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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RAJESH LNU

Petitioner,

v.

MARK BOWEN, Acting-Warden of the Adelanto
Detention Center; TODD LYONS, Acting
Director of Immigration and Customs
Enforcement; KRISTI NOEM, Secretary of the
U.S. Department of Homeland Security; PAMELA
BONDI, Attorney General of the United States

Respondents.

Civil Action No.

**MOTION AND MEMORANDUM OF LAW IN SUPPORT FOR PRELIMINARY
INJUNCTION AND TEMPORARY RESTRAINING ORDER**

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INTRODUCTION

Petitioner, respectfully requests that this Honorable Court hear this matter on an expedited basis and grant his release to prevent further irreparable harm. Mr. Rajesh is a citizen of India who fled his country and sought refuge in the United States in 2023 to escape persecution. Upon arrival, he entered the United States without inspection and was detained by the Department of Homeland Security (“DHS”).

Following his initial detention, DHS released Mr. Rajesh under an Order of Release on Recognizance which required his enrollment in the Alternatives to Detention (“ATD”) program and mandated that he check in with Immigration and Customs Enforcement (“ICE”). On April 19, 2023, DHS issued a Notice to Appear (“NTA”), charging him as an “alien present in the United States without being admitted or paroled,” and alleging removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”)—as an individual who entered the United States at a time or place other than as designated by the Attorney General.

Following his release from detention, Petitioner timely filed a Form I-589, Application for Asylum, with the immigration court. He subsequently obtained stable employment and fully complied with all conditions of his release on recognizance (ROR). Petitioner has no criminal history. Nevertheless, ICE agents unexpectedly detained Petitioner when he went to his regularly scheduled appointment.

Despite his full compliance and lack of any risk to public safety or flight, ICE detained Mr. Rajesh. This abrupt detention—absent any change in circumstances or violation of release conditions—has caused Mr. Rajesh severe hardship and constitutes the irreparable harm this petition seeks to remedy.

Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) and is therefore statutorily eligible for a bond hearing before an Immigration Judge (“IJ”). However, on July 8, 2025, the Department of Homeland Security (“DHS”) issued Interim Guidance (the “Policy”) asserting that all noncitizens—such as Petitioner—who entered the United States without inspection, permission, or parole are categorically ineligible for release on bond.

This Policy radically departs from decades of well-established interpretation of DHS’s detention authority under 8 U.S.C. §§ 1226(a) and 1225(b). It effectively transforms discretionary detention into mandatory detention, unlawfully depriving noncitizens like Petitioner of the individualized custody determinations long recognized under the Immigration and Nationality Act (“INA”).

Subsequently, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS’s interpretation and

1 holding that Immigration Judges lack jurisdiction to grant bond to noncitizens who entered the United
2 States without admission or parole. This decision, in conjunction with DHS's Policy, has effectively
3 stripped Petitioners such as Mr. Rajesh of the statutory right to seek release on bond, subjecting them to
4 indefinite and unnecessary detention contrary to law, due process, and longstanding agency practice.

5 Petitioner has satisfied all the criteria necessary for the issuance of injunctive relief.

6 First, Petitioner has demonstrated a strong likelihood of success on the merits. The Department of
7 Homeland Security's ("DHS") Policy, which categorically denies Petitioner the opportunity for a bond
8 hearing, violates both the Immigration and Nationality Act ("INA") and Petitioner's Fifth Amendment
9 procedural and substantive due process rights. The INA expressly contemplates individualized custody
10 determinations under 8 U.S.C. § 1226(a), and long-standing judicial precedent has affirmed that
11 noncitizens are entitled to such hearings to assess flight risk and danger to the community.

12 Moreover, the overwhelming majority of federal district courts—including courts within this
13 District—have rejected policies identical or substantially similar to DHS's current approach, consistently
14 holding that such blanket denials of bond eligibility are contrary to statute and constitutionally infirm.
15 Accordingly, Petitioner is highly likely to prevail on the merits of his claim.

16 Second, Petitioner will suffer irreparable harm absent prompt judicial intervention. But for DHS's
17 unconstitutional actions depriving him of a bond hearing, Petitioner would already have had the
18 opportunity to seek release from custody. Instead, he remains detained under conditions akin to criminal
19 incarceration, despite having committed no crime and fully complying with all prior conditions of release.

20 Continued detention not only inflicts severe emotional, physical, and psychological hardship, but
21 also impedes Petitioner's ability to meaningfully prepare and present his asylum case, particularly given
22 the constraints of detention facilities. Moreover, because Respondents retain unfettered discretion to
23 transfer Petitioner at any time to facilities outside this District, he faces an ongoing risk of being moved
24 far from counsel and the Court's jurisdiction, further exacerbating the harm.

25 Third, the balance of equities and the public interest strongly favor Petitioner. The harm to
26 Petitioner if injunctive relief is denied is grave and irreparable. He would remain in confinement
27 indefinitely, despite having never been found to pose any danger to the community or risk of flight. In
28 contrast, the harm to Respondents from the requested relief is minimal to nonexistent. Respondents'
position regarding the scope of their detention authority lacks merit, and they cannot, in good faith, claim
that providing Petitioner with release or a constitutionally adequate bond hearing would cause any
cognizable harm to the government or the public.

Both equity and public interest are best served by ensuring adherence to the rule of law and the constitutional protections guaranteed to all persons within the United States.

For these reasons, Petitioner respectfully requests that this Court:

- Grant Petitioner’s immediate release from detention, or, in the alternative, order that Petitioner be provided a constitutionally adequate bond hearing before an Immigration Judge; and
- Enjoin Respondents from transferring Petitioner outside of this District pending the Court’s final adjudication of this matter.

STANDARD OF REVIEW

The standards governing the issuance of a temporary restraining order (“TRO”) and a preliminary injunction are substantially identical. *See Stuhlbarg Int’l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a preliminary injunction, a plaintiff must demonstrate that: (1) he is likely to succeed on the merits; (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. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

The Ninth Circuit has emphasized that “[l]ikelihood of success on the merits is a threshold inquiry and the most important factor.” *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025). Nonetheless, even where a plaintiff cannot make a strong showing on the merits, a preliminary injunction may still issue when “serious questions going to the merits” are raised—so long as the balance of hardships tips sharply in the plaintiff’s favor and the remaining Winter factors are met. *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).

ARGUMENTS

I. THE GOVERNMENT’S INTERPRETATION OF 8 U.S.C. § 1225(b)(2) AND 8 U.S.C. § 1226(a) IS BASELESS

The central issue in this case is whether Petitioner is properly detained under 8 U.S.C. § 1226(a) or § 1225(b)(2). For nearly three decades, both the Department of Homeland Security (“DHS”) and the Board of Immigration Appeals (“BIA”) consistently interpreted the governing statutes to hold that noncitizens like Petitioner—who entered the United States without inspection but were later placed in removal proceedings—are detained pursuant to § 1226(a) and therefore eligible for bond.

However, on July 8, 2025, DHS abruptly reversed this long-standing interpretation and announced that all noncitizens who have not been formally admitted to the United States are categorically ineligible

1 for bond. The BIA adopted this new position in its decision in *Matter of Yajure Hurtado*, 29 I&N Dec.
 2 216 (BIA 2025), effectively extending mandatory detention to millions of individuals who were
 3 previously entitled to individualized custody determinations under § 1226(a).

4 This sweeping policy shift not only contradicts decades of agency and judicial precedent, but also
 5 violates the statutory and constitutional guarantees that safeguard liberty pending removal proceedings.
 6 For the reasons set forth below, this Court should again grant habeas relief and reaffirm that Petitioner is
 7 detained under § 1226(a) and entitled to a bond hearing.

8 **A. 8 U.S.C. § 1225(b)(2) Does Not Govern Petitioner's Detention**

9 In examining the relevant provisions of sections 1225 and 1226, the Court should consider
 10 "whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute
 11 in the case." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But crucially, a statute "cannot be
 12 construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must
 13 be read in their context and with a view to their place in the overall statutory scheme." *Roberts v. Sea-*
 14 *Land Services, Inc.*, 566 U.S. 93, 101 (2012) (quoting *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803,
 15 809 (1989)). Here, the context is clear that "detention authority in § 1225 is exercised at or near the port
 16 of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the
 17 United States." *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *19 (D.N.J. Sep. 26, 2025).
 18 Indeed, "[t]he line historically drawn between these two sections, making sense of their text and the overall
 19 statutory scheme, is that section 1225 governs detention of non-citizens 'seeking admission into the
 20 country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" *Martinez v.*
 21 *Hyde*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at *18 (D. Mass. July 24, 2025). In other words,
 22 the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to
 23 enter, or who have recently entered the U.S. It does not include noncitizens "who entered long ago, are
 24 not taking affirmative steps that could be characterized as 'seeking admission,' and have been residing in
 25 the U.S. for years." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at *39 (D. Nev.
 26 Sep. 17, 2025).

27 This is true for several reasons. First, "for section 1225(b)(2)(A) to apply, several conditions must
 28 be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an
 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be
 admitted.'" *Martinez*, 2025 LX 284582, at *6. There was no examination by an immigration officer in this
 case. Petitioner entered the United States without inspection and was arrested based on an I-200 warrant,

1 for bond. The BIA adopted this new position in its decision in *Matter of Yajure Hurtado*, 29 I&N Dec.
 2 216 (BIA 2025), effectively extending mandatory detention to millions of individuals who were
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8 ***A. 8 U.S.C. § 1225(b)(2) Does Not Govern Petitioner's Detention***

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 12 construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must
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 16 of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the
 17 United States." *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at *19 (D.N.J. Sep. 26, 2025).
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 24 not taking affirmative steps that could be characterized as 'seeking admission,' and have been residing in
 25 the U.S. for years." *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at *39 (D. Nev.
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 admitted.'" *Martinez*, 2025 LX 284582, at *6. There was no examination by an immigration officer in this
 case. Petitioner entered the United States without inspection and was arrested based on an I-200 warrant,

B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner

As a matter of plain-text reading, it is § 1226(a) that applies to people situated like Petitioner, not § 1225(b)(2)(A). Section 1226(a) concerns all noncitizens who are not subject to section 1225 and 1231 (which concerns those with final orders of removal). *See Benitez v. Francis*, 2025 LX 337407, *3 (S.D.N.Y. Aug. 8, 2025) (holding that § 1225 did not apply because the "plain text, overall structure, and uniform case law interpreting" the statutory provision compels the conclusion). "Indeed, for nearly 30 years, § 1225 has applied to noncitizens who are either seeking entry to the United States or have a close nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States." *Zumba*, 2025 LX 482036, at *26. Nothing in the Supreme Court's decision in *Jennings* compels a different outcome. *Id.* ("Although the *Jennings* Court characterizes § 1225(b)(2) as the 'catchall' detention provision for noncitizens who are 'seeking admission,' it identifies § 1226(a) as the 'default rule' for the arrest, detention, and release of non-criminal aliens who are already present in the United States.").

The recent enactment of Laken Riley Act further supports this finding. The Act added language to section 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground for entry without inspection) or INA 212 § (a)(7)(A) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of new certain crimes (not previously covered by section 1226(c)) are now subject to § 1226(c)'s mandatory detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under section 1226(c), Congress reaffirmed that section 1226(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7). Otherwise, the Respondents' position would effectively render 1226(a) and the LRA superfluous.

C. Respondents' Actions Violate Petitioner's Due Process Rights and the INA

Petitioner's continued detention violates due process. The Court must evaluate the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), to determine whether the procedures (or lack thereof) that have been applied to Petitioner are sufficient to protect the liberty interest at issue. In *Mathews*, the Court determined the following: "[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private

1 interest that will be affected by the official action; second, the risk of an erroneous deprivation of such
2 interest through the procedures used, and the probable value, if any, of additional or substitute procedural
3 safeguards; and finally, the Government's interest, including the function involved and the fiscal and
4 administrative burdens that the additional or substitute procedural requirement would entail.”

5 During his time on recognizance, “Petitioner built a life outside detention, has been gainfully
6 employed, and has supported family members” *Polo*, 2025 LX 451732, at *32. Petitioner therefore
7 “has a substantial private interest in being out of custody, which would allow him to continue in these life
8 activities.” *Id.* Moreover, “Respondents' interest in continuing to detain Petitioner is slight” and there has
9 “been no change in any of Petitioner's circumstances that would warrant a finding that [he] is a flight risk
10 or a danger to the community. There is no dispute that Petitioner does not have a criminal record.” *Id.*
11 Indeed, “in releasing him on parole, DHS necessarily concluded that Petitioner was not a flight risk or
12 danger to the community.” *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 LX 426816, at *40
13 (E.D. Cal. Oct. 16, 2025); *see also Noori v. LaRose, et al.*, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1,
14 2025) (noting that “[r]elease reflects a determination by the government that the noncitizen is not a danger
15 to the community or a flight risk.”); *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 LX 410786,
16 at *17 (W.D. Tex. Oct. 16, 2025) (“But that interest, in this case, seems particularly diluted given
17 Respondents' own decision to release Petitioner on his own recognizance once before.”); *J.C.L.A. v.*
18 *Wofford*, No. 1:25-cv-01310-KES-EPG (HC), 2025 LX 404689, at *10 (E.D. Cal. Oct. 16, 2025) (“Even
19 if the government were correct that § 1225(b), by its terms, could apply to petitioner, the government
20 previously represented to petitioner, in the order of release on recognizance, that he had been ‘released on
21 [his] own recognizance [under § 1226(a)] provided that he comply with’ certain conditions. This was an
22 ‘implicit promise’ that his release would “be revoked only if he fail[ed] to live up to the [release]
23 conditions,’ as in *Morrissey*.”).

24 **II. PETITIONER SUFFERS IRREPARABLE HARM**

25 “It is well established that the deprivation of constitutional rights *unquestionably constitutes*
26 *irreparable injury*.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*,
27 427 U.S. 247, 272 (1976)). The Ninth Circuit has likewise recognized the “*irreparable harms imposed on*
28 *anyone subject to immigration detention, including the economic burdens imposed on detainees and their*
families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *see also*

1 Leiva-Perez v. Holder, 640 F.3d 962, 969–70 (9th Cir. 2011) (holding that the inability to pursue a petition
2 for review may constitute irreparable harm).

3 Here, Petitioner plainly satisfies this standard. He is being unlawfully deprived of a bond hearing
4 to which he is statutorily and constitutionally entitled. Each additional day of confinement exacerbates the
5 irreparable injury to his liberty interests and imposes significant emotional and economic hardship on both
6 Petitioner and his family. Absent this Court’s intervention, Petitioner will remain confined in prison-like
7 conditions and be forced to litigate the merits of his asylum claim from detention, severely impairing his
8 ability to prepare his case and to meaningfully exercise his legal rights.

9 **III. BALANCE OF HARMS AND PUBLIC INTEREST FAVOR PETITIONER**

10 The merged "balancing-the-equities" and "public interest" factors favor Petitioner. The potential
11 harm to Petitioner if injunctive relief is not granted is serious. If Petitioner is not released or promptly
12 provided a constitutionally adequate bond hearing, he will be forced to continue litigating his asylum
13 claim in detention even though he is statutorily eligible for release on bond. "In comparison, the harm to
14 Respondents is minimal." *Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 LX 383996, at *11-12 (D.N.M.
15 Sep. 5, 2025). Indeed, "there is a substantial public interest in having governmental agencies abide by the
16 federal laws that govern their existence and operations." *League of Women Voters of U.S. v. Newby*, 838
17 F.3d 1, 12 (D.C. Cir. 2016). Practically speaking, injunctive relief would inflict little more on Respondents
18 than ensure they adhere to the requirement of the Constitution.

19 **IV. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION**

20
21 A habeas court has "the power to order the conditional release of an individual unlawfully
22 detained—though release need not be the exclusive remedy and is not the appropriate one in every case
23 in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Several courts, including at
24 least one in this district, have held that the appropriate remedy for the government’s constitutional
25 violations is release from detention. *See Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX
26 452767, at *23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not assert any other basis for
27 petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate
28 remedy is petitioner's immediate release."); *see also Zumba*, 2025 LX 482036 at *32 (holding that "habeas

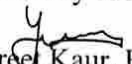
1 does not provide meaningful relief with respect to some of the indignities petitioner has endured But
2 due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to
3 her unlawful detention. The Court finds that release from detention is the appropriate relief”).

4 Alternatively, if the Court is not inclined to release Petitioner, it should instead direct a bond
5 hearing at which time the burden of proof lies with DHS given the gravity of the unconstitutional action
6 and the fact that Petitioner was already once found not to be a danger to the community or a risk of flight
7 when it released him pursuant to ROR. *See Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 LX 227518,
8 at *21 (N.D. Cal. July 24, 2025) (directing that petitioner “may not be detained unless the government
9 demonstrates at such a bond hearing, by clear and convincing evidence, that she is a flight risk or a danger
10 to the community and that no conditions other than her detention would be sufficient to prevent such
11 harms.”); *J.S.H.M.*, 2025 LX 426816, at *49 (E.D. Cal. Oct. 16, 2025) (holding that “[d]oing so is logical
12 even for a post-detention custody hearing for the reasons articulated in *Pinchi*-namely that the immigrant’s
13 initial release reflected a determination by the government that the noncitizen is not a danger to the
14 community or a flight risk.”). In addition, the Court should also enjoin Respondents from transferring
15 Petitioner out of the district. *See Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 349750, at *5 (W.D.
16 Tex. Sep. 9, 2025) (“[t]he Court finds persuasive the decisions enjoining removal and transfer of
17 petitioners under the Court’s inherent power to preserve its ability to hear the case” and that enjoining
18 transfers was necessary “[t]o ensure the ability to meaningfully assess [Petitioner’s] Petition.”).

19 CONCLUSION

20 For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from
21 detention.

22 Respectfully submitted on 10th day of December, 2025

23 
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