding
22 physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (internal quotation
23 omitted). "Freedom from bodily restraint has always been at the core of the liberty protected by the
24 Due Process Clause." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). *See also Zadvydas*, 533 U.S. at
25 690 ("Freedom from imprisonment—from government custody, detention, or other forms of
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1 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”); *Cooper v.*
2 *Oklahoma*, 517 U.S. 348 (1996).

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4 **ii. The Government’s Interest in Keeping Petitioner in**
5 **Custody is Low and the Burden on the Government to**
6 **Release Him from Custody is Minimal**

7 The government’s interest in keeping Petitioner in detention without a due process hearing is
8 low, and when weighed against his significant private interest in his liberty, the scale tips sharply in
9 favor of releasing him from custody. It becomes abundantly clear that the *Mathews* test favors
10 Petitioner when the Court considers that the process Petitioner seeks – release from civil custody
11 after ICE had already released him more than two decades ago, and where nothing in the interim has
12 changed to warrant re-detention after —is a standard course of action for the government. Providing
13 Petitioner with a future hearing before a neutral adjudicator to determine whether his removal is
14 reasonably foreseeable and if there is otherwise evidence that he is a flight risk or danger to the
15 community would impose only a *de minimis* burden on the government, because the government
16 routinely conducts these reviews for individuals in Petitioner’s same circumstances.

17
18 As immigration detention is civil, it can have no punitive purpose. The government’s only
19 interests in holding an individual in immigration detention can be to prevent danger to the
20 community or to ensure a noncitizen’s appearance at immigration proceedings. *See Zadvydas*, 533
21 U.S. at 690

22
23 **iii. Without Release from Custody, the Risk of an**
24 **Erroneous Deprivation of Liberty is High**

25 Releasing Petitioner from civil custody, and ensuring he is provided a pre-deprivation
26 hearing in the future, would decrease the risk of him being erroneously deprived of his liberty.
27 Before he can be lawfully detained, he must be provided with a hearing before a neutral adjudicator

1 at which the government is held to show that circumstances have changed since his release in 2001
2 such that evidence exists to establish that he is a danger to the community or a flight risk.

3 Under the process that ICE maintains is lawful – which affords Petitioner no process
4 whatsoever – ICE can simply re-detain him at any point if the agency desires to do so, as ICE did on
5 October 27, 2025. Petitioner has already been erroneously deprived of his liberty when he was
6 recently detained, and the risk he will continue to be deprived is high if ICE is permitted to keep him
7 in detention after making a unilateral decision to detain him.
8

9 By contrast, the procedure Petitioner seeks – immediate release from custody or a bond
10 hearing before a neutral adjudicator prior to any re-detention at which the government will establish
11 the circumstances have changed since his release in 2021 to justify his detention – is much more
12 likely to produce accurate determinations regarding these factual disputes. See *Chalkboard, Inc. v.*
13 *Brandt*, 902 F.2d 1375, 1381 (9th Cir.1989) (when “delicate judgments depending on credibility of
14 witnesses and assessment of conditions not subject to measurement” are at issue, the “risk of error is
15 considerable when just determinations are made after hearing only one side”). “A neutral judge is
16 one of the most basic due process protections.” *Castro-Cortez v. INS*, 239 F.3d 1037, 1049 (9th Cir.
17 2001), abrogated on other grounds by *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006). The Ninth
18 Circuit has noted that the risk of an erroneous deprivation of liberty under *Mathews* can be decreased
19 where a neutral adjudicator, rather than ICE alone, makes custody determinations. *Diouf v.*
20 *Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1091-92 (9th Cir. 2011).
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22
23 **B. PETITIONER WILL CONTINUE TO SUFFER IRREPARABLE HARM IN THE**
24 **ABSENCE OF A TRO**

25 “The loss or threatened infringement upon [constitutional] rights for even minimal periods of
26 time unquestionably constitutes irreparable injury.” *Cuviello v. City of Vallejo*, 944 F.3d 816, 832
27 (9th Cir. 2019) (internal quotation marks and citation omitted). Moreover, “[t]he Ninth Circuit has
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1 recognized 'irreparable harms imposed on anyone subject to immigration detention' including 'the
2 economic burdens imposed on detainees and their families as a result of detention.'" *Hernandez v.*
3 *Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *Leiva-Perez v. Holder*, 640 F.3d 962, 969-970 (9th Cir.
4 2011) (the inability to pursue a petition for review may constitute irreparable harm).

5 In this case, Petitioner's immediate immigration detention after three years of pretrial
6 detention on charges for which he was ultimately sentenced to 120 and 30 days of county jail
7 constitutes irreparable injury. As previously mentioned, Petitioner has always maintained his
8 innocence against the allegations of his spouse. Based on the District Attorney's dismissal of all
9 charges against him in return of a plea to two counts of Cal. Penal Code § 136.1(b)(1) (dissuading a
10 witness) – with a minimal sentence of incarceration in county jail – Petitioner's assertion of
11 innocence appears plausible. That issue was under the criminal court's purview.
12

13 But immigration detention, which is "civil, not criminal," and "nonpunitive in purpose and
14 effect," must be justified by either (1) dangerousness or (2) flight risk. *Zadvydas*, 533 U.S. at 690;
15 see *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("[T]he government has no legitimate
16 interest in detaining individuals who have been determined not to be a danger to the community and
17 whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or
18 alternative conditions."). When these rationales are absent, immigration detention serves no
19 legitimate government purpose and becomes impermissibly punitive, violating a person's
20 substantive due process rights. See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972) (detention must
21 have a "reasonable relation" to the government's interests in preventing flight and danger); see also
22 *Mahdawi v. Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *11 (D. Vt. Apr. 30, 2025) (ordering
23 release from custody after finding petitioner may "succeed on his Fifth Amendment claim if he
24 demonstrates either that the government acted with a punitive purpose or that it lacks any legitimate
25 reason to detain him").
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Petitioner has a strong community awaiting his release – people who have supported him and volunteered to testify on his behalf in the criminal proceedings. After a lengthy pretrial detention, Petitioner wants nothing more than to rebuild his life, focus on his pending asylum case, reconnect with his family in Iran who eagerly await any news about him, and build his community relationships.

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING THE TRO

The balance of the equities and public interest analyses merge when the government is the opposing party, as is the case in this action. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). In immigration court, custody hearings are routine and impose a “minimal” cost. *Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. Mar. 3, 2025). Thus, faced with a choice “between [these minimally costly procedures] and preventable human suffering,” as discussed above, the Court concludes “that the balance of hardships tips decidedly in [petitioner’s] favor.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

Moreover, Respondents “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution and laws”). If a temporary restraining

1 order is order is not entered, the government would effectively be granted permission to detain in
2 violation of the requirements of due process. “The public interest and the balance of the equities
3 favor ‘prevent[ing] the violation of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d
4 at 1069 (*quoting Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public
5 interest benefits from an injunction that ensures that individuals are not deprived of their liberty and
6 held in immigration detention because of bonds established by a likely unconstitutional process.”);
7 *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are
8 implicated when a constitutional right has been violated, because all citizens have a stake in
9 upholding the Constitution.”).

11 **D. NO BOND IS NECESSARY**

12 The Court has discretion to set the amount of security required for a temporary
13 restraining order or preliminary injunction under Rule 65(c), if any. *Johnson v. Couturier*, 572 F.3d
14 1067, 1086 (9th Cir. 2009). Indeed, “[t]he district court may dispense with the filing of a bond when
15 it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her
16 conduct.” *Id.* (*quoting Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)). Here, it is
17 unlikely any harm will come to Respondents as a result of a grant of temporary relief and
18 Respondents will incur negligible or zero financial costs. Petitioner asks the Court to exercise its
19 discretion to waive the bond requirement.
20

21 **IV. CONCLUSION**

22 For all the above reasons, Petitioner warrants a temporary restraining order ordering
23 Respondents to immediately release him from custody on his prior order of release on recognizance
24 or, alternatively, ordering a bond hearing before a neutral decisionmaker, pursuant to 8 U.S.C. §
25 1226(a), within seven days, in which Respondents must establish that Petitioner is a danger to the
26 community or a flight risk such that his physical custody is legally justified.
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3 Dated: December 10, 2025

Respectfully submitted,

4 /s/ Lina Baroudi

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