

1 Ramanujan Nadadur (Cal Bar No. 315718)
2 Law Offices of Nadadur S. Kumar
3 11620 Wilshire Blvd. Suite 250
4 Los Angeles, CA 90025
5 (310) 479-1383

6
7 Attorneys for Petitioner
8 MARZBAN MODY
9
10
11

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MARZBAN MODY

Petitioner,

v.

WARDEN, DESERT VIEW ANNEX,
ADELANTO ICE PROCESSING
CENTER; PATRICIA M. COLBERT,
FIELD OFFICE DIRECTOR OF THE
LOS ANGELES FIELD OFFICE OF
IMMIGRATION AND CUSTOMS
ENFORCEMENT; KRISTI NOEM,
SECRETARY OF THE DEPARTMENT
OF HOMELAND SECURITY; PAM
BONDI, ATTORNEY GENERAL OF
THE UNITED STATES

Respondents.

Case No. 5-25-CV-03400-FMO-RAO

**PETITIONER'S REPLY BRIEF IN
SUPPORT OF *EX PARTE*
APPLICATION FOR
TERMPORARY RESTRAINING
ORDER**

1 **PETITIONER’S REPLY BRIEF IN SUPPORT OF EX PARTE**
2 **APPLICATON FOR TEMPORARY RESTRAINING ORDER AND**
3 **PRELIMINARY INJUNCTION**

4 Petitioner Marzban Mody, by and through his attorney of record Ramanujan
5 Nadadur, respectfully files the attached Reply Brief in Support of his Ex Parte
6 Application for a Temporary Restraining Order and Preliminary Injunction.

7 Respectfully submitted,

8
9 DATED: December 22, 2025

By /s/ Ramanujan Nadadur

Ramanujan Nadadur
Counsel for Petitioner

I. INTRODUCTION

The government focuses its Opposition almost entirely on the statutory and regulatory reasons why Mr. Mody is not entitled to release or a hearing before a neutral adjudicator regarding his detention. (Opp. at 4-8, Dkt. 10.) As a matter of constitutional due process, however, Mr. Mody has a protected liberty interest in remaining free, and DHS cannot deprive him of this freedom, after releasing him from its custody in 2010 and then in 2011, without notice and an opportunity to be heard. This Court should order him released from custody forthwith or alternatively, it should provide him with a hearing before a neutral adjudicator as to his custody status.

Should the Court rule on constitutional grounds, it does not need to reach the government's statutory and regulatory arguments. However, Mr. Mody prevails on these grounds as well because he was paroled into the country, and DHS has permitted him to remain here following the expiry of his parole. He is not an "applicant for admission," and therefore, he is entitled to a bond hearing under § 1226(a). *See Jennings v. Rodriguez*, 583 U.S. 281, 291 (2018).

Lastly, this Court has jurisdiction to adjudicate Mr. Mody's habeas petition and his application for a temporary restraining order ("TRO") because he challenges his detention, not his removal. For that same reason, he does not need to exhaust his administrative remedies, even though he has already done so.

II. ARGUMENT

A. Mr. Mody Is Likely to Succeed on the Merits of His Constitutional Claims.

Having been released on a grant of humanitarian parole in 2010, Mr. Mody possesses a constitutionally protected interest in remaining free. This interest cannot be revoked absent adequate procedural safeguards, and specifically, notice and an opportunity to be heard. DHS, however, abruptly re-detained Mr. Mody in violation of his procedural due process rights. He respectfully requests that this Court grant his

1 TRO and order either (1) his immediate release from custody to preserve the status quo
2 ante or (2) a hearing before a neutral arbiter as soon as possible. As numerous courts
3 have recently concluded, a district court has both the power and the duty to restore the
4 parties to the status quo—i.e., “the last uncontested status which preceded the pending
5 controversy.” *Fernandez Lopez v. Wofford*, 2025 WL 2959319, at *7 (E.D. Cal. Oct.
6 17, 2025) (collecting cases).

7 **1. Mr. Mody Has a Valid Due Process Right to Challenge his Re-**
8 **Detention.**

9 In its Opposition, the government never acknowledges Mr. Mody’s constitutional
10 right to due process. Contrary to what Respondents suggest, his request for injunctive
11 relief does not concern expedited removal proceedings. Whether Mr. Mody is subject to
12 expedited removal, mandatory detention under § 1225(b), or discretionary detention
13 under § 1226(a), his detention is subject to constitutional limits. The Due Process
14 Clause applies to noncitizens regardless of whether they are “seeking admission” or are
15 “admitted” under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir.
16 2004), *abrogated on other grounds by Wilkie v. Robbins*, 551 U.S. 537 (2007); *see also*
17 *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash.
18 2023).

19 **2. Mr. Mody Has a Due Process Liberty Interest in Remaining Free**

20 Freedom from imprisonment—from government custody, detention, or other
21 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
22 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where an individual obtains
23 liberty, once he is free, his interest in remaining free is constitutionally protected. *See*
24 *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017); *Gonzalez-Fuentes*
25 *v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873
26 (9th Cir. 1982). Before re-detaining an individual, due process requires that they
27 be provided with notice and a hearing before a neutral adjudicator. *See Carballo v.*
28

1 TRO and order either (1) his immediate release from custody to preserve the status quo
2 ante or (2) a hearing before a neutral arbiter as soon as possible. As numerous courts
3 have recently concluded, a district court has both the power and the duty to restore the
4 parties to the status quo—i.e., “the last uncontested status which preceded the pending
5 controversy.” *Fernandez Lopez v. Wofford*, 2025 WL 2959319, at *7 (E.D. Cal. Oct.
6 17, 2025) (collecting cases).

7 **1. Mr. Mody Has a Valid Due Process Right to Challenge his Re-**
8 **Detention.**

9 In its Opposition, the government never acknowledges Mr. Mody’s constitutional
10 right to due process. Contrary to what Respondents suggest, his request for injunctive
11 relief does not concern expedited removal proceedings. Whether Mr. Mody is subject to
12 expedited removal, mandatory detention under § 1225(b), or discretionary detention
13 under § 1226(a), his detention is subject to constitutional limits. The Due Process
14 Clause applies to noncitizens regardless of whether they are “seeking admission” or are
15 “admitted” under immigration law. *Wong v. United States*, 373 F.3d 952, 973 (9th Cir.
16 2004), *abrogated on other grounds by Wilkie v. Robbins*, 551 U.S. 537 (2007); *see also*
17 *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F. Supp. 3d 1163, 1171 (W.D. Wash.
18 2023).

19 **2. Mr. Mody Has a Due Process Liberty Interest in Remaining Free**

20 Freedom from imprisonment—from government custody, detention, or other
21 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause
22 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where an individual obtains
23 liberty, once he is free, his interest in remaining free is constitutionally protected. *See*
24 *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017); *Gonzalez-Fuentes*
25 *v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *Johnson v. Williford*, 682 F.2d 868, 873
26 (9th Cir. 1982). Before re-detaining an individual, due process requires that they
27 be provided with notice and a hearing before a neutral adjudicator. *See Carballo v.*
28

1 471, 482 (1972). An individual released on criminal parole “may be living a relatively
2 normal life at the time he is faced with revocation,” so the fact that his release
3 is conditional and can be revoked does not diminish that the individual will experience
4 “grievous loss” if that freedom is terminated. *Id.* In *Morrissey*, the Court made clear
5 that “the liberty of a [criminal] parolee, although indeterminate, includes many of the
6 core values of unqualified liberty...and must be seen as within the protection of the
7 Fourteenth Amendment.” *Id.*

8 The *Morrissey* Court’s reasoning applies with equal force in Mr. Mody’s case. In
9 2010, DHS granted Mr. Mody a “public benefit” immigration parole;
10 they permitted him to travel to India and then return to the United States; and then they
11 ordered him released upon his re-entry into the United States in 2010. (*See* Dkt. 2 at 16-
12 17; Declaration of Irving Palacios at ¶ 4, Dkt. 10-1.) DHS subsequently re-paroled Mr.
13 Mody into the United States in 2011, and they ordered that he remain free in the United
14 States following that re-parole. (*See* Dkt. 2 at 12-13). Mr. Mody then continued to
15 form the “enduring attachments of normal life” as a husband to a U.S.-citizen wife
16 and a father to a U.S.-citizen son. (Dkt. 2 at 2-8.) He maintained gainful employment
17 throughout this time; he paid his taxes (Dkt. 2 at 53-62.); he received the support of his
18 local Congressman (*See* Ex. F to Reply Brief); and he attended religious services (Dkt.
19 2 at 125.) By revoking Mr. Mody’s release without due process, DHS and the
20 government impose significant negative consequences on him and his loved ones.

21 District courts across the Ninth Circuit find that noncitizens released by
22 DHS have a similar liberty interest to the criminal parolees in *Morrissey*. *See e.g.*
23 *Carballo*, 2025 WL 2381464 at *4-*5 (granting TRO and finding that
24 Petitioner possessed a constitutionally protected liberty interest arising “from his years-
25 long and successful period of release and integration into the community.”); *Galindo*
26 *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *1
27 (E.D. Cal. Aug. 4, 2025) (granting TRO and finding that petitioner’s conditional release
28

1 is a protected liberty interest that requires notice and a hearing, even where petitioner
2 was arrested while released); *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025
3 WL 1927596, at *3, *5 (E.D. Cal. July 14, 2025) (converting petitioner's TRO into
4 preliminary injunction and ordering immediate release for petitioner re-detained
5 without notice and a hearing); *see also Guillermo M. R. v. Kaiser*, No. 25-CV-05436-
6 RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025) (granting preliminary
7 injunction, recognizing that "the liberty interest that arises upon release [from
8 immigration custody] is inherent in the Due Process Clause," enjoining the government
9 from re-detaining petitioner without a pre-deprivation hearing); *Ortega v. Kaiser*, No.
10 25-cv-05259-JST, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (collecting
11 cases finding that noncitizens out on bond have a strong liberty interest).

12 In fact, because Mr. Mody has now been re-detained following his release by
13 DHS in 2010, "his liberty interest is arguably greater than the interest of the parolees
14 in *Morrissey*." *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019). DHS
15 released Mr. Mody following his entry to the United States, which is
16 unlike criminal parolees or probationers, whose liberty interest is limited by their
17 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
18 *Wisconsin*, 483 U.S. 868, 874 (1987). As someone in civil detention, Mr. Mody "is
19 entitled to protections at least as great as those afforded to an individual . . . accused but
20 not convicted of a crime." *See Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004).

21 In conclusion, because Mr. Mody has a constitutionally protected liberty interest
22 in remaining free following DHS' determination that he remain free in 2010
23 and then in 2011, due process requires either that Respondents release him from
24 custody forthwith or at the very least provide him with notice and a hearing before a
25 neutral adjudicator.

B. Section 1226 governs Mr. Mody's Detention, not Section 1225.

The government next contends that because DHS temporarily paroled Mr. Mody into the United States in 2010, he remains an “applicant for admission” and is subject to mandatory detention under § 1225(b)(2). The Court does not need to reach this statutory argument because Mr. Mody prevails on constitutional grounds. In the alternative, however, Mr. Mody is not an “applicant for admission” because after his parole expired on September 5, 2012, DHS declined to take any actions to determine if he had a valid status or take him into custody, as required by statute. Once DHS decided not to treat Mr. Mody as an “applicant for admission” following the expiry of his parole, he became an “alien” governed by 8 U.S.C. § 1226(a). Therefore, as a statutory matter, he is entitled to a release or a bond hearing before a neutral arbiter.

Section 1225 provides that “in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained.” 8 U.S.C. § 1225(b)(2)(A). A noncitizen who is an applicant for admission may be paroled into the United States for “urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A). Parole is a process by which a person physically enters the United States but, for certain legal purposes, remains as if he is at the border seeking admission. *See* United States Citizenship and Immigration Services, Humanitarian or Significant Public Benefit Parole for Aliens Outside the United States (last updated Dec. 15, 2025), *available at* https://www.uscis.gov/humanitarian/humanitarian_parole.

Section 1226 applies to all other noncitizens who are not “applicants for admission.” Section 1226(a) provides that, for a noncitizen who is “arrested and detained” “[o]n a warrant issued by the Attorney General,” the Attorney General (1) “may continue to detain” the arrested noncitizen, (2) “may release” the noncitizen on “bond,” or (3) “may release” the noncitizen on “conditional parole.”

1 the United States without inspection—the moment he entered the United States without
2 inspection being September 5, 2012, the date his parole expired. Although Mr. Mody
3 did make a valid entry into the United States pursuant to the parole, his overstaying of
4 parole places him in the same category as the *Maldonado* class: (1) he lacks lawful
5 status, (2) he entered without inspection following the expiry of his parole, and (2) he is
6 not subject to detention under U.S.C. § 1226(c), § 1225(b)(1), or § 1231. Therefore,
7 this Court should release Mr. Mody from custody forthwith, or it should order that he
8 expeditiously be scheduled for a bond hearing before a neutral arbiter pursuant to 8
9 U.S.C. § 1226(a).

10 In granting Mr. Mody release or a bond hearing before a neutral arbiter as a
11 statutory matter, this Court would join the majority of courts nationwide in rejecting
12 Respondents’ interpretation of Sections 1225 and 1226. *See Rodriguez Vazquez v.*
13 *Bostock*, 2025 WL 2782499, at *1, 21-22 (W.D. Wash. Sept. 30, 2025) (concluding,
14 after a thorough analysis, that “the government’s [interpretation of § 1225] belies the
15 statutory text of the INA, canons of statutory interpretation, legislative history, and
16 longstanding agency practice”); *J.Y.L.C. v. Bostock*, 2025 WL 3169865, at *2 (D. Or.
17 Nov. 12, 2025) (collecting more than thirty cases rejecting the government’s assertion
18 that § 1225 empowers the DHS to arrest and hold a noncitizen present without legal
19 status who has spent years in the U.S.); *Cardona-Lozano v Noem*, 2025 WL 3218244,
20 at *6 (W.D. Tex. Nov. 14, 2025) (“Repeatedly, [district courts across the country] have
21 found that DHS and the [Board of Immigration Appeals’] construction of the INA is
22 incorrect and that petitioners who have long resided in the United States but are being
23 held under § 1225 are entitled to relief.”) (collecting cases)); *Faizyan v. Casey*, 2025
24 WL 3208844, at *5 (S.D. Cal. Nov. 17, 2025) (holding that § 1226 applies to a
25 petitioner who “DHS has consistently treated” as subject to discretionary detention and
26 “who has been residing in the United States for two years” (internal quotation marks
27 and citation omitted)); *Josue I.C.A. v. Lyons*, 2025 WL 3496432, at 3 n.6 (E.D. Cal.
28

1 Dec. 5, 2025) (collecting cases); *Morales-Flores v. Lyons*, 2025 WL 3552841, at *3
2 (E.D. Cal. Dec. 11, 2025) (collecting cases) (“Courts nationwide, including this one,
3 have overwhelmingly rejected respondents’ arguments and found DHS’s new policy
4 unlawful.”).

5 **C. This Court has jurisdiction to adjudicate whether Mr. Mody is being**
6 **detained in violation of the Constitution and federal statute.**

7 In its Opposition, the government makes a series of statutory and regulatory
8 arguments, arguing that this Court lacks jurisdiction over Mr. Mody’s claim for release
9 from detention. (Opp. at 4-8, Dkt. 10.) These arguments are unavailing primarily
10 because federal law gives this Court the authority to rule on the constitutionality of Mr.
11 Mody’s detention, irrespective of its jurisdiction over removal proceedings.

12 Section 1252(g) does not deprive this Court of its jurisdiction over the instant
13 case. This statute applies “only to three discrete actions that the Attorney General may
14 take: her ‘decision or action’ to ‘commence proceedings, adjudicate cases, or execute
15 removal orders.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482
16 (1999) (emphasis in original). Section 1252(g) does not apply to “all claims arising
17 from deportation proceedings,” including claims regarding unlawful detention. *Id.*

18 Similarly, Respondents’ argument that the Court lacks jurisdiction to hear
19 Petitioner’s constitutional and statutory challenge to his detention under §
20 1252(b)(9) has been expressly rejected by the Supreme Court. *See Jennings*, 583 U.S.
21 at 291-92. Section 1252(b)(9) limits judicial review of any legal challenges “arising
22 from any action taken or proceeding brought to remove an alien from the United States
23 under this subchapter” to judicial review of a final order of removal. 8 U.S.C. §
24 1252(b)(2). The Supreme Court in *Jennings* specifically rejected the government’s
25 broad “extreme” reading of “arising from” under § 1252(b)(9) as only allowing
26 challenges to detention authority through an appeal of a final order of removal” because
27 it would “make claims of prolonged detention effectively unreviewable.” *Id.* at
28

1 293 (“By the time a final order of removal was eventually entered, the allegedly
2 excessive detention would have already taken place. And of course, it is possible that
3 no such order would ever be entered in a particular case, depriving that detainee of any
4 meaningful chance for judicial review.”)

5 Likewise, Section 1252(a)(5) only strips a district court of habeas jurisdiction
6 where a petitioner seeks judicial review of a final order of removal, which is not the
7 case here. *See Singh v. Gonzales*, 499 F.3d 969, 977-78 (9th Cir. 2007) (citing *Puri v.*
8 *Gonzales*, 464 F.3d 1038, 1041 (9th Cir. 2006)) (holding that “the REAL ID Act’s
9 jurisdiction-stripping provisions ... does [sic] not apply [if the] claim is not a direct
10 challenge to an order of removal”) (emphasis added).

11 In summary, this Court has jurisdiction to rule upon Mr. Mody’s unlawful
12 detention. He does not challenge any order of removal issued against him nor does he
13 challenge the initiation of removal proceedings against him.

14 **D. Mr. Mody Has Exhausted His Administrative Remedies, Even Though**
15 **He Is Not Required to Do So.**

16 Mr. Mody does not need to exhaust administrative remedies before pursuing a
17 habeas action and injunctive relief in this court despite the government’s actions to the
18 contrary. “Exhaustion can be either statutorily or judicially required. If exhaustion is
19 required by statute, it may be mandatory and jurisdictional, but courts have discretion
20 to waive a prudential requirement.” *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir.
21 2004).

22 Neither the habeas statute, 28 U.S.C. § 2241, nor the relevant sections of the INA
23 require Petitioner to exhaust administrative remedies before filing his petition for
24 habeas corpus. *Id.* (citing *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)).
25 Therefore, the Court must exercise its discretion to determine whether exhaustion
26 should be required as a prudential matter.

1 A court may require prudential exhaustion if: “(1) agency expertise makes
2 agency consideration necessary to generate a proper record and reach a proper decision;
3 (2) relaxation of the requirement would encourage the deliberate bypass of the
4 administrative scheme; and (3) administrative review is likely to allow the agency to
5 correct its own mistakes and to preclude the need for judicial review.” *Puga v. Chertoff*,
6 488 F.3d 812, 815 (9th Cir. 2007). Courts may waive prudential exhaustion if
7 “administrative remedies are inadequate or not efficacious, pursuit of administrative
8 remedies would be a futile gesture, irreparable injury will result, or the administrative
9 proceedings would be void.” *Laing*, 370 F.3d at 1000. Petitioner bears the burden of
10 demonstrating at least one of the *Laing* factors applies. *See Ortega-Rangel v. Sessions*,
11 313 F. Supp. 3d 993, 1003 (N.D. Cal. 2018).

12 First, as a threshold matter, Petitioner has exhausted his administrative
13 remedies—he sought review of his custody by DHS and then by an immigration judge.
14 DHS neglected to release him from custody. (Dkt. 6-7 at 2.) And the EOIR has failed to
15 accept his bond filings nor to schedule him for a bond hearing for almost two weeks.
16 (Dkt. 6-4 at 2.)

17 Second, exhaustion would be futile. In July, the Board of Immigration Appeals
18 adopted the Trump administration’s new reading of the INA—unsurprisingly, as the
19 BIA is overseen by the DOJ, and the DOJ announced this new statutory interpretation,
20 in conjunction with DHS, in July. *See Matter of Yajure-Hurtado*, 29 I&N Dec. 216
21 (BIA 2025). Accordingly, the EOIR will not provide Mr. Mody a bond hearing based
22 on the administration’s new interpretation of § 1225(b)(2). *See Rodriguez Cabrera*,
23 2025 WL 3072687, at *8.

24 Third, requiring Petitioner to be subjected to unlawful detention pending EOIR
25 scheduling a bond hearing, which has not happened for almost two weeks, would
26 continue to cause irreparable harm, which is a separate and independent basis to waive
27
28

1 exhaustion under *Laing*. 370 F.3d at 998; *see also Rodriguez v. Robbins*, 715 F.3d
2 1127, 1145 (9th Cir. 2013).

3 In summary, Mr. Mody does not need to exhaust administrative remedies before
4 pursuing habeas and injunctive relief before this Court. Even if he did, he has already
5 pursued administrative relief before approaching this Court.

6 **III. CONCLUSION**

7 For the foregoing reasons, Mr. Mody requests that the Court grant the temporary
8 restraining order and order Respondents to release him from custody. Alternatively, the
9 Court should order Respondents to schedule Mr. Mody for a bond hearing before a
10 neutral arbiter as soon as possible.

11 Respectfully submitted,

12 DATED: December 22, 2025

13 By /s/ Ramanujan Nadadur

14 Ramanujan Nadadur
15 Counsel for Petitioner
16
17
18
19
20
21
22
23
24
25
26
27
28