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

IMMIGRATION CASE

SANJEEV BUDHA.

Plaintiff,

V.

RON MURRAY, ET AL

Defendants,

Civil No.: 1:25-cv-01941-JLT-HBK

PLAINTIFF'S EX PARTE

EMERGENCY MOTION FOR

TEMPORARY RESTRAINING

ORDER AND PRELIMINARY

INJUNCTION AND NOTICE OF

MOTION

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Eastern District of California, that Petitioner, Sanjeev Budha will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b) and Civil Local Rule 231. Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this

1 Court (1) order Petitioner's immediate release from Respondents' custody pending these
2 proceedings, without requiring bond or electronic monitoring. To preserve this Court's
3 jurisdiction, Petitioner further seeks an order enjoining Respondents from removing him
4 from the United States during the pendency of these proceedings. This motion is based on
5 this Notice of Motion and Motion with enclosed memorandum of points and authorities
6 in support of this motion, and the attached evidence and declaration of Petitioner's
7 counsel, Ben Loveman.

8
9 This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No.
10 1). Consistent with Civil L.R. 231, Petitioner seeks relief at the earliest possible
11 opportunity. Pursuant to Civil L.R. 231, and as detailed further in attached declaration,
12 Respondents' counsel has been notified of this motion, this action, and the emergency
13 reasons requiring an ex parte temporary restraining order. As of December 19, 2025,
14 Respondents have not stipulated to a TRO or otherwise responded to Counsel except as
15 described in the attached declaration.

16 Plaintiff respectfully move the Court for temporary restraining order and
17 preliminary injunction. To allow time for Defendants to be heard, Plaintiff requests the
18 Court initially to grant a temporary restraining order and to set a date for hearing on
19 motion for preliminary injunction if necessary.

20 **I. Correspondence with Respondents' counsel**

21 On December 19, 2025, undersigned counsel for Plaintiff spoke with Ms. Monica
22 Wei of the U.S. Attorney's office for the Eastern District of California and notified her of
23 this case and Plaintiff's intent to file motion for *ex parte* temporary restraining order
24 seeking Petitioner's immediate release from custody. Counsel also emailed AUSA
25 section Chief Audrey Hemesath to notify her office that Petitioner would request hearing
26 on this motion at the earliest available date and that further notice of the actual date and
27 time would be provided as soon as available. Counsel also emailed Defendants counsel a
28 copy of the complaint and notice of motion and motion for *ex parte* restraining order. A

1 copy of this memorandum in support of Petitioner's motion for temporary restraining
2 order has been emailed to defendants' counsel on December 19, 2025, together with
3 counsel's declaration and the exhibits submitted with this memorandum and all
4 previously filed documents in this case. Counsel also requested that Defendants consider
5 releasing Petitioner from custody immediately so as to avoid need for TRO in this case. A
6 response has not yet been received from Defendants' counsel. *See* Decl. of Ben
7 Loveman.

8 **II. FRCP 65(b)(1) (ex parte TRO) requirements are met.**

9 The requirements for issuing a temporary restraining order without notice set out
10 in Federal Rule of Civil Procedure 65(b)(1) are met in this case. Counsel, in the attached
11 declaration, ("Loveman Decl."), and the complaint, ECF No. 1, has set out specific facts
12 showing that immediate and irreparable injury, loss, or damage is ongoing and will
13 continue to result before Respondents' opposition can be heard. *See* Fed. R. Civ. Pro.
14 65(b)(1)(A). Of course, ongoing unlawful detention in violation of the Constitution is an
15 irreparable injury. Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017) (quoting
16 Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an alleged deprivation
17 of a constitutional right is involved, most courts hold that no further showing of
18 irreparable injury is necessary." Warsoldier v. Woodford, 418 F.3d 989, 1001-02 (9th
19 Cir. 2005) (cleaned up). As noted above, counsel notified respondents' counsel of this
20 TRO request and provided their counsel, The U.S. Attorney for the Eastern District of
21 California, with copies of this motion and all documents in this case including Petitioner's
22 habeas petition and Notice of Motion for *Ex Parte* Temporary Restraining Order, and this
23 memorandum in support of that motion by email. *See* "Loveman Declaration." Fed. R.
24 Civ. P. 65(b)(1)(B).

25 **III. Summary of Motion and request for relief**

26 Petitioner asks this Court to find that his re-arrest by immigration authorities and
27 in the absence of materially changed circumstances, and his continued detention,
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1 constitutes a violation of his liberty interest under the Due Process Clause of the
2 Constitution. To the extent necessary, Petitioner asks the Court to find that his current
3 detention is pursuant to INA § 236 and that he is at a minimum entitled to a bond hearing
4 before an immigration judge if detained again in the future during the pendency of
5 removal proceedings or any appeal to the Board of Immigration Appeals.

6 A growing number of District Courts, including many within the Eastern District
7 of California, have recently found that similar or identical circumstances merited grant of
8 TRO and ordered habeas petitioner's immediate release. *See, e.g., Alberto R.C. v.*
9 *Murray*, No. 1:25-cv-01618-KES-SKO (HC), 2025 LX 513970 (E.D. Cal. Dec. 16, 2025);
10 *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO (HC), 2025 LX 524863 (E.D. Cal.
11 Nov. 12, 2025); *Gagandeep Singh v. Bowen*, No. 5:25-cv-03034-CAS-PD, 2025 LX
12 590018, at *9 (C.D. Cal. Nov. 21, 2025); *Estrada Elias v. Knight*, No. 1:25-CV-00594-
13 *BTW*, 2025 WT 3228262, at *1 (D. Idaho Nov. 19, 2025) (collecting cases); *see also Tut*
14 *v. Noem*, No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266, at *9 n.1 (C.D. Cal. Oct. 16,
15 2025) (collecting cases in this district); *Doe v. Becerra*, No. 2:25-cv-647-DJC-DMC,
16 2025 U.S. Dist. LEXIS 37929 at *8 (E.D. Cal. Mar. 3, 2025) (granting temporary
17 restraining order); *López v. Wofford*, No. 1:25-cv-01226-KES-SKO (HC), 2025 LX
18 491132, (E.D. Cal. Oct. 17, 2025)(requiring release of asylum seeker and a pre-detention
19 bond hearing before re-arrest); *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *34-
20 35 (D. AZ August 11, 2025); *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025 U.S. Dist.
21 LEXIS 127539 at *4 (N.D. Cal. July 4, 2025) (same), (N.D. Cal. July 24, 2025); *Singh*,
22 2025 U.S. Dist. LEXIS 132500 at *10 (granting preliminary injunction); *Garcia v.*
23 *Bondi*, No. 25-cv-5070, 2025 U.S. Dist. LEXIS 113570, at *3 (N.D. Cal. June 14, 2025)
24 (granting temporary restraining order requiring pre-detention hearing before re-detention
25 of noncitizen out of custody six years); *Enamorado v. Kaiser*, No. 25-cv-4072-NW, 2025
26 U.S. Dist. LEXIS 90261, at *3 (N.D. Cal. May 12, 2025).

27 IV. Factual background

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Petitioner (Mr. Budha) is 33-year-old native and citizen of Nepal. Loveman Declaration at Exh. 2 (Form I-213).¹ Mr. Kandel entered the United States on or about February 7, 2025 without presenting himself for inspection or seeking admission. Exhs. 1 (NTA), 2 (I-213). A Customs Border Protection (CBP) Officer arrested Petitioner inside the United States and arrested and detained Petitioner. Exh. 2. Petitioner was detained and transferred to an ICE jail in Eloy, Arizona. Id. Removal proceedings under INA §240 were initiated against respondent by filing of a Notice to Appear (NTA). Exh. 1. The NTA charges that Petitioner is a person who is “present in the United States who has not been admitted or paroled[]” and therefore that Petitioner is inadmissible under INA § 212(a)(6)(A)(i) for being present in the U.S. “without being admitted or paroled, or who arrived in the United States at any time or place other than as designated[,]” and § 212(a)(7)(A)(i)(I) as an “immigrant who, at the time of application for admission, is not in possession of a [visa and identity document.]” Exh 1.

Respondent requested and was granted bond under Section 236 by an Immigration Judge in Eloy Arizona. Exh. 2. On March 26, 2025 an Immigration Judge approved release from custody under bond. He was released upon posting of \$12,000 bond. Id. Venue in removal proceedings were changed to San Francisco based on Petitioner’s release from custody and change of address to Daly City, California.

Following release from custody Petitioner was required to enroll with ICE’s ATD program and was fitted with a GPS monitoring unit. Loveman declaration; Exh. 2. Petitioner has complied with all requirements of ATD and has attended all required immigration court hearings and meetings with ICE. Nonetheless, on October 27, 2025 ICE located Petitioner at his residence of re arrested him. The pretextual reason for the redetention was a claim that Petitioner had failed to make a phone reporting appointment on March 27, 2025 ,which would have been two days after his release from ICE custody. Exh. 2. In reality, no such appointment was missed. ICE phone and online check in

¹ As all Exhibits are attached to the “Adhikari Declaration,” the documents will be referenced by Exhibit Number (1-7) omitting “Loveman Declaration.”

1 procedures and records keeping are notoriously unreliable as experienced and reported by
2 noncitizens and immigration attorneys. Loveman Decl. Moreover, even had Mr. Budha
3 missed a phone in appointment In March of 2025, he is still entitled to a hearing prior to
4 being taken back into custody.² Further, he would still be eligible for bond hearing under
5 section 236.

6 However, following his rearrest, Respondents have now asserted that his detention
7 is pursuant to INA § 235 and that he is not eligible for release and that an immigration
8 judge does not have jurisdiction to conduct a bond hearing in his case. Loveman Decl.
9 Petitioner in fact requested a bond hearing from an immigration judge and his counsel
10 was advised by the judge that no such hearing could be held because the court believes it
11 does not have jurisdiction to hold such hearing pursuant to Matter of Yajure Hurtado, 29
12 I. & N. Dec. 216 (BIA 2025)(all noncitizens present without inspection are subject to
13 mandatory detention under INA § 235). Loveman Decl.

14 Petitioner has filed an application for asylum with the immigration court. That
15 application remains pending with the Court and respondent is now scheduled for a
16 hearing on that application in March of 2026. Exh. 3 (hearing notice).

17 V. Legal standard

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20 ² See e.g. *Ramazan M. v. Andrews*, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL
21 3145562, at *6 (E.D. Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where
22 Respondents alleged check-in and other electronic monitoring violations, because
23 “[w]hile respondents argue that petitioner is a flight risk, the purpose of a bond hearing is
24 for a neutral decisionmaker to consider and evaluate such an argument to determine
25 whether it is consistent with the facts and to ensure that noncitizens like petitioner are not
26 deprived of their liberty without justification”), and at *E.A. T.B. v. Wamsley*, No. C25-
27 1192-KKE, 2025 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ordering immediate
28 release of petitioner and finding that it does not “necessarily follow that Petitioner can be
detained for [release conditions] violations without a hearing. 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.”). Judges have
repeatedly found the supposed violations “negligible” or been skeptical of existence of
purported violations. See e.g. *Alas v. Albarran*, 2025 U.S. Dist. LEXIS 207060 *2 FN1
(ND Cal. Oct. 15, 2025).

Temporary restraining orders "serv[e] the [] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439, (1974). Emergency injunctive relief, whether through a temporary restraining order or preliminary injunction, requires a showing of: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the equities balance in the plaintiff's favor; and (4) that preliminary injunctive relief would serve the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Plaintiffs do not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if they raise "serious questions" as to the merits of their claims, the balance of hardships tip "sharply" in their favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

VI. Discussion

The *Winter* factors all weigh in Petitioner's favor in this case. Petitioner's rearrest in the absence of materially changed circumstances constitutes a violation of the Due Process Clause. Petitioner, though a noncitizen, remains protected by the Due Process Clause's protections from unlawful deprivation of liberty. Petitioner is detained, stripped of his fundamental right to liberty, and is separated from his community and family and thus is suffering irreparable harm. Respondents have no legitimate interest in unlawfully detaining noncitizens and the public interest would be served by ensuring that the Respondents do not continue to detain Petitioner, or any person for that matter, in violation of the laws of the United States and at significant cost to the United States public.

1. Likelihood of success on merits-Due Process

1 **a. Due Process Clause Applicable to Noncitizen**

2 The Due Process Clause prohibits deprivations of life, liberty, and property
3 without due process of law. U.S. Const. amend. V. It is firmly established that these
4 protections extend to noncitizens present in the United States. *Trump v. J.G.G.*, 604 U.S.
5 145 S. Ct. 1003, 1006 (2025) (*per curiam*) ("It is well established that the Fifth
6 Amendment entitles aliens to due process of law' in the context of removal proceedings,"
7 quoting *Reno v. Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993));
8 *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653, (2001) ("[T]he
9 Due Process Clause applies to all 'persons' within the United States, including aliens,
10 whether their presence here is lawful, unlawful, temporary, or permanent.").

11 **b. Due Process requires hearing prior to rearrest**

12 Well-established precedent firmly holds that, once a noncitizen has been released
13 from civil immigration detention, they may not be rearrested or detained again absent a
14 material change in circumstances. This principle is statutory and Constitutional.
15 See *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent
16 changed circumstances ... ICE cannot redetain Panosyan."); *Matter of Sugay*, 17 I&N
17 Dec. 647, 640 (B.I.A. 1981). Additionally, any change in circumstances must be
18 "material." *Saravia v. Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub*
19 *nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018); *Ortiz Vargas v.*
20 *Jennings*, No. 20-CV-5785-PJH, 2020 U.S. Dist. LEXIS 167842, 2020 WL 5517277, at
21 *2 (N.D. Cal. Sept. 14, 2020).

22 Here, Petitioner was arrested by CBP following entry to the U.S. Exh. 2.
23 Petitioner was then released on bond under § 236 and, thereafter, had an ongoing and
24 protected interest in his liberty absent pre-detention hearing and showing of changed
25 circumstances. Exh. 2. He was then rearrested though no change in circumstance
26 occurred, and no pre-detention hearing was afforded. Respondents now contend that he is
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1 not eligible for a bond hearing under § 236 and that his detention is mandatory under §
2 235.

3 Court's considering cases with factual circumstances identical or nearly identical
4 to Petitioner have recently, and to counsel's knowledge, uniformly found that rearrest
5 under these circumstances constitutes a violation of the Due Process Clause of the
6 Constitution and that, therefore, Petitioner is likely to succeed on the merits of the claim.
7 *See e.g., Ortega v. Kaiser*, No. 25-cv-05259-JST, 2025 U.S. Dist. LEXIS 121997, 2025
8 WL 1771438, at *3 (N.D. Cal. June 26, 2025) (*collecting cases finding that noncitizens*
9 *who have been released have a strong liberty interest* *Pablo Sequen v. Kaiser*, No. 25-cv-
10 06487-PCP, 2025 U.S. Dist. LEXIS 148751, at *2 (N.D. Cal. Aug. 1, 2025) (*collecting*
11 *cases*); *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *35 (D. AZ August 11,
12 2025).

13 **c. The Mathews Factors all weigh in Petitioner's favor**

14 Where detention of a noncitizen implicates violation of Due Process Clause, the
15 protections of the Due Process Clause must be balanced with the government's
16 countervailing interests in immigration enforcement. To determine whether civil
17 detention violates a detainee's right to liberty the federal courts apply the three-part test
18 set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893. *Rodriguez Diaz v. Garland*,
19 53 F.4th 1189, 1206 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir.
20 2020). *Mathews* requires consideration of (1) "the private interest that will be affected by
21 the official action; (2) "the risk of an erroneous deprivation of such interest through the
22 procedures used, and the probable value, if any, of additional or substitute procedural
23 safeguards;" and (3) "the Government's interest, including the function involved and the
24 fiscal and administrative burdens that the additional or substitute procedural requirement
25 would entail." 424 U.S. at 335.

26 The relevant factors all weigh in Plaintiff's favor. Petitioner has a substantial
27 private interest in remaining out of custody, which would allow him to live at home,
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1 work, and assist his counsel to present his asylum claim to the immigration court.
2 *See Morrissey v. Brewer*, 408 U.S. 471, 482, 484 (1972). There is also a risk of erroneous
3 deprivation that the additional procedural safeguard of a pre-detention hearing would
4 help protect against. Further, as numerous Courts have recognized, the government's
5 interest in re-detaining (or continuing to detain) Petitioner without a hearing is "low,"
6 where Petitioner has consistently appeared for all scheduled immigration hearings and
7 has no criminal record. *See Jorge M.F.*, 2021 U.S. Dist. LEXIS 40823, at *3; *Ortega*, 415
8 F. Supp. 3d at 970.

9 Petitioner is suffering ongoing, immediate, and irreparable harm in the absence of
10 preliminary relief. The Ninth Circuit has recognized "irreparable harms imposed on
11 anyone subject to immigration detention," including "the economic burdens imposed on
12 detainees and their families as a result of detention, and the collateral harms to children of
13 detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th
14 Cir. 2017). Those risks are present here. Moreover, "[i]t is well established that the
15 deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427
16 U.S. 347, 373, (1976)).
17

18 Finally, the balance of the equities and the public interest, which merge in light of
19 the fact that the government is the opposing party, weigh heavily in favor of Petitioner.
20 "[T]he public has a strong interest in upholding procedural protections against unlawful
21 detention, and the Ninth Circuit has recognized that the costs to the public of immigration
22 detention are staggering." *Jorge M. F.*, 2021 U.S. Dist. LEXIS 40823, at *3 (cleaned up)
23 (quoting *Ortiz Vargas*, 2020 U.S. Dist. LEXIS 153579, and then quoting *Hernandez*, 872
24 F.3d at 996); Without the requested relief, Petitioner faces the significant ongoing harms
25 of loss of his liberty and inability to support himself, his family, and to assist fully in
26 preparation to present his asylum claim. There is little or no harm to Respondents of
27 releasing Petitioner until a pre-detention hearing can be completed to show that that
28 detention is warranted. Moreover, a party "cannot reasonably assert that it is harmed in

any legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).

For the foregoing reasons it is likely that Petitioner will succeed on the merits of his Due Process claim and request for immediate release from custody. As such this factor should weigh in favor of granting TRO in this case.

2. The remaining *Winter* factors all weigh in Plaintiff’s favor

As discussed above, irreparable harm is certain and ongoing in this case. *See supra*, (discussion of Mathews Factors). Additionally, the equities all weigh in favor of Petitioner, and the public interest also favors Petitioners release from unlawful and costly immigration detention. *Id.*

As all the *Winter* factors weigh strongly in Plaintiff’s favor, we respectfully ask the Court to issue a TRO requiring plaintiff’s immediate release.

3. Order of Immediate release is only adequate remedy

Because Petitioner is in custody, the only remedy adequate at this stage is to order immediate release and enjoin Respondents from redetaining Petitioner absent a pre-detention hearing with a neutral arbitrator to determine whether detention is lawful and warranted. A Temporary restraining order may, and should where possible, return parties to the ‘status quo’ which refers to “the last uncontested status which preceded the pending controversy.” *Doe v. Noem*, 2025 U.S. Dist. LEXIS 73660, at *9 (W.D. Wash. Apr. 17, 2025) (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). In this case, the status quo is the moment prior to the Petitioner’s likely unlawful detention. *See Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, at *3 (N.D. Cal. July 4, 2025); *Ercelik v. Hyde*, 2025 U.S. Dist. LEXIS 88412, at *15-16 (D. Mass. May 8, 2025); *Kuzmenko v. Phillips*, 2025 U.S. Dist. LEXIS 40961, , at *2 (E.D. Cal. Mar. 10, 2025).

4. Petitioner cannot be detained pursuant to INA § 235

1 Despite the countervailing evidence, *See eg. Exhs. 1, 2*, and clear precedent from
2 the Board of Immigration Appeals, Ninth Circuit Court of Appeals, and U.S. Supreme
3 Court, to the contrary, *see e.g. Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 749
4 (BIA 2023); *Ortega Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007)
5 *Jennings v. Rodriguez*, 583 U.S. 281, 300 (with only limited and nonapplicable
6 exceptions, the only way an alien detained under INA § 235(b) may be released, is
7 temporary parole “for urgent humanitarian reasons or significant public benefit”—
8 Petitioner was not released from initial arrest on parole- *See* Exh. 2), it is likely that
9 Respondents will assert that Petitioner’s detention is mandatory and governed by INA §
10 235.

11 Petitioner believes the issue is not relevant to the question of Petitioner’s
12 immediate release from custody as discussed above. Petitioner asks the Court to consider
13 his position on the non-applicability of § 235, in case the Court finds the issue
14 determinative to this petition and because it is likely to be raised by Respondents.
15 Further, a determination that Petitioner’s initial detention and current detention can only
16 be governed by § 236, would afford Petitioner another avenue to relief and more security
17 for the future from illegal rearrest and deprivation of bond hearing before an immigration
18 judge.

19 Section 235 governs the arrest and detention of arriving aliens. It provides that, “in
20 the case of an alien who is an application for admission, if the examining officer
21 determines that an alien seeking admission is not clearly and beyond a doubt entitled to
22 be admitted, the alien shall be detained for [removal proceedings].” Section 235 does
23 not allow for release from custody on ORR and does not allow for an immigration judge
24 to have jurisdiction to make a custody redetermination. Individuals detained under INA §
25 235 can only be paroled into the United States “for urgent humanitarian reasons or
26 significant public benefit.” *Jennings*, 583 U.S. at 300 (quoting INA § 212(d)(5)(A)).
27 Release on recognizance is not “humanitarian” or “public benefit” “parole into the United
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1 States" under section 1182(d)(5)(A) but rather a form of "conditional parole" from
2 detention upon a charge of removability, authorized under section 1226. *Ortega*
3 *Cervantes v. Gonzales*, 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen
4 released on an "Order of Release on Recognizance" necessarily must have been detained
5 and released under INA § 236, including because he was not an "arriving alien" under the
6 regulations governing section 235 examinations).

7 On the other hand, INA § 236, governs the custody rules where an individual is
8 "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 D.Ct 830 (2018).
9 Again, any claim that respondent was initially or is now detained pursuant to INA § 235
10 cannot be squared with the facts or applicable law.

11 As evidenced here, there is clear record showing that Petitioner's prior arrest, in
12 February of 2025, was pursuant to INA § 236. Specifically, the fact that Petitioner was
13 released on bond order of the immigration judge and was found inside the United States
14 compels the conclusion that his initial detention and release was pursuant to INA § 236.
15 This fact is evidenced in the NTA issued by Respondents where they do not indicate
16 respondent is an arriving alien and indicate that he was not paroled. Exh 1.

17 Secondly, and as has been noted by a growing number of Courts to address habeas
18 petitions under this new ICE/EOIR policy initiative, decades of precedent and policy
19 reflect the fact that noncitizens apprehended within the United States are not treated as
20 'arriving aliens' and not subject to mandatory detention under INA § 235. *See e.g.*
21 *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *30 ("It is worth noting that such an
22 approach would upend decades of practice. Indeed, mandatory detention for all applicants
23 has only been the official policy of the Department of Homeland Security ("DHS") for a
24 few weeks, since July 8, 2025, when Acting Director of U.S. Immigration and Customs
25 Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency
26 had 'revisited its legal position'"). These Courts have also noted that this novel legal
27 position would contravene the plain meaning of sections 236, 235, and would render key
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1 aspects of § 236 as meaningless. *Id.* See also *Martinez v. Hyde*, 2025 U.S. Dist. LEXIS
 2 141724 *11-13 (D. Mass. July 24, 2025). Further, these Court's noted that the novel
 3 interpretation proposed by ICE would render recent amendments to the Statute, made by
 4 the Laken Riley Act, Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), as
 5 meaningless. *Id.* at 17.

6 Nor have Courts been impressed or persuaded by the reasoning *Matter of Yajure*
 7 *Hurtado*, 29 I. & N. Dec. 216, 2025 BIA LEXIS 44 (September 5, 2025) wherein the BIA
 8 held that all noncitizens present in the United States without inspection are not eligible
 9 for bond hearings. Recently, a Court in the Central District rejected that decision and
 10 ordered that all detained persons present in the United States at time of apprehension
 11 should be entitled to bond hearing. *Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM,
 12 2025 LX 563862 (C.D. Cal. Nov. 25, 2025).³ The same conclusion has been reached
 13 within this district as recently as this week. *Alberto R.C. v. Murray*, No. 1:25-cv-01618-
 14 KES-SKO (HC), 2025 LX 513970, at *8 (E.D. Cal. Dec. 16, 2025)(“ Section [236(a)] is
 15 the discretionary detention authority for aliens already present in the United States.”)
 16 (quoting *Jennings v. Rodriguez*, 583 U.S. 281 and noting that many courts continue to
 17 reach this conclusion.).

18 For the reasons described here, and more fully explicated by the well-reasoned
 19 decision in *Sharan S. v. Chestnut*, No. 1:25-CV-01427-KES-SKO (HC), 2025 U.S. Dist.
 20 LEXIS 222923, at *4-8 (E.D. Cal. Nov. 12, 2025) Petitioner asks this Court to determine
 21 and declare that Petitioner's prior detention in February of 2025 was pursuant to INA §
 22 236, that his current detention is pursuant to INA § 236, and that any future detention
 23 should comport with the Due Process Clause and/or the mandates of § 236 which afford
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25
 26 ³ While the *Maldonado Bautista* decision includes a class-wide injunction, early reports from immigration courts
 27 around the country are that immigration judges and DHS attorneys are contesting the existence of a final judgement
 28 and possibly the class definition. Thus, the decision does not obviate the need for individual order in this case. More
 recently, on December 18, 2025, the Court in *Maldonado Bautista* entered a clarifying order and final judgment.
 Exhibit 4. Nonetheless, reports continue to suggest that Immigration Judge's and DHS are refusing bond hearings.
 See Loveman Decl.

1 Petitioner, and similarly situated noncitizens, with the rights to pre-detention hearing
2 prior to rearrest and a bond hearing before an immigration judge whether rearrest is
3 warranted.

4 Petitioner is entitled to immediate release from custody and should remain free
5 unless he is found to be a danger or flight risk by a neutral arbiter. Even assuming
6 Respondents are correct that his initial detention and current detention should be
7 governed by § 235, such conclusion would run afoul of the Constitution of the United
8 States as Petitioner now has a substantial liberty interest which arose from Respondents
9 releasing him from custody under INA § 236. *Guillermo M. R. v. Kaiser*, 791 F. Supp.
10 3d 1021, 2025 WL 1983677, at *4 (N.D. Cal. 2025) (recognizing that "the liberty interest
11 that arises upon release [from immigration detention] is *inherent* in the Due Process
12 Clause").

13
14 **5. The Court need not impose bond under rule 65 where respondents will not**
15 **be harmed and no costs or damages will be incurred.**

16 Finally, Because "there is no realistic likelihood of harm to the [respondents] from
17 enjoining [their] conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), no
18 security is needed to ensure that respondents will be reimbursed for "costs and damages
19 sustained by ... hav[ing] been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c).
20 Respondents are, at taxpayer expense, unlawfully detaining Petitioner and thousands of
21 other identically situated noncitizens. Releasing Petitioner would presumably save
22 respondents the cost of detaining him and, as there is no suggestion that he is either a
23 gangster or flight risk, it is hard to fathom what costs or damages would be incurred to
24 Respondents. Even were there some minimal damages, bond would not be justified
25 where the detention is so overwhelmingly recognized as unlawful and therefore is little
26 likelihood that they could claim they incurred damages from having been wrongfully
27
28

1 restrained. We thus ask the Court to exercise its discretion under Rule 65(c) to dispense
2 with the filing of bond. Sequen v. Kaiser, 793 F. Supp. 3d 1114 (N.D. Cal. 2025)

3 **Conclusion**

4 Petitioner remains unlawfully detained. We ask this Court to order Respondents to do
5 what they already know is required under the law—release respondent and not redetain
6 him without a bond hearing where the government must prove that he is a flight risk or
7 danger to the community by clear and convincing evidence before he may be rearrested.
8 That hearing should have occurred before petitioner was re-detained. "[T]he root
9 requirement' of the Due Process Clause" is "that an individual be given an opportunity
10 for a hearing before he is deprived of any significant protected interest." Cleveland Bd.
11 of Educ. v. Loudermill, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)
12 (quoting Boddie v. Connecticut, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113
13 (1971)).

14 **REQUESTED RELIEF**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court:

- 16
- 17 (1) GRANT this Motion and ORDER Petitioner's immediate release from
Respondents' custody and;
 - 18 (2) Enjoin and Restrain Respondents from re-detaining Petitioner without notice and a
pre-deprivation hearing before a neutral decision maker and;
 - 19 (3) Declare that Petitioner's initial arrest in February of 2025 and any future civil
20 arrests, while his removal proceedings remain pending, are not governed by INA §
21 235 and;
 - 22 (4) Waive the requirement that bond be posted
 - (5) ORDER any other relief this Court finds necessary and proper.

23 Dated: December 19, 2025,

Respectfully,

24
25 /s/Ben Loveman

26 Ben Loveman
27 Attorney for the Plaintiff
28