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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EMILIO GAEL PEREZ BUENO Plaintiff and Petitioner. vs. JAMES JANECKA, Warden of the Adelanto Detention Center; ERNESTO SANTACRUZ, Director of the Los Angeles Field Office, United States Immigration and Customs Enforcement; PAM BONDI, Attorney General, United States Department of Justice; KRISTI NOEM, Secretary, United States Department of Homeland Security; TODD LYONS, Acting Director of Unites States Immigration and Customs Enforcement; and DOES 1-5 Defendants-Respondents	Case No.: Hon: **PETITION FOR A WRIT OF HABEAS CORPUS CHALLENGING UNLAWFUL IMMIGRATION DETENTION**

INTRODUCTION

1. This case challenges the unlawful and punitive detention of Plaintiff-Petitioner Emilio Gael Perez BUENO, who is currently in the custody of Immigration and Customs Enforcement ("ICE") at the Adelanto Detention Center, Adelanto, California. Petitioner is neither a flight risk nor a danger to the community. While Petitioner's administrative appeal to the Board of Immigration Appeal was pending and while on order of recognizance, Respondents re-detained Petitioner at his check-in date on 14 November 2025 without notice, an opportunity to be heard, and to have his immigration counsel present on the decision of an individual without authority to do so, without findings required by law, and in violation of agency rules and published regulations.

2. Unless the Court orders Petitioner's immediate release, he will continue to be subjected to unlawful and punitive detention.

3. Plaintiff-Petitioner further challenge the legality of Respondents' uniform policy and practice of subjecting noncitizens to arrests, detention, and detention without providing due notice of condition of release and/or parole violation, an opportunity to be heard and provide explanation while assisted by retained counsel prior to deprivation of liberty .

4. 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.

5. Through their uniform practices Respondents violate the rights of Petitioner and similarly situated individuals under the due process and equal protection guarantees of

the U.S. Constitution, the INA and its regulations, and the Administrative Procedure Act.

JURISDICTION AND VENUE

6. This action arises under the Constitution of the United States; the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, 110 Stat. 1570 [hereinafter 'INA']; and Administrative Procedure Act, 5 U.S.C. §§ 701 *et seq* [hereinafter "APA"].

7. This Court has further jurisdiction under 28 U.S.C. § 2241, 2243, art. I § 9, cl. 2 of the United States Constitution ("Suspension Clause"), and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States based on final order of removal and such custody is in violation of the Constitution, laws, or treaties of the United States.

8. This Court also may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

9. This court has further remedial authority pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq..

10. The use of the Writ of Habeas Corpus to challenge detention by ICE is not foreclosed by the REAL ID Act. The REAL ID Act of 2005, Pub. L. 109-13, 119 Stat. 231 (May 11, 2005), Title I, Section 106(c), amending INA §§ 242(a)(2)(A), (B), (C) and § 242(g), only deprives the district court of habeas jurisdiction to review orders of removal, not challenges to detention or the denial of constitutional

rights. *See INS v. St. Cyr*, 533 U.S. 289, 364-65 (2001) ("The writ of habeas corpus has always been available to review the legality of executive detention.").

11. This Court could enjoin federal officials pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). *See Philadelphia Co. v. Stimson*, 223 U.S. 605, 619–21 (1912) (applying *Ex Parte Young* to federal official); *Goltra v. Weeks*, 271 U.S. 536, 545 (1926) (same).

12. Plaintiff-Petitioner has exhausted all administrative remedies to the extent available and required by law.

13. Venue properly lies within the Central District of California, because each named Defendant-Respondent is present in this district and a substantial part of the events or omissions giving rise to this action occurred and continue to occur in this District. *See* 28 U.S.C. §1391(b). Petitioner is also currently detained within this district to wit, at the Adelanto Detention Facility located at 10400 Rancho Road, Adelanto, CA 92301. Accordingly, the "restraint complained of" is occurring within the Court's territorial jurisdiction. *See* 28 U.S.C. § 2241(a)

14. No petition for habeas corpus has previously been filed in any court to review Plaintiff-Petitioner's detention.

PARTIES AND FACTS

15. Petitioner Emilio Gael Perez BUENO [hereinafter 'Petitioner'] is a 20-year-old national and citizen of Mexico who was apprehended together with his parents and sister shortly after entering the United States without inspection and placed in section 240 Removal Proceedings. See Exhibit A-C. On 7 July 2025 the Immigration Judge sustained the charge of removability, ordered his removed to

Mexico and denied his fear-based claims. See Exhibit B. Petitioner was arrested at his 14 November 2025 regularly scheduled ICE check-in reporting date without a notice of violation of conditions of release, an opportunity to contest or respond, and to be heard before a neutral adjudicator prior to detention and while Respondents knew that there was no final order of removal in effect.

16. The U.S. Department of Homeland Security ("DHS") is a cabinet department of the United States federal government with the primary mission of securing the United States.

17. ICE is an agency within DHS with the primary mission of arresting, detaining, and removing non-citizens physically present within the territory of the United States. ICE is also responsible for the custody and care of all detained non-citizens awaiting resolution of their immigration cases or removal after a final order of removal had been entered.

18. Defendant Kristi Noem is the Secretary for DHS. In this capacity, Ms. Noem has responsibility for the administration of immigration laws pursuant to 8 U.S.C. §1103(a), has authority over ICE and its field offices, and has authority to order the release of Plaintiff-Petitioner. At all times relevant to this Complaint, Defendant Noem was acting within the scope and course of her position as the Secretary for DHS. Defendant Noem is sued in her official capacity.

19. Defendant-Respondent Todd Lyons is the Acting Director and Senior Official Performing the Duties of the Director of ICE. Defendant Lyons is responsible for the implementation of all ICE's policies, practices, and procedures, including those relating to detention of non-citizens. Defendant Lyons is a legal and immediate custodian of Plaintiff. At all times relevant to this Complaint,

Defendant Lyons was acting within the scope and course of his position as an ICE official. He is sued in his official capacity.

20. Defendant-Respondent Ernesto Santacruz is the Acting Director of the Los Angeles Field Office of ICE, which has immediate custody of Plaintiff-Petitioner. He is sued in his official capacity.

21. Defendant James Janecka is the warden of the Adelanto Detention Facility in San Bernardino County, where Plaintiff-Petitioner is currently detained. Defendant Janecka is the immediate, physical custodian of Plaintiff. He is named in his official capacity.

22. The true names or capacities, whether individual, corporate, associate or otherwise, of the Defendants-Respondents named herein as Does 1 through 5 are unknown to Plaintiff-Petitioner, who therefore sues said Respondents by such fictitious names, and Plaintiff will amend this Complaint to show their true names and capacities when ascertained. Does 1 through 5 are the immediate, physical custodians of Plaintiff

FACTS RELEVANT TO ALL CAUSES OF ACTIONS

23. Petitioner entered the United States on or about 14 March 2024 at or near Lukeville, Az without inspection with his parents and sister and were apprehended by Respondents and detained for processing. See Exhibit C.

24. Upon examination Respondents determined that Petitioner was not a flight risk or danger to any and released him on conditional parole on the condition to enroll in an ATD monitoring program as a condition of his parole. *See Exhibit A.*; see also INA § 236(a)(2)(B); *Rivera v. Holder*, 307 F.R.D. 539 (W.D. Wash. 2015).

25. Soon after Petitioner enrolled in ICE's Intensive Supervision Appearance Program (ISAP) as ordered. See Exhibit A. ¶7, 9. Respondent ICE describes ISAP for non-citizens like Petitioner and the public as a program that "utilizes case management and technology tools to support aliens' compliance with release conditions while on ICE's non-detained docket. ATD-ISAP also increases court appearance rates. ATD-ISAP enables aliens to remain in their communities — contributing to their families and community organizations and, as appropriate, concluding their affairs in the U.S. — as they move through immigration proceedings or prepare for departure." See https://www.ice.gov/features/atd [last visited on 13 Dec. 2025].

26. On 27 August 2024 Respondents served Petitioner with a Notice to Appear (NTA) charging him as a non-citizen present in the US without admission or parole and as inadmissible under section 212(a)(6)(A)(i), thereby initiating the section 240 Removal Proceedings.

27. While in removal proceedings Petitioner applied for asylum. *Id.*

28. On 7 July 2025 an Immigration Judge denied Petitioner's family fear-based claims and ordered removal to Mexico. See Exhibit B.

29. Petitioner timely appealed the IJ's decision to the Board of Immigration Appeal. See Exhibit D. The administrative appeal remains pending.

30. At his 14 November 2025 ICE check-in Respondents arrested and re-detained Petitioner without explanation or notice of violation or revocation of his parole and order of recognizance, without an opportunity to rebut, present evidence, or having the assistance of his immigration counsel.

31. When Petitioner attempted to inquire why he was being detained the deportation officer accused him of not "report[ing] to them through the app" which Petitioner told the officer was not true. Exhibit A, ¶7. When Petitioner attempted to explain that he had always complied with the reporting requirements, the deportation officer told Petitioner that re-detaining him was "his punishment". *Id.*

32. Petitioner asserts that he had not violated any condition of his parole and his release of recognizance and has fully complied with the ISAP monitoring and reporting. *Id.*

33. Petitioner was not served with a notice/decision of revocation of parole and /or order of recognizance (OREC) or with a notice of violation of ISAP.

34. Plaintiff-Petitioner has no prior immigration or any criminal record.

35. Petitioner was not allowed to post a bond and remains in custody.

36. The Respondents have refused to release Petitioner from custody asserting that he is subject to mandatory detention under section 1225(b)(2).

RELEVANT IMMIGRATION STATUTORY SCHEME

Immigration Detention

37. The INA governs the use of immigration detention both pre- and post-final order. Post-final-order immigration detention is governed by 8 U.S.C § 1231(a); pre-final-order detention by 8 U.S.C. § 1226.

38. In 8 U.S.C. §§ 1226 and 1231 Congress created different, but interrelated, comprehensive frameworks for detaining criminal and non-criminal non-citizens.

39. Section 1226 authorizes the detention of non-citizens during removal proceedings: section 1226(a) controls non-criminal aliens' detentions, while section 1226(c) controls criminal aliens' detentions. *See* 8 U.S.C. § 1226(a)&(c). Once a non-citizen's removal proceedings are completed ICE's detention authority is controlled by section 1231, which also distinguishes between non-criminal and criminal non-citizens. *See* 8 U.S.C. § 1231.

Section 1226(a) and Non-Criminal Non-citizens During Removal Proceedings

40. The Attorney General has discretion to detain a non-criminal non-citizen "pending a decision on whether the alien is to be removed from the United States." *See* 8 U.S.C. § 1226(a). The Attorney General may detain the non-citizen for the duration of the removal proceedings or release him on bond or conditional parole. *See* 8 U.S.C. § 1226(a)(1)-(2).

41. In connection with § 1226(a), the DHS promulgated regulations setting out the process by which a non-criminal non-citizen may obtain release. The regulations provide that, in order to obtain bond or conditional parole, the "alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *See* 8 C.F.R. § 1236.1(c)(8). Petitioner was released from initial custody under section 1226(a) and placed on conditional parole.

Section 1226(c) and Criminal Non-citizens During Removal Proceedings

42. Although the Attorney General has broad discretion to release non-criminal non-citizens during the pendency of their removal proceedings, the INA limits the Attorney General's discretion in the case of criminal non-citizens. Specifically, section 1226(c) mandates that "[t]he Attorney General shall take into custody any alien who . . . is deportable by reason of having committed [certain specified offenses]." *See* 8 U.S.C. § 1226(c)(1)(B).

43. Section 1226(c) provides that the Attorney General may release a criminal non-citizen "only if" necessary for narrow witness protection purposes. *See* 8 U.S.C. § 1226(c)(2). Under § 1226(c), custody is mandatory for criminal non-citizens throughout the entirety of their removal proceedings, and there is no statutory possibility for release on bond.

44. Petitioner was never detained and cannot be detained under the authority of section 1226(c) as he has no criminal convictions.

Detention Pursuant to 8 U.S.C. § 1225(b)(2) and Respondents New Detention Practices

45. Under § 1225(b)(2), "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." 8 U.S.C. § 1225(b)(2). By contrast, an alien arrested on a warrant issued by the Attorney General "may" be detained but is also eligible for release on bond. 8 U.S.C § 1226(a). Courts have repeatedly held that § 1225 applies to arriving aliens, while § 1226 governs detention of "aliens already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). Petitioner is not an arriving

alien, see Exhibit C (NTA) nor was he seeking an entry to the US under § 1225 at the time of his re-detention but has resided continuously in the United States for the last 2 years and is was in lawful conditional parole status at the time of his arrest and detention.

46. For decades, non-citizens who entered without inspection and were subsequently apprehended by ICE in the interior of the country have been detained pursuant to § 1226 and entitled to bond hearings before an IJ, unless barred from doing so due to their criminal history.

47. In July 2025, however, ICE began asserting that all individuals who entered without inspection should be considered "seeking admission" and therefore subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). .

48. On September 5, 2025, the BIA issued a precedential decision adopting this interpretation, departing from the INA's text, federal precedent, and existing regulations. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).

49. Respondents' new legal interpretation is plainly contrary to the statutory framework and its implementing regulations. Indeed, for decades, Respondents had applied § 1226(a) to people like the Petitioner. Defendants' new policies are thus not only contrary to law, but are arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). They were also adopted without complying with the procedural requirements of the APA.

50. The Courts to have addressed the issue have found the Government invocation of the mandatory detention provision under section 1225 unlawful and have ordered release of non-citizens held in detention based of such erroneous

reading of the Immigration and Nationality Act and application of § 1225(b) to noncitizens who, like Petitioner, are not apprehended upon arrival in the United States. *See Rodriguez Vasquez* v. *Bostock*, No. 3:25-CV-05240-TMC,---F.Supp.3d---, 2025 WL 1193850 (W.D.Wash. Apr. 24, 2025); *see also Gomes v. Hyde*, No. 1:25-CV- 11571-JEK, 2025 WL 1869299, at *8 (D. Mass. July 7, 2025) granting habeas based on same ground); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM,---F.Supp. 3d---2025 WL 2084238, at *9 (D. Mass. July 24, 2025) (ordering release where noncitizen was redetained based on ICE's assertion of detention authority under§ 1225(b)); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (noting court's disagreement with BIA's analysis in *Yajure Hurtado*); see also *Jimenez v. FCI Berlin, Warden*, No. 25-cv-326-LM-AJ (D.N.H. Sept. 8, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Cuevas Guzman v. Andrews*, 2025 WL 2617256, at *3 n.4 (E.D. Cal. Sept. 9, 2025).

51. Under *Loper Bright v. Raimondo*, this Court should independently interpret the statute and give the BIA's expansive interpretation of § 1225(b)(2) no weight, as it conflicts with the statute, regulations, and precedent. 603 U.S. 369 (2024)[1].

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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);

52. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") of 1996, Pub. L. No. 104-208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Following IIRIRA, the Executive Office for Immigration Review ("EOIR") issued regulations clarifying that individuals who entered the country without inspection were not considered detained under § 1225, but rather under § 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination").

53. The statutory context and structure also make clear that § 1226 applies to individuals who have not been admitted and entered without inspection. In 2025, Congress added new mandatory detention grounds to § 1226(c) that apply only to noncitizens who have not been admitted. *See* The Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (8 U.S.C. § 1226(c)(1)(E)).

54. By specifically referencing inadmissibility for entry without inspection under 8 U.S.C. § 1182(6)(A), Congress made clear that such individuals are otherwise covered

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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.

by § 1226(a). Thus, § 1226 plainly applies to noncitizens charged as inadmissible, including those present without admission or parole.

55. The Supreme Court has explained that § 1225(b) is concerned "primarily [with those] seeking entry," and is generally imposed "at the Nation's borders and ports of entry, where the Government must determine whether [a noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 297, 2987 (2018). In contrast, Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings." *Id.* at 289 (emphases added).

56. Furthermore, § 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 years 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").

57. Accordingly, the mandatory detention provision of § 1225(b)(2) does not apply to Petitioner, who had entered the a year ago and has been placed in section 240 removal proceedings.

Parole and Release on Recognizance

58. Respondents' statutory authority to release noncitizens from custody depends on which detention statute applies.

59. Section 1226(c) is the most restrictive provision and authorizes release only when necessary under federal witness protection statutes. See 8 U.S.C. § 1226(c)(4).

60. Noncitizens subject to either subsection of § 1225 are not statutorily eligible for bond—whether by DHS or an immigration judge—or release on their own recognizance. However, DHS can release them on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

61. Under § 1226(a), DHS can release noncitizens on bond, on their own recognizance (also known as "conditional parole"), or on humanitarian parole. *See* 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(8). Noncitizens who are subject to § 1226(a) are also entitled to a bond hearing before an immigration judge.

62. Regardless of the statutory vehicle for release, a DHS officer may not release a noncitizen unless the individual does not pose a risk of flight or danger to the community. *See* 8 C.F.R. §§ 236.1(c)(8), 1236.1(c)(8) (noncitizen must "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding"); *see also* 8 C.F.R. § 212.5 (humanitarian parole available only when "the [noncitizens] present neither a security risk nor a risk of absconding").

63. Any "[r]elease" of a noncitizen, thus, "reflects a determination by Respondents that the noncitizen is not a danger to the community or a flight risk." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1176 (N.D. Cal. 2017), aff'd sub nom. *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). Here Respondents made the requisite determination and released Petitioner on conditional parole and order of recognizance.

Revocation of Conditions of Release

64. When a non-citizen is placed on parole status after having been detained, a protected liberty interest may arise. *Young v. Harper*, 520 U.S. 143, 147-149 (1997).

65. The Due Process Clause may protect this liberty interest even where a statute allows the immigrant's arrest and detention and does not provide for procedural protections. *Id.* (Due Process requires pre deprivation hearing before revocation of parole); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). *Morrissey* observed that parole allows the parolee to enjoy the same activities as those who have not been arrested and held in custody including, living at home, having a job, and "be[ing] with family and friends and to form the other enduring attachments of normal life." *Morrissey*, 408 U.S. at 482. "Though the [government] properly subjects [the parolee] to many restrictions not applicable to other citizens," such as monitoring and seeking authorization to work and travel, "his condition is very different from that of confinement in a prison." *Id.* "The parolee has relied on at least an implicit promise that parole will be revoked only if he fails to live up to the parole conditions." *Id.* The revocation of parole undoubtedly "inflicts a grievous loss on the parolee." *Id.* (quotations omitted). Therefore, a parolee possesses a protected liberty interest in his "continued liberty." *Id.* at 481–84.

66. The protected liberty is even greater when a person is placed on release on order of recognizance.

67. In *Pinchi*, the Court explained:

> . . . even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody. See Romero v. Kaiser, No. 22-cv-02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022) ("[T]his Court joins other courts of this district facing facts similar to the present case and finds Petitioner raised serious questions going to the merits of his claim that due process requires a hearing before an IJ prior to re-detention."); Jorge M. F. v. Wilkinson, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); Ortiz Vargas v. Jennings, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); Ortega, 415 F. Supp. 3d at 969 ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.").

Pinchi v. Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *3 (N.D. Cal. July 24, 2025).

68. Under substantive due process doctrine, a restraint on liberty like revocation of a non-citizen's order of supervision and /or parole is only permissible if it serves a "legitimate nonpunitive objective." *Kansas v. Hendricks*, 521 U.S. 346, 363 (1997). 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 v. Davis, 533 U.S. 678, 690-92 (discussing constitutional limitations on civil detention).*

69. "Procedural 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).

70. Under the INA and implementing regulations, certain DHS officials "at any time may revoke a bond or [conditional] parole authorized under [§ 1226(a)], rearrest the [noncitizen] under the original warrant, and detain the [noncitizen]." 8 U.S.C. § 1226(b); see 8 C.F.R. § 236.1(c)(9). Certain DHS officials may terminate humanitarian parole upon written notice when they determine that the purpose for parole has been "accomplish[ed]" or when "neither humanitarian reasons nor public benefit warrants the [noncitizen's] continued presence . . . in the United States[.]" 8 C.F.R. § 212.5(e)(2)(i). For decades, however, DHS has had a consistent policy and practice of re-detaining noncitizens in removal proceedings only when the individual circumstances related to their flight risk or danger to the community had materially changed.

71. By regulation, revocations of release may only be carried out in the "discretion of the district director, acting district director, deputy director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign)." 8 C.F.R. § 236.1(c)(9).

72. Despite "the breadth of [the] statutory language" in 8 U.S.C. § 1226(b), the Respondents' authority to re-detain is subject to "an important implicit limitation": It cannot lawfully re-arrest or re-detain someone without "a material change in circumstances." *Saravia*, 280 F. Supp. 3d at 1197; *see also Matter of Sugay*, 17 I. & N. Dec. 637, 640 (B.I.A. 1981). Thus, a person released from initial custody, like

Petitioner here, cannot be re-detained "solely on the ground that he is subject to removal proceedings[,]" without some new, intervening cause. *Saravia*, 280 F. Supp. at 1196. Indeed, the Fourth Amendment, which applies to seizures by immigration authorities, prohibits such re-arrests, which courts have long held could result in "harassment by continual rearrests." *United States v. Holmes*, 452 F.2d 249, 261 (7th Cir. 1971) (Stevens, J.) (prohibiting rearrest without change in circumstances in criminal context); *U.S. v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) (applying Fourth Amendment principles from criminal context to "limit" scope of immigration agents' seizure authority); *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 817 (9th Cir. 2020) (Fourth Amendment limits apply equally to seizures in criminal and civil immigration context).

73. The Supreme Court has repeatedly recognized that re-detention after some form of conditional release requires a pre-deprivation hearing. *Young v. Harper*, 520 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in parole context). The same protection apply to people like Petitioner who were released from civil immigration detention. See Ortega v. Bonnar, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (observing that "[g]iven the civil context [of immigration detention], [the] liberty interest [of noncitizens released from custody] is arguably greater than the interest of parolees.")

COUNT ONE

Detention in Violation of the Fifth Amendment (substantive due process)

Against all Defendants

74. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 73 above.

75. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

76. "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification, . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)).

77. Respondents cannot show any "special justification" or compelling governmental interest which would outweigh Petitioner's constitutional liberty.

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

COUNT TWO
Violation of Fifth Amendment Right
Procedural Due Process
Against All Defendants

79. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 73 above.

80. The Fifth Amendment's Due Process Clause prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." U.S. Const. Amend. V.

81. The Supreme Court has repeatedly emphasized that the Constitution generally requires a hearing before the government deprives a person of liberty or property. *Zinermon v. Burch*, 494 U.S. 113, 127 (1990).

82. Under the *Mathews v. Eldridge* framework, the balance of interests strongly favors Petitioner's release.

83. Petitioner's private interest in freedom from detention is profound. The interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see also Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.").

84. The risk of erroneous deprivation is exceptionally high. Petitioner has never been arrested or convicted of a crime and has deep ties to the community.

85. The government's interest in detaining Petitioner without due process is minimal. Immigration detention is civil, not punitive, and may only be used to prevent danger to the community or ensure appearance at immigration proceedings. *See Zadvydas*, 533 U.S. at 690.

86. Furthermore, the "fiscal and administrative burdens" of providing Petitioner with a bond hearing are minimal, particularly when weighed against the significant liberty interests at stake. *See Mathews*, 424 U.S. at 334–35.

87. Considering these factors, Petitioner respectfully requests that this Court order her immediate release from custody or in the alternative order that he be provided with a bond hearing before an immigration judge where Respondents bear the burden of proof.

COUNT THREE
Violation of 8 U.S.C. § 1226(a)
Unlawful Denial of Release on Bond
Against All Respondents

88. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 73 above.

89. Petitioner may be detained, if at all, pursuant to 8 U.S.C. § 1226(a). Under § 1226(a) and its associated regulations, Petitioner is entitled to a bond hearing. *See* 8 C.F.R. 236.1(d) & 1003.19(a)-(f).

90. Petitioner has not been, and will not be, provided with a bond hearing by Respondents as required by law unless the Court so order.

91. Petitioner's continuing detention is therefore unlawful.

COUNT FOUR
Violation of the Bond Regulations, 8 C.F.R. §§ 236.1, 1236.1 and 1003.19
Against All Respondents

92. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 73 above.

93. In 1997, after Congress amended the INA through IIRIRA, EOIR and the then-Immigration and Naturalization Service ("INS") issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension,

Custody, and Detention of [Noncitizens]," the agencies explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. at 10323. The agencies thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

94. The application of § 1225(b)(2) to Petitioner unlawfully mandates her continued detention and violates 8 C.F.R. §§ 236.1, 1236.1, and 1003.19.

COUNT FIVE

Non-Statutory Ultra Vires Action/Accardi Doctrine Violation Against all Respondents

95. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 73 above.

96. There is no statute, constitutional provision, or other source of law that authorizes Respondents to detain Petitioner under the circumstances of this case.

97. Petitioner has a non-statutory right of action to declare unlawful, set aside, and enjoin Respondents' ultra vires actions.

98. Under the *Accardi* doctrine, Petitioner also has a right to set aside agency action that violated agency procedures, rules, or instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 ("If petitioner can prove the allegation [that agency failed to follow its rules in a hearing] he should receive a new hearing").

99. Respondents violated agency regulations governing who and upon what findings could be detained.

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SUBSTANTIAL LIKELIHOOD OF SUCCESS

100. Petitioner repeats and incorporates by reference all allegations in paragraphs 1 to 99 above.

101. As shown above Petitioner has shown substantial likelihood of success on his statutory and constitutional claims.

NOTICE AND IRREPARABLE HARM

102. Pursuant to Federal Rule of Civil Procedure 65(b)(1) and Local Rules 7-19 and 65-1, immediately after filing this Petition, Petitioners' Counsel will provide a copy of the Petition and notice of intent to file an ex parte application under Rule 65 by providing copies to the United States Attorneys Office for the Central District of California via email to monitored email addresses. Petitioner counsel will file notice of proof of service when notice is completed.

103. Petitioner has resided in the United States for over two years after having been released by Respondents. Respondents found that he is not a flight risk and is not a danger to the community; no material change in circumstances has occurred. He is experiencing severe emotional distress and separation from his parents and sister. See Exhibit A.

104. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). "When an alleged deprivation of a constitutional right is

involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (cleaned up). 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 by the INA, Due Process, and the prohibition against non-refoulement potentially violates his 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.").

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

(1) Assume jurisdiction over this matter and order that Respondents respond to this Petition within 3 days and stated the legal basis for Petitioner's detention;

(2) Issue a Temporary Restraining Order ordering release of Petitioner pending resolution of this case or in the alternative that Respondents provide him with a constitutionally valid bond hearing before an Immigration Judge;

(3) Issue a Writ of Habeas Corpus on the ground that Petitioner's continued detention violates the Due Process Clause and order Petitioner's immediate release;