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REYES ZAMORA VASQUEZ
Plaintiff and Petitioner,

vs.

JAMES JANECKA, Warden of the Adelanto Detention Center; et al.

Defendants-Respondents

5:25-cv-03317-JWH-SK

Hon: JOHN W. HOLCOMB

SUPPLEMENTAL BRIEF IN SUPPORT OF REQUEST AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

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I. INTRODUCTION

This case challenges the continuing unlawful and punitive detention of Petitioner, who is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Adelanto Detention Center, Adelanto, California. Petitioner Reyes Zamora Vasquez, a section 245(i) 'grandfathered alien' has resided in the United States for over 32 years after entering the United States without inspection. He is neither a flight risk nor a danger to the community. Because of Respondents' recent uniform policy and practice Respondents arrested Petitioner without a probable cause, without notice or opportunity to be heard on the issue of flight risk and in violation of agency rules and published regulations, and now refuse to permit Petitioner to make a request for bond before an immigration judge and be released under the scheme promulgated by Congress for non-citizens present in the US without having been admitted or paroled. Unless the Court orders Petitioner's immediate release, *or in the alternative* order that Respondents accord Petitioner a constitutionally valid bond hearing before an Immigration Judge, Petitioner will continue to be subjected to unlawful and punitive detention.

Plaintiff-Petitioner is not challenging or seeking judicial review of the initiation of removal proceedings, the way his removal proceedings were or are conducted, or the

denial of immigration relief by the EOIR or USCIS. Petitioner is not subject to final order of removal.

II. FACTS AND PROCEDURAL HISTORY

Plaintiff-Petitioner is a sixty-two-year-old man who was born in, and is a citizen of, Mexico. (ECF # 1 [Verified Petition for Habeas Corpus & #3 [Ex Parte TRO] ¶ 18 and Decl. at PAGE ID 27 ¶1,6, NTA at PAGE ID 27). Other than being cited for driving without a license he has no criminal arrests or convictions. (*Id.;* ECF # 1 & 3 ¶ 18; Decl ¶14). He entered the United States without inspection in 1992 and has resided with his family in the Southern California area ever since. (*Id.;* ECF # 1 & 3 ¶ 19-22; Decl at PAGE ID 27 ¶1-4). Petitioner was arrested by Respondent on or about 3 November 2025 and taken into custody. *Id.* Prior and at the time of his arrest Petitioner was unarmed, not engaged in criminal or suspicious activities, nor did he attempted to resist arrest. Petitioner was placed in section 240 Removal Proceedings and charged as an individual "present in the United States who has not been admitted or paroled" and inadmissible under section 212(a)(6)(A)(i). (ECF # 1, PAGE ID 29).

Petitioner's removal proceedings are ongoing. But Petitioner was not allowed to apply for a bond and remains in custody which Petitioner alleges is unlawful and unconstitutional.

III. STANDARD FOR TEMPORARY RESTRAINING ORDER ADJUDICATION

Both Temporary Restraining Orders [TRO] and Preliminary Injunctions are governed by Rule 65. *See Credit Bureau Connection, Inc. v. Pardini*, __ F. Supp.

2d__, 2010 WL 2737128, at *5 (E.D. Cal. July 12, 2010). The purpose of such temporary injunctive relief is to preserve the rights and relative positions of the parties, i.e., the status quo, until a final judgment issues. *See Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). 28 U.S.C. §1651(a), in turn, provides that "[A]ll courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

A party seeking a TRO or a preliminary injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *See Winter v. Natural Res. Def. Council*, Inc., 555 U.S. 7, 20 (2008). Petitioner readily satisfies these requirements.

IV. RESPONDENTS' NEW MANDATORY DETENTION POLICIES AND PROCEDURES.

On or about 8 July 2025 DHS issued a directive to the field and instructed ICE employees to consider anyone arrested within the United States and charged with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) to be an "applicant for admission" under 8 U.S.C. § 1225(b)(2)(A). Pursuant to section 1225(b)(2)(A), "applicants for admission" who are "seeking admission" are subject to mandatory detention. The Board of Immigration Appeals ("BIA"), a component of DOJ, addressed the subject of the Policy in a published decision on 5 September 2025 in *Matter of Yajure Hurtado*, 29 I&N Dec. 216(BIA 2025), which is binding on all immigration judges. The BIA, consistent with the July 2025 DHS policy, held that

immigration judges lack authority to hear bond requests or to grant bond to non-citizens who are present in the United States without admission, because such individuals are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(a) and are thus ineligible to be released on bond.

The BIA's opinion is not binding on this Court nor is the agencies' respective interpretation of the statute entitled to deference, *Loper Bright v. Raimondo,* 603 U.S. 369 (2024), as it conflicts with the statute, regulations, and precedent.

Petitioner is in custody solely because of these challenged policies.

V. § 2241 PETITION FOR WRIT OF HABEAS CORPUS

The Constitution guarantees that the writ of habeas corpus is "available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art I, § 9, cl. 2). "Its province, shaped to guarantee the most fundamental of all rights, is to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person." *Carafas v. LaVallee,* 391 U.S. 234, 238 (1968). "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). A writ of habeas corpus may be granted to a petitioner who demonstrates that he is in custody in violation of the Constitution or federal law. 28 U.S.C. § 2241(c)(3). Historically, "the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v.*

St. Cyr, 533 U.S. 289, 301 (2001). Accordingly, a district court's habeas jurisdiction includes challenges to immigration-related detention. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001); *Demore v. Kim*, 538 U.S. 510, 517 (2003); *Trump v. J. G. G.*, 604 U.S. 670, 672 (2025) (describing immigration detainees' challenge to their confinement and removal as falling "within the 'core' of the writ of habeas corpus.") (*per curiam*) (citations omitted). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted). Here, Petitioner is in custody and challenges solely the legality of his detention. No jurisdictional bars are implicated.

VI. PETITIONER IS LIKELY TO SUCCED ON HIS CLAIMS

First, the merits of Petitioner's statutory claims (Counts 3-5) implicate the construction of two statutory provisions. The first -- 8 U.S.C. § 1225(b)(2)(A) -- provides that, absent exceptions that are inapplicable here, "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a [removal] proceeding."

The second relevant provision is 8 U.S.C. § 1226(a), which provides in pertinent part that "an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. Except as provided in subsection (c) and pending such decision, the Attorney General . . . may continue to detain the arrested alien; and . . . may release the alien on . . . bond of at least $1,500

with security approved by, and containing conditions prescribed by, the Attorney General; or . . . conditional parole." *Id.* In other words, § 1226(a) contemplates that a noncitizen who is arrested and detained pending a removal decision is "generally" entitled to a bond hearing. *Nielsen v. Preap* is 586 U.S. 392, 395-98 (2019) ("Aliens who are arrested because they are believed to be deportable may generally apply for release on bond or parole while the question of their removal is being decided. These aliens may secure their release by proving to the satisfaction of a Department of Homeland Security officer or an immigration judge that they would not endanger others and would not flee if released from custody. . . . 8 U.S.C. § 1226(a) generally permits an alien to seek release in this way . . . ."). This is the "default rule." *Jennings v. Rodriguez,* 583 U.S. 281, 288 (2018) ("Section 1226 generally governs the process of arresting and detaining that group of aliens pending their removal. . . . Section 1226(a) sets out the default rule . . . ."); *Rodriguez Diaz v. Garland,* 53 F.4th 1189, 1196-97 (9th Cir. 2022) ("The provision at issue in this case, 8 U.S.C. § 1226, provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal. . . . Under § 1226(a) and its implementing regulations, a detainee may request a bond hearing before an IJ at any time before a removal order becomes final. . . . Additional provisions supplement § 1226's detention scheme. Section 1225(b) applies to an 'applicant for admission' . . . .") (citations omitted). Thus, while Section 1225(b) "authorizes the Government to detain certain aliens seeking admission into the country," section 1226 "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings." *Jennings* at 289.

Section 1225(b)(2)(A) does not apply to noncitizens in Petitioner's situation. *Cf. Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1202 (9th Cir. 2022) (observing that §

1226(a) and its implementing regulations "provide extensive procedural protections that are unavailable under other detention provisions"). Section 1225(b)(2) specifically applies only to those "seeking admission," and the implementing regulations at 8 C.F.R. § 1.2 address noncitizens who are "coming or attempting to come into the United States." The use of the present progressive tense would exclude noncitizens like Petitioner who are apprehended in the interior decades after they entered, as they are no longer "seeking admission" or "coming [...] into the United States." *See Martinez v. Hyde*, 2025 WL 2084238 at *6 (D. Mass. July 24, 2025) (citing the use of present and present progressive tense to support conclusion that INA § 1225(b)(2) does not apply to individuals apprehended in the interior); *see also Al Otro Lado v. McAleenan*, 394 F. Supp. 3d 1168, 1200 (S.D. Cal. 2019) (construing "is arriving" in INA § 235(b)(1)(A)(i) and observing that "[t]he use of the present progressive, like use of the present participle, denotes an ongoing process"). Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the U.S. approximately 32 years ago.

The vast majority of the courts -- both in this district[1] and across the country -- to have addressed the issue have rejected Respondents' legal position and their efforts

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[1] To Counsel's knowledge the following courts within this district have addressed the issue and have found Respondents' legal position meritless: *Xiaoman Ding v. James Janecka et al.*, No. 5:25-CV-03184-DOC-JDE, 2025 WL 3453957 (C.D. Cal. Nov. 28, 2025); *Estrada v. Todd Lyons et al.,* No. CV 25-11002-KK-KSX, 2025 WL 3438562 (C.D. Cal. Nov. 26, 2025); *Padilla v. Bowen*, No. 2:25-CV-10780-CAS-SK, 2025 WL 325136810 (C.D. Cal. Nov. 21, 2025); *Miguel Portillo, et al. v. Kristi Noem*, et al., 5:25-cv-02892-JFW-PVC (C.D. Cal. Oct. 31, 2025); Suy-Tol v. Noem, et al., No. 5:25-CV02806-JFW (AS) (C.D. Cal. Oct. 29, 2025); *Helal v. Janecka*, No. 5:25-CV-02650-HDV-JC, 2025 WL 3190132 (C.D. Cal. Oct. 24, 2025); *Zecua v. Lyons*, No. 2:25-CV-09794-CV-PDX, 2025 WL 3150680

to shield their actions from judicial review under section 1252. *See Zaragoza Mosqueda v. Noem,* No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) ("[T]he Court concludes that petitioners are likely to succeed on the merits of their claims because section 1226(a), not section 1225(b)(2), likely governs their detention."); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) ("Rodriguez has shown that the text of Section 1226, canons of interpretation, legislative history, and longstanding agency practice indicate that he is governed under Section 1226(a)'s 'default' rule for discretionary detention. The Court is persuaded that Rodriguez is likely to succeed on the merits that he is unlawfully detained under Section 1225(b)(2)'s mandatory detention provision."); *Quispe v. Crawford*, No. 1:25-cv-1471-AJT-LRV, 2025 WL 2783799, at *6 (E.D. Va. Sept. 29, 2025) ("Petitioner's detention is governed by § 1226(a)'s discretionary framework, not § 1225(b)'s mandatory detention procedures, as at least thirty federal district courts around the country, including two in this Circuit, have concluded when faced with habeas petitions from comparably situated

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(C.D. Cal. Oct. 17, 2025); *Sandoval Hernandez v. Noem*, No. 5:25-CV-02563-FMO (AGR) (C.D. Cal. Oct. 9, 2025); *Pop v. Noem,* No. 5:25-CV-02589- SSS-SSC, 2025 WL 3050095 (C.D. Cal. Oct. 3, 2025); *Arreola Armenta v. Noem*, No. 5:25-CV-2416-JFW (SP) (C.D. Cal. Sept. 16, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304-CAS-BFM, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Benitez v. Noem*, 5:25-CV-2190-RGK (AS) (C.D. Cal. Aug. 26, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW-DFM, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Ceja Gonzalez v. Noem*, 5:25-CV-2054-ODW (BFM) (C.D. Cal. Aug. 13, 2025); and *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS (BFM) (C.D. Cal. July 28, 2025). Hon Judge Wilson agreed with Respondents' position in *Altamirano Ramos v. Lyons*, No. 2:25-CV-09785-SVW-AJR, 2025 WL 3199872 (C.D. Cal. Nov. 12, 2025). No Court of Appeals have opined on the issue yet.

petitioners."); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425, *7 (E.D. Mich. 2025) ("The BIA's decision to pivot from three decades of consistent statutory interpretation and call for Pizarro Reyes' detention under § 1225(b)(2)(A) is at odds with every District Court that has been confronted with the same question of statutory interpretation. At least a dozen federal courts concur generally with this Court's interpretation of the statutory language as applied in this context."); *Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *12 (E.D. Va. Sept. 19, 2025) (same). As *Pizzaro Reyes* persuasively explains: "[T]he overall context of § 1225 limits the scope of the terms 'applicant for admission' and 'seeking admission' in § 1225(b)(2)(A). . . . The use of "arriving" to describe noncitizens strongly indicates that the statute governs the entrance of noncitizens to the United States. This reading is bolstered by the fact that § 1225 clearly establishes an inspection scheme for when to let noncitizens into the country. In fact, the subheading for § 1225(b)(2)(A) reads "Inspection of Other Aliens," reinforcing the idea that the subsection applies to those coming in, not already present. … *Pizarro Reyes*, 2025 WL 2609425 at *5 (cleaned up); *see also Garcia v. Noem*, No. 25-cv-02180- DMS-MMP, 2025 WL 2549431, at *6 (S.D. Cal. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-cv-124862025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS, Doc. 11 at 5 (C.D. Cal. Aug. 26, 2025); *Leal-Hernandez v. Noem*, No. 1:25-cv-02428- JRR, 2025 WL 2430025, at *10 (D. Md. Aug. 24, 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *13 (D. Mass. Aug. 19, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv- 01789-ODW, 2025 WL 2379285, at *2 (C.D. Cal. Aug. 15, 2025).

Moreover, the recent amendment to § 1226 further bolsters the conclusion that Petitioner's detention is not governed by § 1225(b)(2)(A). As *Pizarro Reyes*

explained, the Laken Riley Act added subsection § 1226(c)(1)(E), which mandates detention for noncitizens who are inadmissible under §§ 1182(a)(6)(A) (noncitizens present in the United States without being admitted or paroled, like Petitioner), 1182(a)(6)(C) (misrepresentation), or 1182(a)(7) (lacking valid documentation) and have been arrested for, charged with, or convicted of certain crimes. § 1226(c)(1)(E)(i)–(ii). Considering that § 1182(a)(6)(A)(i) specifically refers to noncitizens "present in the United States without being admitted or paroled," and that § 1226(c)(1)(E) requires detention without bond of these individuals if they have also committed a felony, the recently created statutory exception would be superfluous if § 1225(b)(2) authorized their detention from the get go. *Pizarro Reyes*, 2025 WL 2609425 at *5; *Rodriguez*, 779 F. Supp. 3d at 1258 (noting that the government's interpretation "would render significant portions of Section 1226(c) meaningless," which is an outcome that would violate "one of the most basic interpretive canons," i.e., that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant") (cleaned up); *Barajas v. Noem*, 2025 WL 2717650, *4 (S.D. Iowa 2025) ("[T]he Federal Defendants' interpretation of § 1225 would render substantial portions of § 1226 superfluous by making detention mandatory for nearly every noncitizen who has entered the United States illegally. If this is what Congress intended, it does not make sense that it would have passed a separate statute as part of the same overall scheme that specifically contemplated bond hearings except in enumerated situations. Indeed, it is especially difficult to square the Federal Defendants' interpretation of § 1225 with Congress's decision earlier this year to pass the Laken Riley Act, which expanded the scope of mandatory detention under § 1226(a). Under the Federal Defendants' interpretation of the interplay between §§ 1225 and 1226, the Laken Riley Act is meaningless. This is

not how statutes are to be interpreted.") (cleaned up); *Maldonado*, 2025 WL 2374411, at *12 ("The Court will not find that Congress passed the Laken Riley Act to 'perform the same work' that was already covered by § 1225(b)(2)."). Because Petitioner here has resided in the US for years and was not seeking admission at the time he was detained, Petitioner is likely to succeed on his statutory claim that he is entitled to a bond hearing and release.

Second, "The Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. at 693 (citation modified). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Id.* at 690 (2001). The Supreme Court has only recognized two legitimate objectives of immigration detention: *preventing danger to the community or preventing flight prior to removal. See Zadvydas,* 533 U.S. at 690-92 *(discussing constitutional limitations on civil detention).*

The governmental interest in the continued detention of these least-dangerous individuals like Petitioner does not and cannot outweigh the liberty interest at stake.

Even when a noncitizen is detained pursuant to 8 U.S.C. § 1231(a)(6) –which is not the case in this matter-- based on an intent to remove the person to another country, that detention is authorized only if there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. This is because, among other concerns, "[a] statute permitting indefinite detention of an alien would raise a serious constitutional problem." *Id.* at 690.

Petitioner cannot be lawfully removed while his has a pending section 240 removal proceedings yet Respondents refuse to release Petitioner knowing that

removal cannot be effect for months even years in light of the severe backlog of cases.

Third, "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of liberty," like the decision to revoke a non-citizen's order of supervision. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (citation modified). "The fundamental requirement of [procedural] due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Id.* at 333 (citation modified). Petitioner was not provided notice and no opportunity to rebut and be heard prior to deprivation of liberty.

Recently, as ICE and CBP have detained many similarly-situated noncitizens, several courts have ordered the immediate release of noncitizens who had been re-detained by DHS without a pre-deprivation hearing. *See, e.g., E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, — F. Supp.3d ——, —— n.4, 2025 WL 2402130, (W.D. Wash. Aug. 19, 2025)(ordering immediate release due to lack of pre-deprivation hearing); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (same); *Pinchi v. Noem*, No. 5:25-CV-05632-PCP, --- F. Supp. 3d ---, 2025 WL 2084921 (N.D. Cal. July 24, 2025) (similar); *Maklad v. Murray*, No. 1:25-CV-00946 JLT SAB, 2025 WL 2299376 (E.D. Cal. Aug. 8, 2025) (similar); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (similar). As the *E.A. T.-B.* court explained, the three-factor test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976) is the controlling framework for determining what process Petitioner is due. *Mathews* requires the Court to evaluate (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguard" and (3) "the

Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335; *see also Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (applying *Mathews* factors to assess right to pre-deprivation hearing); *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee's liberty interests and the state's interests to assess what process is due a parolee). Here, those factors strongly favor Petitioner. Petitioner has an exceptionally strong interest in freedom from physical confinement and in a hearing prior to any revocation of his liberty. Indeed, Petitioner's "interest in not being detained is 'the most elemental of liberty interests[.]" *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). "Freedom from imprisonment . . . lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Similarly, the Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). The Supreme Court has long underscored this point. See, e.g., *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) ("It is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." (citation omitted)). "The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is reincarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017). Next, "the risk of erroneous deprivation of

[Petitioner's] liberty interest in the absence of a pre-detention hearing is high." *E.A. T.-B.*, 2025 WL 2402130, at *4. "That the Government may believe it has a valid reason to detain Petitioner does not eliminate its obligation to effectuate the detention in a manner that comports with due process." *Id.* Petitioner's detention – to be legal-- must "bear[] [a] reasonable relation" to a valid government purpose—here, preventing flight or protecting the community against dangerous individuals. *Zadvydas*, 533 U.S. at 690 (second alteration in the original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)). Only a hearing before a neutral decisionmaker—where ICE must prove that detention is justified and that Petitioner poses a flight risk or danger—can ensure that this "reasonable relation" to a valid government purpose exists. But to date, only the "government enforcement agent" has made any decision about the propriety of detention, *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971), a far cry from the hearing before a neutral decisionmaker that due process requires, *see, e.g., Shadwick v. City of Tampa*, 407 U.S. 345, 350 (1972) ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."). In fact, Petitioner here did not even receive an opportunity to respond to any allegations purporting to justify detention without bond, rebut such a purported showing, or a hearing before a neutral decisionmaker. Finally, "the government's interest in detaining Petitioner or re-detaining [him] without a hearing is slight." *Maklad*, 2025 WL 2299376, at *8; Ortega, 415 F. Supp. 3d at 970 ("If the government wishes to re-arrest Ortega at any point, it has the power to take steps toward doing so; but its interest in doing so without a hearing is low."). "[A]lthough [a pre-deprivation hearing] would have required the expenditure of finite resources (money and time) to provide Petitioner notice and hearing on [parole/bond/OSUP] violations before arresting and re-detaining him, those costs are far outweighed by the

risk of erroneous deprivation of the liberty interest at issue." *E.A. T.-B.*, 2025 WL 2402130, at *5. Notably, since his entry in 1992 into the US, Petitioner has continuously demonstrated that he poses neither a flight risk nor a danger to the community: Petitioner is section 245(i) 'grandfathered alien' and is prima facie eligible for adjustment of status, he retained immigration counsel to navigate the complex process, took care of his families and child, engaged in lawful employment, and established himself as respected and productive member of their communities. See declaration & I-130 Approval.

Fourth, "Congress, by virtue of the Immigration and Nationality Act (INA), has authorized the Department of Homeland Security, through Immigration and Customs Enforcement, to carry out federal immigration law," which "includes [the] authority to interview, arrest, and detain removable aliens." *Lopez-Lopez v. Cnty. of Allegan*, 321 F.Supp.3d 794, 796 (W.D.Mich. 2018). However, it is not a crime for a removable foreign national to remain present in the United States. *Reynaga Hernandez v. Skinner,* 969 F.3d 930, 938 (9th Cir. 2020)(explaining that "[a] migrant who is illegally present in the United States may have committed a civil violation—by overstaying a visa, changing her student status, or acquiring prohibited employment—or a criminal violation, by entering the country illegally."); *Arizona v. United States*, 567 U.S. 387, 407 (2012). If no federal warrant has been issued, ICE officers "have more limited authority" to arrest persons whom they believe to be foreign nationals. *Arizona*, 567 U.S. at 408. In particular, the governing statute (8 U.S.C. §1357(a)(2)) and corresponding regulation (8 C.F.R. §287.8(c)(2)(ii)) allow ICE agents to make warrantless arrests only where they have a reasonable belief that the alien "is likely to escape before a warrant can be obtained." *Arizona*, 567 U.S. at 408.

Here, Respondents had no facts or basis that would provide probable cause that Petitioner was likely to escape before a warrant could be obtained for his arrest. *See Moreno v. Napolitano*, 213 F.Supp.3d 999, 1007 (N.D.Ill. 2016) ("Nor can it be the case that, simply by being potentially removable, an alien must be deemed to be likely to evade detention by ICE. Such a reading would render the limitations on warrantless arrest created by 8 U.S.C. §§1226(a) and 1357(a)(2) meaningless."); *United States v. Pacheco-Alvarez*, 227 F.Supp.3d 863, 872, 889–90 (S.D.Ohio 2016) (holding that ICE lacked reason to believe that defendant posed a risk to escape notwithstanding his admission that he "was born in Mexico and did not have any documentation that would allow him to reside in the United States.").

VI. THE REMAINING FACTORS WEIGHT HEAVILY IN FAVOR OF GRANTING A TEMPORARY RESTRAINING ORDER

Unlawful detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020, aff'd in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); cf. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where "preliminary injunction is necessary to ensure that individuals . . . are not needlessly detained" because they are neither a danger nor a flight risk). This is particularly true here, where Petitioner's continued detention also violates the Constitution. "Civil immigration detention violates due process outside of certain special and narrow nonpunitive circumstances." *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation modified). As detailed above, Petitioner's detention is outside of those "special and narrow nonpunitive circumstances," as the Due Process Clause forbids his

detention without a predeprivation hearing. These constitutional concerns also counsel in favor of finding demonstrated irreparable harm. *See Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that "in cases involving a constitutional claim, a likelihood of success on the merits usually establishes irreparable harm"). Absent a TRO, Petitioner has no hope of being reunited with his partner and child, his extended family, friends, and community. Such "separation from family members" is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted). Moreover, "a postdeprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty." *E.A. T.-B.*, 2025 WL 2402130, at *6. In other words, Petitioner's unlawful detention without a pre-deprivation hearing is already occurring, and only immediate release remedies that issue.

Respondents may argue that the Government has a compelling interest in "the enforcement of its immigration laws" but this interest cannot disturb the status quo that existed prior to Petitioner's unlawful arrests and detention. Moreover, a TRO would serve the public interest as the claims here assert that the new policy in the DHS Guidance Notice and roving at large arrests violate federal laws: Permitting continued violations of federal law would serve "neither equity nor the public interest." *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). Thus, the public interest weighs in favor of the Petitioner because continued detention without the legal protections afforded under § 1226(a) potentially violates the Petitioner's due process and statutory rights. *See Xuyue Zhang v. Barr*, 612 F.Supp.3d 1005, 1017 (C.D. Cal. 2019) ("Generally, public interest concerns are

implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

VII. REQUEST FOR RELIEF

The Court should grant this TRO and order Petitioner's release pending adjudication on the merits of the habeas corpus petition to maintain the status quo as it existed prior to the controversy (i.e. prior to the arrest) or *in the alternative*, order Respondents to afford Petitioner a bond hearing before an immigration judge.

Respectfully Submitted by

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LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record certifies that this brief contains 5571 words, which complies with the word limit of L.R. 11-6.1.

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