BRENDON WOODS (CA SBN #189910)
Public Defender

RAHA JORJANI (CA SBN #240941)
Managing Immigration Attorney
LYDIA SINKUS (CA SBN #321559)
Immigration Attorney
KELSEY MORALES (CA SBN #312362), *Designation of Counsel for Service*
Immigration Attorney
Office of the Alameda County Public Defender
312 Clay Street, 2nd Floor
Oakland, CA 94607
Telephone: 510 268-7429
Facsimile: 510 268-7462
Email: kelsey.morales@acgov.org

Pro Bono Attorneys for Petitioner

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JUAN CUEVAS GUZMAN, Petitioner, v. TONYA ANDREWS, in official capacity, Facility Administrator of Golden State Annex; ORESTES CRUZ, in official capacity, Field Office Director of ICE's San Francsico Field Office; TODD M. LYONS, in official capacity, Acting Director of ICE, KRISTI NOEM, in official capacity, Secretary of the U.S. Department of Homeland Security; PAM BONDI, in official capacity, Attorney General of the United States, Respondents.	Case No. 1:25-cv-01015-SKO **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** Immigration Habeas Case

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Regulations

INTRODUCTION

Petitioner Juan CUEVAS GUZMAN seeks a Temporary Restraining Order that requires Respondents to release him from custody or to provide him with an individualized bond hearing before an immigration judge within seven days of the issuance of a TRO.

The Department of Homeland Security ("DHS") initially detained Petitioner on December 5, 2011, charging him as removable for being present in the United States without admission or parole, or for arriving at a time or place not designated by the Attorney General, 8 U.S.C. § 1182(a)(6)(A)(i). DHS determined Petitioner was amenable to release on a $10,000 bond, pursuant to Immigration and Nationality Act ("INA") § 236 (codified at 8 U.S.C. § 1226(a)). Petitioner sought review of this custody redetermination by an immigration judge ("IJ"), and on December 20, 2011, an IJ ordered him released on a $6,000 bond, finding he was not a danger or flight risk that could not be mitigated by such a bond. DHS did not appeal the IJ's determination. Petitioner was released from ICE custody and spent the next thirteen years at liberty, pursing his immigration case, caring for his two U.S. citizen children, spending time with his extended family, and working to support his family. Petitioner's immigration case was administratively closed in 2014.

On January 25, 2025, ICE re-detained Petitioner pursuant to an administrative warrant issued under 8 U.S.C. § 1226(a) and determined that he would be held without a bond. However, when Petitioner requested a custody determination review before an IJ, the IJ denied him a bond hearing, holding him newly subject to an alternate detention statute, § 1225(b)(2), mandating detention. This ruling followed a new DHS policy, issued "in coordination with the Department of Justice (DOJ)," which instructs all ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an

"applicant for admission" under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. These actions by the executive branch violate Petitioner's constitutional and statutory rights and effectively and unlawfully deny him any review of his detention by a neutral arbiter.

First, it is well-established that individuals released from incarceration have a liberty interest in their freedom. *See, e.g.*, *Morrissey v. Brewer*, 408 U.S. 471, 482-483 (1972); *Galindo Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *4 (E.D. Cal. Aug. 4, 2025). Due process requires that any re-detention of Petitioner happen only *after* a neutral adjudicator has determined that he poses a present danger and unmitigable flight risk. DHS deprived Petitioner of due process by re-detaining him without notice or a hearing. His release is necessary to "return him to the status quo ante—the last uncontested status which preceded the pending controversy." *Galindo Arzate*, 2025 WL 2230521, at *7.

Moreover, the IJ's summary denial of a bond hearing after Petitioner was unlawfully re-detained and his ongoing detention based on the new DHS policy violate the plain language of the INA, 8 U.S.C. § 1101 *et seq*. Despite DHS and the IJ's assertions to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the U.S. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on bond or conditional parole. Section 1226(a) expressly applies to people who, like Petitioner, are charged as removable for having entered the United States without inspection and being present without admission. Respondents' new legal theory set forth in the policy is plainly contrary to the statutory framework and decades of agency practice applying § 1226(a) to people like Petitioner who are present within the United States.

Respondents' unlawful re-detention of Petitioner, couple with their new policy and the resulting ongoing detention of Petitioner without a bond hearing is depriving Petitioner of

statutory and constitutional rights and unquestionably constitutes irreparable injury. Petitioner therefore seeks a Temporary Restraining Order enjoining Respondents to release him from custody until he is a afforded a hearing before a neutral adjudicator at which the government demonstrates by clear and convincing evidence that he is a danger or an unmitigable flight risk, notwithstanding available alternatives to detention and ability to pay a new bond amount. In the alternative, Petitioner seeks a Temporary Restraining Order enjoining Respondents to release him from custody if he is not provided an individualized bond hearing before an immigration judge within seven days of the TRO.

Petitioner also seeks an order prohibiting Respondents from relocating him outside of the Eastern District pending final resolution of this litigation.

STATEMENT OF THE FACTS AND CASE

Petitioner is a forty-nine-year-old father of two who has lived in the U.S. for the past 30 years. Declaration of Lydia Sinkus, Exhibit ("Exh.") A, Declaration of Mr. Cuevas Guzman at ¶¶ 1, 3.[1] Petitioner arrived in the U.S. in 1995 at around 19 years-old; he has since lived and worked in California, close to extended family and friends from his hometown. *Id.* at ¶¶ 2, 3; Exh O, Letters of Support. He raised U.S. citizen children, currently 18 and 24 years old. Exh. A at ¶ 1.

ICE first detained Petitioner in Oakland, CA on December 5, 2011. Exh. D, 2011 Form I-213. DHS issued a Notice to Appear ("NTA") initiating removal proceedings. Exh. B, Notice to Appear. The NTA alleged Petitioner was not a citizen of the United States and had not been admitted or paroled into the United States and charged him as removable on this basis under 8 U.S.C. § 1182(a)(6)(A)(i). *Id.* The same day, DHS issued a Notice of Custody Determination

[1] Facts asserted in this motion are drawn from the attached declaration of Lydia Sinkus and from exhibits to that declaration. Further citations will be directly to the individual exhibits attached to the declaration, or to the declaration itself, hereinafter "Sinkus Decl.".

stating that pursuant to 8 U.S.C. § 1226 and 8 C.F.R. § 236, Petitioner should be released on a $10,000 bond pending a final determination by the IJ in his case. Exh. E, Form I-286, DHS Notice of Custody Determination. In so determining, DHS concluded that Petitioner was not a danger and that any flight risk could be mitigated this bond amount. *See* Sinkus Decl. at ¶ 3.

Petitioner sought review of this custody decision by an IJ, and on December 20, 2011, an IJ ordered him released on a $6,000 bond, similarly finding he did not pose a danger to others and this amount sufficient to mitigate any flight risk. *Id.*; Exh. F, IJ Order Granting Bond. Petitioner was released from immigration custody on December 22, 2011. Exh. G, Bond Receipt.

Petitioner continued to pursue his immigration case once released from ICE custody. He applied for Cancellation of Removal and Adjustment of Status on the basis of hardship to his U.S. citizen children and asylum, withholding of removal, and protection under the Convention Against Torture based on his fear of return to his country of origin. Sinkus Decl. at ¶ 4. He attended all immigration court hearings until the immigration court administratively closed his proceedings on July 23, 2014, based on his pending U visa petition filed with the U.S. Citizenship and Immigration Services ("USCIS") in January 2014. *Id.* at ¶ 5; Exh. A at ¶ 38.

Since his release, Petitioner has lived with his children in Oakland, CA. Exh. A at ¶¶ 3, 5. He has been his family's primary provider, working in a variety of industries—most recently as a FedEx driver. *Id.* at ¶ 4. His family and employers describe him as respectful, hard-working, and reliable. *See* Exh. O. In 2019, he separated from his wife and spent a year with sole custody of his children, after which he shared custody of his minor daughter. Exh. A at ¶ 5.

Petitioner has suffered four convictions during his time in the United States, one of which was vacated as legally invalid, all for misdemeanor offenses. Sinkus Decl. at ¶ 23. At the time DHS and an IJ found him suitable for release from custody, he had three misdemeanor

convictions on his record: a 2000 conviction under Cal. Pen. Code § 273.5(a), for corporal injury on a spouse; a 2007 conviction under Cal. Pen. Code § 415, for disturbing the peace; and a 2011 conviction under Cal. Pen. Code § 243(e)(1), for domestic battery. *Id.* The 2000 Cal. Pen. Code § 273.5(a) conviction was vacated in May 2025 based on legal invalidity. *Id.* In 2022, Petitioner pled no contest to an additional misdemeanor conviction under Cal. Pen. Code § 243(e)(1), for domestic battery by offensive touching, arising out of a 2020 incident. *Id.*; Exh. A at ¶ 17.[2]

Petitioner describes his past convictions as arising out of his unhealthy relationship with his ex-partner. Exh. A at ¶ 14. After the 2020 arrest, he stopped having contact with his former partner and has had no new criminal incidents. *Id.* at ¶¶ 19, 20. His family describes a positive change for Petitioner after leaving this relationship. Sinkus Decl. at ¶ 16; Exh. O. Following his 2022 conviction, Petitioner completed a year of court-assigned domestic violence classes, which he and the class facilitator describe as highly beneficial in growing his conflict management and interpersonal skills. Exh. A at ¶¶ 19-29; Exh. P, Domestic Violence Class Provider Reports.

In the five years since Petitioner's last arrest, he has focused on rebuilding his life as a single parent and providing support and stability for his children. Exh. A at ¶¶ 13, 28, 29. He was the parent who took his daughter to school and medical appointments and supported her in planning for her educational future. *Id.* at ¶¶ 10, 11, 35; Exh. O. In recent years, Petitioner has been the primary caretaker for his adult son who suffers from bipolar disorder. Exh. A at ¶¶ 8, 9, 30. Petitioner has had a work permit for over ten years, through which he worked to support his family. *Id.* at ¶ 38.

---

[2] Petitioner was charged in one other criminal case in 2015 under Cal. Pen. Code § 647.6(a)(1) for annoying or molesting a child; the charge was dismissed in 2020. Sinkus Decl. at ¶ 23; Exh. A at ¶ 18.

On December 6, 2024, DHS issued an administrative warrant for Petitioner's arrest, which was served on Petitioner when ICE detained him in front of his home on January 25, 2025. Exh. I, 2024 Form I-200. On the same day, ICE performed a custody determination review as provided for in 8 U.S.C. § 1226. Exh. J, 2025 Form I-213. ICE summarily determined that Petitioner would be detained without bond, finding him to pose a flight risk that could not be mitigated by these alternatives. *Id.* DHS did not provide Petitioner information regarding what evidence formed the basis of this decision. *See id.*; Exh. A at ¶ 39.

Petitioner was transferred to ICE custody at Golden State Annex ("GSA"). Exh. A at ¶ 39. GSA is a private detention center located in McFarland, California, that is owned and operated by GEO Group, Inc. ("GEO"). GEO is a private prison company that has facilities on three continents.[3] For years, immigrants detained at GSA have raised the alarm about unlivable and unsanitary housing conditions, as well as concerns regarding their treatment.[4]

DHS moved to recalendar Petitioner's removal proceedings. Sinkus Decl. at ¶ 7. Petitioner retained the Alameda County Public Defender's Office for removal and custody proceedings on March 18, 2025. *Id.* at ¶ 1. He filed updated applications for relief on April 25, 2025. *Id.* at ¶ 9. His 2000 misdemeanor conviction under Cal. Pen. Code § 273.5 was vacated for legal invalidity on May 5, 2025. *Id.* at ¶ 11. With this change, Petitioner confirmed his eligibility for a bond hearing under 8 U.S.C. § 1226(a) and became prima facie eligible for Cancellation of

[3] The GEO Group, Inc., https://www.geogroup.com/facilities/golden-state-annex/ (last visited August 11, 2025).

[4] *See e.g.*, "Advocacy Letter: Urgent request to stop new intakes at Golden State Annex," CCIJ (March 11, 2024) at https://www.ccijustice.org/advocacy-gsa-population-increase (highlighting a rise in reports regarding failure to provide drinking water, timely and adequate medical care, soap or underwear and shoes, and disruptions to means and programming).

Removal. *Id.* at ¶ 12. The Immigration Court set an individual hearing on Petitioner's applications for relief for July 22, 2025. *Id.* at ¶ 13.

On July 3, 2025, Petitioner requested a bond redetermination hearing before an IJ. *Id.* at ¶ 14. On July 16, 2025, the immigration court vacated Petitioner's individual hearing and set a bond hearing in the hearing slot. *Id.* at ¶ 15. At the July 22, 2025, hearing before the Adelanto immigration court, the IJ summarized and summarily accepted DHS's position that the court lacked jurisdiction to conduct a bond redetermination hearing because Petitioner "meets the definition of 235(a) for an applicant for admission." *Id.* at ¶¶ 17-18; Exh. V, July 22, 2025, DAR Transcript.[5] The IJ made this ruling having heard no substantive argument from DHS and before allowing Petitioner's counsel to argue this novel issue. Exh. V. Indeed, DHS did not identify what section of the INA they believed stripped the court of jurisdiction based on the asserted "applicant for admission" classification, mentioning neither § 1225(b)(2), the section relied on in the IJ's written order, nor any specific subsection of § 1225 that would mandate detention. Exh. V; Exh. L, 2025 IJ Order Denying Bond Hearing. The IJ also rejected Petitioner's argument that his re-detention without a prior hearing violated the existing IJ order mandating his release on bond. Exh. V. The IJ subsequently issued a written order clarifying the court's ruling that Petitioner was subject to mandatory detention pursuant to § 1225(b)(2)(a). Exh. L.

---

[5] The IJ made her ruling based on the following exchange in court:
IJ: Is the government arguing jurisdiction in this matter?
DHS: Yes.
IJ: And let me look at the NTA. And the NTA is indicating that respondent entered without permission, so government is arguing that he is an applicant for admission despite having been in the U.S. for many years since his alleged illegal entry. Is that what the government is arguing?
DHS: Correct, your honor. I can expand on that if needed, but that's essentially what we are arguing. He meets the definition of 235(a) applicant for admission, despite however long he's been here.
See Exh. V.

DHS's position was based on a new policy issued July 8, 2025, "in coordination with DOJ," which oversees immigration courts, asserting that all noncitizens who entered without inspection are subject to 8 U.S.C. § 1225(b)(2)(A). Exh. M, ICE Interim Guidance Regarding Detention Authority.

As a result of this policy and IJ ruling, Petitioner remains in detention. On August 4, 2025, Petitioner's individual hearing was reset with the immigration court for September 8, 2025. Sinkus Decl. at ¶ 20. Thus, he must wait an additional month for his first individual hearing and will likely require multiple hearings to have his case heard, which can occur over as many months given the growing number of cases on the detained court docket. *Id.* at ¶ 21.

Petitioner filed an appeal of the IJ's bond decision with the Board of Immigration Appeals ("BIA") on July 23, 2025. Sinkus Decl. at ¶ 19. The BIA can take from three to over six months to render a decision on a bond appeal. *Id.*; Exh. N, BIA Appeal Processing Times. Without relief from this Court, Petitioner faces the prospect of months, or even years, in ICE custody, separated from his family and community. *See* Sinkus Decl. at ¶¶ 21-22; Exh. N.

Petitioner's detention has caused him physical and emotional harm and significantly impacted his children's well-being. Exh. A at ¶¶ 30-37. Substandard medical care has exacerbated Petitioner's chronic back pain. *Id.* at ¶¶ 36-37. He has experienced emotional distress due to the vulnerability his children face without his presence and support. *Id.* at ¶¶ 30-35. His former partner is unable to permanently and stably shelter their children, both of whom moved into homeless shelters after he was detained. *Id.* at ¶¶ 30, 34; Exh. O. Petitioner was unable to attend his daughter's high school graduation. Exh. A at ¶ 35. In his absence, his son has struggled to meet his basic needs, including adequate care for bipolar disorder. *Id.* at ¶ 30; Exh. O.

If released from custody, Petitioner plans to move back to his former residence, and his children will return to live with him. Exh. A at ¶ 44. His goal is to return to work as soon as possible and provide them with a safe, stable living environment. *Id.* at ¶¶ 35, 42, 44, 45. His priorities are his immigration case, which he will pursue with the help of his attorney, the care of his son, who needs help managing his health, and financially supporting his daughter as she pursues a career as a nurse. *Id.*; Exh. O.

LEGAL STANDARD

Petitioner is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits… likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). Petitioner overwhelmingly satisfies both standards.

ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS

Petitioner is likely to succeed on his claims under the Due Process Clause of the Fifth Amendment and his statutory claim under the Immigration and Nationality Act.

1. Constitutional Claim Based on Petitioner's Re-detention without Due Process

Petitioner is likely to succeed on his claim under the Due Process Clause of the Constitution. The Due Process Clause constrains Respondents' power to re-detain a noncitizen released on bond without first providing a hearing before a neutral adjudicator where the

government justifies the necessity of his re-detention by clear and convincing evidence.

The Supreme Court has established that when the government conditionally releases an individual from detention, that individual gains a constitutionally protected interest in his 'continued liberty.'" *Morrissey*, 408 U.S at 482. Typically, "the Constitution requires some kind of hearing *before* the [government] deprives a person of liberty." *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). These rights extend to noncitizens in immigration proceedings. *Zadvydas v. Davis*, 533 U.S. 678, 693-94 (2001).

This Court has applied this principle to a noncitizen's release from ICE custody on bond, affirming that "[t]he government may not unilaterally take that liberty away." *Galindo Arzate*, 2025 WL 2230521, at *1. Federal district courts in California, including this one, have repeatedly recognized that due process requires a pre-deprivation hearing for a noncitizen released from ICE custody, like Petitioner, *before* ICE re-detains him. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Soto Garcia v. Andrews*, No. 2: 25-CV-01884-TLN-SCR, 2025 WL 1927596, at * 5 (E.D. Cal. July 14, 2025) (granting PI on this basis).[6]

To make this finding, courts apply a two-step inquiry, asking: (1) whether a protected

[6] *See also Meza v. Bonnar*, 2018 WL 2554572 (N.D. Cal. June 4, 2018); *Vargas v. Jennings*, No. 20-CV-5785-PJH, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *Garcia v. Bondi*, No. 3:25-CV-05070, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, No. 3:25-CV-05071, 2025 WL 1676854, at *4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, No. 3:25-cv-05436-RFL, 2025 WL 1983677, at *10 (N.D. Cal. June 30, 2025); *Phan v. Becerra*, No. 2:25-CV-01757-DC-JDP, 2025 WL 1808702, at *3 (E.D. Cal. June 30, 2025); *Domingo v. Kaiser*, No. 25-CV-05893 (RFL), 2025 WL 1940179, at *10 (N.D. Cal. July 14, 2025); *Zakzouk v. Becerra*, No. 3: 25-CV-06254 (RFL), 2025 WL 2097470, at *4 (N.D. Cal. July 26, 2025); *Maklad v. Murray,* No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376, at *7 (E.D. Cal. Aug. 8, 2025); *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679, at *5 (E.D. Cal. July 11, 2025).

liberty interest exists under the Due Process Clause; and (2) what procedures are necessary to ensure that any deprivation of that liberty interest accords with the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

a. Petitioner Has a Protected Liberty Interest in His Continued Release

The Supreme Court has affirmed, and this Court has recognized, that "individuals released from custody, even where such release is conditional, have a liberty interest in their continued release." *Soto Garcia*, 2025 WL 1927596, at * 3 (*citing Morrissey*, 408 U.S. at 482). In *Morrissey*, the Supreme Court examined the "nature of the interest" that a parolee has in "his continued liberty." 408 U.S. at 481-82. The Court noted that, "subject to the conditions of his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life." *Id.* at 482. The Court explained that "the liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty and its termination inflicts a grievous loss on the parolee and often others." *Id.* In turn, "[b]y whatever name, the liberty is valuable and must be seen as within the protection of the [Fifth] Amendment." *Id.*

For thirteen years preceding his re-detention in January 2025, Petitioner exercised that freedom under the IJ's 2011 order granting him a bond. *See* Exh. A at ¶¶ 4, 5, 8-12, 38. Just as in *Morrissey*, Peitioner's release "[enabled] him to do a wide range of things open to persons'" who have never been in custody or convicted of any crime. *Morrissey*, 408 U.S. at 482. Between 2011 and 2025, Petitioner continued to raise his two U.S. citizen children, maintained employment to support his family, and held close relationships with nearby family and friends. Exh. A at ¶¶ 4-12, 30, 38; Exh. O. Once released on bond, he retained a weighty liberty interest under the Due Process Clause in avoiding re-incarceration. *See Young v. Harper*, 520 U.S. 143, 146-47 (1997);

Gagnon v. Scarpelli, 411 U.S. 778, 781-82 (1973); *Morrissey*, 408 U.S. at 482-483; *Galindo Arzate*, 2025 WL 2230521, at *4 ("The Court finds that petitioner has a protected liberty interest in his release as previously ordered by the immigration judge."); *Guillermo M. R.*, 2025 WL 1983677, at *4 (recognizing that "the liberty interest that arises upon release [from immigration detention] is inherent in the Due Process Clause"). As such, his continued detention without adequate process violates his due process rights.

b. Petitioner's Liberty Interest Mandates Notice and a Hearing Before a Neutral Adjudicator Prior to Any Re-Arrest or Revocation of a Bond

Where a protected liberty interest exists, a court must determine what process is necessary to ensure Petitioner is not unconstitutionally deprived of his liberty. *Haygood v. Younger*, 769 F.2d 1350, 1357 (9th Cir. 1985) (*en banc*). In doing so, the court must "balance [Petitioner's] liberty interest against [DHS's] interest in the efficient administration of" its immigration laws." *Id.* "The more important the interest and the greater the effect of its impairment, the greater the procedural safeguards the [government] must provide to satisfy due process." *Id.*

Under the test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), a court must consider three factors in conducting its balancing test to determine the process due: (1) the private interest affected; (2) the government's interest in keeping Petitioner in detention without a hearing, including the additional burden the requested process would entail; and (3) the risk of erroneous deprivation of such interest through the procedures used and the probable value of additional procedural safeguards. In this case, a pre-deprivation hearing was both possible and valuable in preventing an erroneous deprivation of liberty. *See Morrissey*, 408 U.S. at 481-82. Under the *Mathews* test, ICE's failure to provide such process is a violation of Petitioner's constitutional rights.

i. Petitioner's Has a Powerful Private Interest in His Liberty

Under *Morrissey* and its progeny, individuals conditionally released from serving a criminal sentence have a liberty interest that is "valuable." *Morrissey*, 408 U.S. at 482. In the criminal parolee context, the courts have held that the parolee cannot be re-arrested without a due process hearing in which they can raise any claims they may have regarding why their re-incarceration would be unlawful. *See Gonzalez-Fuentes,* 607 F.3d 864, 891-92 (1st Cir. 2010); *Hurd*, 864 F.3d 671, 683 (D.C. Cir. 2017). Here, where detention is incident to civil proceedings rather than criminal, this principle—that a person free from physical confinement, even if that freedom is lawfully revokable, has a liberty interest entitling him to constitutional due process before he is re-incarcerated—applies with even greater force. Petitioner retains a truly weighty liberty interest even though he was under conditional release prior to his re-arrest.

Petitioner was out of custody on bond for thirteen years prior to his re-detention, during these years, he spent time as the primary caregiver for his two children and maintained employment and strong family and community ties. Exh. A at ¶¶ 4-5, 8-12, 30, 38; Exh. O. This court has found a "powerful" liberty interest in cases with much shorter periods of release from custody. *See Soto Garcia*, 2025 WL 1927596, at * 5 (Petitioner out of custody on bond for two years); *Doe,* 2025 WL 691664, at *5 (Petitioner out of custody on bond for five years). What is at stake for Petitioner is one of the most profound private interests recognized by our legal system: whether ICE may unilaterally nullify a prior bond decision and take away his "constitutionally protected interest in avoiding physical restraint." *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011). This profound private interest must be weighed heavily when determining what process is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

ii. The Government Interest in Detention without a Hearing Is Low and the Burden of the Proposed Additional Process is Minimal.

The government's interest in keeping Petitioner in detention without a due process hearing is low, and the burden of providing such a hearing would be minimal, as immigration courts carry out bond hearings regularly.

As immigration detention is civil, it can have no punitive purpose. The government's only interest in holding an individual in immigration detention can be to prevent danger to the community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690. In this case, when Petitioner was re-detained in 2025, ICE determined he should be detained without bond. Exh. J. However, we have little information about how and why that determination was made. The "custody determination" section of the relevant form, Form I-213, states "[Petitioner] was interviewed and information provided was entered into the Risk Classification Assessment for a … decision in relation to public safety and flight risk, and that no "bond amount and/or combination of ATD" would "mitigate flight risk." *Id.* But DHS provides no details about this "information" or basis for the flight risk assertion. *Id.*

As to flight risk, Petitioner attended all immigration court hearings when he was out of custody on bond, has pending applications for relief, is represented by counsel in removal proceedings, and strong family and community ties. Exh. A ¶¶ 1, 3, 38, 39; Exh. O. The IJ already determined that a bond of $6,000 and no additional alternative to detention requirements were sufficient to mitigate any flight risk. Exh. F.

As to danger, to the extent that DHS based their custody determination on Petitioner's criminal record, it is not clear that such a change is merited, and DHS has known about Petitioner's new interaction with the criminal system for years. Petitioner's most recent criminal arrest occurred five years ago, in 2020 resulting in a 2022 misdemeanor conviction involving only offensive touching. Sinkus Decl. at ¶ 23. The other arrest on his record following his 2011

release on bond occurred in 2019 but was based on a misdemeanor charge filled in 2015, which was dismissed in 2020. *Id.* Petitioner has had no new arrest in five years, and no criminal history whatsoever in the last three years. *Id.* He renewed his work permit multiple times since his June 2015 charges, again following an arrest on those charges in 2019, again following his 2020 arrest, and yet again after his 2022 conviction. *Id.* at ¶ 6. DHS had the opportunity to run biometric and security checks each time he applied for and renewed his work permit, and we know they did so on his most recent renewal in 2023.[7] *See* Exh. J. Therefore, this information was available to DHS and likely known, long before Petitioner's 2025 ICE arrest. Moreover, these outdated facts do not capture the current circumstances relevant to risk of public safety threat for Petitioner, as he has had significant positive changes in his life in the last five years. *See* Exh. A at ¶ 26-29; Sinkus Decl. at ¶ 23(5).

To the extent DHS argues there has been a material change in circumstances increasing flight risk or danger that would increase the government's interest in detaining him, the agency should be required to establish such a change with specific allegations and Petitioner be provided an opportunity to respond. DHS's failure to provide even this minimal process further establishes the need for a neutral adjudicator to review the validity of his re-detention.

The "fiscal and administrative burdens" that release from custody, unless and until a bond hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35. Petitioner does not seek a unique or expensive form of process, but rather his release from custody until a routine hearing regarding whether he should be re-incarcerated takes place. Indeed, this court has found the "effort and cost" required to provide such procedural safeguards "minimal," particularly where, as here, it was previously provided. *Soto Garcia*, 2025 WL

[7] https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf

1927596, at *4. Alternatively, providing Petitioner an immediate hearing before this Court regarding bond is a similarly routine procedure. *See Doe*, 2025 WL 691664, at *6. At that hearing, the Court would have the opportunity to determine whether DHS can present evidence that the flight risk analysis has changed sufficiently to require a different amount of bond—or if bond should be revoked. But there was no justifiable reason to re-incarcerate Petitioner while his case is pending.

As the Supreme Court noted in *Morrissey*, even where the State has an "overwhelming interest in being able to return [a parolee] to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole … the State has no interest in revoking parole without some informal procedural guarantees." 408 U.S. at 483. Release from custody until a neutral adjudicator has determined that DHS has justified Petitioner's re-detention by clear and convincing evidence is far *less* costly and burdensome for the government than keeping him detained. *Hernandez*, 872 F.3d 976, 996 (9th Cir. 2017). Any burden on Respondent of such process does not outweigh Petitioner's substantial liberty interest.

iii. Risk of Erroneous Deprivation of This Interest is High and Proposed Process Would Decrease That Risk

Releasing Petitioner from custody until he is provided a pre-deprivation hearing would decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be lawfully detained, he must be provided a hearing before a neutral adjudicator at which the government is held to show that there has been sufficiently changed circumstances such that the December 2011 bond determination should be altered or revoked because clear and convincing evidence exists to establish he is a danger to the community or a flight risk. *See e.g. Diaz*, 2025 WL 1676854, at *3.

Petitioner has already been erroneously deprived of his liberty, and the risk that he will

continue to be deprived is high if ICE is permitted to keep him detention after making a unilateral decision to re-detain him. Although Petitioner is statutorily eligible for a new bond hearing under 8 U.S.C § 1226(a), DHS, in coordination with DOJ, has recently adopted a new policy asserting that all individuals, like Petitioner, charged with being present without admission under 8 U.S.C § 1182(a)(6)(A)(i), are subject to mandatory detention without the opportunity for release on bond. *See infra.* Indeed, Petitioner was denied a bond hearing on this basis on July 22, 2025, generating the need for the present habeas petition. Exh. L. At this time, no statutory mechanism provides Petitioner any process before a neutral adjudicator following his re-detention. As a result, under current procedures, the validity or necessity of Petitioner's re-detention would evade any review by the IJ or any other neutral arbiter.

By contrast, the procedure sought—release from custody and reinstatement of bond until he is provided a hearing in front of a neutral adjudicator at which DHS proves by clear and convincing evidence that his re-detention is necessary—is much more likely to produce accurate determinations regarding factual disputes, such as whether he is a present danger or unmitigable flight risk. *See Doe*, 2025 WL 691664, *1. The Ninth Circuit has noted that the risk of erroneous deprivation of liberty can be decreased where a neutral decisionmaker, rather than ICE alone, makes custody determinations. *Diouf v. Napolitano*, 634 F.3d 1081, 1091-92 (9th Cir. 2011).

Due process also requires consideration of alternatives to detention and ability to pay at any custody redetermination hearing that may occur. *See Hernandez*, 872 F.3d at 997. Foundational due process requires that Petitioner receive notice and an opportunity to review information concerning his re-detention.

Accordingly, Petitioner is likely to succeed on his claim that the Due Process Clause requires notice and a hearing before a neutral adjudicator *prior to any* re-incarceration by ICE.

And, at the very minimum, he clearly raises serious questions regarding this issue, thus also meriting a TRO. *See Alliance for the Wild Rockies*, 632 F.3d at 1135; *Doe*, 2025 WL 691664, at *8.

2. In the Alternative, Petitioner is Likely to Succeed on his Statutory Claim

At minimum, Petitioner has shown he is likely to succeed on his claim that he is eligible for a bond hearing under 8 U.S.C. § 1226, and that he was deprived of this statutory right by an unlawful change in executive branch policy.

Individuals charged with inadmissibility and deportability in removal proceedings, like Petitioner, have long been detained by DHS under 8 U.S.C. § 1226 and granted an initial bond hearing by an immigration judge, unless subject to mandatory detention due to criminal grounds provided for in the statute. *See* 8 U.S.C. §§ 1229a, 1226(c); 8 C.F.R. §§ 1003.19(a), 1236.1(d). Indeed, DHS carried out Petitioner's arrest and custody determinations in December 2011 and January 2025 under this statute. *See* Exhs. C, D, E, F, I, J. However, on July 8, 2025, DHS issued a new policy instructing all Immigration and Customs Enforcement ("ICE") employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—*i.e.*, those who are present without admission—to be an "applicant for admission," and therefore subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Exh. M. The new policy was implemented "in coordination with" the Department of Justice. *Id.* And on May 22, 2025, in an unpublished decision from the Board of Immigration Appeals, EOIR adopted this same position[8]. Petitioner was summarily denied a bond hearing before an IJ pursuant to this new policy. Exh. V; Exh. L.

DHS's and DOJ's interpretation defies the plain text of the INA. Section 1226(a) applies,

[8] *Available at*: https://nwirp.org/our-work/impact-litigation/assets/vazquez/59-1%20ex%20A%20decision.pdf.

by its plain language, to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). These removal hearings are held under § 1229a, to "decid[e] the inadmissibility or deportability of a[] [noncitizen]." Federal courts that have recently addressed this issue agree that § 1226(a), not § 1225(b), applies to people like Petitioner—noncitizens who have not been admitted, but who are not apprehended upon arrival to the U.S. *See Rodriguez Vazquez v. Bostock*, --- F. Supp. 3d ---, 2025 WL 1193850 (W.D. Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion).

The text of § 1226 also explicitly applies to people charged as being inadmissible, including those charged with entry without inspection, like Petitioner. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E) was recently added by Congress, amending the statute to mandate detention for, among other categories, people who are charged as inadmissible pursuant to 8 U.S.C. § 1182(a)(6) (present without admission) *and* who have certain criminal histories. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). This statutory reference to individuals, like Petitioner, charged as present without admission and clear congressional intent that the statute apply to such individuals, makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the *Rodriguez Vazquez* court explained, "[w]hen Congress creates "specific exceptions" to a statute's applicability, it "proves" that absent those exceptions, the statute generally applies. *Rodriguez Vazquez*, 2025 WL 1193850, at *12 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

DHS's proposed reading of § 1226 is additionally inconsistent with the cannon against superfluities, which requires courts to interpret statutes "as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of

the same statute inconsistent, meaningless or superfluous." *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023). Read as a whole, the statutory text makes clear that § 1226 applies to petitioner, regardless of the fact that he may be present without admission.

By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). The statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act's "broader structure . . . to determine [the statute's] meaning"). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

In relevant part, § 1225(b)(2)(A) states, a noncitizen "who is an applicant for admission, if the examining immigration officer determines that [a noncitizen] seeking admission is not clearly and beyond a doubt entitled to be admitted, [the noncitizen] shall be detained for a proceeding under section 1229a." The new DHS and EOIR policy, classifying Petitioner as detained under § 1225(b), rather than § 1226(a), ignore the whole of the statute, and instead focus on the definition of "applicant for admission," which at § 1225(a)(1). *See* Exh. M; Exh. L. Section 1225(a)(1) defines an "applicant for admission" as a person who is "present in the United States who has not been admitted or who arrives in the United States. But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache*

Tribe v. Becerra, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). Here, that context underscores that the definition in (a)(1) is limited by other language in the statute to those who undergo an initial inspection at or near a port of entry shortly after arrival—and that it does not apply to those who are arrested in the interior of the United States months or years or decades later. Indeed, § 1225(b)(2) does not simply address applicants for admission. Instead, the language "applicant for admission" in (b)(2)(A) is qualified by additional language clarifying the subparagraph applies only to those "seeking admission"—in other words, those who have applied to be admitted or paroled. The DHS and EOIR policy ignore this text, just as the policy and IJ order ignore the statutory language in § 1226 that expressly encompasses persons who have entered the United States and are present without admission.

In sum, the INA's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted." Instead, § 1226(a) covers those who are present within and residing within the United States and who are not at an international border seeking admission.

This reading of the statute is supported by years of agency practice and precedent. *See* Exh. S, Unpublished BIA Decisions, 2015–2024, finding noncitizens charged as present without admission subject to 8 U.S.C. § 1226(a). In contrast, DHS and DOJ's legal theory has been soundly rejected by federal courts. *See e.g. Rodriguez Vazquez*, 2025 WL 1193850, at * 12 (finding such a reading of the INA is likely unlawful and that § 1226(a), not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting habeas petition based on same conclusion); *Maldonado Bautista et al v. Santacruz Jr. et al*, No. 5: 25-CV-01873-SSS-BFM (C.D. Cal. July 28, 2025) (granting TRO based on denial of a bond hearing and

holding that despite being present without admission, Petitioners were not "applicants for admission" under § 1225 and properly detained under § 1226(a)). Indeed, DHS can point to no published case that supports their position, and it is counter to the principles of our legal system that an IJ, bound to follow precedent, accepted such a novel argument with no argument, threadbare analysis, and no legal authority to support this radical change in law. *See* Exh. V.

Therefore, DHS has impermissibly revisited its legal position on detention and release authorities to withhold protections that Petitioner would have otherwise been afforded under § 1226(a), and the IJ has unlawfully adopted a position contrary to law. Petitioner is likely to succeed on the merits of his statutory claim.

B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF

Petitioner will suffer irreparable harm were he to remain deprived of his liberty and subjected to continue incarceration by immigration authorities without being immediately released and provided the constitutionally adequate process that this motion for a temporary restraining order seeks.

The Ninth Circuit has recognized "irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez*, 872 F.3d at 995; *Soto Garcia*, 2025 WL 1676855, at *3 (order granting TRO found irreparable harm from continued ICE detention); *see also Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016) (recognizing that detainees in ICE custody are held in "prison-like conditions.").

Petitioner has been out of ICE custody for thirteen years. Sinkus Decl. at ¶¶ 3, 7. During that time, he has lived with his family in Oakland, CA. Exh. A at ¶¶ 2, 42. He has raised two

U.S. citizen children, at times serving as their sole caretaker and financial provider. *Id.* at ¶¶ 1, 4-12. Before ICE detained Petitioner in January 2025, he was the caretaker for his adult son who suffers from a serious mental health condition and he was training as a FedEx driver, hoping to increase his earnings to be able to pay for his daughter's college education. *Id.* at ¶¶ 1, 4-12, 30. Following Petitioner's detention by ICE, both of his children had to move into homeless shelters. *Id.* at ¶¶ 30, 34; Exh. O. His daughter graduated from high school without the presence of her father and while residing in a youth shelter, she is struggling to continue her education without her father's support. Exh. A at ¶¶ 34, 34; Exh. O. Petitioner has already lost job opportunities and crucial time with his children. Additional time in custody will magnify the "collateral harms" already inflicted on is children. Moreover, every day Petitioner remains detained with subpar medical care, his emotional state and physical health are impacted; he already feels depressed about what is happening to his children and suffers from worsening chronic back pain that he has not been able to properly treat in ICE custody. Exh. A at ¶¶ 36, 37.

Finally, as detailed above, Petitioner contends that his re-arrest absent a hearing before a neutral adjudicator and subsequent denial of a bond hearing violated his due process and statutory rights. As this Court put it in *Doe*, the "violation of Petitioner's due process rights is sufficient to satisfy the irreparable harm requirement." 2025 WL 691664, at *6. The violation of a statutory right is similar in and of itself to an immediate and irreparable injury. *See Maldonado Bautista*, No. 5: 25-CV-01873-SSS-BFM at * 9 (*citing Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022)). A temporary restraining order is necessary to prevent additional irreparable harm by continued unlawful detention.

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING THE TEMPORARY RESTRAINING ORDER

The balance of equities and public interest, which merge in light of the fact that the

government is the opposing party, strongly favors Petitioner. *See Soto Garcia*, 2025 WL 1676855, at *3 (citations omitted).

Federal courts have recognized a strong public interest "in upholding procedural protections against unlawful detention and … that the costs to the public of immigration detention are staggering." *Id.* Moreover, the government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."); *see also Doe*, 2025 WL 691664, at *6. "[I]t would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); *see also Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) (holding that allowing continued violations of federal law would serve "neither equity nor the public interest").

Any burden imposed by requiring the DHS to release Petitioner from custody until he is provided a hearing before a neutral decisionmaker is minimal and clearly outweighed by the substantial harm he and his family will suffer as long as he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Soto Garcia*, 2025 WL 1676855 at *3.

If a temporary restraining order is not entered, the government would effectively be granted permission to ignore the order of an immigration judge, the statutory text of the INA, and the requirements of Due Process. *See M.R.*, 2025 WL 1983677 at * 7 (noting the danger for arbitrary and erroneous deprivation of liberty if ICE is allowed to re-detain individuals released on bond with no additional process). In this context, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

CONCLUSION

For all the above reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction ordering that Respondents release him from custody and refrain from re-arresting him until he is afforded a hearing that complies with due process on whether his re-detention is justified, or, in the alternative ordering that Respondents release him from custody if he is not provided a custody redetermination hearing in front of a neutral arbiter within seven days.

Respectfully submitted this 13th day of August, 2025.

/s/ Kelsey Morales
Kelsey Morales
Attorney for Petitioner