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UNITED STATES DISTRICT COURT
NORTHEN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JULIO LLANES TELLEZ, Petitioner/Plaintiff, vs. ORESTES CRUZ, 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, Respondent/Defendant	Case No.: 25-cv-08982 (PCP) **TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS**

INTRODUCTION

Petitioner JULIO LLANES TELLEZ is a Nicaraguan asylum applicant whom ICE released on an Order of Supervision and directed to report to 630 Sansome Street (San Francisco ERO). He complied for over three years and was then seized at a routine check-in on or about October 16–17, 2025, without prior written notice or a warrant. The Writ Petition pleads these

facts and attaches record proof of supervision, compliance, and community ties. It also pleads that Mr. Tellez timely filed a defensive I-589 on November 30, 2022, holds a C08 employment authorization, has filed taxes, and completed a First Offender Program related to a misdemeanor dui; nothing in the record suggests he is a danger or a flight risk. He seeks narrow, provisional relief: release, or a prompt neutral custody hearing with appropriate burdens; and ancillary orders preserving jurisdiction and preventing the misapplication of mandatory detention to a person with more than two years' presence and a pending defensive asylum claim.

The only hiccup in Petitioner's record, is his pleading no contest to a VC231152(b) misdemeanor in San Benito Superior Court on 8/20/2024. Petitioner has fulfilled all court-imposed requirements, including a three-month first offender dui counseling program that has assisted him in navigating ills of alcohol. Now, ICE after almost a year after his conviction seeks to detain the Petitioner in indefinite detention while his asylum case winds through the Immigration Court system, in fact Mr. Tellez has a December 3, 2025 Master Calendar hearing set in the Adelanto Immigration Court.

A Single Dui Does Not Mandate Mandatory Detention

ARGUMENT

I. Petitioner is likely to succeed on the merits because use of mandatory detention here is unlawful without a pre-detention hearing.

The Due Process Clause protects noncitizens from arbitrary deprivations of liberty. After releasing Mr. Tellez to conditional liberty on an OSUP, ICE re-detained him at a routine check-in with no prior written notice and no prompt individualized custody determination. Under

Mathews v. Eldridge, the private interest in physical freedom, the high risk of erroneous deprivation absent pre-deprivation procedures, and the minimal burden of providing notice and a neutral hearing compels writ relief in this instance. *424 U.S. 319, 334–35 (1976).* The Supreme Court has long held that individuals subjected to civil detention must be afforded due process to challenge the justification for their detention. *See, e.g., Zadvydas v. Davis,* 533 U.S. 678, 684, 700-01 (2001) (due process required government to justify ongoing detention of detained immigrant ordered removed despite past serious crimes). The crime of DUI is not a crime that requires mandatory detention. *Ortiz v. Napolitano* 667 F.Supp.2d 1108, 1115 (D.Ariz. 2009) (Petitioner's 2008 DUI conviction is not a removable offense and does not trigger the mandatory detention provision. See 8 U.S.C. § 1226(c).). "When it comes to non-violent crimes, especially those caused by addiction, the passage of time does make a difference, as does the availability of treatment options. It violates due process to keep someone in immigration detention for more than a year on the basis of dangerousness where the overriding reason is that a non-violent crime was committed as a result of that person's addiction and the individual has a viable plan for rehabilitation and compliance with pertinent conditions of release." *Obregon v. Sessions* (N.D.Cal. Apr. 20, 2017, No. 17-cv-01463-WHO) 2017 U.S.Dist.LEXIS 60552, at *25.) *see also Perez v. McAleenan* (N.D.Cal. 2020) 435 F. Supp. 3d 1055, 1062.)("Mr. Ixchop has produced evidence that may well indicate that he is not a danger to the community on account of his past alcohol abuse. He has been sober since his last DUI in October 2015. He has been in treatment for substance abuse, both before and during his detention. The director of one of his treatment

programs represented that his progress had been "good." An expert disclosed a psychological evaluation concluding that he presented a "low" risk of reoffending.).

In *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, F. Supp. 3d , 2025 WL 2084921. at *3 (N.D. Cal. July 24, 2025). the court held:

> even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody. *See Romero v. Kaiser,* No. 22-cv-02508, 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."); *Jorge M. F. v. Wilkinson.* No. 21-cv-01434. 2021 WL 783561. at *2 (N.D. Cal. Mar. 1. 2021): *Ortiz Vargas v. Jennings.* No. 20-cv-5785. 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23.2020): *Ortega.* 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.")

In similar DUI cases, courts have ordered timely bond hearings. *C.A.R.V. v. Wofford* (E.D.Cal. Nov. 1, 2025,) No. 1:25-CV-01395 JLT SKO) 2025 LX 494560.*); See also Carballo v. Andrews.* No. 1:25-CV-00978-KES-EPG (HG). 2025 WL 2381464, at *8 (E.D. Cal. Aug. 15, 2025), *citing Perera v. Jennings.* et. al. No. 21-CV-04136-BLF. 2021 WL 2400981. at *5 (N.D. Cal. June 11. 2021): *Pham v. Becerra.* No. 23-CV-01288-CRB. 2023 WL 2744397, at *6 (N.D. Cal. Mar. 31, 2023). "[A]llowing a neutral arbiter to review the facts would significantly reduce the risk of erroneous deprivation." *Guillermo M. R. v. Kaiser,* No. 25-CV-05436-RFL, 2025 WL 1983677, at *8 (N.D. Cal. July 17, 2025). Thus, the Court should conclude that prompt, post-deprivation process is required here.

The substantive due process limits on civil detention are independently violated.

Immigration detention must be reasonably related to appearance and community safety rather than punitive aims. *Zadvydas,* 533 U.S. at 690–701*; Clark v. Martinez,* 543 U.S. 371, 377–79 (2005); *Demore v. Kim,* 538 U.S. 510, 516–17 *(2003).* On this record—years of OSUP compliance (OSUP and Personal Report Record), pending defensive asylum (I 589 stamp and Defensive Receipt Notice), C08 EAD, tax filing, and program completion—there is no showing that detention is necessary to ensure appearance or protect the community. *See Ortega-Cervantes v. Gonzales,* 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a non-citizen released on an "Order of Release on Recognizance" necessarily must have been detained and released under section 1226, including because he was not an "arriving alien" under the regulations governing section 1225 examinations).

Government may not repeatedly seize a person on the same basis without new cause or a lawful order. *Williams v. Dart, 967 F.3d 625, 634 (7th Cir. 2020); United States v. Kordosky, 1988 WL 238041, at *7 n.14 (W.D. Wis. Sept. 12, 1988).* In immigration, officials may not re arrest someone solely because he is subject to removal proceedings; allowing repeat arrests would invite "harassment by continual rearrests." *Saravia v. Sessions, 280 F. Supp. 3d 1168, 1196 (N.D. Cal. 2017), aff'd sub nom. Saravia for A.H. v. Sessions, 905 F.3d 1137 (9th Cir. 2018); United States v. Holmes, 452 F.2d 249, 261 (7th Cir. 1971).* The manner of Mr. Tellez's re detention at a check in—with no warrant and no pre deprivation process—falls squarely within these prohibitions.

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

Ongoing detention is an irreparable injury, and removal or transfer would frustrate judicial review. *Winter* and *Nken* supply the governing framework. Recent district decisions—*Maklad v.*

Murray, 2025 U.S. Dist. LEXIS 153675 (E.D. Cal. Aug. 8, 2025); Arzate v. Andrews, 2025 U.S. Dist. LEXIS 161136 (E.D. Cal. Aug. 19, 2025); Barrera v. Andrews, 2025 U.S. Dist. LEXIS 162825 (E.D. Cal. Aug. 21, 2025); Castellon v. Kaiser, 2025 U.S. Dist. LEXIS 157841 (E.D. Cal. Aug. 14, 2025)—recognize that where a supervisee has complied for years and built a life, the private interest in remaining free is substantial while the Government's interest in re detaining without a hearing is slight.

1. Exhaustion is not required and would be futile.

There is no adequate administrative mechanism to adjudicate, before the deprivation, the legality of re detention after years of supervision or the misapplication of ER to a long present supervisee with a defensive asylum posture. The Petition pleads futility with citations to *McCarthy v. Madigan, 503 U.S. 140, 147–49 (1992)*, and recent decisions confirming futility in this precise setting, including *Chavez v. Kaiser, 2025 U.S. Dist. LEXIS 203250; Hurtado, 29 I. & N. Dec. 216, 228 (BIA 2025);* and *Roman v. Noem, 2025 U.S. Dist. LEXIS 186389.* Moreover, *in Matter of Yajure Hurtado,* 29 I&N Dec. 216 (BIA 2025) the BIA's decision held that immigration judges lack jurisdiction to hold bond hearings or grant bond to all individuals charged with entering the country without inspection. Id. Until this reinterpretation of the statutory scheme by the BIA, millions of noncitizens had been informed that they could participate in removal proceedings, which can take months or years, out of custody, so long as they could establish they were neither a flight risk nor danger to the community.

2. Petitioner is Not An Applicant for Admission

Sections 28 USC 1225 and 1226 both govern the detention and removal of noncitizens from the United States. However, Section 1225 provides for mandatory detention of certain individuals, while Section 1226 establishes a discretionary detention scheme. Section 1225 provides that a noncitizen "who is an applicant for admission . . . shall be detained." 8 U.S.C. § 1225(b)(2)(A). In contrast, under Section 1226's discretionary scheme, a noncitizen "may be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C § 1226(a). Pending this decision, the Attorney General may continue to detain the arrested individual or may release the individual on bond or conditional parole. 8 U.S.C § 1226(a)(2)(A)-(B). Section 1226(a) affords noncitizens a statutory right to a bond hearing before an immigration judge. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1256 (W.D. Wash. 2025) (citing 8 C.F.R. § 1236.1(d)); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir. 2022) (explaining that under "§ 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final"). "At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors that show they are not a flight risk or danger to the community." *Bostock*, 779 F. Supp. 3d at 1256.

Respondents argue Petitioner is an "applicant for admission" within the meaning of Section 1225. This argument reflects a recent executive branch policy change directing federal immigration officials to seek expedited removal of a larger swath of noncitizens by classifying all noncitizens present in the United States as "applicant[s] for admission" under Section 1225. This Court should join the vast majority of Courts within this district that have rejected DHS new interpretation of the mandatory detention statutute.

Petitioner argues that § 1225(b)(2) does not apply to noncitizens like him, who have been released by DHS on their own recognizance into the interior of the country. A number of district courts that have examined this issue have so held. These courts have rejected the Government's expansive construction of §1225(b)(2), which would allow it to detain without a hearing virtually any noncitizen not lawfully admitted.

These courts examined the text, structure, agency application, and legislative history of 1225(b)(2) and concluded that it applies only to noncitizens "seeking admission," a category that does not include noncitizens like Petitioner, living in the interior of the country. *See Gomes v. Hyde,* No. 1:25-CV-11571-JEK, 2025 U.S. Dist. LEXIS 128085, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) ("[T]he plain text of Sections 1225 and 1226, together with the structure of the larger statutory scheme, indicates that Section 1225(b)(2) does not apply to noncitizens who are arrested on a warrant issued by the Attorney General while residing in the United States."); *Lopez Benitez v. Francis,* No. 25 CIV. 5937 (DEH), 2025 U.S. Dist. LEXIS 157214, 2025 WL 2371588, at *5 (S.D.N.Y. Aug. 13, 2025) (holding 1225(b)(2) "clearly" not applicable to noncitizens who have resided in the country for years); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 U.S. Dist. LEXIS 156344, at *29 (D. Ariz. Aug. 11, 2025) (finding that the Government's "selective reading" of 1225(b)(2) "violates the rule against surplusage and negates the plain meaning of the text"); *Martinez v. Hyde,* No. CV 25-11613-BEM, 2025 U.S. Dist. LEXIS 141724, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (rejecting the Government's "novel interpretation" that 1225(b) applies to noncitizens detained while present in the United States); *Rodriguez v. Bostock,* 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) (holding that Section 1226, not 1225(b)(2), governed inadmissible noncitizens residing in the country); *Aceros v. Kaiser* (N.D.Cal. Sep. 12, 2025, No. 25-cv-06924-EMC (EMC)) 2025 U.S.Dist.LEXIS 179594, at *21-22.

CONCLUSION

Petitioner desires to preserve his liberty, at a minimum the Court should order release and a bond hearing in this matter.

Dated: November 20, 2025 By: */s/ Julio J. Ramos for Petitioner*