LAXMAN ADHIKARI
ADHIKARI LAW AND ASSOCIATES PC
1390 Market Street, Suite 200
San Francisco, CA 94102
Tel: (650) 483 8614
laxman@adhikarilawusa.com
Attorneys for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

SINGH, Gurjant [redacted] Petitioner, **v.** HAGAN, *et. al.*, Respondents.	Civil No.: **PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND NOTICE OF MOTION**

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that, at the earliest time this matter may be heard, Petitioner respectfully moves this Court for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). Petitioner is currently detained in violation of the Due Process Clause of the Fifth Amendment and seeks immediate release from Respondents' custody pending adjudication of this action, without bond or conditions of supervision.

Petitioner further requests that this Court enjoin Respondents from removing him from the United States during the pendency of these proceedings to preserve this Court's jurisdiction. Petitioner's appeal is presently pending before the Board of Immigration Appeals, and the removal order is therefore not final. See 8 U.S.C. § 1231(a)(1)(B)(ii); 8 C.F.R. § 1003.6(a).

This motion is based on this Notice of Motion, the accompanying memorandum of points and authorities, and the declaration of counsel, Laxman Adhikari, along with all pleadings and records on file in this matter.

This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1). Petitioner seeks relief at the earliest possible opportunity. As detailed further in attached declaration, Respondents' counsel has been notified of this motion, this action, and the reasons justifying temporary restraining order. As of March 18, 2026, Respondents have not stipulated to a TRO or otherwise responded to Counsel.

Petitioner respectfully moves this Court for the issuance of a Temporary Restraining Order and a Preliminary Injunction. To allow Respondents an opportunity to be heard, Petitioner requests that the Court initially issue a Temporary Restraining Order and set this matter for hearing on the Motion for Preliminary Injunction at the Court's earliest convenience, if necessary.

I. Correspondence with Respondents' counsel

On March 18, 2026, undersigned counsel emailed the U.S. Attorney's Office for the District of Colorado at **kevin.traskos@usdoj.gov** to notify respondents of Petitioner's complaint for habeas corpus relief and this motion for temporary restraining order. Counsel provided the U.S. Attorney's office with copies of the complaint, this motion, and all attached papers and informed opposing counsel that further notification would be provided if a hearing date or other order from this Court issues. Counsel also requested that Respondents consider releasing Petitioner from custody immediately to

avoid need for TRO in this case. A response has not been received from Respondents' counsel. *See* Decl. of Laxman Adhikari.

II. Fed. R Civ. P. 65(b)(1) (TRO) requirements are met.

Though Respondents have been provided with actual notice of the habeas petition and this motion, the requirements for issuance of a temporary restraining order without notice under Federal Rule of Civil Procedure 65(b)(1) are satisfied. As set forth in the attached declaration of counsel ("Laxman Adhikari Decl.") and the Petition, ECF No. 1, Petitioner has demonstrated specific facts showing that immediate and irreparable injury is ongoing and will continue before Respondents can be heard in opposition. See Fed. R. Civ. P. 65(b)(1)(A).

Ongoing detention in violation of the Constitution constitutes irreparable harm. See *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792, 805 (10th Cir. 2019) ("[T]he violation of a constitutional right … constitutes irreparable injury."); see also *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). Because Petitioner is currently subject to unlawful detention in violation of the Fifth Amendment, no further showing of irreparable harm is required.

Additionally, counsel has certified efforts to provide notice. Specifically, counsel notified Respondents' counsel, the United States Attorney for the District of Colorado, and provided copies of this motion and all supporting filings, including the habeas petition and accompanying memorandum, via email. See Laxman Adhikari Decl. Accordingly, the certification requirement of Rule 65(b)(1)(B) is satisfied.

III. **Summary of Motion and request for relief**

Petitioner asks this Court to find that his re-arrest by immigration authorities and in the absence of materially changed circumstances, and his continued detention, constitute a violation of his liberty interest under the Due Process Clause of the

Constitution. To the extent necessary, Petitioner asks the Court to find that his current detention can only be pursuant to 8 U.S.C. 1226(a). and that he is, at a minimum, entitled to a bond hearing before an immigration judge if he should be detained again in the future. However, Petitioner believes there is no valid basis for his current detention and that immediate release is thus warranted.

Many hundreds of similarly situated Petitioners have been granted relief across the country and in this district. M.*K. v. Arteta*, 2025 U.S. Dist. LEXIS 265542, *11; (S.D.N.Y. Dec. 23, 2025)(noting the number of cases ruling on these issues)*; Alberto R.C. v. Murray, No. 1:25-cv-01618-KES-SKO (HC), 2025 LX 513970 (E.D. Cal. Dec. 16, 2025); Sharan S. v. Chestnut,* No. 1:25-cv-01427-KES-SKO (HC), 2025 LX 524863 (E.D. Cal. Nov. 12, 2025)*; Gagandeep Singh v. Bowen, No. 5:25-cv-03034-CAS-PD, 2025 LX 590018, at *9 (C.D. Cal. Nov. 21, 2025); Estrada Elias v. Knight, No. l:25-CV-00594-BTW, 2025 WT 3228262, at *1 (D. Idaho Nov. 19, 2025) (collecting cases); see also Tut v. Noem, No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266, at *9 n.1 (C.D. Cal. Oct. 16, 2025) (collecting cases in this district); Doe v. Becerra*, No. 2:25-cv-647-DJC-DMC, 2025 U.S. Dist. LEXIS 37929 at *8 (E.D. Cal. Mar. 3, 2025) (granting temporary restraining order); *López v. Wofford, No. 1:25-cv-01226-KES-SKO (HC), 2025 LX 491132, (E.D. Cal. Oct. 17, 2025)*(requiring release of asylum seeker and a pre-detention bond hearing before re-arrest)*; Rosado v. Figueroa, 2025 U.S. Dist. LEXIS 156344, *34-35* (D. AZ August 11, 2025); *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025 U.S. Dist. LEXIS 127539 at *4 (N.D. Cal. July 4, 2025) (same), (N.D. Cal. July 24, 2025); *Singh*, 2025 U.S. Dist. LEXIS 132500 at *10 (granting preliminary injunction);; *Garcia v. Bondi*, No. 25-cv-5070, 2025 U.S. Dist. LEXIS 113570, at *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order requiring pre-detention hearing before re-detention of noncitizen out of custody six years); *Enamorado v. Kaiser*, No. 25-cv-4072-NW, 2025 U.S. Dist. LEXIS 90261, at *3 (N.D. Cal. May 12, 2025).

Petitioner's case is no different than the above. His re-arrest, without justification, in the absence of violation of terms of initial release, without advance notice or opportunity to be heard, violates his right to due process. Petitioner was arrested inside the U.S., was released on his own recognizance (ORR) and thereafter could not be re-arrested absent a change in circumstances and with advance notice. Adhikari Declaration at **Exh. 2** (NTA).[1] Nor would the outcome be any different if Respondents allege or demonstrate that Petitioner was released from custody on parole. *See e.g. Maklad v. Murray*, 2025 U.S. Dist. LEXIS 153675, *14; 2025 LX 345940; 2025 WL 2299376 (discussing *Y-Z-L-H v Bostock*, 2025 U.S. Dist. LEXIS 130216, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) (before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons therefore).

IV. Factual background

a. Initial entry, arrest, initiation of removal proceedings, and release on recognizance

Petitioner is a native and citizen of India. **[Exh. 2]** (NTA). Petitioner entered the United States on or about Nov. 7, 2023, without presenting himself for inspection or seeking admission. A Customs Border Protection (CBP) Officer detained Petitioner inside the United States on that same date.

Petitioner was then released on his own recognizance under § 1226(a)(2)(B). DHS initiated removal proceedings by filing the NTA with the Executive Office for Immigration Review (EOIR) Immigration Court on or around November 9, 2023 [**Exh.2**]. The NTA charges that Petitioner is a person who is "present in the United States who has not been admitted or paroled[]" and therefore that Petitioner is inadmissible under INA § 212(a)(6)(A)(i) for being present in the U.S. "without being admitted or

[1] As all Exhibits are attached to the "Adhikari Declaration," the documents will be referenced by Exhibit Numbers (1-5) omitting "Adhikari Declaration."

paroled, or who arrived in the United States at any time or place other than as designated.".

Following release from custody, complied with all terms of release and appeared at all required orders of the DHS ICE. Petitioner filed an application for asylum with the EOIR within one year of his arrival and sought a resolution of his case **[Exh. 3]**.

b. Petitioner re-arrested absent change in circumstances or advance notice

Following initial release from custody, Petitioner retained legal counsel and complied with all terms and conditions of his release. He reported to ICE when requested and never missed an immigration court hearing. He submitted an application for asylum to the immigration court. Adhikari Decl. at ¶¶ 11-12. Respondents arrested (re-detained), Petitioner on or around February 28, 2026, despite the absence of probable cause and without any new or intervening circumstances that would render Petitioner's re-arrest or booking necessary, lawful, or rational. Petitioner was thereafter taken to one of ICE'S detention centers, then transferred to Denver Contract Detention Facility where he remains detained at this time. **Exh. 1.**

It is unclear if ICE will posit even a pretextual reason to justify Petitioner's detention. In other cases, Respondents have put forth supposed violations of reporting or address change requirements. Some Courts have noted the dubious or *de minimis* nature of these claims. [2] Moreover still, even had Petitioner violated some term or condition of

---

[2] *See e.g.* Ramazan M. v. Andrews, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at *6 (E.D. Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where Respondents alleged check-in and other electronic monitoring violations, because "[w]hile respondents argue that petitioner is a flight risk, the purpose of a bond hearing is for a neutral decisionmaker to consider and evaluate such an argument to determine whether it is consistent with the facts and to ensure that noncitizens like petitioner are not deprived of their liberty without justification"), and at E.A. T.B. v. Wamsley, No. C25-1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ordering immediate release of petitioner and finding that it does not "necessarily follow that Petitioner can be detained for [release conditions] violations without a hearing. That the Government may believe it has a valid reason to detain petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process."). Judges

his presence in the United States, he would still entitled to a hearing prior to being taken back into custody.[3]

However, following his rearrest, Respondents will almost certainly claim that Petitioner is not eligible for release from custody under 8 U.S.C. 1226(a) because he entered the U.S. without inspection and cite to Matter of Yajure Hurtado, 29 I. & N. Dec. 216 (BIA 2025) (all noncitizens present without inspection are subject to mandatory detention under INA § 1235(b)).

Even where Respondent does not expressly cite *Hurtado*, *supra*, Immigration Judges frequently rely on generalized assertions of flight risk as an independent basis to deny bond, often without individualized evidence demonstrating that the noncitizen is unlikely to appear for future proceedings.

While some IJs in other immigration courts have continued to grant bond to people like Petitioners, consistent with its new policy, DHS also has begun filing Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination. This notice not only appeals to any IJ decision granting bond but also triggers an automatic stay of the bond decision during the appeal. *See* 8 C.F.R. § 1003.19(i)(2).

---

have repeatedly found the supposed violations "negligible" or been skeptical of existence of purported violations. *See e.g. Alas v. Albarran*, 2025 U.S. Dist. LEXIS 207060 *2 FN1 (ND Cal. Oct. 15, 2025).

[3] *See e.g.* Ramazan M. v. Andrews, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at *6 (E.D. Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where Respondents alleged check-in and other electronic monitoring violations, because "[w]hile respondents argue that petitioner is a flight risk, the purpose of a bond hearing is for a neutral decisionmaker to consider and evaluate such an argument to determine whether it is consistent with the facts and to ensure that noncitizens like petitioner are not deprived of their liberty without justification"), and at E.A. T.B. v. Wamsley, No. C25-1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ordering immediate release of petitioner and finding that it does not "necessarily follow that Petitioner can be detained for [release conditions] violations without a hearing. That the Government may believe it has a valid reason to detain petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process."). Judges have repeatedly found the supposed violations "negligible" or been skeptical of existence of purported violations. *See e.g. Alas v. Albarran*, 2025 U.S. Dist. LEXIS 207060 *2 FN1 (ND Cal. Oct. 15, 2025).

V. Legal standard

Temporary restraining orders "serv[e] the [] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439, (1974). Emergency injunctive relief, whether through a temporary restraining order or preliminary injunction, requires a showing of: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the equities balance in the plaintiff's favor; and (4) that preliminary injunctive relief would serve the public interest. *See 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) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Plaintiffs do not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if they raise "serious questions" as to the merits of their claims, the balance of hardships tip "sharply" in their favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

VI. Discussion

The *Winter* factors all weigh in Petitioner's favor in this case. Petitioner's rearrest in the absence of materially changed circumstances constitutes a violation of the Due Process Clause. Petitioner, though noncitizens, remain protected by the Due Process Clause's protections from unlawful deprivation of liberty. Petitioner is detained, stripped of his fundamental right to liberty, and is separated from his community and family and thus is suffering irreparable harm. Respondents have no legitimate interest in unlawfully detaining noncitizens, and the public interest would be served by ensuring that the Respondents do not continue to detain Petitioner, or any person for that matter, in violation of the laws of the United States and at significant cost to the United States public.

1. Likelihood of success on merits-Due Process

a. Due Process Clause Applicable to Noncitizen

The Due Process Clause prohibits deprivations of life, liberty, and property without due process of law. U.S. Const. amend. V. It is firmly established that these protections extend to noncitizens present in the United States. *Trump v. J.G.G.*, 604 U.S. 145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("'It is well established that the Fifth Amendment entitles aliens to due process of law' in the context of removal proceedings," quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993)); *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653, (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

b. Due Process requires hearing prior to rearrest

Well-established precedent firmly holds that, once a noncitizen has been released from civil immigration detention, they may not be rearrested or detained again absent in a material change in circumstances. This principle is statutory and Constitutional. S*ee Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances ... ICE cannot redetain Panosyan."); *Matter of Sugay*, 17 I&N Dec. 647, 640 (B.I.A. 1981). Additionally, any change in circumstances must be "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *Ortiz Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 U.S. Dist. LEXIS 167842, 2020 WL 5517277, at *2 (N.D. Cal. Sept. 14, 2020); *Lopez v. Lyons*, No. 2:25-cv-03174-DJC-CKD, 2025 U.S. Dist. LEXIS 220303, at *7 (E.D. Cal. Nov. 7, 2025). Further, even assuming Respondents initially paroled Petitioner from custody, a fact not evidenced in record as of yet, Petitioner still may not be re-detained absent advance written notification of the nonarbitrary reasons for revocation of parole. *Maklad v. Murray*, 2025 U.S. Dist. LEXIS 153675, *16, 2025 LX 345940, 2025 WL 2299376.

Here, Petitioner was initially arrested by CBP following entry to the U.S. on November 07, 2023. **Exh. 2.** Petitioner was then released on his own recognizance. He was not charged as an arriving alien, and it does not appear that he was paroled from custody under § 1182(d)(5). **Exh. 2.** After he was released, he filed asylum [**Exh. 3**], got his Employment Authorization Documents and started working full time. Petitioner had an ongoing and protected interest in his liberty, absent pre-detention hearing and showing of changed circumstances. He was then rearrested, though no change in circumstance occurred, and no pre-detention hearing was afforded. Respondents will now contend that he is not eligible for a bond hearing under § 1226(a) and that his detention is mandatory under § 1235(b).

Court's considering the deluge of habeas cases sharing the facts of Petitioner's case have recently, and to counsel's knowledge, almost uniformly found that rearrest under these circumstances constitutes a violation of the Due Process Clause of the Constitution and that, therefore, Petitioner is likely to succeed on the merits of the claim. *See e.g., See, e.g., Yurani Hortua v. Chestnut, No. 1:25-cv-01670-TLN-JDP, 2025 U.S. Dist. LEXIS 254930, 2025 WL 3525916 (E.D. Cal. Dec. 9, 2025); Maconel-Arguello v. Chestnut, No. 1:25-cv-01588-KES-EPG-HC, 2026 U.S. Dist. LEXIS 8435, at *14 (E.D. Cal. Jan. 15, 2026)*), 2025 WL 3514495 (E.D. Cal. Dec. 8, 2025*)*; Lopez v. Lyons, No. 2:25-cv-03174-DJC-CKD, 2025 U.S. Dist. LEXIS 220303, at *7 (E.D. Cal. Nov. 7, 2025)*Ortega v. Kaiser,* No. 25-cv-05259-JST, 2025 U.S. Dist. LEXIS 121997, 2025 WL 1771438, at *3 (N.D. Cal. June 26, 2025*) (*collecting cases finding that noncitizens who have been released have a strong liberty interest*) Pablo Sequen v. Kaiser, No. 25-cv-*06487-PCP, 2025 U.S. Dist. LEXIS 148751, at *2 (N.D. Cal. Aug. 1, 2025) (collecting cases); *Rosado v. Figueroa, 2025 U.S. Dist. LEXIS 156344, *35* (D. AZ August 11, 2025); M.*K. v. Arteta*, 2025 U.S. Dist. LEXIS 265542, *11; (S.D.N.Y. Dec. 23, 2025)(noting that over 160 different judges sitting across the country have found due process violations in similar or identical cases).

c. The Mathews Factors all weigh in Petitioner's favor

Where detention of a noncitizen implicates violation of Due Process Clause, the protections of the Due Process Clause must be balanced with the government's countervailing interests in immigration enforcement. To determine whether civil detention violates a detainee's right to liberty the federal courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). *Mathews* requires consideration of (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." 424 U.S. at 335.

The relevant factors all weigh in Petitioner (Plaintiff)'s favor. Petitioner has a substantial private interest in remaining out of custody, which would allow him to live at home, work, and assist his counsel to present his asylum claim to the immigration court. *See Morrissey v. Brewer*, 408 U.S. 471, 482, 484 (1972). There is also a risk of erroneous deprivation that the additional procedural safeguard of a pre-detention hearing would help protect against. Further, as numerous Courts have recognized, the government's interest in re-detaining (or continuing to detain) Petitioner without a hearing is "low," where Petitioner has consistently appeared for all scheduled immigration hearings and has no criminal record. *See Jorge M.F.*, 2021 U.S. Dist. LEXIS 40823, at *3; *Ortega*, 415 F. Supp. 3d at 970.

Petitioner is suffering ongoing, immediate, and irreparable harm in the absence of preliminary relief. The Ninth Circuit has recognized "irreparable harms imposed on anyone subject to immigration detention," including "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." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Those risks are present here. Moreover, "[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)).

Finally, the balance of the equities and the public interest, which merge in light of the fact that the government is the opposing party, weigh heavily in favor of Petitioner. "[T]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Jorge M. F.*, 2021 U.S. Dist. LEXIS 40823, at *3 (cleaned up) (quoting *Ortiz Vargas*, 2020 U.S. Dist. LEXIS 153579, and then quoting *Hernandez*, 872 F.3d at 996); Without the requested relief, Petitioner faces the significant ongoing harms of loss of his liberty and inability to support himself, his family, and to assist fully in preparation to present his asylum claim. There is little or no harm to Respondents of releasing Petitioner until a pre-detention hearing can be completed to show that that detention is warranted. Moreover, a party "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).

For the foregoing reasons it is likely that Petitioner will succeed on the merits of his Due Process claim and request for immediate release from custody. As such this factor should weigh in favor of granting TRO in this case.

2. The remaining *Winter* factors all weigh in Plaintiff's favor

As discussed above, irreparable harm is certain and ongoing in this case. *See supra,* (discussion of Mathews Factors). Additionally, the equities all weigh in favor of Petitioner, and the public interest also favors Petitioners release from unlawful and costly immigration detention. Id.

As all the *Winter* factors weigh strongly in Petitioner's favor, we respectfully ask the Court to issue a TRO requiring petitioner's immediate release.

3. Petitioner is not detained pursuant to INA § 1235(b)

Despite the countervailing evidence, *See eg. NTA* ***Exh. 2, 3, and 4*** in Respondent's possession and clear precedent from the Board of Immigration Appeals, Ninth Circuit Court of Appeals, and U.S. Supreme Court, to the contrary, *see e.g. Matter of Cabrera-Fernandez,* 28 I&N Dec. 747, 749 (BIA 2023); *Ortega Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) *Jennings v. Rodriguez, 583 U.S. 281, 300 (*with only limited and nonapplicable exceptions, the only way an alien detained under INA § 235(b) may be released, is temporary parole "for urgent humanitarian reasons or significant public benefit"—Petitioner was not released from initial arrest on parole- *See* **Exh. 2**), it is likely that Respondents will assert that Petitioner's detention is mandatory and governed by INA § 235.

Petitioner believes the issue is not relevant to the question of Petitioner's immediate release from custody. As discussed above, even if the initial arrest was pursuant to 235, Petitioner, once released, was entitled to either pre-arrest notice and a nonarbitrary basis for rearrest or for revocation of parole (assuming there was a parole in this case) or a pre-detention hearing before a neutral arbiter.

Petitioner asks the Court to consider his position on the non-applicability of § 1225, in case the Court finds the issue determinative to this petition, and because it is likely to be raised by Respondents. Further, a determination that Petitioner's current or future detention can only be governed by § 1226 while removal proceedings are pending would afford Petitioner another avenue to relief and more security for the future from illegal rearrest and deprivation of bond hearing before an immigration judge.

Section 1225 (INA § 235) governs the arrest and detention of arriving aliens. It provides that, "in the case of an alien who is an application for admission, if the

examining officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for [removal proceedings]." Section 235 does not allow for release from custody on ORR and does not allow for an immigration judge to have jurisdiction to make a custody redetermination. Individuals detained under INA § 235 can only be paroled into the United States "for urgent humanitarian reasons or significant public benefit." *Jennings*, 583 U.S. at 300 (quoting INA § 212(d)(5)(A). Release on recognizance is not "humanitarian" or "public benefit" "parole into the United States" under section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon a charge of removability, authorized under section 1226. *Ortega Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under INA § 236, including because he was not an "arriving alien" under the regulations governing section 235 examinations).

On the other hand, INA § 236, governs the custody rules where an individual is "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 D. Ct 830 (2018). Again, any claim that petitioner is now detained pursuant to INA § 235 cannot be squared with the facts or applicable law.

As evidenced here, there is clear record showing that Petitioner's prior release in 2023 was pursuant to INA § 236. Specifically, the fact that Petitioner was released without being paroled means that his arrest and release was pursuant to INA § 236. **Exh. 2**. This fact is evidenced in the NTA issued by Respondents where they do not indicate the respondent is an arriving alien and indicate that he was not paroled. **Exh 2**. Petitioner's current arrest cannot be pursuant to INA § 235 because Petitioner, over a year after arrival, after being placed in full removal proceedings, released from custody, and establishing a life and pursuing asylum inside the United States, is not an arriving alien or applicant for admission under INA § 235 and thus his current arrest could only be pursuant to INA § 236.

i. Petitioner is not 'an arriving alien' where he has been detained in the interior for over a year after arriving in the United States

Secondly, and as has been noted by a growing number of Courts to address habeas petitions under this new ICE/EOIR policy initiative, decades of precedent and policy reflect the fact that noncitizens apprehended within the United States are not treated as 'arriving aliens' and not subject to mandatory detention under INA § 235. *See* e.g. *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *30 ("It is worth noting that such an approach would upend decades of practice. Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security ("DHS") for a few weeks, since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had 'revisited its legal position'"). These Courts have also noted that this novel legal position would contravene the plain meaning of sections 236, 235, and would render key aspects of § 236 as meaningless. *Id. See also Martinez v. Hyde,* 2025 U.S. Dist. LEXIS 141724 *11-13 (D. Mass. July 24, 2025). Further, these Court's noted that the novel interpretation proposed by ICE would render recent amendments to the Statute, made by the Laken Riley Act, Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), as meaningless. *Id* at 17.

4. **Order of Immediate release is only adequate remedy**

Because Petitioner is in custody, the only remedy adequate at this stage is to order immediate release and enjoin Respondents from re-detaining Petitioner absent a pre-detention hearing with a neutral arbitrator to determine whether detention is lawful and warranted. A Temporary restraining order may, and should where possible, return parties to the 'status quo' which refers to "the last uncontested status which preceded the pending controversy." *Doe v. Noem*, 2025 U.S. Dist. LEXIS 73660, at *9 (W.D. Wash. Apr. 17, 2025) (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). In this case, the status quo is the moment prior to the Petitioner's likely unlawful

detention. *See Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, at *3 (N.D. Cal. July 4, 2025); *Ercelik v. Hyde*, 2025 U.S. Dist. LEXIS 88412, at *15-16 (D. Mass. May 8, 2025); *Kuzmenko v. Phillips*, 2025 U.S. Dist. LEXIS 40961, , at *2 (E.D. Cal. Mar. 10. 2025).

Further, Respondents will not assert that they are holding Petitioner under § 1226(a). This is because, § 1226(a) detention is only appropriate, where a noncitizen was previously released, where there is a predeprivation custody hearing. *see* Zinermon v. Burch, 494 U.S. 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d100 (1990); Guillermo M.R., 791 F. Supp. 3d at 1036 ("[A]bsent evidence of urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ"). Such circumstances or justification is not even proposed by Respondents who, again, do not claim that they arrested or are detaining Petitioner under § 1226(a). As both § 1226(a) and (b) are invalid basis for detention, and no other detention authority is asserted, Petitioner is held by Respondents without *any* statutory authority and the proper remedy is immediate release. Garrison G. v. Bondi, No. 26-cv-172 (JMB/DJF), 2026 U.S. Dist. LEXIS 7989, 2026 WL 115026, at *4 (D. Minn. Jan. 15, 2026); Luis N. v. Bondi, No. 26-cv-226 (JMB/DLM), 2026 U.S. Dist. LEXIS 7841, 2026 WL 115070, at *3 (D. Minn. Jan. 15, 2026); Guadarrama Ayala v. Henkey, No. 25-cv-682 (AKB), 2025 U.S. Dist. LEXIS 268011, 2025 WL 3754138, at *6 (D. Idaho Dec. 29, 2025); *J.A.C.P. v. Wofford*, No. 25-cv-1354 (KES/SKO) (HC), 2025 U.S. Dist. LEXIS 211735, 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025); Lepe v. Andrews, 801 F. Supp. 3d 1104, 1119 (E.D. Cal. 2025); Martinez v. Hyde, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025); Membreno v. Thompson, No. 25-CA-1845-XR, 2026 U.S. Dist. LEXIS 2807, 2026 WL 93980, at *5 (W.D. Tex. Jan. 7, 2026)

5. The Court need not impose bond under Fed. R. Civ. P. 65 where respondents will not be harmed and no costs or damages will be incurred.

Finally, because "there is no realistic likelihood of harm to the [respondents] from enjoining [their] conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), no security is needed to ensure that respondents will be reimbursed for "costs and damages sustained by ... hav[ing] been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Respondents are, at taxpayer expense, unlawfully detaining Petitioner and thousands of other identically situated noncitizens. Releasing Petitioner would presumably save respondents the cost of detaining him and, as there is no suggestion that he is either a ganger or flight risk, it is hard to fathom what costs or damages would be incurred to Respondents. Even if there were some minimal damages, bond would not be justified where the detention is so overwhelmingly recognized as unlawful and therefore there is little likelihood that they could claim they incurred damages from having been wrongfully restrained. We thus ask the Court to exercise its discretion under Rule 65(c) to dispense with the filing of bond. *Sequen v. Kaiser*, 793 F. Supp. 3d 1114 (N.D. Cal. 2025).

Conclusion

Petitioner remains unlawfully detained. We ask this Court to order Respondents to do what they already know is required under the law—release respondent and not re-detain him without a bond hearing where the government must prove that he is a flight risk or danger to the community by clear and convincing evidence before he may be rearrested. That hearing should have occurred before petitioner was re-detained. "'[T]he root requirement' of the Due Process Clause" is "'that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest.'" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (quoting Boddie v. Connecticut, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).

REQUESTED RELIEF

For the foregoing reasons, Petitioner respectfully requests that the Court:

(1) GRANT this Motion and ORDER Petitioner's immediate release from Respondents' custody and;
(2) Enjoin and Restrain Respondents from re-detaining Petitioner without notice and a pre-deprivation hearing before a neutral decision maker and;
(3) Waive the requirement that bond be posted
(4) ORDER any other relief this Court finds necessary and proper.

Respectfully submitted this 18th Day of March 2026,

/s/Laxman Adhikari
Laxman Adhikari
ADHIKARI LAW AND ASSOCIATES PC
1390 Market Street, Suite 200
San Francisco, CA 94102
Tel: (650) 483 8614
laxman@adhikarilawusa.com
Attorneys for Petitioner