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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

FRESNO DIVISION

MUZAFFAR OSMANOV,

Petitioner,

v.

JEFFREY LYNCH, Warden, Golden State Annex;

SERGIO ALBARRAN, Field Office Director of San Francisco Office of Detention and Removal, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security;

TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

MARKWAYNE MULLIN, in his Official Capacity, Secretary, U.S. Department of Homeland Security; and

TODD BLANCHE, in his Official Capacity, Attorney General of the United States,

Respondents-Defendants.

DETAINED

Case No.

Immigration alien number: [redacted]

PETITIONER'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES

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NOTICE OF EX PARTE APPLICATION AND APPLICATION

TO ALL PARTIES AND COUNSEL OF RECORD: PLEASE TAKE NOTICE that Petitioner Muzaffar Osmanov applies ex parte for a temporary restraining order and an order to show cause why a preliminary injunction should not issue. Petitioner asks the Court to order his immediate release restoring the status quo ante; to enjoin Respondents from re-detaining him absent constitutionally adequate process; and to enjoin Respondents from transferring him outside this District during the pendency of these proceedings. This application is made on the ground that Petitioner's detention violates the Fifth Amendment and the Immigration and Nationality Act, and is based on this Notice, the accompanying Memorandum of Points and Authorities, the concurrently filed Petition for Writ of Habeas Corpus and supporting exhibits, the Declaration of Aida Osmanova, and all matters of which the Court may take judicial notice.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For nearly four years the Government let Muzaffar Osmanov live at liberty while the asylum application on which he is a dependent proceeded before the USCIS and recently before the EOIR. ICE released him on his own recognizance in accordance with section 236 of the Act, authorized him to work through September 2030, and watched him comply with everything asked of him. He appeared for his biometrics, was never enrolled in any electronic monitoring program, never missed an appointment, and was never charged with violating any condition of his release. He has never been arrested and has no criminal history. Then, on July 4, 2026, without notice and without any hearing, ICE arrested him near a gas station and confined him at the Golden State Annex.

The Government's own records refute any suggestion that Mr. Osmanov absconded or moved without its knowledge. DHS mailed correspondence to his California address and re-issued his charging documents bearing that address months before it arrested him. Courts in this District

have addressed this precise situation again and again over the past several months and have ordered immediate release. Mr. Osmanov held a protected liberty interest in his continued freedom; the Government extinguished it with no pre-deprivation process; and the equities and public interest weigh decisively in his favor. His detention has left his wife alone to care for their two young children, without the family's sole source of support. The Court should order his immediate release, restore the status quo ante, and enjoin both his re-detention without process and his transfer out of this District.

II. STATEMENT OF FACTS

Petitioner is a citizen of Russia. He entered the United States near San Ysidro, California, on or about September 11, 2022, together with his wife and two young children, and was released from Customs and Border Protection custody the following day. He was never placed in expedited removal, never received a credible-fear interview, and was never the subject of any order under 8 U.S.C. § 1225(b)(1). DHS charged him under INA § 212(a)(6)(A)(i) and placed him in ordinary § 240 proceedings; the Notice to Appear does not allege that he is an "arriving alien." (Pet. Tab A.)

On September 12, 2022, DHS released Petitioner on a Form I-220A Order of Release on Recognizance, expressly "in accordance with section 236." (Pet. Tab B.) DHS granted him employment authorization in the (c)(8) category, valid through September 5, 2030, with terms and conditions marked "None." (Pet. Tab C.) His wife timely filed a Form I-589 on which Petitioner and the couple's two children are dependents; that application remained pending before the USCIS with the subsequent application filed before the Sacramento Immigration Court once new NTAs were issued on April 20, 2026. (Tab D)

Petitioner complied with every obligation of which he was aware. He appeared for biometrics on January 31, 2023. He was never enrolled in ICE's Alternatives to Detention program,

never placed on electronic monitoring, and never assigned a recurring check-in. He has no criminal history and has never been arrested. Upon receiving work authorization he worked lawfully and established his own business, through which he supported his family as its principal earner.

DHS knew where Petitioner lived. On April 23, 2026, the New York Asylum Office mailed him a written Notice of Forwarding of his Form I-589 to his residence in Antelope, California (Pet. Tab D), and on April 20, 2026, DHS re-issued Notices to Appear for Petitioner and each family member bearing that same California residence and setting the matter before the Sacramento Immigration Court (Pet. Tab A). Petitioner's removal proceedings are active and counseled; upon the entry of counsel, the scheduled master calendar hearing was vacated consistent with the Sacramento Immigration Court's practice, and the matter proceeds in writing.

On July 4, 2026, ICE arrested Petitioner near a gas station at 4311 Antelope Road in Antelope, California, without notice and without a hearing, alleging no violation supported by any finding and making no individualized determination of danger or flight risk. He is now confined at the Golden State Annex. Petitioner is indigent, and his detention has deprived his wife and two children of their sole means of support. (See Declaration of Aida Osmanova.)

III. LEGAL STANDARD

A temporary restraining order issues on a showing of likely success on the merits, likely irreparable harm, a balance of equities tipping in the movant's favor, and that an injunction serves the public interest. *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008). The Ninth Circuit applies these factors on a sliding scale, and where the Government is a party the equities and public-interest factors merge. The status quo to be preserved is "the last uncontested status which preceded the pending controversy" — here, Petitioner's liberty before his arrest. Chief Judge Nunley granted a materially identical application on these standards. *Morales-Flores v.*

Lyons, No. 1:25-cv-01640-TLN-EFB, 2025 WL 3552841 (E.D. Cal. Dec. 11, 2025).

IV. ARGUMENT

A. Petitioner is likely to succeed on his Fifth Amendment claim.

The Due Process Clause protects every person in the United States, "whether their presence here is lawful, unlawful, temporary, or permanent," against the deprivation of physical liberty without due process. *Zadvydas v. Davis*, 533 U.S. 678, 690, 693 (2001); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). A protected liberty interest may arise from a conditional release from custody. *Young v. Harper*, 520 U.S. 143, 147–49 (1997); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). Courts test such a release by comparing it to the parole interest described in *Morrissey*. *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887 (1st Cir. 2010).

Petitioner's release on recognizance under § 236, and his nearly four years of compliant liberty, gave rise to exactly such an interest. Chief Judge Nunley so held on materially identical facts, ruling that a conditional release "created a reasonable expectation that he would be entitled to retain his liberty absent a material change in circumstances" protected by the Due Process Clause. *Morales-Flores*, 2025 WL 3552841, at *4–5. The Eastern District has repeatedly reached the same conclusion and ordered immediate release. *Zhunio Malla v. Warden of Golden State Annex*, No. 1:26-cv-02402-DAD-CKD, 2026 WL 1759593 (E.D. Cal. June 18, 2026) (adopting findings and recommendations and granting the writ); *Sagar v. Chestnut*, 2026 WL 572528 (E.D. Cal. Mar. 2, 2026); *Velasquez-Quevedo v. Warden, Golden State Annex*, 2026 WL 1541795 (E.D. Cal. June 1, 2026); *Diaz Luque v. Warden, Cal. City*, 2026 WL 1475815 (E.D. Cal. May 26, 2026).

That release reflected an affirmative DHS determination that Petitioner was neither a danger nor a flight risk. Release on recognizance is permitted only where the noncitizen shows that

release "would not pose a danger to property or persons" and that he "is likely to appear," 8 C.F.R. § 1236.1(c)(8), so "release reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017). Petitioner justifiably relied on that determination and on his continued liberty. *Perry v. Sindermann*, 408 U.S. 593, 601–03 (1972).

To the extent DHS asserts that Petitioner's relocation breached a condition of his I-220A, that assertion cannot justify summary re-detention. The condition names no officer from whom permission could be sought, and DHS in any event had documented knowledge of his California address and continued to prosecute his case there. Regardless, even an accused violator of conditional release is entitled to a hearing before his liberty may be revoked; that is the core holding of *Morrissey*. 408 U.S. at 485–88. The Government does not get to adjudicate the alleged violation by re-arresting him at a gas station and providing no hearing at all.

Under *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), all three factors favor Petitioner: his interest in physical liberty is fundamental and heightened by nearly four years of compliant release; the risk of erroneous deprivation is high because he received no custody hearing of any kind; and the Government's interest in detaining him without a hearing is low, especially where it already determined he posed no danger and no risk of flight. *Morales-Flores*, 2025 WL 3552841, at *5–6; *Hernandez v. Sessions*, 872 F.3d 976, 993 (9th Cir. 2017). Because the violation was complete upon his re-detention, a later bond hearing would not cure it.

This Court's jurisdiction is secure. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) bars a due process challenge to the lawfulness of detention. *Margaryan v. Warden of Cal. City Det. Facility*, No. 1:25-cv-01582-EFB, 2026 WL 183731, at *2 (E.D. Cal. Jan. 23, 2026). Exhaustion is prudential and excused, because the constitutional claim attacks the absence of any pre-deprivation hearing and the immigration court cannot supply that remedy. *Laing v.*

Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004).

B. Section 1226(a), not § 1225(b), governs, and the entry fiction does not apply.

Petitioner is not subject to mandatory detention. He was released under § 236 and has lived in the interior since 2022; § 1226(a) governs and is discretionary. Courts in this District and the majority nationwide reject the Government's contrary reading. *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1112 (E.D. Cal. 2025); *Morales-Flores*, 2025 WL 3552841, at *2–4. Four courts of appeals have rejected the Government's position. *Lopez-Campos v. Raycraft*, 2026 WL 1283891 (6th Cir. May 11, 2026); *Barbosa da Cunha v. Freden*, 2026 WL 1146044 (2d Cir. Apr. 28, 2026); *Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 2026 WL 1223250 (7th Cir. May 5, 2026); *Hernandez Alvarez v. Warden*, 2026 WL 1243395 (11th Cir. May 6, 2026). The Government's reliance on the out-of-circuit decisions in *Avila v. Bondi*, 2026 WL 819258 (8th Cir. Mar. 25, 2026), and *Buenrostro-Mendez v. Bondi* is unpersuasive and does not reach the due process claim. Indeed, the July 2025 DHS guidance on which the Government's theory depends has been stayed within ICE's San Francisco area of responsibility — which includes this District. *Garro Pinchi v. Noem*, 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025).

The entry fiction does not apply, because Petitioner was never placed in expedited removal. *Chiguil v. Noem*, 2026 WL 983134, at *1 (E.D. Cal. Apr. 13, 2026). *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020), is limited to admissibility challenges and does not constrain the due process rights of a person, like Petitioner, contesting detention. *Singh v. Chestnut*, 2026 WL 124830, at *2–3 (E.D. Cal. Jan. 16, 2026).

C. Petitioner will suffer irreparable harm absent relief.

The deprivation of constitutional rights unquestionably constitutes irreparable injury, and "[d]eprivation of physical liberty by detention constitutes irreparable harm." *Morales-Flores*,

2025 WL 3552841, at *6 (quoting *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018)). The Ninth Circuit has recognized the irreparable harms imposed on anyone subject to immigration detention, including the economic burdens on detainees and their families. *Hernandez*, 872 F.3d at 994–95. Each additional day of unlawful confinement is a harm no later judgment can repair.

The harm here is acute and ongoing. Petitioner was the sole financial support for his wife and two young children. Since his detention, the family has lost its only source of income and struggles to meet basic needs. His wife is left to care for the children alone while managing the household and this litigation. The children — ages seven and six — have reacted severely to the sudden loss of their father: one wakes at night and has grown anxious, and both have withdrawn and at times refused food. These harms compound daily and cannot be undone by a later judgment. (See Declaration of [redacted]) The harm is further compounded by the risk that the Government will transfer Petitioner out of this District to a jurisdiction with less favorable law, defeating the Court's ability to grant effective relief.

D. The balance of equities and the public interest favor relief.

Petitioner's interest in physical liberty is fundamental, and the Government has no legitimate countervailing interest: its own determinations — releasing him on recognizance, corresponding with him at his California residence, and authorizing him to work through 2030 — establish that he is neither a danger nor a flight risk. The public interest is served by enforcing constitutional rights and is never served by unconstitutional detention. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Respondents "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations." *Morales-Flores*, 2025 WL 3552841, at *6.

E. The relief is immediate release restoring the status quo ante.

Because the violation is the deprivation of an existing liberty interest without process, the remedy this District has consistently ordered is immediate release on the conditions the petitioner already held, with no new restrictions, coupled with an injunction barring re-detention without advance notice and a pre-deprivation hearing before a neutral decisionmaker at which the Government bears the burden by clear and convincing evidence. *Morales-Flores*, 2025 WL 3552841, Order ¶¶ 2–4; *Pupykin v. Lynch*, No. 1:26-cv-04957-TLN-SCR (E.D. Cal. June 29, 2026) (Nunley, C.J.) (granting ex parte TRO, ordering immediate release, and enjoining re-detention absent seven days' notice and a pre-deprivation hearing), compliance noted, ECF No. 6. Petitioner does not seek a bond hearing as the primary remedy; a post-deprivation hearing would presuppose the validity of a detention that was unlawful at inception.

F. The Court should enjoin transfer, and no security should be required.

To preserve its jurisdiction, the Court should enjoin Respondents from transferring Petitioner outside this District during the pendency of these proceedings. Such relief is individual to Petitioner and does not implicate 8 U.S.C. § 1252(f)(1). *Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022). Finally, the Court should waive security under Rule 65(c). Petitioner is indigent, the relief vindicates constitutional rather than commercial interests, and Respondents face no monetary loss. *Morales-Flores*, 2025 WL 3552841, Order ¶ 4 (waiving security).

V. CONCLUSION

The Court should grant the application, order Petitioner's immediate release restoring the status quo ante, enjoin his re-detention absent a constitutionally adequate hearing, enjoin his transfer out of this District, and issue an order to show cause why a preliminary injunction should not issue.

Dated: July 11, 2026

Respectfully submitted,

/s/ Regina Jacobson

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