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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
IMPERIAL

Kuljit Singh,

Petitioner,

v.

GREGORY J. ARCHAMBEAULT, Field Office Director of the Bakersfiled and Imperial Field Office of U.S. Immigration and Customs Enforcement; JOSEPH B. EDLOW, Acting Director of U.S. Immigration and Customs Enforcement; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security; PAM BONDI, Attorney General of the United States,

Respondents.

Case No,: '26CV1076 RBM BJW

Petitioner's Notice of Motion for a Temporary Restraining Order and Preliminary Injunction and Incorporated Memorandum of Law

Immigration Habeas Case

PETITIONER'S NOTICE OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND INCORPORATED MEMORANDUM OF LAW

PLEASE TAKE NOTICE that Petitioner through counsel, Madelaine Behr, Esq., hereby moves this Court for an order: (i) pursuant to Fed. R. Civ. P. 65 and Local Rule 7-19, enjoining and restraining Respondents from detaining Petitioner and ordering Petitioner's immediate release from custody, with no additional restrictions to be imposed upon him, and also enjoining and restraining Respondents from re-arresting or re-detaining Petitioner absent compliance with constitutional protections, including seven days notice and a pre-deprivation custody hearing before a neutral decisionmaker, where the Government shall bear the burden of proving by clear and convincing evidence that Petitioner poses a danger to the community or a flight risk. This motion is supported by the accompanying Memorandum of Law

INCORPORATED MEMORANDUM OF LAW

I. FACTUAL BASIS

Kuljit Singh ("Mr. Singh") entered the United States without inspection on or about October 28, 2025 and was released on his own recognizance from DHS custody to pursue his asylum claim, and then was arbitrarily and unlawfully re-detained by Respondents, despite having appeared at his court hearings and any check-in appointments as required. ICE re-detained him on October 30, 2025, at his routinely scheduled ICE check-in.

He has now been held for over 2 months without a bond hearing, in keeping with Respondents' unlawful bond denial policy. He is presently detained in the custody of ICE at the Imperial ICE Processing Center in Imperial, California. DHS and EOIR each have nationwide policies mandating the detention of all persons who entered without admission or parole, regardless of whether that person was apprehended upon arrival. Most recently, on September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec.216 (BIA 2025), the Board of Immigration Appeals (BIA) held that all persons who have entered the United States without admission or parole are now subject to mandatory detention under §1225(b)(2)(A). This legal interpretation is

plainly contrary to the statutory framework and contrary to decades of agency practice applying § 1226(a) to people like Petitioner.

II. STANDARD OF LAW

For a TRO, courts consider whether a petitioner has established: "[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Nat Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Petitioner must "make a showing on all four prongs" of the *Winter* test. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). In evaluating a petitioner's motion, a district court may weigh petitioner's showings on the *Winter* elements using a sliding-scale approach. *Id.* A stronger showing on the balance of the hardships may support issuing a TRO even where the petitioner shows that there are "serious questions on the merits . . . so long as the [petitioner] also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* Simply put, a petitioner must demonstrate, "that [if] serious questions going to the merits were raised [then] the balance of hardships [must] tip[ ] sharply" in petitioner's favor in order to succeed in a request for a TRO. *Id.* at 1134–35.

III. ANALYSIS

A. Likelihood of Success on the Merits

Petitioner establishes a likelihood of success on the merits of his claim that his detention violates both the Immigration and Nationality Act ("INA") and the Fifth Amendment Due Process Clause.

i. Violation of the INA

Petitioner is unlawfully detained under 8 U.S.C. § 1225(b)(2) ("§ 1225(b)(2)"). Section 1225(b)(2) mandates detention during removal proceedings for applicants "seeking admission" and does not provide for a bond hearing. Whereas 8 U.S.C. § 1226(a) ("§ 1226(a)") "provides the general process for arresting and detaining [noncitizens] who are present in the United States and eligible for removal." *Rodriguez Diaz*

v. Garland, 53 F.4th 1189, 1196 (9th Cir. 2022). Under § 1226(a), the Government has broad discretion whether to release or detain the individual. *Id.* Further, § 1226(a) provides several layers of review for an initial custody determination. *Id.* It also confers "an initial bond hearing before a neutral decisionmaker, the opportunity to be represented by counsel and to present evidence, the right to appeal, and the right to seek a new hearing when circumstances materially change." *Id.* at 1202. As such, the text and legislative history of the INA demonstrates that 8 U.S.C. § 1226(a) governs his detention — not 8 U.S.C. § 1225. Petitioner is therefore entitled to the process that statute requires, including a bond hearing at a minimum. Yet, Respondents have not provided any hearing to Petitioner during his period of civil detention. Accordingly, Petitioner is likely to succeed on the merits of his claim that Respondents have violated the INA and improperly subjected him to mandatory detention without a hearing.

ii. Violation of Due Process

The Fifth Amendment Due Process Clause prohibits government deprivation of individual"s life, liberty, or property without due process of law. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017). The Due Process Clause applies to all "persons" within the borders of the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all "persons" within the United States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent."). These due process rights extend to immigration proceedings. *Id.* at 693–94.

Courts examine procedural due process claims in two steps: the first asks whether there exists a protected liberty interest under the Due Process Clause, and the second examines the procedures necessary to ensure any deprivation of that protected liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("Once it is determined that due process applies, the question remains what process is due.").

For the first step, Petitioner has a protectable liberty interest. *See Rico-Tapia v. Smith*, No.

CV 25-00379 SASP-KJM, 2025 WL 2950089, at *8 (D. Haw. Oct. 10, 2025) (noting "[e]ven where the revocation of a person's freedom is authorized by statute, that person may retain a protected liberty interest under the Due Process Clause"). "[T]he government's decision to release an individual from custody creates „an implicit promise," upon which that individual may rely, that their liberty „will be revoked only if [they] fail[ ] to live up to the . . . conditions [of release]." *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. July 24, 2025) (quoting *Morrissey*, 408 U.S. at 482) (modifications in original)). "Accordingly, a noncitizen released from custody pending removal proceedings has a protected liberty interest in remaining out of custody." *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *6 (N.D. Cal. Sept. 12, 2025). To determine whether an individual's conditional release rises to the level of a protected liberty interest, courts have "compar[ed] the specific conditional release in the case before them with the liberty interest in parole as characterized by *Morrissey*." *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255, at *3 (E.D. Cal. Sept 9, 2025).

After Petitioner was released from custody to pursue his asylum claim, he gained a liberty interest in his continued freedom. Under *Morrisey*, this release implied a promise that he would not be re-detained, during the pendency of his immigration proceedings, if he abided by the terms of his release. *See, e.g.*, *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (noting the Government's actions in allowing petitioner to remain in the community for over five years strengthened petitioner's liberty interest).

For the second step, the Court considers three factors: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Petitioner, who built a life in the United States and was pursuing his asylum claim, was re-detained and held in custody despite abiding by the rules. His private interest has been severely impacted by his detention. Second, the risk of erroneous deprivation is considerable given that Petitioner has not been given any bond hearing. Lastly, the government interest in detaining Petitioner is low and the cost of providing additional safeguards is not burdensome. Respondents' own regulations require notice and a pre-deprivation hearing, which they did not provide. Indeed, it would be less of a fiscal and administrative burden for the Government to return Petitioner home to await a determination on his immigration proceedings than to continue to detain him.

B. Irreparable Harm

The Ninth Circuit recognizes "irreparable harms imposed on anyone subject to immigration detention," including "the economic burdens imposed on detainees and their families as a result of detention[.]" *Hernandez*, 872 F.3d at 995. Petitioner has now been detained for a considerable period of time, and "[i]t is well established that the deprivation of constitutional rights „unquestionably constitutes irreparable injury.'" *Melendres v Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

C. Balance of Equities and Public Interest

As to the final two *Winter* factors, "[w]hen the government is a party, the analysis of the balance of the hardships and the public interest merge." *Nat'l Urban League v. Ross*, 484 F. Supp. 3d 802, 807 (N.D. Cal. 2020) (citing *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The Government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv* , 753 F.2d 719, 727 (9th Cir. 1983). Second, "it is always in the public interest to prevent the violation of a party's constitutional

rights." *Melendres*, 695 F.3d at 1002. Moreover, "the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (internal citation omitted).

IV. CONCLUSION

As Petitioner has met all the requirements, he asks that this court grant his temporary restraining order.

Respectfully submitted,

Date: February 18, 2026

/s/ Madelaine Behr

Madelaine Behr, Esq.

Attorney for Petitioner