CRAIG H. MISSAKIAN (CABN 125202)
United States Attorney
PAMELA T. JOHANN (CABN 145558)
Chief, Civil Division
WILLIAM SKEWES-COX (DCBN 1780431)
Special Assistant United States Attorneys

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-7073
William.skewes-cox@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ANDRES FELIPE OME OSORIO,

Petitioner,

v.

SERGIO ALBARRAN, et al.,

Respondents.

CASE NO. 3:26-cv-08783

RESPONDENTS' MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER

NOTICE OF MOTION TO DISSOLVE

On August 22, 2026, the Court issued its "ORDER RE TRO" granting Petitioner's motion for a temporary restraining order. *See* Dkt. Nos. 2, 3. Accordingly, pursuant to Federal Rule of Civil Procedure 65(b)(4), Respondents Sergio Albarran, David J. Venturella, Markwayne Mullin, and Todd Blanche ("Respondents") move to dissolve the TRO that was granted ex parte. Under the same rule, Respondents request that a hearing be held as soon as practicable but no more than two days from today.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is supported by the concurrently filed Declaration of William Skewes-Cox with accompanying Exhibits. As set forth in the Points and Authorities in support of this Motion, Petitioner is not likely to succeed on the merits because his criminal history renders him subject to mandatory detention under 8 U.S.C. § 1226(c) and he is a danger to the community. Moreover, Petitioner failed to disclose material facts in his motion for a temporary restraining order.

WHEREFORE, Respondents pray that this Court grant their request to dissolve the temporary restraining order.

Dated: August 22, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ William Skewes-Cox
WILLIAM SKEWES-COX
Special Assistant United States Attorney

Attorneys for Respondents

POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION TO DISSOLVE

Petitioner's ex-parte motion for a temporary restraining order fails to mention material facts of which he surely had knowledge. The material facts withheld from the Court by Petitioner establish that Petitioner is subject to mandatory detention.

First, Petitioner was arrested on or about March 2, 2025, for [redacted] *See* Exhibit A. Under 8 U.S.C. § 1226(c)(1)(E), this arrest renders Petitioner subject to mandatory detention because § 211 is a theft offense. *See* Exhibit B (establishing Petitioner's inadmissibility); *see also Rodriguez Vazquez v. Bostock,* No. 25-6842, 2026 WL 2196424, at *6 (9th Cir. July 30, 2026) (acknowledging that § 1226(c)(1)(E) renders alien subject to mandatory detention). Additionally, this [redacted] arrest materially bears on Petitioner's repeated assertions that no changed circumstances justified his arrest by ICE and that he is not a danger to the community. *See, e.g.*, Dkt. No. 2-1 at 6 ("No such changed circumstances exist here: he has no criminal *convictions*…" (emphasis added)). Though Petitioner's motion for a temporary restraining order states that he has no criminal *convictions*, Petitioner failed to disclose the fact of this arrest and the statutory provision under which he was arrested. Those facts are material because it is Petitioner's specific *arrest* under § 211 that renders him subject to mandatory detention. While it may be true that Petitioner lacks any criminal convictions, a conviction is not necessary to trigger the mandatory detention provision under § 1226(c)(1)(E). Petitioner failed to provide the Court with the necessary information to make an informed determination regarding the legality of Petitioner's detention, which is at the heart of Petitioner's claims in the habeas petition and his request for immediate release. Petitioner's decision to refer only to convictions without disclosing the arrest that potentially falls under § 1226(c)(1)(E) likely reflects a strategic decision to obtain immediate release without having to address that Petitioner may be subject to mandatory detention.

Second, Petitioner failed to inform this Court that on or about July 4, 2026, he was arrested for driving under the influence. *See* Exhibit A. This DUI arrest also materially bears on Petitioner's repeated assertions that no changed circumstances justified his arrest by ICE and that he is not a danger to the community. *See* Dkt. No. 2-1 at 5-6. DUI is an inherently dangerous offense that supports a finding that

Petitioner is a danger to the community. *See Birchfield v. North Dakota*, 579 U.S. 438, 443 (2016) ("Drunk drivers take a grisly toll on the Nation's roads, claiming thousands of lives, injuring many more victims, and inflicting billions of dollars in property damage every year."); *Begay v. United States*, 553 U.S. 137, 141–42 (2008) (recognizing that "[d]runk driving is an extremely dangerous crime" which creates a serious potential risk of physical injury to others), *abrogated on other grounds, Johnson v. United States*, 576 U.S. 591 (2015); *see also Mitchell v. Wisconsin*, 588 U.S. 840, 861 (2019) (Sotomayor, J., dissenting) ("To be sure, drunk driving poses significant dangers."); *Matter of Choc-Tut*, 29 I&N Dec. 48 (BIA 2025) ("Driving under the influence represents a grave danger to the community and is a significant adverse consideration in bond proceedings."). The DUI certainly constitutes changed circumstances since his prior release. The Court was entitled to know this fact before considering Petitioner's arguments that he is not a danger to the community and that no changed circumstances exists and that therefore his detention violates substantive and procedural due process.

Before the Court issued the TRO, counsel for Respondents reached out to counsel for Petitioner and alerted her to the material facts omitted from her filings. *See* Declaration of William Skewes-Cox at 2. A party seeking an ex parte TRO must disclose all material facts to the Court. *See* Cal. R. Prof. Conduct 3.3(d) (requiring disclosure of adverse material facts in ex parte proceeding); *see also* NDCA Civil Local Rule 11-4(a) (requiring compliance with the standards of professional conduct of California). Counsel for Respondents requested that counsel for Petitioner update her filings with the Court before the Court issued an order on the TRO. *See* Declaration of William Skewes-Cox at 2. Petitioner failed to do so in time and permitted this Court to rule on the TRO without knowledge of these material facts. Respondents are frustrated that they must now fight uphill to get an order reversed after the Court was deprived of the opportunity to hear pertinent material facts before issuing its order.

Lastly, as regards Petitioner's conditions of confinement claim, specifically his claim that he is being detained "without medical care," such a claim does not sound in habeas and is not a basis for immediate release. The Ninth Circuit has explicitly recognized "the rule that a habeas claim is one challenging the fact of confinement, rather than the conditions of confinement." *Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024); *see also Moya v. Blanche,* No. 2:26-CV-00675-APG-DJA, 2026 WL

1481604, at *9 (D. Nev. May 27, 2026) (finding that the court lacked "jurisdiction over the portion of Moya's habeas petition that seeks release based on inadequate medical care under the Fifth Amendment."). As a result, "Petitioner's allegations that continued custody poses a substantial risk of serious harm, without more, do not state a habeas claim when the asserted constitutional violation is the alleged inadequacy of medical care and remedial measures short of release would address any such circumstance." *Garcia Boscan v. Becerra*, No. 1:26-CV-00651-KES-SAB-HC, 2026 WL 1146061, at *3 (E.D. Cal. Apr. 28, 2026), *report and recommendation adopted*, No. 1:26-CV-00651-KES-SAB (HC), 2026 WL 1865473 (E.D. Cal. June 28, 2026). "Release is the only available remedy—and thus a claim is at the core of habeas—if a successful petition demonstrates that the *detention itself* is without legal authorization." *Pinson v. Carvajal*, 69 F.4th 1059, 1070 (9th Cir. 2023) (emphasis in original). But as explained above, Petitioner's detention is legal because he is subject to mandatory detention under §1226(c). And even in the alternative that 8 U.S.C. § 1226(a) applied, Petitioner's criminal history demonstrates that he is a danger who would not prevail at a bond hearing. Thus, this Court lacked subject-matter jurisdiction to order release based on a conditions of confinement claim made in a habeas petition. As regards the merits of his claim, all detainees in ICE custody receive medical care. *See* "ICE Health Service Corps," https://www.ice.gov/detain/ice-health-service-corps.

In response to Petitioner's material omissions and with the record now corrected, the Court should dissolve the Order found at Dkt. No. 3.

DATED: August 22, 2026

Respectfully submitted,

CRAIG H. MISSAKIAN
United States Attorney

/s/ William Skewes-Cox
WILLIAM SKEWES-COX
Special Assistant United States Attorney

Attorneys for Respondents

[PROPOSED] ORDER

Respondents' motion to dissolve the TRO at Dkt. No. 3 is hereby granted.

DATE:

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Hon. James Donato
United States District Judge