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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Hamza Oiskhine,
Petitioner,

David Rivas, Warden of the San Luis Detention Center,

**Gregory J. Archambeault, San Diego Field Office Director, Immigration and Customs Enforcement and
Removal Operations,**

Todd Lyons, Acting Director of Immigration and Customs Enforcement,

Kristi Noem, Secretary of the Department of Homeland Security,

**Pamela Bondi, United States Attorney General
Respondents.**

Case No. **CV25-04600-PHX-SHD--ASB**

**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER
AND IMMEDIATE RELEASE FROM CUSTODY**

Petitioner Hamza Oiskhine, proceeding pro se, respectfully moves this Court for an Emergency Temporary Restraining Order ("TRO") ordering his immediate release from immigration custody pending resolution of his 28 U.S.C. § 2241 habeas petition. This motion is supported by the Verified Petition for Writ of Habeas Corpus, his hospital discharge record from October 1, 2025, and medical records documenting his severe Crohn's disease and prior surgery.

Petitioner does **not** seek ex parte relief. He understands that, given the complexity of his constitutional and statutory claims, the Court may wish to hear from Respondents before granting ultimate relief. At the same time, his fragile health and ongoing denial of essential medical care require **expedited** consideration.

I. INTRODUCTION

Hamza Oiskhine has been in ICE custody since September 9, 2025, following a **warrantless, deceptive arrest** based on an anonymous tip and without probable cause or an individualized assessment of flight

risk, in violation of the Fourth Amendment and 8 U.S.C. § 1357(a)(2). He remains detained under 8 U.S.C. § 1226(a) without a warrant issued by or on behalf of the Attorney General, without a lawful initial custody determination under 8 C.F.R. § 1236.1(c)(8), and after ICE submitted a **false arrest report** to the immigration court that portrayed him as a flight risk.

On top of this, Mr. Oiskhine suffers from **severe Crohn's disease**. He was hospitalized on **October 1, 2025** with a serious flare-up, bloody stools, and major abdominal pain. The ER doctor expressly instructed that he be seen by a **gastroenterologist within one day** of discharge. More than 40 days later, **ICE refused to approve that appointment**. He continues to experience bloody stools, severe abdominal pain, and constant nausea, while missing his Crohn's treatment. In the past, when similar symptoms were ignored, he required more than a month of hospitalization and **surgical removal of a large part of his colon** due to an untreated infection. **(EXHIBIT 8)**

Every day of unlawful detention now **worsens his medical condition** and increases the risk of permanent damage or another emergency surgery. This is exactly the sort of **"extraordinary circumstance"** that warrants release pending habeas under courts' inherent authority to grant bail in immigration habeas cases. See *Mapp v. Reno*, 241 F.3d 221, 226–30 (2d Cir. 2001) (recognizing inherent judicial power to release immigration habeas petitioners where substantial claims and extraordinary circumstances make bail necessary to make the habeas remedy effective).

II. LEGAL STANDARD

A TRO and preliminary injunction require the movant to show:

1. A likelihood of success on the merits;
2. A likelihood of irreparable harm absent relief;
3. That the balance of equities tips in his favor; and
4. That the injunction is in the public interest.

Winter v. Nat. Res. Def. Council, 555 U.S. 7, 20 (2008).

In the Ninth Circuit, serious questions going to the merits plus a balance of hardships that tips sharply toward the plaintiff can also support injunctive relief, so long as irreparable harm and public interest factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011).

Federal courts also have inherent authority to release an immigration habeas petitioner on bond or conditions of supervision pending the outcome of the petition when the petition raises substantial claims and extraordinary circumstances make release necessary to make the habeas remedy effective. *Mapp v. Reno*, 241 F.3d 221, 226–30 (2d Cir. 2001).

III. ARGUMENT

A. Petitioner Is Likely to Succeed, or at Least Raises Serious Questions, on the Merits

1. Unlawful Warrantless Arrest in Violation of the Fourth Amendment and § 1357(a)(2)

ICE agents arrested Petitioner without a warrant, without probable cause, and without any individualized assessment of flight risk. The arrest relied solely on an **anonymous, uncorroborated tip** that an “alien involved in fraudulent activities” would retrieve mail at a certain time. The tip gave no name, physical description, or verifiable information. Agents did not observe any unlawful conduct; retrieving mail is an ordinary, innocent activity.

In *Florida v. J.L.*, 529 U.S. 266 (2000), the Supreme Court held that an anonymous tip lacking predictive detail or corroboration is insufficient even for a Terry stop, much less a full custodial arrest. Petitioner’s arrest is even more deficient: the alleged underlying conduct (collecting mail) is not inherently suspicious, and ICE made no effort to verify the tip.

Moreover, 8 U.S.C. § 1357(a)(2) authorizes immigration officers to arrest without a warrant only when they have reason to believe a person is an alien in violation of immigration laws **and** that the person is likely to escape before a warrant can be obtained. ICE did not know Petitioner’s identity or status at the time of arrest and had no evidence of any likelihood of escape. Petitioner alleges that ICE also violated standards recognized in the *Castañon Nava v. DHS* settlement, which required ICE to issue a nationwide Broadcast Statement of Policy reiterating these limitations and documenting the facts supporting warrantless arrests.

On this record, Petitioner has a strong likelihood of showing that his arrest violated both the Fourth Amendment and § 1357(a)(2), or at minimum presents **serious questions going to the merits of Claim One.**

2. Unlawful Detention Under § 1226(a) and Fifth Amendment Due Process

Petitioner further challenges his continued detention under 8 U.S.C. § 1226(a). The statute provides that “[o]n a warrant issued by the Attorney General, a[n] [noncitizen] may be arrested and detained pending a decision on whether the alien is to be removed from the United States.” (emphasis added). Petitioner alleges that **no such warrant was issued** and that ICE has never produced one.

Recent district court decisions have held that the **plain text** of § 1226(a) requires a warrant, and that detention without a warrant is unlawful. See, e.g., *Choglo Chafra v. Scott*, 241 F.3d 221 (D. Me. 2025) (finding detention improper where no warrant was issued and ordering release); *Chiliquinga Yumbillo v. Stamper and Astudillo v. Hyde* (D. Me., D.R.I. 2025) (similar conclusions that § 1226(a) “plainly requires” a warrant and that warrantless detention exceeds statutory authority).

Additionally, 8 C.F.R. § 1236.1(c)(8) requires that, prior to detention under § 1226(a), immigration officers allow a noncitizen to “demonstrate to the satisfaction of the officer that . . . release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.” Courts have read this regulation and § 1226(a) together to require an **initial custody determination** by DHS, with an opportunity to appeal to an immigration judge. See, e.g., *Lopez Benitez v. Francis*, 2025 WL 2371588, at *10 (S.D.N.Y. 2025) (concluding that § 1226(a) presupposes an initial DHS custody decision and IJ review).

Petitioner alleges that **no initial custody determination was made by an ICE officer**; he was simply detained and then brought to bond hearings where ICE submitted false allegations. That failure violates § 1226(a), its implementing regulation, and the Fifth Amendment’s procedural due process guarantee.

On these statutory and constitutional grounds, Petitioner has a strong likelihood of success—or, at minimum, raises serious questions—on Claim Two.

3. False Evidence and Substantive Due Process

At his bond hearing, ICE submitted a report falsely claiming that Petitioner ran away upon seeing agents in tactical gear, lied about having cancer to secure a hospital trip, and possessed IDs and credit cards. Petitioner will submit evidence (arrest video and property inventory) contradicting these assertions.

The Supreme Court has long held that the government's knowing use of false evidence violates due process. *Mooney v. Holohan*, 294 U.S. 103 (1935); *Pyle v. Kansas*, 317 U.S. 213 (1942); *Napue v. Illinois*, 360 U.S. 264 (1959). When false evidence is used to justify continued detention or denial of bond, it "shocks the conscience" and constitutes an abuse of power proscribed by the Fifth Amendment. *County of Sacramento v. Lewis*, 523 U.S. 833, 846–47 (1998).

Petitioner is therefore likely to succeed on his claim that ICE's conduct violated substantive due process, further strengthening his TRO request.

B. Petitioner Faces Imminent and Irreparable Harm

1. Serious, Worsening Crohn's Disease

Petitioner's medical situation is urgent:

- Diagnosed with severe Crohn's disease;
- Hospitalized on October 1, 2025, for a flare-up with bloody stools, major abdominal pain, and nausea;
- ER doctor instructed ICE medical staff to arrange **gastroenterology follow-up within one day**;
 - Over 40 days later, **no appointment** has been approved by ICE;
- Petitioner continues to experience bloody stools, severe pain, and constant nausea, while **missing his Crohn's treatment**;
- In the past, similar delays led to hospitalization for over a month and **partial colectomy**, removing a large part of his colon due to untreated infection.

Untreated Crohn's can lead to sepsis, bowel perforation, strictures, malnutrition, and permanent organ damage—harms that are **neither compensable nor reversible**. This is classic irreparable harm.

2. Deprivation of Physical Liberty Is Irreparable

"Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects." *Zadydas v. Davis*, 533 U.S. 678, 690 (2001). Continued **unlawful detention** itself is irreparable harm; time in custody cannot be restored or compensated after the fact. Combined with the medical neglect described above, the harm is extreme.

C. The Balance of Equities Decisively Favors Petitioner

On Petitioner's side:

- Ongoing serious health risk and potential for permanent injury;
 - Ongoing loss of liberty based on a defective arrest and detention framework;
 - False allegations tainting bond decisions.
- On Respondents' side:**
- If Petitioner is released, ICE retains numerous tools (order of supervision, check-ins, electronic monitoring) to ensure his appearance at future hearings;
 - Petitioner has a U-Visa certification in progress, strong community ties, and is actively litigating his case;
 - The government has **no legitimate interest** in detaining someone in violation of the Constitution and governing statutes. The equities therefore tip sharply in Petitioner's favor.

D. The Public Interest Supports Granting the TRO

The public has a strong interest in:

- Ensuring that federal agencies comply with the Constitution and statutes;
- Preventing serious, avoidable medical harm to people in government custody;
- Maintaining the integrity of the habeas process and judicial oversight over detention.

Granting a TRO to release Petitioner pending resolution of his habeas petition vindicates these interests and does not prevent the government from enforcing immigration laws lawfully in the future.

V. REQUESTED RELIEF

For the reasons stated above, Petitioner respectfully requests that the Court:

Grant this Emergency Motion and issue a Temporary Restraining Order directing Respondents to immediately release Petitioner from immigration custody

DATED: November 24th, 2025

Respectfully submitted,

/s/ Hamza Oiskhine
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