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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

JOAQUÍN DAVID RICO-TAPIA **Plaintiff/Petitioner** **vs.** **Michael J.D. Smith, Warden, Federal Detention Center, Honolulu, Hawai'i; Polly Kaiser, Acting Field Office Director, San Francisco Field Office, Immigration and Customs Enforcement; Pam Bondi, Attorney General of the United States; Kristi Noem, Secretary of Homeland Security, in their official capacities,**	**No.1:25-cv-00379-SASPKJM** **MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER** **Judge: Shanlyn A. S. Park** **Hearing:TBD** **Related Document: Dkt 1.**

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

1. Pursuant to Fed. R. Civ. P. 65, Petitioner respectfully asks the Court to issue an ex parte Temporary Restraining Order directing his immediate release from ICE custody pending adjudication of this action; or, in the alternative, ordering immediate release and requiring a custody hearing within 14 days at which the government bears the clear-and-convincing burden to establish danger or flight risk. Petitioner further asks the Court to enjoin any transfer or removal that would defeat this Court's jurisdiction and to prohibit Respondents from placing or maintaining him in expedited removal while this habeas case is pending, in light of his documented two-plus years of U.S. presence and prior parole. *See Coal. for Humane Immigrant Rights v. Noem* (D.D.C. Aug. 1, 2025, No. 25-cv-872 (JMC)) 2025 U.S.Dist.LEXIS 148615) (applying stay to expedited removal of parolees with more than two years in country).

2. Petitioner Joaquín David Rico-Tapia is a native of Venezuela and a citizen of Colombia. He was lawfully paroled into the United States on October 14, 2022, and, for nearly two years thereafter, lived, worked, and complied with all DHS supervision requirements in Northern California. On July 23, 2025, after an Immigration Judge dismissed his removal proceedings without prejudice, ICE re-detained him and transferred him to FDC Honolulu—thousands of miles from his

community—without prior notice and opportunity to be heard. He is in asylum pending status.

3. Despite his prior parole, good conduct and more than two years of continuous physical presence he now faces expedited removal arbitrarily thrust upon him. The Fifth Amendment forbids re-detaining a long-settled parolee without pre-deprivation process before a neutral decisionmaker and without the Government carrying a clear-and-convincing burden of dangerousness or flight risk. *Romero v. Kaiser*, No. 22-cv-02508, 2022 U.S. Dist. LEXIS 82538, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention." (*Aviles-Mena v. Kaiser* (N.D.Cal. Aug. 12, 2025, No. 25-cv-06783-RFL) 2025 U.S.Dist.LEXIS 156032, at *6.)

4. Petitioner respectfully seeks status-quo-preserving relief: (i) release pending adjudication of his habeas petition; or, at minimum, (ii) an expedited order to show cause under § 2243 and a prompt custody hearing with the appropriate constitutional burdens; together with (iii) a limited no-transfer/no-removal order to preserve this Court's jurisdiction over the immediate custodian and ensure reasonable access to counsel while the petition is adjudicated.

EXPEDITED REMOVAL HERE IS UNLAWFUL.

5. Expedited removal has been held inapplicable to aliens paroled into the United States. Two important cases have recently stayed enforcement of expedited removal proceedings to paroled aliens present within the interior of the United States and those paroled for more than two years. On August 1, 2025, the U.S. District Court for the District of Columbia in *Coal. for Humane Immigrant Rights v. Noem* (D.D.C. Aug. 1, 2025, No. 25-cv-872 (JMC) 2025 U.S.Dist.LEXIS 148615) stayed government policies seeking to place individuals who entered the country on parole at a port of entry in expedited removal proceedings. The court found that the Immigration and Nationality Act does not authorize expedited removal for people who were paroled at a port of entry, even after their parole has been terminated. The D.C. Circuit Court of Appeals stayed the District Court Order; however, the stay **does not** apply to paroled individuals who have been in the United States longer than two years, Mr. Rico-Tapia has been in the United States in continuous fashion since October 14, 2022. Consequently, his current detention is likely unlawful under 5th Amendment procedural due process considerations. **See Ramos Dec. Ex. 1.**

6. On August 29, 2025 the same District Court in *Make the Rd. N.Y. v. Noem,* 2025 U.S. Dist. LEXIS 169432, 2025 LX 389496, stayed government policy applying expedited removal to aliens detained within the interior of the United States with less than two years established community connection. *Make the Rd. N.Y. v. Noem*,

2025 U.S. Dist. LEXIS 169432, *72, 2025 LX 3894960. Mr. Rico-Tapia resides in the San Francisco Bay Area, far from the international border.

7. The expedited removal statute us codified at 8 U.S.C. § 1225(b)(1)(A)(i); *see id.* § 1182(a)(6)(C), (a)(7) (grounds of inadmissibility). Among that set, only two categories of noncitizens are eligible for expedited removal: (1) noncitizens "arriving in the United States," and (2) noncitizens who "ha[ve] not been admitted or paroled into the United States" and cannot affirmatively show that they have been "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." 8 U.S.C. § 1225(b)(1)(A)(i)–(iii). [1]

8. Courts have repeatedly granted TRO/PI relief for individuals re-detained by ICE after long periods on parole. *See Espinoza v. Kaiser* (E.D.Cal. Sep. 5, 2025, No. 1:25-CV-01101 JLT SKO) 2025 U.S.Dist.LEXIS 173694, at *14-15.) (*Coalition* concluded that the statute "forbids the expedited removal of noncitizens who have been, at any point in time, paroled into the United States."); *Maklad v. Murray* (E.D.Cal. Aug. 8, 2025, No. 1:25-cv-00946 JLT SAB) 2025 U.S.Dist.LEXIS 153675 (Notably, already her I-589 petition has been summarily dismissed, and it appears that if she is not released, she will not receive the

[1] See *Aviles-Mena v. Kaiser* (N.D.Cal. Sep. 5, 2025, No. 25-cv-06783-RFL) 2025 U.S.Dist.LEXIS 173976, at *9-10 (Aviles-Mena no longer qualifies for expedited removal because he was "paroled" into the United States and has been living and working in the United States for three years.)

consideration of her derivative asylum claims. As other courts have done, the Court concludes that the government's interest in detaining Ms. *Maklad* or re-detaining her without a hearing is slight); *Arzate v. Andrews* (E.D.Cal. Aug. 19, 2025, No. 1:25-cv-00942-KES-SKO (HC)) 2025 U.S.Dist.LEXIS 161136.) (petitioner has consistently shown up for his check-ins and hearings, and petitioner has complied with the terms of supervision. In such circumstances, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."); *See also Barrera v. Andrews* (E.D.Cal. Aug. 21, 2025, No. 1:25-cv-01006 JLT SAB) 2025 U.S.Dist.LEXIS 162825.)(parole allowed him to build a life outside detention, albeit under the terms of that parole. Mr. Garcia has a substantial private interest in being out of custody); *Castellon v. Kaiser* (E.D.Cal. Aug. 14, 2025, No. 1:25-cv-00968 JLT EPG) 2025 U.S.Dist.LEXIS 157841 (During her more than three years on parole, Ms. Arostegui Castellon obtained work, attended classes at a community college, and built connections with her community . . . Tthe Court concludes that the government's interest in detaining Ms. Arostegui Castellon or re-detaining her without a hearing, is slight.)

9. Petitioner respectfully requests a TRO: (i) immediately releasing him from detention (ii) no-transfer/no-removal to preserve jurisdiction or, alternatively, an expedited

schedule/OSC and prompt bond hearing with the proper burden; and (iii) a § 2243 "forthwith" timetable.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) (habeas), 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1651 (All Writs Act); declaratory relief lies under 28 U.S.C. §§ 2201–02. The district-of-confinement rule applies in core habeas: Petitioner is confined at FDC Honolulu, and his immediate custodian (the Warden) is located in this District. (*See* Ramos. Dec. Ex. C (FDC Honolulu).) Venue is proper here.

11. To the extent Respondents purport to proceed under expedited removal, Petitioner also seeks limited habeas review consistent with statute and challenges unlawful executive detention; however, the threshold classification question confirms that custody is governed by § 1226(a) on this record.

LEGAL STANDARDS

12. A TRO issues under the same standard as a preliminary injunction. *Winter v. NRDC,* 555 U.S. 7, 20–22 (2008). Petitioner must show (1) likelihood of success on the merits, (2) irreparable harm absent relief, (3) that equities tip in his favor, and (4) the public interest supports relief. Pursuant to ***Winter***, the moving party must demonstrate that he is "likely to succeed on the merits." 555 U.S. at 20. As long as all four *Winter* factors are addressed, an injunction may issue where there are

"'serious questions going to the merits'" and "a balance of hardships that tips sharply towards the plaintiff." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). When the Government is the opposing party, the last two factors merge. *See Nken v. Holder,* 556 U.S. 418, 435 (2009).

13. Under FRCP 65, a TRO requires specific facts in a verified pleading or declaration showing immediate and irreparable injury, and, if sought ex parte, counsel must certify efforts to give notice and explain why notice should not be required. The order must state the reasons, describe the restrained conduct in reasonable detail, and address security. 28 U.S.C. § 2243 directs habeas courts to proceed "forthwith," typically requiring a return within three days (up to twenty for good cause) and a prompt hearing thereafter.

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED (AND, AT MINIMUM, RAISES SERIOUS QUESTIONS) ON THE MERITS.

A. Statutory misclassification: custody, if any, lies under § 1226(a), not § 1225(b).

The record shows Petitioner is a parolee (10/14/2022) with years of community residence and documented ties; after the IJ dismissed his case without prejudice (07/23/2025), ICE re-detained him and transferred him to FDC Honolulu. (*See* Ramos. Dec. Ex. B; Ex. D; Ex. A; Ex. E–F.) Respondents cannot now reverse

course and institute § 1225 expedited removal proceedings. *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *7-9 (S.D.N.Y. Aug. 13, 2025) holding that a person placed in full removal proceedings under § 1226 cannot thereafter be detained under § 1225. (*Clavijo v. Kaiser* (N.D.Cal. Aug. 21, 2025, No. 25-cv-06248-BLF) 2025 U.S.Dist.LEXIS 163056, at *11.)

14. Treating a long-settled parolee as subject to mandatory detention under § 1225(b) is contrary to the statute and regulatory framework; detention—if any—must proceed under § 1226(a) with access to custody redetermination. "The Court acknowledges that the statute indicates that, "The Attorney General at any **time** may revoke a bond or **parole authorized** under subsection (a), rearrest the alien under the original warrant, and detain the alien." 8 U.S.C. § 1226(b). As noted above, this does **not** mean that DHS may exercise its discretion in a manner that is inconsistent with constitutional requirements." *Salazar v. Kaiser* (E.D.Cal. Aug. 25, 2025, No. 1:25-CV-01017-JLT-SAB) 2025 U.S.Dist.LEXIS 165942, at *23.)

B. Procedural due process: re-detention after prolonged liberty without a neutral hearing violates the Fifth Amendment.

15. Having been at liberty under DHS supervision for years, Petitioner holds a protected liberty interest in avoiding physical restraint absent adequate process. Federal courts—on closely analogous records—have enjoined re-detention without a

hearing and ordered immediate release or, at least, a bond hearing at which the Government carries a clear-and-convincing burden to show danger or flight risk. In *Y-Z-L-H v Bostock*, 2025 U.S. Dist. LEXIS 130216, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) the court explained the parole process in immigration cases and noted that before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons supporting the revocation decision.

16. These two independent paths—regulatory and constitutional—establish a strong likelihood of success. At the very least, they present serious questions and the equities tip sharply toward Petitioner on the denial of liberty basis standing alone.

II. IRREPARABLE HARM IS CONCRETE AND IMMINENT.

17. Detention itself is an irreparable injury; removal or transfer out of this District would frustrate this Court's ability to adjudicate the core habeas directed to the immediate custodian and impede counsel access. Petitioner's continued confinement also jeopardizes ongoing administrative processes in the form of the pending Asylum application. The status quo must be preserved to allow meaningful judicial review.(It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (*quoting Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 49 L. Ed. 2d 547 (1976)).

III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR RELIEF, SECURITY (FRCP 65(c)).

18. Because the interest of the government is the interest of the public, the final two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009). "[T]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Jorge M. F.*, 2021 U.S. Dist. LEXIS 40823, 2021 WL 783561, at *3. Petitioner respectfully requests that the Court waive security or set a nominal bond, given that he seeks to preserve the status quo and this Court's jurisdiction, he is in civil detention with limited means, and Respondents face no realistic monetary harm from narrowly tailored relief.

CONCLUSION

19. For these reasons, the Court should grant a Temporary Restraining Order:

a. Releasing Mr. Tapia from federal custody; or
b. Issue an Order to Show Cause forthwith under 28 U.S.C. § 2243, requiring a return within three (3) days (or within such time as the Court allows for good cause, not exceeding twenty (20) days) and setting a prompt hearing thereafter as to why he should not be released.
c. Enjoin transfer or removal while this action is pending and require production of Petitioner and reasonable access to counsel, preserving this Court's jurisdiction over the immediate custodian.

d. Waive security or set a nominal bond under FRCP 65(c).

Dated: September 11, 2015

Respectfully submitted,

/s/ Julio J. Ramos .
Julio J. Ramos
Counsel for Petitioner