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UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF CALIFORNIA

VLADIMIR ERNESTO PRIETO-CORDOVA

Petitioner,

v.

CHRISTOPHER J. LAROSE, *in his official capacity as Warden of the Otay Mesa Detention Center*; PATRICK DIVVER, *in his official capacity as Field Office Director of the Immigration and Customs Enforcement, and Removal Operations*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States*,

Respondents.

RESPONSE TO THE UNITED STATES' OPPOSITION TO PETITIONER'S WRIT OF HABEAS CORPUS APPLICATION

ORAL ARGUMENT REQUESTED

Date of Hearing Requested: May 3, 2025

Case No. 25CV2824 CAB DDL

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I. INTRODUCTION

A. Vladimir Prieto-Cordova:

Vladimir stands before this Court not simply as an immigration detainee, but as an internationally recognized athlete, an accomplished coach, and a committed advocate for democracy in his home country of Venezuela, who has long faced grave threats under Venezuela's authoritarian Maduro regime. Vladimir's position as a prominent sportsperson —and his refusal to align with a regime notorious for persecuting dissenters—placed him in relentless danger. Armed collectives broke into his home, threatening to paralyze him unless he supported the regime, a form of torture, and labeling him a "traitor" for seeking safety abroad. His life has also been threatened. His advocacy has extended beyond the boundaries of Venezuela: Vladimir has actively participated in peaceful opposition activities both at home and in the United States, following in the footsteps of his father, a member of the Civil Political Association. He is an individual suffering *"credible fear."* And, he is a legitimate asylum seeker, who should have the protection of the Convention Against Torture, (CAT), and who is a person that would, if allowed to stay in the U.S., by any standard, he would be a gift to this nation.

Vladimir is an individual with a worldwide reputation in his sport as a coach and referee. He is a qualified Fédération Internationale D'Escrime (FIE) referee, the World body over international fencing, and he is a prestigious, World renowned fencing Foil Coach. Not only is he not a threat to the United States, to the contrary, he is serving the citizens of this nation in a very productive manner. He has a current work permit, which does not expire until 2030. His employer is UCSD and Elite Fencing of Rancho Bernardo. It is important to note that he is the coach of a current international fencer who has won four (4) World Championships under his tutelage.

Hundreds of coaches with O-1 visas from other countries populate this country's university fencing teams and clubs. Ironically, he is before you today because he fled for his life before he had the opportunity to obtain such a visa.

As is described in his Habeas Petition, he was a vocal opponent of Maduro, the current head of the Venezuelan Government. His life has been threatened. He was visited in his home by a group of thugs, who threatened to cripple him. He was, and still is under threat and in danger.

Despite these hardships, Vladimir's dedication to the values of sportsmanship and democracy has never wavered. Forced to flee after enduring persistent

surveillance and intimidation, he sought asylum in the United States, the only country he found willing to offer protection. Since his arrival, Vladimir has continued to contribute to his community, pursuing his passion as an athlete and coach with the prestigious University of California San Diego's (UCSD) Nationally ranked Fencing Team.

The legal context of Vladimir's detention must be understood against the backdrop of recent judicial scrutiny of the government's expansive interpretation of immigration detention statutes. Courts have almost universally rejected the automatic, indefinite application of mandatory detention under 8 U.S.C. § 1225(b)(2) to noncitizens, like Vladimir, who have long been residing in the United States pursuant to parole and/or release by immigration authorities.

The Proof of this status is in a document the Government has not produced tot his court—Vladimir's INA 236 release into the U.S., on parole. Prevailing opinions underscore that individuals in Vladimir's position—released and compliant for an extended period—are entitled to due process, including careful consideration of the equities, and a bond hearing where the government *must* establish danger or flight risk by clear and convincing evidence. The government's attempts to revert to

blanket detention have been repeatedly found contrary to both statutory text and constitutional guarantees.

Vladimir's record is unblemished: 1) from his initial arrival, he declared his intent to seek asylum, 2) he was paroled into the United States, and 3) scrupulously abided by all conditions imposed by immigration authorities. His dedicated compliance underscores the absence of risk of flight or potential danger to the community. During his time in the United States, Vladimir has been serving as a highly trusted fencing coach at the University of California San Diego, giving back to his community by mentoring student-athletes with high expectations—a contribution that cannot readily be replicated. His sudden re-detention, following an order to appear for the imposition of an ankle monitor, was wholly unexpected and untethered from any noncompliance. When he arrived at the ICE facility, he was told he would be given an ankle monitor, and when he let them know that he had to work with children and young adults, and would they consider an alternative, he was taken into custody.

The government's characterization of mandatory detention as an absolute ignores both Vladimir's exemplary record and the individualized equities at stake. Vladimir's continued confinement would exact irreparable harm—not only on him,

but on the students, team, and broader university community that relies on his leadership.

The government now asserts that Vladimir's continued detention is mandatory under 8 U.S.C. § 1225(b)(2), arguing that no bond hearing is permitted and that courts lack jurisdiction to interfere. The government has still not produced an arrest warrant or given any reason for his custody. The Government in their Response disregards both Vladimir's application for asylum, his initial parole into the U.S. and his demonstrated compliance, decency, and good will. Together with the recent judicial consensus rejecting the government's overly sweeping interpretation of the statutes, instead emphasizing individualized due process and the presumption of release for those not shown to be dangerous, or likely to abscond, these Government actions are, frankly Un-American.

Vladimir's request for immediate relief is compelled by the urgent threat of arbitrary removal to another jurisdiction or country, the risk of irreversible harm to his safety, and the disruption of his vital contributions to the UCSD community. Far from being a risk, Vladimir's ongoing employment and deep ties to the local community illustrate why his continued detention is unnecessary and unjust.

At every turn, Vladimir has abided by U.S. immigration laws: entering under the supervision of ICE, applying for asylum promptly, albeit approximately seven (7) days late through no fault of his own as explained below, and complying with all release conditions for approximately three years. He has become an integrated member of the community and an irreplaceable mentor to students striving for excellence at the national and international level. Now, arbitrary detention under a disputed statutory pretext not only violates the rule of law, but also deprives a worthy individual—and the community he serves—of due process and basic fairness.

The government's own exhibits corroborate Vladimir's clean record: he has no history of criminal conduct or immigration violations, and at the time of his re-detention, removal proceedings remained ongoing with no suggestion of noncompliance. The reports reaffirm that he was released on recognizance and had fully complied with all conditions prior to his arrest. No facts indicate that he poses a flight risk or threatens public safety. Sadly, he appears to be the victim of the Government's rush to satisfy its' statistical goal of deporting millions of immigrants.

At the heart of Vladimir's case is his unwavering opposition to a repressive regime, which has singled him out both for his athletic prominence and for his

public defense of democratic principles. The terror he faces if returned to Venezuela is not hypothetical, but grounded in lived experience and substantiated threats. His asylum application further details his transit through Mexico where protection was unavailable, confirming that the United States is truly his last safe refuge. He did not travel through Columbia, as one document suggests.

In summary, Vladimir Prieto-Cordova is a model asylum-seeker and community member, facing imminent harm if removed and irreparable damage if unjustly detained. His flawless record of compliance, deep ties to the community, and ongoing contributions as a coach and mentor underscore that the government's blanket application of detention is legally unsound and ethically indefensible. For these reasons and rooted in recent judicial precedent and the equities unique to his circumstances, Vladimir respectfully requests immediate release on bail while his petition is adjudicated.

2. <u>The True Facts of Vladimir Prieto-Cordova's Entry to the U.S. & Why He is a Section § 1226 Entrant, as Opposed to a Section §1225 Entrant:</u>

Contrary to the Government's response, which pretends to be unaware of, or is deliberately ignoring, his asylum application based on credible fear, and his status as an asylum applicant, when he entered the United States at the Texas border. Not

one mention of the word asylum is in the government response. His defection from Venezuela, took him through Mexico. While in Mexico at the invitation of the Mexican government and sport authorities, because of his Worldwide reputation, to lecture in a clinic to help Mexican authorities learn how to become successful international fencing referees, he and his future wife, herself an extraordinarily successful sabre fencing coach, learned that their apartment had been ransacked, and badly damaged. (Remember he had already received death threats and threats of crippling violence at this point). Upon learning of this happening, he and his future wife, Jornely Velazquez-Guevara, later to become, in 2025, Jornely Velazquez-Prieto, (hereinafter "Jornely"), defected and fleeing to the United States. They entered at a place in the 1,954 mile border, (with only 52 legal land crossings grouped into 26 official U.S. Customs and Border Protection (CBP) designated ports of entry), where it was impossible for Vladimir and Jornely to enter at an official designated point. Nevertheless, Vladimir and Jornely dutifully flagged down a border patrolman and surrendered to him declaring that they were seeking asylum. A document attached here as EXHIBIT 1, a document not produced by the Government, which indicates that he was undoubtedly paroled into the U.S. as an INA 236 entrant, and released from custody in the Houston area. (This document is also attached to his Habeas Petition). He then moved to Dallas with permission, and

then eventually to San Diego, at all times keeping the immigration authorities informed of his moves. He has absolutely no criminal record, and has been a perfect parolee.

3. Vladimir is currently being held on orders by Federal authorities on immigration with no apparent published charges and is confined at the federal immigration institute named Otay Mesa Detention Center, located at 7488 Calzada De La Fuente, San Diego, CA 92154. He is confined to a 7-man overcrowded cell, under very stressful conditions. He has not complained but it is offered by counsel for the Court's information.

B. <u>It is Questionable that Petitioner Entered the U.S. Without Inspection:</u>

Vladimir reported to immigration authorities on the day he entered the U.S., the appeared to parole him into the U.S. during that period of time. The nature of his entry, and the flagging down of a border patrol agent, surrendering with a declaration seeking asylum, give this court discretion that he entered with inspection.

II. THIS COURT HAS JURISDICITON TO CONSIDER PETITITONER'S CHALLENGE TO HIS DETENTION

A. The Court Has the Jurisdiction to Release Petitioner

There is no question that the Court has jurisdiction to consider this custody challenge. Respondents raise jurisdictional challenges to the petition for writ of habeas corpus under 8 U.S.C. § 1252(g) and § 1252(b)(9).

First, § 1252(g) does not apply to legal claims. Ibarra-Perez v. United States, __ F.4th__No. 24-631, 2025 WL 2461663, at *7 (9th Cir. Aug. 27, 2025). It also does not apply to custody challenges, which are not one of the "three discrete actions that the Attorney General may take: her 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999) (emphasis in original). See Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); Mosqueda v. Noem, No. 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8, 2025);Vasquez Garcia v. Noem, No. 25-CV-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Similarly, it is clear that 8 U.S.C. § 1252(b)(9) does not preclude review, as Petitioner does not challenge her removal proceedings before this Court. In Jennings, the Supreme Court determined that the "arising from" language of section

1252(b)(9) did not apply to challenges to the lawfulness of custody during a removal proceeding. Jennings, 583 U.S. at 292-95. Gonzalez v. U.S. Immigr. & Customs Enf't, 975 F.3d 788, 810 (9th Cir. 2020); Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *10 (W.D. Wash. Sept. 30, 2025). As such, Petitioner's detention challenge is properly before this Court.

B. Petitioner is not Subject to a Detention Under 8 U.S.C. § 1225(b)(2) and is Entitled to a Bond Hearing.

Even though Claimant strongly argues that he is a Title 8 U.S.C. § 1226 subject, because the Government argues he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because he entered without inspection. Notably, Respondents do not argue that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(1) as an arriving noncitizen who is subject to expedited removal proceedings. There is no Notice to Appear, that charges Petitioner as having entered the United States without inspection and not as an arriving alien, because he was paroled into the U.S.

By its own terms, § 1226(a) applies 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). §1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens

who are inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. See, e.g., § 1226(c)(1)(A), (C).

If the Board's position that § 1226(a) did not apply to inadmissible noncitizens such as who are present without inspection in the United States were correct, there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, the statute would only have needed to address people who are deportable for certain offenses. Notably, recent amendments to § 1226 dramatically reinforce that this section covers people like Petitioners who DHS alleges to be present without admission. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection, those who are inadmissible because they are present without admission. See Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E). By

including such individuals under § 1226(c), Congress further clarified that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. See Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *18 (W.D. Wash. Sept. 30, 2025); Diaz Martinez v. Hyde, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025); Gomes v. Hyde, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025). See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

In sum § 1226'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." Section 1226(a) covers those who are present within and residing within the United States and who are not at the border seeking admission. The text of § 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is concerned "primarily [with those] seeking entry," Jennings v. Rodriguez, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government

must determine whether a[] [noncitizen] seeking to enter the country is admissible," id. at 287.

Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who has already entered and is now residing in the United States. An individual submits an "application for admission" only at "the moment in time when

the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." Id. (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those who can be said to be "seeking admission" within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, violating a key rule of statutory construction. See *Shulman*, 58 F.4th at 410–11.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," i.e. those who are "arriving on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving into the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. See Dubin v. United States, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute).

Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as 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").

III. DISCUSSION:

***Your applicant respectfully asks this Court to take into consideration a recent case with almost identical facts in which the Court ordered bond. J.S.H.M., Petitioner v. MINGA WOFFORD, et al.* Slip Copy (2025):2025 WL 2938808.**

This case involved the analysis of two detention statutes 8 U.S.C. § 1226 and § 1225. The Court also cites *Salcedo Aceros v. Kaiser*, Mp;25-CV-06924-E<C. 2025 WL 2637503 (N.D. Cal. Sept. 12. 2025. This case is identical in its relevant facts and law and demonstrates, much more articulate than I, the reasons why Vladimir should be released on bond. This application for a Temporary Restraining Order or Preliminary Injunction in connection with the Habeas Corpus petition filed in behalf of Vladimir Ernesto Prieto-Cordova (hereinafter "Vladimir.") on October 22, 2025.

Petitioner requests that if this TRO or Preliminary Injunction is granted, this TRO or Preliminary Restraining Order hearing, be considered the bond hearing itself, so that Petitioner can be released immediately and because I will be out of the country beginning May 4, 2025, and a later scheduled bond hearing would necessarily exclude me.

A. Government's Argument: Statutory Authority and Mandatory Detention:

The Government's opposition is grounded in the assertion that Vladimir Ernesto Prieto-Cordova is an "applicant for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2). The government maintains that, based on this statutory classification, Prieto-Cordova is not entitled to a bond hearing or discretionary release, and only "parole" on a case-by-case, discretionary basis is available (see government's brief and U.S. Attorney Exhibits). *Jennings v. Rodriguez and Matter of M-S-* are invoked to support this. Although the Government relies on Exhibit 1 to their opposition Petitioner objects because, 1) it makes no mention of the manner in which he reported—seeking asylum, 2) on information and belief, the policy of ICE is to not record any application of asylum in their initial documents after they have processed an immigrant taken into custody, and 3) their documents contradict the release document that indicate he is being

released under INA 236, where the border patrol agents, in their discretion, released Vladimir on parole;

B. **Jurisdictional Limits:** The government argues that the district court lacks subject matter jurisdiction pursuant to 8 U.S.C. §§ 1252(g) and (b)(9), which channels review of removal and detention to the circuit courts via petition for review, barring district court interference before a final removal order (see *Reno v. AAADC, J.E.F.M. v. Lynch*; government's brief). The Government is wrong on this point as well, as the District Cour does have jurisdiction to hear this matter and to consider bail.

C. **Due Process**: The government cites *Dep't of Homeland Sec. v. Thuraissigiam* and *Jennings* for the proposition that non-citizens in Prieto-Cordova's position are owed only such process as Congress has established by statute, not a constitutional right to a bond hearing. This argument ignores the statutes and laws surrounding the protection and admission of immigrants seeking legitimate asylum.

D. **Irreparable Harm and Public Interest:** While the Government claims that civil immigration detention alone does not meet the standard for irreparable harm warranting TRO or preliminary relief, and that the public interest lies in the enforcement of immigration laws and the prompt execution of removal, Vladimir's case is not a typical removal case but one with strong elemental qualification for

asylum. The public has a great interest, indeed a right, to see fairness and obedience in its asylum laws. Thus, the Government's interest *should be in an analysis of the individual facts in a case, and the rationale behind asylum laws*. The asylum laws of our nation recognize the humanity in saving souls from brutality, torture, and murder, by allowing them, in keeping with our national history of being an immigrant nation, to be rescued from such fates.

E. <u>No Factual Allegations of Risk</u>: Notably, the government does not allege Prieto-Cordova is a flight risk or danger to the community; its opposition is rooted *entirely* in statutory arguments for mandatory categorical detention. The Government *even argues* that Vladimir has no reason to complain, because he has only been incarcerated for less than 30 days. I understand the context of this remark, because of the history numerous cases of long periods of incarceration that immigrants suffer, because of large caseloads, and the body of law dealing with these types of cases. However, any case involving incarceration, when liberty is taken from an individual *unfairly and unnecessarily*, is one day too many. Mindless confinement of a human being, when it is not justified or avoidable, is the height of inhumanity.

F. Judicial Treatment of Expanded Mandatory Detention:

Case law (e.g., *J.S.H.M v. Wofford, supra,* and numerous cited district court decisions compiled in national advisories) *strongly rejects the government's expansive interpretation of § 1225(b)(2) as applying to all noncitizens in the interior who were previously released under parole or recognizance, especially absent new evidence or individual findings of flight risk or danger.*

Courts distinguish between initial border apprehensions (which may fall under § 1225(b)) and persons released and residing in the interior, for whom discretionary § 236(a) custody and bond review apply.

The weight of recent precedent holds that re-detention or revocation of parole requires notice, individualized assessment, and, at minimum, a timely bond hearing with the government bearing the burden by clear and convincing evidence.

Reliance interests and due process rights are recognized for individuals long released and integrated into communities, making summary re-detention constitutionally problematic. Such is the case with Vladimir and his wife.

G. Due Process and Bond Hearing Rights: Courts emphasize that after release on parole or recognizance, liberty interests protected by the Due Process Clause attach, requiring at least a prompt post-deprivation hearing, as repeatedly upheld in

cases such as *Pinchi v. Noem*, *Doe v. Becerra*, *Padilla v. ICE*, and the extensive *J.S.H.M. v. Wofford* order.

H. **Factual Background Similarities**:

Prieto-Cordova's factual profile very closely mirrors the *J.S.H.M.* case—both were paroled at the border, lived peacefully with community ties for months/years, complied with ICE requirements, were subsequently re-detained at a check-in with little or no advance warning, and face removal prior to full adjudication of claims. Both have no criminal history and present no evidence of flight risk or dangerousness. Each of these cases involve an abrupt shift from supervised release to detention without materially changed circumstances or individualized findings.

Indeed, Vladimir's record of obedience to his requirements, his work record, and his peacefulness is superior to the applicant in *J.S.H.M.*, and J.S.H.M., the individual who was given bond release.

I. **Government's Lack of Individualized Evidence**: Across all factual records and government filings, there is no showing or allegation of Prieto-Cordova posing a danger to the community or risk of flight. The record instead highlights community contributions (e.g., coaching at UCSD), pending asylum applications, and peaceful residence and a legitimate work record under a authorized work permit.

J. Procedural and Equitable Factors: Irreparable Harm and Public Interest:

Courts consistently find that loss of liberty and risk of removal before exhaustion of legal remedies constitute irreparable harm, and that the public interest is not undermined by release of individuals who are not threats and whose continued detention serves no individualized enforcement purpose.

C. THE LATE FILING OF PETITIONER'S APPLICATION IS EXCUSABLE UNDER EXTRAORDINARY CIRCUMSTANCES:

Petitioner voluntarily discloses, although the Government has not raised it, that his application was about seven (7) days beyond the one-year deadline for filing his petition for asylum. Under United States immigration law, an application for asylum must be filed within one year of the applicant's arrival in the country. However, there are limited circumstances under which a judge may excuse a late filing. These circumstances are not based on equitable considerations but rather on specific exceptions provided by law, such as ineffective assistance of counsel.

1. One-Year Filing Deadline for Asylum Applications

The Immigration and Nationality Act (INA) and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, ordinarily requires that an application for asylum be filed within one year after the date of the applicant's

arrival in the United States. 8 U.S.C. § 1158(a)(2)(B). This deadline is normally strictly enforced, and failure to meet it generally results in the denial of the application. However, the law provides two statutory exceptions to the one-year filing deadline: (1) changed circumstances that materially affect the applicant's eligibility for asylum, and (2) *extraordinary circumstances* relating to the delay in filing the application, provided that the applicant "demonstrates...extraordinary circumstances relating to the delay in filing the application" within the required one year. Ineffective assistance of counsel has been held to be an extraordinary circumstance. These exceptions are narrowly construed and must be supported by evidence.

2. Extraordinary Circumstances Exception

The extraordinary circumstances exception may apply if the applicant can demonstrate that the delay in filing was due to factors beyond his or her control. Examples of extraordinary circumstances include serious illness, mental or physical disability, or *ineffective assistance of counsel*. Courts have held that the applicant must show that the extraordinary circumstance directly caused the delay in filing and that the application was filed within a reasonable time after those circumstances were resolved. For instance, in *People v. Gregor*, the court emphasized the importance of reasonable diligence in filing motions after triggering events (*People*

v. Gregor, 82 Cal.App.5th 147 (2022))[1]. Similarly, in *Harrison v. County of Del Norte*, the court noted that excusable neglect must be the act or omission of a reasonably prudent person under similar circumstances, and mere ignorance of filing deadlines is generally insufficient to excuse a late filing (*Harrison v. County of Del Norte*, 168 Cal.App.3d 1 (1985)).

Here, Vladimir entrusted his application to a licensed attorney in the State of Florida, early in the process, and was assured that the attorney would properly process his application. Instead, in a shocking display of professional negligence, the attorney, Elio Vazqiez Immigration Law Group filed the application two (2) days late. Societal Motives for licensing attorneys and holding them accountable for negligence include consumer protection, ensuring high-quality legal services, and upholding the integrity of the legal system. Licensing creates a barrier to entry that ensures lawyers have a baseline level of competence, while accountability mechanisms like professional negligence lawsuits and disciplinary action protect the public from misconduct and incompetence by providing recourse and deterring bad behavior. We have a chance here to write a wrong done by a member of our profession. Thus, it is respectfully requested that the Court balance that scale in favor of an innocent, vulnerable, decent person, fleeing a brutal country for his life and limb, and find that professional negligence, and the minor two-day delay in

filing his asylum application having been caused by an "extraordinary circumstance," professional negligence, and absolve him of any fault in the matter.

Respectfully, this court has the jurisdiction to review "extraordinary circumstances." *Husyev v. Mukasey*, 528 F.3d 1172, 2008. In *Husyev*, the court reviewed two obstacles to jurisdiction and resolved them in favor of accepting jurisdiction. 1) where the court concluded that the case presented a question of law not subject to the jurisdictional restrictions of § 1158(a)(3); and 2) where the Court concluded that the plain language of the REAL ID Act grants jurisdiction to appellate courts to review questions of law presented in petitions for review of final orders of removal, even those pertaining to otherwise discretionary determinations. "The REAL ID Act restores our jurisdiction to address such a question of law despite any statutory restrictions on our jurisdiction over discretionary decisions." Husyev did not prevail mostly because he waited 364 days [late] before applying for asylum.

Here, our Petitioner was at the total mercy of the attorney in Florida who, having a year to file the application for Asylum, failed to do it on time, having delegated his duties to a non-lawyer who failed to file his application on time. The circumstances are that the application *was filed seven (7) days late.*

In summary, a judge may forgive the late filing of an asylum application if the applicant can demonstrate that the delay was caused by changed circumstances or extraordinary circumstances, such as in this case, ineffective assistance of counsel, as defined by the INA. Please see EXHIBIT 2, (Declaration of Maria Chavez, Maryland Attorney and Immigration lawyer in San Diego).

SUMMARY OF GOVERNMENT'S OPPOSITION TO RELEASE FROM CUSTODY AND PRAYERS FOR RELIEF:

1. Statutory Authority and Eligibility for Release

The government contends that Prieto-Cordova is mandatorily detained under 8 U.S.C. § 1225(b)(2), precluding any bond hearing or discretionary release. However, relevant statutory interpretation and the procedural history of this case show that Prieto-Cordova was paroled into the United States on his own recognizance under authority of INA § 236(a)—not § 1225(b)—and lived peaceably and productively in the community. The evidentiary record, ICE release orders, and supporting case law (see J.S.H.M v. Wofford, national advisory) confirm that such interior parolees or released individuals are properly subject to discretionary custody review under § 236(a), with the right to an individualized bond hearing.

2. Jurisdiction and Court Authority

The government's jurisdictional argument fails in light of on-point case law holding that district courts retain habeas jurisdiction to review the legality of continued detention and to order relief—including bond hearings—where due process violations are alleged (see *J.S.H.M.*, and numerous cited advisories).

The attempted invocation of §§ 1252(g) and (b)(9) is insufficient to bar review of the legality and constitutionality of detention, as established in both circuit and district precedent. The existence of ongoing removal proceedings does not strip the federal court of its habeas authority over basic liberty claims.

3. Due Process and Bond Hearing Rights

Judicial interpretations widely recognize that, after a period of release or parole, a noncitizen holds a substantial liberty interest that cannot be revoked without due process—specifically, notice and an individualized bond hearing at which the government bears the burden of proving necessity for continued custody by clear and convincing evidence (see *Pinchi v. Noem*, *Doe v. Becerra*, *Padilla*, & *J.S.H.M. v. Wofford*).

Purely statutory process does not satisfy Fifth Amendment requirements where the government shifts a previously released individual to mandatory detention without new individualized findings.

4. Assessment of Flight Risk and Danger

The government identifies *no evidence* that Prieto-Cordova is a flight risk or danger to the community. Records confirm no criminal history, his peaceful and productive presence in the United States, with significant community ties.

ICE's initial grant of parole or recognizance reflects an agency determination that he was not a flight risk or threat, and there is no evidence of changed circumstances justifying re-detention.

5. Irreparable Harm and Public Interest

Loss of liberty and risk of removal prior to completion of legal proceedings constitute irreparable harm, as recognized by numerous recent decisions. The public interest aligns with ensuring due process and preventing arbitrary or punitive detention of individuals without individualized evidence of risk.

The balance of equities and public interest do not favor blanket enforcement when the petitioner has shown compliance, benefit to the community, and no public safety risk.

6. Proper Remedy

Under the applicable legal framework, the proper relief is an order requiring prompt individualized review via a bond hearing, or release on recognizance pending such a hearing, with the burden placed on the government to justify continued detention. The TRO or preliminary injunctive relief is warranted to preserve Prieto-Cordova's right to be heard and prevent removal pending adjudication of his claims.

As mentioned above, it is now feared that Respondents now seek to eject Vladimir from his own asylum case, continue to detain him, and possibly transfer him away from the southern District of California so that they can rapidly deport him under an entirely separate and inapposite law, 8 U.S.C. § 1225, although it is clear that he qualifies for processing under §1226. This fear is reinforced by ICE's ongoing practices, and government efforts as reported in the news outlets, to deport asylum seekers to a foreign country before they have the opportunity to challenge their removal and perfect their asylum application, a current political atmosphere where the government appears to be attempting to unofficially invalidating the asylum laws, by its conduct. Thus, this application for a preliminary injunction preventing his removal from this jurisdiction, from the U.S., and his release from custody.

7. Thus, your affiant request that this Court stay any removal proceedings from this jurisdiction and from the U.S. and combine the bond decision with this review, or in the absence of a hearing, grant a recognizance bond upon the grant of this petition, so that Petitioner may resume his coaching position at University of San Diego (UCSD), during this fencing season. His deportation would cause irreparable harm both to him and the program which he supports. It is important to note that his employment does not displace any worker in the United States, because Vladimir's unique skills, expertise and reputation cannot be duplicated by any individuals, because, frankly, they do not exist. He is a one-of-a-kind foil fencing coach. And he has a work permit, which does not expire until April 28, 2030.

9. These circumstances justify this restraining order and grant of release, because of the pressure that ICE is under to deport millions of immigrants before consequential political events occur.

10. Petitioner is not a flight risk, has an enormous responsibility to coach a team and an individual with Olympic potential, and has a meritorious application for asylum.

11. Should this Temporary Restraining Order NOT issue, petitioner is most likely to suffer irreparable harm.

12. Counsel for Petitioner will traveling on November 4, 2025, be out of the country until November 22, 2025, and ***respectfully request and urge that the restraining order and bond hearing be combined, and be heard no later than November 3, 2025. We ask for an in-person hearing so that members of the University of California San Diego (UCSD) fencing team and coaching staff can be present in support of their beloved coach.***

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter.

b. *Stay any removal proceedings either from this jurisdiction or the U.S. while petitioner's Habeas application is pending.*

c. Should the Court grant relief, combine the bond hearing with either a written decision or the hearing on this matter and order his immediate release.

c. Grant any other further relief this Court deems just and proper.

Dated: October 29, 2025,

Respectfully submitted,

_____

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Pro Bono Assistance for Petitioner

Admitted in Maryland Only

COPY

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

ORDER OF RELEASE ON RECOGNIZANCE

File No.: [redacted]

Name: PRIETO-CORDOVA, VLADIMIR ERNESTO Date: February 16, 2022

You have been arrested and placed in removal proceedings. In accordance with section 236 of the Immigration and Nationality Act and the applicable provisions of Title 8 of the Code of Federal Regulations, you are being released on your own recognizance provided you comply with the following conditions:

☒ You must report for any hearing or interview as directed by Immigration and Customs Enforcement or the Executive Office for Immigration Review.

☒ You must surrender for removal from the United States if so ordered.

☒ You must report in (writing) (person) to Duty officer at See I-831 on 03/17/2022 08:00 as directed.

If you are allowed to report in writing, the report must contain your name, alien registration number, current address, place of employment, and other pertinent information as required by the officer listed above.

☒ You must not change your place of residence without first securing written permission from the officer listed above.

☒ You must not violate any local, State or Federal laws or ordinances.

☒ You must assist Immigration and Customs Enforcement in obtaining any necessary travel documents.

☐ Other: *Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.*

If fitted with a U.S. Immigration and Customs Enforcement GPS tracking ankle bracelet, do not tamper with or remove the device. Under federal law, it is a crime to willfully damage or attempt to damage property of the United States. Damaging or attempting to damage the GPS tracking ankle bracelet or any of its associated equipment (including, but not limited to, the charging station, batteries, power cords, etc.) may result in your arrest, detention, and prosecution under 18 U.S.C. § 1361 and/or 18 U.S.C. § 641, each punishable by a fine, up to ten years imprisonment, or both.

☐ See attached sheet containing other specified conditions (Continue on separate sheet if required)

NOTICE: Failure to comply with the conditions of this order may result in revocation of your release and your arrest and detention by Immigration and Customs Enforcement.

C. Bacchus BACCHUS, C 0387
(Name and Title of ICE Official)

Alien's Acknowledgement of Conditions of Release under an Order of Recognizance

I hereby acknowledge that I have (read) (had interpreted and explained to me in the _____ language) the contents of this order, a copy of which has been given to me. I understand that failure to comply with the terms of this order may subject me to a fine, detention, or prosecution.

(Signature of ICE Official Serving Order) (Signature of Alien)

02/17/2022
Date

I hereby cancel this order of release because:

☐ The alien failed to comply with the conditions of release. ☐ The alien was taken into custody for removal.

DECLARATION OF MARIA C. CHAVEZ, ESQ.

I, Maria C. Chavez, Esq. declare under the penalty of perjury that the following is true and correct to the best of my knowledge.

1. My name is Maria C. Chavez and I am an attorney licensed to practice law in the state of Maryland (Bar Number 0912150149). I represent Vladimir Prieto Cordova in his removal proceedings before the Executive Office of Immigration Review, Otay Mesa Immigration Court.

2. On or about late November 2022, on advice of a friend, Mr. Prieto Cordova called Attorney Elio, Esq. of the Miami area for possible representation regarding his asylum. He spoke with his assistant Nelisa Peña who scheduled a formal consultation a few days later. Notably, the consultation was with Nelisa and not Mr. Vazquez. During that consultation, Mr. Prieto Cordova communicated to Ms. Peña that he entered the United States on January 23, 2022.

3. In the following days, someone from Mr. Vazquez's office sent Mr. Prieto Cordova a retainer agreement whereby they agreed for Mr. Vazquez to represent Mr. Prieto Cordova in an asylum application before the Executive Office of Immigration Review in exchange for $8,000. The agreement was duly executed on December 10, 2022.

4. Based on my review of communications between Mr. Prieto Cordova and Ms. Peña, he submitted all relevant information and documents by mid–January 2023. Following submission of his documents, Mr. Prieto Cordova believed everything would be timely filed and trusted in his attorney's office.

5. Ms. Peña sent the "final" asylum application on Form I-589 for Mr. Prieto-Cordova's signature on January 25, 2023—two days after the one-year anniversary of Mr. Prieto-Cordova's entry into the United States.

6. A few months later, when Mr. Prieto Cordova was looking into how many days his asylum application had been pending so he could qualify for work authorization, he realized that his application had been filed late. Mr. Prieto Cordova asked Ms. Peña why it was filed late, and she relayed to him that it was filed on time, but that the Immigration Court takes a few days to process it. She further stated that even if it was deemed to be late, it did not matter and that he could always ask for a pardon if it became necessary.

7. In the years that followed, Mr. Prieto Cordova communicated with and provided documents and additional information to Ms. Peña. At no point did he ever speak with Mr. Vazquez. And, during his court hearings, Mr. Vazquez appeared via televideo and did not know who Mr. Prieto Cordova was when the Immigration Judge asked him.

8. After ICE detained Mr. Prieto Cordova in October 2025, I substituted in as his counsel and had access to his electronic record of proceedings with the Immigration Court.

9. There, I discovered that although Mr. Prieto Cordova and Ms. Peña as the form's preparer signed the I-589 on January 25, 2023, it was not actually filed with the Immigration Court until January 31, 2023—nearly one week after the filing deadline.

10. In my professional opinion, Mr. Vazquez committed malpractice in filing the asylum application late. His office had the important documents and evidence about 10 days before the filing deadline and it was still filed late. And, given that all filings are done electronically, there simply is no reason for it to have been filed one week late.

11. Additionally, it is my belief that Mr. Vazquez facilitated Ms. Peña's unlawful practice of immigration law. In the immigration field, it is common for non-attorneys to prepare forms and applications on behalf of nocitizens—often to the noncitizen's detriment due to their lack of training. Sometimes, these preparers affiliate with immigration attorneys in an effort to appear as if the preparer is simply a legal assistant. Here, Ms. Peña's email communications ended with @m3nusa.com, which is Ms. Peña's business website where she advertises her immigration form preparation services. This website makes no mention of Mr. Vazquez. Given that Mr. Prieto Cordova only communicated with Ms. Peña through her business's email address, I believe that he fell victim to the unlawful practice of law by a non-attorney under the auspices of an attorney.

12. I intend to assist Mr. Prieto Cordova in filing a bar complaint with the Florida State Bar against Mr. Vazquez.

Maria C. Chavez, Esq.

10/29/25
Date

2025 WL 2938808
Only the Westlaw citation is currently available.
United States District Court, E.D. California.

J.S.H.M, Petitioner,

v.

MINGA WOFFORD, et al., Respondents.

Case No. 1:25-CV-01309 JLT SKO
|
Filed 10/16/2025

(Doc. 2)

ORDER GRANTING PRELIMINARY INJUNCTION IN PART[1]

I. INTRODUCTION

*1 J.S.H.M, a 28-year-old native of Colombia, crossed the border into the United States on April 5, 2022. (Doc. 13 at 4.) At the time of his entry, he entered the country as a "family unit" in which he identified the woman and child with whom he entered as his wife and child. (*Id.* at 4, 11.) He was initially detained in a border holding facility for a few days in Yuma, Arizona, but was released on April 6, 2022, "due to detention capacity" at that facility. (*Id.* at 6.) The record indicates that DHS paroled him pursuant to INA 212(d)(5) [8 U.S.C. § 1182(d)(5)], which allows for discretionary parole into the United States "under such conditions as [DHS] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." (*Id.* at 11.) J.S.H.M. was required to comply with the terms of the Alternatives to Detention (ATD) program "as a condition of Parole." (*Id.* at 6.) The ATD enrollment form he signed that day indicated, as pertinent:

> Your release is contingent upon your enrollment and successful participation in an Alternatives to Detention (ATD) program as designated by the U.S. Department of Homeland Security. As part of the ATD program, you will be subject to electronic monitoring and may be subject to a curfew. Failure to comply with the requirements of the ATD program will result in a redetermination of your release conditions or your arrest and detention.

(Doc. 13 at 8.)

Petitioner, his wife and child appeared in person at the San Francisco ICE office as instructed on April 21, 2022. (Doc. 13 at 11.) At that appointment, "the family unit" was "placed on ATD SMARTLINK technology, a monitoring application for his personal cell phone." (*Id.*; Doc. 1 ¶ 8.) The program required J.S.H.M. to take a photo every week, answer phone calls from ISAP officers, and report periodically in-person at the Intensive Supervision Appearance Program (ISAP) and ICE offices. (Doc. 1, ¶ 8.) Petitioner was also served with a Notice to Appear (NTA) in the mail indicating he was "[i]n removal proceedings under section 240 of the Immigration and Nationality Act." (Doc. 13 at 14.)

J.S.H.M. admits that "on one occasion" he "submitted his weekly photo check-in one day after the deadline, because of his work schedule," but "[h]e communicated the reason for the delay to his ISAP officer." (Doc. 1 ¶ 9.) He also admits to submitting his photo "a few minutes late on a few occasions because he was driving and could not stop safely and immediately." (*Id.*) He indicates that he communicated the reason for those delays to his ISAP officer and never received any formal warnings, threats of arrest, or formal notice of non-compliance from ISAP officials regarding those "sporadic incidents." (*Id.*)

Respondents describe Petitioner's compliance differently:

> Petitioner continually missed ISAP check-in appointments, missing appointments on no less than 34 separate occasions, including on May 19, 2022; June 2, 2022; July 7, 2022; August 18, 2022; September 8, 2022; September 15, 2022; November 3, 2022; November 10, 2022; December 22, 2022; December 29, 2022; January 5, 2023; June 29, 2023; July 13, 2023; September 4, 2023; September 18, 2023; September 25, 2023; October 2, 2023; November 20, 2023; December 4, 2023; December 18, 2023; December 25, 2023; January 1, 2024; March 7, 2024; April 1, 2024; April 22, 2024; May 6, 2024; July 1, 2024; July 15, 2024; July 22, 2024; August 12, 2024; August 26, 2024; September 9, 2024; October 17, 2024; and September 15, 2025.

*2 (Doc. 10 at 2; Doc. 10-1, ¶ 10-13; Doc. 13 at 18.) According to Respondents, ICE's Enforcement and Removal Operations (ERO) increased the level of supervision applicable to Petitioner two times because of his violations. (Doc. 10-1, ¶ 10.)

Since entering the United States, J.S.H.M. has established a life in Oakland, California, where he has been working as a driver. (Doc. 1, ¶ 10.) He obtained an employment

authorization document and holds a current California's driver's license. (Doc. 1, ¶ 11.) He is now also engaged to a U.S. citizen[2]. (*Id.*) They obtained a marriage license shortly before his detention; their wedding is scheduled for November 4, 2025, at San Francisco City Hall and they have a honeymoon planned for Palm Springs shortly thereafter. (*Id.*) J.S.H.M. also timely filed for asylum and withholding of removal, with his final, individual hearing scheduled for 2027 in San Francisco. (Doc. 1, ¶ 11.) "He is deeply interested in pursuing his asylum petition because he was the victim of a murder attempt in Colombia." (*Id.*) It is undisputed that Petitioner has no criminal history. (Doc. 13 at 21.)

On September 22, 2025, pursuant to instructions from ICE, J.S.H.M. presented himself for a scheduled check-in at the San Francisco ICE Field Office. (Doc. 1, ¶ 12.) Eventually, J.S.H.M. was informed that he was under arrest. (*Id.*, ¶ 14.) According to Petitioner, when he asked for a reason, "the officers were vague, stating only that it was 'their work' and that there were unspecified 'problems with [his] reporting.' " (*Id.*) Petitioner alleges that ICE refused to give him additional details. (*Id.*) According to the Form I-831 prepared by ICE that day, an ICE agent informed Petitioner that he was not fully compliant with the ATD case program and that he was being taken into custody due to "violation of his OREC conditions." (Doc. 13 at 21.)

He was held in a small room at the San Francisco office for the remainder of the day and overnight. (Doc. 1, ¶ 15.) The next day, he was transported, fully shackled, in a van to Fresno, California. (*Id.* at ¶ 19.) He describes the conditions in the van as "harsh, with limited oxygen, extreme heat, and no room to move, causing J.S.H.M. to suffer from pain from the shackles." (*Id.*) He was held in Fresno in a holding cell for approximately five hours with limited food. (*Id.* at ¶ 20.) He was then transported in a van to Mesa Verde Detention Center in Bakersfield, California. (*Id.*)

Since being detained, J.S.H.M. alleges that he has suffered various harms, including sleep deprivation, hygiene issues, and food deprivation. (Doc. 1, ¶ 24.) Detention has caused him "severe emotional distress, and he reports crying frequently." (*Id.*) In addition, J.S.H.M. suffers from chronic rhinitis and allergies, which cause him difficulty breathing. (*Id.*) He was under a doctor's care for this condition before his detention and he claims the conditions of confinement at Mesa Verde are exacerbating these medical issues. (*Id.*) Additionally, J.S.H.M. is unable to spend time with his fiancée, family, and community; is unable to prepare for his wedding; and his fiancée is struggling financially and emotionally. (*Id.*) J.S.H.M's fiancé has submitted a letter describing their relationship, his work ethic, their future plans, and how his detention is impacting her life and the lives of others. (Doc. 1-3 at 2–6.) Numerous other individuals have submitted detailed, articulate letters of support describing Petitioner's good character and positive impact on his community. (*Id.* at 7–24.)

*3 On October 4, 2025, J.S.H.M. filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, alleging that his detention violates both substantive and procedural due process under the Fifth Amendment. (Doc. 1.) He has also filed an ex parte motion for a temporary restraining order that seeks the following relief: (1) immediate release from Respondents' custody; (2) an injunction barring Respondents from re-detaining Petitioner unless they demonstrate at a pre-deprivation hearing, by clear and convincing evidence, that Petitioner is a flight risk or danger to the community; (3) an order prohibiting the government from "sending him to any place outside of the United States." (Doc. 2 at 30.)

On October 6, 2025, the Court issued a Minute Order expressing preliminarily that it appears that Petitioner was likely to be able to demonstrate that his circumstances warrant an order requiring DHS to provide him with a bond hearing. (*See* Doc. 7.) The Court ordered Respondents to show cause in writing why the Court should not grant Petitioner's motion for a temporary restraining order and scheduled the matter for a hearing. (*Id.*) The Court also ordered the government not to remove Petitioner from the country or out of the Eastern District of California in the meantime without the permission of the Court. (*Id.*)

On October 9, 2025, Respondents filed their opposition, which argues: (1) Petitioner's TRO should be denied because it improperly seeks the same relief as his habeas petition; (2) it was Petitioner's "abysmal[ ]" performance on supervision that prompted his re-detention; and (3) Petitioner is mandatorily detained during his removal proceedings pursuant to 8 U.S.C. § 1225(b)(1) and his noncompliance with the terms of his release distinguish this matter from the many cases in which this Court has rejected Respondents interpretation of § 1225. (*See* Doc. 10) Petitioner filed a reply brief on October 14, 2025. (Doc.12)

For the reasons set forth below, the Court converts the matter to a motion for preliminary injunction and **GRANTS** the motion in part.

II. LEGAL BACKGROUND

A. Statutory Immigration Framework (8 U.S.C. § 1225 and § 1226)

Two statutes govern the detention and removal of inadmissible noncitizens from the United States: 8 U.S.C. § 1226 and § 1225. In the interest of expedience, the Court relies here, as relevant, on the legal background accurately presented by the district court in *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503 (N.D. Cal. Sept 12, 2025):

> **A. Full Removal Proceedings and Discretionary Detention (§ 1226)**
>
> The "usual removal process" involves an evidentiary hearing before an immigration judge. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated under 8 U.S.C. § 1229(a), also known as "full removal," by filing a Notice to Appear with the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226 provides that while removal proceedings are pending, a noncitizen "may be arrested and detained" and that the government "may release the alien on ... conditional parole." § 1226(a)(2); *accord Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be "detained" or "allowed to reside in this country"). When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). A noncitizen will be released if he or she "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *Id.* (citing 8 C.F.R. § 236.1(c)(8)).
>
> *4 "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing, the detainee demonstrates by the preponderance of the evidence that he or she is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk," the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)). Once released, the noncitizen's bond is subject to revocation. Under 8 U.S.C. § 1226(b), "the DHS has authority to revoke a noncitizen's bond or parole 'at any time,' even if that individual has previously been released." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal. 2019). However, if an immigration judge has determined the noncitizen should be released, the DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021). Where the release decision was made by a DHS officer, not an immigration judge, the Government's practice has been to require a showing of changed circumstances before re-arrest. *See Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).
>
> **B. Expedited Removal and Mandatory Detention (§ 1225)**
>
> While "§ 1226 applies to aliens already present in the United States," U.S. immigration law also "authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2)," a process that provides for expedited removal. *Jennings*, 583 U.S. at 303 (2018). Under § 1225, a noncitizen "who has not been admitted or who arrives in the United States" is considered "an applicant for admission." 8 U.S.C. § 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes "expedited removal." § 1225(b)(1). § 1225(b)(1) provides that:
>
> > "If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) [8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7)], the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 [8 USCS § 1158] or a fear of persecution."
>
> Sections 8 U.S.C. § 1182(a)(6)(C) and 1182(a)(7) respectively refer to noncitizens who are inadmissible due to misrepresentation or failure to meet document requirements. Clause (iii) of § 1225(b)(1) allows the Attorney General (who has since delegated the responsibility to the Department of Homeland Security Secretary) to designate for expedited removal noncitizens "who ha[ve] not been admitted or paroled into the United States, and who ha[ve] not affirmatively shown, to the satisfaction of an immigration officer, that

the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." § 1225(b)(1)(A)(iii)(II).

To summarize, under § 1225(b)(1), two groups of noncitizens are subject to expedited removal. First, there are "arriving" noncitizens who are inadmissible due to misrepresentation or failure to meet document requirements. The implementing agency regulations define "arriving alien" as applicants for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. The second group – designated noncitizens –includes noncitizens who meet all of the following criteria: (1) they are inadmissible due to lack of a valid entry document or misrepresentation; (2) they have not "been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"; and (3) they are among those whom the Secretary of Homeland Security has designated for expedited removal. *Thuraissigiam*, 591 U.S. at 109; § 1225(b)(1).

*5 "Initially, DHS's predecessor agency did not make any designation [under (3)], thereby limiting expedited removal only to 'arriving aliens,' " that is, noncitizens encountered at ports of entry. *Make the Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 U.S. Dist. LEXIS 169432, at *14 (D.D.C. Aug. 29, 2025). In the following years, DHS extended by designation expedited removal to noncitizens who arrive by sea and who have been present for fewer than two years, and to noncitizens apprehended within 100 air miles of any U.S. international land border who entered within the last 14 days. *Id.* This was the status quo until January 2025, when the Department of Homeland Security revised its § 1225 designation to "apply expedited removal to the fullest extent authorized by statute." Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025). Under this designation, expedited removal applies to noncitizens encountered *anywhere* within the United States, who have been in the United States for less than two years and are inadmissible for lack of valid documentation or misrepresentation. In short, expedited removal was expanded to apply for the first time to vast numbers of noncitizens present in the interior of the United States.

Under the expedited removal statute § 1225(b)(1), if an applicant "indicates either an intention to apply for asylum" or "a fear of persecution," the immigration officer "shall refer the alien for an interview by an asylum officer." §§ 1225(b)(1)(A)(i)–(ii). If the asylum officer determines that the applicant has a "credible fear," the applicant "receive[s] 'full consideration' of his asylum claim in a standard removal hearing." *Thuraissigiam*, 591 U.S. at 110. If the officer determines there is no "credible fear," the officer "shall order the alien removed from the United States without further hearing or review." § 1225(b)(1)(B)(iii). However, the officer's decision may be appealed by the applicant to an immigration judge, who must conduct the review "to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination." *Id.* Detention under § 1225(b)(1) is "mandatory" "pending a final determination of credible fear of persecution and if found not to have such a fear, until removed." *Id.* (citing § 1225(b)(1)(B)(iii)(IV) ("Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.")

[Section] 1225 also contains a provision that applies to applicants for admission not covered by § 1225(b)(1). *Jennings*, 583 U.S. at 287. This provision, 1225(b)(2), states that, subject to statutory exceptions, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a [full removal proceedings] of this title." § 1225(b)(2). In other words, noncitizens subject to 1225(b)(2) are not eligible for expedited removal but are subject to mandatory detention while their full removal proceedings are pending. This is in contrast to the default detention regime under § 1226(a), which allows for discretionary release and review of detention through a bond hearing.

C. The Government's Recent Change in Position

Until this year, the DHS has applied § 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation. This practice was codified by regulation. The regulations implementing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") state that "Despite being applicants for admission, aliens who are present without having

been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). In fact, the government has conceded in other contexts that "DHS's long-standing interpretation has been that 1226(a) [discretionary detention] applies to those who have crossed the border between ports of entry and are shortly thereafter apprehended." Dkt. No. 17 (citing Solicitor General, Transcript of Oral Argument at 44:24–45:2, *Biden v. Texas*, 597 U.S. 785 (2022) (No. 21-954))....

*6 In 2025, however, the Government's policy changed dramatically. The DHS revised its § 1225 designation to "apply expedited removal *to the fullest extent authorized by statute*." Designating Aliens for Expedited Removal, 90 Fed. Reg. 8139 (Jan. 24, 2025) (emphasis added). The Secretary of Homeland Security memorandum directed federal immigration officers to "consider ... whether to apply expedited removal" to "any alien DHS is aware of who is amenable to expedited removal but to whom expedited removal has not been applied." Dkt. No. 1 at ¶ 33. Officers are encouraged to "take steps to terminate any ongoing removal proceeding and/or any active parole status." *Id.* The memorandum states that DHS shall take the actions contemplated by the memorandum "in a manner that takes account of legitimate reliance interests," but states that "the expedited removal process includes asylum screening, which is sufficient to protect the reliance interests of any alien who has applied for asylum or planned to do so in a timely manner." Huffman Memorandum (Jan. 23, 2025).

Since mid-May of 2025, the Department of Homeland Security has made a practice of appearing at regular removal proceedings in immigration court, moving to dismiss the proceedings, and then re-arresting the individual in order to place them in expedited removal proceedings. Dkt. No. 1 at ¶¶ 35–40. If the immigration judge does not dismiss the full removal proceedings, ICE still makes an arrest, apparently in reliance on § 1225(b)(2)'s detention provision.

Salcedo Aceros, 2025 WL 2637503 at *1-4 (internal footnotes omitted).

B. Parole

ICE may choose to release a person on parole. The decision is discretionary and is made on a case-by-case basis. An immigrant who has been detained at the border may be paroled for humanitarian reasons, or due to it providing a significant public benefit (8 U.S.C. § 1182(d)(5)(A)), or they may be conditionally released (8 U.S.C. § 1226(a)). These are distinct procedures. A person on conditional parole is usually released on their own recognizance subject to certain conditions such as reporting requirements.[3] To be released on conditional parole, there must be a finding that the immigrant does not pose a risk of flight or danger to the community. *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007).

Of relevance in this case is DHS's "Alternatives to Detention" (ATD) program, designed "to provide supervised release and enhanced monitoring for a subset of foreign nationals subject to removal whom ICE has released into the United States." *Audrey Singer*, Cong. Research Serv., R45804, Immigration: Alternatives to Detention (ATD) Programs 14 (July 8, 2019), https://sgp.fas.org/crs/homesec/R45804.pdf). "These aliens are not statutorily mandated to be in DHS custody, are not considered threats to public safety or national security, and have been released either on bond, their own recognizance, or parole pending a decision on whether they should be removed from the United States." (*Id.*)

C. Parole Revocation

In *Y-Z-H-L v Bostock*, 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. The court held:

> Section 1182 ... has a subsection titled "Temporary admission of nonimmigrants," which allows noncitizens, even those in required detention, to be "paroled" into the United States. This provision, at issue in this case, states:
>
> > The Secretary of Homeland Security may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and **when the purposes of such parole shall, in the opinion of the Secretary**

> **of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.**

*7 8 U.S.C. § 1182(d)(5)(A).

Y-Z-H-L v Bostock, 2025 WL 1898025, at *3 (emphasis added). *Y-Z-H-L* determined that under the Administrative Procedure Act, immigration parolees are entitled to determinations related to their parole revocations that are not arbitrary, capricious or an abuse of discretion. *Id.* at *10. An agency acts arbitrarily and capriciously by failing to make a reasoned determination or where the agency fails to "articulate[ ] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Id.* Parole revocations in the context of the INA must occur on a case-by-case basis and may occur "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served the alien shall forthwith return or be returned to the custody from which he was paroled." *Id.* at *12 (quoting 8 C.F.R. § 212.5(e)). 8 C.F.R. § 212.5(e) requires written notice of the termination of parole except where the immigrant has departed or when the specified period of parole has expired.

Applying *Y-Z-H-L* and § 212.5(e), *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *11 (W.D.N.Y. July 16, 2025), found that the INA requires a case-by-case analysis as to the decision to revoke humanitarian parole:

> This Court agrees that both common sense and the words of the statute require parole revocation to be analyzed on a case-by-case basis and that a decision to revoke parole "must attend to the reasons an individual [noncitizen] received parole." *See id.* There is no indication in the record that the government conducted any such analysis here. On the contrary, the letter Mata Velasquez received merely stated summarily that DHS had "revoked [his] parole." Docket Item 62-1 at 5. Thus, there is no indication that—as required by the statute and regulations—an official with authority made a determination specific to Mata Velasquez that either "the purpose for which [his] parole was authorized" has been "accomplish[ed]" or that "neither humanitarian reasons nor public benefit warrants [his] continued presence...in the United States." *See* 8 C.F.R. § 212.5(e)(2)(i). As a result, DHS's revocation of Mata Velasquez's parole violated his rights under the statute and regulations. *See Y-Z-L-H*, 2025 WL 1898025, at *13.

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 reached a similar conclusion relying on the Due Process Clause:

> ... **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.").

*8 *Id.* (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals.").

III. ANALYSIS

A. Jurisdiction

1. Habeas Corpus

Under 28 U.S.C. § 2241, the Court has the authority to determine a petition for writ of habeas corpus in which the petitioner asserts they are being held in custody "in violation of the Constitution or laws or treaties of the United States." "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475,

484 (1973). Petitioner seeks immediate release from custody, which he contends violates the Constitution of the United States. (*See* Doc. 1.) Thus, he properly invokes the Court's habeas jurisdiction.

2. Judicial Review Under the INA

The INA limits judicial review in many instances. Though 8 U.S.C § 1252(g) precludes this Court from exercising jurisdiction over the executive's decision to "commence proceedings, adjudicate cases, or execute removal orders against any alien," there are no final removal orders at issue here. The Court is also not reviewing the executive's decision to conduct removal proceedings against Petitioner. Thus, the Court has the jurisdiction to review the authority under which Respondents claim to detain Petitioner as well as whether the detention comports with statutory and constitutional requirements. *See Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018) (holding that § 1252(g) precludes judicial review only as to the three areas specifically outlined in the subsection); *see also Reno v. American–Arab Anti–Discrimination Committee*, 525 U.S. 471, 482 (1999).

B. Injunctive Relief

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001) (explaining that the analysis for temporary restraining orders and preliminary injunctions is "substantially identical"). When seeking a TRO or PI, plaintiffs must establish: (1) they are "likely to succeed on the merits" of their claims, (2) they are "likely to suffer irreparable harm in the absence of a preliminary injunction," (3) "the balance of equities tips in [their] favor" and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The moving party has the burden to "make a showing on all four prongs" of the *Winter* test to obtain a preliminary injunction. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Thus, the moving party has "the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997); *Hecox v. Little*, 104 F.4th 1061, 1073 (9th Cir. 2023). The Court may weigh the request for a preliminary injunction with a sliding-scale approach. *Alliance*, at 1135 (9th Cir. 2011). Accordingly, a stronger showing on the balance of hardships may support the issuance of a preliminary injunction where there are "serious questions on the merits ... so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 24. Preliminary injunctions are intended "merely to preserve the relative positions of the parties until a trial on the merits can be held, and to balance the equities as the litigation moves forward." *Lackey v. Stinnie*, 604 U.S. ___, 145 S. Ct. 659, 667 (2025) (citations omitted).

*9 The status quo refers to "the last uncontested status which preceded the pending controversy." *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963) (quoting *Westinghouse Elec. Corp. v. Free Sewing Mach. Co.*, 256 F.2d 806, 808 (7th Cir. 1958)). In the Court's view, that is the status when Petitioner was re-detained not before he was arrested as urged by Petitioner, because the question is whether his violations, as detailed above, constitute sufficient justification to retain him in custody. *See Kuzmenko v. Phillips*, No. 25-CV-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025).

Even if the Court's action here constitutes a mandatory injunction,[4] the evidence supports that action. Petitioner alleges he has suffered and is suffering violations of his substantive and procedural due process rights and that his continued unlawful detention will impose on him and his family serious injury if the injunction does not issue. The injunction issued here is on firm legal footing. As discussed below, due process requires that Petitioner be given post-deprivation process. Because DHS failed to do so and there have been no changed circumstances, a prompt bond hearing is required. These injuries are not capable of redress through monetary compensation. Accordingly, injunctive relief is appropriate even under the higher standard for mandatory injunctions.[5]

1. Likelihood of Success on the Merits

*10 This first factor "is the most important" under *Winter*, and "is especially important when a plaintiff alleges a constitutional violation and injury." *Baird v. Bonta*, 81 F.4th 1036, 1041 (9th Cir. 2023).

a. *Respondents Rely on an Incorrect Interpretation of § 1225 for the Authority to Detain Respondent*

One of Respondents' central arguments is that Petitioner is subject to "mandatory detention" pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). (Doc. 10 at 1.) Respondents admit that the legal arguments relied upon by DHS to support this assertion have been rejected by this Court in other proceedings. (*Id.*) In one

such recent case *Ortiz Donis v. Chestnut*, 1:25-CV-01228-JLT, 2025 WL 2879514 at *3–6 (E.D. Cal. Oct. 9, 2025), and others. Respondents have relied on the BIA's recent decision in *Yajure Hurtado* affirming the government's new interpretation of § 1225. This Court has reviewed and considered the government's interpretation adopted by *Yajure Hurtado*. Again, in the interest of expedience, the Court relies on the analysis set forth in detail in *Salcedo*:

> Ms. Salcedo Aceros argues that § 1225(b)(2) does not apply to noncitizens like her, who have been released by DHS on their own recognizance into the interior of the country. Dkt. No. 17 at 4. A number of district courts that have examined this issue in recent months 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 Ms. Salcedo Aceros, living in the interior of the country. *See Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 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 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 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).
>
> The Government has not pointed to a single district court that has agreed with its construction of 1225(b)(2). Instead, the Government points to a recent BIA decision agreeing with its interpretation. Dkt. No. 22 (citing *Matter of Jonathan Javier Yajure Hurtado*, 29I & N Dec. 216 (BIA 2025)). There, the BIA held that Section 1225(b)(2) prescribes mandatory detention for all inadmissible noncitizens living in the United States. For the reasons discussed below, the Court finds the conclusion of the district courts more persuasive than the BIA's new ruling.
>
> *11 First, the BIA decision is entitled to little deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do"). Under *Skidmore*, the "weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). In this regard, the BIA's current position is inconsistent with its earlier pronouncements. Prior to its September 5 decision, the BIA issued three non-precedential decisions taking the *opposite* position. *See Martinez*, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025). In one decision, the Board even stated that it was "unaware of any precedent" that would support the Government's position. *Id.* Under *Loper*, the Court has no obligation to defer to the BIA's view, particularly when that view has not "remained consistent over time." *Loper*, 603 U.S. at 386; *see also Skidmore*, 323 U.S. at 140. Moreover, the BIA's reasoning lacks persuasive power for several reasons.

i.

As with any question of statutory interpretation, the Court begins with the relevant statutory provisions. § 1225(a) defines an applicant for admission as:

"[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) ..."

§ 1225(b)(2)(A) states:

"[I]n the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

The Government argues and the BIA agreed that every noncitizen who has not been lawfully admitted to the United States continues to be a noncitizen "seeking admission" and thus subject to § 1225(b)(2). In other words, it treats the phrases "applicant for admission" and "seeking admission" as synonymous.

But this reading would render the phrase "seeking admission" in § 1225(b) superfluous. To qualify for § 1225(b)(2), a noncitizen must (1) be an applicant for admission, (2) be "seeking admission", and (3) be "not clearly and beyond a doubt entitled to be admitted." If, as the Government argues, all applicants for admission are deemed to be "seeking admission" for as long as they remain applicants, then the phrase "seeking admission" would add nothing to the provision. This "violates the rule against surplusage." *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 (S.D.N.Y. Aug. 13, 2025); *see also United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023) ("[E]very clause and word of a statute should have meaning."); *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) ("[N]o clause, sentence, or word shall be superfluous, void, or insignificant.") (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001)).

Moreover, the Government's and the BIA's reading of "seeking admission" is unnatural and ignores the tense of the term. As one district court observed:

"[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as "seeking admission" to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as "seeking admission" (or "seeking" "lawful entry") at that point—one would say that they had entered unlawfully but now seek a lawful means of remaining there."

Lopez Benitez, 2025 WL 2371588, at *7.

ii.

Indeed, the Government's and BIA's position conflicts with the implementing regulation for § 1225(b). *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385-86 (2024) (implementing regulations may provide a "useful reference point for understanding a statutory scheme" when issued "contemporaneously"). 8 C.F.R. § 235.3 describes Section 1225(b)(2) as applying to "any *arriving alien* who appears to the inspecting officer to be inadmissible." (Emphasis added.) The regulation thus contemplates that "applicants *seeking admission*" are a subset of applicants "roughly interchangeable" with "arriving aliens." *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). "Arriving aliens" are specifically defined by regulation as applicants for admission "coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. This plainly does not describe Ms. Salcedo Aceros. Indeed, the DHS's Notice to Appear form similarly distinguishes between "arriving alien" and "alien present in the United States who has not been admitted or paroled." Dkt. No. 16-2.

*12 ☐ You are an arriving alien.

You are an alien present in the United States who has not been admitted or paroled.

☐ You have been admitted to the United States, but are removable for the reasons stated below.

These regulations and forms presume that the term alien "seeking admission" has limited application, not the sweeping construction given to it by the BIA.

iii.

Another "fundamental canon of statutory construction" is that "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Gundy v. United States*, 588 U.S. 128, 140–41 (2019). Here, the Government's interpretation would "nullify" a recent amendment to the immigration statutes. *See Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025). Section 1226 generally establishes a discretionary detention framework, but provides that for certain noncitizens, detention is mandatory. Section 1226(c). In January of *this year*, Congress amended Section 1226 to add an additional category of citizens subject to mandatory detention. Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). This category includes noncitizens who are (1)

inadmissible under 1182(6)(A) [present without admission or parole], (6)(C) [misrepresentation], or (7)(A) [lack of proper documentation] *and* (2) have been charged with one of certain enumerated crimes. *Id.* If the Government's view is correct, however, all noncitizens who are inadmissible are *already* subject to mandatory detention under § 1225(b)(2), whether or not they have been charged with a qualifying crime and thus are subject to § 1226(c). This view would render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it. But "[w]hen Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme."). If Congress amended Section 1226 to create mandatory detention for certain inadmissible noncitizens, it follows that those noncitizens were not already subject to mandatory detention. Thus, the scope of Section 1225(b)(2) cannot be as broad as the government argues.

iv.

In addressing whether a noncitizen who has lived for years within the United States can be considered "seeking admission," the BIA expressed concern that if a noncitizen is not "admitted" to the United States but is not deemed "seeking admission," then the noncitizen's legal status would present a "legal conundrum." *Id.* at 221. The BIA did not further elaborate, but presumably its concern was that such an individual would have no legal status under the immigration code. This concern is misplaced. The statute explicitly provides a term of art for someone who is not "admitted" but is not *necessarily* "seeking admission": such noncitizens fall into the broader category of "applicants for admission." As noted, otherwise the language in 1225(b)(2), which treats noncitizens "seeking admission" as a subset of "applicants for admission" would be superfluous. All "applicants for admission" have some legal status whether they belong to the subset of those seeking admissions or not.

***13** The BIA also reasoned that petitioner's argument for a narrower construction of Section 1225(b)(2) left unanswered which applicants for admission would be covered by that section if applicants for admission who have lived within the United States for years are excluded from its reach. *Id.* In other words, the BIA believed that an interpretation of § 1225(b)(2) that does not cover all applicants for admission would render § 1225(b)(2) an empty set. Not so. Most obviously, § 1225(b)(2) applies to arriving noncitizens who are inadmissible on grounds other than 8 U.S.C. § 1182(a)(6)(C) or 1182(a)(7) (which are the grounds that put an arriving noncitizen on the track for expedited removal). The statute governing inadmissibility lists ten grounds for inadmissibility, many of which have distinct sub-grounds. *See* 8 U.S.C. § 1182(a)(1)-(10). There are thus arriving noncitizens inadmissible on these other bases who would fall under Section 1225(b)(2), as opposed to Section 1225(b)(1). Section 1225(b)(2) would not be a null set even if narrowly construed.

v.

The BIA acknowledged that the Government's interpretation of § 1225(b)(2) makes it redundant with § 1226(c)'s mandatory detention provisions, and renders superfluous Congress' recent amendment, but nevertheless maintained that this redundant interpretation is not problematic. But as noted above, this conclusion is inconsistent with conventional rules of statutory interpretation. Further, the BIA failed to recognize that interpreting § 1225(b)(2) as district courts have done would not render *any* section of the immigration code superfluous. Under the district courts' interpretation, Section 1225(b)(2) has a role within the statutory framework, applying to arriving aliens inadmissible on grounds other than the two that allow for expedited removal, as noted above.

vi.

The BIA's consideration of the legislative history of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is also unpersuasive. Prior to 1996, the immigration laws distinguished individuals based on "entry" rather than admission. *Hing Sum v. Holder*, 602 F.3d 1092, 1099 (9th Cir. 2010). Noncitizens who had effected an "entry" into the United States were subject to deportation proceedings, while those who had not made an "entry" were subject to "more summary" exclusion proceedings. *Id.* at 1099–100 (9th Cir. 2010). To remedy this, the IIRIRA substituted "admission for entry" and replaced deportation and exclusion proceedings with a general "removal" proceeding. *Id.* In the BIA's view, this indicates that in enacting IIRIRA Congress sought to create completely level treatment for noncitizens in removal proceedings, regardless of whether they are living in the United States or encountered at the border. It would therefore follow that a provision like § 1225(b)(2) would not

differentiate between noncitizens based on their presence in the United States, or the length of that presence.

But the BIA erred in its analysis by identifying *one* of Congress' concerns in enacting IIRIRA and then treating it as Congress's sole concern driving the statute. Congress was indeed focused on ensuring that there was "no reward for illegal immigrants or visa overstayers." H.R. REP. 104-469, 12. But Congress addressed this concern: the IIRIRA consolidated exclusion and deportation procedures into a single procedure and provided that noncitizens "who enter illegally or who overstay the period of authorized admission will have a greater burden of proof in removal proceedings and will face tougher standards for most discretionary immigration benefits, such as suspension of removal and work authorization." *Id.*

In making these changes, Congress did not fully disrupt the old system, including the system of detention and release. In fact, according to the legislative record, "Section 236(a) [1226(a)] restates the current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." H.R. REP. 104-469, 229. Congress' concern about adjusting the law in some respects to reduce inequities in the removal process did not mean Congress intended to entirely up-end the existing detention regime by subjecting *all* inadmissible noncitizens to mandatory detention, a seismic shift in the established policy and practice of allowing discretionary release under Section 1226(a) –the scope of which Congress did not alter. *See Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025) (citing H.R. Rep. No. 104-469, pt. 1, at 229).

***14** Accordingly, the Court finds the well-reasoned decisions of the many district courts that have rejected the Government's expansive view of 1225(b)(2) far more persuasive than the new BIA ruling, a ruling at odds with its prior decisions and DHS's actions over the past thirty years. *Salcedo Aceros*, 2025 WL 2637503 at *8–12. This Court agrees with the reasoning of *Salcedo* and joins the numerous other district courts that have rejected the government's recent interpretation of the relationship between § 1225 and § 1226.

b. *Due Process Clause Protections*

J.S.H.M. contends that his continued detention violates his due process rights. (*See* Doc. 1, ¶¶ 103–113.) 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.").

Id. (emphasis added). Other courts, including this Court, have held similarly. *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL 691664, at *4 (E.D. Cal. Mar. 3, 2025); *see also Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023) ("The Supreme Court has consistently held that non-punitive detention violates the Constitution unless it is strictly limited, and, typically, accompanied by a prompt individualized hearing before a neutral decisionmaker to ensure that the imprisonment serves the government's legitimate goals."). Even assuming Respondents are correct that § 1225(b) is the applicable detention authority for all "applicants for admission," Respondents fail to contend with the liberty interest created by the fact that the Petitioner in this case was released on recognizance in 2022, *prior to the manifestation of this interpretation*.

Thus, the Court must evaluate the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), to determine whether the procedures (or lack thereof) that have been applied to Petitioner are sufficient to protect the liberty interest at issue. *Pinchi*, 2025 WL 2084921at *3. In *Mathews*, the Court determined the following:

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural

> safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*15 As to private interest, during his more than three years on parole, J.S.H.M. obtained permission to work, pursued gainful employment, and built a relationship with his fiancé and many others in his community. Thus, parole allowed him to build a life outside detention, albeit under the terms of that parole. J.S.H.M. has a substantial private interest in being out of custody and his detention denies him that liberty interest. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

The Court also finds that there is a significant risk of erroneous deprivation under the present circumstances. This record suggests several reasons why petitioner's detention may not be justified. First, in 2022, in releasing him on parole, DHS necessarily concluded that Petitioner was not a flight risk or danger to the community. *Noori v. LaRose, et al.*, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1, 2025) ["In general, '[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk.' " *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018)."

The change in circumstance may be J.S.H.M.'s ATD infractions. However, Petitioner asserts that though he was subject to frequent remote and in person ATD check ins, he was never formally informed of any violations. (Doc. 1, ¶ 9.) He also asserts that he was in regular communication with his ISAP officer about his late photo submissions and the reasons for them. (*Id.*) Notably, however, the violations detailed in his A File include not only missed biometric check-ins but also one missed in-person meeting. (Doc. 13 at 18) In fact, he missed a biometric check-in just one week before his arrest. *Id.*

The Supreme Court has held that "the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *See Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (emphasis in original). However, the Court also recognized that there may be situations that urgently require arrest, in which a prompt post-deprivation hearing is appropriate. *Id.* at 128 (noting there may be "special case[s]" where a pre-deprivation hearing is impracticable); *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *9 (N.D. Cal. July 17, 2025) ("absent evidence of urgent concerns, a *pre*-deprivation hearing is required to satisfy due process, particularly where an individual has been released on bond by an IJ"). The rapidly developing caselaw on this subject gives limited guidance as to where this line should be drawn. Some courts that have addressed detention-related habeas petitions brought by persons released on ATD have required pre-deprivation process, but in somewhat different circumstances. In *E.A.T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025), the district court ordered the release of a petitioner arrested by ICE immediately after appearing in immigration court. That court agreed with the petitioner that ICE's post hoc explanation that ATD violations warranted his detention was pretextual, given that ICE first became aware of petitioner's alleged ATD violations a few hours before his immigration hearing, DHS did not raise those violations at the hearing or argue the petitioner should be detained for any reason, and the petitioner was then provided multiple, inconsistent justifications for his arrest. *Id.* In *Arzate v. Andrews*, No. 1:25-CV-00942-KES-SKO (HC), 2025 WL 2230521, at *7 (E.D. Cal. Aug. 4, 2025), converted to preliminary injunction sub nom, 2025 WL 2411010, at *1 (E.D. Cal. Aug. 20, 2025), the court ordered immediate release of in immigration detainee who had been in compliance with conditions of ATD, even though he had incurred a misdemeanor arrest while on parole, in part because no charges were ever filed.

*16 In contrast, this Court ordered a bond hearing in *Martinez Hernandez v. Andrews*, No. 1:25-CV-01035 JLT HBK, 2025 WL 2495767 (E.D. Cal. Aug. 28, 2025), where the petitioner's ATD records indicate numerous violations. Though Martinez Hernandez offered explanations for the violations and there was a dispute of fact as to whether the violations occurred, ICE's reliance upon those violations was "not obviously pretexual." *Id.* at * 12 ("If Respondent's view of the facts is correct, it is at least arguable that providing Petitioner with notice and a pre-deprivation hearing would have been impracticable and/or would have motivated his flight."). As this Court noted in *Martinez Hernandez*:

> In similar circumstances, courts have refused to release the petitioners but have ordered timely bond hearings. *Carballo v. Andrews*, No. 1:25-CV-00978-KES-EPG (HC), 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 concludes that prompt, post-deprivation process is required here.

Id.

Finally, as other courts have done, the Court concludes that the government's interest in detaining J.S.H.M without proper process is slight. In sum, the Court concludes that he has demonstrated a likelihood of success on the merits on his procedural due process claim.

C. Irreparable Harm

"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. 247, 272 (1976)). Moreover, "[t]he Ninth Circuit has recognized 'irreparable harms imposed on anyone subject to immigration detention' including 'the economic burdens imposed on detainees and their families as a result of detention.' " *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *Leiva-Perez v. Holder*, 640 F.3d 962, 969-970 (9th Cir. 2011) (the inability to pursue a petition for review may constitute irreparable harm). The Petitioner has established irreparable harm.

D. Balance of the Harms/Public Interest

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 (2009). The Court agrees with the analysis of *Pinchi*, and finds it correctly addresses the situation here:

> "[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 WL 783561, at *3 (cleaned up) (quoting *Ortiz Vargas*, 2020 WL 5074312, at *4, and then quoting *Hernandez*, 872 F.3d at 996); see also *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution."). Without the requested injunctive relief, Petitioner-Plaintiff faces the danger of significant health consequences and deprivation of her liberty. Yet the comparative harm potentially imposed on Respondents-Defendants is minimal—a mere short delay in detaining Petitioner-Plaintiff, should the government ultimately show that detention is intended and warranted. Moreover, a party "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).
>
> *17 This Court therefore joins a series of other district courts that have recently granted temporary restraining orders barring the government from detaining noncitizens who have been on longstanding release in their immigration proceedings, without first holding a pre-deprivation hearing before a neutral decisionmaker. *See, e.g.*, *Diaz v. Kaiser*, No. 25-cv-05071, 2025 WL 1676854, at *2 (N.D. Cal. June 14, 2025); *Garcia v. Bondi*, No. 25-cv-05070, 2025 WL 1676855, at *3 (N.D. Cal. June 14, 2025). Although Petitioner filed her motion shortly after being detained, rather than immediately beforehand, the same reasoning applies to her situation. Her liberty interest is equally serious, the risk of erroneous deprivation is likewise high, and the government's interest in continuing to detain her without the required hearing is low. *See Doe v. Becerra*, No. 2:25-cv-00647-DJC-DMC, 2025 WL 691664, at *6 (E.D. Cal. Mar. 3, 2025) (granting a TRO as to an individual who had been detained over a month earlier).

Pinchi, at *3. In addition, as mentioned, there appears to be no dispute that there is no evidence that Petitioner poses a risk of flight or a danger to the community. For these reasons and those set forth in *Pinchi*, the Court concludes that the balance of the equities and public interest weigh in favor of Petitioner.

E. Bond

"The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). The Court has "discretion as to the amount of security required, if any," and it "may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (citation modified). Because "the [Government] cannot reasonably

assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations," *Zepeda*, 753 F.2d at 727, the Court finds that no security is required here.

F. Burden of Proof

Petitioner requests that if the Court orders a bond hearing, the government should bear the burden of proof. (*See* Doc. 12 at 19.) In *Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022), the Ninth Circuit considered whether a noncitizen detained under § 1226(a) pending removal proceedings had a right to a second bond hearing where the government would have the burden to establish by clear and convincing evidence that his continued detention was justified. *Rodriguez Diaz* concluded that due process did not require that procedure, reasoning in part that:

> Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden shifting would be constitutionally necessary in all, most, or many cases. There is no reason to believe that, as a general proposition, the government will invariably have more evidence than the alien on most issues bearing on alleged lack of future dangerousness or flight risk.

Id. at 1212.

However, *Rodriguez Diaz* "held only that a noncitizen detained under section 1226(a) does not have a right to a second bond hearing when the only changed material condition since their first bond hearing is the duration of their detention." *Pinchi*, 2025 WL 2084921, at *4. It did not address the burden of proof applicable under the present circumstances.

Pinchi went on to discuss why the calculus changes for an individual who had been paroled from immigration custody after their initial detention:

> Even assuming arguendo that the post-detention bond hearing provided under section 1226(a) provides constitutionally sufficient process for those noncitizens who have never previously been detained and released by DHS, [Petitioner's] circumstance is different. Her release from ICE custody after her initial apprehension reflected a determination by the government that she was neither a flight risk nor a danger to the community, and [she] has a strong interest in remaining at liberty unless she no longer meets those criteria. The regulations authorizing ICE to release a noncitizen from custody require that the noncitizen "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons" and that the noncitizen is "likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8).
>
> *18 Release [therefore] reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). [Petitioner] was apprehended by ICE officers when she crossed the border into the United States [ ]. ICE then released her on her own recognizance. As ICE was not authorized to release [her] if she was a danger to the community or a flight risk, the Court must infer from [her] release that ICE determined she was neither. [Her] release from ICE custody constituted an "implied promise" that her liberty would not be revoked unless she "failed to live up to the conditions of her release." *Morrissey*, 408 U.S. at 482. The regulatory framework makes clear that those conditions were that she remain neither a danger to the community nor a flight risk. [She] justifiably relied on the government's implied promise in obtaining employment, taking on financial responsibility for her family members, and developing community relationships. The more than two years that she has spent out of custody since ICE initially released her have only heightened her liberty interest in remaining out of detention. Accordingly, [her] private interest in retaining her liberty is significant.

Pinchi, 2025 WL 2084921, at *4.

This reasoning contributed to the conclusion in *Pinchi* that a pre-deprivation hearing was required under *Mathews*. The court in *Pinchi* also placed the burden at any such hearing on the government to demonstrate to a neutral decisionmaker by clear and convincing evidence that re-detention is necessary to prevent danger to the community or flight. *Id.* at *7. Doing so is logical even for a post-detention custody hearing for the reasons articulated in *Pinchi*–namely that the immigrant's initial release reflected a determination by the government that the noncitizen is not a danger to the community or a flight risk. Since it is the government that initiated re-detention, it follows that the government should be required to bear the burden of providing a justification for the re-detention.

CONCLUSION AND ORDER

For the foregoing reasons, the Court **ORDERS:**

1. Petitioner's Motion for Temporary Restraining Order (Doc. 2) is converted to a Motion for Preliminary Injunction, and it is **GRANTED in PART**.

2. Petitioner **SHALL** be provided a bond hearing **within 10 days** of service of this order.

3. At any such hearing, the Government **SHALL** bear the burden of establishing, by clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight, and Petitioner **SHALL** be allowed to have counsel present.

4. Within three days of the bond hearing, Respondent **SHALL** file a status report in this case confirming that the hearing has been provided.

5. The government may file a further brief on the merits of the habeas petition within 30 days. Alternatively, as soon as it can within that 30-day period, the government may file a notice that it does not intend to file further briefing. If the government files an additional brief, Petitioner may file a further brief within 30 days thereafter.

IT IS SO ORDERED.

All Citations

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Footnotes

1 Upon the agreement of the parties, the Court converts the motion for temporary restraining order into one for preliminary injunction. Respondents had notice, opportunity to respond and be heard. Additional briefing is not required and the standard for a TRO and a preliminary injunction is the same. As such, given the nature of the relief granted by this order and to allow Respondents to appeal should they choose, the Court converts this to a Motion for Preliminary Injunction.

2 As noted, at his initial entry into the country and when he reported on his Notice to Appear, he, his Columbian wife and child presented themselves to DHS officials. Nevertheless, during a 9/22/25 interview, J.S.H.M. told ICE officers that "he is no longer a part of the family he entered with. He stated he is not married to her, and the child is not his." (Doc. 13 at 21.) As of April 10, 2023, J.S.H.M. was still receiving mail at the same address identified by "the family unit" on April 21, 2022 (*Id.* at 14), though when he was arrested in September 2025, he provided a different address for himself and a different address for the "Columbian wife" and child. *Id.* at 20.

3 An immigrant cannot be released on conditional parole if they are subject to mandatory detention under § 1226(c). There is no suggestion that § 1226(c) applies in this case.

4 "A prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (internal citations omitted). In other words, a prohibitory injunction "freezes the positions of the parties until the court can hear the case on the merits." *Heckler v. Lopez*, 463 U.S. 1328, 1333 (1983). A mandatory injunction, on the other hand, "orders a responsible party to 'take action.' " *Marlyn Nutraceuticals*, 571 F.3d at 879 (quoting *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 484 (1996)). Although subject to a higher standard, a mandatory injunction is permissible when "extreme or very serious damage will result" that is "not capable of compensation in damages," and the merits of the case are not "doubtful." *Id.* (internal citations and quotation marks omitted).

5 The government questions whether the Court can order preliminary relief of the nature requested here because the relief sought is akin to the relief requested in the underlying § 2241 petition. (Doc. 10 at 4.) The government cites *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992), which held that entering "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." But the circumstances of that case were quite different. In *Mosbacher*, the trial court ordered as preliminary relief the release of data that the defendant sought to keep private and thus, had the Ninth Circuit not reversed, the defendant would "have lost the whole case for all practical purposes." *Id.* Some district courts have relied on this line of cases to deny immigration detainee's requests for release at the TRO stage. *See, e.g., Mendez v. U.S. Immigr. & Customs Enf't*, No. 23-CV-00829-TLT, 2023 WL 2604585, at *3 (N.D. Cal. Mar. 15, 2023) (citing *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); *Keo v. Warden of Mesa Verde Ice Processing Center*,

No. 1:24-cv-00919-HBK, 2024 WL 3970514 (E.D. Cal. Aug. 28, 2024) (citing *Mendez*, *Mosbacher*, and *Comenisch*). But a closer look at *Camenisch* reveals that the Supreme Court did not intend to bar TROs of the kind requested here. Rather, *Camenisch* stands for the proposition that "findings of fact and conclusions of law made by a court in a preliminary injunction or TRO posture are preliminary and do not bind the court at the trial on the merits. Thus, it is not appropriate to enter a final judgment at a TRO stage." *Doe v. Noem*, 778 F. Supp. 3d 1151, 1167 (W.D. Wash. 2025) (evaluating government argument based on *Comenisch*). *Doe v. Bostock*, No. C24-0326JLR-SKV, 2024 WL 2861675 (W.D. Wash. June 6, 2024), cited by the government (Doc. 11 at 5), is not persuasive. There, the petitioner was released from a federal correctional facility after serving a criminal sentence directly into ICE custody and then challenged her continued detention. *Doe v. Bostock*, No. C24-0326-JLR-SKV, 2024 WL 3291033, at *2 (W.D. Wash. Mar. 29, 2024) (report and recommendation). Under those circumstances, the status quo was detention, not release, so the requested form of preliminary relief –immediate release—was inappropriate for that reason.

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