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

IMMIGRATION CASE

10 **MAISURADZE, George**



12 Petitioner,

13 v.

14 **LAROSE, ET AL.,**

15 Respondents.

Civil No.: 3:26-cv-01480-CAB-AHG

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**PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION AND NOTICE OF
MOTION**

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE as soon as it may be heard in the United States District Court for the Southern District of California, that Petitioner (also mentioned as "Plaintiff"), will and hereby does move for a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b). Because Petitioner's detention violates the Due Process Clause of the Fifth Amendment to the United States, Petitioner respectfully requests that this Court (1) order Petitioner's immediate release from Respondents' custody pending these

1 proceedings, without requiring bond or electronic monitoring. To preserve this Court's
2 jurisdiction, Petitioner further seeks an order enjoining Respondents from removing him
3 from the United States during the pendency of these proceedings. This motion is based on
4 this Notice of Motion, Motion with enclosed memorandum of points and authorities in
5 support of this motion, and the attached evidence and declaration of Petitioner's counsel,
6 Laxman Adhikari.

7
8 This motion is also supported by the Petition for Writ of Habeas Corpus (ECF No.
9 1) Petitioner seeks relief at the earliest possible opportunity. As detailed further in attached
10 declaration, Respondents' counsel has been notified of this motion, this action, and the
11 reasons justifying temporary restraining order. As of March 10, 2026, Respondents have
12 not stipulated to a TRO or otherwise responded to Counsel.

13 Petitioner respectfully moves this Court for the issuance of a Temporary Restraining
14 Order and a Preliminary Injunction. To allow Respondents an opportunity to be heard,
15 Petitioner requests that the Court initially issue a Temporary Restraining Order and set this
16 matter for hearing on the Motion for Preliminary Injunction at the Court's earliest
17 convenience, if necessary.

18
19 **I. Correspondence with Respondents' counsel**

20 On March 10, 2026, undersigned counsel emailed the U.S. Attorney's Office for the
21 Southern District of California at Efile.dkt.civ@usdoj.gov to notify respondents of
22 Petitioner's complaint for habeas corpus relief and this motion for temporary restraining
23 order. Counsel provided the U.S. Attorney's office with copies of the complaint, this
24 motion, and all attached papers and informed opposing counsel that further notification
25 would be provided if a hearing date or other order from this Court issues. Counsel also
26 requested that Respondents consider releasing Petitioner from custody immediately to
27 avoid need for TRO in this case. A response has not been received from Respondents'
28 counsel. *See Decl. of Laxman Adhikari.*

1 **II. Fed. R Civ. P. 65(b)(1) (TRO) requirements are met.**

2
3 Though Respondents have been provided with actual notice of the habeas petition
4 in this case and of this motion, the requirements for issuing a temporary restraining order
5 without notice pursuant to Federal Rule of Civil Procedure 65(b)(1) are satisfied. Counsel,
6 in the attached declaration ("Laxman Adhikari Decl."), and the complaint, ECF No. 1, has
7 set out specific facts showing that immediate and irreparable injury, loss, or damage is
8 ongoing and will continue to result before Respondents' opposition can be heard. *See* Fed.
9 R. Civ. P. 65(b)(1)(A). Of course, ongoing unlawful detention in violation of the
10 Constitution is an irreparable injury. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir.
11 2017) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). "When an
12 alleged deprivation of a constitutional right is involved, most courts hold that no further
13 showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-
14 02 (9th Cir. 2005) (citations omitted). As noted above, counsel notified respondents'
15 counsel of this TRO request and provided their counsel, the U.S. Attorney for the Southern
16 District of California, with copies of this motion and all documents in this case including
17 Petitioner's habeas petition and Notice of Motion for Temporary Restraining Order, and
18 this memorandum in support of that motion by email. *See* "Laxman Adhikari Declaration."
19 Fed. R. Civ. P. 65(b)(1)(B).

20 **III. Summary of Motion and request for relief**

21 Petitioner asks this Court to find that his re-arrest by immigration authorities
22 (respondents) and in the absence of materially changed circumstances, and his continued
23 detention, constitute a violation of his liberty interest under the Due Process Clause of the
24 Constitution. To the extent necessary, Petitioner asks the Court to find that his current
25 detention can only be pursuant to 8 U.S.C. 1226(a). and that he is, at a minimum, entitled
26 to a bond hearing before an immigration judge if he should be detained again in the future.
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1 However, Petitioner believes there is no valid basis for his current detention and that
2 immediate release is thus warranted.

3
4 Thousands of people similarly situated to Petitioner have been granted relief across
5 the country and in this district. *Lavish Lavish v. Albarran*, No. 1:26-cv-00790-TLN-SCR
6 (E.D. Cal. Feb. 26, 2026); *Reyes Gaytan v. Knight*, No. 1:25-cv-02041-DC-JDP, 2026 WL
7 ____ (E.D. Cal. Feb. 25, 2026) (recommending grant of §2241 habeas petition and release
8 where ICE re-detained petitioner without notice or a hearing). *M.K. v. Arteta*, 2025 U.S.
9 Dist. LEXIS 265542, *11; (S.D.N.Y. Dec. 23, 2025)(noting the number of cases ruling on
10 these issues); *Alberto R.C. v. Murray*, No. 1:25-cv-01618-KES-SKO (HC), 2025 LX
11 513970 (E.D. Cal. Dec. 16, 2025); *Sharan S. v. Chestnut*, No. 1:25-cv-01427-KES-SKO
12 (HC), 2025 LX 524863 (E.D. Cal. Nov. 12, 2025); *Gagandeep Singh v. Bowen*, No. 5:25-
13 cv-03034-CAS-PD, 2025 LX 590018, at *9 (C.D. Cal. Nov. 21, 2025); *Estrada Elias v.*
14 *Knight*, No. 1:25-CV-00594-BTW, 2025 WT 3228262, at *1 (D. Idaho Nov. 19, 2025)
15 (collecting cases); see also *Tut v. Noem*, No. 5:25-cv-02701-DOC-AGR, 2025 LX 415266,
16 at *9 n.1 (C.D. Cal. Oct. 16, 2025) (collecting cases in this district); *Doe v. Becerra*, No.
17 2:25-cv-647-DJC-DMC, 2025 U.S. Dist. LEXIS 37929 at *8 (E.D. Cal. Mar. 3, 2025)
18 (granting temporary restraining order); *López v. Wofford*, No. 1:25-cv-01226-KES-SKO
19 (HC), 2025 LX 491132, (E.D. Cal. Oct. 17, 2025)(requiring release of asylum seeker and
20 a pre-detention bond hearing before re-arrest); *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS
21 156344, *34-35 (D. AZ August 11, 2025); *Garro Pinchi v. Noem*, No. 25-cv-05632, 2025
22 U.S. Dist. LEXIS 127539 at *4 (N.D. Cal. July 4, 2025) (same), (N.D. Cal. July 24, 2025);
23 *Singh*, 2025 U.S. Dist. LEXIS 132500 at *10 (granting preliminary injunction); *Garcia v.*
24 *Bondi*, No. 25-cv-5070, 2025 U.S. Dist. LEXIS 113570, at *3 (N.D. Cal. June 14, 2025)
25 (granting temporary restraining order requiring pre-detention hearing before re-detention
26 of noncitizen out of custody six years); *Enamorado v. Kaiser*, No. 25-cv-4072-NW, 2025
27 U.S. Dist. LEXIS 90261, at *3 (N.D. Cal. May 12, 2025).
28

Petitioner's case is no different from the above-stated case. His re-arrest, without justification, in the absence of violation of terms of initial release, without advance notice or opportunity to be heard, violates his right to due process. Petitioner was arrested inside the U.S., was released on his own recognizance (ORR) and thereafter could not be re-arrested absent a change in circumstances and with advance notice. Adhikari Declaration at Exh. 2 (NTA).¹ Nor would the outcome be any different if Respondents allege or demonstrate that Petitioner was released from custody on parole. *See e.g. Maklad v. Murray*, 2025 U.S. Dist. LEXIS 153675, *14; 2025 LX 345940; 2025 WL 2299376 (discussing *Y-Z-L-H v Bostock*, 2025 U.S. Dist. LEXIS 130216, 2025 WL 1898025, at *10-12 (D. Or. July 9, 2025) (before parole may be revoked, the parolee must be given written notice of the impending revocation, which must include a cogent description of the reasons therefore).

IV. Factual background

a. Initial entry, arrest, initiation of removal proceedings, and release on recognizance

Petitioner is 46-year-old native and citizen of Georgia. Exh. 2 (NTA). Petitioner entered the United States on or about December 24, 2021 and presented himself for inspection, however he was not admitted or paroled. A Customs Border Protection (CBP) Officer detained Petitioner inside the United States on that same date.

Petitioner was then released on his own recognizance under § 1226(a)(2)(B). The DHS issued an NTA and initiated removal proceedings by filing the NTA with the Executive Office for Immigration Review (EOIR) Immigration Court on January 26, 2024. [Exh.2]. The NTA charges that Petitioner is a person who is "present in the United States who has not been admitted or paroled[]" and therefore that Petitioner is inadmissible under

¹ As all Exhibits are attached to the "Adhikari Declaration," the documents will be referenced by Exhibit Numbers (1-5) omitting "Adhikari Declaration."

1 INA § 212(a)(6)(A)(i) for being present in the U.S. “without being admitted or paroled, or
2 who arrived in the United States at any time or place other than as designated[,]”....

3
4 Following his release from custody in 2021, Petitioner complied with all terms of
5 release and appeared at all required orders of the DHS ICE. Petitioner filed an application
6 for asylum within one year of his arrival and sought a resolution of his case. **Exh. 4.**

7 **b. Petitioner re-arrested absent change in circumstances or advance notice**

8 Following his initial release from custody, Petitioner retained legal counsel and
9 complied with all terms and conditions of his release. He reported to the ICE when
10 requested and never missed an immigration court hearing. He submitted an application for
11 [affirmative] asylum to the USCIS initially. Adhikari Decl. at ¶¶ 11-12. Respondents
12 arrested Petitioner on February 21, 2026, despite the absence of probable cause and without
13 any new or intervening circumstances that would render Petitioner’s re-arrest or booking
14 necessary, lawful, or rational. Petitioner was thereafter transferred to Otay Mesa Detention
15 Center where he remains detained at this time. **Exh. 1.**

16
17 It is unclear if ICE will posit even a pretextual reason to justify Petitioner’s
18 detention. In other cases, Respondents have put forth supposed violations of reporting or
19 address change requirements. Some Courts have noted the dubious or *de minimis* nature of
20 these claims.² Moreover still, even had the Petitioner violated some term or condition of

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22 ² See e.g. *Ramazan M. v. Andrews*, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at *6 (E.D.
23 Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where Respondents alleged check-in and other
24 electronic monitoring violations, because “[w]hile respondents argue that petitioner is a flight risk, the
25 purpose of a bond hearing is for a neutral decisionmaker to consider and evaluate such an argument to
26 determine whether it is consistent with the facts and to ensure that noncitizens like petitioner are not
27 deprived of their liberty without justification”), and at *E.A. T.B. v. Wamsley*, No. C25-1192-KKE, 2025
28 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ordering immediate release of petitioner and finding that
it does not “necessarily follow that Petitioner can be detained for [release conditions] violations without a
hearing. That the Government may believe it has a valid reason to detain petitioner does not eliminate its
obligation to effectuate the detention in a manner that comports with due process.”). Judges have repeatedly
found the supposed violations “negligible” or been skeptical of existence of purported violations. See e.g.
Alas v. Albarran, 2025 U.S. Dist. LEXIS 207060 *2 FN1 (ND Cal. Oct. 15, 2025).

1 his presence in the United States, he would still be entitled to a hearing prior to being taken
2 back into custody.³

3
4 However, following his rearrest, Respondents will almost certainly claim that
5 Petitioner is not eligible for release from custody under 8 U.S.C. 1226(a) because he
6 entered the U.S. without inspection and cite to *Matter of Yajure Hurtado*, 29 I. & N. Dec.
7 216 (BIA 2025) (all noncitizens present without inspection are subject to mandatory
8 detention under INA § 1235(b)).

9 Even where Respondent does not expressly cite *Hurtado, supra*, Immigration Judges
10 frequently rely on generalized assertions of flight risk as an independent basis to deny bond,
11 often without individualized evidence demonstrating that the noncitizen is unlikely to appear
12 for future proceedings. While some IJs in other immigration courts have continued to grant
13 bond to people like Plaintiffs, consistent with its new policy, DHS also has begun filing
14 Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination. This notice
15 not only appeals to any IJ decision granting bond but also triggers an automatic stay of the
16 bond decision during the appeal. *See* 8 C.F.R. § 1003.19(i)(2).

17 In *Bautista*, the Ninth Circuit issued an administrative stay pending appeal of a district
18 court declaratory judgment and enforcement order relating to immigration detention
19 procedures. The decision was entered on March 6, 2026. The court temporarily stayed the
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21
22 ³ *See e.g.* Ramazan M. v. Andrews, No. 1:25-cv-01356-KES-SKO (HC), 2025 WL 3145562, at *6 (E.D.
23 Cal. Nov. 10, 2025) (ordering pre-deprivation hearing where Respondents alleged check-in and other
24 electronic monitoring violations, because “[w]hile respondents argue that petitioner is a flight risk, the
25 purpose of a bond hearing is for a neutral decisionmaker to consider and evaluate such an argument to
26 determine whether it is consistent with the facts and to ensure that noncitizens like petitioner are not
27 deprived of their liberty without justification”), and at E.A. T.B. v. Wamsley, No. C25-1192-KKE, 2025
28 WL 2402130, at *4 (W.D. Wash. Aug. 19, 2025) (ordering immediate release of petitioner and finding that
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obligation to effectuate the detention in a manner that comports with due process.”). Judges have repeatedly
found the supposed violations “negligible” or been skeptical of existence of purported violations. *See e.g.*
Alas v. Albarran, 2025 U.S. Dist. LEXIS 207060 *2 FN1 (ND Cal. Oct. 15, 2025).

1 district court's orders only to the extent they applied outside the Central District of
2 California, while allowing the judgment to remain in effect within the Central District during
3 the pendency of the government's stay motion. The court emphasized that the government's
4 motion did not challenge the district court's interpretation of 8 U.S.C. § 1225(b)(2), which
5 was already the subject of separate appellate proceedings. *Bautista v. U.S. Department of*
6 *Homeland Security*, No. 26-1044 (9th Cir. Mar. 6, 2026).

7 8 **V. Legal standard**

9 Temporary restraining orders "serv[e] the [] underlying purpose of preserving the
10 status quo and preventing irreparable harm just so long as is necessary to hold a hearing,
11 and no longer." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*
12 *Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439, (1974). Emergency injunctive relief,
13 whether through a temporary restraining order or preliminary injunction, requires a
14 showing of: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm
15 in the absence of preliminary relief; (3) that the equities balance in the plaintiff's favor; and
16 (4) that preliminary injunctive relief would serve the public interest. *See Winter v. Nat. Res.*
17 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush &*
18 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
19 temporary restraining order standards are "substantially identical"). Even if Plaintiffs do
20 not show a likelihood of success on the merits, the Court may still grant a temporary
21 restraining order if they raise "serious questions" as to the merits of their claims, the
22 balance of hardships tip "sharply" in their favor, and the remaining equitable factors are
23 satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

24 **VI. Discussion**

25 The *Winter* factors all weigh in Petitioner's favor in this case. Petitioner's rearrest
26 in the absence of materially changed circumstances constitutes a violation of the Due
27 Process Clause. Petitioner, though noncitizens, remain protected by the Due Process
28

1 Clause's protections from unlawful deprivation of liberty. Petitioner is detained, stripped
2 of his fundamental right to liberty, and is separated from his community and family and
3 thus is suffering irreparable harm. Respondents have no legitimate interest in unlawfully
4 detaining noncitizens, and the public interest would be served by ensuring that the
5 Respondents do not continue to detain Petitioner, or any person for that matter, in violation
6 of the laws of the United States and at significant cost to the United States public.

7
8 **1. Likelihood of success on merits-Due Process**

9 **a. Due Process Clause Applicable to Noncitizen**

10 The Due Process Clause prohibits deprivations of life, liberty, and property without
11 due process of law. U.S. Const. amend. V. It is firmly established that these protections
12 extend to noncitizens present in the United States. *Trump v. J.G.G.*, 604 U.S. 145 S. Ct.
13 1003, 1006 (2025) (*per curiam*) ("It is well established that the Fifth Amendment entitles
14 aliens to due process of law' in the context of removal proceedings," quoting *Reno v.*
15 *Flores*, 507 U.S. 292, 306, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993)); *Zadvydas v. Davis*,
16 533 U.S. 678, 693, 121 S. Ct. 2491, 150 L. Ed. 2d 653, (2001) ("[T]he Due Process Clause
17 applies to all 'persons' within the United States, including aliens, whether their presence
18 here is lawful, unlawful, temporary, or permanent.").

19 **b. Due Process requires hearing prior to rearrest**

20 Well-established precedent firmly holds that, once a noncitizen has been released
21 from civil immigration detention, they may not be rearrested or detained again absent in a
22 material change in circumstances. This principle is statutory and Constitutional.
23 See *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021) ("Thus, absent changed
24 circumstances ... ICE cannot redetain Panosyan."); *Matter of Sugay*, 17 I&N Dec. 647, 640
25 (B.I.A. 1981). Additionally, any change in circumstances must be "material." *Saravia v.*
26 *Barr*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v.*
27 *Sessions*, 905 F.3d 1137 (9th Cir. 2018); *Ortiz Vargas v. Jennings*, No. 20-CV-5785-PJH,
28

1 2020 U.S. Dist. LEXIS 167842, 2020 WL 5517277, at *2 (N.D. Cal. Sept. 14, 2020); *Lopez*
2 *v. Lyons*, No. 2:25-cv-03174-DJC-CKD, 2025 U.S. Dist. LEXIS 220303, at *7 (E.D. Cal.
3 Nov. 7, 2025). Further, even assuming Respondents initially paroled Petitioner from
4 custody, a fact not evidenced in record as of yet, Petitioner still may not be re-detained
5 absent advance written notification of the nonarbitrary reasons for revocation of parole.
6 *Maklad v. Murray*, 2025 U.S. Dist. LEXIS 153675, *16, 2025 LX 345940, 2025 WL
7 2299376.

8
9 Here, Petitioner was initially arrested by the CBP following his entry to the U.S. on
10 December 24, 2021. **Exh. 2.** Petitioner was then released on his own recognizance. He was
11 not charged as an arriving alien, and it does not appear that he was paroled from custody
12 under § 1182(d)(5). *Supra*. After he was released, he filed asylum **Exh.3**, got his
13 Employment Authorization Documents and started working full-time. Petitioner had an
14 ongoing and protected interest in his liberty, absent pre-detention hearing and showing of
15 changed circumstances. He was then rearrested after over four years, though no change in
16 circumstance occurred, and no pre-detention hearing was afforded. Respondents will now
17 contend that he is not eligible for a bond hearing under § 1226(a) and that his detention is
18 mandatory under § 1235(b).

19 Court's considering the deluge of habeas cases sharing the facts of Petitioner's case
20 have recently, and to counsel's knowledge, almost uniformly found that rearrest under
21 these circumstances constitutes a violation of the Due Process Clause of the Constitution
22 and that, therefore, Petitioner is likely to succeed on the merits of the claim. *See e.g., See,*
23 *e.g., Yurani Hortua v. Chestnut*, No. 1:25-cv-01670-TLN-JDP, 2025 U.S. Dist. LEXIS
24 254930, 2025 WL 3525916 (E.D. Cal. Dec. 9, 2025); *Maconel-Arguello v. Chestnut*, No.
25 1:25-cv-01588-KES-EPG-HC, 2026 U.S. Dist. LEXIS 8435, at *14 (E.D. Cal. Jan. 15,
26 2026)), 2025 WL 3514495 (E.D. Cal. Dec. 8, 2025); *Lopez v. Lyons*, No. 2:25-cv-03174-
27 DJC-CKD, 2025 U.S. Dist. LEXIS 220303, at *7 (E.D. Cal. Nov. 7, 202 5) *Ortega v.*
28 *Kaiser*, No. 25-cv-05259-JST, 2025 U.S. Dist. LEXIS 121997, 2025 WL 1771438, at *3

(N.D. Cal. June 26, 2025) (collecting cases finding that noncitizens who have been released have a strong liberty interest) *Pablo Sequen v. Kaiser*, No. 25-cv-06487-PCP, 2025 U.S. Dist. LEXIS 148751, at *2 (N.D. Cal. Aug. 1, 2025) (collecting cases); *Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *35 (D. AZ August 11, 2025); *M.K. v. Arteta*, 2025 U.S. Dist. LEXIS 265542, *11; (S.D.N.Y. Dec. 23, 2025) (noting that over 160 different judges sitting across the country have found due process violations in similar or identical cases).

c. The Mathews Factors all weigh in Petitioner's favor

Where detention of a noncitizen implicates violation of Due Process Clause, the protections of the Due Process Clause must be balanced with the government's countervailing interests in immigration enforcement. To determine whether civil detention violates a detainee's right to liberty the federal courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022); *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). *Mathews* requires consideration of (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.” 424 U.S. at 335.

The relevant factors all weigh in Petitioner (Plaintiff)'s favor. Petitioner has a substantial private interest in remaining out of custody, which would allow him to live at home, work, and assist his counsel to present his asylum claim to the immigration court. *See Morrissey v. Brewer*, 408 U.S. 471, 482, 484 (1972). There is also a risk of erroneous deprivation that the additional procedural safeguard of a pre-detention hearing would help protect against. Further, as numerous Courts have recognized, the government's interest in re-detaining (or continuing to detain) Petitioner without a hearing is “low,” where Petitioner has consistently appeared for all scheduled immigration hearings and has no

1 criminal record. *See Jorge M.F.*, 2021 U.S. Dist. LEXIS 40823, at *3; *Ortega*, 415 F. Supp.
2 3d at 970.

3
4 Petitioner is suffering ongoing, immediate, and irreparable harm in the absence of
5 preliminary relief. The Ninth Circuit has recognized “irreparable harms imposed on anyone
6 subject to immigration detention,” including “the economic burdens imposed on detainees
7 and their families as a result of detention, and the collateral harms to children of detainees
8 whose parents are detained.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).
9 Those risks are present here. Moreover, “[i]t is well established that the deprivation of
10 constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*,
11 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373, (1976)).

12 Finally, the balance of the equities and the public interest, which merge in light of
13 the fact that the government is the opposing party, weigh heavily in favor of Petitioner.
14 “[T]he public has a strong interest in upholding procedural protections against unlawful
15 detention, and the Ninth Circuit has recognized that the costs to the public of immigration
16 detention are staggering.” *Jorge M. F.*, 2021 U.S. Dist. LEXIS 40823, at *3 (cleaned up)
17 (quoting *Ortiz Vargas*, 2020 U.S. Dist. LEXIS 153579, and then quoting *Hernandez*, 872
18 F.3d at 996); Without the requested relief, Petitioner faces the significant ongoing harms
19 of loss of his liberty and inability to support himself, his family, and to assist fully in
20 preparation to present his asylum claim. There is little or no harm to Respondents of
21 releasing Petitioner until a pre-detention hearing can be completed to show that that
22 detention is warranted. Moreover, a party “cannot reasonably assert that it is harmed in any
23 legally cognizable sense by being enjoined from constitutional violations.” *Zepeda v. U.S.*
24 *Immigr. & Nat. Serv.*, 753 F.2d 719, 727 (9th Cir. 1983).

25 For the foregoing reasons it is likely that Petitioner will succeed on the merits of his
26 Due Process claim and request for immediate release from custody. As such this factor
27 should weigh in favor of granting TRO in this case.
28

1 **2. The remaining *Winter* factors all weigh in Plaintiff's favor**

2 As discussed above, irreparable harm is certain and ongoing in this case. *See supra*,
3 (discussion of Mathews Factors). Additionally, the equities all weigh in favor of Petitioner,
4 and the public interest also favors Petitioners release from unlawful and costly immigration
5 detention. *Id.*

6
7 As all the *Winter* factors weigh strongly in Petitioner's favor, we respectfully ask the
8 Court to issue a TRO requiring petitioner's immediate release.

9 **3. Petitioner is not detained pursuant to INA § 1235(b)**

10 Despite the countervailing evidence, *See eg. NTA Exh. 2, 3, and 4* in Respondent's
11 possession and clear precedent from the Board of Immigration Appeals, Ninth Circuit
12 Court of Appeals, and U.S. Supreme Court, to the contrary, *see e.g. Matter of Cabrera-*
13 *Fernandez*, 28 I&N Dec. 747, 749 (BIA 2023); *Ortega Cervantes v. Gonzales*, 501 F.3d
14 1111, 1115-16 (9th Cir. 2007) *Jennings v. Rodriguez*, 583 U.S. 281, 300 (with only limited
15 and nonapplicable exceptions, the only way an alien detained under INA § 235(b) may be
16 released, is temporary parole "for urgent humanitarian reasons or significant public
17 benefit"—Petitioner was not released from initial arrest on parole- *See Exh. 2*), it is likely
18 that Respondents will assert that Petitioner's detention is mandatory and governed by INA
19 § 235.

20
21 Petitioner believes the issue is not relevant to the question of Petitioner's immediate
22 release from custody. As discussed above, even if the initial arrest was pursuant to 235,
23 Petitioner, once released, was entitled to either pre-arrest notice and a nonarbitrary basis
24 for rearrest or for revocation of parole (assuming there was a parole in this case) or a pre-
25 detention hearing before a neutral arbiter.

26 Petitioner asks the Court to consider his position on the non-applicability of § 1225,
27 in case the Court finds the issue determinative to this petition, and because it is likely to be
28

1 raised by Respondents. Further, a determination that Petitioner's current or future detention
2 can only be governed by § 1226 while removal proceedings are pending would afford
3 Petitioner another avenue to relief and more security for the future from illegal rearrest and
4 deprivation of bond hearing before an immigration judge.

5
6 Section 1225 (INA § 235) governs the arrest and detention of arriving aliens. It
7 provides that, "in the case of an alien who is an application for admission, if the examining
8 officer determines that an alien seeking admission is not clearly and beyond a doubt entitled
9 to be admitted, the alien shall be detained for [removal proceedings]." Section 235 does
10 not allow for release from custody on ORR and does not allow for an immigration judge
11 to have jurisdiction to make a custody redetermination. Individuals detained under INA §
12 235 can only be paroled into the United States "for urgent humanitarian reasons or
13 significant public benefit." *Jennings*, 583 U.S. at 300 (quoting INA § 212(d)(5)(A)). Release
14 on recognizance is not "humanitarian" or "public benefit" "parole into the United States"
15 under section 1182(d)(5)(A) but rather a form of "conditional parole" from detention upon
16 a charge of removability, authorized under section 1226. *Ortega Cervantes v. Gonzales*,
17 501 F.3d 1111, 1115-16 (9th Cir. 2007) (holding that a noncitizen released on an "Order
18 of Release on Recognizance" necessarily must have been detained and released under INA
19 § 236, including because he was not an "arriving alien" under the regulations governing
20 section 235 examinations).

21 On the other hand, INA § 236, governs the custody rules where an individual is
22 "already in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 289, 138 D. Ct 830 (2018).
23 Again, any claim that petitioner is now detained pursuant to INA § 235 cannot be squared
24 with the facts or applicable law.

25 As evidenced here, there is clear record showing that Petitioner's prior release in
26 2024, was pursuant to INA § 236. Specifically, the fact that Petitioner was released without
27 being paroled means that his arrest and release was pursuant to INA § 236. **Exh. 2.** This
28

fact is evidenced in the NTA issued by Respondents where they do not indicate the respondent is an arriving alien and indicate that he was not paroled. *supra*. Petitioner's current arrest cannot be pursuant to INA § 235 because Petitioner, over a year after arrival, after being placed in full removal proceedings, released from custody, and establishing a life and pursuing asylum inside the United States, is not an arriving alien or applicant for admission under INA § 235 and thus his current arrest could only be pursuant to INA § 236.

i. Petitioner is not 'an arriving alien' where he has been detained in the interior for over a year after arriving in the United States

Secondly, and as has been noted by a growing number of Courts to address habeas petitions under this new ICE/EOIR policy initiative, decades of precedent and policy reflect the fact that noncitizens apprehended within the United States are not treated as 'arriving aliens' and not subject to mandatory detention under INA § 235. *See e.g. Rosado v. Figueroa*, 2025 U.S. Dist. LEXIS 156344, *30 ("It is worth noting that such an approach would upend decades of practice. Indeed, mandatory detention for all applicants has only been the official policy of the Department of Homeland Security ("DHS") for a few weeks, since July 8, 2025, when Acting Director of U.S. Immigration and Customs Enforcement, Todd M. Lyons, issued an internal memorandum explaining that the agency had 'revisited its legal position'"). These Courts have also noted that this novel legal position would contravene the plain meaning of sections 236, 235, and would render key aspects of § 236 as meaningless. *Id. See also Martinez v. Hyde*, 2025 U.S. Dist. LEXIS 141724 *11-13 (D. Mass. July 24, 2025). Further, these Court's noted that the novel interpretation proposed by ICE would render recent amendments to the Statute, made by the Laken Riley Act, Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025), as meaningless. *Id* at 17.

4. Order of Immediate release is only adequate remedy

Because Petitioner is in custody, the only remedy adequate at this stage is to order immediate release and enjoin Respondents from re-detaining Petitioner absent a pre-detention hearing with a neutral arbitrator to determine whether detention is lawful and

1 warranted. A Temporary restraining order may, and should where possible, return parties
2 to the 'status quo' which refers to "the last uncontested status which preceded the pending
3 controversy." *Doe v. Noem*, 2025 U.S. Dist. LEXIS 73660, at *9 (W.D. Wash. Apr. 17,
4 2025) (citing *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). In
5 this case, the status quo is the moment prior to the Petitioner's likely unlawful
6 detention. *See Pinchi v. Noem*, 2025 U.S. Dist. LEXIS 127539, at *3 (N.D. Cal. July 4,
7 2025); *Ercelik v. Hyde*, 2025 U.S. Dist. LEXIS 88412, at *15-16 (D. Mass. May 8,
8 2025); *Kuzmenko v. Phillips*, 2025 U.S. Dist. LEXIS 40961, at *2 (E.D. Cal. Mar. 10,
9 2025).

10 Further, Respondents will not assert that they are holding Petitioner under § 1226(a).
11 This is because, § 1226(a) detention is only appropriate, where a noncitizen was previously
12 released, where there is a pre-deprivation custody hearing. *see Zinerman v. Burch*, 494 U.S.
13 113, 127, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990); *Guillermo M.R.*, 791 F. Supp. 3d at
14 1036 ("[A]bsent evidence of urgent concerns, a pre-deprivation hearing is required to
15 satisfy due process, particularly where an individual has been released on bond by an IJ").
16 Such circumstances or justification is not even proposed by Respondents who, again, do
17 not claim that they arrested or are detaining Petitioner under § 1226(a). As both § 1226(a)
18 and (b) are invalid basis for detention, and no other detention authority is asserted,
19 Petitioner is held by Respondents without *any* statutory authority, and the proper remedy
20 is immediate release. *Garrison G. v. Bondi*, No. 26-cv-172 (JMB/DJF), 2026 U.S. Dist.
21 LEXIS 7989, 2026 WL 115026, at *4 (D. Minn. Jan. 15, 2026); *Luis N. v. Bondi*, No. 26-
22 cv-226 (JMB/DLM), 2026 U.S. Dist. LEXIS 7841, 2026 WL 115070, at *3 (D. Minn. Jan.
23 15, 2026); *Guadarrama Ayala v. Henkey*, No. 25-cv-682 (AKB), 2025 U.S. Dist. LEXIS
24 268011, 2025 WL 3754138, at *6 (D. Idaho Dec. 29, 2025); *J.A.C.P. v. Wofford*, No. 25-
25 cv-1354 (KES/SKO) (HC), 2025 U.S. Dist. LEXIS 211735, 2025 WL 3013328, at *8 (E.D.
26 Cal. Oct. 27, 2025); *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1119 (E.D. Cal. 2025);
27 *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025); *Membreno v. Thompson*,
28

No. 25-CA-1845-XR, 2026 U.S. Dist. LEXIS 2807, 2026 WL 93980, at *5 (W.D. Tex. Jan. 7, 2026)

5. The Court need not impose bond under Fed. R. Civ. P. 65 where respondents will not be harmed and no costs or damages will be incurred.

Finally, because "there is no realistic likelihood of harm to the [respondents] from enjoining [their] conduct." *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003), no security is needed to ensure that respondents will be reimbursed for "costs and damages sustained by ... hav[ing] been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Respondents are, at taxpayer expense, unlawfully detaining Petitioner and thousands of other identically situated noncitizens. Releasing Petitioner would presumably save respondents the cost of detaining him and, as there is no suggestion that he is either a danger or flight risk, it is hard to fathom what costs or damages would be incurred to Respondents. Even if there were some minimal damages, bond would not be justified where the detention is so overwhelmingly recognized as unlawful and therefore there is little likelihood that they could claim they incurred damages from having been wrongfully restrained. We thus ask the Court to exercise its discretion under Rule 65(c) to dispense with the filing of bond. *Sequen v. Kaiser*, 793 F. Supp. 3d 1114 (N.D. Cal. 2025)

Conclusion

Petitioner remains unlawfully detained. We ask this Court to order Respondents to do what they already know is required under the law—release Petitioner and not re-detain him without a bond hearing where the government must prove that he is a flight risk or danger to the community by clear and convincing evidence before he may be rearrested. That hearing should have occurred before petitioner was re-detained. "[T]he root requirement' of the Due Process Clause" is "that an individual be given an opportunity for a hearing before he is deprived of any significant protected interest." *Cleveland Bd. of*

1 *Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985) (quoting
2 *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971)).

3
4 **REQUESTED RELIEF**

5 For the foregoing reasons, Petitioner respectfully requests that the Court:

- 6 (1) GRANT this Motion and ORDER Petitioner's immediate release from
7 Respondents' custody and;
8 (2) Enjoin and Restrain Respondents from re-detaining Petitioner without notice and a
9 pre-deprivation hearing before a neutral decision maker and;
10 (3) Waive the requirement that bond be posted
11 (4) ORDER any other relief this Court finds necessary and proper.

12 Dated: March 10, 2026,

13 Respectfully,

14 /s/Laxman Adhikari

15 Laxman Adhikari

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