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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

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DREWS OMONDI

Movant,

v.

MARY DE ANDA-YBARRA, Director, El Paso Field Office Immigration and Customs Enforcement; TODD M. LYONS, Acting Director of Immigration and Customs Enforcement; KRISTI NOEM, Secretary, U.S. Department of Homeland Security; PAMELA BONDI, Attorney General,

Respondents.

Case No. 26-439

**MOTION FOR TEMPORARY  
RESTRAINING ORDER; REQUEST  
FOR EXPEDITED BRIEFING**

*Concurrently filed with VERIFIED  
PETITION FOR WRIT OF HABEAS  
CORPUS*

Immigration Detainee Case

Movant Drews Omondi, through his counsel and pursuant to Fed. R. Civ. P. 65, hereby respectfully requests this Court to issue a Temporary Restraining Order and Preliminary Injunction ordering his immediate release and prohibiting his re-detention without notice and a pre-deprivation hearing where the government bears the burden of justifying any re-detention by clear and convincing evidence.

Movant also respectfully requests this Court to expedite consideration of this Motion pursuant to 28 U.S.C. § 1657 and for good cause, and to order a Response within 3 days of the Court’s Order, and a Reply within 2 days thereafter.

**FACTUAL BACKGROUND**

Movant, Drews Omondi, is a resident of Minneapolis, Minnesota, and a citizen of Kenya. Mr. Omondi entered the United States in or about 2014 on a valid fiancée visa and married a U.S.

citizen shortly thereafter. Mr. Omondi had a pending application for adjustment of status through that marriage, but due to irreconcilable differences, he decided to leave that relationship and he withdrew the application before it was processed. He has remained in the country since then.

In June 2020, Mr. Omondi met his now wife, Miriam Mongare, who is a U.S. citizen. They lawfully married in January 2021 in Dakota County, Minnesota. Although Mr. Omondi could have again started the process to adjust his status to obtain a green card, he and his wife wanted to save more money before starting the process, as they were focused on paying rent, bills, and other necessities at the time.

Since their marriage, Mr. Omondi and Mrs. Mongare have had two young children, both of whom are U.S. citizens: a 3-year-old daughter and a 1-month-old infant son. They have been living peacefully in Minneapolis at a stable address and attending their local church.

On January 6, 2026, Mr. Omondi was arrested by Immigration and Customs Enforcement (“ICE”) while he was outside of his house fixing the family car. Upon information and belief, Respondents did not have probable cause to arrest Movant, and neither possessed nor presented to him a warrant of any kind, judicial or otherwise, to justify his arrest or detention.

Upon his arrest, Mr. Omondi was quickly transferred out of Minnesota to El Paso, Texas; he was subsequently moved again to New Mexico. He currently remains in Respondents’ custody in New Mexico at Otero County Processing Center.

Mr. Omondi’s detention has been traumatizing for himself and for his family. Mr. Omondi was arrested and detained when his wife was already nine months pregnant. Nine days after his arrest and detention, Mrs. Mongare went into labor in the middle of the night. Without Mr. Omondi or any other immediate family in the area, she had to call 911 to transport her and her 3-year-old toddler to the hospital. While she was in labor, Mrs. Mongare received a 2-minute phone call from

her husband—the first time he was permitted and able to contact his family since he was arrested. Later that day, Mrs. Mongare underwent a C-section and gave birth to their now 1-month-old infant, who Mr. Omondi has yet to meet. Mrs. Mongare remained in the hospital for three days.

Without her husband’s support, Mrs. Mongare has been struggling both physically and emotionally—to recover from her C-section and to care for their two young children on her own, while making ends meet. The stress of this situation has caused Mrs. Mongare emotional trauma, angst, and sleepless nights. Their 3-year-old daughter, who witnessed Mr. Omondi’s arrest and is very close to her father, has also been emotionally distraught by his detention. She similarly has difficulty sleeping and repeatedly cries for her father while asking when he is coming back.

Mr. Omondi understandably has been suffering because of the separation from his family during a deeply emotional time in their lives, and because of his inability to support his wife through her surgery and in her recovery. The conditions of confinement for Mr. Omondi have also been harsh and punitive. Shortly after he arrived at Otero County Processing Center, he suffered a wound that developed into a boil. Despite asking for medical attention, he was not offered treatment for more than one week, until it burst. More recently, since the government shutdown began on February 14, he and other detainees have no longer been allowed to take breaks outside or to eat in common areas—presumably due to staffing shortages. The lack of fresh air has been particularly difficult given the number of detainees inside the facility creating congested conditions.

Mr. Omondi’s detention is an unlawful deprivation of his constitutional 5th Amendment due process rights, a violation of the Immigration and Nationality Act (“INA”), and the Administrative Procedure Act (“APA”).

**LEGAL STANDARD**

Movant is entitled to a temporary restraining order if he establishes that he is “[1] likely to succeed on the merits ... [2] 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. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (bracketed numbers added). While all four factors must weigh in the Movant’s favor, “[t]he likelihood of success and irreparable harm factors are the most critical.” *Martinez Rodriguez v. Castro*, 2026 WL 252503 (D. N.M. Jan. 30, 2026) (internal quotations and citation omitted). Mr. Omondi satisfies this standard.

## **LEGAL ARGUMENT**

### **I. MOVANT IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS**

#### **A. Mr. Omondi Was Unlawfully Arrested And Remains Unlawfully Detained Under Section 1226(a)**

The INA prescribes three basic forms of detention for most noncitizens in removal proceedings. One of these forms is outlined in 8 U.S.C. § 1226, which allows for discretionary detention and “authorizes the Government to detain certain noncitizens already in the country pending the outcome of removal proceedings.” *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

Mr. Omondi was admitted into the United States with inspection in or about 2014 and has remained in this country since then, past the expiration of his visa. He has no criminal record and is not subject to mandatory detention under Section 1226(c). Accordingly, Respondents presumably take the position that Mr. Omondi is subject to discretionary detention pursuant to 8 U.S.C. § 1226(a).

However, detention under § 1226 is predicated upon the existence of a valid warrant: “*On a warrant issued by the Attorney General*, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States. . . .” 8 U.S.C. § 1226(a) (emphasis added). Upon information and belief, Mr. Omondi was never presented with any warrant—judicial or administrative—at the time of his arrest or at any point thereafter.

Furthermore, while there may be narrow circumstances in which an immigration officer may be entitled to make an arrest without a warrant, none of those apply here. Mr. Omondi has been living continuously and peacefully in the United States, without a criminal record, for nearly 12 years. He has been married to a United States citizen for more than 5 years and, at the time of his arrest, had one U.S. citizen child and another on the way (who was since born). Respondents did not and cannot articulate any reason to believe that Mr. Omondi was likely to escape before they could obtain a warrant.

Mr. Omondi’s current detention under 8 U.S.C. § 1225(a) violates both the INA and his due process rights. As this renders his detention unlawful from its inception, he should be released. *See, e.g., Quintero Campos v. Deleon*, No. 25-cv-10099, 2025 WL 3514120, at \*2 (S.D.N.Y. Dec. 8, 2025) (collecting cases ordering immediate release); *Maldonado v. Olson*, 2025 WL 2374411 at \*12 (D. Minn. 2025).

### **B. Mr. Omondi’s Ongoing Detention Is A Violation Of His 5th Amendment Due Process Rights**

The Supreme Court has long recognized that noncitizens physically present in the United States are entitled to due process protections, regardless of their immigration status. *Zadvydas, Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976). And “[f]reedom from imprisonment—from government custody, detention, or other forms of physical

restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

Because “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” the government may imprison people as a preventive measure only within strict limits. *Foucha v. Louisiana*, 504 U.S. 71, 83 (1992) (quoting *United States v. Salerno*, 481 U.S. 739, 755 (1987)). Even “[w]hen government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner.” *Salerno*, 481 U.S. at 746.

### **Procedural Due Process**

Courts use the three-factor *Mathews v. Eldrige* test to determine what process is due to noncitizens challenging detention. *See* 424 U.S. 319 (1976). The *Mathews* factors assess: (1) “the private interest that will be affected by the official action”; (2) “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 (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* at 335.

The first *Mathews* factor weighs heavily in Mr. Omondi’s favor. A person’s interest in freedom from physical detention is “the most elemental of liberty interests.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529, 124 S. Ct. 2633, 159 L.Ed.2d 578 (2004); *see also ovydas v. Davis*, 533 U.S. 678, 690 (2001) (“Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.”). Mr. Omondi is wrongfully confined, which is a direct attack on his liberty interest. Moreover, his

liberty interest is particularly strong given that he had been lawfully admitted after inspection when he first entered the country in 2014.

The second *Mathews* factor also weighs in Movant's favor. The current procedures employed by the government—arresting Mr. Omondi without a warrant and keeping him in detention for six weeks without access to any bond hearing—have already caused an erroneous deprivation of his liberty interests. This is especially true where, as for Mr. Omondi, there does not appear to be a significant likelihood of removal in the reasonably foreseeable future, since he has a path to staying in this country through his U.S. citizen wife. See *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001) (“once removal is no longer reasonably foreseeable, continued detention is no longer authorized...”).

Finally, the third factor likewise weighs in Mr. Omondi's favor. His detention imposes high fiscal and administrative burdens on Respondents. Moreover, the public interest is not served by detaining noncitizens like Mr. Omondi, who have demonstrated strong ties to the community and are neither a flight risk nor dangerous.

Respondents violated procedural due process by detaining Mr. Omondi without adequate procedural protections. This Court should order his release without any restraints on his liberty and prohibit any re-detention without proper pre-deprivation process.

### **Substantive Due Process**

Immigration detention is civil detention and must “bear a reasonable relation to the purpose for which the individual was committed” so that it remains “nonpunitive in purpose and effect.” *Zadvydas*, 533 U.S. at 690 (citation modified); see also *Schall v. Martin*, 467 U.S. 253, 264-69 (1984) (finding detention must be a proportional—not excessive—response to a legitimate state objective).

Courts have identified only two legitimate purposes for immigration detention: mitigating flight risk pending removal and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690-91. Accordingly, to satisfy substantive due process under the Fifth Amendment, a noncitizen's detention must be tied to flight risk or a danger to the community. *Zadvydas*, 533 U.S. at 690.

Neither purpose is served by Movant's detention. Mr. Omondi presents neither a flight risk nor a danger to the community. Mr. Omondi has been in the U.S. for more than a decade without any criminal record. For the past 5 years has been living a quiet life in Minneapolis with his U.S. citizen family: his wife, toddler daughter, and infant son who was born via C-section while he remained in detention.

Because the government is not detaining Mr. Omondi to serve legitimate interests in protecting against danger or flight risk, his detention violates substantive due process under the Fifth Amendment, and this Court should order his immediate release.

## **II. MR. OMONDI WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF**

Mr. Omondi suffers irreparable harm each day he is deprived of his liberty. As the Tenth Circuit explained, "Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 805 (10th Cir. 2019). Movant's detention in violation of Due Process, thus, amounts to irreparable injury.

Even if this Court were to require a showing, the irreparable injury is clear. Mr. Omondi has been distraught by his unjustified separation from his wife and young children. He has now been detained for no legitimate reason for more than six weeks. As a result of his detention, he missed the birth of his second child and has been unable to support his wife, both emotionally and physically, through recovery from her C-section. *See* Amended Verified Petition for Writ of

Habeas Corpus, paras. 6-8. Mr. Omondi continues to suffer emotionally and psychologically every day that he is unlawfully confined in immigration detention. Moreover, he does not suffer alone. His wife and young children also suffer daily from the separation from their husband and father. *See id.* These injuries are physical, psychological, and cause significant distress and hardship. A temporary restraining order is necessary to prevent this continuing irreparable harm caused by Mr. Omondi's continued, wholly unjustified detention.

### **III. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST FAVOR GRANTING THE TEMPORARY RESTRAINING ORDER**

When the government is the party opposing the injunction, the balance of equities and public interest merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.”). “[I]t would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

Any burden imposed by requiring DHS to release Mr. Omondi from custody is minimal and clearly outweighed by the substantial harm he and his family will continue to suffer as long as he is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Soto Garcia*, 2025 WL 1676855 at \*3. If a temporary restraining order is not entered and injunctive relief is not granted, the government would effectively have permission to ignore the constitutional strictures of due process and the plain text of the INA, which prohibits the warrantless arrest and detention of non-citizens such as Mr. Omondi—who have no criminal

record and strong ties to the community through his U.S. citizen family. The public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

### **REQUEST FOR EXPEDITED BRIEFING**

Pursuant to 28 U.S.C. § 1657 and for good cause, Movant respectfully requests that the Court expedite consideration of this Motion. As explained above, Mr. Omondi's unlawful detention is a violation of his due process rights and a direct attack on his strong liberty interest, which is sufficient showing of irreparable harm. *See Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 805 (10th Cir. 2019) ("Most courts consider the infringement of a constitutional right enough and require no further showing of irreparable injury.").

Mr. Omondi has been unlawfully detained for six weeks as of the date of this filing and moved to facilities in two different states. Every day that he remains in custody is continuing to cause irreparable harm to both him and his family. *See Amended Verified Petition for Writ of Habeas Corpus*, paras. 6-8.

For the foregoing reasons, Movant respectfully requests that the Court order an expedited briefing schedule whereby the Response is filed no later than 3 days of the Court's Order and a Reply is filed no later than 2 days thereafter.

### **CONCLUSION**

This Court should find that Mr. Omondi warrants a temporary restraining order and a preliminary injunction. Movant respectfully asks this Court to: (1) order his immediate release without restraints on his liberty beyond any that may have existed prior to his unlawful re-detention; (2) enjoin Respondents from implementing any condition of release; (3) order that his release be inside the State of Minnesota at a safe time and place communicated in advance to counsel, and with all of Mr. Omondi's personal effects in Respondents' possession (such as driver's license, immigration papers, passport, cell phone, and keys); and (4) prohibit his re-

detention unless the government provides advance notice and a pre-deprivation hearing before this Court in which it proves by clear and convincing evidence that Mr. Omondi is a danger or flight risk.

In the alternative, this Court should order that Respondents release Mr. Omondi unless they provide him with a bond hearing before a neutral arbiter pursuant to 8 U.S.C. § 1226(a). Movant further requests that the Court enjoin the government from transferring his custody to any facility outside of the District of New Mexico pending the resolution of this case, and direct that any hearing the Court may set on this Motion be conducted remotely by videoconference or telephone.

Date: February 17, 2026

Respectfully Submitted,

/s/ Ji Hae Kim

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