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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

YUNUS ALPTEKIN,

Petitioner,

vs.

JEREMY CASEY, Warden, Imperial Regional
Detention Facility,

DANIEL A. BRIGHTMAN, San Diego Field
Office Director, Immigration and Customs
Enforcement and Removal Operations
("ICE/ERO"),

TOD M. LYONS, Acting Director of
Immigration and Customs Enforcement
("ICE"),

KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security; and,

PAM BONDI, Attorney General of the United
States,

In their official capacities

Respondents.

Case No.: 3:26-cv-00714-DMS-SBC

**PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING ORDER**

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INTRODUCTION

Petitioner Yunus Alptekin (“Mr. Alptekin” or “Petitioner”) respectfully moves this Court for a temporary restraining order (“TRO”) pending its adjudication of his Petition for Writ of Habeas Corpus.

The federal government has enacted a sweeping campaign of arrest and confinement against noncitizens appearing for their immigration court removal hearings, scheduled check-in appointments at the office of Immigration and Customs Enforcement (“ICE”), and while going about their lives in communities across the country. These arrests are pursuant to a new policy targeting people like Mr. Alptekin, the majority of whom were assessed by the government to be neither a risk to public safety nor a flight risk.

On February 26, 2022, Mr. Alptekin presented himself at the El Paso, Texas Port of Entry where he requested asylum. He was detained by immigration officials, spent four days in El Paso followed by his transfer to Dallas, Texas where he spent eighteen days in Department of Homeland Security (“DHS”) custody before he was released on his own recognizance. Mr. Alptekin fully complied with DHS’s terms of his release, and he presented himself for all of his immigration court hearings.

On January 15, 2026, Mr. Alptekin was parked in his vehicle in Fontana, California talking on his cell phone to his family in Turkey when he was surrounded by border patrol agents who blocked his vehicle. The agents motioned for him to exit his vehicle and requested his identification. Mr. Alptekin complied with the agents who then took his picture, handcuffed him, placed him in an unmarked vehicle and transported him to the Imperial Regional Adult Detention Facility in Calexico, California where he is currently being detained. Mr. Alptekin was not

1 provided with any showing of changed circumstances warranting his detention and was not given
2 any notice or an opportunity to be heard at the time of his detainment. His immigration court
3 proceedings were and continue to be pending before the Imperial Immigration Court in Imperial,
4 California with his next master calendar hearing schedule for February 3, 2026, at 9:00 am.

5 Mr. Alptekin requests the Court to order his immediate release, enjoin and restrain the DHS
6 from transferring him outside the Southern District of California, and not re-detain him unless
7 there is a change in circumstances warranting detention and the government provides notice in
8 advance and holds a bond hearing by a neutral arbiter pursuant to section 1226(a) and applicable
9 regulations, at which Mr. Alptekin's eligibility for bond must be considered, and where the
10 government must demonstrate by clear and convincing evidence that he is a flight risk or danger
11 to the community, such that physical custody is legally justified.
12
13

14 JURISDICTION & VENUE

15 This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331
16 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); United States Constitution Article
17 I, Section 9 (Suspension Clause).
18

19 The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2241,
20 Article I, §9, cl. 2 (the Suspension Clause) and Article III of the U.S. Constitution, the
21 Administrative Procedure Act, 5 U.S.C. §701 et seq.; and 28 U.S.C. § 2201 (Declaratory
22 Judgment).
23

24 An actual and justiciable controversy exists between the parties under 28 U.S.C. § 2201, and
25 this Court has authority to grant declaratory and injunctive relief. Id. § 2201, 2202. The Court
26 has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651.
27

1 The claims and relief are individualized; §1252(f)(1) does not bar such relief. *Garland v.*
2 *Aleman Gonzalez*, 596 U.S. 543 (2022).

3 Venue is properly with this Court pursuant to 28 U.S.C. § 1391(e)(1) because a substantial
4 part of the events or omissions giving rise to the claim occurred within the Eastern District of
5 California; Petitioner is detained in this District; and his immediate custodian resides here. He is
6 detained in McFarland, Kern County, which falls within the Fresno Division of the Eastern
7 District of California.
8

9 **PARTIES**

10 Petitioner YUNUS ALPTEKIN is a noncitizen who has resided in the United States for
11 almost four years. He is currently detained by ICE at the Imperial Regional Adult Detention
12 Facility located at 1572 Gateway Road, Calexico CA 92231 and within the jurisdiction of this
13 Court.
14

15 Respondent JEREMY CASEY is the acting Warden of the Imperial Regional Adult
16 Detention Facility located in Calexico, California. Jeremy Casey is the proper respondent
17 because he is the warden of the facility at which Mr. Alptekin is detained.
18

19 Respondent DANIEL A. BRIGHTMAN is the Field Office Director of U.S. Immigration and
20 Customs Enforcement's Enforcement and Removal Operations (ERO), San Diego Field Office,
21 which exercises supervisory authority over Petitioner's detention and removal proceedings.
22

23 Respondent TOD M. LYONS is acting director of Immigration and Customs Enforcement.

24 Respondent KRISTI NOEM is the Secretary of the U.S. Department of Homeland Security,
25 responsible for the administration and enforcement of federal immigration laws.

26 Respondent PAM BONDI is the Attorney General of the United States and has ultimate
27 supervisory authority over the Department of Justice and the immigration courts.

STATEMENT OF FACTS

I. Mr. Alptekin’s initial detention by DHS and subsequent release on his own recognizance

Mr. Yunus Alptekin is citizen and national of Turkey who arrived at the US on or about February 26, 2022, where he presented himself for inspection at the El Paso, Texas border crossing to request asylum. He was detained by immigration officials, spent four days in El Paso followed by his transfer to Dallas, Texas where he spent eighteen days in DHS custody.

On or about March 20, 2022, Immigration and Customs Enforcement (“ICE”) released Mr. Alptekin on his own recognizance.¹ He was issued a Notice to Appear (“NTA”) dated April 13, 2022, ordering him to appear on September 21, 2023, at the Newark Immigration court at 970 Broad Street, Room 1200, Newark, New Jersey 07102 before an Immigration Judge (“IJ”) for his removal proceedings. The portion of the NTA that describes the nature of the proceedings has the box checked that states, “you are an alien present in the United States who has not been admitted or paroled” and subject to removal pursuant to Immigration and Nationality Act (“INA”) § 212(a)(6)(A)(i). See Notice to Appear at Exhibit (“Exh”) A.

After he was released by ICE, Mr. Alptekin secured an attorney to represent him in his removal proceedings with the Newark Immigration Court where he filed Form I-589 application

¹ Petitioner’s immigration file available to undersigned counsel does not contain Form I-220A, used by ICE to document the release of a detainee on their own recognizance, or Form I-286 Notice of Custody Determination used to document when a detainee is either detained under the custody of DHS, released under a bond, or released on their own recognizance. In lieu of said forms, the exhibits attached to this motion demonstrate that Petitioner was released by DHS including the Notice to Appear, immigration court hearing notices, order changing venue, and change of address Form EOIR 33.

1 for asylum and withholding of removal. *See* Form I-589 Filing (partial) Exh B. Mr. Alptekin
2 secured an employment authorization document and established a life in the United States. *See*
3 Letters from Friends Exh C. At all times Mr. Alptekin complied with the terms of his release,
4 and he has no criminal history in his home country or the US.

5 Mr. Alptekin attended his first master calendar removal hearings at the Newark Immigration
6 Court before moving to Los Angeles, California and filing a request for a change of venue in his
7 case to the Los Angeles Immigration Court. *See* Order, Change of Venue and Change of Address
8 Form EOIR 33 Exh D. Mr. Alptekin promptly attended his four master calendar hearings at the
9 Newark Immigration Court and his two removal hearings at the Los Angeles Immigration Court.
10 *See* Immigration Court Hearing Notices at Exh. E.

11 **II. Mr. Alptekin's re-detention**

12
13
14 On January 15, 2026, Mr. Alptekin parked his truck at a Flying J Travel Center in Fontana,
15 California around 6:50 a.m. While he was sitting in his truck talking on his cell phone to his
16 family in Turkey, border patrol agents appeared and blocked his vehicle. The agents motioned
17 for him to exit his vehicle and requested his identification. Mr. Alptekin complied with the
18 agents who surrounded him, took his picture, handcuffed him, placed him in an unmarked
19 vehicle and transported him to the Imperial Regional Adult Detention Facility in Calexico,
20 California where he is currently being detained. Mr. Alptekin was not provided with any
21 showing of changed circumstances warranting his detention and was not given any notice or an
22 opportunity to be heard at the time of his detainment. His immigration court proceedings were
23 and continue to be pending before the Imperial Immigration Court in Imperial, California with
24 his next master calendar hearing schedule for February 19, 2026, at 8:30 am. *See* Immigration
25 Court Hearing Notice at Exh. F.

1 Mr. Alptekin was re-detained by DHS, not because there was a material change in his
2 circumstances, but in furtherance of its new policy arrogating to itself the unilateral authority to
3 detain individuals without respect to whether anything has happened that has converted the
4 individual into a flight risk or danger to the community and without involving a neutral
5 arbitrator.

6
7 DHS's release of Mr. Alptekin's on his own recognizance on or about March 20, 2022, and
8 the agency's issuance of the NTA ordering Mr. Alptekin to appear for non-detained removal
9 proceedings demonstrates that the government does not believe that he is a danger to the
10 community or a flight risk.

11
12 It is well established that the Fifth Amendment provides that citizens and noncitizens like
13 Mr. Alptekin have a profound interest in freedom from physical confinement. Under binding
14 Ninth Circuit precedent, the Due Process Clause requires that Respondents must bear the burden
15 of proof to justify Mr. Alptekin's continued detention without bond by clear and convincing
16 evidence of flight risk or danger to the community.

17 **ARGUMENT**

18
19 The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the
20 Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins
21 governmental action, the party must demonstrate that (1) "he is likely to succeed on the merits,
22 (2) that he is likely to suffer irreparable harm in the absence of the preliminary relief, (3) that the
23 balance of equities tip in his favor, and (4) that an injunction is in the public interest." *Winter v.*
24 *Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D.*
25 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO
26 standards are "substantially identical").
27

28 CASE NO.: 3:26-CV-00714-DMS-SBC PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER

1 Under the Ninth Circuit’s “‘serious questions’ test—a ‘sliding scale’ variant of the *Winter*
2 test— . . . a party is entitled to a preliminary injunction if it demonstrates (1) ‘serious questions
3 going to the merits,’ (2) ‘a likelihood of irreparable injury,’ (3) ‘a balance of hardships that tips
4 sharply towards the plaintiff,’ and (4) ‘the injunction is in the public interest.’” *Flathead-Lolo-*
5 *Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) (quoting *All. for*
6 *the Wild Rockies*, 865 F.3d at 1217). Under the “serious questions” test, “if a plaintiff can only
7 show that there are serious questions going to the merits—a lesser showing than likelihood of
8 success on the merits—then a preliminary injunction may still issue if the balance of hardships
9 tips *sharply* in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *All. for the*
10 *Wild Rockies v. Peña*, 865 F.3d 1211,1217 (9th Cir. 2017).

11
12
13 A plaintiff need demonstrate likely success or serious questions on only one of their claims to
14 receive a TRO. *See Ozkay v. Equity Wave Lending, Inc.*, No. 20-cv-08263-JST, 2020 WL
15 12764953, at *2 (N.D. Cal. Nov. 25, 2020).

16 **I. Mr. Alptekin is likely to succeed on the merits of his procedural due process claim**

17 Mr. Alptekin maintains that his re-detention and continued and indeterminate detention
18 violates due process and that he is a noncitizen not “seeking admission” and therefore not subject
19 to mandatory detention under 8 U.S.C. § 1225(b)(2). Because his detention status is subject to 8
20 U.S.C. §1226 he therefore has a liberty interest, and he is entitled to due process.

21
22 Mr. Alptekin also maintains that he has a substantial liberty interest because he was re-
23 detained by ICE without a required change in his circumstances warranting his re-detention. In
24 fact, DHS released Mr. Alptekin on his own recognizance after he was detained by immigration
25 officials upon his arrival to the US. The government’s action unequivocally proves that it does
26 not view Mr. Alptekin as a threat to public safety or a flight risk.

1 **A. Due Process**

2 The Due Process Clause protects persons in the United States from being “deprived of
3 life, liberty, or property, without due process of law.” U.S. Const. amend. V. “[T]he Due Process
4 Clause applies to all ‘persons’ within the United States, including aliens, whether their presence
5 here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693
6 (2001). “Freedom from imprisonment—from government custody, detention, or other forms of
7 physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”
8 *Zadvydas*, 533 U.S. at 690. “[E]ven when an initial decision to detain or release an individual is
9 discretionary, the government’s subsequent release of the individual from custody creates ‘an
10 implicit promise’ that the individual’s liberty will be revoked only if they fail to abide by the
11 conditions of their release.” *Calderon v. Kaiser*, No. 25-cv-6695 AMO, 2025 WL 2430609, at *2
12 (N.D. Cal. Aug. 22, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). “[T]he fact
13 that a decision-making process involves discretion does not prevent an individual from having a
14 protectable liberty interest.” *Alptekin v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019).
15
16

17 After his initial and only entry in the U.S. on or about February 26, 2022, Mr. Alptekin was
18 detained by immigration authorities. DHS then released Mr. Alptekin on his own recognizance.
19 At all times following his release, Mr. Alptekin remained in compliance with all scheduled
20 check-ins with ICE and he never missed an appointment. He also promptly attended all his
21 hearings with the Newark Immigration Court and the Los Angeles Immigration Court following
22 his motion to change venue of his removal proceedings. DHS’s decision to release Mr. Alptekin
23 on his own recognizance after his arrival in this county demonstrates that the agency does not
24 view him as a threat to public safety or a flight risk. Accordingly, this Court should find that Mr.
25 Alptekin has established a liberty interest in his continued release.
26
27

1 **B. The Mathews factors**

2 Mr. Alptekin argues that he is likely to succeed on his procedural due process claim based on
3 the factors set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under that case, the Court must
4 consider:

5 three distinct factors: First, the private interest that will be affected by the
6 official action; second, the risk of an erroneous deprivation of such interest
7 through the procedures used, and the probable value, if any, of additional or
8 substitute procedural safeguards; and finally, the Government’s interest,
9 including the function involved and the fiscal and administrative burdens that
the additional or substitute procedural requirement would entail.

10 Mr. Alptekin’s right to be free from government imprisonment is being affected by his
11 continued detention. In *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), the Supreme Court stated
12 “[f]reedom from imprisonment—from government custody, detention, or other forms of physical
13 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” Furthermore,
14 “[e]ven when the government has discretion to detain an individual, its subsequent decision to
15 release the individual creates ‘an implicit promise’ that she will be re-detained only if she
16 violates the conditions of her release.” *Pablo Sequen v. Albarran*, ___ F.Supp.3d ___, 2025 WL
17 2935630, at *5 (Oct. 15, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). District
18 courts in the Ninth Circuit “consistently hold that if DHS has released a noncitizen pending civil
19 removal proceedings, the noncitizen has a protected liberty interest in remaining out of
20 immigration custody.” *Id.* Mr. Alptekin was released on his own recognizance after his arrival in
21 the US allowing him to attend his removal proceedings while living freely in the US, signaling
22 that he is not viewed by the government as a danger or flight risk. Mr. Alptekin complied with
23 obligations after his release, and he did not commit any new crimes. These facts support Mr.
24 Alptekin’s position that he has a strong private interest in remaining free.

1 Next, the risk of erroneous deprivation also weighs in Mr. Alptekin’s favor. There is a high
2 risk of erroneous deprivation of his liberty interest when he was re-detained without a custody
3 redetermination hearing. Mr. Alptekin has not been provided process and erroneous deprivation
4 is high since the government has already demonstrated, by previously releasing him on his own
5 recognizance, that he is not a danger to society or a flight risk. Requiring the Government to
6 conduct a hearing before subjecting noncitizens to re-detention would guard significantly against
7 that risk. Several district courts in California agree with him. See *A.E. v. Andrews*, No. 25-cv-
8 0107 KES SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025) (“The risk of an erroneous
9 deprivation [a petitioner’s] interest is high where [h]e has not received any bond or custody
10 redetermination hearing[.]” (alterations in original) (citation and internal quotation marks
11 omitted)); *R.D.T.M. v. Wofford*, No. 1:25-cv-01141 KES SKO, 2025 WL 2617255, at *6 (E.D.
12 Cal. Sept 9, 2025) (“Civil immigration detention, which is ‘nonpunitive in purpose and effect[.]’
13 is justified when a noncitizen presents a risk of flight or danger to the community.” This factor
14 also weighs in favor of Mr. Alptekin.
15

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18 On the third factor, Mr. Alptekin asserts there is no countervailing government interest in
19 justifying his re-detention where he presents no flight risk or danger to the community. “The
20 government may have ‘a strong interest’ in detaining noncitizens during the pendency of
21 removal proceedings as needed to ‘protect[] the public from dangerous criminal aliens,’ or to
22 prevent flight and thereby ‘increase the chance that ... the aliens will be successfully removed.’”
23 *Pablo Sequen v. Kaiser*, ___ F.Supp.3d ___, 2025 WL 2650637, at *8 (N.D. Cal. Sept. 16, 2025)
24 (quoting *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1208 (9th Cir. 2022). However, when the
25 Government has previously decided to release a noncitizen and there is no evidence in the record
26 of any changed circumstance that might have caused the Government to reconsider its initial
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1 decision to release the noncitizen, courts have found the Government’s interest in re-detention is
2 low. *Doe v. Chestnut*, No. 1:25-cv-01372- CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal.
3 Nov. 26, 2025). This factor also weighs in favor of Mr. Alptekin. Mr. Alptekin was detained by
4 DHS and then released on his own recognizance. Mr. Alptekin remained in compliance with any
5 scheduled check-ins with ICE and he never missed an appointment. DHS’s decision to release
6 Mr. Alptekin on his own recognizance demonstrates that the government does not view him as a
7 threat to public safety or a flight risk.
8

9 **C. Mr. Alptekin’s detention violates the Immigration and Nationality Act (“INA”**
10 **because his detention is subject to § 1226 not § 1225(b)(2)**

11 Mr. Alptekin’s detention violates the INA because he is subject to 8 U.S.C. § 1226, not § 8
12 U.S.C. 1225(b)(2) since he is not an applicant “seeking admission.

13 Section 1225(b)(2)(A) mandates detention “in the case of an alien who is an applicant for
14 admission, if the examining immigration officer determines that an alien seeking admission is
15 not clearly and beyond a doubt entitled to be admitted.” An “applicant for admission” is defined
16 as a noncitizen “present in the United States who has not been admitted or who arrives in the
17 United States (whether or not at a designated port of arrival and including an alien who is
18 brought to the United States after having been interdicted in international or United States
19 waters).” 8 U.S.C. § 1225(a)(1).
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22 Section 1226, on the other hand, “provides the general process for arresting and detaining
23 aliens who are present in the United States and eligible for removal” and, under subsection (a),
24 the government has broad discretion to detain or release. *Rodriguez Diaz v. Garland*, 53 F.4th
25 1189, 1196 (9th Cir. 2022) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018)). It also
26 provides that “a detainee may request a bond hearing before an IJ at any time before a removal
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1 order becomes final” and “an individual detained pursuant to § 1226(a) may request an
2 additional bond hearing whenever he experiences a material change in circumstances.” *Id.* at
3 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). “Until this year, the DHS has applied § 1226(a)
4 and its discretionary release and review of detention to the vast majority of noncitizens allegedly
5 in this country without valid documentation.” *Salcedo Aceros v. Kaiser*, No. 25-cv-06924 EMC,
6 2025 WL 2637503, at *3 (N.D. Cal. Sep. 12, 2025).

8 In this case, because Mr. Alptekin was already present in the country, and has been for
9 almost four years, § 1226(a) applies to him, entitling him to the procedures for re-detention it
10 requires. Respondents’ position is that Mr. Alptekin is properly detained under § 1225(b)(2)
11 under DHS’s recent statutory interpretation that this provision applies broadly to all noncitizens,
12 including Mr. Alptekin, who are present in the United States and have not been admitted.

14 The legal arguments relied upon by the government classifying people like Mr. Alptekin as
15 detained under § 1225 (b)(2) have been rejected by most of the district courts across the country
16 to have considered them. *Barco Mercado v. Francis*, No. 25-cv-6582 LAK, ___ F. Supp. 3d ___,
17 2025 WL 3295903, at *4 & App’x A (S.D.N.Y. Nov. 26, 2025) (collecting cases); *Contreras-*
18 *Cervantes v. Raycraft*, No. 2:25- cv-13073, 2025 WL 2952796, at *8 & n.4 (E.D. Mich. Oct. 17,
19 2025) (“There can be no genuine dispute that Section 1226(a), and not Section 1225(b)(2)(A),
20 applies to a noncitizen who has resided in this country, irrespective of the length of time, having
21 been apprehended and arrested within the border of the United States. The reading of the statutes
22 supports this finding, as does every other Court that has had to address the distinction between
23 Section 1225(b)(2)(A) and Section 1226(a).”). “These courts examined the text, structure,
24 agency application, and legislative history of 1225(b)(2) and concluded that it applies only to
25 noncitizens ‘seeking admission,’ a category that does not include noncitizens like [petitioner],
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1 living in the interior of the country.” *Salcedo Aceros*, 2025 WL 2637503, at *8 No. 25-cv-06924
2 EMC, 2025 WL 2637503, at *3 (N.D. Cal. Sep. 12, 2025); see also *Lepe v. Andrews*, No. 1:25-
3 cv-1163 KES SKO, ___ F. Supp. 3d ___, 2025 WL 2716910, at *4 (E.D. Cal. Sept. 23, 2025)
4 (“The government’s proposed interpretation of the statute (1) disregards the plain meaning of
5 section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would
6 render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades
7 of prior statutory interpretation and practice.”) (collecting cases).

9 Like the courts cited above, this Court should find that § 1226(a), rather than §
10 1225(b)(2)(A), applies to a non-citizen such as Mr. Alptekin who is already living in the United
11 States. For this reason, Mr. Alptekin is likely to succeed on the merits of his claim that
12 Respondents have violated the INA by improperly subjecting him to mandatory detention under
13 §1225(b)(2)(A).
14

15 **II. Deprivation of Mr. Alptekin’s constitutional rights unquestionably constitutes**
16 **irreparable injury**

17 The deprivation of Mr. Alptekin’s constitutional rights unquestionably constitutes irreparable
18 injury.” *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (quoting *Melendres v. Arpaio*,
19 695 F.3d 990, 1002 (9th Cir. 2012). Mr. Alptekin’s detention alone is an irreparable injury. *Id.*

20 Mr. Alptekin has been detained since January 15, 2026, and his unlawful detention
21 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*, 492 F. Supp.
22 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated in part on other grounds*,
23 *remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022); *cf. Rodriguez v.*
24 *Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (irreparable harm is met where “preliminary
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1 injunction is necessary to ensure that individuals . . . are not needlessly detained” because they
2 are neither a danger nor a flight risk).

3 This is particularly true here, where Mr. Alptekin’s detention also violates the Constitution.
4 Civil immigration detention violates due process outside of ‘certain special and narrow
5 nonpunitive circumstances.’” *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018). As detailed
6 above, Mr. Alptekin’s detention is outside of those “special and narrow nonpunitive
7 circumstances,” as the Due Process Clause forbids his detention without a pre-deprivation
8 hearing. These constitutional concerns also counsel in favor of finding that Mr. Alptekin has
9 demonstrated irreparable harm, for he has shown that his detention violates due process. *See*
10 *Baird v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a
11 constitutional claim, a likelihood of success on the merits usually establishes irreparable harm”).
12
13

14 “[U]nlawful detention certainly constitutes ‘extreme or very serious’ damage, and that
15 damage is not compensable in damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir.
16 2017). Moreover, “[i]t is well established that the deprivation of constitutional rights
17 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
18 Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1979)). “When an alleged deprivation of
19 a constitutional right is involved, most courts hold that no further showing of irreparable injury is
20 necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005).
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22

23 **III. The balance of the hardships and public interest weigh heavily in Mr. Alptekin’s favor**

24 The final two factors for a preliminary injunction—the balance of hardships and public
25 interest— “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418,
26 435 (2009). Here, Mr. Alptekin faces weighty hardships: loss of liberty and deprivation of the
27 right to earn a living. The government, by contrast, faces no hardship, as all it must do is release
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1 a person it previously released and who the government has demonstrated through its own actions
2 is not a danger to society or a flight risk. Avoiding such “preventable human suffering” strongly
3 tips the balance in favor of Mr. Alptekin. *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*,
4 713 F.2d 1432, 1437 (9th Cir. 1983).

5 What is more, “the public interest benefits from an injunction that ensures that individuals
6 are not deprived of their liberty and held in immigration detention because of . . . a likely
7 [illegal] process.” *Hernandez*, 872 F.3d at 996. Indeed, “in cases involving a constitutional
8 claim, a likelihood of success on the merits . . . strongly tips the balance of equities and public
9 interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at 1048.

10 Accordingly, the balance of hardships and the public interest favor a temporary restraining
11 order to ensure that Respondents release Mr. Alptekin.

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14 **IV. Immediate release is warranted.**

15 This Court should order Mr. Alptekin’s release. “[A] post-deprivation hearing cannot serve
16 as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous
17 deprivation of liberty.” *E.A. T.-B. v. Wamsley, et al.*, No. 25-1192-KKE, -- F. Supp. 3d --, 2025
18 WL 2402130, at *6 (W.D. Wash. Aug. 19, 2025). In other words, Mr. Alptekin’s unlawful
19 detention without a pre-deprivation hearing is *already* occurring, and only immediate release
20 remedies that issue.

21
22 Moreover, Mr. Alptekin’s “immediate release is necessary to restore the status quo ante
23 litem. This “refers not simply to any situation before the filing of a lawsuit, but instead to the last
24 uncontested status which preceded the pending controversy.”” *GoTo.com, Inc. v. Walt Disney*
25 *Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000); *see also Phetsadakone v. Scott*, 2025 WL 2579569 at
26 *5 (W.D. Wash. Sept. 5, 2025) (The last uncontested status here was Phetsadakone’s release on
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1 supervision, which he maintained without incident for decades. The Government’s July 2025 re-
2 detention—allegedly without following required procedures—created the current controversy.

3 Restoring Phetsadakone to his prior supervised release status maintains the status quo ante litem
4 and prevents irreparable harm while allowing full adjudication of his claims for injunctive relief
5 and on the merits.”). As in these cases, here the pending controversy stems from Mr. Alptekin’s
6 re-detention on or about August 26, 2025, when he was leaving home for his work.
7

8 In similarly situated cases, Respondents have asserted that granting immediate release via a
9 TRO inappropriately grants “ultimate relief.” Not only is this incorrect because Mr. Alptekin
10 seeks only to restore the status quo, but this principle is also at odds with Supreme Court and
11 Ninth Circuit precedent. In fact, the Supreme Court long ago explained that for temporary relief
12 to be proper, it *should* be akin in nature as to the final relief sought: “[a] preliminary injunction is
13 always appropriate to grant intermediate relief of the same character as that which may be
14 granted finally.” *De Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945). This
15 principle remains the law. *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631,
16 636 (9th Cir. 2015) (“A preliminary injunction is appropriate when it grants relief of the same
17 nature as that to be finally granted.”).
18

19 Moreover, the principles that govern this case are now well-established. Courts across the
20 country have repeatedly affirmed that it is unlawful for Respondents to re-detain persons like Mr.
21 Alptekin without first providing a hearing where the detained person can demonstrate that they
22 present a flight risk or a danger to the community if not taken back into custody. Accordingly, as
23 mentioned several times in this motion, because Respondent’s own actions have clearly
24 demonstrated that the government does not consider Mr. Alptekin a flight risk or a threat to the
25 community, he respectfully seeks a TRO requiring his immediate release. The Court should then
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1 direct Respondents to respond to an order to show cause with any arguments or additional
2 information they believe is necessary so that this Court can issue the writ of habeas securing Mr.
3 Alptekin's continued right to liberty and a final judgment providing that he may only be re-
4 detained if ICE justifies re-detention by clear and convincing evidence at a pre-deprivation
5 hearing where ICE is required to demonstrate Mr. Alptekin violated his conditions of release and
6 is a flight risk or danger to the community. *Pinchi v. Noem*, --- F. Supp. 3d ----, No. 25-cv-
7 05632-PCP, 2025 WL 2084921, at *2-6 (N.D. Cal. July 24, 2025).

9 **CONCLUSION**

10 For the foregoing reasons, Mr. Alptekin respectfully requests the Court grant his motion for a
11 temporary restraining order and order his immediate release from DHS custody.
12

13
14 DATED: February 4, 2026

15
16 Respectfully Submitted,

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