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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TAJINDER SINGN Petitioner, v. JEREMY CASEY, Warden of the Imperial Regional Detention Center; TODD LYONS, 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. **MOTION FOR TEMPORARY RESTRAINING ORDER**

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

I. INTRODUCTION

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

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

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

In stark contrast to this sustained compliance, ICE unexpectedly detained Petitioner at his regularly scheduled check-in appointment. ICE re-detained Petitioner without notice, without any changed circumstances, and without any lawful justification, and thereafter failed to provide any valid reason for his detention.

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

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

II. LEGAL STANDARD

The standards governing a TRO and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Bush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

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

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

III. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits

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

Petitioner entered the United States in 2022, was released on bond pursuant to Form I-831 and parole, complied with all conditions, and has remained in the interior of the United States for years. He is in pre–final order removal proceedings.

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

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

B. Petitioner Is Suffering Irreparable Harm

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

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

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

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

C. The Balance of Equities and Public Interest Favor Relief

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

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

The public interest is served by ensuring that federal agencies comply with the Constitution and the INA. Because the injunction sought would merely halt unconstitutional government action and restore the status quo ante, Rule 65(c) permits waiver of any bond requirement, as Respondents face no cognizable monetary harm from compliance with the Constitution and the INA.

IV. REQUESTED RELIEF

Petitioner respectfully requests that the Court:

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

V. CONCLUSION

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

Respectfully,

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Dated this 5th day of January, 2026.

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TAJINDER 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.

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

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INTRODUCTION

Petitioner, respectfully requests that this Honorable Court hear this matter on an expedited basis and grant his release to prevent further irreparable harm. Mr. Singh is a citizen of India who fled his country and sought refuge in the United States in 2022 to escape persecution. Upon arrival, he entered the United States without inspection and was detained by the Department of Homeland Security ("DHS").

Following his initial detention, DHS released Mr. Singh on Parole. On December 20, 2022, DHS issued a Notice to Appear ("NTA"), charging him as an "alien present in the United States without being admitted or paroled," and alleging removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA")—as an individual who entered the United States at a time or place other than as designated by the Attorney General.

Following his release from detention, Petitioner timely filed a Form I-589, Application for Asylum, with the immigration court. He subsequently obtained stable employment and fully complied with all conditions of his release on Parole. Petitioner has no criminal history. Nevertheless, On December 11, 2025, Petitioner was unexpectedly taken into ICE custody when he stopped at an inspection point at a border patrol checkpoint during the normal course of his employment. Petitioner did not flee, conceal his identity, or violate any condition of his release since 2022

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

Petitioner is subject to discretionary detention under 8 U.S.C. § 1226(a) and is therefore statutorily eligible for a bond hearing before an Immigration Judge ("IJ"). However, on July 8, 2025, the Department 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.

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

Subsequently, on September 5, 2025, the Board of Immigration Appeals ("BIA") issued its decision in Matter of Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), adopting DHS's interpretation and

holding that Immigration Judges lack jurisdiction to grant bond to noncitizens who entered the United States without admission or parole. This decision, in conjunction with DHS's Policy, has effectively stripped Petitioners such as Mr. Singh of the statutory right to seek release on bond, subjecting them to indefinite and unnecessary detention contrary to law, due process, and longstanding agency practice.

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

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

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

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

Continued detention not only inflicts severe emotional, physical, and psychological hardship, but also impedes Petitioner's ability to meaningfully prepare and present his asylum case, particularly given 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.

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

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

For these reasons, Petitioner respectfully requests that this Court:

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

STANDARD OF REVIEW

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

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

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

This is true for several reasons. First, "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an 'examining immigration officer' must determine that the individual is: (1) an 'applicant for admission'; (2) 'seeking admission'; and (3) 'not clearly and beyond a doubt entitled to be

admitted.'" *Martinez*, 2025 LX 284582, at *6. There was no examination by an immigration officer in this case. Petitioner entered the United States without inspection and was arrested based on an I-200 warrant, which specifically references section 1226. Petitioner was also released on ROR, which explicitly references section 1226. The issuance of the NTA is not an examination by an immigration officer, and the Government cannot present any legal authority demonstrating otherwise.

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

As a court in this district recently held: "[t]he government's argument that section 1225(b) applies to all noncitizens present in the United States without admission is implausible. The government's proposed interpretation of the statute (1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to 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. 1:25-cv-01187-SKO (HC), 2025 LX 481997, at *23 (E.D. Cal. Oct. 17, 2025); *Polo v. Chestnut,* No. 1:25-CV-01342 JLT HBK, 2025 LX 451732, at *18 (E.D. Cal. Oct. 17, 2025); *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 LX 426816, at *29 (E.D. Cal. Oct. 16, 2025); *Aceros v. Kaiser*, No. 25-cv-06924-EMC (EMC), 2025 LX 330524, at *21 (N.D. Cal. Sep. 12, 2025).

Second, "the titles and headings of § 1225 repeatedly cabin its application to 'Inspections,' which, as petitioner convincingly argues, occur at ports of entry, their functional equivalent, or near the border." *Zumba*, 2025 LX 482036, at *23. While not binding, [titles and headings of a statute] are instructive and provide the Court with the necessary assurance that it is at least applying the right part of the statute in a given circumstance." *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486, 2025 LX 315102, at *15 (E.D. Mich.

Aug. 29, 2025). Therefore, "1225(b)(2)(A) applies when people are being inspected, which usually occurs at the border, when they are seeking lawful entry into this country." *Id.* at *18.

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

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

The recent enactment of Laken Riley Act further supports this finding. The Act added language to section 1226(c) that directly references people who have entered without inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Pursuant to these amendments, noncitizens charged as inadmissible under INA § 212(a)(6)(A) (the inadmissibility ground 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), Congress reaffirmed that section 1226(a) covers noncitizens who are not subject to section (c) but are charged as removable under § 212(a)(6)(A) or 212(a)(7). Otherwise, the Respondents' position would effectively render 1226(a) and the LRA superfluous.

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

Petitioner's continued detention violates due process. The Court must evaluate the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), to determine whether the procedures (or lack thereof) that have been applied to Petitioner are sufficient to protect the liberty interest at issue.

In *Mathews*, the Court determined the following: "[O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."

During his time on recognizance, "Petitioner built a life outside detention, has been gainfully employed, and has supported family members . . . ." *Polo*, 2025 LX 451732, at *32. Petitioner therefore "has a substantial private interest in being out of custody, which would allow him to continue in these life activities." *Id.* Moreover, "Respondents' interest in continuing to detain Petitioner is slight" and there has "been no change in any of Petitioner's circumstances that would warrant a finding that [he] is a flight risk or a danger to the community. There is no dispute that Petitioner does not have a criminal record." *Id.* Indeed, "in releasing him on parole, DHS necessarily concluded that Petitioner was not a flight risk or danger to the community." *J.S.H.M v. Wofford*, No. 1:25-CV-01309 JLT SKO, 2025 LX 426816, at *40 (E.D. Cal. Oct. 16, 2025); *see also Noori v. LaRose, et al.*, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1, 2025) (noting that '[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk."); *Vieira v. Anda-Ybarra*, No. EP-25-CV-00432-DB, 2025 LX 410786, at *17 (W.D. Tex. Oct. 16, 2025) ("But that interest, in this case, seems particularly diluted given Respondents' own decision to release Petitioner on his own recognizance once before."); *J.C.L.A. v. 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 [his] own recognizance [under § 1226(a)] provided that he comply with' certain conditions. This was an 'implicit promise' that his release would "be revoked only if he fail[ed] to live up to the [release] conditions,' as in *Morrissey*.").

II. PETITIONER SUFFERS IRREPARABLE HARM

"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) (quoting Elrod v. Burns, 427 U.S. 247, 272 (1976)). The Ninth Circuit has likewise recognized the "*irreparable harms imposed on*

anyone subject to immigration detention, including the *economic burdens imposed on detainees and their families as a result of detention.*" Hernandez v. Sessions, 872 F.3d 976, 995 (9th Cir. 2017); *see also* Leiva-Perez v. Holder, 640 F.3d 962, 969–70 (9th Cir. 2011) (holding that the inability to pursue a petition for review may constitute irreparable harm).

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

III. BALANCE OF HARMS AND PUBLIC INTEREST FAVOR PETITIONER

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

IV. THE PROPER REMEDY IS RELEASE OF PETITIONER FROM DETENTION

A habeas court has "the power to order the conditional release of an individual unlawfully detained—though release need not be the exclusive remedy and is not the appropriate one in every case in which the writ is granted." *Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Several courts, including at least one in this district, have held that the appropriate remedy for the government's constitutional violations is release from detention. *See Lepe v. Andrews*, No. 1:25-cv-01163-KES-SKO (HC), 2025 LX 452767, at *23 (E.D. Cal. Sep. 23, 2025) ("[g]iven that the government does not assert any other basis for

petitioner's detention and does not argue that petitioner presents a flight risk or danger, the appropriate remedy is petitioner's immediate release."); *see also Zumba*, 2025 LX 482036 at *32 (holding that "habeas does not provide meaningful relief with respect to some of the indignities petitioner has endured . . . . But due to its flexible nature, the Court may fashion a remedy that returns petitioner to her position prior to her unlawful detention. The Court finds that release from detention is the appropriate relief . . . .").

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

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

Respectfully submitted on 5th day of January, 2026.

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