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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

PEDRO JOAQUIN AVILES-MENA

Case No.: 3:25cv-06783

Petitioner,

vs.

**VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS FOR RELEASE
FROM ICE-ERO CUSTODY**

POLLY KAISER, Acting Field Office
Director of the San Francisco Immigration
and Customs Enforcement Office; TODD
LYONS, Acting Director of United States
Immigration and Customs Enforcement;
KRISTI NOEM, Secretary of the United
States Department of Homeland Security,
PAMELA BONDI, Attorney General of the
United States, acting in their official
capacities,

Respondents

INTRODUCTION

1. Pedro Joaquín Aviles-Mena seeks asylum (“Petitioner”) however he faces unlawful ICE-ERO detention at 630 Sansome Street, San Francisco California. He invokes habeas relief under 28 U.S.C. § 2241 and the authorized by 8 U.S.C. § 1252(e)(2)—

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1 including § 1252(e)(2)(B)—to challenge his ongoing custody incident to an attempted
2 placement in expedited immigration removal, as well as related constitutional due process
3 and statutory/regulatory violations. See 8 C.F.R. Section 235.3(b)(6). He has never
4 violated the law in this or any other country. He works a Futon shop in San Francisco.
5 The status quo requires that he be immediately released from ICE custody.
6

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8 2. After entering the United States, on May 23, 2022 DHS/ICE granted
9 Petitioner parole under *INA* § 212(d)(5)(A), and issued written notice of that parole. He has
10 remained continuously in the community under that authorization, prior to his detention he
11 was residing in Daly City California with his fiancée. His admission to this country via
12 parole precludes expedited removal.
13

14 3. Petitioner has filed his Form I-589 for asylum (USCIS acknowledgment of
15 receipt dated May 22, 2023) and later appeared for biometrics on June 15, 2023. USCIS
16 subsequently approved his employment authorization, evidencing his continued lawful
17 presence and compliance.
18

19 4. USCIS is attempting to cancel the pending asylum process. In June 2025,
20 USCIS issued a “Notice of Dismissal of Form I-589” with instructions consistent with
21 referral to a credible-fear interview, effectively attempting to re-route petitioner to the
22 summary framework of *INA* § 235(b)(1). That notice provides petitioner with no due
23 process regarding appeals, nor does it indicate the statutory basis for the Dismissal.
24

25 5. Despite more than two years of continuous physical presence, ICE detained
26 Petitioner during a routine check-in and seeks to place him in expedited removal. On
27

1 August 8, 2025, Petitioner appeared for his routine ICE check-in at the San Francisco Field
2 Office and was taken into custody for expedited-removal processing—even though the
3 statute limits expedited removal to certain non-admitted/non-paroled noncitizens who
4 cannot show two years of continuous presence. 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

6 6. Petitioner confirms continuous residence well beyond two years. The
7 government issued documents attached to this Petition as Exhibits, A, B, C, and D confirm
8 continuous presence in the United States for more than two years by the Petitioner.
9 (EXHIBIT A, NOTICE OF USCIS DISMISSAL, EXHIBIT B PAROLE
10 AUTHORIZATION, EXHIBIT C, ASYLUM RECEIPT, EXHIBIT D FEDERAL
11 TAXES).

14 7. Expedited removal is a summary process primarily applied at or near the
15 border and, when expanded nationwide, still excludes those who “have been physically
16 present in the United States continuously for the two-year period immediately preceding
17 the date of the determination.” DHS lacks the authority to nullify or render void the two-
18 year presence limitation Congress wrote into § 1225(b)(1)(A)(iii). Accordingly, attempting
19 to subject Petitioner to expedited removal is contrary to the statute and to due process.
20

22 8. Petitioner respectfully asks the Court to issue a writ of habeas corpus
23 ordering his immediate release, enjoying transfer or removal while this action is pending,
24 and holding unlawful DHS’s attempt to subject him to expedited removal given his more-
25 than-two-year continuous presence, his prior parole, and his compliance with the asylum
26 process. See 8 U.S.C. § 1252(e)(2); 8 U.S.C. § 1225(b)(1); U.S. Const. amend. V

JURISDICTION AND VENUE

9. Subject-matter jurisdiction. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (Declaratory Judgment Act), and 28 U.S.C. § 2241 (habeas corpus), as reinforced by Article I, § 9, cl. 2 (the Suspension Clause), the Fourth and Fifth Amendments, and the Administrative Procedure Act, 5 U.S.C. §§ 701–706. In addition, because Respondents purport to detain Petitioner incident to expedited-removal processing, this Petition also seeks the limited habeas review authorized by 8 U.S.C. § 1252(e)(2)—including § 1252(e)(2)(B) (“Unlawful Executive Detention”)—while preserving Petitioner’s independent constitutional and statutory claims cognizable under § 2241.

10. Venue. Venue is proper in this District and Division pursuant to 28 U.S.C. § 2241(a) and 28 U.S.C. § 1391(b)(2), (e)(1) because Petitioner is physically detained within the Northern District of California, including at the ICE San Francisco Field Office/hold facility located at 630 Sansome Street, San Francisco, California, and his immediate custodian is found here. The Court may also issue orders under the All Writs Act to preserve its jurisdiction— including orders prohibiting transfer or removal during the pendency of this action.

PARTIES

11. Petitioner. Pedro Joaquín Aviles-Mena also known as “Pedro Aviles Mena,” is a native and citizen of Nicaragua. He entered the United States and was granted parole on May 23, 2022; he thereafter filed Form I-589 (USCIS receipt May 22, 2023).

1 appeared for biometrics on June 15, 2023, and later received employment authorization.

2 These government records confirm identity and continuous presence exceeding two years.

3
4 12. Respondent Polly Kaiser serves as the Acting Field Office Director
5 for the San Francisco ICE Field Office and is the physical custodian of the Petitioner. In
6 this role, she administers immigration laws and oversees enforcement and detention policy
7 within ICE's San Francisco Area of Responsibility, including matters relating to the
8 Petitioner's detention. Respondent Kaiser maintains an office and regularly conducts
9 official business within this district. She is named in this action in her official capacity.
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11 13. Respondent Todd M. Lyons is the Acting Director of ICE and the
12 Senior Official Performing the Duties of the Director. He is charged with administering
13 and enforcing the immigration laws of the United States, routinely conducts business
14 within this District, and bears legal responsibility for all efforts related to the detention and
15 removal of the Petitioner. Respondent Lyons is sued in his official capacity.
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18 14. Respondent Kristi Noem is the Secretary of Homeland Security,
19 holding ultimate authority over the Department of Homeland Security. In this role and
20 through her agents, Respondent Noem exercises broad authority and responsibility for the
21 operation and enforcement of immigration laws, conducts business within this District, and
22 is legally responsible for actions concerning the detention and removal of the Petitioner.
23 Respondent Noem is sued in her official capacity.
24

25 15. Respondent Pamela Bondi is the Attorney General of the United
26 States and the highest-ranking official within the Department of Justice. Through her
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1 position and agents, she holds oversight responsibility for the implementation and
2 enforcement of federal immigration laws. This responsibility is delegated to the Executive
3 Office for Immigration Review, which manages the immigration courts and the Board of
4 Immigration Appeals. Respondent Bondi is named in her official capacity.
5

6 EXHAUSTION

7
8 16. No adequate administrative remedy exists to resolve the threshold
9 legality of Petitioner's detention. Petitioner challenges (i) his present custody and (ii)
10 DHS's attempt to subject him to expedited removal (ER) despite more than two years of
11 continuous U.S. presence. The credible-fear process—referenced in USCIS's June 5, 2025
12 notice—does not provide any avenue to adjudicate whether ER may lawfully be used
13 against him, nor can it order his release from civil detention. Thus, there is nothing
14 meaningful to exhaust with respect to the core, antecedent questions presented here.
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17 17. Habeas review is expressly authorized and does not require further
18 exhaustion in these circumstances. Congress preserved limited habeas review to test the
19 lawfulness of executive detention incidents to ER. See 8 U.S.C. § 1252(e)(2) (including §
20 1252(e)(2)(B)). Petitioner also invokes 28 U.S.C. § 2241 for his independent constitutional
21 and statutory claims. No statute provides an administrative mechanism capable of granting
22 the relief sought (release; bar on ER/transfer), so judicial review is proper now.
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25 18. Futility and inadequacy. Even if an “exhaustion” concept applied, it
26 would be futile and inadequate because (a) DHS has already declared Petitioner in ER and
27 issued an I-860 (per USCIS's dismissal letter), and (b) immigration judges lack jurisdiction
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1 to review ER or to order release in that posture. Further delay would not cure the defect
2 and would risk irreparable harm through transfer or summary removal.

3
4 19. Emergency posture underscores ripeness. Petitioner was arrested at
5 his routine ICE check-in at 630 Sansome Street, San Francisco, on August 8, 2025, and
6 remains in DHS custody pending ER processing, with no credible-fear interview scheduled.
7 The government's actions are final as to the detention and ER routing challenged here; the
8 dispute is therefore ripe and fit for immediate judicial determination
9

10 20. Because there is no administrative path to resolve the legality of
11 Petitioner's custody and ER placement—and any further pursuit would be futile and
12 incapable of affording the requested relief—exhaustion is excused, and this Court should
13 proceed to the merits.
14

15 LEGAL BACKGROUND

16 *A. The Constitution Provides Protections for Noncitizens Regarding Arrest and* 17 18 *Detention.*

19 21. The Constitution establishes due process rights for all persons within
20 the United States, including noncitizens regardless of their legal status or duration of stay.
21 *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at
22 693). These due process rights include both substantive and procedural elements.
23

24 22. According to case law, due process protects individuals from arbitrary
25 government action, including the exercise of power without reasonable justification for a
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1 legitimate government objective. *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974); *Cnty. of*
2 *Sacramento v. Lewis*, 523 U.S. 833, 846 (1998).

3
4 23. These protections are applicable to noncitizens facing detention, as
5 liberty is considered the norm, and pretrial or non-trial detention is a limited exception.
6 *United States v. Salerno*, 481 U.S. 739, 755 (1987). Freedom from imprisonment or
7 government-imposed physical restraint is a core liberty interest protected by the Due
8 Process Clause. *Zadvydas*, 533 U.S. at 690.

10 24. Substantive due process requires that all forms of civil detention,
11 including immigration detention, must have a reasonable relation to a non-punitive purpose.
12 See *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has identified two
13 permissible non-punitive purposes for immigration detention: ensuring appearance at
14 proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690-92;
15 *Demore v. Kim*, 538 U.S. 510 at 519-20, 527-28, 31 (2003). Procedural due process
16 prohibits imposing physical restraints without adequate safeguards.

19 25. The Constitution generally requires a hearing before depriving a
20 person of liberty or property. *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). This
21 requirement applies even when revocation of freedom is lawful. *Hurd v. D.C., Gov't*, 864
22 *F.3d* at 683 (citing *Young v. Harper*, 520 U.S. 143, 152 (1997); *Gagnon v. Scarpelli*, 411
23 U.S. 778, 782 (1973); *Morrissey v. Brewer*, 408 U.S. 471 (1972)).

26 26. Individuals released from custody on conditions, including parolees,
27 maintain a protected liberty interest in conditional release. *Morrissey* at 408 U.S. at 482.

1 The Supreme Court has stated that parolees expect that parole will be revoked only for
2 failure to meet its conditions. *Id.* This form of liberty is recognized under constitutional
3 protection.
4

5 27. This reasoning extends to individuals released from civil immigration
6 detention, such as those at the border. Noncitizens residing in the United States possess a
7 protected interest in continued freedom from confinement. *Zadvydas*, 533 U.S. at 690. In
8 civil immigration contexts, this liberty interest may be greater than that of parolees. *Ortega*
9 *v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019).
10

11 ***B. Due Process and the Immigration and Nationality Act Address Summary Removal***
12 ***Procedures for Noncitizens.***
13

14 28. Deportation/Removal constitutes a deprivation of liberty protected by
15 the Due Process Clause. The Supreme Court has acknowledged the significance of a
16 noncitizen's interest in deportation proceedings due to the potential loss of residence and
17 employment opportunities. *Landon v. Plasencia*, 459 U.S. 21, 34 (1982) (quoting *Bridges*
18 *v. Wixon*, 326 U.S. 135, 154 (1945)).
19

20 29. Removal procedures evolved following Supreme Court decisions
21 affirming that deportation without hearing before a neutral decision maker violates due
22 process. *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903); *Wong Yang Sung v. McGrath*, 339
23 U.S. 33, 49, modified, 339 U.S. 908 (1950).
24

25 30. Section 240 of the Immigration and Nationality Act provides
26 substantive and procedural protections. Noncitizens in Section 240 proceedings are entitled
27

1 to hearings in immigration court prior to removal. 8 U.S.C. § 1229a. Statutory rights
2 include representation by counsel, presenting and confronting evidence, administrative
3 review by the Board of Immigration Appeals, and judicial review in federal Courts of
4 Appeals. 8 C.F.R. § 1003.1(b); 8 U.S.C. § 1252(a)(5).

6 31. Expedited removal, historically applicable only to recently arrived
7 noncitizens, limits the rights and processes available in Section 240 proceedings.

9 32. Expedited removal generally occurs outside of immigration court; an
10 immigration officer may order removal “without further hearing or review.” 8 U.S.C. §
11 1225(b)(1)(A)(i). Individuals subject to expedited removal are typically detained and
12 unable to access counsel. Enforcement agents serve as decision makers and may
13 unilaterally determine applicability and issue removal orders.

15 33. If an individual in expedited removal expresses fear of persecution or
16 seeks asylum, they are referred for a credible fear interview. 8 U.S.C. § 1225(b)(1)(A)(ii).
17 A positive finding allows application for asylum through Section 240 proceedings. §
18 1225(b)(1)(B)(ii). If credible fear is not established, the officer issues a removal order
19 “without further hearing or review,” subject to limited review by an immigration judge
20 regarding the credible fear determination. § 1225(b)(1)(B)(iii).

23 34. The standard for issuing a temporary restraining order is identical to
24 the standard for issuing a preliminary injunction. *See Washington v. Trump*, 847 F.3d 1151,
25 1159 n.3 (9th Cir. 2017) (“[T]he legal standards applicable to TROs and preliminary
26 injunctions are substantially identical.” (internal quotation marks and citation omitted)). A
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1 plaintiff seeking preliminary injunctive relief must establish “[1] that he is likely to succeed
 2 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary
 3 relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the
 4 public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).
 5 “[I]f a plaintiff can only show that there are serious questions going to the merits – a lesser
 6 showing than likelihood of success on the merits – then a preliminary injunction may still
 7 issue if the balance of hardships tips sharply in the plaintiff’s favor, and the other two
 8 *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767
 9 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted). “[W]hen
 10 the Government is the opposing party,” the final two factors “merge.” *Nken v. Holder*,
 11 556 U.S. 418, 435 (2009). An injunction is a matter of equitable discretion and is “an
 12 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
 13 entitled to such relief.” *Winter*, 555 U.S. at 22. A “TRO ‘should be restricted to . . .
 14 preserving the status quo and preventing irreparable harm just so long as is necessary to
 15 hold a [preliminary injunction] hearing and no longer.’” *E. Bay Sanctuary Covenant v.*
 16 *Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods, Inc. v.*
 17 *Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415.
 18 U.S. 423, 439 (1974)).

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

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 CUSTODY - 11

1 2. Issue a writ of habeas corpus ordering Respondents to immediately release Petitioner
2 from custody;

3 3. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth
4 Amendment, the Fourth Amendment, the First Amendment, and the Administrative Procedure
5 Act;
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7 4. Declare that dismissing Petitioner's Asylum Application would violate the Due Process
8 Clause of the Fifth Amendment;

9 5. Declare that placing Petitioner in expedited removal proceedings would violate the Due
10 Process Clause of the Fifth Amendment;

11 6. Enjoin Respondents from transferring Petitioner outside this District or deporting
12 Petitioner pending these proceedings;

13 7. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a
14 custody hearing before a neutral arbiter in which the government bears the burden of proving, by
15 clear and convincing evidence, that Petitioner is a flight risk or danger to the community;
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17 8. Award Petitioner his costs and reasonable attorneys' fees in this action as provided for
18 by the Equal Access to Justice Act and 28 U.S.C. § 2412; and 11. Grant such further relief as the
19 Court deems just and proper.
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21 Date: August 10, 2025

22 Respectfully Submitted,

23 /s/ JULIO J. RAMOS
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25 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**
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28 VERIFIED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS FOR RELEASE FROM ICE-ERO
CUSTODY - 12

1 I represent Petitioner, PEDRO JOAQUIN AVILES-MENA, and submit this verification
2 on his behalf. I hereby verify that the factual statements made in the foregoing Petition
3 for Writ of Habeas Corpus are true and correct to the best of my knowledge.
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5 /s/ JULIO J. RAMOS
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28 VERIFIED VERIFIED PETITION FOR WRIT OF HABEAS CORPUS FOR RELEASE FROM ICE-ERO
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