

1 Stephanie Mc Clure, Esq. (313747)  
2 Law Offices of Stephanie Mc Clure, LLC  
3 101 Avenue of the Americas; 9<sup>th</sup> Fl  
4 New York New York 10013  
5 Telephone: (646) 417-8380  
6 Email: Stephanie@smclawgroup.com  
7 *Attorney for Petitioner*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ARMAN NERSISYAN, an individual

Petitioner,

v.

TODD M. LYONS, Acting Director, U.S.  
Immigration and Customs Enforcement,  
MARCOS CHARLES, Acting Executive  
Associate Director, Enforcement and Removal  
Operations, U.S. Immigration and Customs  
Enforcement; KRISTI NOEM, Secretary, U.S.  
Department of Homeland Security; PAMELA  
BONDI, U.S. Attorney General; and DOE 1,  
Warden of California City Corrections Center

Respondents.

Case no.: 1:25-CV-0178

**MOTION FOR EMERGENT  
TEMPORARY  
RESTRAINING ORDER**

**POINTS AND AUTHORITIES  
IN SUPPORT OF EX PARTE  
MOTION FOR TEMPORARY  
RESTRAINING ORDER,  
PRELIMINARY  
INJUNCTION, GRANTING  
HABEAS AMENDMENT AND  
RELIEF**

1 Petitioner makes this emergency ex parte application to this honorable Court to: (1)  
2 explain the reasons for not moving for emergent relief upon the filing of this petition in December  
3 of 2025; (2) ordering petitioner's immediate release from immigration detention; (3) enjoining  
4 respondents from re-arresting petitioner without proper due process as described further herein;  
5 (4) enjoining respondents from transferring petitioner out of this jurisdiction; (5) granting leave  
6 to amend the petition as previously requested by way of motion (7) and granting the petition for  
7 a writ of habeas corpus and all relief requested therein.

8 These motions are made on an emergent basis because of the irreparable harm that will  
9 continue if time is allotted for a response from respondents, who have previously indicated they  
10 have no authority to stipulate to release and have made their objections already known. Such is  
11 incorporated into the affirmation of counsel that follows the request for relief.

12 Petitioner is suffering irreparable harm each and every day and the relief requested herein  
13 has been routinely granted by this court under indistinguishable circumstances, warranting relief.

14 If the Court deems oral argument necessary, Petitioner respectfully requests to appear by  
15 video as the undersigned is presently located in the State of New Jersey and travel time will result  
16 in further irreparable harm to this petitioner.

17  
18 Dated: February 12, 2026

Respectfully submitted,  
/s/ Stephanie Mc Clure, Esq.  
Law Office of Stephanie Mc Clure, LLC  
101 Avenue of the Americas; 9<sup>th</sup> Fl  
New York New York 10014  
Tel: 646-417-8380  
Email: Stephanie@smclawgroup.com

1  
2  
3 **STATEMENT OF INDISPUTABLE FACTS**

- 4 1. Petitioner is a native and citizen of Armenia. After fleeing Armenia and coming to  
5 America, he was initially arrested by immigration authorities on September 27, 2016.  
6 He was paroled into the country on that same date and provided with the attached parole  
7 document. Respondents admit throughout [DE 8] that Petitioner's pre-arrest status was that  
8 of one released and paroled. Petitioner was placed in 240 proceedings and released on  
9 September 27, 2016. See Exhibit A.
- 10 2. He has no criminal history whatsoever. He has no arrests, no convictions, and no pending  
11 criminal matters to speak of.
- 12 3. Petitioner had an approved I-130, filed by his U.S. citizen wife. A Form 485 was filed and  
13 a marriage interview was held October 30, 2025. He appeared on that date with his wife as  
14 scheduled.
- 15 4. Without notice, Petitioner was taken into custody while at his marriage interview.
- 16 5. He has been in custody since that day.
- 17 6. No change of circumstances occurred in his life between the time of his parole and the  
18 time of his marriage interview, other than having an approved I 130 filed by his U.S. citizen  
19 spouse, a filed I 485, and properly attending his marriage interview.
- 20 7. No notice of parole revocation was given to petitioner prior to his arrest. No pre-detention  
21 interview or pre-detention hearing was held in order to assess change of circumstances  
22 bearing upon his continued release.
- 23 8. A stay of removal is active under Appellate Case number 25-73.

24 **LEGAL STANDARD**

25 The standard for issuing a temporary restraining order is identical to the standard for issuing  
26 a preliminary injunction. See *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017)  
27 (“[T]he legal standards applicable to TROs and preliminary injunctions are substantially  
28

1 identical.” (internal quotation marks and citation omitted)). An injunction is a matter of equitable  
2 discretion and is “an extraordinary remedy that may only be awarded upon a clear showing that  
3 the plaintiff is entitled to such relief.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S.  
4 7, 22 (2008). And “a TRO ‘should be restricted to . . . preserving the status quo and preventing  
5 irreparable harm just so long as is necessary to hold a [preliminary injunction] hearing and no  
6 longer.’” *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny  
7 Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423,  
8 439 (1974)). A plaintiff seeking preliminary injunctive relief must establish “[1] that he is likely  
9 to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary  
10 relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public  
11 interest.” *Winter*, 555 U.S. at 20. “[I]f a plaintiff can only show that there are serious questions  
12 going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary  
13 injunction may still issue if the balance of hardships tips sharply in the plaintiff’s favor, and the  
14 other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th  
15 Cir. 2014) (internal quotation marks and citations omitted). “[W]hen the Government is the  
16 opposing party,” the final two factors “merge.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).  
17  
18  
19  
20  
21

### LEGAL ARGUMENT

22  
23 **74.** As Judge Nunley explained in [DE 8] in the matter of *Desouza v. Chestnut*, 1:26-  
24 cv-0488 (E.D. Cal. Jan. 21, 2026) “(t)he court has repeatedly ruled on the issues presented  
25 in the instant case” which are materially indistinguishable from the matter at bar.

26 **75.** This case seeks emergent relief under F.R.C.P. 65 for the same reasons presented  
27 and granted in *DeSouza and Garro-Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal.  
28

1 July 24, 2025) (collecting cases.). See also *Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC  
2 (HC), 2025 WL 2791778, at \*5 (E.D. Cal. Aug. 20, 2025), See *J.L.R.P. v. Wofford*, 1:25-cv-  
3 01464-KES-SKO, *Morales-Flores v. Lyons, et al*, [1:25-CV-01640 – TLN – EFB] [DE 12] at  
4 p. 2., *Lepe v. Andrews*, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*4 (E.D.  
5 Cal. Sept. 23, 2025), (collecting cases).

6 **76.** This Petitioner previously brought this motion for emergent relief. However, the  
7 court denied the motion, wanting for an explanation as to why the emergent motion had not  
8 been brought in December upon filing the petition at [DE 1].

9 **77.** As indicated in the attached Declaration of Stephanie Mc Clure, Esq., the petition  
10 in this matter was filed by attorney Stephen Ridgill, Esq. of the Law Office of Judith Wood.

11 **78.** The undersigned, Stephanie Mc Clure, substituted counsel for Petitioner and has no  
12 association with outgoing counsel.

13 **79.** Ridgill conceded to the undersigned, with integrity and professionalism, that is was  
14 a mistake not to make the emergent motion previously, and as a less experienced attorney he  
15 simply just did not know it was possible.

16 **80.** As a result, this petitioner, whose claim is nearly identical to numerous petitioners  
17 who have been released from detention by this court on indistinguishable facts, has remained  
18 unlawfully incarcerated for over two months without relief being requested.

19 **81.** Upon entering the matter, the undersigned quickly recognized the error of prior  
20 counsel and acted without delay to remedy same and address the unlawful incarceration  
21 immediately.

22 **82.** In accordance with Supreme Court and Ninth Circuit precedent cited *infra*,  
23 unlawful detention constitutes irreparable harm, as does a denial of one's constitutional  
24 right(s). Case law cited *infra* has held that **daily unlawful detention exacerbates irreparable**  
25 **harm.**  
26  
27  
28

1 **83.** Petitioner cannot be continually subjected to irreparable harm, merely  
2 because prior inexperienced counsel did not know an emergent disposition was possible  
3 and otherwise made errors in pleading and judgment. (Emphasis added).

4 **84.** It would be wholly unjust to subject a person suffering from unconstitutional and  
5 unlawful detention, to increasing irreparable harm because of the errors of a less experienced  
6 attorney.

7 **85.** In this case, the circumstances of petitioner's re-detention have been addressed by  
8 this court numerous times as recently ruled in January by Judge Nunley cited above.

9 **86.** The procedural and background facts are nearly identical on the issues of the  
10 emergent relief, irreparable harm, and the unlawful re-detention without notice or due process.

11 **87.** A motion has also been filed for leave to Amend the petition in this case.

12 **88.** Similarly, just as former counsel did not know emergent relief was available, he  
13 likewise expressed to the undersigned that he simply did not know of the arguments relating  
14 to re-detention and the C.F.R. regulations as written in the Amended Petition.

15 **89.** If this court accepts the Petition, and gives the Respondents an ordinary time to  
16 respond, irreparable harm will continue will be exponentially worsened.

17 **90.** Further, the Government's position is already known, as they have already set forth  
18 their position in their Motion to Dismiss and Opposition.

19 **91.** Equally as noteworthy is that the Government's position on this matter has been  
20 repeatedly rejected by this court. See DeSouza, supra. and Morales-Flores, infra.

21 **92.** Further, pursuant to *Winter v. Nat. Res. Def. Council Inc.* 555 U.S. 7, 20 (2008),  
22 the petitioner has established that: (1) there is a likelihood of success on the merits that  
23 respondents violated the Fifth Amendment of the Constitution and the Code of Federal  
24 Regulations; and (2) petitioner will suffer irreparable harm but for this TRO relief; and (3) the  
25 balance of equities tip in petitioner's favor pursuant to *Morales-Flores*; and (4) the equities  
26 favor release in the public interest.  
27  
28

1       **93.**       This case is indistinguishable from the case of *J.L.R.P. v. Wofford*, 1:25-cv-01464-  
2 KES-SKO, an Eastern District of California case decided November 14, 2025 and *DeSouza v.*  
3 *Chestnut*, *supra.* in which the identical emergent relief was warranted based upon the same  
4 exact type of unlawful arrest without notice in violation of due process and the petitioner's  
5 constitutional rights.

6               In both cases, the court found that:

7  
8               (1) Specific regulations, 8 C.F.R. §§ 241.13(i) and 241.4(l), govern  
9 how and when ICE may revoke the release of a noncitizen who has been  
10 released or paroled. Section 241.13(i) permits revocation of release “if, on  
11 account of changed circumstances, [ICE] determines that there is a significant  
12 likelihood that the alien may be removed in the reasonably foreseeable  
13 future.”<sup>3</sup> 8 C.F.R. § 241.13(i)(2). As the *Nguyen, supra.* court explained, the  
14 regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) apply to non-citizens in  
15 petitioner's situation and outline the process to be followed. *Id.*; *Escalante*,  
16 2025 WL 2206113, at \*3 (“After *Zadvydus*, the immigration regulations were  
17 revised to implement administrative review procedures for . . . those who are  
18 re-detained upon revocation of their supervised release.” (citing 8 C.F.R. §  
19 241.13)). In *Escalante*, which also dealt with a noncitizen who had been  
20 ordered removed, released, and then re-detained, the court noted that:

21               **Section 241.13(i)(2)[,] [which is] entitled “Revocation for removal[,],” provides**  
22 **that “the Service may revoke an alien’s [supervised] release under this section**  
23 **and return the alien to custody if, on account of changed circumstances, *the***  
24 ***Service determines* that there is a significant likelihood that the alien may be**  
25 **removed in the reasonably foreseeable future.” 8 C.F.R. § 241.13(i)(2) (emphasis**  
26 **added). Section 241.4(b)(4)[,] which is entitled “*Service determination under 8***  
27 ***C.F.R. 241.13[,]*” states that, after supervised release under section 241.13, “*if the***  
28 ***Service subsequently determines*, because of a change of circumstances, that there**

1           **is a significant likelihood that the alien may be removed in the reasonably**  
2           **foreseeable future [to the country to which the alien was ordered removed or] a**  
3           **third county, the alien shall again be subject to the custody review procedures**  
4           **under this section.” 8 C.F.R. § 241.4(b)(4) (emphasis added).**  
5           *Escalante*, 2025 WL 2206113, at \*1–3.

6 Further:

7           94. The regulations at 8 C.F.R. §§ 241.13(i) and 241.4(l) set out the procedures to be followed  
8           in revoking release or parole, procedures that protect important due process rights. *See*  
9           *Nguyen v. Hyde*, 788 F. Supp. 3d 144, 152 (D. Mass. 2025) (noting that 8 C.F.R. § 241.13(i)  
10           was “promulgated to protect a fundamental right derived from the Constitution”). Those  
11           procedures include:

12                   **Upon revocation, the alien will be notified of the reasons for revocation of his**  
13                   **or her release. The Service will conduct an initial informal interview promptly**  
14                   **after his or her return to Service custody to afford the alien an opportunity to**  
15                   **respond to the reasons for revocation stated in the notification. The alien may**  
16                   **submit any evidence or information that he or she believes shows there is no**  
17                   **significant likelihood he [will] be removed in the reasonably foreseeable**  
18                   **future, or that he [] has not violated the order of supervision. The revocation**  
19                   **custody review will include an evaluation of any contested facts relevant to the**  
20                   **revocation and a determination whether the facts as determined warrant**  
21                   **revocation and further denial of release.**

22                   8 C.F.R. § 241.13(i)(3); *see also Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC  
23                   (HC), 2025 WL 2791778, at \*5 (E.D. Cal. Aug. 20, 2025).

24           95. Under the Due Process Clause of the Fifth Amendment to the United States Constitution,  
25           no person shall be “deprived of life, liberty, or property, without due process of law.” U.S.  
26           Const. amend. V. “Freedom from imprisonment—from government custody, detention, or  
27           other forms of physical restraint—lies at the heart of the liberty that Clause protects.”  
28           *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (citing *Foucha v. Louisiana*, 504 U.S. 71, 80  
                 (1992)). Courts have previously found that individuals released from immigration custody

1 on bond have a protectable liberty interest in remaining out of custody on bond. *See Ortiz*  
2 *Vargas v. Jennings*, No. 20-cv5785, 2020 WL 5074312, at \*3 (N.D. Cal. Aug. 23, 2020);  
3 *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (“Just as people on preparole,  
4 parole, and probation status have a liberty interest, so too does Ortega have a liberty  
5 interest in remaining out of custody on bond.”); *Romero v. Kaiser*, No. 22-cv-02508, 2022  
6 WL 1443250, at \*2 (N.D. Cal. May 6, 2022) (“[T]his Court joins other courts of this district  
7 facing facts similar to the present case and finds Petitioner raised serious questions going  
8 to the merits of his claim that due process requires a hearing before an IJ prior to re-  
9 detention.”); *Jorge M. F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at \*2 (N.D.  
10 Cal. Mar. 1, 2021). Such was the finding and reasoning of this court in *J.L.R.P. v.*  
11 *Wofford*, 1:25-cv-01464-KES-SKO. This court also agreed that a pre-deprivation hearing  
12 was required; stating:  
13  
14

15 Due process “is a flexible concept that varies with the particular situation.” *Zinerman v. Burch*,  
16 494 U.S. 113, 127 (1990).  
17

18 The procedural protections required in a given situation are evaluated using the *Mathews*  
19 *v. Eldridge* factors:  
20

21 96. First, the private interest that will be affected by the official action; second, the risk of an  
22 erroneous deprivation of such interest through the procedures used, and the probable  
23 value, if any, of additional or substitute procedural safeguards; and finally, the  
24 government’s. For similar reasons as those discussed in the aforementioned cases, this  
25 Court held that the three factors relevant to the due process inquiry set out in *Mathews v.*  
26 *Eldridge*, 424 U.S. 319 (1976)—“the private interest that will be affected by the official  
27  
28

1 action,” “the risk of an erroneous deprivation . . . and the probable value, if any, of  
2 additional or substitute procedural safeguards,” and “the Government’s interest, including  
3 the function involved and the fiscal and administrative burdens that the additional or  
4 substitute procedural requirement would entail,” *Id.* (quoting *Mathews v. Eldridge*, 424  
5 *U.S. 319, 335 (1976)*); see *Hernandez v. Sessions*, 872 *F.3d 976, 993 (9th Cir. 2017)*  
6 (applying *Mathews* factors in immigration detention context).  
7

8 97. This court turned to the first factor, that petitioner has a significant private interest in  
9 remaining free from detention, and found that he did, just as here. The analysis and result  
10 is the same. “Freedom from imprisonment—from government custody, detention, or other  
11 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause  
12 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner had been out of custody  
13 for nearly four years, and during that time, built a life in the United States. His detention  
14 denies him that freedom. Second, the court looked to the risk of an erroneous deprivation  
15 of liberty is high because 8 C.F.R. §§ 241.13 and 241.4 do not provide for review of ICE’s  
16 reasons for revocation by a neutral arbiter. The court cited another Eastern District case  
17 and said the “**reasoning applies even more forcefully here, where ICE failed to timely**  
18 **provide even the notice and interview required by its own regulations.** See *Yang*, 2025  
19 WL 2791778, at \*9” *J.L.R.P. v. Wofford*, 1:25-cv-01464-KES-SKO at page 16.  
20  
21

22 This is the same exact scenario in the instant petitioner’s case. ICE failed to provide any  
23 notice of revocation at all, nor the interview required by it’s own regulation.  
24

25 98. Under those circumstances, which are identical to the circumstances here, the court granted  
26 the petitioner’s immediate release, granted the petition for habeas corpus in toto, and  
27 enjoined and restraining respondents from re-detaining petitioner unless there are material  
28

1 changed circumstances and a neutral decisionmaker determines that there is a significant  
2 likelihood of petitioner's removal in the reasonably foreseeable future, or respondents  
3 demonstrate by clear and convincing evidence at a pre-deprivation bond hearing before a  
4 neutral decisionmaker that petitioner is a flight risk or danger to the community such that  
5 his physical custody is legally justified. We are seeking the same relief, albeit in addition  
6 to the restraining orders necessary to retain jurisdiction, which we've also requested.  
7

8 99. Petitioner has a clear success on the merits claim, because this case is nearly identical in  
9 every material respect to cases granted out of this court seeking the same relief under the  
10 same circumstances.

11 100. The requirements for issuing a temporary restraining order without notice set out  
12 in Federal Rule of Civil Procedure 65(b)(1) are also met in this case. This motion has set  
13 out specific facts showing that immediate and irreparable injury, loss, or damage may result  
14 before the adverse party can be heard in opposition, and good faith efforts were made in  
15 attempt to put counsel on notice by telephone. Because there are "serious questions going  
16 to the merits (in petitioner's favor)" - "the balance of hardships tips sharply" in petitioner's  
17 favor. *Weber*, 767 F.3d at 942.  
18

19 20 101. Petitioner is also suffering and will continue to accrue exponential irreparable harm  
21 in the absence of the requested preliminary relief. The Ninth Circuit has recognized  
22 "irreparable harms imposed on anyone subject to immigration detention," including "the  
23 economic burdens imposed on detainees and their families as a result of detention, and the  
24 collateral harms to children of detainees whose parents are detained." *Hernandez v.*  
25 *Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, "[i]t is well established that the  
26 deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"  
27  
28

1 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S.  
2 347, 373 (1976)). Petitioner has a U.S. citizen wife and family who rely on him. He has  
3 family and roots in his community established over the last decade. He had an approved I  
4 130. He has no admissibility issue or criminal matters. He had a properly filed I 485 and  
5 in fact was at his marriage interview (one of the last steps) prior to being granted permanent  
6 residency. His removal was ordered stayed by a Court of Appeals reviewing the denial of  
7 his 485 adjustment that came the day after his arrest at the marriage interview.  
8

9 102. His detention cannot be said to be lawful by any means. It was effected without  
10 due process, in violation of the Fifth Amendment, and applicable C.F.R. regulations, and  
11 cannot be said to be in furtherance of removal, especially at this point, given that his  
12 removal is stayed. His continued incarceration is enough under Supreme Court precedent  
13 noted above to establish irreparable harm, and irreparable harm that is multiplying daily.  
14

15 103. Finally, the balance of the equities and the public interest, which merge in light of  
16 the fact that the government is the opposing party, tip sharply in Petitioner-Plaintiff's favor.  
17 "[T]he public has a strong interest in upholding procedural protections against unlawful  
18 detention, and the Ninth Circuit has recognized that the costs to the public of immigration  
19 detention are staggering." *Jorge M. F.*, 2021 WL 783561, at \*3 (quoting *Ortiz Vargas*,  
20 2020 WL 5074312, at \*4, and then quoting *Hernandez*, 872 F.3d at 996); Moreover, a  
21 party "cannot reasonably assert that it is harmed in any legally cognizable sense by  
22 being enjoined from constitutional violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*,  
23 753 F.2d 719, 727 (9th Cir. 1983).  
24

25  
26 104. The *Winters* factors are satisfied in this instance and injunctive relief should issue  
27 accordingly.  
28

1 105. We respectfully request that this court issue the same emergent relief it has offered  
2 other petitioners in the same exact circumstance; and do so *ex parte* as the court did in  
3 *DeSouza* and *Garro Pinchi* because waiting for a response will result in continually  
4 accruing and exponential irreparable harm.

5  
6 106. This is especially so where the court has “repeatedly ruled on the issues” See  
7 *Judge Nunley’s Order in DeSouza, supra., at* [DE 8] and where the Government’s  
8 position as expressed previously in this matter and others is known and has been repeatedly  
9 rejected. Id. See also *Morales-Flores 1:25-CV-01640, TLN, EFB, 2025 WL 3552841 at*  
10 *\*3 (E.D. Cal. December 11, 2025)* and *J.L.R.P. v. Wofford, 1:25-cv-01464-KES-SKO;*  
11 See also *Garro Pinchi, supra* granting *ex parte* relief under materially indistinguishable  
12 circumstances and see also *Diaz v. Kaiser, No. 25-cv-05071, 2025 WL 1676854, at \*2*  
13 *(N.D. Cal. June 14, 2025); Garcia v. Bondi, No. 25-cv-05070, 2025 WL 1676855, at \*3*  
14 *(N.D. Cal. June 14, 2025).*

15  
16 107. Alternatively, in the event this court is not inclined to issue the relief *ex parte*, we  
17 respectfully request:

- 18  
19 (1) the opportunity to be heard on the most expedited schedule the court may accommodate,  
20 and that,  
21 (2) the court grant the TRO to the extent it will enjoin Respondents from transferring petitioner  
22 out of this jurisdiction during the pendency of this case (in order to preserve jurisdiction);  
23 and  
24 (3) issue an order relieving petitioner of its duty under [DE 10] to file declarations rendered  
25 moot by the contemplated amended petition.
- 26  
27  
28

**LEGAL ARGUMENT**

**POINT ONE**

**THE RE-DENTION OF THIS PETITIONER WAS UNLAWFUL BECAUSE  
PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION AND HIS RE-  
DENTENTION VIOLATED EXISTING REGULATIONS**

Respondents re-detained this petitioner, without notice required by 8 C.F.R. 241.13(i)(3), as briefed below, and did so because under the new DHS policy of July 2025, DHS believes petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). (See footnote number 4, page 5, within the Government’s Motion at [DE 8] styled as a “motion to dismiss” under Rule 4.)

Until DHS changed its policy in July of 2025, the Government consistently applied § 1226(a), not § 1225(b)(2), to noncitizens present and residing in the United States who were detained by an immigration authorities and subject to removal. See *Morales-Flores v. Lyons, et al*, [1:25-CV-01640 – TLN – EFB] [DE 12] at p. 2. There, as here, petitioner resided in the interior of the United States long after being taken into custody and subsequently released by immigration authorities. Petitioner here is a native and citizen of Armenia. He entered the United States in 2016 and has remained continuously since that time. At the time of his entry, a custody decision was made to parole him into the country. He was provided with an Parole Card stating:

“You are authorized to stay in the U.S. only until the date written on this form. (No date is written.) To remain past this date, without permission from Department of Homeland Security authorities is a violation of the law.” A handwritten note indicates “Paroled into the U.S. per SND DFO D Flores Pending a Sec 240 Hearing before an IJ 212(d)(5).”

Over the ten years that transpired since that parole and release into the United States, he has made a life here. He has a U.S. citizen wife and family. He had an approved I-130, a properly filed I 485, and was present for his marriage interview lawfully in pursuit of residency status. He

1 has no criminal history whatsoever. He has no arrests, no convictions, and no pending criminal  
2 matters to speak of. He was nevertheless arrested without notice at this marriage interview and  
3 his 485 denied the next day. An appeal is pending and removal is stayed accordingly.

4 Respondents claim, as they have many times before this court unsuccessfully, that under  
5 their new policy, mandatory detention applies and that he has no protected liberty interest.

6 As stated clearly in *Morales-Flores*, supra.:

7 **“(S)ubstantial ink has been spilled on this issue. Courts nationwide, including this one, have overwhelmingly rejected Respondents’ arguments and found DHS’s new policy unlawful. See e.g., Hortua v. Chestnut, et al., No. 1:25-cv-01670-TLN-JDP, 2025 WL 3525916 (E.D. Cal. Dec. 9, 2025); Barco Mercado v. Francis, No. 25-CV-6582 (LAK), 2025 WL 3295903, at \*4 (S.D.N.Y. Nov. 26, 2025) (estimating over 350 cases ruled DHS’s July policy improper across 160 different judges sitting in about 50 different courts nationwide); Mirley Adriana Bautista Pico, et al. v. Kristi Noem, et al., No. 25-CV-08002-JST, 2025 WL 3295382, at \*2 (N.D. Cal. Nov. 26, 2025) (collecting cases); Armando Modesto Estrada-Samayoa v. Orestes Cruz, et al., No. 1:25-CV-01565-EFB (HC), 2025 WL 3268280, at \*4 (E.D. Cal. Nov. 24, 2025) (collecting cases). “These courts examined the text, structure, agency application, and legislative history of 1225(b)(2) and concluded that it applies only to noncitizens ‘seeking admission,’ a category that does not include noncitizens like [Petitioner], living in the interior of the country.” Salcedo Aceros v. Kaiser, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at \*8 (N.D. Cal. Sept. 12, 2025) (collecting cases). In comparison, “[t]he government’s proposed reading of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice.” Lepe v. Andrews, No. 1:25-CV-01163-KES-SKO (HC), 2025 WL 2716910, at \*4 (E.D. Cal. Sept. 23, 2025) (collecting cases).**

23 The new DHS policy has been deemed unlawful and petitioner is not subject to mandatory  
24 detention.

25 In *Morales-Flores*, this court in materially indistinguishable circumstances, agreed “*with*  
26 *the chorus of well-reasoned and compelling decisions and finds no reason to reconsider its prior*  
27 *rulings. Particularly as the Maldonado Bautista court has already declared a statutory violation*  
28

1 on behalf of Petitioner as a class member.” *Morales-Flories, Supra*. For that reason, the court  
2 found petitioner not to be an applicant seeking admission subject to mandatory detention under §  
3 1225(b)(2) and must respectfully do the same in the instant matter.

4  
5 **POINT TWO**

6 **PETITIONER HAS A PROTECTED LIBERTY INTEREST**

7  
8 The Due Process Clause of the Fifth Amendment prohibits government from depriving an  
9 individual’s life, liberty, or property without due process of law. *Hernandez v. Session*, 872 F.3d  
10 976, 990 (9th Cir. 2017). The Due Process Clause applies to all “persons” within the borders of  
11 the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001)  
12 (“[T]he Due Process Clause applies to all ‘persons’ within the United States, including noncitizens,  
13 whether their presence here is lawful, unlawful, temporary, or permanent.”). These rights extend  
14 to immigration proceedings, including deportation proceedings. *Id.* at 693–94; *Demore v. Kim*,  
15 538 U.S. 510, 523 (2003).

16  
17 One’s interest in liberty itself, that is the “freedom from imprisonment—from government  
18 custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due  
19 Process] Clause protects.” *Zadvydas*, 533 U.S. at 690. “Even individuals who face significant  
20 constraints on their liberty or over whose liberty the government wields significant discretion  
21 retain a protected interest in their liberty.” *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal.  
22 July 24, 2025).

23  
24 This petitioner has a substantial liberty interest based on his parole ten years ago by  
25 immigration authorities in 2016, as established in *Morrissey v. Brewer*. (ECF No. 2-2 at 20–21  
26 (citing 408 U.S. 471, 481–82 (1972) and relied upon by this court in *Morales-Flores, supra*. A  
27  
28

1 noncitizen release from custody pending immigration proceedings has a protected liberty interest  
2 in remaining out of custody. *Salcedo Aceros*, 2025 WL 2637503, at \*6, see also *Morales-Flores*,  
3 *supra*. To determine whether an individual’s conditional release rises to the level of a protected  
4 liberty interest, this court has cited to *Morrissey* and “compar[ed] the specific conditional release  
5 in the case before them with the liberty interest in parole as characterized by *Morrissey*.” *R.D.T.M.*  
6 *v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255, at \*3 (E.D. Cal. Sept 9, 2025).  
7 Here, the Court must find, consistent with *Morales-Flores*, that this Petitioner has developed  
8 “enduring attachments of normal life” as described in *Morrissey*, 409 U.S. at 482. Over the last  
9 ten years, Petitioner has built a life, a marriage, a family, and a community in California. Petitioner  
10 here, as in *Morales-Flores* was released from immigration authorities which created a reasonable  
11 expectation that he would be entitled to retain his liberty, absent a material change in  
12 circumstances. Just as in *Morales Flores*, this Petitioner has **not** been arrested or charged with any  
13 crimes in violation of that release. Furthermore, Petitioner has an approved I-130, a properly filed  
14 I 485, and was attending the last phase of his adjustment of status to lawful permanent resident by  
15 attending his marriage interview at the time of his arrest.  
16  
17  
18

19 Pursuant to this court’s prior holdings, the court must find this Petitioner, in a position  
20 indistinguishable from that in *Morales-Flores*. *Morales-Flores* was living in America post-release  
21 for 7 years; this petitioner has lived here peacefully post release for 10 years). The court must  
22 therefore hold that Petitioner does in fact have a liberty interest in his release from immigration  
23 detention (parole) protected by the Due Process Clause as it has for prior individuals before this  
24 court so situated.  
25

26 The violation of this liberty interest, without a change of circumstance is unlawful and  
27 unconstitutional.  
28

**POINT THREE**

**DHS POLICY UPDATES DO NOT ABROGATE THE EXISTING CODE OF FEDERAL REGULATIONS, SPECIFICALLY 8 C.F.R. § 241.13(i)(3) AND THE RE-DETENTION OF THIS PETITIONER WITHOUT THE SAFEGUARDS PROVIDED BY THIS STATUTE CONSTITUTE A VIOLATION OF DUE PROCESS**

It is axiomatic to say that DHS policy changes do not override statutory regulation of its powers. The re-detention of individuals is addressed with specificity by 8 C.F.R. § 241.13(i)(3). Under that regulatory framework, if re-detention is sought by DHS, they must provide an individual with: (1) notice of revocation; (2) a pre-detention informal interview; and (3) an opportunity to present evidence. More specifically, the regulations provide that: **“Upon revocation, the alien will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The alien may submit any evidence or information that he or she believes shows there is no significant likelihood he [will] be removed in the reasonably foreseeable future, or that [she] has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.**

8 C.F.R. § 241.13(i)(3); *see e.g. Yang v. Kaiser*, No. 2:25-CV-02205-DAD-AC (HC), 2025 WL 2791778, at \*5 (E.D. Cal. Aug. 20, 2025).

The DHS policy that attempts to reclassify a certain group of persons is of no moment to the matter at hand, in instances of re-arrest and re-detention, because the regulation is still the law and must be followed. Unless and until this provision of the Code of Federal Regulations is changed, after notice and opportunity for public comment, and full compliance with the

1 Administrative Procedures Act, ICE is required to abide by the written code that provides for limits  
2 to its powers and for the Due Process of individuals subject to its power. That said the application  
3 of the “new policy” repeatedly struck down by the courts in effort to justify re-detention of  
4 individuals in Petitioner’s circumstance is and will continue to be unlawful and a violation of due  
5 process. See J.L.R.P. v. Wofford, 1:25-cv-01464-KES-SKO.

6  
7 **POINT FOUR**

8 **THIS COURT SHOULD GRANT EX PARTE RELIEF FOR THE REASONS**  
9 **ABOVE AND ALSO DENY RESPONDENT’S MOTION TO DISMISS IN**  
10 **TOTO AS THE MOTION RAISES NO ARGUMENT COGNIZABLE UNDER**  
11 **RULE 4 AND SHOULD BE STRICKEN OR DENIED**

12 The Summary Dismissal portion of Rule 4 permits meritorious motions to be presented  
13 to the court in instances where a petitioner has failed to set forth facts sufficient to make out a  
14 claim for a constitutional violation. Here, facts sufficient are plainly pleaded by petitioner to  
15 establish a claim for relief in its original Petition.

16 Firstly, the motion itself bears no resemblance to a Rule 4 motion. It makes no claim of  
17 insufficient factual pleading at all. Rather, it sets forth what the Respondents’ may feel is a  
18 defense, albeit one repeatedly rejected by this court. Further, its claim that petitioner’s due process  
19 arguments were insufficiently developed fails as a reading of the facts and the case law cited  
20 within the original petition is sufficient to state a claim for constitutional relief under the summary  
21 dismissal rule; sufficient to state a claim.

22  
23 Second, the motion seeks to defend an arrest that was premised upon a change in policy  
24 **repeatedly** held unlawful by this court as the respondent is well aware, as his office has  
25 continually represented the respondents in these matters. DHS’s claim that it may re-detain a  
26 parolee, living on the interior of the United States for years, and may reclassify such persons as  
27 subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A) and re-detain them without notice  
28

1 or due process, in violation of their own duties under the Code of Federal Regulations briefed  
2 herein, and in violation of the Constitution of the United States is meritless. The position has  
3 repeatedly been denied by this court and courts around the country and a motion premised upon  
4 an arrest and re-detention made under this theory should be denied without need for further  
5 inquiry.  
6

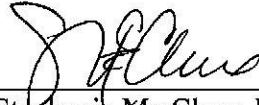
7  
8 **CONCLUSION**

9 For these reasons, it is respectfully requested that the court:

- 10 1) Find a TRO is warranted and the *Winter* factors established; and  
11 2) Issue an Order directing respondents to IMMEDIATELY RELEASE the  
12 petitioner and return his property; and allow for petitioner to place reasonable  
13 phone call(s) in order to coordinate his pickup from the detention center once  
14 released; and  
15 3) Issue an Order enjoining Respondents from transferring petitioner out of this  
16 jurisdiction; and  
17 4) Issue an Order enjoining Respondents from re-arresting petitioner unless and  
18 until a change in circumstance occurs and petitioner is given at least 10 days  
19 notice of intent to revoke parole, and a full pre-detention hearing, where he is  
20 represented by counsel, and has an opportunity to be heard and present  
21 evidence of a lack of change in circumstances and lack of flight risk; and  
22 5) Issue an Order Amending the Petition for Habeas Corpus as requested in the  
23 pending motion for leave to amend; and  
24 6) Issuing an for a Writ of Habeas Corpus, granting the relief requested *in toto*,  
25 and  
26  
27  
28

1  
2 7) Any other relief this court deems just and proper.

3  
4 Dated: 2/12/26



5 Stephanie Mc Clure, Esq.  
6 Law Office of S. Mc Clure LLC  
7 101 Avenue of the Americas; 9<sup>th</sup> Fl  
8 New York New York 10013  
9 Tel: 646-417-8380  
10 Email: Stephanie@smclawgroup.com

11 **AFFIRMATION OF ATTORNEY**

12 I, Stephanie Mc Clure, am an attorney at law, duly licensed to practice law  
13 before this honorable court. I hereby swear and affirm as follows under oath. I  
14 represent the petitioner in the within matter. The facts and circumstances of  
15 Petitioner's matter as contained herein are an accurate portrayal of the facts and  
16 circumstances revealed during my investigation and have been either directly related  
17 to me from an appropriate witness or gleaned from actual documentary evidence.  
18

19 I hereby swear and affirm that I spoke with former counsel for petitioner Steven  
20 Ridgill on February 11, 2026 by telephone and email.  
21

22 During those conversations, I inquired as to why he did not request emergent  
23 relief in this matter when he filed the petition in December of 2025. He indicated in  
24 sum and substance that he did not know he could move for emergent relief or that the  
25 Rules provided a mechanism for emergent relief. It was a simple error of a less  
26 experienced attorney, albeit an error that resulted in continued irreparable harm to this  
27 petitioner.  
28

1 I further represent that the copies of documents attached to the Petition  
2 incorporated herein are true and accurate copies of documents obtained by me during  
3 my investigation. I believe the facts as represented to the court to be true and accurate  
4 based on my personal observations and/or where based upon documentary evidence or  
5 third party information, I indeed believe them to be true. I hereby swear and affirm  
6 these statements to be true and am aware that if any statement made is willfully false  
7 I am subject to punishment including perjury as defined by the United States and  
8 California laws.  
9

10  
11  
12 Dated: 2/12/26



Stephanie Mc Clure, Esq.  
Law Office of S. Mc Clure LLC  
101 Avenue of the Americas; 9<sup>th</sup> Fl  
New York New York 10013  
Tel: 646-417-8380  
Email: Stephanie@smclawgroup.com