IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GONZALO CONSTANTE VALVERDE,

Petitioner,

v.

SHIKHA DOSANJ, WARDEN, FEDERAL DETENTION CENTER, HONOLULU, HAWAI'I; DAVID PORTER, ACTING FIELD OFFICE DIRECTOR, HONOLULU FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT; PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES; KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, IN THEIR OFFICIAL CAPACITIES,

Respondents.

CIVIL NO. CV 26-00061 JAO-KJM

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I. INTRODUCTION

Petitioner GONZALO CONSTANTE VALVERDE ("**Petitioner**") is a 38-year old citizen of Ecuador. Petitioner has been living in the United States for more than a year and has an asylum application pending with the Executive Office for Immigration Review ("**EOIR**"). Petitioner was arrested in December 2025 when he came to Honolulu, Hawai'i from Kaua'i, where he was living and working, for a check-in appointment with U.S. Immigration and Customs Enforcement ("**ICE**").

Although petitioner was detained after residing in the United States for nearly a year, making 8 U.S.C. § 1226 the applicable statute, Petitioner has not been, and without intervention from this Court will not be, afforded a meaningful opportunity to challenge his detainment through a bond hearing as he is entitled to pursuant to 8 U.S.C. § 1226(a). *See Rico-Tapia v. Smith*, No. CV 25-00379 SASP-KJM, 2025 WL 2950089, at *9 (D. Haw. Oct. 10, 2025) ("'Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.'") (quoting *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018)); 8 C.F.R. 236.1(d) & 1003.19(a)-(f)).

Petitioner has now been detained for over two months without a meaningful opportunity for bond and his continued detention without a bond hearing violates his Fifth Amendment due process rights. Petitioner's ability to defend his case, gather

evidence, and communicate with counsel is severely impeded by his detention. While non-detained respondents in immigration court often have several months to years to prepare for their merits hearings before an immigration judge, detained respondents must do so on a much shorter timeline with little communication with the outside world.

Petitioner's Petition for Writ of Habeas Corpus (the "**Petition**") has been fully briefed and is set for hearing before this Court on March 3, 2026. Petitioner's merits hearing in immigration court, however, is set for February 26, 2026.

Petitioner has a strong case on the merits, as numerous courts around the country have ruled that noncitizens like Petitioner who are detained after residing in the United States are not subject to mandatory detention under 8 U.S.C. § 1225(b) as Respondents argue. *See supra*, Section VI.A.1.b. Additionally and independently, numerous courts around the country have held that mandatory detention in these circumstances violates the noncitizens due process rights. *See supra*, Section VI.A.1.c.

Petitioner faces irreparable injury if a temporary restraining order ("**TRO**") is not issued as he will be forced to go forward with his merits hearing without the opportunity to prepare for his case outside of detention. On the other hand, Respondents' interest in going forward with the merits hearing prior to a decision on

the Petition is minimal at best. The hearing on the Petition is set for a few days after the merits hearing and any delay will be brief.

Accordingly, Petitioner's Motion for Temporary Restraining Order (the "**Motion**") should be granted and Respondents should be enjoined from holding Petitioner's merits hearing in immigration court until after a decision on the Petition.

II. BACKGROUND

A. Factual Background.

Petitioner, who is currently detained at the Federal Detention Center, Honolulu, Hawai'i, Dkt. 1-4 (Notice to EOIR: Alien Address), is a 38-year old citizen of Ecuador, *see* Dkt. 1-5 (Respondent's Form I-589, Application for Asylum). Petitioner entered the United States on or around January 10, 2025 at the port of entry at San Ysidro, California, Dkt. 1-7 (Department of Homeland Security Notice to Appear), and was processed and released on parole by a CBP Officer. *See* Dkt. 1-8 (Form I-94). Petitioner timely applied for asylum on or around January 16, 2025 based on receiving threats due to his political opinion, and his application remains pending. *See* Dkt.1-5

Petitioner received a notice to report to ICE on December 1, 2025, and flew from Kaua'i to Honolulu to comply with the notice. *Id.* ¶ 27. When he reported to ICE on December 1, 2025 as instructed, Petitioner was arrested. *Id.* He has remained in detention in the District of Hawai'i since that time.

On February 23, 2026, Petitioner moved for a bond redetermination hearing and moved to continue his merits hearing pending a decision on his habeas petition in this Court. Exs. A & B; Declaration of Neribel Chardon ("**Chardon Decl.**") ¶¶ 4. The Court set a bond redetermination hearing for February 25, 2026 at 8:30 am. Chardon Decl. ¶ 5. However, immigration judges at the Honolulu Immigration Court have held bond redetermination hearings, only to declare that they lack jurisdiction to grant bond under the BIA's interpretation of the INA set forth in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025).[1] Chardon Decl. ¶¶ 8-12. Thus, it is highly likely the bond redetermination hearing set for February 25, 2026 will not be meaningful.

The government filed an opposition to the motion to continue on February 24, 2026. *Id.* ¶ 6; Ex. C. The Immigration Court has not yet ruled on the motion to continue the merits hearing. Chardon Decl. ¶ 7. Based on recent experience, Petitioner's counsel believes that the request is highly likely to be denied. *Id.*

[1] In *Matter of Yajure Hurtado*, the Board of Immigration Appeal held that "[b]ased on the plain language of section 235(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(2)(A) (2018), **Immigration Judges lack authority** to hear bond requests or **to grant bond to aliens who are present in the United States without admission**." 29 I. & N. Dec. 216, 216 (BIA 2025).

III. PROCEDURAL BACKGROUND

On February 9, 2026, Petitioner filed a Petition for Writ of Habeas Corpus (the "**Petition**"). Dkt. 1. The Petition asserts claims for the violation of 8 U.S.C. § 1226(a) and his procedural and substantive due process rights under the Fifth Amendment. Dkt. 1 ¶¶ 62-78. The Petition requests, *inter alia*, that the Court issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately, or, in the alternative, provide Petitioner with a bond hearing and order Petitioner's release on conditions the Court deems just and proper. Dkt. 1-1.

On February 17, 2026, Respondents filed a Return to the Petition. Dkt. 13. On February 19, 2026, Petitioner filed a Reply to Respondents' Return. Dkt. 14. On February 20, 2026, the Court issued an order setting a hearing on the Petition for March 3, 2026.

IV. STATUTORY BACKGROUND

Two statutes—8 U.S.C. §§ 1225 and 1226—provide for the detention of noncitizens pending removal proceedings.

8 U.S.C. § 1226 "provides the general process for arresting and detaining aliens **who are present in the United States** and eligible for removal." *Rico-Tapia*, 2025 WL 2950089, at *5 (D. Haw. Oct. 10, 2025) (citing *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022)) (emphasis added). Detention pursuant to Section 1226(a) is not mandatory. Section 1226(a) states that "while

removal proceedings are pending, 'an alien may be arrested and detained.'" *Id.* (quoting 8 U.S.C. § 1226(a)(1)).

When a noncitizen is detained under Section 1226(a), the initial custody determination is made by an ICE officer. *Id.* (citing *Rodriguez Diaz*, 53 F.4th at 1196). The noncitizen may be released if the ICE officer determines "such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *Id.* (internal quotation marks omitted); *see also* 8 C.F.R. § 236.1(c)(8).

If a noncitizen wishes to contest the initial custody determination, he has a right to do so before an immigration judge at a bond redetermination hearing. *Pablo Sequen v. Albarran*, 2025 WL 2935630, at *2 (N.D. Cal. Oct. 15, 2025) (citing 8 C.F.R. § 236.1(d)(1)). At the bond hearing, the immigration judge should order the noncitizen's release if the noncitizen proves, "by a preponderance of the evidence that he is not a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk." *Rico-Tapia*, 2025 WL 2950089, at *5 (citing *Rodriguez Diaz*, 53 F.4th at 1197) (internal quotations omitted). "The noncitizen's bond or parole can be revoked at any time, even if the noncitizen was previously released; however, if an immigration judge has determined the noncitizen should be released, the DHS may not re-arrest that noncitizen absent a change in circumstance.'" *Id.* (cleaned up and internal quotations omitted).

On the other hand, 8 U.S.C. §1225(b)(2) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines **that an alien seeking admission** is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained[.]" *Id.* (emphasis added).

Put simply, "Section 1225 covers persons seeking to enter the country, while Section 1226 applies to persons already present in the country." *Rico-Tapia*, 2025 WL 2950089, at *5 (internal quotations marks omitted). This conclusion is supported by the plain text of the statutory provisions and historical precedent. *See Jennings*, 583 U.S. 281.

Until this past year, the aforementioned statutes have always been applied in this manner. *Salcedo Aceros v. Kaiser*, 2025 WL 2637503, at *3 (N.D. Cal. Sept. 12, 2025) ("Until this year, the DHS has applied § 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation."). Recently, however, the government has been detaining individuals already residing in the United States pursuant to Section 1225 and depriving them of the additional procedural safeguards they are entitled to under Section 1226(a). *See, e.g.*, *Rico-Tapia*, 2025 WL 2950089, at *6.

V. LEGAL STANDARD

Under 28 U.S.C. § 2241, district courts may grant writs of habeas corpus to detainees who demonstrate they are "in custody in violation of the Constitution or

laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). "[T]he writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *I.N.S. v. St. Cyr*, 533 U.S. 289, 301 (2001).

To establish entitlement to a TRO, Petitioner bears the burden to "establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.'" *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see D.K. ex rel. Kellet v. Lingle*, 2009 WL 3415353, at *1 (D. Haw. Oct. 22, 2009) (preliminary injunction standard applies to a TRO).

VI. ARGUMENT

A. Petitioner satisfies all requirements for a TRO.

With respect to each of the claims Petitioner asserts in his habeas petition, (1) Petitioner is likely to succeed on the merits, (2) Petitioner is likely to suffer irreparable harm in the absence of preliminary relief, and (3) the balance of equities tips in Petitioner's favor and a preliminary injunction is in the public interest. *Winter*, 555 U.S. at 20.

1. Petitioner is likely to succeed on the merits of the claims asserted in his habeas petition.

a. This Court has jurisdiction over the Petition.

In their Response to the Petition, Respondents argue that 8 U.S.C. § 1252(b)(9) and (g) preclude jurisdiction. This argument has no merits.

Numerous courts around the country have decided similar habeas petitions. *See, e.g. Millan v. Voorhies*, No. 4:25-CV-02779, 2026 WL 248376, at *9 (N.D. Ohio Jan. 30, 2026) ("The last four months since *Matter of Yajure Hurtado* was decided have seen an overwhelming surge of habeas petitions in district courts across the country. By last count, over 1,000 district court decisions have been issued. . . . *Matter of Yajure Hurtado citing references*, Westlaw (filtered by jurisdiction) (last accessed Jan. 28, 2026). Overwhelmingly, district courts have disagreed with the agency's interpretation of Section 1225(b)(2)(A)'s mandatory detention scheme and applying it to all immigrants who have applied for admission but have not reached a final determination on the merits."). Respondents fail to cite a single case where a Court has held that it does not have jurisdiction over a similar challenge to mandatory detention under 8 U.S.C. § 1225(b).

Section 1252(g) provides: "[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter."

The Supreme Court has explained that this provision applies only to three

discrete actions that the Attorney General may take: "her 'decision or action' to '*commence* proceedings, *adjudicate* cases, or *execute* removal orders.'" *Reno v. AADC*, 525 U.S. 471, 482 (1999). In *Ibarra-Perez v. U.S.*, the Ninth Circuit explained that general rule is to "resolve any ambiguities in a jurisdiction-stripping statute [such as §1252(g)] in favor of the narrower interpretation, and by the strong presumption in favor of judicial review.'" 154 F.4th 989, 995 (9th Cir. 2025) (citation omitted). And "[i]nstead of 'sweep[ing] in any claim that can technically be said to 'arise from' the three listed actions,' **[§1252(g)] 'refer[s] to just those three specific actions themselves**.'" *Id.* at 996 (citation omitted).

Petitioner challenges the government's continued detention of him without a meaningful bond hearing pursuant to the government's interpretation of § 1225(b), and not any decision "to commence proceedings, adjudicate cases, or execute removal orders." Thus, Section 1252(g) does not apply.

Section 1252(b)(9) provides:

> Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section.

In *Jennings v. Rodriguez*, the Supreme Court held that §1252(b)(9) did not apply to the adjudication of whether certain statutory provisions allowed prolonged detention without a bond hearing. 583 U.S. 281 (2018). As Judge Park of this Court explained,

"a decision to detain is independent of an action taken to remove an alien; while the former is aimed at ensuring that the alien is not a flight risk or a danger to the community, the focus of the latter is the removal of the alien," and a challenge to detention without bond is properly within the Court's habeas jurisdiction. *Rico-Tapia*, 2025 WL 2950089, at *4 (citing *Jennings* 583 U.S. at 295 n.3).

Likewise, Petitioner is not asking for a review of removal order and he is not challenging the decision to detain him in the first place or any part of the process by which his removability will be determined. He is challenging his detention pending the outcome of his proceedings without a meaningful bond hearing.

Numerous courts have held that §1252(b)(9) and (g) do not bar such challenges. *See Vicharra v. Henkey*, 2025 WL 3564725, at *4 (D. Nev. Dec. 12, 2025) (government's arguments that Sections 1252(g) and 1252(b)(9) bar review of habeas petition challenging mandatory detention "are foreclosed by Ninth Circuit and Supreme Court precedent"); *Yataco v. Warden*, 2025 WL 4065463, at *3, *R&R adopted* 2026 WL 158151 (C.D. Cal. Jan. 16, 2026) (government's arguments regarding the applicability of § 1252(b)(9) and (g) to noncitizens contesting mandatory detention "cannot be reconciled with Supreme Court and Ninth Circuit authority"); *Saldana Guzman v. Noem*, No. 2025 WL 3691994, at *3 (C.D. Cal. Oct. 31, 2025) ("Multiple courts in this Circuit have now addressed and rejected the Government's argument with respect to sections 1252(b)(9) and (g).") (citing cases);

Yang v. Kaiser, 2025 WL 2791778, at *3 (E.D. Cal. Aug. 20, 2025) (collecting cases holding § 1252(g) does not bar review of similar challenges).

b. 8 U.S.C. § 1226(a) applies to Petitioner.

Petitioner may only be detained pursuant to 8 U.S.C. § 1226(a) on a discretionary basis. *Rico-Tapia*, 2025 WL 2950089, at *7. As explained above, Section 1226 "provides the general process for arresting and detaining aliens who are present in the United States and eligible for removal." *Id.* at *5. Petitioner was arrested and detained after he had been living in the U.S. for nearly a year, so Petitioner is subject to detention, if at all, pursuant to § 1226(a). *Id.* at *6-7.

Petitioner cannot be subject to mandatory detention under 8 U.S.C. § 1225(b)(2) because as a person already present in the U.S. is not presently "seeking admission" to the United States. *See id.* at *6-7. Numerous courts have likewise rejected the government's position that noncitizens residing in the U.S. are subject to mandatory detention under 8 U.S.C. § 1225(b)(2). For example, one district court explained that "the Government and [Board of Immigration Appeal's] interpretation of the § 1225(b)(2) is both contrary to the plain meaning of the statutory text, legislative history, and decades of agency practice, and raises serious constitutional concerns under the Due Process Clause of the Fifth Amendment." *Arce-Cerva, v. Noem*, 2025 WL 3017866, at *2 (D. Nev. Oct. 28, 2025); *see also Rodriguez v. Bostock*, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) (citing numerous

cases concluding "that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.") (collecting cases); *Vazquez v. Feeley*, 2025 WL 2676082, at *11 (D. Nev. Sept. 17, 2025) (holding, "consistent with the overwhelming majority of district courts in the Ninth Circuit and across the country that have thus far considered the issue," that § 1226, not §1225, applies to noncitizens like the petitioner who had resided in the U.S. prior to their apprehension) (citing cases); *Ivonin v. Rhoney*, 2026 WL 199283, at *4 (W.D.N.Y. Jan. 26, 2026) ("[T]his Court agrees with other courts who have looked at this issue and concluded that in instances, as here, where a petitioner's re-arrest was *not* a continuation of the initial border encounter, but an independent decision to detain the individual after the expiration of his parole, the detention pursuant to that re-arrest arises under § 1226. In other words, suggesting that Ivonin is still on the threshold of entry into this country, based on his re-entry into the United States through parole which expired over seven years ago, stretches the 'legal fiction' beyond reason.") (emphasis in original) (discussing cases); *Daza v. Albarran*, 2026 WL 81518, at *4 (N.D. Cal. Jan. 12, 2026) ("At the time of her November 2025 detention, [following expiration of her parole] Petitioner was not an arriving noncitizen seeking entry into the country and had been living here for one year. Accordingly, she was not seeking admission at the time of her detention, so Section 1225(b)(2)'s mandatory detention provision does not apply.").

As a person detained under 8 U.S.C. § 1226(a), Petitioner must, upon his request, receive a bond hearing with strong procedural protections. *See Rico-Tapia*, 2025 WL 2950089, at *7; *Brito v. Garland*, 22 F.4th 240, 244, 256-57 (1st Cir. 2021) (affirming class-wide declaratory judgment and explaining "noncitizens detained pursuant to 8 U.S.C. § 1226(a) are entitled to receive a bond hearing at which the Government must prove the alien is either dangerous by clear and convincing evidence or a risk of flight by a preponderance of the evidence.") (internal quotations omitted); 8 C.F.R. §§ 236.1(d) & 1003.19(a)-(f).

Petitioner has not been afforded this right and remains detained.

c. Petitioner's due process rights have been violated.

Even if Petitioner were subject to mandatory detention under 8 U.S.C. § 1225 or any other statute, Petitioner's due process claims are likely to succeed on the merits. "[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *see Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) ("[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law").

The Fifth Amendment's Due Process Clause specifically forbids the Government to "deprive[]" any "person . . . of . . . liberty . . . without due process of

law." U.S. Const. amend. V. The Supreme Court thus "repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection," including an individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting cases); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992) (requiring individualized hearing and strong procedural protections for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997) (same for commitment of sex offenders).

"Once it is determined that due process applies, the question remains what process is due." *Salcedo Aceros*, 2025 WL 2637503, at *5 (N.D. Cal. Sept. 12, 2025) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) (internal quotation marks omitted)). "The constitution typically requires some kind of a hearing before the State deprives a person of liberty or property." *Id.* (citing *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (internal quotation marks omitted). "To determine what procedures are required, courts apply the three-part test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)," which considers: "(1) the private interest affected; (2) the risk of an erroneous deprivation; and (3) the Government's interest." *Salcedo Aceros*, 2025 WL 2637503, at *6; *see also Rico-Tapia*, 2025 WL 2950089, at *8. These factors overwhelmingly support that Petitioner is entitled to a bond hearing before a neutral immigration judge.

First, Petitioner has a strong liberty interest in remaining free from

detainment. *Rico-Tapia*, 2025 WL 2950089, at *9 (holding that a noncitizen who was initially detained and released "has a substantial private interest in remaining free from detention"); *Bostock*, 2025 WL 3014274, at *7 ("District courts … have held that once released from immigration custody, noncitizens acquire 'a protectable liberty interest in remaining out of custody on bond.'"); *Salcedo Aceros*, 2025 WL 2637503, at *6 ("Accordingly, a noncitizen released from custody pending removal proceedings has a protected liberty interest in remaining out of custody."); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025) ("Thus, even when ICE has the initial discretion to detain or release a noncitizen pending removal proceedings, after that individual is released from custody she has a protected liberty interest in remaining out of custody.") (citing cases). If released, Petitioner "'can be gainfully employed and [is] free to be with family and friends and to form the other enduring attachments of normal life.'" *Pablo Sequen v. Albarran*, 2025 WL 2935630, at *6 (N.D. Cal. Oct. 15, 2025) (quoting *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)). "The termination of that liberty would 'inflict[] a 'grievous loss'' both on [Petitioner] and [his] loved ones." *Id.* (quoting *Morrisey*, 408 U.S. at 482).

Second, Petitioner faces a high risk of erroneous deprivation if his Petition is not granted. "[C]ivil immigration detention must be 'non punitive in purpose' and bear a reasonable relation to the authorized statutory purposes of preventing flight

and danger to the community." *Bostock*, 2025 WL 3014274, at *8 (internal quotation marks omitted). "Absent a pre-detention hearing in front of a neutral arbiter, the risk of erroneous deprivation is high given the possibility that petitioner's re-detention will not be pursuant to a valid state interest." *Id.*; *see also Rico-Tapia*, 2025 WL 2950089, at *9 ("[T]he risk of an erroneous deprivation of liberty is high where, as here, Rico-Tapia has not received a bond hearing."); *Salcedo Aceros*, 2025 WL 2637503, at *12 ("Where an individual has not received a bond or redetermination hearing, 'the risk of an erroneous deprivation [of liberty] is high.'") (citation omitted). Even if the Immigration Court holds a bond hearing, Petitioner will be unable to meaningfully challenge his detention without an order from this Court because of the BIA's holding that immigration judges lack jurisdiction to grant bond for noncitizens like Petitioner.

Third, the government has no countervailing interest against providing Petitioner with a hearing. "In immigration court, custody hearings are routine and impose a minimal cost." *Doe v. Becerra*, No. 2025 WL 691664, at *2 (E.D. Cal. Mar. 3, 2025) (internal quotation marks omitted). There would also be "no concern with a hearing delaying the Government's efforts to remove petitioner" as "[a]ny such delay would be minimal[.]" *See e.g. Bostock*, 2025 WL 3014274, at *9. "Whether the Government conducts a pre-detention hearing –or, indeed, whether petitioner is in detention or not –will not obstruct the removal process. And detention

for its own sake is not a legitimate governmental interest." *Id.* (citing *Pinchi v. Noem*, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025) ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.")).

Thus, regardless of whether any statute subject to him to mandatory detention, Petitioner has been deprived of his procedural due process rights because he has not and will not receive a meaningful bond hearing pursuant to 8 U.S.C. § 1226(a) without intervention from this Court, and is, therefore, unlawfully being detained. Furthermore, the government has failed to carry out its substantive obligation to ensure that Petitioner's detention bears a "reasonable relation" to the purposes of immigration detention (i.e., the prevention of flight and danger to the community during the pendency of removal proceedings) and is not impermissibly punitive. *See Zadvydas*, 533 U.S. at 690; *Demore*, 538 U.S. at 532-33 (Kennedy, J., concurring).

Accordingly, Petitioner is likely to succeed on the merits of his due process claims. *See, e.g.*, *Savane v. Francis*, 801 F.Supp.3d 483, 491 (S.D.N.Y. 2025) ("Even assuming that § 1225 applies, as Respondents contend, Petitioner's due process rights were violated because Respondents did not afford Petitioner any process at all before detaining him."); *Munoz Materano v. Arteta*, 804 F.Supp.3d

395, 414 (S.D.N.Y. 2025) ("Even if § 1225 were statutorily applicable to Munoz Materano, the Court finds that Respondents violated his Fifth Amendment Due Process rights by moving to dismiss his Section 240 proceedings, revoking his parole, and arresting him pursuant to § 1225, without providing him notice or an opportunity to be heard.").

2. Petitioner is likely to suffer 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. 347, 373 (1976)). "[D]etention in the absence of a constitutionally adequate bond hearing—such that Petitioner would continue to be deprived of his physical liberty in violation of procedural and substantive due process in the absence of intervention—that Petitioner has carried his burden as to irreparable harm." *Arce-Cervera v. Noem*, 2025 WL 3017866, at *6 (D. Nev. Oct. 28, 2025) (citing *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Petitioner is detained and is deprived of his physical liberty and has not been afforded a bond hearing as he is entitled to under 8 U.S.C. § 1226. Petitioner is likely to face irreparable harm if the TRO is not granted because his ability to defend his case, gather evidence, and communicate with counsel is severely impeded by his detention. Among other things, while detained, it is extremely

difficult and time consuming for Petitioner to communication with counsel. Chardon Decl. ¶ 13. Petitioner's detention at the Honolulu Federal Detention Center also makes it extremely difficult, if not impossible, to access his belongings on the island of Kaua'i, some of which contain documents that may be pertinent to his case. *Id.* Finally, Petitioner's detention means that his case is heard on the Immigration Court's detained docket, which is accelerated in comparison to the non-detained docket, affording him less time to prepare for his merits hearing. *Id.*

Petitioner's lack of ability to adequately prepare for his defense while free from detention constitutes irreparable injury. *See, e.g.*, *Rico-Tapia*, 2025 WL 2950089, at *9 ("As this Court has concluded that Rico-Tapia's detention without a bond hearing is likely unconstitutional, Rico-Tapia has carried his burden as to irreparable harm."); *J.O.L.R. v. Wofford,* 2025 WL 2908740, at *7 (E.D. Cal. Oct. 14, 2025) ("Given the Court's conclusion that petitioner is likely to succeed on the merits of his claims that his detention without a bond hearing violates the Due Process Clause, petitioner faces irreparable harm absent a temporary restraining order.").

While the Immigration Court has set a bond redetermination hearing for February 25, 2026 at 8:30 am, a TRO is still necessary to prevent irreparable harm because Petitioner is unlikely to receive a meaningful opportunity to contest his

detention at this hearing.[2] *See* Chardon Decl. ¶¶ 7-12. Moreover, it is unlikely the Immigration Court will grant Petitioner's motion to continue his merits hearing. *Id.* ¶ 6. Accordingly, Petitioner is unlikely to avoid irreparable harm through relief from the Immigration Court.

3. The balance of equities tips in Petitioner's favor and preliminary injunction is in the public interest.

"When the government is the nonmoving party, 'the last two *Winter* factors merge.'" *J.O.L.R.*, 2025 WL 2908740, at *7 (citing *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023)). Courts have held that although the government has a strong interest in enforcing the immigration laws, balancing the choice between holding a meaningful bond hearing, which is a "minimally costly procedure," and "preventable human suffering," the balance of hardship tips in the noncitizens' favor. *Id.* (citing *Hernandez v Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

"[T]he Government's interest is adequately protected by the bond hearing process, and its ability to present individualized evidence regarding its contention that prolonged detention" of Petitioner is warranted. *Arce-Cervera*, 2025 WL 3017866, at *7. Furthermore, the government "cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional

[2] Counsel will file a status report shortly after the hearing to inform the Court of the outcome.

violations." *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983). In fact, "the procedures undertaken by DHS of summarily detaining noncitizens who dutifully appear at ICE offices and immigration courts undermines legitimate government interests" by chilling access to courthouses and consequentially impairing the fair administration of justice. *Salcedo Aceros*, 2025 WL 2637503, at *13–14.

Moreover, the government will not be prejudiced by a short delay of the merits hearing to allow for this Court to rule on the Petition and give Petitioner an opportunity to vindicate his constitutional and statutory rights through a meaningful opportunity at bond.

"The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *J.O.L.R.*, 2025 WL 2908740, at *7; *see also Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a party's constitutional rights."). Thus, the balance of equities tips in Petitioner's favor and, here, granting a preliminary injunction is in the public interest.

VII. CONCLUSION

Petitioner requests that the Motion and enjoin Respondents from holding a merits hearing in immigration court until after the Court rules on the Petition.

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