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UNITED STATES DISTRICT COURT
EASTERN DISTRICT

Sergio SOSA MIRANDA,

Petitioner,

vs.

Kristi NOEM, Secretary, U.S. DEPARTMENT OF HOMELAND SECURITY; CHRISTOPHER CHESTNUT, Warden of California City Detention Facility; SERGIO ALBARRAN, Acting Field Office Director of Enforcement and Removal Operations, TODD LYONS, Acting Director of Immigration and Customs Enforcement; Pamela BONDI, U.S. Attorney General; acting in their official capacities,

Respondents.

Case No.: 1:25-at-01368

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Immigration Habeas Case

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TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS AND CASE 3

Petitioner's Detention and Release by Immigration Authorities in 2022 4

Petitioner's Period of Liberty from September 2022 until December 2025 4

Petitioner's Re-detention on December 15, 2025 5

ARGUMENT 6

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS. 6

1. Petitioner is likely to succeed on his claim under the Due Process Clause of the Constitution. 6

a. Petitioner Has a Protected Liberty Interest in His Continued Release. 7

b. Petitioner's Liberty Interest Mandated a Hearing Prior to Any Re-detention 9

i. Petitioner Has a Powerful Private Interest in His Liberty 9

ii. The Government's Interest in Detention without a Hearing Is Low and the Burden of the Proposed Additional Process is Minimal 10

iii. Risk of Erroneous Deprivation of This Interest is High and Proposed Process Would Decrease That Risk 12

2. In the Alternative, Petitioner is Likely to Succeed on his Statutory Claim 13

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF 18

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING THE TEMPORARY RESTRAINING ORDER 20

CONCLUSION 21

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TABLE OF AUTHORITIES

FEDERAL CASES

Acosta Roa v. Albarran, No. 25-CV-07802-RS, 2025 WL 2732923, at *5 (N.D. Cal. Sept. 25, 2025) 15

Aguilar Maldonado v. Olson, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) 16

Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011) 6

Alliance for the Wild Rockies, 632 F.3d at 1135; Doe, 2025 WL 691664, at *8 13

Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1069 (9th Cir. 2014) 20

Arrazola-Gonzalez v. Noem, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) 16

Arzate v. Andrews, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025) 2

Benitez v. Noem, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) 16

Diaz Martinez v. Hyde, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) 16

Diaz v. Kaiser, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025) 7

Diouf v. Napolitano, 634 F.3d 1081, 1091-92 (9th Cir. 2011) 12

Doe v. Becerra, No. 2:25-CV-00647-DJCDMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025) 7

Domingo v. Kaiser, No. 25-CV-05893 (RFL), 2025 WL 1940179, at *10 (N.D. Cal. July 14, 2025) 7

Dos Santos v. Noem, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) 16

Gagnon v. Scarpelli, 411 U.S. 778, 781-82 (1973) 8

Galvez v. Jaddou, 52 F.4th 821, 832 (9th Cir. 2022) 20

Garcia v. Bondi, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025) 7

Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299 15

Gonzalez-Fuentes v. Molina, 607 F.3d 864, 887 (1st Cir. 2010) 8

Gonzalez-Fuentes, 607 F.3d 864, 891-92 (1st Cir. 2010) 10
Guillermo M.R. v. Polly Kaiser, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. June 30, 2025) 7
Guzman v. Andrews, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *7 (E.D. Cal. Sept. 9, 2025) 7
Haygood v. Younger, 769 F.2d 1350, 1357 (9th Cir. 1985) 9
Hernandez v. Sessions, 872 F.3d 976, 981 (9th Cir. 2017) 6
Hurd v. District of Columbia, 864 F.3d 671, 683 (D.C. Cir. 2017) 8
Hurd, Jr. v. D.C., 864 F.3d 671, 683 (D.C. Cir. 2017) 10
Jorge M. F. v. Wilkinson, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021) 7
Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989) 7
King v. Burwell, 576 U.S. 473, 492 (2015) 17
Kostak v. Trump, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025) 16
Leal-Hernandez v. Noem, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) 16
Lepe v. Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025) 3
Lepe v. Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4-9 (E.D. Cal. Sept. 23, 2025) 13
Lopez Benitez, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025). 18
Maklad v. Murray, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *7 (E.D. Cal. Aug. 8, 2025) 7
Maldonado Bautista et al v. Santacruz Jr. et al, No. 5: 25-CV-01873-SSS-BFM (C.D. Cal. July 28, 2025) 15
Mathews v. Eldridge, 424 U.S. 319, 335 (1976) 9
Meza v. Bonnar, 2018 WL 2554572 (N.D. Cal. June 4, 2018) 7
Michigan v. E.P.A., 576 U.S. 743, 758 (2015) 11
Morrissey v. Brewer, 408 U.S. 471, 482-483 (1972) 2

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Morrissey v. Brewer, 408 U.S. at 482 8
Ortega v. Bonnar, 415 F. Supp. 3d 963 (N.D. Cal. 2019) 7
Phan v. Becerra, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *3 (E.D. Cal. June 30, 2025) 7
Pinchi v.Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, ... 7
Preap v. Johnson, 831 F.3d 1193, 1195 (9th Cir. 2016) 19
Ramirez Clavijo v.Kaiser, No. 25-CV-06248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025) 7
Regents of Univ. of California v. United States Dep't of Homeland Sec., 279 F. Supp. 3d 1011, 1043 (N.D. Cal.) 11
Rocha Rosado v. Figueroa, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) 16
Rodriguez v. Bostock, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025) 15
Rodriguez Vazquez, 2025 WL 1193850, at *12 15
Romero v. Hyde, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) 16
Salcedo Aceros v. Kaiser, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025) 16
San Carlos Apache Tribe v. Becerra, 53 F.4th 1236, 1240 (9th Cir. 2022) 17
Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010) 15
Shulman v. Kaplan, 58 F.4th 404, 410–11 (9th Cir. 2023) 17
Singh v. Andrews, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *5 (E.D. Cal. July 11, 2025) 7
Singh v. Holder, 638 F.3d 1196, 1203 (9th Cir. 2011) 6
Soto Garcia v. Andrews, No. 2: 25-CV-01884-TLN-SCR, 2025 WL 1927596, at * 5 (E.D. Cal. July 14, 2025) 7
Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001) 6
Vargas v. Jennings, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020) 7
Vasquez Garcia v. Noem, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) 15
Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) 6

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Young v. Harper, 520 U.S. 143, 146-47, 152 (1997) 8
Zadvydas v. Davis, 533 U.S. 678, 693-94 (2001) 7
Zepeda v. INS, 753 F.2d 719, 727 (9th Cir. 1983 20
Zinermon v. Burch, 494 U.S. 113, 127 (1990) 7

STATUTES

6 USC § 279(g)(2) 4
8 U.S.C. §§ 1229a 13
8 U. S.C. § 1182(a)(6)(A)(i) 1
8 U.S.C. § 1182(a)(6)(A)(i) 4
8 U.S.C. § 1225(b)(2)(A) 2, 17
8 U.S.C. § 1226 13
8 U.S.C. § 1226(b) 6
8 U.S.C. § 1226(c)(1)(E) 14
8 U.S.C. §1182(a)(6)(A)(i) 2
8 U.S.C. §1225(b)(2)(A) 2
I.N.A § 212(a)(6)(A)(i)) 1
INA §240 1

OTHER AUTHORITIES

Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025) 14
Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025) 2, 12

REGULATIONS

8 C.F.R. § 236.1(c)(9) 6
8 C.F.R. §§ 1003.19(a) 13
8 U.S.C. § 1226(a) 13

CONSTITUTIONAL PROVISIONS

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Due Process Clause of the Fifth Amendment to the United States Constitution..... 1

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INTRODUCTION

This case is about a twenty-year-old with Special Immigrant Juvenile Status ("SIJS"), currently held in immigration custody, who cannot be removed from the United States because he has a valid grant of Deferred Action.

On or around December 15, 2025, Respondents arbitrarily detained Petitioner at his home without a warrant or notice in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution, the Fourth Amendment to the United States Constitution and his statutory rights under the Immigration and Nationality Act ("INA") and the Administrative Procedure Act ("APA").

Petitioner Sergio SOSA MIRANDA ("Sergio" or "Petitioner") seeks a Temporary Restraining Order that requires: (1) Respondents to release him from custody and prevents re-detention; or (2) to provide him with an individualized bond hearing before an immigration judge within 21 days of the issuance of a TRO.

Petitioner has enjoyed three years of liberty, going to school, working, obtaining access to critical medical care, and developing a strong bond with his father and siblings since Respondents last detained him as a minor shortly after his entry into the United States. During that time, he has gained Special Immigrant Juvenile Status ("SIJS") protection, a grant of deferred action, work authorization, and had his immigration court case administratively closed.

On August 03, 2022, Department of Homeland Security (DHS) – Customs and Border Protection ("CBP") apprehended Petitioner in Texas after crossing the border. CBP detained 17-year-old Sergio, and he was released on September 10, 2022, to his father in Sacramento County, California. He has remained in his father's custody ever since.

DHS - CBP charged Sergio as removable for being present in the United States without admission or parole, or for arriving at a time or place not designated by the Attorney General under 8 U. S.C. § 1182(a)(6)(A)(i), (I.N.A § 212(a)(6)(A)(i)). DHS – Immigration and Customs Enforcement ("ICE") then initiated INA §240 Removal Proceedings before U.S. Department of Justice – Executive Office of Immigration Review ("EOIR" or "Immigration Court").

On May 5, 2023, an EOIR immigration judge ordered Sergio's INA §240 removal

proceedings to be administratively closed given his pending application for relief as an unaccompanied child.

On April 18, 2024, DHS – United States Citizenship and Immigration Status ("USCIS") Sergio was granted Special Immigrant Juvenile Status, rendering him eligible to adjust to a lawful permanent resident when the visa becomes available. U.S. Department of Homeland Security determined that Sergio deserved a favorable exercise of discretion and granted deferred action, protecting him from immigration enforcement and granting him authorization to work, while he awaited availability of a visa to adjust permanently.

On July 8, 2025, DHS issued a new policy instructing all ICE employees to consider anyone inadmissible under 8 U.S.C. §1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

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

On or around December 15, 2025, ICE agents arrested him without notice, warrant, or explanation. Petitioner was transferred to California City Detention Center (an immigration jail run by Corecivic, a private company) located at 22844 Virginia Blvd, California City, CA 93505. Petitioner now finds himself unlawfully detained with no access to prompt review of his custody. These actions by the Executive Branch violate Petitioner's constitutional and statutory rights, and effectively and unlawfully deny him review of his detention by a neutral arbiter.

Nevertheless, it is well-established that individuals released from incarceration have a significant liberty interest in their freedom. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025). To protect that interest on the particular facts of Petitioner's case, due

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process required notice and a hearing, prior to any re-detention, at which he would be afforded the opportunity to advance his arguments as to why his bond should not be revoked.

Similarly, Petitioner's detention under § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act. *See Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025). Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection. Respondents' new legal interpretation is plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner. *Id.*

Respondents' unlawful re-detention of Petitioner, coupled with their new policy and the resulting ongoing detention of Petitioner without a bond hearing, deprives Petitioner of statutory and constitutional rights, and unquestionably constitutes irreparable injury.

Petitioner, therefore, seeks a Temporary Restraining Order enjoining Respondents to release him from custody until he is a afforded a hearing before a neutral adjudicator at which the government must demonstrate by clear and convincing evidence that he is a danger or an unmitigable flight risk, notwithstanding available alternatives to detention and ability to pay a new bond amount.

Petitioner also seeks an order prohibiting Respondents from relocating him outside of the Eastern District pending final resolution of this litigation.

STATEMENT OF FACTS AND CASE[1]

Petitioner is currently detained at the California City Detention Center. He is a twenty-year-old designated unaccompanied child from Guatemala. *Declaration of Kristina McKibben, Exhibit ("Exh.") B*, Verification of Release; *Exh. F*, EOIR Immigration Judge Order. Petitioner has strong ties to Northern California where he has established a life for himself after reuniting with his father and siblings in 2022. Prior to his detention, Petitioner resided in Sacramento

[1] The Statement of Facts is based on the attached Declaration of Kristina McKibben; Exhibits A-G.

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County with his father and two siblings, where he was employed at a restaurant and painted homes to support the household with his wages.

On or around December 15, 2025, ICE arrested Sergio at his home. He has no prior convictions and is not a danger to the community.

Petitioner's Detention and Release by Immigration Authorities in 2022

On August 2022, at seventeen-years-old, Sergio entered the United States, and after apprehension, the Department of Homeland Security designated him an unaccompanied minor pursuant to 6 USC § 279(g)(2). *Exh. A* and *Exh. B*. ICE issued Sergio a Notice to Appear ("NTA") that alleged that Petitioner was not a citizen of the United States, and he had not been admitted or paroled into the United States and charged him as removable on this basis under 8 U.S.C. § 1182(a)(6)(A)(i). *Exh. A*.

On September 10, 2022, Sergio was released on his own recognizance and reunified with his father in Sacramento County, California. *Id.*

Petitioner's Period of Liberty from September 2022 until December 2025

Following release, Sergio diligently applied for immigration relief, completing a state juvenile court hearing to determine his best interest for staying in the United States as a noncitizen child who has been abused, abandoned, or neglected by one or both parents ("Special Immigrant Juvenile Status" or "SIJS"). *Decl. of Kristina McKibben*

A state court judge issued a predicate order in June 2023, ordering Sergio's father full custody and a finding that it is in Sergio's best interest to stay in the United States based on his fear or return, access to medical care, and stability provided by his father. While Sergio had fled for his physical safety, [redacted], he now had a myriad of supports. *Id.*

While in his care, Sergio's father ensured that he had access to medical insurance and access to treatment for a neurological condition, heart fissures, and anxiety and depression. At the time, even while learning English and overcoming health complications, Sergio received an award for Honor Roll at [redacted] *Id.*

U.S. Department of Homeland Security – United States Citizenship and Immigration

Status ("USCIS"), the immigration benefits arm, issued a notice of approval for SIJS and grant of deferred action on April 18, 2024. *Id.*, *Exh. D.*

On June 26, 2024, Sergio received employment authorization. *Id. Exh E.*

An immigration court initially ordered Sergio's immigration removal proceedings closed in May, 2023 and denied ICE's attempt to re-calendar proceedings in September 2025.*Id. Exh. G*

At the time of Sergio's arrest, he was working two jobs to support his household – at a restaurant on Wednesdays through Sundays, and painting homes. Additionally, he had found stability in his health, support with his family, and relief with his immigration case. *Decl. of Kristina McKibben*

Despite having closed immigration cases, Sergio diligently updated his address in September 2025 with both EOIR and USCIS. This is the address where ICE agents would surprise him with a warrantless arrest in December 2025.*Id.*

Petitioner's Re-detention on December 15, 2025

ICE visited Sergio's home without prior notice on or around December 15, 2025. After making contact with him, agents urged him to come outside to discuss an "upcoming court hearing", grabbed him, and arrested him without explanation or a warrant. Sergio does not have a pending court hearing, and indeed the Immigration Court has twice ordered that his case be – and remain – administratively closed on May 5, 2023, and again on September 2, 2025.*Id. Exh. F.* A search of the EOIR public access portal, with Sergio's DHS number entered, reflects that his case remains administratively closed with no pending court dates. *Id. Exh. G.*

Petitioner's detention has caused him physical and emotional harm and has significantly impacted the wellbeing of his family. Since he entered detention, he has experienced emotional distress, and has become physically ill, including, but not limited to, a severe toothache and a severe cough that has been exacerbated by the frigid temperatures inside the facility. In addition, he suffers from a heart condition, a neurological condition, and anxiety and depression – all of which he requires treatment for. He has requested medical attention for his conditions, especially for his tooth, but to no avail. *Id.*

If released, Sergio would return home to his father and siblings who are awaiting him. *Id.*

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ARGUMENT

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits… likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). Petitioner overwhelmingly satisfies both standards.

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

1. Petitioner is likely to succeed on his claim under the Due Process Clause of the Constitution.

The Due Process Clause constrains Respondents' power to re-detain a noncitizen conditionally released without first providing a hearing before a neutral adjudicator where the government justifies the necessity of his re-detention by clear and convincing evidence. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) ("[T]he government's discretion to incarcerate noncitizens is always constrained by the requirements of due process"). While certain statute and regulations grant DHS the ability to revoke a noncitizen's immigration bond and re-arrest the noncitizen, see 8 U.S.C. § 1226(b); 8 C.F.R. § 236.1(c)(9), DHS's power to re-arrest a noncitizen who is released is constrained by the demands of due process. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

In this case, the statutory and regulatory authority, as interpreted by the agency, are insufficient to protect Petitioner's weighty interest in his freedom from detention.

The Supreme Court has established that when the government conditionally releases an individual from detention, that individual gains a constitutionally protected interest in his

'continued liberty.'" *Morrissey*, 408 U.S at 482. Typically, "the Constitution requires some kind of hearing before the [government] deprives a person of liberty." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). These rights extend to noncitizens in immigration proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001). This Court has applied this principle to a noncitizen conditionally released from immigration custody, affirming that "[t]he government may not unilaterally take that liberty away." *Arzate*, 2025 WL 2230521, at *1.

Federal district courts in California, including this one, have repeatedly recognized that due process requires a pre-deprivation hearing for a noncitizen released from ICE custody, like Petitioner, before ICE re-detains him. See *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Soto Garcia v. Andrews*, No. 2: 25-CV-01884-TLN-SCR, 2025 WL 1927596, at * 5 (E.D. Cal. July 14, 2025) (granting PI on this basis).[2]

To make this finding, courts apply a two-step inquiry, asking: (1) whether a protected liberty interest exists under the Due Process Clause; and (2) what procedures are necessary to ensure that any deprivation of that liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

///

a. Petitioner Has a Protected Liberty Interest in His Continued Release.

The Supreme Court has affirmed, and the California Eastern District specifically, has

[2] See also *Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Doe v. Becerra*, No. 2:25-CV-00647-DJCDMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. June 30, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *3 (E.D. Cal. June 30, 2025); *Domingo v. Kaiser,* No. 25-CV-05893 (RFL), 2025 WL 1940179, at *10 (N.D. Cal. July 14, 2025); *Pinchi v.Noem*, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *5 (E.D. Cal. July 11, 2025); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *7 (E.D. Cal. Aug. 8, 2025); *Ramirez Clavijo v.Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263, at *6 (N.D. Cal. Aug. 21, 2025); *Guzman v. Andrews*, No. 1:25-CV-01015-KES-SKO (HC), 2025 WL 2617256, at *7 (E.D. Cal. Sept. 9, 2025).

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recognized, that "individuals released from custody, even where such release is conditional, have a liberty interest in their continued release." *Soto Garcia*, 2025 WL 1927596, at * 3 (citing *Morrissey v. Brewer*, 408 U.S. at 482).

In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. That Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. That Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen as within the protection of the [Fifth] Amendment." *Id.*

This basic principle—that individuals have a liberty interest in their conditional release—has been reinforced by both the Supreme Court and the circuit courts on numerous occasions. *See Young v. Harper*, 520 U.S. 143, 146-47, 152 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973). As the First Circuit explained, when analyzing the issue of whether a specific conditional release rises to the level of a protected liberty interest, "[c]ourts have resolved the issue by comparing the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010); *see also Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) ("a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated").

In the instant case, Sergio has resided in Sacramento County, California since 2022, living with his father. Petitioner has diligently attended immigration court hearings and appointments, obtained an approval for SIJS and deferred action, secured work authorization, obtained employment, and supported his household. In addition, he updated his address both with EOIR and USCIS, despite having no open cases.

While released, he was able to participate in the "attachments of normal life," *Morrissey*, 408 U.S. at 482, and as such, he has a protected liberty interest and his continued detention

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without adequate process violates his due process rights. See *Morrissey*, 408 U.S. at 482-483; *Pinchi*, 2025 WL 2084921, at *3 ("[E]ven when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody."); *Guillermo M. R.*, 2025 WL 1983677, at *4 (recognizing that "the liberty interest that arises upon release [from immigration detention] is inherent in the Due Process Clause").

As such, his continued detention without adequate process violates his due process rights.

b. Petitioner's Liberty Interest Mandated a Hearing Prior to Any Re-detention

Where a protected liberty interest exists, a court must determine what process is necessary to ensure Petitioner is not unconstitutionally deprived of his liberty. *Haygood v. Younger*, 769 F.2d 1350, 1357 (9th Cir. 1985) (en banc). In doing so, the court must "balance [Petitioner's] liberty interest against [DHS's] interest in the efficient administration of" its immigration laws." *Id.* "The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Id.*

Under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), a court must consider three factors in conducting its balancing test to determine the process due:

(1) the private interest affected;

(2) the government's interest in keeping Petitioner in detention without a hearing, including the additional burden the requested process would entail; and

(3) the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional procedural safeguards. In this case, a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty. See *Morrissey*, 408 U.S. at 481-82. Under the *Mathews* test, ICE's failure to provide such process prior to his detention is a violation of Petitioner's constitutional rights.

i. Petitioner Has a Powerful Private Interest in His Liberty

Petitioner retains a truly weighty liberty interest since he was released on his own recognizance for three years; enjoyed the express protection from immigration enforcement with

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a grant of SIJS, work authorization, and deferred action; and his detention is incident to civil proceedings rather than criminal, therefore, this principle—that a person free from physical confinement, even if that freedom is lawfully revokable, has a liberty interest entitling him to constitutional due process before he is re-incarcerated—applies with even greater force.

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes*, 607 F.3d 864, 891-92 (1st Cir. 2010); *Hurd, Jr. v. D.C.*, 864 F.3d 671, 683 (D.C. Cir. 2017).

Here, Petitioner has been out of custody for over three years, and during that time, began a life in Sacramento living with his father and siblings, stabilizing his health, pursuing an education, and working. His detention denies him that freedom.

What is at stake for Petitioner is one of the most profound private interests recognized by our legal system: whether ICE may unilaterally nullify a prior release and take away his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).

This profound private interest must be weighed heavily when determining what process is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

ii. The Government's Interest in Detention without a Hearing Is Low and the Burden of the Proposed Additional Process is Minimal

The government must provide due process prior to detaining Petitioner because the burden of providing such a hearing is minimal when immigration courts carry out bond hearings regularly, and because immigration detention is civil, and therefore, it can have no punitive purpose.

The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas,* 533 U.S. at 690. In releasing Petitioner in 2022, ICE decided that

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Petitioner was neither a danger nor flight risk.

Furthermore, as the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole … the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483. Release from custody until a neutral adjudicator has determined that DHS has justified Petitioner's re-detention by clear and convincing evidence is far less costly and burdensome for the government than keeping him detained. Hernandez, 872 F.3d at 996.

Here, DHS has neither provided Petitioner with information about why he was re-detained without a bond hearing nor, for the reasons stated herein, an opportunity or any means to have a bond hearing.

Additionally, for the reasons stated herein, the government cannot plausibly assert that it had a sudden interest in detaining Petitioner in December of 2025 on account of an individualized determination, especially when DHS granted deferred action expressly classifying Petitioner as a low enforcement priority. See *Exh. D.* "Courts, of course, may not accept post hoc rationalizations for agency action, nor may they supply a reasoned basis for the agency's action that the agency itself has not given. Rather, an agency's action must be upheld, if at all, on the basis articulated by the agency itself." *Regents of Univ. of California v. United States Dep't of Homeland Sec.*, 279 F. Supp. 3d 1011, 1043 (N.D. Cal.) (cleaned up). *See also Michigan v. E.P.A.*, 576 U.S. 743, 758 (2015) (recognizing as a "foundational principle of administrative law that a court may uphold agency action only on the grounds that the agency invoked when it took the action.").

Moreover, even if DHS believed that there had been a material change in circumstances that would justify revoking release, it should have provided Petitioner notice and a hearing first. *See Guzman*, 2025 WL 2617256, at *1; *Arzate*, 2025 WL 2230521, at *6; *Soto Garcia*, 2025 WL 1927596, at * 5. Likewise, Petitioner should have been afforded notice and a hearing prior to his detention when Petitioner's interest in his liberty established his right to a hearing prior to his detention where he could hear the government's evidence underlying its determination to arrest,

and present his argument as to why the revocation of his liberty is not justified. *Id.*

Notice and an opportunity to respond are basic due process safeguards that have been denied to Petitioner here. Any burden on Respondent of such process does not outweigh Petitioner's substantial liberty interest.

iii. Risk of Erroneous Deprivation of This Interest is High and Proposed Process Would Decrease That Risk

Petitioner has already been erroneously deprived of his liberty, and the risk that he will continue to be deprived is high if ICE is permitted to keep him detention after making a unilateral decision to re-detain him.

Before Petitioner can be lawfully re-detained, he should be provided with a hearing before a neutral adjudicator at which the government must justify whether re-detention is warranted – that is the vehicle to decrease the risk of him being erroneously deprived of his liberty. *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Although, since his detention, the BIA has issued a decision that subjects individuals like Petitioner to mandatory detention, see *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), as a result, under current procedures, the validity or necessity of Petitioner's re-detention and continued imprisonment by ICE would evade any review by the IJ or any other neutral arbiter because there is no longer any statutory mechanism that would provide Petitioner any process before a neutral adjudicator following his re-detention.

By contrast, the procedure sought—release from custody until he is provided a hearing in front of a neutral adjudicator at which DHS proves by clear and convincing evidence that his re-detention is necessary—is much more likely to produce accurate determinations regarding factual disputes, such as whether he is a present danger or unmitigable flight risk. See *e.g., Singh*, 2025 WL 1918679, at *7, *10 ("[T]he risk of an erroneous deprivation of liberty is high where, as here, the petitioner has not received any bond or custody redetermination hearing.") (ordering release and placing the burden of proof on the government on any pre-deprivation hearing). The Ninth Circuit has noted that the risk of erroneous deprivation of liberty can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf,* 634 F.3d at

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1091-92.

In this case, Petitioner was previously released on his own recognizance pursuant to ICE's authority under 8 U.S.C. § 1226. As explained in *Valencia Zapata*, "ICE had previously determined Petitioners not to pose a risk under those criteria and communicated no basis under those statutory purposes for arresting Petitioners. In these circumstances, the risk of erroneous deprivation appears high." 2025 WL 2578207, at *3.

Accordingly, Petitioner is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral adjudicator at which the government bears the burden of proof prior to any re-incarceration by ICE. At the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135; Doe, 2025 WL 691664, at *8.

2. In the Alternative, Petitioner is Likely to Succeed on his Statutory Claim

At minimum, Petitioner has shown he is likely to succeed on his claim that he is eligible for a bond hearing under 8 U.S.C. § 1226, and that he was deprived of this statutory right by an unlawful change in executive branch policy. *See Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4-9 (E.D. Cal. Sept. 23, 2025) (concluding that noncitizen detained by warrant pursuant to § 1226(a) was not detained under § 1252(b)(2)(A), ordering release).

Individuals charged with inadmissibility and deportability in removal proceedings, like Petitioner, have long been detained by DHS under 8 U.S.C. § 1226 and granted an initial bond hearing by an immigration judge, unless subject to mandatory detention due to criminal grounds provided for in the statute. *See* 8 U.S.C. §§ 1229a, 1226(c); 8 C.F.R. §§ 1003.19(a), 1236.1(d).

Section 1226(a) applies, by its plain language, to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). This statute applies to noncitizens like Petitioner, who are present without being admitted or paroled. Indeed, as stated by this Court: The government's argument that section 1225(b)(2)(A) applies to all noncitizens present in the United States without admission is unpersuasive. The government's proposed interpretation of the statute (1) disregards the plain

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meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice. Other district courts have reached a similar conclusion. Lepe, 2025 WL 2716910, at *4 (citing cases).

Furthermore, Section 1226(a) provides that the government may detain noncitizens "on a warrant." If, like in 2022, DHS submits an administrative warrant, it will be issued pursuant to section 1226(a). *See Lepe*, 2025 WL 2716910, at *8; *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (stating that Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an alien "pending a decision on whether the alien is to be removed from the United States."). By contrast with § 1226(a), the word "warrant" does not appear anywhere in § 1225. Congress's specific reference to a "warrant" in § 1226(a) indicates that a person arrested pursuant to a warrant is detained subject to § 1226(a), not § 1225. Likewise, Congress's decision not to omit the word "warrant" entirely from § 1225 indicates that individuals subject to § 1225 are amenable to warrantless arrests. This clear statutory language shows that Sergio, if detained pursuant to a DHS administrative warrant – none of which has been produced to Sergio – then he is detained under § 1226(a) and thus entitled to a bond hearing.

The text of § 1226 also explicitly applies to people charged as being inadmissible, including those charged with being present without being admitted or paroled, like Petitioner. See 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E) was recently added by Congress, amending the statute to mandate detention for, among other categories, people who are charged as inadmissible pursuant to 8 U.S.C. § 1182(a)(6) (present without admission) and who have certain criminal histories. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).

This statutory reference to individuals, like Petitioner, charged as present without admission and clear congressional intent that the statute apply to such individuals, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "when Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez*

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Vazquez, 2025 WL 1193850, at *12 (citing Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010)).

DHS's and DOJ's interpretations defy the plain text of the INA, the INA's logic, and the well-established case law and practice interpretating this provision: on July 8, 2025, DHS issued a new policy instructing all ICE employees to consider anyone inadmissible under §1182(a)(6)(A)(i)—i.e., those who are present without admission—to be an "applicant for admission," and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*, wherein the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings. Under these policies, Petitioner is subject to mandatory detention without a bond hearing before an immigration judge.

However, federal courts have resoundingly rejected this attempt by DHS and DOJ to pivot to this misreading of the detention statutes. The U.S. District Court for the Western District of Washington found that such a reading of the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens who are present without being admitted or paroled. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). Federal courts to have considered the question have rejected the DHS-DOJ interpretation of the statutes. See *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Maldonado Bautista et al v. Santacruz Jr. et al*, No. 5: 25-CV-01873-SSS-BFM (C.D. Cal. July 28, 2025) (granting TRO based on denial of a bond hearing and holding that despite being present without admission, Petitioners were not "applicants for admission" under § 1225 and properly detained under § 1226(a)); *Salcedo Aceros*, 2025 WL 2637503, at *9; *Acosta Roa v. Albarran*, No. 25-CV-07802-RS, 2025 WL 2732923, at *5 (N.D. Cal. Sept. 25, 2025) ("The BIA opinion is not persuasive."); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (granting habeas relief); *Lopez-Campos v. Raycraft*, --- F. Supp. 3d ----, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting habeas relief); *Kostak v. Trump*, No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D.

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La. Aug. 27, 2025) (granting preliminary relief); *Benitez v. Noem*, No. 5:25-cv-02190, Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (granting habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (granting habeas relief); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, No. 25-cv-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (granting habeas relief); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting habeas relief); *Rocha Rosado v. Figueroa*, No. CV 25-02157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation to grant habeas relief), adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (granting habeas relief); *Lopez Benitez*, 2025 WL 2371588 (granting individual habeas relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (denying reconsideration of individual habeas relief); Gomes, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting individual habeas relief). Therefore, DHS and DOJ have impermissibly revisited their legal positions on detention and release authorities in order to withhold protections that Petitioner would have otherwise been afforded under § 1226(a).

In this case, DHS's conduct aligns with this longstanding reading of the statute: in his Notice to Appear, DHS indicated that Petitioner was a "noncitizen present in the United States who has not been admitted or paroled[,]" *Decl of Kristina McKibben, Exh. A*, NTA (contrasted with labeled as "arriving [noncitizen]"); Petitioner's release on his own recognizance suggests that DHS has not previously classified Petitioner as subject to mandatory detention, *see Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *8 (N.D. Cal. Sept. 12, 2025) (concluding that § 1225(b)(2) does not apply to noncitizens like the petitioner, who have been released by DHS on their own recognizance into the interior of the country). Time and time again, DHS has acted under § 1226(a); and DHS's proposed reading of § 1226 is inconsistent with the cannon against superfluities, which requires courts to interpret statutes "as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that

renders other provisions of the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023).

Read as a whole, the statutory text makes clear that § 1226 applies to Petitioner, regardless of the fact that he may be present without admission.

By contrast, § 1225(b) applies to people arriving at ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). The statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," id. § 1225(a)(3), (b)(1), (b)(2), (d); see also King v. Burwell, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning"). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings*, 583 U.S. at 287.

In relevant part, § 1225(b)(2)(A) states, a noncitizen "who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, [the noncitizen] shall be detained for a proceeding under section 1229a." This new DHS and EOIR policy, classifying Petitioner as detained under § 1225(b), rather than § 1226(a), ignores the whole of the statute, and instead focuses on the definition of "applicant for admission," which is found at § 1225(a)(1). Section 1225(a)(1) defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States. But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted).

Here, that context underscores that the definition in (a)(1) is limited by other language in the statute to those who are undergoing an initial inspection at or near a port of entry shortly after arrival—and that it does not apply to those who are arrested in the interior of the United States

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months or years or even decades later. Indeed, § 1225(b)(2) does not simply address applicants for admission. Instead, the language "applicant for admission" in (b)(2)(A) is qualified by additional language clarifying the subparagraph applies only to those "seeking admission"—in other words, those who have applied to be admitted or paroled. See e.g., Lepe, 2025 WL 2716910, at *5 ("The government's proposed interpretation of the statute ignores the plain meaning of the phrase 'seeking admission.'"); *Lopez Benitez*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13, 2025). The DHS and EOIR policies ignore this text, just as it ignores the statutory language in § 1226 that expressly encompasses persons who have entered the United States and are present without admission.

In sum, the INA's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted." Instead, § 1226(a) covers those who are present within and residing within the United States and who are not at an international border seeking admission. Furthermore, finding Petitioner detained under § 1226(a), rather than § 1225(b)(2)(A), accords with years of agency practice and precedent finding noncitizens charged as present without admission subject to 8 U.S.C. § 1226(a). *See Lepe*, 2025 WL 2716910, at *8 ("The Court finds that the government's longstanding practice, under which section 1225(b)(2)(A) would not have applied to petitioner's circumstances, is consistent with the text and statutory scheme."). The meaning of a statute cannot change from year to year, and yet that is what DHS and DOJ are attempting to do through this contorted reading of §§ 1225(a)(1) and 1225(b)(2)(A).

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

The irreparable harm in this case goes far beyond the denial of due process when his family lost his financial support, he's receiving no medical care for his extremely dangerous health concerns, and several courts have previously found it in his best interest to remain in the care of his father.

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Hernandez*, 872 F.3d at 994-95 (internal quotations omitted).

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These "irreparable harms [are] imposed on anyone subject to immigration detention," including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Id.* at 995; *Soto Garcia*, 2025 WL 1676855, at *3 (order granting TRO, finding irreparable harm from continued ICE detention); *see also Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016) (recognizing that detainees in ICE custody are held in "prison-like conditions.").

Here, his family would suffer intense hardship because has developed a strong family tie and he provides his family with a good source of income. Since Petitioner has been out of custody for over three years he has only lived with his father, who provided intensive support with his health conditions. He had secured work authorization and had worked at a restaurant and painting homes. He helps support the household with the earnings. *Decl. of Kristina McKibben*

Petitioner, himself, suffers irreparable harm if he remains in custody when while detained, he has received subpar medical care, his emotional state and physical health are impacted, and Petitioner has dealt with unassisted medical concerns and concerns about whether he will be removed to the country where he [redacted]. *Id.*

The Court have previously granted protection for Petitioner, prior to his detention by ICE, under SIJS and deferred action. Furthermore, a state court found it in his best interest to remain in the United States to access medical care, and to remain in the custody and care of his father. Moreover, an immigration judge has twice ordered his immigration court case to stay administratively closed. *Id.*

Finally, as detailed above, Petitioner contends that his re-arrest absent a hearing before a neutral adjudicator violated his due process and statutory rights.

The violation of a statutory right is similar in and of itself to an immediate and irreparable injury. See *Lepe*, 2025 WL 2716910, at *9 ("[T]he violation of petitioner's statutory rights causes immediate and irreparable injury."); *Maldonado Bautista*, No. 5: 25-CV-01873-SSS-BFM at * 9.

For the reasons stated herein, Petitioner will continue to suffer irreparable harm were he

to remain deprived of his liberty and subjected to continue incarceration by immigration authorities without being immediately released and provided the constitutionally adequate process that this motion for a temporary restraining order seeks. A temporary restraining order is necessary to prevent additional the irreparable harms by continued unlawful detention.

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING THE TEMPORARY RESTRAINING ORDER

The balance of equities and public interest, which merge in light of the fact that the government is the opposing party, strongly favor Petitioner. See *Soto Garcia*, 2025 WL 1676855, at *3 (citations omitted). Federal courts have recognized a strong public interest "in upholding procedural protections against unlawful detention and … that the costs to the public of immigration detention are staggering." *Id.*; *see also Hernandez*, 872 F.3d at 996 quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) wherein that Court found that "the balance of hardships tips decidedly in … favor" of immigrants raising constitutional claims."

Here, in contrast to the profound and irreparable harm facing Plaintiff, the government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. See *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.")."[I]t would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); see also *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (holding that allowing continued violations of federal law would serve "neither equity nor the public interest"). Any burden imposed by requiring the DHS to release Petitioner from custody until he is provided a hearing before a neutral decisionmaker is minimal and clearly outweighed by the substantial harm he and his family suffer as long as he continues to be detained. See *Heckler*, 713 F.2d at 1437; see *Lepe*, 2025 WL 2716910, at *10 ("[F]aced with a choice between these minimally costly [court] procedures and preventable human suffering, [] the Court concludes that the balance of hardships tips decidedly in petitioner's favor.").

If a temporary restraining order is not entered, the government would effectively be

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granted permission to ignore the statutory text of the INA and the requirements of Due Process. See *Guillermo M.R.*, 2025 WL 1983677 at * 7 (noting the danger of arbitrary and erroneous deprivation of liberty if ICE is allowed to re-detain individuals released on bond with no additional process). In this context, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

Accordingly, no public interest is served by detaining an individual whom the government has acknowledged presents no danger or flight risk in the above court decisions, because had DHS believed that there had been a material change in circumstances that would justify revoking release, it should have provided Petitioner notice and a hearing first, *see Guzman*, 2025 WL 2617256, at *1; *Arzate*, 2025 WL 2230521, at *6; *Soto Garcia*, 2025 WL 1927596, at * 5, which DHS did and has not.

CONCLUSION

For all the above reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction ordering that Respondents release him from custody and refrain from re-arresting him until he is afforded a hearing that complies with due process on whether his re-detention is justified, or, in the alternative, ordering that Respondents release him from custody if he is not provided a custody redetermination hearing in front of a neutral arbiter within 14 days.

Dated: December 22, 2025

Respectfully Submitted,

COMMUNITY JUSTICE ALLIANCE

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