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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 BILAL ALPSEN,

14 Petitioner,

15 v.

16 MINGA WOFFORD, in official capacity,
Facility Administrator of Mesa Verde Ice
17 Processing Center; SERGIO ALBARRAN, in
official capacity, Field Office Director of ICE's
18 San Francisco Field Office; TODD M. LYONS,
in official capacity, Acting Director of ICE,
19 KRISTI NOEM, in official capacity, Secretary
of the U.S. Department of Homeland Security;
20 PAM BONDI, in official capacity, Attorney
General of the United States,

21 Respondents.
22

Case No.

**NOTICE OF MOTION AND EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Immigration Habeas Case

23 **NOTICE OF MOTION**
24

1 Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local
2 rules of this Court, Petitioner respectfully moves this Court for emergency relief in the form of a
3 temporary restraining order. Petitioner requests an order that directs Respondents to release
4 Petitioner from custody immediately and enjoins them from re-detaining Petitioner unless the
5 government provides notice and a hearing before a neutral arbiter in which it proves by clear and
6 convincing evidence that Petitioner is a danger or flight risk. In the alternative, Petitioner asks
7 for an order directing Respondents to release Petitioner from custody and enjoin his re-detention
8 unless, within seven days of the Court's Order, Respondents provide Petitioner with an
9 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a), at
10 which the government bears the burden of proving by clear and convincing evidence that he is a
11 danger or flight risk.

12 Petitioner also seeks a temporary restraining order enjoining Respondents from relocating
13 Petitioner outside the Eastern District of California pending final resolution of this case.

14 This application is supported by a Memorandum of Points and Authorities, the
15 Declaration of Shira Levine with accompanying exhibits, as well as any additional submissions
16 that may be considered by the Court. As set forth in the Points and Authorities in support of this
17 Motion, Mr. Alpsen merits a temporary restraining order in light of his unlawful re-detention
18 without a hearing and his continued detention without a bond hearing, in violation of his Due
19 Process rights under the Fifth Amendment and his statutory rights under the Immigration and
20 Nationality Act.

21 WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining
22 order (1) enjoining Respondents to release him immediately from custody and not re-detain him
23 without a hearing before a neutral arbiter at which the government bears the burden of proving by
24

1 clear and convincing evidence that Petitioner is a danger or flight risk, or (2), in the alternative,
2 enjoining Respondents to release him unless he is afforded within seven days a bond hearing before
3 a neutral magistrate, pursuant to 8 U.S.C. § 1226(a), at which the government bears the burden of
4 proving by clear and convincing evidence that he is a danger or flight risk.

5 Respectfully submitted this 2nd day of December, 2025.

6 */s/ Shira Levine*

7 Shira Levine
8 Attorney for Petitioner

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8 **INTRODUCTION**

9 Petitioner Bilal Alpsen is a 31-year-old family man with no criminal history. Ex. A.¹ He
 10 is married to a United States citizen. Exs. B, C, M. Together, they have a four-month-old
 11 daughter who is also a U.S. citizen. Ex. N. Petitioner has a close-knit family, a strong work
 12 history, and a strong claim for immigration relief. Exs. A, B, J.

13 On August 21, 2022, he entered the United States to seek asylum after being tortured in
 14 his native Turkey. Exs. D, F, H.² Respondents detained him in Texas for nine days. Ex. E. On
 15 August 30, 2022, Respondents released Petitioner on his own recognizance, thus vesting him
 16 with a powerful liberty interest. Ex. E.

17 More than three years later, on October 10, 2025, Respondents abruptly snatched away
 18 this liberty interest without holding a pre-deprivation hearing or providing grounds that could
 19 justify deprivation without process. This abrupt and unconstitutional deprivation occurred, of all
 20 times and places, while Petitioner was attending his regularly scheduled ICE check-in—a strong
 21 indication that he was not a risk to flee.

22 _____
 23 ¹ Citations are made to the Declaration of Counsel (“Levine Decl.”) and its component exhibits. In subsequent
 citations, counsel cites directly to the exhibits themselves.

24 ² On October 23, 2025, a USCIS asylum officer determined that Petitioner had a credible fear of persecution based
 on the past persecution [REDACTED]

1 The sole ground offered by Respondents for the re-detention—the claim that Petitioner
2 did not have a pending court date, Ex. B—makes the re-detention even more constitutionally
3 concerning. After all, Respondents, not Petitioner, are the ones responsible for scheduling court
4 hearings. As Respondents well know, Petitioner filed a timely asylum application and has been
5 doing everything in his power to address his immigration status. Ex. A, Ex. B.

6 In still a further deviation from lawful process, Respondents told Petitioner, upon his re-
7 detention, that he was being placed into expedited removal proceedings, even though the
8 government’s own records demonstrate that Petitioner had present in the United States for more
9 than two years and is, thus, ineligible for expedited removal. Ex. F.

10 Petitioner’s unconstitutional detention continues to his day, all without a modicum of the
11 process due to him. Indeed, his case is an illustration of the critical importance of *pre*-deprivation
12 process. When there is no hearing before detention, there is no opportunity to address the
13 unlawful and unjustifiable conclusions that lead to detention.

14 This detention of Petitioner violates Due Process, the Immigration and Nationality Act
15 (“INA”), and the Administrative Procedure Act.

16 Due process is violated, quite simply, because Respondents provided Petitioner with a
17 liberty interest that he enjoyed for four years. Then, without any process, much less due process,
18 Respondents took that liberty away. From the time he was released by the Office of Refugee
19 Settlement on June 16, 2021, Ex. F, to the time he was detained by ICE on August 14, 2025,
20 Petitioner accrued a significant interest in being free. This cannot be taken away without process.
21 In addition to the failure to provide a pre-deprivation hearing, Respondents are violating
22 Petitioner’s legal rights by refusing to consider him for bond, as discussed below.

1 Respondents have violated the Immigration and Nationality Act by deeming Petitioner to
2 be ineligible for a bond hearing. All across the country, including in this district, federal habeas
3 courts have decried the unlawful, new policy of denying bond hearings to anyone accused of
4 entering the country without inspection. Back on July 8, 2025, the Department of Homeland
5 Security (“DHS”) and the Executive Office of Immigration Review (“EOIR”) embraced a
6 radical, new policy that treats anyone alleged to be inadmissible under § 1182(a)(6)(A)(i)—i.e.,
7 those who entered the United States without inspection—as an “applicant for admission” under 8
8 U.S.C. § 1225(b)(2)(A) and, thus, subject to mandatory detention. Ex. Q. This policy
9 transgresses basic tenets of statutory interpretation and has been roundly rejected by the federal
10 district courts, including this one. But because of this illegal policy, Petitioner—who is accused
11 of entering without inspection—cannot even get a bond hearing. Only this Court can intervene to
12 correct this unlawful detention.

13 Petitioner’s detention violates the Administrative Procedure Act.

14 Petitioner moves for a temporary restraining order requiring his immediate release and
15 enjoining the government from re-detaining him unless and until it can show by clear and
16 convincing evidence that he is a danger or flight risk. “The purpose of a preliminary injunction is
17 to return the parties to the status quo ante, which is ‘not simply [] any situation before the filing
18 of a lawsuit, but instead [] the last uncontested status which preceded the pending controversy.’”
19 *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at *10 (E.D. Cal.
20 Sept. 23, 2025) (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir.
21 2000)). In this case, the status quo ante would be Petitioner’s freedom, which was granted to him
22 by the government back in 2022.

23 In the alternative, Petitioner requests an order granting his release, unless he is afforded a
24

1 bond hearing before a neutral arbiter within seven days at which the government must prove by
2 clear and convincing evidence that Petitioner is a danger or flight risk.

3 **LEGAL STANDARD**

4 Petitioner is entitled to a temporary restraining order if he establishes that he is “likely to
5 succeed on the merits... likely to suffer irreparable harm in the absence of preliminary relief, that
6 the balance of equities tips in [his] favor, and that an injunction is in the public interest.” *Winter*
7 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush*
8 *& Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Even if Petitioner does not show a likelihood of
9 success on the merits, the Court may still grant a temporary restraining order if he raises “serious
10 questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and
11 the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
12 1127 (9th Cir. 2011). Petitioner overwhelmingly satisfies both standards.

13 **ARGUMENT**

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

15 Petitioner is likely to succeed on his Due Process claim and his Immigration and
16 Nationality Act (“INA”) claim. The discussion deals with them in turn.

17 **1. The Re-Detention of Petitioner Violated His Due Process Rights.**

18 The Constitution’s Due Process Clause makes it unlawful deprive a person of their protected
19 liberty interest without first providing a hearing. Yet Respondents took away Petitioner’s
20 freedom—the weightiest of liberty interests—without any such hearing. Nor could Respondents
21 point to any “urgent,” “changed circumstances,” that could justify re-detention without a hearing.

1 **a. Petitioner Has a Protected Liberty Interest in His Conditional Release**

2 Petitioner’s liberty from immigration custody is protected by the Due Process Clause:
3 “Freedom from imprisonment—from government custody, detention, or other forms of physical
4 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v.*
5 *Davis*, 533 U.S. 678, 690 (2001). For three years preceding his re-detention, Petitioner enjoyed
6 the liberty interest that ICE created when it released him on his own recognizance. Ex. E, F.
7 Because he was released without even being placed in removal proceedings, Petitioner possessed
8 a weighty liberty interest, under the Due Process Clause, in avoiding re-incarceration. *See Young*
9 *v. Harper*, 520 U.S. 143, 146-47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82 (1973);
10 *Morrissey*, 408 U.S. at 482-83.

11 In *Morrissey*, the Supreme Court examined the “nature of the interest” that a parolee has
12 in “his continued liberty.” 408 U.S. at 481-82. The Court noted that, “subject to the conditions of
13 his parole, [a parolee] can be gainfully employed and is free to be with family and friends and to
14 form the other enduring attachments of normal life.” *Id.* at 482. The Court further noted that “the
15 parolee has relied on at least an implicit promise that parole will be revoked only if he fails to
16 live up to the parole conditions.” *Id.* The Court explained that “the liberty of a parolee, although
17 indeterminate, includes many of the core values of unqualified liberty and its termination inflicts
18 a grievous loss on the parolee and often others.” *Id.* In turn, “[b]y whatever name, the liberty is
19 valuable and must be seen as within the protection of the [Fifth] Amendment.” *Morrissey*, 408
20 U.S. at 482.

21 This basic principle—that individuals have a liberty interest in their conditional release—
22 has been reinforced by both the Supreme Court and the circuit courts on numerous occasions.
23 *See, e.g., Young*, 520 U.S. at 152 (holding that individuals placed in a pre-parole program created
24 to reduce prison overcrowding have a protected liberty interest requiring pre-deprivation

1 process); *Gagnon*, 411 U.S. at 781-82 (holding that individuals released on felony probation
2 have a protected liberty interest requiring pre-deprivation process).

3 As the First Circuit has explained, when analyzing the issue of whether a specific
4 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
5 issue by comparing the specific conditional release in the case before them with the liberty
6 interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 887
7 (1st Cir. 2010) (internal quotation marks and citation omitted); *see also, e.g., Hurd v. District of*
8 *Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical
9 confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him
10 to constitutional due process before he is re-incarcerated”) (citing *Young*, 520 U.S. at 152,
11 *Gagnon*, 411 U.S. at 782, and *Morrissey*, 408 U.S. at 482).

12 Even where the individual obtains liberty through a mistake of law or fact, courts have
13 clearly held that this is a protectable liberty interest. *See id.*; *Gonzalez-Fuentes*, 607 F.3d at 887;
14 *Johnson v. Williford*, 682 F.2d 868, 873 (9th Cir. 1982) (noting that due process considerations
15 support the notion that an inmate released on parole by mistake, because he was serving a
16 sentence that did not carry a possibility of parole, could not be re-incarcerated because the
17 mistaken release was not his fault, and he had appropriately adjusted to society, so it “would be
18 inconsistent with fundamental principles of liberty and justice” to return him to prison) (internal
19 quotation marks and citation omitted).

20 Here, when this Court ““compar[es] the specific . . . release . . . in [Petitioner’s case],
21 with the liberty interest in parole as characterized by *Morrissey*,”” they are strikingly similar. *See*
22 *Gonzalez-Fuentes*, 607 F.3d at 887. Just as in *Morrissey*, Petitioner’s release “enables him to do
23 a wide range of things open to persons”” who have never been in custody or convicted of any
24

1 crime, including to live at home, work, and “be with family and friends and to form the other
2 enduring attachments of normal life.” *Morrissey*, 408 U.S. at 482. Noncitizens released on a
3 bond have a similar liberty interest, which “grows over time.” *Guillermo M. R.*, 2025 WL
4 1983677, at *5; *see also Diaz*, 2025 WL 1676854, at *2 (“Courts have previously found that
5 individuals released from immigration custody on bond have a protectable liberty interest in
6 remaining out of custody on bond.”); *Jorge M.F.*, 2021 WL 783561, at *3 (holding that a
7 Mexican citizen with pending removal proceedings who had been released on bond had “a
8 substantial private interest in remaining on bond”); *Doe*, 2025 WL 691664, at *5 (“Petitioner,
9 having been released at a bond hearing over four years ago, has a similar liberty interest.”);
10 *Ortega*, 415 F. Supp. at 970 (finding “a substantial private interest in remaining on bond, and
11 that interest has only grown in the 18 months since[.]”). And this private interest in remaining
12 free is even stronger in a case, like Petitioner’s, where the government released him from
13 custody without even the need for a bond.

14 **b. The “Release on Own Recognizance” Necessarily Reflects a Determination that**
15 **Petitioner Is Not a Danger or Flight Risk**

16 When Respondents release a person on their “own recognizance,” as they did with
17 Petitioner in 2022, Ex. E, that decision “reflects a determination by the government that the
18 noncitizen is not a danger to the community or a flight risk,” *Saravia v. Sessions*, 280 F. Supp.
19 3d 1168, 1176 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th
20 Cir. 2018). The relevant regulations state that “the alien must demonstrate to the satisfaction of
21 the officer that such release would not pose a danger to property or persons, and that the alien is
22 likely to appear for any future proceeding.” 8 C.F.R. § 1236.1(c)(8).

23 Once the release determination is made, Respondents cannot override that determination
24 later without a hearing at which changed circumstances are shown by clear and convincing

1 evidence. *See Matter of Sugay*, 17 I. & N. Dec. 637, 640 (BIA 1981) (“[W]here a previous bond
2 determination has been made by an immigration judge, no change should be made by [DHS]
3 absent a change of circumstance.”);³ *Saravia*, 280 F. Supp. 3d at 1197 (noting that, “[o]nce a
4 noncitizen has been released, the law prohibits federal agents from rearresting him merely
5 because he is subject to removal proceedings. Rather, the federal agents must be able to present
6 evidence of materially changed circumstances — namely, evidence that the noncitizen is in fact
7 dangerous or has become a flight risk, or is now subject to a final order of removal.”); *see*
8 *Panosyan v. Mayorkas*, 854 F. App’x 787, 788 (9th Cir. 2021) (“Thus, absent changed
9 circumstances ... ICE cannot redetain Panosyan.”).

10 Courts have required Respondents to demonstrate not only “changed circumstances” but
11 also “evidence of urgent concerns” if they seek to redetain a noncitizen without a hearing. *See*
12 *Guillermo M. R. v. Kaiser*, 791 F. Supp. 3d 1021, 1036 (N.D. Cal. 2025) (“absent evidence of
13 urgent concerns, a pre-deprivation hearing is required to satisfy due process, particularly where
14 an individual has been released on bond by an IJ”). This applies not only to those released on
15 bond but also to those released on their own recognizance. *See Rodriguez v. Kaiser*, No. 1:25-
16 CV-01111-KES-SAB (HC), 2025 WL 2855193, at *7 (E.D. Cal. Oct. 8, 2025) (concluding that,
17 “given the absence of evidence of urgent concerns . . . a pre-deprivation hearing [was] required
18 to satisfy due process,” and collecting cases).⁴

19
20 ³ *Saravia*, a leading case from this district, notes that “DHS has incorporated this holding [from *Sugay*] into its
21 practice, requiring a showing of changed circumstances both where the prior bond determination was made by an
immigration judge and where the previous release decision was made by a DHS officer.” *Saravia*, 280 F. Supp. 3d at
1197.

22 ⁴ Numerous decisions reach this conclusion. *Alvarenga Matute v. Wofford*, No. 1:25-CV-01206-KES-SKO (HC),
2025 WL 2996577, at *2 (E.D. Cal. Oct. 24, 2025); *W.V.S.M. v. Wofford*, No. 1:25-cv-01489-KES-HBK (HC), 2025
23 U.S. Dist. LEXIS 228189, at *3 (E.D. Cal. Nov. 19, 2025); *Ramandi v. Field Office Dir., ICE Ero S.F.*, No. 1:25-
CV-01462-JLT-EPG, 2025 U.S. Dist. LEXIS 224698, at *2 (E.D. Cal. Nov. 13, 2025); *F.M.V. v. Wofford*, No. 1:25-
cv-01381-KES-SAB (HC), 2025 U.S. Dist. LEXIS 217645, at *3 (E.D. Cal. Nov. 4, 2025); *Vilela v. Robbins*, No.
24 1:25-cv-01393-KES-HBK (HC), 2025 U.S. Dist. LEXIS 219172, at *3 (E.D. Cal. Nov. 6, 2025); *J.A.E.M. v.*
Wofford, No. 1:25-cv-01380-KES-HBK (HC), 2025 U.S. Dist. LEXIS 211728, at *2 (E.D. Cal. Oct. 27, 2025).

1 As the court in *Guillermo M.R.* recently noted, the court could not “identify any other
2 context in which government agents could permissibly take someone who has been released by a
3 judge, lock up that person, and have no hearing either beforehand or promptly thereafter.”
4 *Guillermo M. R. v. Kaiser*, 2025 WL 1983677, at *7 (N.D. Cal. July 17, 2025). The courts have
5 made clear that DHS does not get a free pass from the requirements of due process. *See e.g.*
6 *Pinchi*, 2025 WL 2084921, at *3 (“[T]he liberty [of a person released from government custody]
7 is valuable and must be seen as within the protection of the [Due Process Clause.]” (citing
8 *Morrissey*, 408 U.S. at 482)). DHS must ensure due process *before* re-detention: “Respondents
9 may not re-detain petitioner unless the government proves by clear and convincing evidence at a
10 bond hearing before a neutral decisionmaker that petitioner is a flight risk or danger to the
11 community such that his physical custody is legally justified.” *Alvarenga Matute v. Wofford*,
12 2025 WL 2817795, at *8 (E.D. Cal. Oct. 2, 2025).

13 As for the process due to noncitizen following their re-detention by ICE, the recent
14 district court decision in *Domingo v. Kaiser*, 2025 WL 1940179 , is illustrative. In that case, Mr.
15 Domingo, a noncitizen from Guatemala, had been re-detained by ICE twelve years after his
16 release on a bond. *Id.* at *1. He had been convicted of a crime in 2019 following his release on
17 bond, but ICE required no supervision, no check-ins, and no additional monitoring since his
18 conviction. *Id.* at *3. Domingo challenged his mandatory detention, arguing that his re-detention
19 without review by a neutral adjudicator violated his due process rights. *Id.* at *1. In granting a
20 preliminary injunction, the Court held that even with the new facts, Domingo had established a
21 strong likelihood of success in showing that he had an interest in his continued liberty and that
22 mandatory detention, in that case, under 8 U.S.C. 1225(b)(1)(B)(ii), would violate this due
23 process rights unless he was afforded adequate process. *Id.* at *4. The Court further held that,
24

1 after applying the three-factor test in *Mathews*, 424 U.S. at 335, Domingo was entitled to a
2 hearing before a neutral decision maker to determine whether his detention was warranted. *Id.* At
3 that hearing, the government bore the burden of establishing, by clear and convincing evidence,
4 whether Domingo posed a danger or a flight risk.

5 No “changed circumstances” exist that could justify Respondents’ decision to re-detain
6 Petitioner without a hearing. Petitioner has no criminal history. Petitioner has not engaged in any
7 activities that would make him a flight risk. Indeed, in the three years during which Petitioner
8 enjoyed his liberty interest, his actions only served to ameliorate any concerns about flight risk.
9 He married a U.S. citizen and, together, they had a child. He retained an attorney, filed for
10 asylum, attended every interview, check-in, and other appointment required of him, and even
11 saw his wife file an immigration relief claim on his behalf. Indeed, it is notable that Petitioner
12 was re-detained *while attending* an ICE check-in. This is strong proof that he is not a flight risk.

13 The only explanation for Petitioner’s detention is the claim by Respondents that he does
14 not have a court date in immigration court. Exs. A, B. Plainly, this cannot justify re-detention
15 without a hearing because, first, it has no bearing on whether Petitioner is a danger or a flight
16 risk and, second, the lack of a hearing is entirely Respondents’ fault. On February 17, 2023,
17 Petitioner filed his affirmative application and advanced steadily on this asylum relief. Ex. H. By
18 contrast, Respondents did not initiate a removal case against him until after he was arrested. Ex.
19 F. Initially, on October 10, 2025, Respondents placed him in expedited removal proceedings. Ex
20 F. A month and three days later, Respondents filed a Notice to Appear, initiating standard
21 removal proceedings. Ex. F. Quite simply, the reason Petitioner did not have a court hearing is
22 that Respondents did not find any need to start removal proceedings until *after* they re-detained.

1 **c. Petitioner’s Liberty Interest Mandated a Hearing Before any Re-Detention**

2 Due process mandates that Petitioner receive notice and a hearing before a neutral
3 adjudicator prior to any re-arrest or re-detention. “Adequate, or due, process depends upon the
4 nature of the interest affected. The more important the interest and the greater the effect of its
5 impairment, the greater the procedural safeguards the [government] must provide to satisfy due
6 process.” *Haygood v. Younger*, 769 F.2d 1350, 1355-56 (9th Cir. 1985) (*en banc*) (citing
7 *Morrissey*, 408 U.S. at 481-82). This Court must “balance [Petitioner’s] liberty interest against
8 the [government’s] interest in the efficient administration of” immigration laws to determine
9 what process he is owed to ensure ICE does not unconstitutionally deprive him of his liberty. *Id.*
10 at 1357. Under the test set forth in *Mathews*, this Court must consider three factors in conducting
11 its balancing test:

12 first, the private interest that will be affected by the official action; second, the risk of an
13 erroneous deprivation of such interest through the procedures used, and the probative
14 value, if any, of additional or substitute procedural safeguards; and finally the
15 government’s interest, including the function involved and the fiscal and administrative
16 burdens that the additional or substitute procedural requirements would entail.

17 *Haygood*, 769 F.2d at 1357 (citing *Mathews*, 424 U.S. at 335).

18 The Supreme Court “usually has held that the Constitution requires some kind of a
19 hearing *before* the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
20 113, 127 (1990) (emphasis in original). Only in a “special case” where post-deprivation remedies
21 are “the only remedies the State could be expected to provide” can post-deprivation process
22 satisfy the requirements of due process. *Zinerman*, 494 U.S. at 985. Moreover, only where “one
23 of the variables in the *Mathews* equation—the value of pre-deprivation safeguards—is negligible
24 in preventing the kind of deprivation at issue” such that “the State cannot be required
constitutionally to do the impossible by providing pre-deprivation process,” can the government
avoid providing pre-deprivation process. *Id.*

1 Because, in this case, the provision of a pre-deprivation hearing was both possible and
2 valuable in preventing an erroneous deprivation of liberty, ICE was required to provide
3 Petitioner with notice and a hearing *prior* to any re-detention. *See Morrissey*, 408 U.S. at 481-82;
4 *Haygood*, 769 F.2d at 1355-56; *Zinerman*, 494 U.S. at 985; *see also Youngberg v. Romeo*, 457
5 U.S. 307, 321-24 (1982); *Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984) (holding that
6 individuals awaiting involuntary civil commitment proceedings may not constitutionally be held
7 in jail pending the determination as to whether they can ultimately be recommitted). Under
8 *Mathews*, “the balance weighs heavily in favor of [Petitioner’s] liberty” and required a pre-
9 deprivation hearing before a neutral adjudicator, which ICE failed to provide.

10 **d. Petitioner’s Private Interest in His Liberty Is Profound**

11 Under *Morrissey* and its progeny, individuals conditionally released from serving a
12 criminal sentence have a liberty interest that is “valuable.” *Morrissey*, 408 U.S. at 482. In
13 addition, the principles espoused in *Hurd* and *Johnson*—that a person who is in fact free of
14 physical confinement, even if that freedom is lawfully revocable, has a liberty interest that
15 entitles him to constitutional due process before he is re-incarcerated—apply with even greater
16 force to individuals like Petitioner, who have been released pending civil removal proceedings,
17 rather than parolees or probationers who are subject to incarceration as part of a sentence for a
18 criminal conviction. Parolees and probationers have a diminished liberty interest given their
19 underlying convictions. *See, e.g., U.S. v. Knights*, 534 U.S. 112, 119 (2001); *Griffin v.*
20 *Wisconsin*, 483 U.S. 868, 874 (1987). Nonetheless, even in the criminal parolee context, the
21 courts have held that the parolee cannot be re-detained without a due process hearing in which
22 they can raise any claims they may have regarding why their re-detention would be unlawful. *See*
23 *Gonzalez-Fuentes*, 607 F.3d at 891-92; *Hurd*, 864 F.3d at 683. Thus, Petitioner retains a truly
24 weighty liberty interest.

1 At stake in this case is one of the most profound individual interests recognized by our
2 legal system. The case tests whether ICE unilaterally nullify a prior decision of the government
3 to release Petitioner, thus taking away his physical freedom, *i.e.*, his “constitutionally protected
4 interest in avoiding physical restraint.” *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011).
5 “Freedom from bodily restraint has always been at the core of the liberty protected by the Due
6 Process Clause.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Zadvydas*, 533 U.S. at 690;
7 *Cooper v. Oklahoma*, 517 U.S. 348 (1996); *Doe*, 2025 WL 691664, at *5 (“It cannot be gainsaid
8 that Petitioner has a substantial private interest in maintaining his out-of-custody status.”). There
9 is a profound private interest in this case, which must be weighed heavily when determining
10 what process Petitioner is owed under the Constitution. *See Mathews*, 424 U.S. at 334-35.

11 **e. The Government’s Interest in Keeping Petitioner in Detention Without a Hearing is**
12 **Low, and the Burden is Minimal on the Government to Release Him from Custody**
13 **Until He is Provided a Hearing.**

14 The government’s interest in keeping Petitioner in detention without a hearing is low;
15 when weighed against Petitioner’s significant private interest in his liberty, the scale tips sharply
16 in favor of releasing him from custody unless and until the government demonstrates by clear
17 and convincing evidence that he is a flight risk or danger to the community. It becomes
18 abundantly clear that the *Mathews* test favors Petitioner when the Court considers that the
19 process he seeks—release from custody pending notice and a hearing regarding whether he
20 should be re-detained or a bond amount should be set—is a standard course of action for the
21 government. In the alternative, providing Petitioner with a hearing before this Court (or a neutral
22 decisionmaker) to determine whether there is clear and convincing evidence that he is a flight
23 risk or danger to the community would impose only a *de minimis* burden on the government: the
24 government routinely provides this sort of hearing to detained individuals like Petitioner.

1 As immigration detention is civil, it can have no punitive purpose. The government's
2 only interest in holding an individual in immigration detention can be to prevent danger to the
3 community or to ensure a noncitizen's appearance at immigration proceedings. *See Zadvydas*,
4 533 U.S. at 690. Notably, ICE took years to serve Petitioner with a Notice to Appeal and
5 schedule his first court appearance. Ex. F. This shows that there was no particular hurry to detain
6 Petitioner and that he could have been given the appropriate process.

7 To date, there is no legitimate justification for re-detaining (or continuing to detain)
8 Petitioner. Respondents told him and his wife that they were detaining Petitioner because he did
9 not have a scheduled court date. Ex. A, B. The government's failure to serve the Notice to
10 Appear and set a hearing cannot be blamed on Petitioner. Furthermore, Petitioner could have
11 easily been served an Notice to Appear (thus creating a court date) while allowing Petitioner to
12 remain out of detention. Nothing about Petitioner suggests that he is a danger to the community
13 or a flight risk. He is an integral part of a loving family. He was gainfully employed and his
14 family depended on these wages—until Respondents' actions caused him to lose his job. Exs. A,
15 B. There is no reason to believe that he would fail to appear at court, given his affirmative
16 commitment pursuing his asylum claim and his family connections.

17 Nor can the government assert that it had a sudden interest in detaining Petitioner in
18 October 2025, after releasing him back on August 30, 2022. Ex. E. Respondents have known for
19 over three years that Petitioner is not a citizen. If DHS believed that there were some grounds for
20 detention based on danger to the community, such as an arrest or conviction, ICE should have
21 moved to re-detain him before the Immigration Court (subject to the demands of due process)
22 and explained what those grounds could be. Instead, ICE chose to re-detain him without any
23 explanation or process.

1 The government's interest in detaining Petitioner at this time is therefore low. The "fiscal
2 and administrative burdens" that release from custody, unless and until a pre-deprivation bond
3 hearing is provided, would impose are nonexistent in this case. *See Mathews*, 424 U.S. at 334-35.
4 Petitioner does not seek a unique or expensive form of process, but rather his release from
5 custody until a routine hearing regarding whether his bond should be revoked and whether he
6 should be re-incarcerated takes place.

7 **f. Without Release from Custody until the Government Provides a Hearing, Risk of**
8 **Erroneous Deprivation of Liberty is High; Process in the Form of a Constitutionally**
9 **Compliant Hearing Where ICE Carries the Burden Would Decrease Risk.**

9 Releasing Petitioner from custody until he is provided a pre-deprivation hearing would
10 decrease the risk of him being erroneously deprived of his liberty. Before Petitioner can be
11 lawfully detained, he must be provided with a hearing before a neutral adjudicator at which the
12 government is held to show that there has been sufficiently changed circumstances such that the
13 2016 release determination should be altered or revoked because clear and convincing evidence
14 exists to establish that Petitioner is a danger to the community or a flight risk. *See e.g. Diaz*, 2025
15 WL 1676854, at *3 (finding that "the three factors relevant to the due process inquiry set out in
16 *Mathews*...support requiring a pre-detention hearing" for a petitioner released on an IJ bond).

17 Petitioner has already been erroneously deprived of his liberty, and the risk that he will
18 continue to be deprived is high if ICE is permitted to keep him in detention after making a
19 unilateral decision to re-detain him. Petitioner was previously granted release, however DHS's
20 recent (and unlawful) interpretation of 8 U.S.C. § 1225(b)(2) means that DHS will treat him as
21 subject to mandatory detention, thus depriving him of even post-deprivation process. There is no
22 longer any statutory mechanism that would provide Petitioner any process before a neutral
23 adjudicator following his re-detention. As a result, under current procedures, the validity or
24

1 necessity of Petitioner’s re-detention and continued imprisonment by ICE would evade any
 2 review by an immigration judge or any other neutral arbiter.

3 By contrast, the procedure Petitioner seeks—release from custody and reinstatement of
 4 his prior release order until he is provided a hearing in front of a neutral adjudicator at which the
 5 government proves by clear and convincing evidence that circumstances have changed to justify
 6 his re-detention—is much more likely to produce accurate determinations regarding factual
 7 disputes, such as whether a certain circumstance constitutes a “materially changed
 8 circumstance.” The Supreme Court has emphasized the importance of *pre-deprivation* hearings
 9 where available, as such an option is here. *See Zinermon v. Burch*, 494 U.S. 113, 128 (1990)
 10 (only in a “special case” where post-deprivation remedies are “the only remedies the State could
 11 be expected to provide” can post-deprivation process satisfy the requirements of due process).

12 Numerous court decisions have found due process violated when ICE skips over a pre-
 13 deprivation hearing and detains a person who was previously released on his own recognizance
 14 or on bond.⁵ And in these cases, the required relief is an immediate release, coupled with an
 15 order not to re-detain the Petitioner without a pre-deprivation hearing.

16
 17
 18 ⁵ *See, e.g., Alvarenga Matute v. Wofford*, 2025 WL 2996577, at *2 (E.D. Cal. Oct. 24, 2025); *W.V.S.M. v. Wofford*,
 2025 U.S. Dist. LEXIS 228189, at *3 (E.D. Cal. Nov. 19, 2025); *Ramandi v. Field Office Dir., ICE Ero S.F.*, No.
 2025 U.S. Dist. LEXIS 224698, at *2 (E.D. Cal. Nov. 13, 2025); *F.M.V. v. Wofford*, 2025 U.S. Dist. LEXIS 217645,
 19 at *3 (E.D. Cal. Nov. 4, 2025); *M.V.I. v. Andrews*, 2025 U.S. Dist. LEXIS 222773, 2025 WL 3154403, at *12 (E.D.
 Cal. Nov. 12, 2025); *Alva v. Noem*, No. 1:25-cv-01600-DJC-CSK, 2025 U.S. Dist. LEXIS 232065, at *11 (E.D.
 20 Cal. Nov. 25, 2025); *Vilela v. Robbins*, 2025 U.S. Dist. LEXIS 219172, at *3 (E.D. Cal. Nov. 6, 2025); *J.A.E.M. v.*
Wofford, 2025 U.S. Dist. LEXIS 211728, at *2 (E.D. Cal. Oct. 27, 2025); *Meza v. Bonnar*, 2018 WL 2554572 (N.D.
 Cal. June 4, 2018); *Ortega v. Bonnar*, 415 F. Supp. 3d 963 (N.D. Cal. 2019); *Vargas v. Jennings*, 2020 WL
 21 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Jorge M. F. v. Wilkinson*, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1,
 2021); *Garcia v. Bondi*, 2025 WL 1676855, at *4 (N.D. Cal. June 14, 2025); *Diaz v. Kaiser*, 2025 WL 1676854, at
 22 *4 (N.D. Cal. June 14, 2025); *Guillermo M.R. v. Polly Kaiser*, 2025 WL 1983677, at *7 (N.D. Cal. June 30, 2025);
Phan v. Becerra, 2025 WL 1808702, at *3 (E.D. Cal. June 30, 2025); *Domingo*, 2025 WL 1940179, at *10; *Quoc*
 23 *Chi Hoac v. Becerra*, 2025 WL 1993771, at 3 (E.D. Cal. July 16, 2025); *Soto Garcia v. Andrews*, 2025 WL
 1927596, at * 5 (E.D. Cal. July 14, 2025); *Pinchi v. Noem*, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025);
 24 *Zakzouk v. Becerra*, 2025 WL 2097470, at *4 (N.D. Cal. July 26, 2025); *Salam v. Maklad*, 2025 WL 2299376, at *9
 (E.D. Cal. Aug. 8, 2025).

1 **2. The Continued Detention of Petitioner, Without A Bond Hearing, Violates the**
2 **Immigration and Nationality Act.**

3 Petitioner’s detention without even the possibility of a bond hearing violates the
4 Immigration and Nationality Act, thus providing an additional basis for habeas relief.

5 On July 8, 2025, ICE, announced a new policy “in coordination with” DOJ. This new
6 policy rejected the well-established understanding of the statutory framework and reversed
7 decades of practice. The new policy, entitled “Interim Guidance Regarding Detention Authority
8 for Applicants for Admission,”⁶ asserts that all persons who entered the United States without
9 inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225(a)(1), and
10 therefore subject to mandatory detention provision under Section 1225(b)(2)(A). The policy
11 applies regardless of when or where a person was apprehended, and it affects those who have
12 resided in the United States for months, years, and even decades.

13 On September 5, 2025, a month before Petitioner’s detention, the Board of Immigration
14 Appeals (BIA) issued an opinion adopting this interpretation of the detention statutes. *Matter*
15 *Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). This BIA decision holds that “aliens who
16 are present in the United States without admission are applicants for admission as defined under
17 section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration
18 of their removal proceedings.” *Id.*

19 Respondents have adopted this position even though federal courts have roundly rejected
20 it.⁷ The U.S. District Court in the Western District of Washington found that such a reading of

21 ⁶ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

22 ⁷ A partial list of such cases can be found here. See, e.g., *Guerrero Lepe v. Andrews*, --- F. Supp. 3d ---, 2025 WL
23 2716910 (E.D. Cal. Sept. 23, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (granting
24 habeas relief); *Salazar v. Dedos*, 2025 WL 2676729, at *1 (D.N.M. Sept. 17, 2025); *Lopez-Campos v. Raycraft*, ---
F. Supp. 3d ---, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (granting habeas relief); *Kostak v. Trump*, No. 3:25-
cv-01093-JE, Doc. 20 (W.D. La. Aug. 27, 2025) (granting preliminary relief); *Benitez v. Noem*, No. 5:25-cv-02190,
Doc. 11 (C.D. Cal. Aug. 26, 2025) (granting preliminary relief); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D.

1 the INA is likely unlawful and that Section 1226(a), not Section 1225(b), applies to noncitizens
 2 who are neither apprehended upon arrival to the United States nor within the first two years of
 3 presence. *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1245 (W.D. Wash. 2025). In the Central
 4 District of California, detainees sought a nationwide class action challenging this policy. *See*
 5 *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, Class Action Compl. & Am.
 6 Pet. for Habeas Corpus, Dkt. 15 (C.D. Cal. July 28, 2025). The district court granted class
 7 certification and a motion for summary judgment. As this wall of federal court decisions
 8 explains, Respondents' interpretation of Section 1225(b)(2) defies the INA's text and is, thus,
 9 unsupportable.

10 First, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it requires courts
 11 to ignore numerous words in the text of that very subsection. Petitioner was apprehended by ICE
 12 on October 10, 2025, in San Francisco, not at the border. And he was apprehended nearly three
 13 years after entering. The text of the mandatory-detention statute just does not cover a person
 14 detained like this. As Justice Antonin Scalia and his co-author, Bryan A. Garner, explain: "If
 15 possible, every word and every provision is to be given effect." SCALIA AND GARNER, *READING*
 16 *LAW: THE INTERPRETATION OF LEGAL TEXTS* AT 174 (2012). A good interpretation of a statute
 17 will not result in "extra" words. Yet that is exactly what occurs if one tries to apply Section
 18
 19

20 Md. Aug. 24, 2025) (granting habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2403827 (D. Mass.
 Aug. 19, 2025) (granting habeas relief); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW, 2025 WL 2379285
 21 (C.D. Cal. Aug. 15, 2025) (granting habeas relief); *Aguilar Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug.
 15, 2025) (granting habeas relief); *Dos Santos v. Noem*, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (granting
 22 habeas relief); *Rocha Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (report and recommendation
 to grant habeas relief), adopted, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (granting habeas relief); *Lopez Benitez*
v. Francis, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (granting individual habeas relief); *Maldonado Bautista v.*
 23 *Santacruz*, *13 (C.D. Cal. July 28, 2025) (granting preliminary relief); *Diaz Martinez v. Hyde*, No. CV 25-11613-
 BEM, --- F. Supp. 3d ---, 2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (denying reconsideration of individual
 24 habeas relief); *Romero v. Hyde*, --- F. Supp. 3d ---, 2025 WL 2403827 (D. Mass. July 19, 2025) (granting habeas
 relief); *Gomes v. Hyde*, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) (granting individual habeas relief).

1 1225(b)(2)(A) to Petitioner’s case. Here is the full text of Section 1225(b)(2)(A), the mandatory-
 2 detention provision:

3 [I]n the case of an alien who is an applicant for admission, if the [1] *examining immigration*
 4 *officer* determines that an alien [2] *seeking* admission is [3] *not clearly and beyond a doubt*
entitled to be admitted, the alien shall be detained for a proceeding under section 240.

5 8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added). On October 10, 2025, when
 6 Petitioner was apprehended at an ICE check-in, he was never seen by an “examining
 7 immigration officer.” There was never a “determin[ation] that . . .” he was “not clearly and
 8 beyond a doubt entitled to be admitted.” Nor was Petitioner “seeking” anything at the time of his
 9 apprehension. He had been living free in the United States for over three years after the
 10 government had released him on his own recognizance. The reason the DHS-DOJ application of
 11 the statute has all of these “extra” words is that the statute applies only to those who are
 12 “arriving” at the border and are candidates for “expedited removal.” When Respondent was
 13 arrested on October 10, 2025, he was not a candidate for expedited removal because he had been
 14 in the United States for more than two years. Ex. E. In the arriving context, those “extra” words
 15 make sense, as there will be an “examining immigration officer” and there will be a
 16 determination of potential eligibility for immigration relief, and the noncitizen is “seeking”
 17 something, namely, admission. This misreading has been demonstrated by numerous district
 18 courts.⁸

19 Second, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA because it
 20 renders a neighboring subsection superfluous. In Section 1226(c), the INA describes people who

22 ⁸ *Martinez v. Hyde*, No. CV 25-11613-BEM, — F.Supp.3d —, —, 2025 WL 2084238, at *2 (D. Mass. July
 23 24, 2025); *see also Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at *5; *Lepe v. Andrews*, No. 1:25-
 24 CV-01163-KES-SKO (HC), 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025); *Lopez-Campos v. Raycraft*, No.
 2:25-CV-12486, — F.Supp.3d —, —, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025).

1 would otherwise be eligible for bond under Section 1226(a), but are rendered ineligible for bond
 2 because of their criminal histories. *See* 8 U.S.C. § 1226(c). Of particular interest, subsections
 3 1226(c)(1)(E)(i)-(ii) address people who are alleged to be inadmissible under 8 § U.S.C.
 4 1182(a)(6)(A) as aliens present without inspection. According to these subsections, such people
 5 are ineligible for bond *only* if they are also “charged with, . . . arrested for, . . . convicted of . . .”
 6 certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). In short, Section 1226(c) requires mandatory
 7 detention for people who have entered without inspection *and* have criminal histories. But if the
 8 DHS-DOJ reading were correct, then all people who entered without inspection would be
 9 mandatorily detained, regardless of whether they had criminal histories or not. Subsections
 10 1226(c)(1)(E)(i) and (ii) would be superfluous, if the DHS-DOJ position were correct, because
 11 Section 1225(b)(2)(A) would govern all cases where someone was alleged to have entered
 12 without inspection. But we know that cannot be right, as these subsections of 1226(c)(1) were
 13 the most recent subsections added by Congress to the INA just this year in the Laken Riley Act,
 14 Pub. L. No. 119-1, 139 Stat. ____ (2025) (adding (E)(i) and (E)(ii) to Section 1226(c)(1)).
 15 Congress would not have added the subsections only to see these additions rendered completely
 16 superfluous. That is another sign that the government’s reading of Section 1225(b)(2)(A) is
 17 wrong.⁹ Numerous district courts have come to this same conclusion.¹⁰

18 Third, the DHS-DOJ reading of the statute is wrong because it is incompatible with the
 19 title of Section 1225, “Inspection by Immigration Officers; *Expedited Removal of Inadmissible*
 20 _____

21 ⁹ As the Supreme Court has explained, “It is our duty to give effect, if possible, to every clause and word of a
 22 statute.” *Duncan v. Walker*, 533 U.S. 167, 174 (2001); *see Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1259 (W.D.
 Wash. 2025); *see also* SCALIA AND GARNER, *READING LAW*, AT 174 (“If possible, every word and every provision is
 to be given effect. . . . None should needlessly be given an interpretation that cause it to . . . have no consequence.”).

23 ¹⁰ *See* *Gomes*, 2025 WL 1869299, at *5; *Lopez Benitez*, — F.Supp.3d at —, 2025 WL 2371588, at *7; *Romero*
 24 *v. Hyde*, No. CV 25-11631-BEM, — F.Supp.3d at —, —, 2025 WL 2403827, at *11 (D. Mass. Aug. 19,
 2025); *Maldonado v. Olson*, No. 25-CV-3142 (SRN/SGE), — F.Supp.3d —, —, 2025 WL 2374411, at *12
 (D. Minn. Aug. 15, 2025); *Lepe v. Andrews*, 2025 WL 2716910, at *6 (E.D. Cal. Sept. 23, 2025).

1 *Arriving Aliens; Referral for Hearing.*” 8 U.S.C. § 1225 (emphasis added). As the Supreme Court
2 has explained, “the title of a statute and the heading of a section are tools available for the
3 resolution of a doubt” about the meaning of a statute. *Almendarez-Torres v. United States*, 523
4 U.S. 224, 234 (1998). Section 1225’s title refers to “arriving” noncitizens who are put in
5 “expedited removal proceedings.” *Id.* These are the people to whom Section 1225(a)(1)’s
6 definition of “applicant for admission” and Section 1225(b)(2)(A)’s mandatory detention
7 provisions apply. The government gravely errs by applying the definition of “applicant for
8 admission” to people who are not “arriving” and not in “expedited removal proceedings.” In this
9 case, Petitioner was not “arriving” or “seeking admission” when he was detained in San
10 Francisco, three years after he allegedly crossed the border. While ICE issued him a form
11 notifying him that he was being put into expedited removal proceedings, he was not eligible for
12 expedited removal because he had been in the United States over two years. Ex. E. Section
13 1225(b)(2)(A) cannot apply to him. *See Lepe v. Andrews*, 2025 WL 2716910, at *6.

14 Fourth, and relatedly, the DHS-DOJ reading violates the INA because it ignores the
15 subject-matter of Section 1225. Section 1225 describes the procedures for the inspection and
16 expedited removal of people detained at the border who are “seeking admission” to the United
17 States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court itself noted that the mandatory detention
18 scheme in Section 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the
19 Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.”
20 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Throughout, Section 1225’s text makes clear
21 that it concerns apprehensions and “expedited” procedures carried out at the border—not actions
22 taken far from the border, as in Petitioner’s case. That the DHS-DOJ reading of the statute
23 ignores this context is a sure sign that it is wrong. “It is a fundamental canon of statutory
24

1 construction,” the Supreme Court explained, “that the words of a statute must be read in their
2 context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dep’t*
3 *of Treasury*, 489 U.S. 803, 809 (1989). The context of Section 1225 demonstrates that
4 subsections 1225(a)(1) and 1225(b)(2)(A) apply to those apprehended at or near the border upon
5 arrival or shortly thereafter. They do not apply to those who are arrested in the interior of the
6 United States months or years or decades later. Quite simply, the DHS-DOJ reading of the
7 statute is an act of cherry-picking a definitional phrase from one context and applying it to
8 another context where it does not belong.

9 Nor is this Court bound by the BIA’s recent decision in *Matter of Yajure Hurtado*, 29
10 I&N Dec. 216 (B.I.A. 2025), which endorsed this unlawful interpretation of sections 1225 and
11 1226. As the Supreme Court has recently held, “[C]ourts must exercise independent judgment in
12 determining the meaning of statutory provisions.” *Loper Bright Enters. v. Raimondo*, 603 U.S.
13 369, 394 (2024). After *Loper Bright*, a federal court “may look to [the BIA’s] interpretations [of
14 the INA] for guidance, but [must not] defer to the agency.” *Lopez v. Garland*, 116 F.4th 1032,
15 1036 (9th Cir. 2024).

16 For the distinct reasons outlined above, the mandatory detention provision of Section
17 1225(b)(2)(A) does not apply to people like Petitioner.

18 **B. PETITIONER WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE**
19 **RELIEF**

20 Petitioner suffers irreparable harm each day he is deprived of his liberty. The Ninth
21 Circuit has recognized “irreparable harms imposed on anyone subject to immigration detention”
22 including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens
23 imposed on detainees and their families as a result of detention, and the collateral harms to
24 children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995; *Soto Garcia*,

1 2025 WL 1676855, at *3 (order granting TRO found irreparable harm from continued ICE
2 detention); *see also Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016) (recognizing that
3 detainees in ICE custody are held in “prison-like conditions.”).

4 Petitioner has suffered significant physical pain because of his detention. He has been
5 denied access to his asthma medication, even though he had this medication with him at the time
6 of arrest. Ex. A. Indeed, when Petitioner asked the arresting agents for his asthma medication,
7 soon after his incarceration began, “the officers told me, ‘That is not our problem,’ and refused
8 to give them to me.” Ex. A. Within the first few days of arriving at the Mesa Verde detention
9 facility, Petitioner was taken to the hospital—twice—and found to have “an infection in my
10 blood.” Ex. A.

11 As this Court put it in *Doe*, the “violation of Petitioner’s due process rights is sufficient to
12 satisfy the irreparable harm requirement.” 2025 WL 691664, at *6. The violation of a statutory
13 right is similar in and of itself to an immediate and irreparable injury. *See Maldonado Bautista*,
14 No. 5: 25-CV-01873-SSS-BFM at * 9 (*citing Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202
15 (9th Cir. 2022)). A temporary restraining order is necessary to prevent additional irreparable
16 harm by continued unlawful detention.

17 Nor is Petitioner the only to suffer because of his unlawful detention. His wife suffers
18 daily. Her gallbladder conditions has caused her severe pain and prevented her from working,
19 Ex. B, and Petitioner’s absence has delayed her ability to get a needed surgery for this condition,
20 Ex. B. Likewise, Petitioner’s wife and infant daughter suffer because of the financial strain that
21 his detention has imposed on the family. They have received emergency housing assistance from
22 the YMCA, which is about to run out. Ex. B. In Petitioner’s absence, his wife cannot afford
23 diapers or clothes for her daughter and has been left to search for donations. Ex. B. Petitioner
24

1 was the financial provider for the family, as well as the emotional support for his wife and infant
2 child. Exs. B, P. Each day of unlawful deprivation inflicts an injury that cannot be repaired. A
3 temporary restraining order is necessary to prevent irreparable harm by continued, unlawful
4 detention.

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

7 When the government is the party opposing the injunction, the balance of equities and
8 public interest merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The government cannot suffer
9 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
10 *INS*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in
11 any legally cognizable sense by being enjoined from constitutional violations.”). “[I]t would not
12 be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal
13 law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v.*
14 *Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014). Any burden imposed by requiring DHS to release
15 Petitioner from custody until he is provided an appropriate hearing is minimal and clearly
16 outweighed by the substantial harm he and his family will suffer as long as he continues to be
17 detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Soto Garcia*, 2025
18 WL 1676855 at *3. If a temporary restraining order is not entered, the government would
19 effectively have permission to ignore Due Process and the text of the INA. The public interest
20 overwhelmingly favors entering a temporary restraining order and preliminary injunction.

21 **CONCLUSION**

22 This Court should find that Petitioner warrants a temporary restraining order and a
23 preliminary injunction. Petitioner respectfully asks this Court to order his immediate release and
24 to prohibit his re-detention unless the government provides seven days’ notice and a hearing

1 before a neutral arbiter in which it proves by clear and convincing evidence that Petitioner is a
2 danger or flight risk. In the alternative, this Court should order that Respondents release
3 Petitioner unless it provides Petitioner with a bond hearing before a neutral arbiter pursuant to 8
4 U.S.C. § 1226(a) within seven days and order that, at such hearing, the government bears the
5 burden of proving his is a danger or flight risk by clear and convincing evidence. Petitioner
6 further requests an order enjoining the government from transferring his custody to any facility
7 outside of the Eastern District of California pending the resolution of this case.

8 Respectfully submitted this 2nd day of December, 2025.
9

10 /s/ Shira Levine
11 Shira Levine
12 Attorney for Petitioner
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