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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Khalid Hakimi,

Petitioner-Plaintiff,

vs.

Christopher J. LAROSE, in his official capacity as Warden of Otay Mesa Detention Center; Daniel A. BRIGHTMAN, in his official capacity as San Diego Field Office Director, ICE Enforcement Removal Operations; Todd LYONS, in his official capacity as Acting Director of ICE; Daren MARGOLIN is the Acting Director of EOIR; and Pamela BONDI, U.S. Attorney General, Kristi NOEM, in her official capacity as Secretary of Homeland Security,

Respondent-Defendants.

Case No. '26CV1458 JO MMP

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

Agency File No.: [redacted]

PETITION FOR TEMPORARY RESTRAINING ORDER

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Petitioner hereby moves this Court for an *ex parte* Temporary Restraining Order requiring Respondents to refrain from removing the Petitioner from the United States and his immediate release. A hearing on this Motion will take place at a date and time to be set before the Judge assigned to this case. Petitioners support their Motion with the attached Memorandum of Points and Authorities and exhibits.[1]

[1] Pursuant to Local Rule 83.3(g), on March 4, 2026, undersigned counsel informed Assistant U.S. Attorney Juliet Keene via email that Petitioner intended to file this ex parte Motion for Temporary Restraining Order before this Court within one or two days. See Declaration of Nicholas Paúl

MEMORANDUM OF POINTS AND AUTHORITIES

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Sworn Declaration of Nicholas Paúl Esq.

1. On March 4, 2026, pursuant to rule 83.3(g), I emailed AUSA Juliet Keene, notice that I planned to file an ex parte Motion for Temporary Restraining Order (TRO) in the next 1-2 days. In the same email I notified AUSA Juliet Keene that I planned on filing at the United States District Court for the Southern District of California.

I swear under penalty of perjury that the above statements are true and correct.

/S/ Nicholas Paúl _____ 03/06/2026

Nicholas Paúl Date

INTRODUCTION

Petitioner, Khalid Hakimi is unlawfully detained in Respondents' custody at the Otay Mesa Detention Center and seeks his immediate release through a Temporary Restraining Order (TRO). The Department of Homeland Security (DHS) previously processed and released Petitioner and his family from immigration custody and placed them in removal proceedings on July 20, 2024.

Petitioner and his family have lived in the US for over 1.5 years. While in the US, Petitioner enrolled in high school, graduated, and attended Grossmont Community College. Petitioner was granted work authorization in 2025, and was lawfully employed as a warehouse worker at Amazon. Petitioner was helping to financially support his family members. Petitioner has had no criminal contact, has attended all court hearings, and has otherwise scrupulously sought to comply with the conditions placed on him and his family as parolees and asylum seekers. Indeed, there were no material changed circumstances related to flight risk or danger that would have justified his re-detention.

Nevertheless, U.S. Immigration and Customs Enforcement (ICE) agents arrested the Petitioner on January 9, 2026, while he was driving near his home.

(Petitioner was arrested even though he was not the intended target of ICE agents.) Petitioner has been confined to immigration detention at the Otay Mesa Detention Center for over 53 days for no legitimate reason and continues to suffer mentally and emotionally due to the conditions of the detention center and being separated from his family.

Petitioner's re-detention is unlawful because he received no pre-deprivation hearing to determine whether material changes in circumstances rendered him a danger to the community or flight risk such that his detention was suddenly warranted. Had he received such a hearing, it would have been clear that the Petitioner had engaged in no activity between the time of his prior release from custody and arrest that justifies re-detention; he does not present a danger to the community, nor does he pose a flight risk, as he has appeared at all required hearings in his removal proceedings and his subsequent affirmative asylum process.

Petitioner's re-detention under these circumstances violates the Due Process Clause. It violates substantive Due Process because it is not justified by any legitimate government purpose. It violates procedural Due Process because Petitioner's prior release from custody gave rise to a protectable liberty interest

that could not be taken from him without a pre-deprivation hearing.

Petitioner's interest in obtaining that modest process far outweighs the government's interest in detaining him without it, and the risk of error is great where, as here, the government has not conducted a pre-deprivation hearing to assess whether changed circumstances justify re-detention. Finally, Petitioner's re-detention is arbitrary and capricious in violation of the Administrative Procedure Act (APA) because the agency has never articulated a justifiable reason for re-detaining Petitioner's—indeed, it cannot. Accordingly, Petitioner seeks a TRO ordering his immediate release, return of all property Respondents confiscated -- including but not limited to Petitioner's and his brothers' employment authorization cards, Petitioner's phone and other personal belongings and an order restraining Respondents from re-detaining him without a pre-deprivation hearing.

STATEMENT OF FACTS

Petitioner came to the United States from Afghanistan fleeing violence and extortion from the Taliban. He is the son of M.H, who is the principal applicant for asylum in the US. *See* Exhibit C.

Petitioner sought entry into the United States by registering through the

Department of Homeland Security (DHS) app called CBP One. On July 20, 2024, he appeared at the San Ysidro Port of Entry pursuant to his CBP One appointment, was questioned and provided biometric information. The government granted Petitioner parole, issued a Form I-94 valid until July 18, 2026, and released him on July 20, 2024, under 8 C.F.R § 212.5 (Temporary admission for humanitarian reasons).

On August 20, 2024, Respondents and Petitioner submitted a joint motion to dismiss the proceedings to allow Petitioner to pursue adjudication of asylum claims outside of removal proceedings. Immigration Judge Bartolomei granted the motion and dismissed the Petitioner's and his family's removal proceedings under 8 C.F.R. § 1239.2 (C). *See* Exhibit E.

Petitioner and his family have lived in the US for over 1.5 years. While in the US, Petitioner enrolled in high school, graduated and subsequently attended Grossmont Community College. Petitioner was lawfully employed as a warehouse worker at Amazon and was helping to financially support his family members.

Moreover, Petitioner is a man of faith and frequently attended the Rey de Reyes Church in San Ysidro, CA.

Petitioner, through pro bono counsel, filed an I-589 application before the

U.S. Citizenship and Immigration Service (USCIS) on April 25, 2025 -- well within the statutory one-year filing deadline. He was a derivative applicant in his father's petition. *See* Exhibit C.

Despite following all requirements and orders of EOIR and USCIS, DHS agents arrested Petitioner (on January 9, 2026) while he was driving near his home. *See* Exhibit G. He was charged under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *See* Exhibit F. Petitioner has never received a legally compliant notice of the revocation of his parole.

Counsel was able to visit Petitioner at the Otay Mesa detention facility where he provided him with the NTA that contained the stamped signature of Deportation Officer Smith dated January 10, 2026. *See* Exhibit F. Petitioner's next Master Calendar Hearing is set for March 11, 2026 at 1:00 PM.

STANDARD OF REVIEW

A Temporary Restraining Order ("TRO") may be issued upon a showing "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). A trial court may grant a TRO or a preliminary injunction to "preserve the status

quo and the rights of the parties" until a decision can be made in the case. *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in this context "refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy[.]'" *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) . The analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc., Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009).

Additionally, in the Ninth Circuit, courts may "employ an alternative 'serious questions' standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v. ICE*, 16 F.4th 613, 635 (9th Cir. 2021) (cleaned up). Under that test, Plaintiffs must show "serious questions going to the merits and a balance of hardships that tips sharply toward the plaintiff[s]" along with "a likelihood of irreparable injury and that the injunction is in the public interest" *Id.* (internal citations omitted).

ARGUMENT

I. Petitioner is Likely to Succeed on the Merits of his Claims

A) Petitioner's re-detention is Arbitrary and Capricious in Violation of the Administrative Procedure Act (APA):

To be reviewable under the APA, a challenged action must constitute final agency action, which includes "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Agency action is final where (1) it marks the "consummation" of the agency's decision-making process and is therefore not "of a merely tentative or interlocutory in nature;" and (2) is an action "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–178 (1997) (internal citations omitted). Courts must hold unlawful and set aside agency action that is arbitrary and capricious. 5 U.S.C. 706(2)(A). An action is arbitrary and capricious if the agency fails to "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983) (internal quotation marks omitted).

Agencies must "support and explain their conclusions with evidence and reasoned analysis." *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 648 (9th Cir. 2010). "[W]here the agency has failed to provide even the minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). Moreover, courts may not consider "impermissible" agency "post hoc rationalization." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citations omitted). Respondent's decisions to re-detain Petitioner constitutes a final agency action because the re-detention marks the "consummation" of the Respondent's decision-making process on the question of Petitioner's custody, and they are actions "by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett*, 520 U.S. at 177-78. Indeed, the "practical and legal effects of the agency action" are that Petitioner has been deprived of his liberty for over 54 days and separated from his family with no end in sight.

Moreover, Respondent's decision to re-detain Petitioner was arbitrary and capricious in violation of the APA where the agency failed to contemporaneously (or ever) articulate any flight-risk or danger-based justifications for their decisions. Respondents have never once provided Petitioner documentation explaining the

reasons for their abrupt re-detention, nor have they offered explanations, other than broad statements indicating that Petitioner's arrest was required because he was "illegal", despite Petitioner's continuous attempts to explain that he was paroled into the United States. *See* Exhibit A at 3, ¶ 14. Thus, ICE did not and cannot offer a "satisfactory explanation" for its decisions to re-detain Petitioner, a "rational connection" between the facts—Petitioners' lack of intervening criminal history or flight risk factors—and the choice it made to detain him. *State Farm*, 463 U.S. at 42-43. ICE failed to provide "even the minimal level of analysis," *Encino Motorcars*, 579 U.S. at 221, let alone "reasoned analysis" that the APA requires. *Ctr. for Biological Diversity*, 623 F.3d at 648. Thus, ICE's decision to re-detain Petitioner was arbitrary and capricious in violation of the APA, and the agency cannot now seek to provide post-hoc justification to cure its unlawful action. *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123, 1147 (D. Or. 2025) (finding termination of parole arbitrary and capricious where ICE "provide[d] no record evidence of an articulation by the agency of any reason for the change to terminate Petitioner's parole, let alone a rational basis for its decision"); *Ledesma Gonzalez v. Bostock*, No. 2:25-CV-01404-JNW-GJL, 2025 WL 2841574, at *5-6 (W.D. Wash. Oct. 7, 2025) (finding an "absence of contemporaneous explanation" where "[t]he record

does not reflect any deliberative process, any consideration of [petitioner's] individual circumstances, or any articulated reasoning for why the agency changed its eight-year-old determination that he was not a flight risk or danger to the community," rendering the revocation of prior release on recognizance arbitrary and capricious).

For these reasons, Petitioner is likely to succeed on the merits of his claims. Alternatively, Petitioner has at least raised "serious questions" going to the merits of his claims, thus favoring the issuance of the TRO. *Fraihat*, 16 F.4th at 635

Petitioner also asserts the revocation of his parole violates the APA based on long standing *Accardi* doctrine principles. The Supreme Court has long recognized that, "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). The Ninth Circuit has applied this principle to the immigration context. See, e.g., *Alcaraz v. I.N.S.,* 384 F.3d 1150, 1162 (9th Cir. 2004). The *Accardi* doctrine extends beyond just "regulations" to include, e.g., "internal operating procedures," "handbook[s]," "policy statements," and other evidence of an agency's "usual practice." Id.

When an asylum seeker comes to the border to seek asylum in the U.S., the Department of Homeland Security has the option of detaining them and placing them in expedited removal proceedings or releasing them into the U.S. on parole.

The INA provides that DHS "may . . . in [the Secretary's] discretion parole" an arriving asylum seeker into the United States on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

If the Department exercises the option of paroling the noncitizen into the U.S. under 8 U.S.C. § 1182(d)(5), said parole may not be terminated arbitrarily but rather "upon accomplishment of the purpose for which parole was authorized or when…neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States…." 8 C.F.R. § 212.5(e)(2)(i).

Petitioner was granted parole into the United States to pursue his asylum claim lawfully. Petitioner and his family retained counsel and applied for asylum. This asylum application is pending adjudication by the US Citizenship and Immigration Service (USCIS). Petitioner has no criminal history and has complied with all of DHS's requirements. He has attended all hearings and check-ins that have been required of him. The purpose of his parole has not been accomplished given that his asylum proceedings are still active, and there are no exigent circumstances that

would justify the revocation of his parole. Petitioner's revocation of parole and arrest was an arbitrary and capricious action that is in violation of the APA.

B) Petitioner's re-detention Violates the Due Process Clause of the Fifth Amendment

The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. Const. amend. V. This protection applies to noncitizens. *Zadvydas v Davis*, 533 U.S. 678, 693 (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" *Id.* at 690. While immigration laws afford ICE discretion over its decisions to arrest, detain, and revoke prior releases, those decisions are nonetheless constrained by the requirements of the Constitution, including the Due Process Clause. See generally *Id.* at 690, *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017).

i) **Substantive Due Process**

Civil detention must "bear[] a reasonable relation to [its] purpose." *Zadvydas*, 533 U.S. at 690. In the immigration context, detention only comports

with substantive Due Process when it furthers the government's legitimate goals of "ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Id.* Thus, ICE detention, which is Constitutionally constrained as a form of nominally "civil" detention to be nonpunitive in nature, violates substantive Due Process where it is not justified by flight risk or danger to the community, or where it is motivated by anything other than those two legitimate purposes. See *id.*

Here, Respondents re-detained Petitioner despite having no flight risk or danger-based justifications to do so; in fact, Petitioner has never had contact with the criminal legal system in the United States, including since his previous release from Respondents' custody. Petitioner has complied with all requirements Respondents have imposed on him. Under these circumstances, Petitioner's detention cannot serve a legitimate government purpose and therefore contravenes his substantive Due Process rights.

Moreover, ICE re-detained Petitioner pursuant to a blanket policy where ICE claims authority to arrest and detain all noncitizens who it alleges are lawfully present in the United States, without regard for whether he is a flight risk or

dangerous.[2] Indeed, the ICE agent who arrested Petitioner told him explicitly that the reason for his detention was because he knew that Petitioner was a "illegal". *See* Exhibit A at 3 ¶ 14. Detention pursuant to such a policy violates substantive Due Process because it is unrelated to the two regulatory purposes of immigration detention; it authorizes detention indiscriminately, based on status alone, regardless of any consideration of danger or flight risk. Regardless of whether the policy is a product of arrest quotas, a desire to deter unlawful migration, or to encourage voluntary deportation, the detentions cannot comport with substantive Due Process because such a detention policy does not serve a legitimate government purpose. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 188-189 (D.D.C. 2015) (citing *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (observing that "[i]n discussing civil commitment more broadly, the [Supreme] Court has declared such general deterrence justifications impermissible" and finding likely contrary to Due Process a policy pursuant to which DHS detained "one particular individual" for purposes of "sending a message of deterrence to other[s] who may be considering

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[2] Camilo Montoya-Galvez, *Migrants who entered U.S. via Biden-era CBP One app stripped of legal status, told to leave "immediately"*, CBS News, (April 8, 2025), https://www.cbsnews.com/news/migrants-cbp-one-app-legal-status-stripped-dhs/

immigration"); *Demore v. Kim*, 538 U.S. 510, 532–33 (2003) (Kennedy, J., concurring); *Kansas v. Hendricks*, 521 U.S. 346, 361-62 (1997); *Bell v. Wolfish*, 441 U.S. 520, 539 (1979). Thus, Petitioner's re-detention violates substantive Due Process.

ii) Procedural Due Process

Petitioner's re-detention also violates procedural Due Process. Under *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts evaluate procedural Due Process by balancing (1) the private interest affected; (2) the risk of erroneous deprivation of such interest; and (3) the government's interest. *Id.* at 335. There is no question that freedom from government imprisonment is a profound private interest that "lies at the heart of the liberty that" Due Process protects. *Zadvydas*, 533 U.S. at 690. In cases where an individual has been previously released from government custody, the release itself creates a liberty interest in remaining out of custody. *Morrisey v. Brewer*, 408 U.S. 471, 482 (1972). In the immigration context, courts have consistently found the private interest in "retaining [] liberty" is significant, *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1035, (N.D Cal. 2025) even where "ICE has the initial discretion to detain or release a noncitizen pending removal proceedings." *Id.* at 1032 (citing *Romero v. Kaiser*, No. 22-cv-02508, 2022 WL

143250 at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v. Wilkinson,* No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021); *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal. Aug. 23, 2020); *Ortega v. Bonnar*, 415 F.Supp.3d 963, 969 (N.D. Cal. 2019). Courts in this district have specifically recognized that individuals have a significant liberty interest in "freedom from imprisonment" after "the government grants a [noncitizen] parole into the country," *Sanchez v. Larose*, No. 25-CV-2396-JES-MMP, 2025 WL 2770629, at *3 (S.D. Cal. Sept. 26, 2025), *Cabrera v. Larose*, No. 26cv863-LL-MSB, 2026 U.S. Dist. LEXIS 36793 (S.D. Cal. Feb. 23, 2026).

As numerous district courts within the Ninth Circuit and around the country have found, where individuals subject to ICE re-detention have "not received any bond or custody hearing, the risk of an erroneous deprivation of liberty is high because neither the government nor [the petitioner] has had an opportunity to determine whether there is any valid basis for her detention." *Pinchi,* 792 F. Supp. 3d 1025, at 1035. Indeed, where a petitioner "was previously released following a determination that he posed no flight risk or danger to the community, and absent any new evidence showing a material change in circumstances, the risk of erroneous detention without a hearing is substantial." *Palma v. Larose*, No. 25-cv-

1942-BJC-MMP, 2025 U.S. Dist. LEXIS 213718 (S.D. Cal. Aug. 11, 2025). The requirement that the government conduct a pre-deprivation hearing to determine whether changed circumstances justify re-detention is especially crucial to safeguard Due Process because the prior "[r]elease reflects a determination by the government that the noncitizen is not a danger to the community or a flight risk." *Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018). That is certainly true in Petitioner's case. *See* 8 C.F.R. § 1236.1(c)(8) (authorizing release of noncitizens under § 1226(a) if they "would not pose a danger to property or persons," and are "likely to appear for any future proceeding"); 8 C.F.R. § 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding"). To be lawful their re-detention "must be based on evidence that the circumstances relevant to that original release decision have changed." *Saravia* 280 F. Supp at 1196; see also *Sanchez*, 2025 WL 2770629 at *3 ("To satisfy due process, those changed circumstances must represent individualized legal justification for detention." (internal citation omitted)). Where, as here, the government has failed to conduct any individualized determination of whether changed circumstances justify Petitioner's re-detention—let alone pre-deprivation hearings—the risk of erroneous deprivation is too high to comport with Due

Process. Finally, there is no countervailing government interest that justifies Petitioner's re-detention where, as here, Petitioner presents no danger or flight risk concerns. Petitioner has no prior criminal history or contact with the criminal legal system whatsoever. The Petitioner has never missed a court date or done anything to suggest he is a flight risk. *See* Statement of Facts, supra.

To the extent that Respondents seek to justify re-detention "to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures," or because providing pre-deprivation procedures would be "fiscally or administratively onerous," those excuses do not constitute a legitimate government interest that outweighs Petitioner's liberty interest. *Pinchi,* 792 F. Supp. 3d 1025, at 1035. Compared to the "staggering" "costs to the public of immigration detention," *Hernandez*, 872 F.3d at 996, "[t]he effort and cost required" of providing a hearing "is minimal." *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1094 (E.D. Cal. 2025). As a parolee living in the United States for over 1.5 years, Petitioner has acquired a liberty interest that mandates due process (in the form of notice and a hearing). Petitioner readily satisfies each of the *Mathew's* factors; thus, his re-detention without a pre-deprivation hearing to assess whether material changes in circumstances justify his

detention violates procedural Due Process, as a growing number of district courts around the country have held in similar circumstances.[3]

C) Petitioner's re-detention Contravenes the Immigration and Nationality Act (INA)

For similar reasons, Petitioners' re-detention also violates the INA. Petitioners is detained under 8 U.S.C. 1226(a), which provides for detention of certain noncitizens "inside the United States" and "present in the country." *Jennings v. Rodriguez*, 584 U.S. 281, 288-89 (2018).

8 U.S.C. § 1225(b)(2), in contrast, mandates detention for any noncitizen "who is an applicant for admission, if the examining immigration *officer* determines that a[] [noncitizen] *seeking admission* is not clearly beyond a doubt entitled to be *admitted*[.]" See 8 U.S.C. § 1225(b)(2) (emphasis added); *Jennings*, 583 U.S. at 287 (describing section 1225 as relating to "borders and ports of entry"). As an individual who was arrested in the interior of the country over one year and a half

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[3] See, e.g., *Lozada v. Larose*, No. 25cv3614-LL-KSC, 2026 U.S. Dist. LEXIS 12973 (S.D. Cal. Jan. 23, 2026), *Sanchez v. Larose*, No. 25-CV-2396-JES-MMP, 2025 U.S. Dist. LEXIS 190593, 2025 WL 2770629, at *4 (S.D. Cal. Sept. 26, 2025) ; *Prieto-Cordova v. Larose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025)

after they arrived in the United States, Petitioners' re-detention is governed by 8 U.S.C. § 1226(a).

In some cases, the government has argued that individuals like the Petitioner are detained under § 1225(b)(2), but that claim is meritless.[4] Petitioner was plainly not "*seeking admission*" at the time of his re-detention. Moreover, any interpretation suggesting that § 1225(b)(2) governs Petitioners' detention would contravene decades of agency policy and practice. Thus, § 1226(a) governs. Detention under the INA only "has two regulatory goals: ensuring the appearance of [noncitizens] at future immigration proceedings and preventing danger to the community." *Zadvydas*, 533 U.S. at 690.

Prior to re-detaining them, DHS had released Petitioners from its custody, necessarily determining they posed no danger or flight risk. That is because DHS released Petitioner on parole— which requires a finding that the noncitizen poses neither a danger nor a flight risk. *See* 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens deemed "neither a security risk nor a risk of absconding").

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[4] Such an interpretation would not be entitled to this Court's deference. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385–86, (2024) (courts must exercise "independent judgment").

Thus, § 1226(a) only authorizes re-detention after an individualized determination that some material change in circumstances related to flight risk or danger now justifies re-detention. See *Ortega*, 415 F.Supp.3d at 968 ("DHS re-arrests individuals only after a 'material' change in circumstances." (citing *Saravia*, 280 F.Supp.3d at 1197)); *United States v. Cisneros*, No. 19-CR00280-RS-5, 2021 WL 5908407, at *2 (N.D. Cal. Dec. 14, 2021) ("[R]e-arrest can only occur if there has been a change in circumstances."). Here, Petitioners' re-detention flowed not from individualized determinations of changed circumstances, but rather from a blanket arrest policy.

ICE communicated no justifications to Petitioner for their re-detention, and indeed, there are none. Petitioner has no criminal history, let alone new criminal history. Nor has Petitioner failed to comply with any conditions or otherwise demonstrated risk of flight following their release from DHS custody. Thus, there are no changed circumstances that justify departure from the prior release and re-detention, and DHS did not engage in the required individualized determination prior to re-detaining them at their check-ins. Accordingly, Petitioners' re-detention violates 8 U.S.C. § 1226(a).

II. Petitioner Continues 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). The Ninth Circuit has specifically recognized irreparable harm resulting from unconstitutional immigration detention. *Hernandez*, 872 F.3d 976 at 994. This is sufficient to justify emergency relief. *See Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

Petitioner is suffering irreparable harm through his deprivation of liberty and his in ability to be with his family, all while knowing he could be removed at any moment without anyone reviewing his case. In the event of his removal, he would be unable to return to the United States for 10 years. 8 USC § 1182(a)(9)(B)(II) .

In this case, a TRO would simply require Respondents to refrain from removing Petitioner and restore the Petitioner to the status quo prior to the legal violation, which the equities favor.

III. The Balance of the Equities Favors Relief

The balance of the equities favors relief for Petitioner. "[A party] cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process.").

Any enforcement interests that the Department of Homeland Security may assert should not apply until and unless the I-589 is adjudicated. Even if they did have an interest, it would be outweighed by the Petitioner's liberty interests and the adjudication of his application.

In this case, a TRO would simply require Respondents to stop violating the law and restore Petitioners to the status quo prior to the legal violation, which the equities favor.

IV. Release is the Only Proper Remedy

Petitioner requests that this Court order his immediate release and prohibit Respondents from re-detaining his without a pre-deprivation hearing at which the

government would bear the burden of proving that material changes in circumstances justify re-detention. Moreover, Petitioner requests that all property respondent confiscated be returned to him upon his release, including he and his brother's employment authorization card, Petitioner's phone, and other personal belongings.

Release is the only proper remedy because it is required to return Petitioner to the status quo ante, which is "the last uncontested status which preceded the pending controversy." See, e.g., *Pinchi*, 792 F.3d at 1036 (ordering immediate release of noncitizen unlawfully re-detained without a pre-deprivation hearing) (internal citations omitted).[5] Thus, Petitioner is entitled to immediate release and to remain at liberty unless the government provides a pre-deprivation hearing at which it establishes a lawful justification for his detention.

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[5] *Perez v. Noem*, No. 3:25-cv-03777-CAB-JLB, 2026 U.S. Dist. LEXIS 8505 (S.D. Cal. Jan. 14, 2026) (granting immediate release); *Lozada v. Larose*, No. 25cv3614-LL-KSC, 2026 U.S. Dist. LEXIS 12973 (S.D. Cal. Jan. 23, 2026) (granting immediate release); *Benitez v. Hermosillo*, No. 2:25-cv-02535-BAT, 2025 U.S. Dist. LEXIS 267678 (W.D. Wash. Dec. 30, 2025) (granting immediate release); *L.A.E. v. Wamsley*, No. 3:25-cv-01975-AN, 2025 U.S. Dist. LEXIS 214096 (D. Or. Oct. 30, 2025) (immediate release) ; *Navarro v. Noem*, No. 2:26-cv-00334-TLF, 2026 U.S. Dist. LEXIS 35352 (W.D. Wash. Feb. 20, 2026) (immediate release)

CONCLUSION

Petitioner respectfully requests that this Court grant his request for a Temporary Restraining Order, enjoining ICE from issuing a removal order or removing him from the country and ordering his immediate release from ICE custody and restoration of his status prior to his unlawful arrest. Petitioner also requests that all property confiscated by the respondent be returned to him upon his release.

Dated: March 7, 2026

Respectfully submitted,

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