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UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

ROHIT SAINI [redacted]
Petitioner,

v.

JUAN BALTAZAR, Warden of the ICE Denver Contract Detention Facility, ROBERT HAGAN, Denver Field Office Director for U.S. Immigration and Customs EnforcemenT; TODD LYONS, Acting Director of United States Immigration and Customs Enforcement; PAMELA BONDI, Attorney General of the United States, acting in their official capacities,
Respondents.

Case No. 1:26-cv-01142-TPO

PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the District of Colorado, that Petitioner, will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States,

Petitioner respectfully requests that this Court order Petitioner's immediate release from Respondents' custody pending these proceedings, without requiring bond or electronic monitoring. To preserve this Court's jurisdiction, Petitioner further seeks an order enjoining Respondents from removing him from the United States during the pendency of these proceedings. This motion is based on this Notice of Motion, Motion with enclosed memorandum of points and authorities in support of this motion, and the attached evidence and declaration of Petitioner's counsel, Daljit Ghuman. This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No. 1).

Respondents' counsel has been notified of this motion, this action, and the reasons justifying temporary restraining order. As of March 19, 2026, Respondents have not stipulated to a TRO or otherwise responded to Counsel. Plaintiff respectfully move the Court for temporary restraining order and preliminary injunction. To allow time for Defendants to be heard, Plaintiff requests the Court initially to grant a temporary restraining order and to set a date for hearing on motion for preliminary injunction, if necessary.

I. **Correspondence with Respondents' counsel**

On March 19, 2026, undersigned counsel emailed the U.S. Attorney's Office for the District of Colorado to notify respondents of Petitioner's complaint for habeas corpus relief and of the intent to file this motion for temporary restraining order. On March 19, 2026, undersigned 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 Defendants consider releasing Petitioner from custody immediately to avoid need for TRO in this case. A response has not been received from Defendants' counsel. *See* Decl. of Daljit Ghuman (Ghuman Decl.).

II. FRCP 65(b)(1) (ex parte TRO) requirements are met.

Though Respondents have been provided with actual notice of the habeas petition in this case and of this motion, the requirements for issuing a temporary restraining order without notice pursuant to Federal Rule of Civil Procedure 65(b)(1) are satisfied. Counsel, in the attached declaration, ("Ghuman Decl."), and the complaint, ECF No. 1, has set out specific facts showing that immediate and irreparable injury, loss, or damage is ongoing and will continue to result before Respondents' opposition can be heard. *See* Fed. R. Civ. Pro. 65(b)(1)(A). Of course, ongoing unlawful detention in violation of the Constitution is an irreparable injury. Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017) (quoting Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)). When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary. As noted above, counsel notified respondents' counsel of this TRO request and provided their counsel, The U.S. Attorney for the District of Colorado, with copies of this motion and all documents in this case including Petitioner's habeas petition and Notice of Motion for Temporary Restraining Order, and this memorandum in support of that motion by email. *See* "Ghuman Declaration." Fed. R. Civ. P. 65(b)(1)(B).

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

Petitioner asks this Court to find that his re-arrest by immigration authorities nd his continued detention pursuant to 8 U.S.C. § 1225(b), constitutes 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 INA § 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 while removal proceedings are ongoing.

Several hundred District Court Judges, in an even growing number of cases, many within this District, have found that similar or identical circumstances constituted unlawful detention with many quickly granting TROs or final relief. Martinez v. Baltazar,

Civil Action No. 26-cv-00106-PAB, 2026 U.S. Dist. LEXIS 13991, at *11 (D. Colo. Jan. 26, 2026); Marin v. Baltazar, Civil Action No. 25-cv-03697-PAB, 2025 U.S. Dist. LEXIS 261962, at *11 (D. Colo. Dec. 18, 2025); Gonzalez Ramos v. Dedos, No. 1:25-cv-00975-MLG-KRS, 2025 WL 3653928, at *1, *4-*5 (D.N.M. Dec. 17, 2025) (granting a § 2241 petition based solely on violations of Fifth Amendment due process rights related to incorrect classification under § 1225); Rivera Esperanza v. Francis, No. 25-CV-8727, 2025 U.S. Dist. LEXIS 253384, 2025 WL 3513983, at *9 n.4 (S.D.N.Y. Dec. 8, 2025) ("Having found that [the petitioner's] rights under the Fifth Amendment were violated when the Government detained him on October 21, 2025, the Court does not reach his alternative arguments that his detention violated the Fourth Amendment or the INA."); Intriago-Sedgwick v. Noem, No. 1:25-cv-01065-MIS-LF, 2025 U.S. Dist. LEXIS 263112, at *21 (D.N.M. Dec. 19, 2025); Diallo v. Baltazar, Civil Action No. 1:25-cv-3548-SKC, 2026 U.S. Dist. LEXIS 17341, at *7 (D. Colo. Jan. 29, 2026); Puerto v. Leeper, No. 26-CV-405, 2026 U.S. Dist. LEXIS 14909, at *3 (E.D.N.Y. Jan. 27, 2026)(noting "hundreds" of Courts in agreement); Echevarria v. Bondi, No. CV-25-03252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025); 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); M.B. v. Noem, No. 1:26-cv-00005-DJC-AC, 2026 U.S. Dist. LEXIS 4661, at *5-8 (E.D. Cal. Jan. 9, 2026); J.S.H.M v. Wofford, No. 1:25-cv-01309-JLT-SKO, 2025 U.S. Dist. LEXIS 204422, 2025 WL 2938808; 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);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); 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).

Nor does the fact of an arrest, without conviction and without consideration of evidence or circumstances of arrest, change the analysis as to whether Petitioner is properly held pursuant to § 1225(b) or as to whether release is warranted. *See e.g.* Monsalve v. Chestnut, No. 1:26-cv-00626-DAD-CKD, 2026 U.S. Dist. LEXIS 17745, at *3 (E.D. Cal. Jan. 29, 2026) and Cajina v. Wofford, No. 1:25-cv-01566-DAD-AC (HC), 2025 U.S. Dist. LEXIS 229609, at *2 (E.D. Cal. Nov. 21, 2025). Indeed, the Board of Immigration Appeals has recognized the limited value of an arrest standing alone as evidence of commission of a crime. The Board of Immigration Appeals (BIA) has also found that an arrest is insufficient to prove a crime was committed. Matter of Arreguin De Rodriguez, 21 I. & N. Dec. 38, 42 (BIA 1995) ("Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein."); see also Avila-Ramirez v. Holder, 764 F.3d 717, 723-725 (7th Cir. 2014) (concluding that uncorroborated arrest reports should not be given significant weight, particularly when the noncitizen admits no wrongdoing).

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 and thereafter could not be re-arrested without warrant, absent exigent circumstances. Nor would the outcome be any different if Respondents allege or demonstrate that Petitioner was released from custody on humanitarian 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 own recognizance

Petitioner is a native and citizen of India. Ghuman Declaration at Exh. 1 (NTA).[1] Petitioner entered the United States on or about June 28, 2024 without presenting himself for inspection or seeking admission. Id. A Customs Border Protection (CBP) Officer arrested Petitioner inside the United States on that same date. Exh. 2 (Order of Release on Recognizance under § 1226) Petitioner was then released on his own recognizance on that same date under § 1226(a)(2)(B). Id. Petitioner filed an application for asylum with the immigration court. Exh. 3 (Form I589 as filed with Court) However, almost two years later, and despite compliance with the order of release, absent change in circumstances, and without making an individualized determination of flight risk or danger, Respondents rearrested Petitioner on March 12, 2026. Exh. 4 (Form I830)

Removal proceedings under § 1229a remain ongoing. Petitioner's presence in the United States remains authorized and lawful pursuant to his pending application for asylum and parole into the United States. 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 paroled, or who arrived in the United States at any time or place other than as designated[,]" and § 212(a)(7)(A)(i)(I) as an "immigrant who, at the time of application for admission, is not in possession of a [visa and identity document.] Exh 1.

b. Petitioner re-arrested despite no 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 applied for asylum with the immigration court and completed all required steps to seek relief in the United States.

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[1] As all Exhibits are attached to the "Ghuman Declaration," the documents will be referenced by Exhibit Number (1-2) omitting "Ghuman Declaration" for convenience.

ECF No. 1. Respondents will undoubtedly cite Petitioner's arrest as the reason it arrested Pettioner. However, arrest is not evidence of guilt, is not a 'violation of law' and the mere arrest is not a violation of Petiitoner order of release on own recognizance. The fact also remains that Respondents did not arrest Petitioner with warrant or even make the pretext that arrest was due to violation of order of supervision. Instead, they claim only that Petitioner is subject to mandatory detention under § 1225(b). In other cases, Respondents have put forth supposed violations of reporting or address change requirements though remote, unverified, and, to counsel, clearly unrelated to the arrest. 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 his presence in the United States, he would still entitled to a hearing prior to being taken back into custody.[3]

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[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 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

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). To obtain a restraining order, the movant must show "(1) a substantial likelihood of success on the merits, (2) irreparable injury in the absence of the injunction, (3) its threatened injury outweighs the harm to the opposing party under the injunction, and (4) the injunction is not adverse to the public interest. First W. Cap. Mgmt. Co. v. Malamed, 874 F.3d 1136, 1139 n.2 (10th Cir. 2017) (citing Westar Energy, Inc. v. Lake, 552 F.3d 1215, 1224 (10th Cir. 2009)). "The burden is on the movant, and 'the right to relief must be clear and unequivocal' due to the extraordinary nature of preliminary injunctions as a remedy." N.S. v. Albuquerque Pub. Schs. Bd. of Educ., No. 1:24-cv-01303-MLG-GJF, 2025 U.S. Dist. LEXIS 226466, 2025 WL 3215604, at *2 (D.N.M. Feb. 3, 2025) (quoting Greater Yellowstone Coal. v. Flowers, 321 F.3d 1250, 1256 (10th Cir. 2003)).

VI. Discussion

The 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 a noncitizen, remains 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

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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).

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."). *De* Souza v. Robbins, No. 1:25-cv-01597-DJC-JDP, 2025 U.S. Dist. LEXIS 230557, at *6 (E.D. Cal. Nov. 23, 2025)

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 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); *O*rtiz 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).

Here, Petitioner was initially arrested by CBP on warrant under § 1226(a) following entry to the U.S. on. He was released on conditional parole under § 1226(a)(B)(2) on that same date. He was not charged as an arriving alien in the notice to appear though the form contains a box to so indicate. Petitioner, instead was released on 'conditional parole' or what is known as an 'order of release on own recognizance' under § 1226(a)(B)(2). Thereafter, 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 § 1225(b).

Courts hearing thousands of cases with factual circumstances identical or nearly identical to Petitioner 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.,* Intriago-Sedgwick v. Noem, No. 1:25-cv-01065-MIS-LF, 2025 U.S. Dist. LEXIS 263112, at *21 (D.N.M. Dec. 19, 2025); Diallo v. Baltazar, Civil Action No. 1:25-cv-3548-SKC, 2026 U.S. Dist. LEXIS 17341, at *7 (D. Colo. Jan. 29, 2026); *M*arin v. Baltazar, Civil Action No. 25-cv-03697-PAB, 2025 U.S. Dist. LEXIS 261962, at *11 (D. Colo. Dec. 18, 2025) Puerto v. Leeper, No. 26-CV-405, 2026 U.S. Dist. LEXIS 14909, at *3 (E.D.N.Y. Jan. 27, 2026)(noting "hundreds" of Courts in agreement); 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)); Martinez v. Hyde, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025); Orejuela Gutierrez v. Chesnut, No. 1:25-cv-01515-DAD-AC (HC), 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).

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); Cortes v. Noem, Civil Action No. 1:25-cv-02677-CNS, 2025 U.S. Dist. LEXIS 181582, at *10 (D. Colo. Sep. 16, 2025)("At bottom, the Court agrees with other courts that have, against substantially similar factual backgrounds, concluded that detention without a bond hearing amounts to a due process violation.")

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 Plaintiff's favor. Petitioner has a substantial private interest in remaining out of custody, which would allow him to live at home with his wife and child, 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 convictions.

Though Petitioner has been arrested, he has not been convicted of any criminal offense and there is no admission or extraneous evidence of guilt or dangerousness. An arrest, standing alone, is not strong evidence of anything and particularly not guilt. *See e.g.* Monsalve v. Chestnut, No. 1:26-cv-00626-DAD-CKD, 2026 U.S. Dist. LEXIS 17745, at *3 (E.D. Cal. Jan. 29, 2026) and Cajina v. Wofford, No. 1:25-cv-01566-DAD-AC (HC), 2025 U.S. Dist. LEXIS 229609, at *2 (E.D. Cal. Nov. 21, 2025). Indeed, the Board of Immigration Appeals has recognized the limited value of an arrest standing alone as evidence of commission of a crime. The Board of Immigration Appeals (BIA) has also found that an arrest is insufficient to prove a crime was committed. Matter of Arreguin De Rodriguez, 21 I. & N. Dec. 38, 42 (BIA 1995) ("Just as we will not go behind a record of conviction to determine the guilt or innocence of an alien, so we are hesitant to give substantial weight to an arrest report, absent a conviction or corroborating evidence of the allegations contained therein."); see also Avila-Ramirez v. Holder, 764 F.3d 717, 723-725 (7th Cir. 2014) (concluding that uncorroborated arrest reports should not be given significant weight, particularly when the noncitizen admits no wrongdoing); Billeke-Tolosa v. Ashcroft, 385 F.3d 708, 713 (6th Cir. 2004)

Petitioner is suffering ongoing, immediate, and irreparable harm in the absence of preliminary relief. Valdez, 559 F. Supp. 3d at 1181-82 (quoting Schrier v. Univ. of Colo., 427 F.3d 1253, 1267 (10th Cir. 2005)). "'Merely serious or substantial harm is not irreparable harm.'" *Id.* (quoting Schrier, 427 F.3d at 1267). "What makes an injury 'irreparable' is the inadequacy of, and the difficulty of calculating, a monetary remedy after a full trial." Free the Nipple-Fort Collins, 916 F.3d at 806 (citing *Awad*, 670 F.3d at 1131). "Any deprivation of any constitutional right fits that bill." *Id.* Absent the Court's Order requiring Respondents provide a bond hearing, Cortez-Gonzalez will continue to be denied her Fifth Amendment due process right and will remain detained unlawfully in penal like conditions. Cortez-Gonzalez v. Noem, No. 2:25-cv-00985-MLG-KK, 2025 U.S. Dist. LEXIS 252249, at *13 (D.N.M. Dec. 4, 2025)

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. There is a strong public interest in upholding procedural protections against unlawful detention, 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). "Whatever (unstated) interest Respondents may have in detaining [Petitioner], it is outweighed by the "'substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.'" Gamez Lira v. Noem, No. 1:25-cv-00855-WJ-KK, 2025 U.S. Dist. LEXIS 173818, 2025 WL 2581710, at *4 (D.N.M. Sept. 5, 2025) (quoting League of Women Voters of U.S. v. Newby, 838 F.3d 1, 12, 426 U.S. App. D.C. 67 (D.C. Cir. 2016).

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. **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 redetaining 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." 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) (quoting Martinez); 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).

A due process violation cannot be remedied by post detention review. Munoz Materano v. Arteta, 2025 WL 2630826, at *20 (S.D.N.Y. Sept. 12, 2025) (ordering immediate release); Chipantiza Sisalema v. Francis, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); Rueda Torres v. Francis, No. 25-cv-8408, 2025 WL 3168759, at

*6 (S.D.N.Y. Nov. 13, 2025) (same); Cifuentes v. Soto, No. 25-cv-18029, 2025 WL 3771380, at *4 (D.N.J. Dec. 31, 2025) (same); Gonzalez Centeno v. Lowe, No. 3:25-cv-2518, 2026 WL 94642, at *4 (M.D. Pa. Jan. 13, 2026) (same); Feisal O. v. Noem, No. 26-cv-81, 2026 WL 92857, at *3 (D. Minn. Jan. 13, 2026) (same); Garcia Covarrubias v. Holston, No. 2:25-cv-02445, 2026 WL 25970, at *4 (D. Nev. Jan. 5, 2026) (same) Kenzhebaev v. Noem, No. 1:25-cv-1786, 2025 WL 3737975, at *9 (W.D. Mich. Dec. 29, 2025) (same); Crespo Tacuri v. Genalo, No. 25-cv-06896, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment).

Additionally, evidence suggests that immigration judges cannot or will not provide a fair and/or neutral hearing sufficient to satisfy the dictates of statue or due process. ECF No. 1 at ¶¶ 80-93. The assertions in Petitioners complaint are not mere speculation and have been written about and noted by reporters and District Courts across the U.S. *See e.g.* Ulloa Bueno v. Soto, No. 26-CV-896, 2026 WL 509102, at *2 (D.N.J. Feb. 24, 2026) (granting immediate release after immigration judges twice failed to conduct a neutral bond hearing with the burden on DHS: "Continued detention in the face of repeated noncompliance with explicit judicial directives constitutes an ongoing deprivation of liberty without constitutionally sufficient process."); Pedroso de Oliveira v. Freden, No. 6:25-CV-6663 2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025); Akhemedov v. Pittman, No. CV 2513734 (MCA), 2026 WL 323404, at *4 (D.N.J. Feb. 6, 2026) (ordering second bond hearing because at the first court-ordered hearing, the IJ did not clearly put the burden of proof on DHS as the habeas court had required); A.D. v. Oddo, 3:25-cv-460-SLH-MPK, Dkt. No. 40 (W.D.P.A. Feb. 12, 2026) (granting motion to enforce and ordering immediate release where IJ did not provide correct interpreter, then incorrectly called the petitioner "evasive" in denying bond); Said v. Noem, 3:25-cv-938-MOC (W.D.N.C, Feb. 4, 2026) (granting TRO where immigration judge's refusal to consider testimony and declarations, or let petitioner defend himself

against unauthenticated assertion he had not complied with a prior condition of release, likely violated due process); Picado v. Hyde, 26-cv-65-JJM-PAS (D.R.I. Feb. 9, 2026) (granting immediate release where Picado had "two bond hearings that two separate judges have found to be deficient," including an immigration judge finding that an uncorroborated police report that Picado was speeding constituted clear and convincing evidence he was a danger to the community); Santos v. Lowe, No. 1:18-cv-1553, No. 2020 WL 4530728, at *3 (M.D. Pa. Aug. 6, 2020) (after court-ordered bond hearing for § 1226(c) prolonged detention claim, finding that "[m]echanistic reliance on factors that are common to all 1226(c) detainees will not suffice"); Luciano-Jimenez v. Doll, 543 F. Supp. 3d 69, 72 (M.D. Pa. 2021) (finding court ordered bond hearing was not individualized and granting federal court hearing); Kyle Cheney, Judges keep ordering immigration hearings – but say the results are a sham,Mar.6,2016,available at https://www.politico.com/news/2026/03/06/immigrationcase-hearings-judges-00815660;

Thus, if this Court finds that a bond hearing should be afforded rather than immediate release, Petitioner requests a hearing before this Court, a Magistrate Judge, or through some non-Executive Branch employee or agent. While Court's have found that Immigration Judges have expertise or are better suited to review danger or flight risk, the evidence suggests that the immigration judges are not using any such expertise or otherwise have been instructed or intimidated into forgoing use of their expertise.

3. Petitioner is not detained pursuant to INA § 1225(b)

Despite the countervailing evidence, *See eg. Exh.* 2 (Order of Release on Recognizance under § 1226 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 § 1225(b) may be released, is temporary parole "for urgent humanitarian reasons or

significant public benefit"—Petitioner was not released from initial arrest on humanitarian parole- *See* Exh. 2), it is likely that Respondents will assert that Petitioner's detention is mandatory and governed by INA § 1225.

Petitioner believes the issue is not relevant to the question of Petitioner's immediate release from custody. As discussed above, even if initial arrest was pursuant to 1225(b), Petitioner, once released, was entitled to either pre-arrest notice and nonarbitrary basis for rearrest or for revocation of parole 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(b) 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 1225 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 § 1225 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 § 1226, including because he was not an "arriving alien" under the regulations governing section 1225 examinations).

On the other hand, INA § 1226, 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 § 1225 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 § 1226. Specifically, the fact that Petitioner was released on his own recognizance means that his arrest and release was pursuant to INA § 1226(a)(B)(2). S*ee* Ortega-Cervantes v. Gonzales, 501 F.3d 1111, 1115 (9th Cir. 2007) (noting that "release on recognizance" can be used as another name for "conditional parole" under Section 1226); De Souza v. Robbins, No. 1:25-cv-01597-DJC-JDP, 2025 U.S. Dist. LEXIS 230557, at *6 (E.D. Cal. Nov. 23, 2025) .Petitioner's current arrest can not be pursuant to INA § 1225 because Petitioner, over two-years after arrival, after release on conditional parole, applying for asylum, establishing a life in the U.S., being being placed in full removal proceedings under 1229a, is not an arriving alien or applicant for admission under INA § 1225(b) and thus his current arrest could only be pursuant to § 1226(a).

i. Petitioner is not 'an arriving alien' where he detained in the interior over a year after being released on parole 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 § 1225(b). *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 1226, 1225, and would render key aspects of § 1226 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.

Nor have Courts been impressed or persuaded by the reasoning Matter of Yajure Hurtado, 29 I. & N. Dec. 216, 2025 BIA LEXIS 44 (September 5, 2025) wherein the BIA held that all noncitizens present in the United States without inspection are not eligible for bond hearings. Recently, a Court in the Central District rejected that decision and ordered that all detained persons present in the United States at time of apprehension should be entitled to bond hearing. Bautista v. Santacruz, No. 5:25-cv-01873-SSS-BFM, 2025 LX 563862 (C.D. Cal. Nov. 25, 2025). The same conclusion has been reached many times over within this District. like Marin v. Baltazar, Civil Action No. 25-cv-03697-PAB, 2025 U.S. Dist. LEXIS 261962, (D. Colo. Dec. 18, 2025) and this Circuit, like Cortez-Gonzalez v. Noem, No. 2:25-cv-00985-MLG-KK, 2025 U.S. Dist. LEXIS 252249, at *9 (D.N.M. Dec. 4, 2025). (noting the conclusion is in accord with Jennings v. Rodriguez, 583 U.S. 281 and noting that many courts continue to reach this conclusion.).

For the reasons described here, and more fully explicated by the well-reasoned decision in cases like Cortez-Gonzalez v. Noem, No. 2:25-cv-00985-MLG-KK, 2025 U.S. Dist. LEXIS 252249, at *9 (D.N.M. Dec. 4, 2025); Morillo v. Albarran, No. 1:25-cv-01533-DJC-AC, 2025 U.S. Dist. LEXIS 224965, 2025 WL 3190899, at *2-4 (E.D. Cal. Nov. 15, 2025). Petitioner asks this Court to determine and declare that Petitioner' current arrest could only be pursuant to INA § 1226(a), though unlawful under that section as well, and that any future detention should comport with the Due Process

Clause and/or the mandates of § 1226(a) which afford Petitioner, and similarly situated noncitizens, with the rights to pre-detention hearing prior to rearrest and a bond hearing before an immigration judge whether rearrest is warranted. De Souza v. Robbins, No. 1:25-cv-01597-DJC-JDP, 2025 U.S. Dist. LEXIS 230557, at *7 (E.D. Cal. Nov. 23, 2025); Lopez v. Lyons, No. 2:25-cv-03174-DJC-CSD, 2025 U.S. Dist. LEXIS 220303, 2025 WL 3124116, at *3 (E.D. Cal. Nov. 7, 2025).

Petitioner is entitled to immediate release from custody and should remain free unless he is found to be a danger or flight risk by a neutral arbiter. Even assuming Respondents are correct that the initial arrest or even current arrest should (have) been governed by § 1225(b), such conclusion would still run into Constitutional limitations discussed above. Petitioner now has a substantial liberty interest which arose from Respondents releasing him from custody under INA § 236. Guillermo M. R. v. Kaiser, 791 F. Supp. 3d 1021, 2025 WL 1983677, at *4 (N.D. Cal. 2025) (recognizing that "the liberty interest that arises upon release [from immigration detention] is *inherent* in the Due Process Clause").

4. The Court need not impose bond under rule 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 Respondents from enjoining their conduct., no security is needed to ensure that respondents will be reimbursed for costs and damages sustained by having 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 were there some minimal damages, bond would not be justified where the detention is so overwhelmingly recognized as unlawful and therefore 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 redetain 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).

REQUESTED RELIEF

For the foregoing reasons, Plaintiff 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) Declare that Respondent's may only rearrest Petitioner pursuant to INA § 1226 while removal proceedings under § 1229a remain pending and that any future civil arrests are not governed by INA § 1225(b) and;
(4) Waive the requirement that bond be posted
(5) ORDER any other relief this Court finds necessary and proper.

Dated: March 20, 2026

Respectfully,

/s/Daljit Ghuman

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