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9  
10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 GURDEEP SINGH

14 Petitioner,

15 v.

16 JEREMY CASEY, Warden of the Imperial  
17 Regional Detention Center; TODD LYONS,  
18 Acting Director of Immigration and Customs  
19 Enforcement; KRISTI NOEM, Secretary of the  
20 U.S. Department of Homeland Security; PAMELA  
21 BONDI, Attorney General of the United States

22 Respondents.

Civil Action No.

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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27  
28 **MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION**

1  
2 **I. INTRODUCTION**

3 Petitioner Singh respectfully moves for an emergency Temporary Restraining Order (“TRO”) to  
4 prevent ongoing and irreparable constitutional harm resulting from Respondents’ unlawful detention of  
5 Petitioner without access to bond. Petitioner is currently detained under the Department of Homeland  
6 Security’s July 8, 2025 detention policy, which reclassifies noncitizens like Petitioner as subject to  
7 mandatory detention under 8 U.S.C. § 1225(b) and categorically denies bond hearings.  
8

9 As set forth in Petitioner’s Verified Petition for Writ of Habeas Corpus and incorporated  
10 Memorandum of Law, this policy violates the Immigration and Nationality Act (“INA”) and the Fifth  
11 Amendment. Federal courts—including courts within this District—have overwhelmingly rejected  
12 DHS’s position and held that noncitizens in pre-final order removal proceedings are detained, if at all,  
13 under 8 U.S.C. § 1226(a) and are therefore entitled to an individualized bond hearing. ICE’s re-detention  
14 of Petitioner—after years of full compliance and without any changed circumstances—underscores the  
15 urgent need for emergency relief.  
16

17 The conditions of Petitioner’s release required him to comply with all terms and conditions  
18 imposed by DHS, which Petitioner fully and faithfully satisfied. Petitioner remained in continuous  
19 compliance for more than two and half years, reporting as required, committing no violations, and  
20 demonstrating that he posed no flight risk and no danger to the community.  
21

22 In stark contrast to this sustained compliance, ICE unexpectedly detained Petitioner. ICE re-  
23 detained Petitioner without notice, without any changed circumstances, and without any lawful  
24 justification, and thereafter failed to provide any valid reason for his detention.  
25

26 This deceptive and arbitrary re-detention, following years of compliance and liberty granted by  
27 the Government itself, constitutes an unlawful deprivation of physical liberty in violation of due process.  
28

1 Absent immediate injunctive relief, Petitioner will continue to suffer irreparable loss of liberty  
2 and faces the risk of transfer outside this District, which would frustrate this Court’s jurisdiction.

3 **II. LEGAL STANDARD**

4 The standards governing a TRO and a preliminary injunction are “substantially identical.”  
5 *Stuhlberg Int’l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).  
6

7 A TRO may issue where the movant demonstrates: A likelihood of success on the merits, a  
8 likelihood of irreparable harm absent relief, that the balance of equities tips in his favor, and that an  
9 injunction is in the public interest. *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

10 Alternatively, a TRO may issue where serious questions go to the merits and the balance of  
11 hardships tips sharply in the movant’s favor. *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th  
12 Cir. 2014).  
13

14 **III. ARGUMENT**

15 **A. Petitioner Is Likely to Succeed on the Merits**

16 **1. Petitioner Is Detained Under § 1226(a), Not § 1225(b)**

17 Petitioner entered the United States in 2017, was released on bond pursuant to Form I-286,  
18 complied with all conditions, and has remained in the interior of the United States for years. He is in  
19 pre-final order removal proceedings.  
20

21 For nearly three decades, DHS and EOIR consistently treated individuals in Petitioner’s position  
22 as detained under § 1226(a). DHS’s July 8, 2025 policy abruptly reversed that interpretation and  
23 unlawfully stripped Immigration Judges of bond authority.  
24

25 District courts nationwide—including multiple courts in the Eastern District of California—have  
26 rejected DHS’s interpretation as inconsistent with: The statutory text, the structure of §§ 1225 and 1226,  
27 Congressional intent, and Due process.  
28

1                   **2. Bautista–Maldonado Confirms Bond Eligibility and Class Protection**

2                   In *Bautista–Maldonado v. DHS*, the district court held that DHS may not reclassify noncitizens  
3 already placed in removal proceedings as subject to mandatory detention under § 1225(b). The court  
4 concluded that such individuals are detained, if at all, under § 1226(a) and must be afforded bond  
5 hearings before an Immigration Judge.

6                   Petitioner falls squarely within the certified or, at minimum, protected class in *Bautista–*  
7  
8 *Maldonado*:

- 9                   • He entered without inspection,  
10                   • He is in pre–final order removal proceedings,  
11                   • DHS relies on the July 8, 2025 policy to deny bond, and  
12                   • He is detained without individualized custody review.

13                   As a class member, Petitioner is entitled to the relief ordered in *Bautista–Maldonado*, including  
14 restoration of bond eligibility and protection from unlawful mandatory detention.  
15

16                   **B. Petitioner Is Suffering Irreparable Harm**

17                   Loss of physical liberty constitutes irreparable harm as a matter of law. *Melendres v. Arpaio*, 695  
18 F.3d 990, 1002 (9th Cir. 2012).  
19

20                   The conditions of Petitioner’s release required him to comply with all terms and conditions  
21 imposed by DHS, which Petitioner fully and faithfully satisfied. Petitioner remained in full compliance  
22 for more than three years, reporting as required, committing no violations, and posing no danger or  
23 flight risk. At no point during this period did DHS allege noncompliance or changed circumstances. ICE  
24 detained Petitioner without notice, without changed circumstances, and without any lawful justification,  
25 and thereafter failed to provide any valid reason for his detention.  
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27  
28

1 This arbitrary re-detention—after years of compliance—constitutes an unlawful deprivation of  
2 liberty and establishes irreparable harm as a matter of law. See *Melendres*, 695 F.3d at 1002 (deprivation  
3 of constitutional rights “unquestionably constitutes irreparable injury”). Each additional day of detention  
4 inflicts ongoing constitutional injury that cannot be remedied by monetary damages, forces Petitioner to  
5 litigate his immigration case from confinement, separates him from his family and employment, and  
6 exposes him to the risk of transfer outside this District, thereby threatening this Court’s jurisdiction.  
7

8 Accordingly, immediate injunctive relief under Federal Rule of Civil Procedure 65 is warranted  
9 to prevent further irreparable harm.

10 **C. The Balance of Equities and Public Interest Favor Relief**

11 The balance of equities weighs sharply in Petitioner’s favor. DHS previously determined  
12 Petitioner posed no danger or flight risk when it released him on bond. Respondents cannot credibly  
13 claim harm from either: Releasing Petitioner under conditions, or providing a constitutionally adequate  
14 bond hearing.  
15

16 Petitioner has demonstrated a clear likelihood of success on the merits and ongoing irreparable  
17 deprivation of physical liberty, immediate injunctive relief is warranted. Under Federal Rule of Civil  
18 Procedure 65(c), the Court may issue injunctive relief without requiring a bond where, as here, the  
19 injunction serves to halt unconstitutional government action and the enjoined party faces no cognizable  
20 monetary harm. Continued detention is unlawful, Respondents suffer no financial injury from  
21 compliance with federal law, and any bond requirement would be inappropriate. Accordingly, the Court  
22 should order Petitioner’s immediate release, or alternatively immediate bond eligibility under 8 U.S.C. §  
23 1226(a), without security.  
24

25 The public interest is served by ensuring that federal agencies comply with the Constitution and  
26 the INA. Because the injunction sought would merely halt unconstitutional government action and  
27  
28

1 restore the status quo ante, Rule 65(c) permits waiver of any bond requirement, as Respondents face no  
2 cognizable monetary harm from compliance with the Constitution and the INA.

3 **IV. REQUESTED RELIEF**

4 Petitioner respectfully requests that the Court:

- 5
- 6 1. Issue a Temporary Restraining Order Prohibiting Respondents from transferring Petitioner  
7 outside the Eastern District of California during the pendency of this action;
  - 8 2. Order Petitioner's immediate release, or in the alternative,
  - 9 3. Order Respondents to provide an individualized bond hearing before an Immigration Judge  
10 within a fixed time period, with the burden on DHS; and
  - 11 4. Set an Order to Show Cause re preliminary injunction.

12 **V. CONCLUSION**

13  
14 Respondents' continued detention of Petitioner without bond violates the INA, the Fifth  
15 Amendment, and binding federal court authority. Immediate injunctive relief is necessary to prevent  
16 further irreparable harm and to preserve this Court's jurisdiction.

17  
18 Respectfully,

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26  
27 Dated this 24<sup>th</sup> day of December, 2025.

28  
  
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**IN THE UNITED STATES DISTRICT COURT  
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GURDEEP SINGH

Petitioner,

v.

JEREMY CASEY, Warden of the Imperial  
Regional Detention Center, Acting Director of  
Immigration and Customs Enforcement; KRISTI  
NOEM, Secretary of the U.S. Department of  
Homeland Security; PAMELA BONDI, Attorney  
General of the United States

Respondents.

Civil Action No.

**MEMORANDUM OF LAW IN SUPPORT FOR PRELIMINARY INJUNCTION  
AND TEMPORARY RESTRAINING ORDER**

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## INTRODUCTION

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3 Petitioner, respectfully requests that this Honorable Court hear this matter on an expedited basis  
4 and grant his release to prevent further irreparable harm. Mr. Singh is a citizen of India who fled his  
5 country and sought refuge in the United States in 2023 to escape persecution. Upon arrival, he entered the  
6 United States without inspection and was detained by the Department of Homeland Security (“DHS”).

7 Following his initial detention, DHS released Mr. Singh under an Order of Release on Parole which  
8 required his enrollment in the Alternatives to Detention (“ATD”) program and mandated that he check in  
9 with Immigration and Customs Enforcement (“ICE”). On December 30, 2023, DHS issued a Notice to  
10 Appear (“NTA”), charging him as an “alien present in the United States without being admitted or  
11 paroled,” and alleging removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act  
12 (“INA”)—as an individual who entered the United States at a time or place other than as designated by  
13 the Attorney General.

14 Following his release from detention, Petitioner timely filed a Form I-589, Application for  
15 Asylum, with the immigration court. He subsequently obtained stable employment and fully complied  
16 with all conditions of his release on recognizance (ROR). Petitioner has no significant criminal history.  
17 Nevertheless, On October 29, 2025, Petitioner was unexpectedly taken back into ICE custody.  
18 Petitioner had appeared for his second scheduled criminal court hearing, spoke with the judge, and fully  
19 complied with all requirements of the court. As Petitioner exited the courthouse following the hearing,  
20 ICE officers—who had been waiting outside—immediately detained him. Petitioner did not flee,  
21 conceal his identity, or violate any condition of his release. His re-detention occurred solely because  
22 ICE positioned itself at the courthouse, not due to any misconduct or noncompliance on his part.

23 Despite his full compliance and lack of any risk to public safety or flight, ICE detained Mr. Singh.  
24 This abrupt detention—absent any change in circumstances or violation of release conditions—has caused  
25 Mr. Singh severe hardship and constitutes the irreparable harm this petition seeks to remedy.

26 Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) and is therefore statutorily  
27 eligible for a bond hearing before an Immigration Judge (“IJ”). However, on July 8, 2025, the Department  
28 of Homeland Security (“DHS”) issued Interim Guidance (the “Policy”) asserting that all noncitizens—  
such as Petitioner—who entered the United States without inspection, permission, or parole are  
categorically ineligible for release on bond.

1 This Policy radically departs from decades of well-established interpretation of DHS’s detention  
2 authority under 8 U.S.C. §§ 1226(a) and 1225(b). It effectively transforms discretionary detention into  
3 mandatory detention, unlawfully depriving noncitizens like Petitioner of the individualized custody  
4 determinations long recognized under the Immigration and Nationality Act (“INA”).

5 Subsequently, on September 5, 2025, the Board of Immigration Appeals (“BIA”) issued its  
6 decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS’s interpretation and  
7 holding that Immigration Judges lack jurisdiction to grant bond to noncitizens who entered the United  
8 States without admission or parole. This decision, in conjunction with DHS’s Policy, has effectively  
9 stripped Petitioners such as Mr. Singh of the statutory right to seek release on bond, subjecting them to  
10 indefinite and unnecessary detention contrary to law, due process, and longstanding agency practice.

11 Petitioner has satisfied all the criteria necessary for the issuance of injunctive relief.

12 First, Petitioner has demonstrated a strong likelihood of success on the merits. The Department of  
13 Homeland Security’s (“DHS”) Policy, which categorically denies Petitioner the opportunity for a bond  
14 hearing, violates both the Immigration and Nationality Act (“INA”) and Petitioner’s Fifth Amendment  
15 procedural and substantive due process rights. The INA expressly contemplates individualized custody  
16 determinations under 8 U.S.C. § 1226(a), and long-standing judicial precedent has affirmed that  
17 noncitizens are entitled to such hearings to assess flight risk and danger to the community.

18 Moreover, the overwhelming majority of federal district courts—including courts within this  
19 District—have rejected policies identical or substantially similar to DHS’s current approach, consistently  
20 holding that such blanket denials of bond eligibility are contrary to statute and constitutionally infirm.  
21 Accordingly, Petitioner is highly likely to prevail on the merits of his claim.

22 Second, Petitioner will suffer irreparable harm absent prompt judicial intervention. But for DHS’s  
23 unconstitutional actions depriving him of a bond hearing, Petitioner would already have had the  
24 opportunity to seek release from custody. Instead, he remains detained under conditions akin to criminal  
25 incarceration, despite having committed no crime and fully complying with all prior conditions of release.

26 Continued detention not only inflicts severe emotional, physical, and psychological hardship, but  
27 also impedes Petitioner’s ability to meaningfully prepare and present his asylum case, particularly given  
28 the constraints of detention facilities. Moreover, because Respondents retain unfettered discretion to  
transfer Petitioner at any time to facilities outside this District, he faces an ongoing risk of being moved  
far from counsel and the Court’s jurisdiction, further exacerbating the harm.

1  
2 Third, the balance of equities and the public interest strongly favor Petitioner. The harm to  
3 Petitioner if injunctive relief is denied is grave and irreparable. He would remain in confinement  
4 indefinitely, despite having never been found to pose any danger to the community or risk of flight. In  
5 contrast, the harm to Respondents from the requested relief is minimal to nonexistent. Respondents'  
6 position regarding the scope of their detention authority lacks merit, and they cannot, in good faith, claim  
7 that providing Petitioner with release or a constitutionally adequate bond hearing would cause any  
8 cognizable harm to the government or the public.

9 Both equity and public interest are best served by ensuring adherence to the rule of law and the  
10 constitutional protections guaranteed to all persons within the United States.

11 For these reasons, Petitioner respectfully requests that this Court:

- 12 • Grant Petitioner's immediate release from detention, or, in the alternative, order that Petitioner be  
13 provided a constitutionally adequate bond hearing before an Immigration Judge; and
- 14 • Enjoin Respondents from transferring Petitioner outside of this District pending the Court's final  
15 adjudication of this matter.

### 16 STANDARD OF REVIEW

17 The standards governing the issuance of a temporary restraining order ("TRO") and a preliminary  
18 injunction are substantially identical. *See Stuhlberg Int'l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832,  
19 839 n.7 (9th Cir. 2001). To obtain a preliminary injunction, a plaintiff must demonstrate that: (1) he is  
20 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary  
21 relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *See Winter*  
22 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

23 The Ninth Circuit has emphasized that "[I]ikelihood of success on the merits is a threshold inquiry  
24 and the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir.  
25 2025). Nonetheless, even where a plaintiff cannot make a strong showing on the merits, a preliminary  
26 injunction may still issue when "serious questions going to the merits" are raised—so long as the balance  
27 of hardships tips sharply in the plaintiff's favor and the remaining Winter factors are met. *Friends of the*  
28 *Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).

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**ARGUMENTS**

**I. THE GOVERNMENT’S INTERPRETATION OF 8 U.S.C. § 1225(b)(2) AND 8 U.S.C. § 1226(a) IS BASELESS**

The central issue in this case is whether Petitioner is properly detained under 8 U.S.C. § 1226(a) or § 1225(b)(2). For nearly three decades, both the Department of Homeland Security (“DHS”) and the Board of Immigration Appeals (“BIA”) consistently interpreted the governing statutes to hold that noncitizens like Petitioner—who entered the United States without inspection but were later placed in removal proceedings—are detained pursuant to § 1226(a) and therefore eligible for bond.

However, on July 8, 2025, DHS abruptly reversed this long-standing interpretation and announced that all noncitizens who have not been formally admitted to the United States are categorically ineligible for bond. The BIA adopted this new position in its decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), effectively extending mandatory detention to millions of individuals who were previously entitled to individualized custody determinations under § 1226(a).

This sweeping policy shift not only contradicts decades of agency and judicial precedent, but also violates the statutory and constitutional guarantees that safeguard liberty pending removal proceedings. For the reasons set forth below, this Court should again grant habeas relief and reaffirm that Petitioner is detained under § 1226(a) and entitled to a bond hearing.

***A. 8 U.S.C. § 1225(b)(2) Does Not Govern Petitioner’s Detention***

In examining the relevant provisions of sections 1225 and 1226, the Court should consider “whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.” *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). But crucially, a statute “cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Roberts v. Sea-Land Services, Inc.*, 566 U.S. 93, 101 (2012) (quoting *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989)). Here, the context is clear that “detention authority in § 1225 is exercised at or near the port of entry; and detention authority arises from § 1226 when a noncitizen is arrested in the interior of the United States.” *Zumba v. Bondi*, No. 25-cv-14626 (KSH), 2025 LX 482036, at \*19 (D.N.J. Sep. 26, 2025). Indeed, “[t]he line historically drawn between these two sections, making sense of their text and the overall statutory scheme, is that section 1225 governs detention of non-citizens ‘seeking admission into the country,’ whereas section 1226 governs detention of non-citizens ‘already in the country.’” *Martinez v.*

1 *Hyde*, Civil Action No. 25-11613-BEM, 2025 LX 284582, at \*18 (D. Mass. July 24, 2025). In other words,  
2 the text and context of section 1225(b)(2) indicates that it applies to noncitizens entering, or attempting to  
3 enter, or who have recently entered the U.S. It does not include noncitizens “who entered long ago, are  
4 not taking affirmative steps that could be characterized as ‘seeking admission,’ and have been residing in  
5 the U.S. for years.” *Vazquez v. Feeley*, No. 2:25-cv-01542-RFB-EJY, 2025 LX 460110, at \*39 (D. Nev.  
6 Sep. 17, 2025).

7 This is true for several reasons. First, “for section 1225(b)(2)(A) to apply, several conditions must  
8 be met—in particular, an ‘examining immigration officer’ must determine that the individual is: (1) an  
9 ‘applicant for admission’; (2) ‘seeking admission’; and (3) ‘not clearly and beyond a doubt entitled to be  
10 admitted.’” *Martinez*, 2025 LX 284582, at \*6. There was no examination by an immigration officer in this  
11 case. Petitioner entered the United States without inspection and was arrested based on an I-200 warrant,  
12 which specifically references section 1226. Petitioner was also released on ROR, which explicitly  
13 references section 1226. The issuance of the NTA is not an examination by an immigration officer, and  
14 the Government cannot present any legal authority demonstrating otherwise.

15 Furthermore, the phrase “seeking admission” is undefined but “necessarily implies some sort of  
16 present-tense action.” *Martinez*, 2025 LX 284582, at \*11. Here, there is no present action, and the NTA  
17 cannot conceivably be interpreted such. As another district court succinctly stated, “[t]o reiterate, §  
18 1225(b)(2)(A) narrows the above broader definition of ‘applicants for admission’ and applies in the  
19 context of (1) ‘inspection’ by an ‘examining immigration officer’ only to (2) ‘applicants for admission’  
20 as defined above, who are (3) ‘seeking admission,’ and (4) whom § 1225(b)(1) does not address.” *Vazquez*,  
21 2025 LX 460110, at \*36. “It is inconsistent with the plain, ordinary meaning of the phrase ‘seeking  
22 admission’ to apply this section to all noncitizens already present and residing in the U.S., regardless of  
23 whether they are taking any affirmative acts that constitute ‘seeking admission.’” *Id.*

24 As a court in this district recently held: “[t]he government’s argument that section 1225(b) applies  
25 to all noncitizens present in the United States without admission is implausible. The government’s  
26 proposed interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2)  
27 disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to  
28 section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and  
practice.” *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigrant Processing Ctr.*, No. 1:25-cv-  
01187-SKO (HC), 2025 LX 481997, at \*9 (E.D. Cal. Oct. 17, 2025). Other courts in this district have  
ruled similarly. See *Sanchez v. Minga Wofford, Warden, Mesa Verde Immigrant Processing Ctr.*, No.

1 1:25-cv-01187-SKO (HC), 2025 LX 481997, at \*23 (E.D. Cal. Oct. 17, 2025); *Polo v. Chestnut*, No. 1:25-  
2 CV-01342 JLT HBK, 2025 LX 451732, at \*18 (E.D. Cal. Oct. 17, 2025); *J.S.H.M v. Wofford*, No. 1:25-  
3 CV-01309 JLT SKO, 2025 LX 426816, at \*29 (E.D. Cal. Oct. 16, 2025); *Aceros v. Kaiser*, No. 25-cv-  
4 06924-EMC (EMC), 2025 LX 330524, at \*21 (N.D. Cal. Sep. 12, 2025).

5 Second, “the titles and headings of § 1225 repeatedly cabin its application to ‘Inspections,’ which,  
6 as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border.”  
7 *Zumba*, 2025 LX 482036, at \*23. While not binding, [titles and headings of a statute] are instructive and  
8 provide the Court with the necessary assurance that it is at least applying the right part of the statute in a  
9 given circumstance.” *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at \*15 (E.D. Mich.  
10 Aug. 29, 2025). Therefore, “1225(b)(2)(A) applies when people are being inspected, which usually occurs  
11 at the border, when they are seeking lawful entry into this country.” *Id.* at \*18.

12 **B. 8 U.S.C. § 1226(a) Clearly Applies to Petitioner**

13 As a matter of plain-text reading, it is § 1226(a) that applies to people situated like Petitioner, not  
14 § 1225(b)(2)(A). Section 1226(a) concerns all noncitizens who are not subject to section 1225 and 1231  
15 (which concerns those with final orders of removal). *See Benitez v. Francis*, 2025 LX 337407, \*3  
16 (S.D.N.Y. Aug. 8, 2025) (holding that § 1225 did not apply because the “plain text, overall structure, and  
17 uniform case law interpreting” the statutory provision compels the conclusion). “Indeed, for nearly 30  
18 years, § 1225 has applied to noncitizens who are either seeking entry to the United States or have a close  
19 nexus to the border, and § 1226 has applied to those aliens arrested within the interior of the United States.”  
20 *Zumba*, 2025 LX 482036, at \*26. Nothing in the Supreme Court’s decision in *Jennings* compels a different  
21 outcome. *Id.* (“Although the *Jennings* Court characterizes § 1225(b)(2) as the ‘catchall’ detention  
22 provision for noncitizens who are ‘seeking admission,’ it identifies § 1226(a) as the ‘default rule’ for the  
23 arrest, detention, and release of non-criminal aliens who are already present in the United States.”).

24 The recent enactment of Laken Riley Act further supports this finding. The Act added language to  
25 section 1226(c) that directly references people who have entered without inspection or who are present  
26 without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these  
27 amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground  
28 for entry without inspection) or INA 212 § (a)(7)(A) (the inadmissibility ground for lacking valid  
documentation to enter the United States) and who have been arrested, charged with, or convicted of new  
certain crimes (not previously covered by section 1226(c)) are now subject to § 1226(c)’s mandatory  
detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under section 1226(c),

1 Congress reaffirmed that section 1226(a) covers noncitizens who are not subject to section (c) but are  
2 charged as removable under § 212(a)(6)(A) or 212(a)(7). Otherwise, the Respondents' position would  
3 effectively render 1226(a) and the LRA superfluous.

4 **C. Respondents' Actions Violate Petitioner's Due Process Rights and the INA**

5  
6 Petitioner's continued detention violates due process. The Court must evaluate the three-part test  
7 set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), to determine whether the procedures (or  
8 lack thereof) that have been applied to Petitioner are sufficient to protect the liberty interest at issue.  
9 In *Mathews*, the Court determined the following: "[O]ur prior decisions indicate that identification of the  
10 specific dictates of due process generally requires consideration of three distinct factors: First, the private  
11 interest that will be affected by the official action; second, the risk of an erroneous deprivation of such  
12 interest through the procedures used, and the probable value, if any, of additional or substitute procedural  
13 safeguards; and finally, the Government's interest, including the function involved and the fiscal and  
14 administrative burdens that the additional or substitute procedural requirement would entail."

15 During his time on recognizance, "Petitioner built a life outside detention, has been gainfully  
16 employed, and has supported family members . . . ." *Polo*, 2025 LX 451732, at \*32. Petitioner therefore  
17 "has a substantial private interest in being out of custody, which would allow him to continue in these life  
18 activities." *Id.* Moreover, "Respondents' interest in continuing to detain Petitioner is slight" and there has  
19 "been no change in any of Petitioner's circumstances that would warrant a finding that [he] is a flight risk  
20 or a danger to the community. There is no dispute that Petitioner does not have a criminal record." *Id.*  
21 Indeed, "in releasing him on parole, DHS necessarily concluded that Petitioner was not a flight risk or  
22 danger to the community." *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 LX 426816, at \*40  
23 (E.D. Cal. Oct. 16, 2025); *see also Noori v. LaRose, et al.*, 2025 WL 2800149, at \*13 (S.D. Cal. Oct. 1,  
24 2025) (noting that "[r]elease reflects a determination by the government that the noncitizen is not a danger  
25 to the community or a flight risk."); *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 LX 410786,  
26 at \*17 (W.D. Tex. Oct. 16, 2025) ("But that interest, in this case, seems particularly diluted given  
27 Respondents' own decision to release Petitioner on his own recognizance once before."); *J.C.L.A. v.*  
28 *Wofford*, No. 1:25-cv-01310-KES-EPG (HC), 2025 LX 404689, at \*10 (E.D. Cal. Oct. 16, 2025) ("Even  
if the government were correct that § 1225(b), by its terms, could apply to petitioner, the government  
previously represented to petitioner, in the order of release on recognizance, that he had been 'released on

1 [his] own recognizance [under § 1226(a)] provided that he comply with' certain conditions. This was an  
2 'implicit promise' that his release would "be revoked only if he fail[ed] to live up to the [release]  
3 conditions,' as in *Morrissey*.”).

## 4 **II. PETITIONER SUFFERS IRREPARABLE HARM**

6 “It is well established that the deprivation of constitutional rights *unquestionably constitutes*  
7 *irreparable injury*.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*,  
8 427 U.S. 247, 272 (1976)). The Ninth Circuit has likewise recognized the “*irreparable harms imposed on*  
9 *anyone subject to immigration detention, including the economic burdens imposed on detainees and their*  
10 *families as a result of detention*.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *see also*  
11 *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (holding that the inability to pursue a petition  
12 for review may constitute irreparable harm).

13 Here, Petitioner plainly satisfies this standard. He is being unlawfully deprived of a bond hearing  
14 to which he is statutorily and constitutionally entitled. Each additional day of confinement exacerbates the  
15 irreparable injury to his liberty interests and imposes significant emotional and economic hardship on both  
16 Petitioner and his family. Absent this Court’s intervention, Petitioner will remain confined in prison-like  
17 conditions and be forced to litigate the merits of his asylum claim from detention, severely impairing his  
18 ability to prepare his case and to meaningfully exercise his legal rights.

## 19 **III. BALANCE OF HARMS AND PUBLIC INTEREST FAVOR PETITIONER**

20 The merged "balancing-the-equities" and "public interest" factors favor Petitioner. The potential  
21 harm to Petitioner if injunctive relief is not granted is serious. If Petitioner is not released or promptly  
22 provided a constitutionally adequate bond hearing, he will be forced to continue litigating his asylum  
23 claim in detention even though he is statutorily eligible for release on bond. “In comparison, the harm to  
24 Respondents is minimal.” *Lira v. Noem*, No. 1:25-cv-00855-WJ-KK, 2025 LX 383996, at \*11-12 (D.N.M.  
25 Sep. 5, 2025). Indeed, “there is a substantial public interest in having governmental agencies abide by the  
26 federal laws that govern their existence and operations.” *League of Women Voters of U.S. v. Newby*, 838  
27 F.3d 1, 12 (D.C. Cir. 2016). Practically speaking, injunctive relief would inflict little more on Respondents  
28 than ensure they adhere to the requirement of the Constitution.

1  
2 **IV. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION**


3  
4 A habeas court has "the power to order the conditional release of an individual unlawfully  
5 detained—though release need not be the exclusive remedy and is not the appropriate one in every case  
6 in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Several courts, including at  
7 least one in this district, have held that the appropriate remedy for the government's constitutional  
8 violations is release from detention. *See Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX  
9 452767, at \*23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not assert any other basis for  
10 petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate  
11 remedy is petitioner's immediate release."); *see also Zumba*, 2025 LX 482036 at \*32 (holding that "habeas  
12 does not provide meaningful relief with respect to some of the indignities petitioner has endured . . . . But  
13 due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to  
14 her unlawful detention. The Court finds that release from detention is the appropriate relief . . .").

15 Alternatively, if the Court is not inclined to release Petitioner, it should instead direct a bond  
16 hearing at which time the burden of proof lies with DHS given the gravity of the unconstitutional action  
17 and the fact that Petitioner was already once found not to be a danger to the community or a risk of flight  
18 when it released him pursuant to ROR. *See Pinchi v. Noem*, No. 5:25-cv-05632-PCP, 2025 LX 227518,  
19 at \*21 (N.D. Cal. July 24, 2025) (directing that petitioner "may not be detained unless the government  
20 demonstrates at such a bond hearing, by clear and convincing evidence, that she is a flight risk or a danger  
21 to the community and that no conditions other than her detention would be sufficient to prevent such  
22 harms."); *J.S.H.M.*, 2025 LX 426816, at \*49 (E.D. Cal. Oct. 16, 2025) (holding that "[d]oing so is logical  
23 even for a post-detention custody hearing for the reasons articulated in *Pinchi*—namely that the immigrant's  
24 initial release reflected a determination by the government that the noncitizen is not a danger to the  
25 community or a flight risk."). In addition, the Court should also enjoin Respondents from transferring  
26 Petitioner out of the district. *See Santiago v. Noem*, No. EP-25-CV-361-KC, 2025 LX 349750, at \*5 (W.D.  
27 Tex. Sep. 9, 2025) ("[t]he Court finds persuasive the decisions enjoining removal and transfer of  
28 petitioners under the Court's inherent power to preserve its ability to hear the case" and that enjoining  
transfers was necessary "[t]o ensure the ability to meaningfully assess [Petitioner's] Petition.").

**CONCLUSION**

1  
2 For the foregoing reasons, the Court should grant habeas relief and order Petitioner released from  
3 detention.

4 Respectfully submitted on 24<sup>th</sup> day of December, 2025

5   
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