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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PEDRO JOAQUIN AVILES-MENA

Plaintiff,

vs.

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,

Defendant

Case No.: 3:25-CV-06783

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONER'S EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner Pedro Joaquín Aviles-Mena ("Mr. Aviles-Mena") respectfully request a writ of habeas corpus, to remedy his unlawful executive detention, including review available under 8 U.S.C. § 1252(e)(2)(B), the 4th, 5th and 6th Amendments to the Constitution including but not limited to procedural and substantive due process. Prior to detention, the Petitioner was employed, living with his fiancée, and living a life commensurate with his status as an affirmative asylum applicant fleeing the brutal regime of Daniel Ortega and the Sandinista Government of Nicaragua. Mr. Aviles-Mena having lived more than two years in the United States is not an "arriving alien" subject to "Expedited Removal" at a port of entry.

This petition arises from ICE's decision to detain Mr. Aviles-Mena at his routine check-in at 630 Sansome Street, San Francisco on August 8, 2025 and to place him into expedited-removal processing despite being paroled into the United States, a timely-filed affirmative asylum application, and continuous residence in the country for more than two years. This memorandum is filed in Support of the Ex Parte Request for Temporary Restraining Order and Preliminary Injunction. The Petitioner also challenges the government's attempt to nullify his asylum claims.

Upon entering the United States, the government granted Mr. Aviles-Mena parole. The parole notice—dated May 23, 2022—confirms ICE's discretionary parole and the associated conditions of release (Exhibit B Declaration of Julio J. Ramos, pp. 5–6).

Consistent with that lawful entry and status, Mr. Aviles-Mena properly filed an asylum application. USCIS issued an I-589 receipt showing a filing received as of May 22, 2023 (Exhibit C Declaration of Julio J. Ramos, p. 8). USCIS then scheduled and noticed biometrics for June 15, 2023 (Exhibit C Declaration of Julio J. Ramos, p. 10). USCIS also approved employment authorization (C08-code for asylum applicant), with an approval notice valid 11/29/2023–

11/28/2028 (Declaration of Julio J. Ramos Exhibit C, p. 9). These agency records demonstrate that the government has consistently acknowledged the Petitioner's status as an asylum applicant and had never denied work authorization because credible fear review was not completed.

Mr. Aviles-Mena's continuous residence and good-faith compliance are further corroborated by his 2024 federal tax return (Form 1040) listing his address in California and reporting wages for the 2024 tax year (Exhibit D, pp. 12–13).

Notwithstanding these facts, on June 5, 2025 USCIS without notice dismissed the I-589 and advised that any fear claim would be routed to an asylum officer for a credible-fear screening under 8 C.F.R. § 208.30 (titled "Notice of Dismissal of Form I-589," dated June 5, 2025). The dismissal notice on its face ties the dismissal to DHS's placement of Mr. Aviles-Mena in expedited removal and issuance of a Form I-860. No appeal procedures are mentioned in the dismissal.

On August 8, 2025, at his routine ICE check-in in San Francisco, ICE took Mr. Aviles-Mena into custody and continues processing him for expedited removal—a summary process that is incorrect to him as pleaded here because (1) he was paroled into the United States in May 2022, (2) he has maintained lawful presence tied to his pending asylum and work authorization, and (3) he has been continuously present for well over two years, as shown by the parole record (May 23, 2022), the I-589 receipt (May 22, 2023), the biometrics notice (June 15, 2023), the EAD approval (Nov. 29, 2023), and his 2024 tax filing. Moreover, his residency in Daly City, California is far away from the border nexus requirement for expedited removal.

This petition therefore challenges (a) the lawfulness of Mr. Aviles-Mena's executive detention and (b) DHS's use of expedited removal in his circumstances. The detention and summary process disregard his parole and documented residence, and they interrupt the asylum

process that USCIS itself recognized and processed for more than a year before issuing the 2025 dismissal/credible-fear routing notice. *See* Notice of Dismissal of Form I-589 (June 5, 2025);

Mr. Aviles-Mena respectfully asks this Court to issue the writ, order his immediate release from unlawful detention, and grant further relief as set out in the prayer to prevent removal while the Court reviews the claims set forth herein.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1651 (All Writs Act), and 5 U.S.C. §§ 701–706 (APA), and may grant declaratory relief under 28 U.S.C. §§ 2201–02. Because ICE purports to detain Petitioner incident to expedited-removal processing, the Petition also seeks the limited habeas review authorized by 8 U.S.C. § 1252(e)(2), including § 1252(e)(2)(B) (unlawful executive detention). Venue is proper in this District because Petitioner is physically detained within the Northern District of California and his immediate custodian is found here; Petitioner was taken into custody at the San Francisco Field Office (630 Sansome Street) and remains within ICE's San Francisco custodial control.

BACKGROUND

Mr. Aviles-Mena is a Nicaraguan national who entered the United States and was granted parole by DHS/ICE on May 23, 2022. The parole was memorialized in ICE's Interim Notice Authorizing Parole and is incorporated as Exhibit B to the Writ for Habeas Corpus Petition.

Following parole, Petitioner complied with U.S. immigration procedures. He filed Form I-589 (asylum), which USCIS received on May 22, 2023, and he appeared for biometrics on June 15, 2023; USCIS later approved employment authorization (C08-asylum applicant category). These government records document his identity and continuous presence well beyond two years.

Petitioner has worked in a futon shop in San Francisco and has dutifully paid taxes in Northern California. His 2024 federal income-tax return (Form 1040) shows his name/SSN and reported wages of $26,649, corroborating ongoing residence and employment during the 2024 tax year.

In June 2025, after more than two years of continuous U.S. presence, USCIS issued a "Notice of Dismissal of Form I-589," advising that DHS had apprehended Petitioner, placed him in expedited removal, and issued a Form I-860, with a credible-fear interview to follow.

On August 8, 2025, at 8:00 a.m., Petitioner reported as directed to the ICE San Francisco Field Office (630 Sansome Street) for his regular check-in and was taken into custody for expedited-removal processing—without a judicial or administrative warrant—despite statutory limits on using nationwide expedited removal against people who can demonstrate two years' continuous physical presence.

Petitioner's ICE reporting history is consistent and documented. His Personal Report Record shows compliant reporting on August 2, 2022 and August 2, 2024, in line with his parole and asylum filings.

Given these facts—and the government's choice to detain him now while routing him into expedited removal—Petitioner seeks habeas relief, including review under 8 U.S.C. § 1252(e)(2) and specifically § 1252(e)(2)(B) (Unlawful Executive Detention), because his current custody is not authorized by law.

LEGAL STANDARDS

The standard for issuing a temporary restraining order is largely identical to the standard for issuing a preliminary injunction. *See Washington v. Trump,* 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). "A plaintiff seeking [such relief] must establish that [1] [s]he is likely to succeed on the

merits, [2] that [s]he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in h[er] favor, and [4] that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 21 (2008). "[I]f a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips sharply in the plaintiff's favor and the other two Winter factors are satisfied.'" *All. for the Wild Rockies v. Peña,* 865 F.3d 1211, 1217 (9th Cir. 2017) (*quoting Shell Offshore, Inc. v. Greenpeace, Inc.,* 709 F.3d 1281, 1291 (9th Cir. 2013)). The final two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Petitioner is likely to succeed on the merits because use of Expedited Removal here is unlawful.

Congress limited nationwide expedited removal (ER) to noncitizens who have not been admitted or paroled and who cannot affirmatively show two years' continuous physical presence. 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Because DHS paroled Petitioner on May 23, 2022 and his records establish more than two years of continuous presence, he falls outside the class designated for ER.

The Government issued documents here confirm two plus years of presence in the United States: (i) the Interim Notice Authorizing Parole dated 05/23/2022; (ii) USCIS I-589 receipt (05/22/2023) and ASC biometrics notice (06/15/2023); (iii) subsequent EAD approval (C08) valid 11/29/2023–11/28/2028; and (iv) the 2024 tax return reflecting wages and a California address—collectively proving continuous U.S. presence exceeding two years.

DHS nevertheless arrested Petitioner at his routine check-in on August 8, 2025 to process him for ER—contrary to § 1225(b)(1)(A)(iii)(II)(two year limitation to apply expedited removal)

A. Habeas jurisdiction lies to remedy unlawful executive detention incident to ER.

Section 1252 preserves limited habeas review for ER cases, including challenges styled as "Unlawful Executive Detention" under § 1252(e)(2). Petitioner expressly invokes this statute to challenge the government's actions of denial of liberty, livelihood, companionship, and the universal right to refuge inherent in civilized nations.

At a minimum, the Court may determine whether Petitioner was properly subjected to ER considering his parole and two-year presence, and under these circumstances order Petitioner's release from detention because of a lack of statutory authority. *See also* 28 U.S.C. § 2241 and the All-Writs Act, 28 U.S.C. § 1651.

B. Due process violations independently warrant relief.

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. Abruptly cancelling USCIS's asylum processing, routing Petitioner to ER, and detaining him at a check-in without warrant or hearing violates the *Mathews v. Eldridg*e 424 U.S. 319 (1976) balancing required by administrative agencies in order to satisfy due process: the private interest of freedom from physical restraint and access to the asylum process; risk of erroneous deprivation; and the Government's interest is not advanced in this case by disregarding the statutory two-year limit for expedited removals, Petitioner's parole status and Petitioner's CO8 pending asylum status. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands," *Morrissey v. Brewer,* 408 U. S. 471, 408 U. S.

481. Standing alone, the torpidity of the credible review process on its face violates procedural due process and should negate the government from disregarding the validly filed affirmative asylum filed by the Petitioner because the government has waived credible fear review because of the filing of an affirmative asylum and its authorization of a work permit to Petitioner.

II. Irreparable harm, balance of equities, and public interest all favor immediate relief.

A. Detention itself is a paradigmatic irreparable injury; removal before adjudication would moot the case. The Supreme Court's *Winter and Nken* factors confirm that likely merits plus concrete harms warrant emergency relief preserving the status quo.

B. The U.S. Department of State's 2023 Human Rights Report—Nicaragua documents systematic abuses, including arbitrary detention, torture, enforced disappearances, and persecution of perceived opponents. Those findings underscore the concrete danger Petitioner faces if removed.

Given Petitioner's pending asylum claims and documented U.S. ties (work authorization and 2024 tax filing), the equities strongly favor release. Ancillary relief is necessary to protect jurisdiction. To ensure the Court can adjudicate this habeas matter, it may issue no-transfer/no-removal orders under the All-Writs Act and the immediate-custodian rule recognized in *Rumsfeld v. Padilla*; courts may preserve jurisdiction even when the agency attempts to move a detainee.

Exhaustion is not required or would be futile. There is no adequate administrative path to resolve the threshold legality of detention or DHS's misapplication of ER to a paroled, two-plus-year resident; this challenge is properly brought in habeas under § 1252(e)(2) and § 2241.

SECURITY

Rule 65(c) permits the Court to require security in connection with provisional relief. In immigration habeas matters like this seeming to vindicate statutory and constitutional limits on civil detention—courts routinely waive bond or set a nominal amount, especially where the petitioner is detained and seeking only to preserve the status quo and the Court's jurisdiction. Petitioner is in ICE custody, has limited means, and seeks non-monetary relief that serves the public interest in lawful enforcement; he therefore respectfully requests that the Court waive any security or, if required, set a nominal bond.

CONCLUSION

For the reasons stated, the Court should grant the writ and order immediate release. In the alternative, the Court should order immediate release and require a custody hearing within 14 days at which the Government bears the clear-and-convincing burden to prove danger or flight risk.

To preserve the Court's jurisdiction and the status quo while this action is pending, the Court should also enjoin transfer or removal and prohibit Respondents from placing or maintaining Petitioner in expedited removal given the undisputed record of: (i) parole on May 23, 2022; (ii) USCIS receipt of the I-589 on May 22, 2023; (iii) ASC biometrics notice on June 15, 2023; (iv) EAD approval (C08) valid 11/29/2023–11/28/2028; and (v) 2024 federal tax filing—all of which demonstrate more than two years of continuous U.S. presence and compliance.

Finally, the equities and irreparable-harm showing are underscored by official country conditions for Nicaragua (2023) documenting arbitrary detention and repression of perceived opponents—harms that cannot be undone if Petitioner is removed before adjudication. (See U.S. Department of State, Nicaragua 2023 Human Rights Report excerpts submitted with the petition.)

Petitioner respectfully requests any further relief the Court deems just and proper.

Date: August 11, 2025,

Respectfully submitted,

/s/ Julio J. Ramos
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