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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11 FRESNO DIVISION

11 VIVEK BAINS,

12 *Petitioner,*

13 v.

14 KRISTI NOEM, in her official capacity as
15 Secretary of the Department of Homeland
16 Security; PAMELA BONDI, in her official
17 capacity as Attorney General of the United
18 States; TODD LYONS, in his official
19 capacity as Acting Director and Senior
20 Official Performing the Duties of the
21 Director of U.S. Immigration and Customs
22 Enforcement; MARCOS CHARLES, in his
23 official capacity as Field Office Director
24 for U.S. Immigration and Customs
25 Enforcement, Enforcement and Removal
26 Operations; CHRISTOPHER CHESTNUT, in
27 his official capacity as Warden of California
28 City Correctional Facility,

Respondents.

Case No. 1:25-at-01400

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

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INTRODUCTION

Petitioner is a native and citizen of India who sought protection after experiencing circumstances giving rise to a credible fear of persecution or torture, as recognized by an asylum officer. Petitioner has fully complied with all immigration requirements, including appearing for ICE check-ins and immigration court proceedings, and has no criminal history or record of violence.

Despite these equities, Petitioner was taken into ICE custody during a routine ICE check-in appointment on October 16, 2025, and is currently detained at the California City ICE Processing Center in California City, California. He is properly detained under 8 U.S.C. § 1226(a) and is fully eligible for an individualized custody redetermination hearing before an Immigration Judge.

However, Petitioner has been categorically denied access to a bond hearing following DHS's Interim Guidance ("Policy"), which incorrectly asserts that all noncitizens who entered without inspection are automatically subject to mandatory detention under 8 U.S.C. § 1225(b). This Policy constitutes a drastic and unlawful departure from decades of established statutory interpretation, governing regulations, and binding precedent distinguishing § 1225(b) mandatory detention from § 1226(a) discretionary custody.

As a result, Petitioner has been denied the individualized custody review guaranteed by the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. His detention—civil in name yet punitive in effect—has become arbitrary and indefinite, without any individualized finding of danger or flight risk.

Petitioner is likely to succeed on the merits of his habeas claims because DHS's Policy violates the INA, exceeds the agency's statutory authority, and deprives him of the constitutional

1 protections required for civil detention. Without immediate judicial intervention, he will continue
2 to suffer irreparable harm, as he remains confined for an indefinite period despite strong equities,
3 statutory eligibility for bond, and pending applications for asylum, withholding of removal, and
4 protection under the Convention Against Torture.
5

6 For these reasons, Petitioner respectfully requests that this Court: (1) enjoin Respondents
7 from transferring him outside this District while this action is pending; (2) direct Respondents to
8 provide him with a constitutionally adequate bond hearing within three days, at which DHS bears
9 the burden of proving by clear and convincing evidence that continued detention is warranted; and
10 (3) grant such other relief as law and justice require.
11

12 **STATEMENT OF FACTS**

13
14 Petitioner repeats and incorporates by reference each Statement of Facts contained in the
15 Petition for Writ of *Habeas Corpus* as if fully set forth herein.
16

17 **I. HABEAS RELIEF**

18 To obtain habeas corpus relief, a petitioner must demonstrate that he is "in custody in
19 violation of the Constitution or laws or treaties of the United States." *See* 28 U.S.C. § 2241(c)(3).
20 This Court has habeas corpus jurisdiction to consider the statutory and constitutional grounds for
21 immigration detention that are unrelated to a final order of removal. *See Demore v. Kim*, 538 U.S.
22 510, 517-18 (2003).
23

24 **II. DETENTION AUTHORITY UNDER THE INA**

25
26 The Immigration and Nationality Act ("INA") establishes three principal statutory bases for
27 the detention of noncitizens in removal proceedings. First, 8 U.S.C. § 1226(a) authorizes the
28 discretionary detention of noncitizens placed in standard removal proceedings under 8 U.S.C. §

1 1229a. Individuals detained under § 1226(a) are entitled to an individualized custody determination
2 before an Immigration Judge and may seek release on bond or conditional parole. See 8 C.F.R. §§
3 1003.19(a), 1236.1(d). By contrast, noncitizens falling within certain enumerated criminal
4 categories are subject to mandatory detention under § 1226(c).
5

6 Second, the INA authorizes mandatory detention of certain arriving or recently arrived
7 noncitizens placed in expedited removal or other admission-related proceedings under 8 U.S.C. §
8 1225(b). Individuals encountered at or near the border are deemed “applicants for admission,” 8
9 U.S.C. § 1225(a)(1), and must demonstrate that they are “clearly and beyond a doubt” entitled to
10 be admitted. Id. § 1225(b)(2)(A). Those who cannot make such a showing “shall be detained”
11 pending resolution of their cases, unless temporarily paroled under § 1182(d)(5)(A).
12

13 Third, individuals subject to a final order of removal fall under the post-order detention
14 scheme set forth in 8 U.S.C. § 1231(a)–(b), which authorizes detention only for a period reasonably
15 necessary to effectuate removal. Sections 1226(a) and 1225(b)(2) were enacted through the Illegal
16 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), while § 1226(c) was
17 most recently amended by the Laken Riley Act in 2025.
18

19 Under this statutory framework, Petitioner’s custody arises under § 1226(a). He is in
20 standard § 240 removal proceedings before the Adelanto Immigration Court; following a credible
21 fear determination, he has no criminal history and is not subject to any final order of removal. DHS
22 issued a Form I-200 warrant for arrest, placing him squarely within the discretionary custody
23 authority of § 1226(a), not within the mandatory detention authority of § 1226 (a). Nothing in §
24 1226(a) authorizes prolonged or indefinite detention of a noncitizen who poses no danger or flight
25 risk; civil detention must remain reasonably related to the government’s limited purposes of
26 ensuring appearance and protecting public safety. *See Jennings v. Rodriguez*, 138 S. Ct. 830 (2018);
27
28

1 *Demore v. Kim*, 538 U.S. 510, 528–31 (2003).

2 Despite this statutory scheme, DHS has invoked the Board of Immigration Appeals’
3 decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), to argue that Immigration
4 Judges lack jurisdiction to conduct bond hearings for individuals whom DHS asserts are subject to
5 detention under § 1225(b). Relying on that interpretation, the Immigration Judge declined to hear
6 Petitioner’s bond request, despite his administrative detention by ICE during a routine check-in
7 appointment on October 16, 2025, his placement in § 240 proceedings, and his eligibility for
8 custody redetermination under 8 C.F.R. §§ 1003.19(a), 1236.1(d).
9

10 This position effectively deprives Petitioner—and similarly situated individuals—of the
11 statutory and regulatory protections that Congress and the Executive have long provided to
12 noncitizens in § 240 proceedings. It results in prolonged detention without an individualized
13 assessment of necessity, contrary to the INA’s structure and purpose, and inconsistent with
14 constitutional limits on civil confinement.
15

16 Accordingly, Petitioner’s continued detention falls outside the narrow detention authority
17 conferred by the INA, which requires individualized custody review and prohibits arbitrary or
18 indefinite detention—protections that Petitioner has been categorically denied.
19

20 STANDARD OF REVIEW

21 Temporary restraining orders and preliminary injunctions are evaluated under the same
22 standard in the Ninth Circuit. Under the framework established by the Supreme Court in *Winter v.*
23 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008), movants must demonstrate a
24 likelihood of success on the merits, a likelihood of suffering irreparable harm in the absence of
25 preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the
26 public interest. The Ninth Circuit also recognizes a complementary “sliding scale” approach under
27 which movants may obtain relief by raising serious questions going to the merits and demonstrating
28

1 that the balance of hardships tips sharply in their favor, so long as the remaining Winter factors are
2 met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (2011). A TRO is warranted
3 where, as here, Petitioner faces ongoing constitutional violations and unlawful detention that
4 threaten immediate, irreparable injury for which no adequate remedy exists at law.
5

6 **ARGUMENTS**

7 **I. PETITIONERS HAVE ESTABLISHED A LIKELIHOOD OF SUCCESS ON** 8 **THE STATUTORY DETENTION** 9

10 **A. Petitioners' Prolonged Detention Without a Bond Hearing Is Unlawful** 11 **Under the INA**

12 The Immigration and Nationality Act ("INA") authorizes civil immigration detention only
13 when it serves a legitimate statutory purpose: ensuring appearance at future proceedings or
14 protecting public safety. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Clark v. Martinez*, 543 U.S.
15 371, 381 (2005). When detention ceases to advance those purposes or becomes arbitrary or
16 indefinite, it exceeds the government's statutory authority.
17

18 Petitioner has been detained for several months without any individualized custody
19 determination following his administrative arrest by ICE on October 16, 2025. Petitioner was
20 arrested pursuant to a Form I-200 warrant during a routine ICE check-in appointment and placed
21 in standard § 240 removal proceedings, making § 1226(a) the governing authority and rendering
22 him eligible for an individualized custody redetermination hearing. Petitioner does not have any
23 criminal history, does not pose a danger to the community or a flight risk, and has complied with
24 all DHS requirements prior to detention. Despite this, Petitioner has been denied access to any bond
25 hearing and remains confined at the California City ICE Processing Center.
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1 Courts have repeatedly held that prolonged civil detention without an individualized bond
2 hearing violates both the INA and the Due Process Clause. *See Hernandez v. Sessions*, 872 F.3d
3 976, 991 (9th Cir. 2017) (requiring individualized assessments for prolonged detainees); see also
4 *Sajous v. Decker*, 2018 WL 2357266, at *11 (S.D.N.Y. May 23, 2018) (holding detention
5 unreasonable where government failed to justify continued confinement). Because Petitioner's
6 detention no longer serves any legitimate governmental interest, it has become arbitrary, excessive,
7 and unlawful under the INA.
8

9
10 **B. DHS's Reliance on a Jurisdictional Technicality Has Deprived**
11 **Petitioners of a Custody Review Mechanism.**

12 DHS asserts that Petitioner is subject to mandatory detention under § 1225(b) of the INA
13 based on disputed allegations that he was apprehended "shortly after entry." The government's own
14 actions contradict that assertion. Petitioner was served with a Form I-200 Warrant for Arrest during
15 a routine ICE check-in appointment on October 16, 2025, and placed in § 240 removal proceedings,
16 which are governed by § 1226(a). Under these circumstances, jurisdiction over the bond lies with
17 the Immigration Judge. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d).
18

19 DHS has invoked *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to reclassify
20 Petitioner as an "arriving alien." This categorical approach—grounded entirely in DHS's untested
21 characterization of his apprehension—has deprived Petitioner of any mechanism to seek release.
22 He cannot request a bond hearing before the Immigration Judge, and DHS has declined to consider
23 parole or other discretionary custody options.
24

25 This bureaucratic reclassification has placed Petitioner in administrative limbo, as he is
26 treated as an "arriving alien" for detention purposes but as a § 240 respondent for removal purposes.
27 The statute does not authorize DHS to deny their access to a custody review process by
28

1 manipulating jurisdictional labels. This misclassification is contrary to the INA, the governing
2 regulations, and established precedent requiring individualized assessments of custody.
3

4 **C. Continued Detention Violates Petitioner’s Fifth Amendment Right to**
5 **Due Process.**

6 The Fifth Amendment guarantees that no person shall be deprived of liberty without due
7 process of law, a protection that extends to all persons within the United States regardless of
8 immigration status. *Zadvydas*, 533 U.S. at 693; *Landon v. Plasencia*, 459 U.S. 21, 32 (1982).
9 Petitioner’s prolonged detention—without a bond hearing, without individualized assessment, and
10 based solely on a disputed jurisdictional classification—violates these core constitutional
11 protections.
12

13 The Supreme Court has emphasized that “[f]reedom from imprisonment—from government
14 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due
15 Process] Clause protects.” *Zadvydas*, 533 U.S. at 690 (quoting *Foucha v. Louisiana*, 504 U.S. 71,
16 80 (1992)). Applying the three-part balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335
17 (1976), Petitioner’s due process claim easily prevails.
18

19 First, the private interest at stake—freedom from physical confinement—is one of the most
20 fundamental recognized in constitutional law; even more so when this deprivation occurs outside
21 lawful authority.

22 Second, the risk of erroneous deprivation is exceptionally high given DHS’s unilateral
23 reclassification and the Immigration Judge’s refusal to evaluate Petitioner’s actual danger or flight-
24 risk profile.
25

26 Third, the government’s interest in maintaining custody is minimal here, as Petitioner has
27 no criminal history, substantial community ties, and has complied with all ICE reporting
28 requirements prior to detention. Because the government has provided no constitutionally adequate

1 procedure to review the lawfulness or necessity of Petitioner's detention, her continued
2 confinement violates the Due Process Clause. At a minimum, due process requires a prompt bond
3 hearing before a neutral adjudicator at which DHS bears the burden of establishing, by clear and
4 convincing evidence, that continued detention is necessary.
5

6 Because the government has provided no constitutionally adequate procedure to review the
7 lawfulness or necessity of Petitioner's detention, his continued confinement violates the Due
8 Process Clause. At a minimum, due process requires a prompt bond hearing before a neutral
9 adjudicator at which DHS bears the burden of establishing, by clear and convincing evidence, that
10 continued detention is necessary.
11

12 **II. PETITIONERS WILL SUFFER IRREPARABLE HARM UNLESS THE COURT**
13 **ISSUES A TEMPORARY RESTRAINING ORDER**

14 Under *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008), Petitioner must
15 demonstrate that he will suffer irreparable harm in the absence of immediate injunctive relief. In
16 the immigration detention context, courts have consistently recognized that ongoing, unlawful
17 deprivation of physical liberty constitutes irreparable harm as a matter of law. *See Rodriguez v.*
18 *Robbins*, 804 F.3d 1060, 1080–81 (9th Cir. 2015), rev'd on other grounds sub nom. *Jennings v.*
19 *Rodriguez*, 138 S. Ct. 830 (2018); *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) ("the
20 deprivation of physical liberty for even one day constitutes irreparable harm"). Petitioner's
21 continued confinement—despite the absence of any individualized custody review—inflicts
22 exactly the sort of harm that the *Winter* standard contemplates.
23
24

25 Petitioner has been detained for several months at the California City ICE Processing Center
26 in California City, California, a secure civil detention facility whose conditions closely resemble
27 those of a penal institution. He is deprived of freedom of movement, placed under strict institutional
28

1 control, separated from his support network, and subjected to continuous monitoring. Every
2 additional day of confinement deepens the constitutional injury he suffers from being denied access
3 to a bond hearing or any meaningful opportunity to challenge the legality of his detention.
4

5 Courts have recognized that “[p]rolonged detention without an individualized determination
6 of dangerousness or flight risk inflicts irreparable injury on detainees.” *Sajous v. Decker*, 2018 WL
7 2357266, at *12 (S.D.N.Y. May 23, 2018). The harm here is neither hypothetical nor remote; it is
8 ongoing, acute, and directly attributable to Respondents’ refusal to provide Petitioner with a
9 custody determination. See also *Leal-Hernandez v. Noem*, No. 1:25-cv-02428, 2025 WL 327685,
10 at *37 (D. Md. Aug. 24, 2025) (finding irreparable harm where petitioner remained detained
11 without any lawful process or review)¹.
12

13
14 Petitioner’s continued incarceration has also caused significant emotional and
15 psychological harm. The public interest likewise favors immediate intervention. Preventing
16 constitutional violations is always in the public interest. *Melendres v. Arpaio*, 695 F.3d 990, 1002
17 (9th Cir. 2012). Such mental and emotional injuries cannot be undone after the fact, nor can they
18 be compensated monetarily. The Ninth Circuit has recognized that “every day of detention is
19 another day of lost liberty that cannot be recovered².” Allowing DHS to continue detaining.
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23

24 ¹ I See, e.g., *Alvarez Ortiz v. Freden*, No. 25-CV-960, Ortiz v. Freden, 2025 U.S. Dist. LEXIS 217654 (W.D.N.Y.
25 Nov. 4, 2025) (granting temporary restraining order and requiring bond hearing within seven days); *Padron*
26 *Covarrubias v. Vergara*, No. 5:25-CV-112, *Hernandez Capote v. Sec’y of United States Dep’t of Homeland Sec.*,
27 2025 U.S. Dist. LEXIS 218136 (S.D. Tex. Oct. 8, 2025) (granting habeas relief under 8 USCS § 1226 and ordering a
prompt bond hearing or release by a fixed deadline); *Guerrero Orellana v. Moniz*, No. 25-CV-12664, *Orellana v.*
28 *Moniz*, 2025 U.S. Dist. LEXIS 196282 (D. Mass. Oct. 3, 2025) (holding that petitioner’s detention is governed by §
1226(a) and enjoining continued custody without a bond hearing); *Lepe v. Andrews*, No. 1:25-CV-01163, *Lepe v.*
Andrews, 2025 U.S. Dist. LEXIS 187233 (E.D. Cal. Sept. 23, 2025) (same).

² *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)

1 Petitioner indefinitely without lawful authority or individualized review undermines the integrity
2 of the immigration system and erodes public confidence in the rule of law.

3
4 The public interest likewise favors immediate intervention. Preventing constitutional
5 violations is always in the public interest. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).
6 Allowing DHS to continue detaining Petitioner indefinitely without lawful authority or
7 individualized review undermines the integrity of the immigration system and erodes public
8 confidence in the rule of law.
9

10 Accordingly, Petitioner has demonstrated irreparable harm of the highest order. Immediate
11 judicial intervention is necessary to prevent further unlawful deprivation of liberty and to ensure
12 compliance with the statutory and constitutional safeguards governing civil detention.
13

14 **III. THE BALANCE OF HARMS WEIGHS IN FAVOR OF PETITIONER'S**

15 The final two *Winter* factors—the balance of equities and the public interest—strongly favor
16 granting injunctive relief. Where the government is a party, these factors merge. *Nken v. Holder*,
17 556 U.S. 418, 435 (2009). Together, they require the Court to consider whether the harm to
18 Petitioner from continued detention outweighs any harm to the government arising from his release
19 or from providing a prompt bond hearing, and whether such relief advances or undermines the
20 public interest.
21

22 Here, the equities tilt sharply in Petitioner's favor. Every additional day of confinement
23 inflicts a profound deprivation of liberty and exacerbates the psychological and emotional harm
24 that Petitioner has already experienced during his prolonged incarceration at the California City
25 ICE Processing Center. Petitioner has no criminal history, poses no danger to the community, and
26 has consistently complied with every requirement imposed by DHS and the Immigration Court.
27
28

1 His continued detention serves no legitimate purpose under the Immigration and Nationality Act
2 (“INA”). It contradicts the government’s stated interest in detaining only those who present a
3 genuine risk of flight or danger to public safety.
4

5 By contrast, the government faces minimal—if any—harm if relief is granted. Releasing
6 Petitioner under reasonable conditions of supervision, or providing him with a constitutionally
7 adequate bond hearing, does not impede any lawful enforcement objective. As courts have
8 repeatedly observed, “[t]he government suffers no harm when it is required to adhere to the
9 Constitution.” *O’Donnell v. Harris County*, 892 F.3d 147, 155 (5th Cir. 2018). Administrative
10 convenience cannot justify prolonged, unlawful detention that exceeds statutory authority or
11 violates constitutional protections.
12

13
14 The public interest also strongly favors Petitioner. The public has a compelling interest in
15 ensuring that immigration detention is conducted lawfully, consistent with due process, and only
16 for legitimate statutory purposes. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (noting that
17 indefinite civil detention “would raise serious constitutional concerns”); *Beltran v. Smith*, 458 F.
18 Supp. 3d 1139, 1145 (D. Colo. 2020) (ordering release where detention no longer served INA
19 objectives). Upholding constitutional safeguards for individuals in civil immigration custody
20 reinforces the integrity of the justice system and affirms that the government must operate within
21 the rule of law.
22

23 Balancing these considerations, both the equities and the public interest weigh decisively in
24 favor of Petitioner’s release or, at minimum, the issuance of a prompt bond hearing before a neutral
25 adjudicator. Granting relief will prevent further irreparable harm to Petitioner and promote the
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1 public's compelling interest in ensuring government compliance with statutory and constitutional
2 constraints governing civil detention.
3

4 **CONCLUSION**

5 For the reasons set forth above, Petitioner has demonstrated a clear likelihood of success on
6 the merits of his claims, will suffer irreparable harm in the absence of immediate relief, and has
7 shown that the balance of equities and the public interest overwhelmingly favor granting a
8 temporary restraining order. His continued detention—without a bond hearing, an individualized
9 custody determination, or any meaningful judicial review—violates the Immigration and
10 Nationality Act, the Due Process Clause of the Fifth Amendment, and the *Accardi* doctrine.
11

12 Accordingly, Petitioner respectfully requests that this Honorable Court:
13

- 14 1. Enjoin Respondents and their agents from transferring Petitioner outside the
15 jurisdiction of this Court while this matter is pending;
16
17 2. Direct Respondents to provide him with a constitutionally adequate bond hearing
18 before a neutral Immigration Judge within three (3) days, at which the government bears
19 the burden of proving, by clear and convincing evidence, that continued detention is
20 necessary; and
21 3. Grant such other and further relief as the Court deems just and proper.
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1 Dated: December 23, 2025

Respectfully Submitted,

3 /S/ Cynthia Bautista

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner's VIVEK BAINS, submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for TRO are true and correct to the best of my knowledge.

Dated: December 23, 2025

/S/ Cynthia Bautista
Cynthia Bautista

/S/Luis Angeles
Luis Angeles

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2025, I filed the foregoing petition for TRO electronically through the CM/ECF system, which caused all parties or counsel to be served by electronic means as more fully reflected on the Notice of Electronic Filing.

/S/ Cynthia Bautista
Cynthia Bautista

/S/Luis Angeles
Luis Angeles