

1 **Sajjad Hussain, Esq. CSBN 318154**
2 **Indus Pacific Law Office, Law Corp**
3 **8996 Miramar Road, Suite 306**
4 **San Diego, CA 92126**
5 **760-810-3142**
6 **induspacificlaw@gmail.com**

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9 **SOUTHERN DIVISION**

10 Ersin Tabak)

11 Plaintiff,)

12 vs.)

13 **Sixto Marrero**, Warden, Imperial Regional)
14 Adult Detention Facility, **Kristi Noem**,)
Secretary, Department of Homeland Security;)
15 **Gregory J. Archambeault**, Field Office)
Director, Enforcement and Removal Operations)
16 (ERO) San Diego, CA. **Todd M Lyons**.)
Performing the Duties of the Immigration and)
17 Customs Enforcement; **Pamela Bondi**, United)
States Attorney General)

18 Defendant(s).)
19)

Case No.: '26CV1640 CAB DDL

**PETITION FOR WRIT OF HABEAS
CORPUS**

20 **PETITION FOR WRIT OF HABEAS CORPUS**

21 **PURSUANT TO 28 U.S.C. §2241 (e)**

22 Petitioner respectfully petitions this Honorable court for a writ of habeas corpus to remedy
23 petitioner's unlawful detention by the respondents as follows:

24 Dated this March 16, 2026

25
26 By: Sajjad Hussain, Esq.

1 **I. INTRODUCTION**

2 1. Petitioner Ersin Tabak a native and citizen of Turkey brings this petition for writ of habeas
3 corpus pursuant to 28 U.S.C. § 2241 to challenge the legality of his current immigration
4 detention. On September 08, 2022, he was released on a bond of \$1500 by an order of an
5 Immigration Judge. After more than three years of liberty in the community under an the
6 Immigration Judge’s order, during which he complied with all conditions and committed
7 no offenses, the Department of Homeland Security (“DHS”) summarily re-arrested him on
8 Feb 02, 2026 without notice, without a hearing, without any individualized determination
9 and in violation of Immigration Court order dated Sep 08, 2022.

10 2. Petitioner’s detention is unlawful and violates the Due Process Clause of the Fifth
11 Amendment.

12 3. First, DHS violated Petitioner’s procedural due process rights by revoking long-standing,
13 Immigration Judge’s ordered liberty without providing notice or a meaningful opportunity
14 to be heard. For over three years, DHS permitted Petitioner to live in the community and
15 repeatedly accepted his compliance. On Jan 02, 2026, DHS took him into custody from
16 streets in Los Angeles, CA, without advance warning, without stating any basis for re-
17 detention, and without conducting any custody review. This summary deprivation of
18 liberty violates core procedural due process protections.

19 4. Second, DIIS violated substantive due process by detaining Petitioner even though
20 detention is no longer reasonably related to any legitimate immigration purpose.
21 Immigration Court previously determined and DIIS found it right, over a period of years,
22 that detention was unnecessary. Nothing material changed at the time of Petitioner’s re-
23 arrest. He remained compliant, posed no flight risk, and was not alleged to be dangerous.
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1 Under these facts, continued detention is excessive, punitive in effect, and unsupported by
2 any regulatory justification.

3 5. Because Petitioner's detention results from multiple constitutional and regulatory violations,
4 habeas relief is required. Liberty was withdrawn without due process, and detention no longer
5 serves any legitimate immigration purpose. Under these circumstances, continued
6 confinement is punitive and unlawful. Petitioner therefore seeks immediate release from
7 immigration custody, subject to reasonable conditions of supervision if the Court deems them
8 necessary.
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10 **II. CUSTODY**

11 6. Mr. Tabak is detained in the legal and physical custody of Respondents at the Imperial
12 Regional Detention Facility in Calexico, Imperial, California, where he is under the direct
13 control of Respondents and their agents.
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15 **III. JURISDICTION**

16 7. This action arises under the Constitution of the United States and the Immigration and
17 Nationality Act, 8 U.S.C. § 1101 et seq.

18 8. Jurisdiction is proper under 28 U.S.C § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal
19 question); 28 U.S.C. § 1651 (All Writs Act); U.S. Const. art. I, § 9, cl. 2 (the Suspension
20 Clause); and 5 U.S.C. § 702 (Administrative Procedure Act).

21 **IV. VENUE**

22 9. Venue lies with the United States District Court for the Southern District of California because
23 Petitioner is currently detained within this Court's territorial jurisdiction at the Imperial
24 Regional Adult Detention Facility, located at 1572 Gateway Rd, Calexico, CA 92231, United
25 States. See 28 U.S. C. §1391. All material decisions regarding detention have been made at
26 the ICE San Diego Field Office in San Diego, California.
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1 **V. EXHAUSTION**

2 10. Petitioner Mr. Tabak is not required to exhaust administrative remedies. Exhaustion for
3 habeas claims is prudential, not jurisdictional. *See Laing v. Ashcroft*, 370 F.3d 994, 997 (9th
4 Cir. 2004). The prudential exhaustion requirement may be waived if “administrative
5 remedies are inadequate or not efficacious, pursuit of administrative remedies would be a
6 futile gesture. [or] irreparable injury will result.” *Id.* at 1000. Administrative remedies would
7 be futile, inadequate, and not efficacious. Exhausting his constitutional claim would be futile
8 because the agency does not have the authority to rule on constitutional questions. *See Wang*
9 *v. Reno*, 81 F.3d 808, 815–16 (9th Cir. 1996) (per curiam) (“the inability of the INS to
10 adjudicate the constitutional claim completely undermines most, if not all, of the purposes
11 underlying exhaustion”).
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13 11. Exhausting his statutory claim would also be futile because the Immigration Judge (“IJ”)
14 adjudicating the merits case—and to whom his bond hearing request would likely be
15 assigned—acts under the authority of the Attorney General and is required to follow precedent
16 set by the Board of Immigration Appeals (BIA). The BIA in the *Matter of Q. Li* 29 I & N Dec.
17 66 (BIA 2025) held that Immigration Judges lack authority to hear bond requests or grant
18 bond to individuals who are arrested and detained without a warrant while arriving in the
19 United States, whether or not at a port of entry, and subsequently placed in removal
20 proceedings is detained under section 235(b) of the Immigration and Nationality Act (“INA”),
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22 12. Petitioner entered the United States on August 12, 2022, without inspection and was charged
23 as removable under INA § 212(a)(6)(A)(i) for being present in the United States without being
24 admitted or paroled.
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1 13. Even if exhaustion were not futile, waiver is warranted because the claim presents purely legal
2 issues, and no purpose is served by requiring an administrative appeal. See *Hernandez v.*
3 *Sessions*, 872 F.3d 976, 988–89 (9th Cir. 2017).

4 **V. PARTIES**

5 14. Mr. Tabak is a native and citizen of Turkey. He arrived in the United States near El Paso, TX,
6 on or about August 12, 2022; he was not admitted or paroled after inspection by an
7 Immigration Officer. He was placed in removal proceedings and sought relief from removal
8 under the asylum, withholding of removal, and CAT protection on January 23, 2023. He has
9 an active removal case and an active asylum application before the court. Petitioner remains
10 in ICE custody.

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12 15. Respondent Sixto Marrero. Warden, Imperial Regional Adult Detention Facility where
13 Petitioner is detained. He is sued in his official capacity.

14 16. Respondent Kristi Noem is the Secretary of the Department of Homeland Security, an agency
15 of the United States. She is responsible for administering and enforcing immigration laws.
16 See 8 U.S.C. § 1103(a). Respondent is a legal custodian of Petitioner. She is sued in her
17 official capacity.

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19 17. Respondent Gregory J. Archambeault is the Field Office Director for Enforcement and
20 Removal Operations (ERO), San Diego, California. He is sued in his official capacity.

21 18. Respondent Todd M. Lyons is performing the duties of the Director of U.S. Immigration and
22 Customs Enforcement (ICE). He is sued in his official capacity.

23 19. Respondent Pamela Bondi is the Attorney General of the United States. As Attorney General,
24 the Respondent has the authority to interpret immigration laws and adjudicate removal cases
25 and bond hearings. See 8 U.S.C. § 1103(g). The Attorney General delegates this responsibility
26 to the Executive Office for Immigration Review, which administers the immigration courts
27

1 and the BIA. Respondent Bondi is a legal custodian of Petitioner. She is sued in her official
2 capacity.

3 **VII. FACTUAL ALLEGATIONS**

4 20. Petitioner Mr. Tabak is a citizen and national of Turkey.

5 21. Petitioner entered the United States on August 12, 2022, without inspection and was
6 charged as removable under INA § 212(a)(6)(A)(i) for being present in the United States
7 without being admitted or paroled.
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9 22. Upon his entry, he was detained and subsequently released after a bond hearing on
10 September 8, 2022, before the Imperial, California, courts.

11 23. Mr. Tabak was placed in removal proceedings and sought relief from removal under the
12 asylum, withholding of removal, and CAT protection on January 23, 2023.

13 24. Mr. Tabak has an active removal case and an active asylum application before the court.
14 Petitioner remains in ICE custody.
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16 25. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs
17 Enforcement (ICE). Petitioner was detained in the Los Angeles, California area while
18 walking on the street without an arrest warrant and was transported to the Imperial
19 Regional Adult Detention Facility on February 2, 2026.

20 26. Mr. Tabak was immediately placed on the detained docket, and his hearing was
21 rescheduled to the next available date, as he is in detention.

22 27. Mr. Tabak has never been arrested or committed a crime anywhere in the world, and there
23 is no basis to conclude that he poses a threat to the community or national security or is a
24 flight risk.
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1 **VII. LEGAL ARGUMENT**

2 **A. The re-detention of Mr. Tabak, who was previously released on bond, without**
3 **individualized hearings violates his Fifth Amendment right to due process.**

4 28. Upon his entry, the petitioner was detained and subsequently released following a bond
5 hearing on September 8, 2022, in the Imperial Immigration Court of California. There
6 have been no changes to his circumstances since that time.

7 29. The Fifth Amendment Due Process Clause prohibits government deprivation of an
8 individual's life, liberty, or property without due process of law. *Hernandez v. Sessions*, 872
9 F.3d 976, 990 (9th Cir. 2017). The Due Process Clause applies to all "persons" within the
10 borders of the United States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S.
11 678, 693 (2001) ("[T]he Due Process Clause applies to all "persons" within the United States,
12 including noncitizens, whether their presence here is lawful, unlawful, temporary, or
13 permanent."). These due process rights extend to immigration proceedings. *Id.* at 693–94.

14 30. Courts examine procedural due process claims in two steps: the first asks whether there exists
15 a protected liberty interest under the Due Process Clause, and the second examines the
16 procedures necessary to ensure any deprivation of that protected liberty interest accords with
17 the Constitution. *See Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989);
18 *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) ("Once it is determined that due process
19 applies, the question remains what process is due.").

20 31. For the first step, Petitioner has a protectable liberty interest. *See Rico-Tapia v. Smith*, No.
21 CV 25-00379 SASP-KJM, 2025 WL 2950089, at *8 (D. Haw. Oct. 10, 2025) (noting "[e]ven
22 where the revocation of a person's freedom is authorized by statute, that person may retain a
23 protected liberty interest under the Due Process Clause"). "[T]he government's decision to
24 release an individual from custody creates 'an implicit promise,' upon which that individual
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1 may rely, that their liberty ‘will be revoked only if [they] fail[] to live up to the . . . conditions
2 [of release].’ *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. July 24, 2025) (quoting
3 *Morrissey*, 408 U.S. at 482) (modifications in original). “Accordingly, a noncitizen released
4 from custody pending removal proceedings has a protected liberty interest in remaining out
5 of custody.” *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *6
6 (N.D. Cal. Sept. 12, 2025). To determine whether an individual’s conditional release rises to
7 the level of a protected liberty interest, courts have “compar[ed] the specific conditional
8 release in the case before them with the liberty interest in parole as characterized by
9 *Morrissey*.” *R.D.T.M. v. Wofford*, No. 1:25-cv-01141-KES-SKO, 2025 WL 2617255, at *3
10 (E.D. Cal. Sept 9, 2025).

12 32. After Petitioner was released from custody, he gained a liberty interest in his continued
13 freedom. Under *Morrissey*, this release implied a promise that he would not be re-detained
14 pending his immigration proceedings if he abided by its terms. *See, e.g., Doe v. Becerra*, 787
15 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (noting the Government’s actions in allowing
16 petitioner to remain in the community for over five years strengthened petitioner’s liberty
17 interest).

19 33. For the second step, the Court considers three factors: (1) “the private interest that will be
20 affected by the official action;” (2) “the risk of an erroneous deprivation of such interest
21 through the procedures used, and the probable value, if any, of additional or substitute
22 procedural safeguards;” and (3) “the Government’s interest, including the function involved
23 and the fiscal and administrative burdens that the additional or substitute procedural
24 requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

26 34. Petitioner, who built a life in the United States, was re-detained and held in custody. His
27 private interests have been affected by his detention. Additionally, the government’s interest
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1 in detaining Petitioner is low, and the cost of providing additional safeguards is not
2 burdensome. Respondents' own regulations require notice and a pre-deprivation hearing,
3 which they did not provide. Indeed, it would be less of a fiscal and administrative burden for
4 the Government to return Petitioner home to await a determination on his immigration
5 proceedings than to continue to detain him.

6
7 35. The Fifth Amendment's Due Process Clause mandates an individualized hearing before an
8 immigration judge for noncitizen detainees who were previously bonded before they can be
9 re-detained, according to recent decisions from California district courts. The Northern
10 District's ruling in *Pablo Sequen v. Kaiser*, 793 F.Supp.3d 1114 (2025), established this
11 principle, holding that detaining a noncitizen without a pre-detention hearing before a neutral
12 decisionmaker is likely unconstitutional. The court in *Sequen* granted immediate release and
13 prohibited re-detention without the requisite proper hearing. *See* 793 F.Supp.3d 1114 • 2025
14 WL 2203419, 807 F.Supp.3d 1120 • 2025 WL 2817795.

15
16 36. The Petitioner, an alien with lawful work authorization, no criminal history, and actively
17 pursuing immigration proceedings by filing Form I-589, Application for Asylum and for
18 Withholding of Removal, along with initial supporting documentation, establishes a
19 compelling presumption against detention absent individualized review.

20 37. Substantive due process protects noncitizens from arbitrary government confinement, which
21 violates a noncitizen's substantive due process rights, except in certain narrow, nonpunitive
22 circumstances where a special justification outweighs the individual's constitutionally
23 protected interest in avoiding physical restraint. U.S. Const. Amend. 5. Risk of erroneous
24 deprivation of noncitizens' interest in freedom from detention weighed in favor of finding that
25 ongoing immigration detention of noncitizens, who were already present in United States after
26 allegedly entering without inspection or parole, without opportunity for release on bond
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1 during pendency of standard removal proceedings violated procedural due process under
2 *Mathews v. Eldridge* test; absent individualized bond hearings, government had sole,
3 unguided, and unreviewable discretion to detain noncitizens without any individualized
4 showing of why detention was warranted, government did not contend two noncitizens
5 presented danger or flight risk, and third noncitizen had been granted bond but remained
6 detained after government's appeal automatically stayed bond order. U.S. Const. Amend. 5; 8
7 C.F.R. S 1003.19(i)(2). See *Escobar Salgado v. Mattos* --- F.Supp.3d ----2025 WL 3205356.

9 38. Release is the only appropriate remedy for the constitutional violations in this case, including
10 the lack of pre-deprivation notice or individualized review before Petitioner's arrest, which
11 cannot be remedied by a post-deprivation hearing. See *Alfaro Herrera v. Baltazar*, No. 1:25-
12 cv-04014, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) (given that the petitioner had been
13 previously released by ICE, and holding a bond hearing would prolong his unlawful
14 detention, "[r]espondents' violations of Petitioner's rights are best remedied by ordering
15 Petitioner's immediate release from immigration detention."); *Qasemi v. Francis*, No. 25-cv-
16 10029, 2025 WL 3654098 at *14, (S.D.N.Y. Dec. 17, 2025) (a bond hearing would not be an
17 adequate remedy for the due process violations in petitioner's sudden arrest and detention);
18 *Noyola v. Bondi*, --- F.Supp.3d ---, No. 1:26-CV-405-RP, 2026 WL 607266, at *5 (W.D. Tex.
19 Mar. 4, 2026) (same); *Bethancourth v. Tate*, --- F.Supp.3d ---, No. 4:26-CV-01169, 2026 WL
20 638482, at *5 (S.D. Tex. Mar. 6, 2026) (same, where the government alleged no changed
21 circumstances justifying re-detention); *Crespo Tacuri v. Genalo*, No. 25-cv-06896, 2026 WL
22 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (finding that post-deprivation review cannot remedy the
23 due process violation of detaining petitioner with no process or individualized assessment);
24 *Diallo v. Trump*, 25-cv-2012-JE-JMP (W.D.L.A. Mar. 5, 2026)

B. The Petitioner is Entitled to a Bond Determination Under 8 U.S.C. §1226, Not §1225, Even Without a Prior Release

41. Upon his entry, the petitioner was detained and subsequently released following a bond hearing on September 8, 2022, in the Imperial Immigration Court of California. There have been no changes to his circumstances since that time. However, the government now argues that mandatory detention under § 1225 is the appropriate authority for detaining noncitizens, such as the petitioner, who have not been admitted or paroled.

42. Full removal proceedings under 8 U.S.C. § 1229 (a) are “the standard mechanism for removing inadmissible noncitizens.” Make the *Rd. N.Y. v. Noem*, No. 25-cv-190 (JMC), 2025 WL 2494908, at *2 (D.D.C. Aug. 29, 2025); see also *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020) (“The usual removal process involves an evidentiary hearing before an immigration judge, and at that hearing an alien may attempt to show that he or she should not be removed.”). These proceedings are initiated by serving the noncitizen with a Form I-862 “notice to appear” in immigration court. 8 U.S.C. § 1229(a)(1).

43. Full removal proceedings “take place before an [immigration judge (“IJ”)], an employee of the Department of Justice (DOJ) who must be a licensed attorney and has a duty to develop the record in cases before them.” *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-cv-872 (JMC), — F.Supp.3d —, —, 2025 WL 2192986, at *3 (D.D.C. Aug. 1, 2025) (citing 8 U.S.C. § 1229a(a)(1), (b)(1)).

44. In full removal proceedings, noncitizens have rights to hire counsel, to a reasonable opportunity to examine evidence against them, to present evidence on their own behalf, and to cross-examine any government witnesses. 8 U.S.C. § 1229a(b)(4)(A)–(B). “[D]ue to the built in procedures,” full removal proceedings “typically take[] place over the course of multiple hearings,” which “allows time for noncitizens to both gather evidence in support of petitions

1 for relief available in immigration court ... and seek collateral relief from other components of
2 [the Department of Homeland Security (“DHS”).]” *Coal. for Humane Immigrant Rts.*, —
3 F.Supp.3d at —, 2025 WL 2192986, at *3.

4 45. Accordingly, “[w]hen a person is apprehended under § 1226(a), an ICE officer makes the initial
5 custody determination.” *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022)
6 (citing 8 C.F.R. § 236.1(c)(8)). If the detainee disagrees with the officer’s determination, they
7 “may request a bond hearing before an IJ at any time before a removal order becomes final.”
8 *Id.* at 1197 (citing 8 C.F.R. §§ 236.1(d)(1), 1003.19). The procedural posture progresses, and
9 the detainee must then “establish to the satisfaction of the Immigration Judge . . . that he or she
10 does not present a danger to persons or property, is not a threat to the national security, and
11 does not pose a risk of flight.” *Hernandez v. Sessions*, 872 F.3d 976, 982 (9th Cir. 2017)
12 (quoting *In re Guerra*, 24 I. & N. Dec. 37, 38 (B.I.A. 2006)). Appeal on an adverse decision is
13 available with the BIA. *Id.* at 983 (citing § 236.1(d)(3)).

14
15 46. INA § 1225(b)(1) authorizes expedited removal for certain “applicants for admission” in two
16 categories. First, noncitizens “arriving in the United States” are determined by an immigration
17 officer to be inadmissible due to misrepresentation or failure to meet document requirements.
18 *Id.* at § 1225(b)(1)(A)(i); see also *id.* at § 1182(a)(6)(C). (a)(7).

19
20 47. Second, noncitizens that (a) are inadmissible because of misrepresentation or failure to meet
21 documents requirements; (b) have not “been admitted or paroled into the United States”; (c)
22 have not “affirmatively shown, to the satisfaction of an immigration officer, that [they have]
23 been physically present in the United States continuously for the 2-year period immediately
24 prior to the date of the determination of inadmissibility”; and (d) have been designated by the
25 Attorney General for expedited removal. *Id.* at § 1225(b)(1)(A)(iii).

1 48. 8 U.S.C. § 1226 “provides the general process for arresting and detaining aliens who are
2 present in the United States and eligible for removal.” *Rodriguez Diaz v. Garland*, 53 F.4th
3 1189, 1196 (9th Cir. 2022). The provision “distinguishes between two different categories” of
4 noncitizens. *Jennings*, 583 U.S.

5 49. These two categories of noncitizens subject to § 1225(b)(1) are subject to mandatory detention
6 “until certain proceedings have concluded.” *Jennings*, 583 U.S. at 297. Individuals that fall
7 into § 1225(b)(1) are “normally ordered removed ‘without further hearing or review’ pursuant
8 to an expedited removal process” unless claiming asylum or a fear of persecution. *Jennings*,
9 53 U.S. at 287 (first quoting § 1225(b)(1)(A)(i); then citing § 1225(b)(1)(A)(ii)).

10 50. Under § 1226(a), the “default rule,” *id.*, a noncitizen “may be arrested and detained” [...] “On
11 a warrant issued by the Attorney General,” if their removal proceedings are pending, 8 U.S.C.
12 § 1226(a). Detention pursuant to § 1226(a) is not mandatory. If the noncitizen was not charged
13 with, arrested for, or convicted of certain criminal offenses enumerated in § 1226(c), the
14 government has discretion to release them on “bond of at least \$1,500 with security approved
15 by, and containing conditions prescribed by, the Attorney General; or ... conditional parole.”
16 *Id.* at § 1226(a)(2)(A)–(B).

17 51. Noncitizens who are “seeking admission” and not covered by the expedited removal provisions
18 in § 1225(b)(1) are subject to § 1225(b)(2). See *id.* At 287. This category would include, for
19 example, noncitizens who are arriving in the United States, seek admission, and are
20 inadmissible for some reason other than misrepresentation or failure to meet documents
21 requirements. See 8 U.S.C. § 1182(a)(2)–(3). Subject to limited exceptions, the § provides that
22 such noncitizens “shall be detained” for full removal proceedings under § 1229(a) “if the
23 examining immigration officer determines” that the noncitizen “is not clearly and beyond a
24 doubt entitled to be admitted.” *Id.* at § 1225(b)(2)(A).

1 52. Until this year, DHS has applied § 1226(a) and its discretionary release and review of detention
2 “to the vast majority of noncitizens allegedly in this country without valid documentation”—
3 a practice codified by regulation. *Salcedo Aceros*, 2025 WL 2737503, at *3.

4 53. Recently, several district courts have held that the Government’s new, and more expansive,
5 interpretation of mandatory detention under the INA is either incorrect or likely incorrect on
6 the basis that this reading of the statute would render 1226(c) inoperable or moot. *See, e.g.,*
7 *Rodriguez Vasquez v. Bostock, et al.* 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash.
8 Sept. 30, 2025).

9
10 **C. The detention of a non-risk, non-criminal petitioner constitutes a violation of due**
11 **process, as such confinement substantially impairs the petitioner's capacity to**
12 **adequately prepare their asylum case.**

13 54. Although the petitioner has already submitted his application for asylum and for
14 withholding of removal, written pleadings, and initial evidence to support his application,
15 the petitioner must update his file to reflect the changing political climate in both his home
16 country, Turkey, and the United States, gather all necessary documents, and actively seek
17 counsel's assistance at this stage. The rapid progression of cases placed on the detained
18 docket and the difficulty of accessing legal counsel could cause irreparable harm to a
19 petitioner who has committed no crime and poses no danger to society.

20 55. According to the court's decision, the appeal process may also require. However, the
21 Board of Appeal does not have the function of reviewing the argument in the first instance;
22 thus, the petitioner needs to address it at the individual hearing.

23 56. Thus, the petitioner’s continued detention substantially interferes with his ability to pursue
24 his removal proceedings and any subsequent administrative review. Unlike the
25 government, which is represented by trained counsel, Petitioner must secure and
26 coordinate legal representation under the severe limitations imposed by detention. These
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1 constraints prevent him from meaningfully contacting, consulting with, and retaining
2 counsel in a manner comparable to a non-detained individual.

3 57. Moreover, detention restricts Petitioner's ability to communicate with counsel and to
4 gather and prepare the evidence necessary to present his claims in his immigration
5 proceedings. Without release, Petitioner cannot adequately prepare his case or effectively
6 participate in the adjudication of his claims.

7
8 58. Accordingly, release from detention is necessary to ensure that Petitioner has a meaningful
9 opportunity to prepare and present his claims in his removal proceedings and in any
10 subsequent administrative appeal. Denying Petitioner such an opportunity would
11 undermine the fundamental fairness of the proceedings and would constitute a violation
12 of the Due Process Clause.

13 59. Failing to grant him the right to a fair hearing throughout all these proceedings would
14 constitute a violation of due process.

15
16 **D. At Any Hearing, The Government Must Justify Ongoing Detention By Clear and
Convincing Evidence.**

17 60. Due process also requires certain minimum procedures at bond hearings. First, the
18 government must meet the burden of proof by clear and convincing evidence to justify
19 continued detention. Second, the decision-maker must consider available alternatives to
20 detention. Finally, if the government cannot meet its burden, the decision-maker must assess
21 a noncitizen's ability to pay a bond when determining the appropriate conditions of release.
22

23 61. To justify immigration detention, the government must bear the burden of proof by clear and
24 convincing evidence that the noncitizen is a danger or flight risk. *See Singh v. Holder*, 638
25 F.3d 1196, 1203 (9th Cir. 2011); *Aleman Gonzalez v. Barr*, 955 F.3d 762, 781 (9th Cir. 2020),
26 rev'd on other grounds by *Garland v. Aleman Gonzalez*, 142 S. Ct. 2057, 213 L. Ed. 2d 102
27

1 (2022) (“Jennings’s rejection of layering [the clear and convincing burden of proof standard]
2 onto § 1226(a) as a matter of statutory construction cannot . . . undercut our constitutional due
3 process holding in *Singh*.”); Where the Supreme Court has permitted civil detention in other
4 contexts, it has relied on the fact that the Government bore the burden of proof by at least
5 clear and convincing evidence. See *United States v. Salerno*, 481 U.S. 739, 750, 752 (1987)
6 (upholding pretrial detention after a “full-blown adversary hearing” requiring “clear and
7 convincing evidence” and “a neutral decisionmaker”); *Foucha v. Louisiana*, 504 U.S. 71, 81-
8 83 (1992) (striking down civil detention scheme that placed burden on the detainee);
9 *Zadvydas*, 533 U.S. at 692 (finding post-final-order custody review procedures deficient
10 because, inter alia, they placed burden on detainee).

11
12 62. The requirement that the government bears the burden of proof by clear and convincing
13 evidence is also supported by application of the three-factor balancing test from *Mathews v.*
14 *Eldridge*, 424 U.S. 319, 335 (1976).

15
16 63. First, incarceration deprives noncitizens of a “profound” liberty interest—one that always
17 requires some form of procedural protections. *Diouf*, 634 F.3d at 1091- 92; see also *Foucha*,
18 504 U.S. at 80 (“It is clear that commitment for any purpose constitutes a significant
19 deprivation of liberty that requires due process protection.” (citation omitted)).

20 64. Second, the risk of error is high when the government is represented by trained attorneys,
21 while detained noncitizens are often unrepresented and frequently lack English proficiency.
22 See *Santosky v. Kramer*, 455 U.S. 745, 762-63 (1982).

23 65. Third, placing the burden on the government imposes minimal cost or inconvenience, as the
24 government has access to the noncitizen’s immigration records and other information that it
25 can use to make its case for continued detention.
26

1 66. Furthermore, “Whether a person is likely to escape before an administrative warrant can be
2 obtained requires an individualized determination based on knowledge of facts, particularized
3 with respect to that person.” *Barham v Ramsey*, 434 F.3d 565, 573 (D.C. Cir. 2006) (quoting
4 *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979)).” See *José Escobar Molina v. U.S. Dep’t of*
5 *Homeland Sec.*, No. 25-3417 (BAH) p. 30. There is no individualized determination regarding
6 Mr. Tabak.

7
8 67. “At a bond hearing, to justify denial of bond and continued detention, due process requires
9 the Government to prove by clear and convincing evidence that an immigrant is a flight risk
10 or a danger to the community. *Singh*, 638 F.3d at 1203 (citing the “substantial liberty interest
11 at stake”); see also *Obregon v. Sessions*, 2017 WL 1407889, at *7 (N.D. Cal. Apr. 20, 2017)
12 (“Case law demonstrates that establishing dangerousness by ‘clear and convincing evidence’
13 is a high burden”). To determine whether an immigrant who is detained under section
14 1226(a) presents a flight risk or danger to the community, IJs “look to a number of factors,”
15 like: (1) whether the immigrant has a fixed address in the United States; (2) the immigrant’s
16 length of residence in the United States; (3) the immigrant’s family ties in the United States,
17 (4) the immigrant’s employment history, (5) the immigrant’s record of appearance in court,
18 (6) the immigrant’s criminal record, including the extensiveness of criminal activity, the
19 recency of such activity, and the seriousness of the offenses, (7) the immigrant’s history of
20 immigration violations; (8) any attempts by the immigrant to flee prosecution or otherwise
21 escape from authorities; and (9) the immigrant’s manner of entry to the United States” *Perez*
22 *v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020). Petitioner Mr. Tabak has resided in the
23 United States since August 2022 and maintains a fixed address there. He has consistently
24 informed the court of any address changes and has attended all scheduled hearings. Moreover,
25 he has never defaulted on any hearings related to his case and has fully complied with all
26
27
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1 procedural requirements. Furthermore, Mr. Tabak is duly authorized to work within the
2 United States and has continually maintained legal employment status. He possesses a valid
3 Social Security Number (SSN) and a current Employment Authorization Document (EAD),
4 and he is regularly employed in a lawful workplace. Consequently, his activities are readily
5 subject to oversight. Additionally, he has not been involved in any criminal activities, neither
6 in the United States nor in his country of origin. Therefore, a bond hearing is necessary to
7 allow him to explain all relevant matters and present his case. The requirement for due process
8 persists throughout the hearing.
9

10 68. Due process also requires considering a noncitizen's ability to pay bail. "Detention of an
11 indigent 'for inability to post money bail' is impermissible if the individual's 'appearance at
12 trial could reasonably be assured by one of the alternate forms of release.'" *Id.* at 990 (quoting
13 *Pugh v Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978) (en banc)). Therefore, when
14 determining the appropriate release conditions for immigration detainees, due process
15 demands "consideration of financial circumstances and alternative conditions of release" to
16 prevent detention based solely on poverty. *Id.* Due process also requires consideration of
17 alternatives to detention.
18

19 **E. Due Process Requires Consideration of Alternatives To Detention.**

20 69. Due process also requires that a neutral decisionmaker consider available alternatives to
21 detention. A primary purpose of immigration detention is to ensure a noncitizen's appearance
22 during removal proceedings. Detention is not reasonably related to this purpose if there are
23 alternative conditions of release that could mitigate the risk of flight. *See Bell v. Wolfish*, 441
24 U.S. 520, 538 (1979). ICE's alternatives-to-detention program—the Intensive Supervision
25 Appearance Program (ISAP)—has achieved extraordinary success in ensuring appearance at
26 removal proceedings, with compliance rates approaching 100 percent. *See Hernandez v.*
27
28

1 *Sessions*, 872 F.3d 976, 991 (9th Cir. 2017). ICE’s alternatives-to-detention program—the
2 Intensive Supervision Appearance Program—has achieved extraordinary success in ensuring
3 appearance at removal proceedings, with compliance rates approaching 100 percent.
4 *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (observing that ISAP “resulted in a
5 99% attendance rate at all EOIR hearings and a 95% attendance rate at final hearings”).
6

7 70. Due process likewise requires consideration of a noncitizen’s ability to pay a bond. “Detention
8 of an indigent ‘for inability to post money bail’ is impermissible if the individual’s
9 ‘appearance at trial could reasonably be assured by one of the alternate forms of release.’”
10 *Hernandez*, 872 F.3d at 990 (quoting *Pugh v. Rainwater*, 572 F.2d 1053, 1058 (5th Cir. 1978)
11 (en banc)). Therefore, when determining the appropriate conditions of release for people
12 detained for immigration purposes, due process requires “consideration of financial
13 circumstances and alternative conditions of release.” *Id.*; see also *Martinez v. Clark*, 36 F.4th
14 1219, 1231 (9th Cir. 2022) (“While the government had a legitimate interest in protecting the
15 public and ensuring the appearance of noncitizens in immigration proceedings, we held [in
16 *Hernandez*] that detaining an indigent alien without consideration of financial circumstances
17 and alternative release conditions was ‘unlikely to result’ in a bond determination ‘reasonably
18 related to the government’s legitimate interests.’ (citation omitted).”).
19

20 71. Mr. Tabak was previously released on bond. “It is undisputed that Mateo Francisco was
21 initially released from detention back in 2021, which necessarily would have involved a
22 finding that he was not a danger or flight risk. See 8 U.S.C. 1232(c)(2)(A) (UAC in HHS
23 custody shall be promptly placed in the least restrictive setting that is in the best interest of
24 the child after HHS Secretary considers danger to self, danger to the community, and risk of
25 flight). In the nearly five years he has lived in the United States, he has not been arrested or
26 convicted of a crime. See Hr’g Ex. 3, 12, Dkt. No. 45-3. Moreover, at the evidentiary hearing,
27
28

1 the Court inquired whether Mateo Francisco had done anything wrong to bring the current
2 administrative consequences on himself.” *Francisco v. Dedos* - 2026 WL 145456

3 **VII. CLAIMS FOR RELIEF FIRST CLAIM FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**

5 **Violation of the Fifth Amendment**

6 72. Petitioner re-alleges and incorporates by reference paragraphs 1 through 71.

7 73. The detention of the petitioner following release on bond, without an individualized hearing
8 before an Immigration Judge, violates the Due Process Clause of the Fifth Amendment.

9 74. The Due Process Clause of the Fifth Amendment forbids the government from depriving any
10 “person” of liberty without due process of law. U.S. Const. amend.

11 75. The Due Process Clause requires the government to establish, at an individualized hearing
12 before a neutral decisionmaker, that Petitioner’s detention is justified by clear and convincing
13 evidence of flight risk or danger, even after consideration of whether alternatives to detention
14 could sufficiently mitigate that risk.

15 76. Petitioner’s ongoing detention interferes with his ability to pursue his removal case and
16 administrative review. While the government is represented by trained attorneys, the
17 petitioner is entitled to a meaningful opportunity for a fair trial, which necessitates his release.

18 **COUNT TWO**

19 **Violation of 8 U.S.C. §1225 and 8 U.S.C. §1226.**

20 77. Petitioner re-alleges and incorporates by reference paragraphs 1 through 76.

21 78. Petitioner’s continued detention by Respondents is unlawful. The mandatory detention
22 provision at 8 U.S.C. § 1225(b)(2) does not apply to noncitizens residing in the United States
23 who are subject to the grounds of inadmissibility because they originally entered the United
24 States.

1 States without inspection. Such noncitizens are detained under § 1226(a), unless they are
2 subject to another detention provision, such as § 1225(b)(1), § 1226(c) or § 1231.

3 79. Upon his entry, he was detained and later released after a bond hearing on September 8, 2022,
4 before the Imperial, California, courts. There has been no change to his status since then.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully prays that this Court grant the following relief:

7 (i) Assume jurisdiction over this matter.

8 (ii) Grant the Order to temporary restraining order as requested in the application
9 filed concurrently. Declare that Petitioner's ongoing detention violates 8 U.S.C. §
10 1226(a) and the Due Process Clause of the Fifth Amendment.

11 (iv) Issue a Writ of Habeas Corpus and order Respondents to immediately release
12 Petitioner from DIIS custody under reasonable conditions and enjoin Respondents
13 from re-arresting him without a pre-deprivation hearing before this Court.

14 (v) Alternatively, order that Petitioner be released within 14 days unless
15 Respondents schedule a hearing to take place before a neutral arbiter, where, to
16 continue detention, the government must establish by clear and convincing
17 evidence that Petitioner presents a danger or flight risk, and

18 address why available conditions of supervision cannot mitigate any such risks; and
19 if (a) the government fails to meet this burden, the neutral arbiter orders Petitioner's
20 release on appropriate conditions of supervision, taking into account Petitioner's
21 ability to pay a bond; or (b) the government meets this burden, the neutral arbiter
22 issue a reasoned decision explaining why the government has met its burden of
23 proof and why alternatives to detention are inadequate;
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25
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1 (vi) Enjoin Respondents from causing Petitioner any greater harm during the
2 pendency of this litigation and immigration court case, such as by transferring him
3 farther away from his legal Counsel or placing him into solitary confinement. (vii)
4 Award reasonable costs and attorneys' fees under the Equal Access to Justice Act,
5 28 U.S.C. § 2412, or on any other basis justified under law.

6 and

7 (viii) Grant such further relief as the Court deems just and proper.

8 Respectfully Submitted this March 16, 2026.
9
10
11

12 By:

13 /s/Sajjad Hussain
14 Sajjad Hussain, Esq.
15 Indus Pacific Law Office, Law Corp
Attorney for Petitioner

16 /s/Beyza Candelen
17 (motion for *pro hac vice* admission forthcoming)
18 Merit Law, LLP
19 11011 Richmond Ave, Ste 840
Houston, Texas 77042
20 +1 (862) 459-2608
info@meritllp.com

1 **Sajjad Hussain, Esq. CSBN 318154**
2 **Indus Pacific Law Office, Law Corp**
3 **8996 Miramar Road, Suite 306**
4 **San Diego, CA 92126**
5 **760-810-3142**
6 **induspacificlaw@gmail.com**

7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9 **SOUTHERN DIVISION**

10 Ersin Tabak

11 Plaintiff,

12 vs.

13 **Sixto Marrero**, Warden, Imperial Regional
14 Adult Detention Facility, **Kristi Noem**,
15 Secretary, Department of Homeland Security;
16 **Gregory J. Archambeault**, Field Office
17 Director, Enforcement and Removal Operations
(ERO) San Diego, CA. **Todd M Lyons**,
Performing the Duties of the Immigration and
Customs Enforcement; **Pamela Bondi**, United
States Attorney General
Defendant(s).

) **Case No.:**

) **MOTION FOR TEMPORARY**
) **RESTRAINING ORDER**

18 **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

19 Petitioner respectfully petitions this Honorable court for a writ of habeas corpus to remedy
20 petitioner's unlawful detention by the respondents as follows:

21 Dated this March 16 , 2026

22
23
24 By: Sajjad Hussain, Esq.

1
2 **I. INTRODUCTION**

3 1. Petitioner respectfully moves for a Temporary Restraining Order (“TRO”) under Federal
4 Rule of Civil Procedure 65 to preserve the status quo and prevent immediate, irreparable
5 harm while Petitioner prepares and files a petition for writ of habeas corpus challenging
6 the legality of his detention.

7
8 2. Petitioner is currently detained by the Department of Homeland Security at the Imperial
9 Regional Adult Facility, CA despite having lived at liberty in the United States for more
10 than three years under order of release on bond by the Immigration Judge. He complied
11 with all reporting requirements and appeared as directed. On Feb 02, 2026, petitioner
12 was detained in the Los Angeles, California area while walking on the street without
13 any pre-detention hearing or notice and was transported to the Imperial Regional Adult
14 Detention Facility (“Imperial Regional”). This summary deprivation of liberty violates
15 core procedural due process protections Petitioner’s detention is unlawful and violates
16 the Due Process Clause of the Fifth Amendment.

17
18 3. This TRO seeks narrowly tailored, temporary relief to maintain the status quo by
19 enjoining Respondents from transferring Petitioner from this jurisdiction for a limited
20 period and ordering his immediate release. The requested relief is necessary to protect
21 this Court’s jurisdiction and ensure that meaningful judicial review remains available.

22 ***II. JURISDICTION AND AUTHORITY***

23 1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which
24 authorizes federal courts to inquire into the legality of executive detention. Habeas
25 corpus is the proper vehicle for challenging civil immigration detention imposed
26 without statutory authorization or in violation of the Constitution. *Zadvydas v. Davis*,

1 533 U.S. 678, 687 (2001). Petitioner is currently detained at the Imperial Regional Adult
2 Detention Facility, CA, which is located within this Court’s territorial jurisdiction.
3 Because Petitioner’s immediate custodian is subject to this Court’s authority,
4 jurisdiction over Petitioner’s habeas claims is proper.

5
6 2. This Court also has authority to issue temporary, status-quo-preserving relief necessary
7 to protect its jurisdiction and ensure effective judicial review. Where government action
8 threatens to moot a detention challenge or frustrate review before the Court can resolve
9 the merits, interim injunctive relief may be appropriate. *Nken v. Holder*, 556 U.S. 418,
10 426–27 (2009). Jurisdiction is not barred by 8 U.S.C. §§ 1252(b)(9) or 1252(g).
11 Petitioner does not seek review of a final order of removal, does not challenge the
12 conduct or merits of removal proceedings, and does not contest removability. He
13 challenges only the legality of his current detention and related custody authority. The
14 Ninth Circuit has held that habeas claims challenging immigration detention are
15 collateral to removal proceedings and fall outside the scope of §§ 1252(b)(9) and
16 1252(g). *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006). The Supreme
17 Court has likewise rejected interpretations of § 1252(b)(9) that would sweep detention
18 challenges into the removal-review scheme. *Jennings v. Rodriguez*, 583 U.S. 281, 293
19 (2018).

20
21 3. Accordingly, this Court has jurisdiction to adjudicate Petitioner’s habeas claims and
22 authority to issue limited interim relief necessary to preserve that jurisdiction and
23 prevent irreparable harm during the Court’s review

24
25 **I. FACTUAL BACKGROUND**

1 4. Petitioner, Mr. Tabak is a native and citizen of Turkey. He arrived in the United States
2 near El Paso, Texas. on or about August 12, 2022, and was not admitted or paroled after
3 inspection by an Immigration Officer. Upon his entry, he was detained and subsequently
4 released on a \$1,500 bond with Alternatives to Detention by an Immigration Judge in
5 El Paso, Texas. This order was never appealed by the Department of Homeland Security
6 (“DHS”) and therefore became final.

7
8 5. For years prior to his arrest, Petitioner was released under and he complied with all
9 reporting requirements. There is no record of violations. On Feb 02, 2026, Petitioner
10 was detained without any pre detention hearing or *any violation*.

11 6. Petitioner remains detained at the Imperial Regional Adult Detention Facility, CA while
12 his case is pending adjudication before Immigration Court.

13 7. Petitioner seeks temporary, emergency relief to prevent transfer or order for his release
14 and files a petition for writ of habeas corpus challenging the legality of his detention.

15 **II. LEGAL STANDARD**

16
17 8. A temporary restraining order is an extraordinary remedy governed by Federal Rule of
18 Civil Procedure 65. A court may issue a temporary restraining order where the moving
19 party demonstrates (1) a likelihood of success on the merits, (2) a likelihood of
20 irreparable harm absent relief, (3) that the balance of equities tips in the movant’s favor,
21 and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
22 555 U.S. 7, 20 (2008).

23
24 9. The Ninth Circuit applies these factors on a sliding-scale basis. Under that approach, a
25 temporary restraining order may issue where serious questions going to the merits are
26 raised and the balance of hardships tips sharply in the movant’s favor, provided that the
27 movant also demonstrates irreparable harm and that the requested relief serves the
28

1 public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th
2 Cir. 2011).

3 10. When the government is a party, the balance of equities and the public interest factors
4 merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In the immigration context, courts
5 may issue interim relief where government action threatens to irreparably harm the
6 movant or undermine the availability of meaningful judicial review. *Id.* at 426–27.

7
8 ***V. ARGUMENTS***

9 ***1. Likelihood of Success on the Merits***

10 11. Petitioner has demonstrated a likelihood of success on the merits. He was summarily
11 rearrested and detained after more than three years of liberty, without an opportunity to
12 be heard, without any individualized determination justifying the deprivation of liberty,
13 and without seeking reversal of the Immigration Judge’s order granting his release on
14 bond. This conduct not only violates the Fifth Amendment’s Due Process Clause but
15 also undermines the integrity of the judicial system, as the respondent detained the
16 petitioner contrary to an Immigration Court order.

17 12. Under Federal Rule of Civil Procedure 65, a temporary restraining order is warranted
18 where the moving party establishes a likelihood of success on the merits. *Winter v. Nat.*
19 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

20 13. Petitioner’s due process claims rests on settled principles: long-term conditional release
21 creates a protected liberty interest; withdrawal of that liberty requires constitutionally
22 adequate process; and summary re-detention without such process fails that
23 requirement.
24

1 *A. DHS's summary re-arrest after long-term Immigration Court ordered release*
2 *violates procedural due process*

3 14. *As a threshold matter, the Fifth Amendment prohibits the government from depriving*
4 *any person of liberty without due process of law. These protections apply to all persons*
5 *within the United States and extend to civil immigration detention. Zadvydas v. Davis,*
6 *533 U.S. 678, 693 (2001).*

7 15. Consistent with this principle, when the government affirmatively releases an individual
8 from custody and permits continued liberty under conditions of supervision or parole, it
9 creates a protected liberty interest in continued freedom absent a violation of those
10 conditions. That liberty interest may not be withdrawn arbitrarily. *Morrissey v. Brewer,*
11 *408 U.S. 471, 482 (1972).*

12 16. Building on this framework, district courts within the Ninth Circuit have recognized that
13 conditional release enhances a noncitizen's due process interest in liberty and that
14 challenges to summary re-detention following such release are properly analyzed under
15 the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) frameworks. *Kaztashyan v. Warden*
16 *of the Golden State Annex Detention Facility*, No. 1:25-cv-01526-DC-SCR (E.D. Cal.
17 2025); *Khan v. Noem*, No. 1:25-cv-01411-EPG-IHC, 2025 WL 3089352. at *5 (E.D.
18 Cal. Nov. 5, 2025).

19 17. Accordingly, once a protected liberty interest is established, the Court determines what
20 process is due by balancing three factors: (1) the private interest affected; (2) the risk of
21 erroneous deprivation through the procedures used and the value of additional
22 safeguards; and (3) the government's interest, including the administrative burden of
23 additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Kentucky Dep't*
24 *of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).
25
26
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28

1 18. This liberty interest is enhanced where the government has affirmatively released an
2 individual from custody and permitted liberty to persist under conditions. *Morrissey v.*
3 *Brewer*, 408 U.S. 471, 482 (1972).

4 19. Courts in California have applied this principle directly in the immigration context,
5 holding that prior conditional release enhances a noncitizen's due process interest in
6 liberty. *Kaztashyan v. Warden of the Golden State Annex Detention Facility*, No. 1:25-
7 cv-01526-DC-SCR (E.D. Cal. 2025); *Khan v. Noem*, No. 1:25-cv-01411-EPG-IIC,
8 2025 WL 3089352, at *5 (E.D. Cal. Nov. 5, 2025). The court has likewise recognized
9 that a noncitizen released into the community retains a substantial interest in continued
10 freedom and that long-term government acquiescence in that liberty strengthens
11 constitutional protection. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025).

12 20. Here, DHS allowed Petitioner to live at liberty for more than three years. This created
13 an implied promise that Petitioner would not be summarily re-detained absent a
14 violation, material change in circumstances or reversal of court order. Petitioner relied
15 on that promise and structured his life, accordingly, including his work, and community
16 ties. DHS's summary withdrawal of that liberty inflicted a serious loss.

17 21. Accordingly, Petitioner's liberty interest is not diminished by the existence of a prior
18 removal order; it is heightened by the Immigration Court order and government's own
19 decision to confer and maintain liberty over time. Therefore, the private interest weighs
20 in Petitioner's favor.

21
22
23 *(i). The Risk Of Erroneous Deprivation Is High, And Additional Safeguards*
24 *Would Significantly Reduce That Risk*

25 22. The second Mathews factor concerns the likelihood of error under the procedures used.
26 The risk of erroneous deprivation is greatest where liberty is withdrawn summarily,
27

1 without notice, without an opportunity to be heard, and without any individualized
2 determination. *Morrissey v. Brewer*, 408 U.S. 471, 484 (1972).

3 23. District courts have recognized that the absence of any pre- or post-deprivation process
4 creates a substantial risk of error. *R.D.T.M. v. Wofford*, 2025 WL 2617255, at *4 (E.D.
5 Cal. Sept. 9, 2025); *Manzanarez v. Bondi*, 2025 WL 3247258, at *4 (E.D. Cal. Nov. 20,
6 2025). The same conclusion was reached in *Gurjinder S. v. Warden*, No. 1:26-cv-00188-
7 TLN-CSK (E.D. Cal. Jan. 16, 2026), which observed that where detention occurs
8 without any hearing, the probative value of additional procedural safeguards is high.
9

10 24. Here, Petitioner's liberty was summarily withdrawn without notice or an opportunity to
11 be heard after more than three years of liberty. The government did not identify a change
12 in circumstances, any violation of Court order or reversal of court order by any appellate
13 authority. DHS detained Petitioner without providing any individualized custody
14 determination. The risk of error is substantial.
15

16 **(ii). The Government's Interest Does Not Outweigh The Need For Procedural
17 Protections**

18 25. The third Mathews factor considers the government's asserted interests. While the
19 government has an interest in administering the immigration system, that interest must
20 be weighed against Petitioner's protected liberty interest.

21 26. Here, the government's interest is diminished by Immigration Court order and DHS's
22 prior conduct. The Immigration Court determined and DHS did not dispute that
23 Petitioner was neither danger to community nor flight risk and his release on bond was
24 justified. Petitioner complied with all obligations for years. Accordingly, the
25 government's interest in dispensing with process is limited. *Hernandez v. Sessions*, 872
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1 F.3d 976, 994 (9th Cir. 2017); Garcia v. Andrews, 2025 WL 1927596, at *5 (E.D. Cal.
2 July 14, 2025).

3 27. Moreover, the burden of additional safeguards is modest. Courts have held that the
4 administrative burden of providing notice and a custody hearing does not outweigh due
5 process protections. Khan v. Noem, No. 1:25-cv-01411-EPG-HC, 2025 WL 3089352,
6 at *5 (E.D. Cal. Nov. 5, 2025); Diaz v. Kaiser, 2025 WL 1676854, at *3 (N.D. Cal. June
7 14, 2025).
8

9 ***(iii). The Mathews Balance Confirms A Due Process Violation***

10 28. Viewed together, all three Mathews factors favor Petitioner. Petitioner possesses an
11 enhanced liberty interest arising from long-term conditional release; the risk of
12 erroneous deprivation from summary re-arrest is substantial; and the government's
13 interest in dispensing with basic procedural protections is limited. Kaztashyan v.
14 Warden of the Golden State Annex Detention Facility, No. 1:25-cv-01526-DC-SCR
15 (E.D. Cal. 2025); Khan v. Noem, No. 1:25-cv-01411-EPG-HC, 2025 WL 3089352, at
16 *5 (E.D. Cal. Nov. 5, 2025); R.D.T.M. v. Wofford, 2025 WL 2617255, at *4 (E.D. Cal.
17 Sept. 9, 2025); Doe v. Becerra, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025).
18

19 ***(iv). Imminent transfer outside this Court's jurisdiction violates due process and results***
20 ***in irreparable harm***

21 29. Petitioner faces an immediate risk of transfer outside this Court's jurisdiction. That risk
22 independently implicates due process concerns and would result in irreparable harm if
23 relief is not granted.

24 30. As a matter of due process, transfer alters Petitioner's legal and custodial status in a
25 manner that requires notice and a meaningful opportunity to be heard before it occurs.
26
27
28

1 Petitioner has lived in the United States for years, a long-term release under Immigration
2 Court order in the United States. Nevertheless, on Feb 02, 2026, DIHS detained him.

3 31. Transfers outside this Court's jurisdiction would likewise disrupt access to counsel and
4 interfere with this Court's ability to maintain orderly review of Petitioner's claims.

5 32. Because Petitioner could be transferred at any time absent court intervention, the
6 threatened transfer presents both a violation of due process and a concrete risk of
7 irreparable harm warranting immediate relief.

8 33. For these reasons, Petitioner has demonstrated a likelihood of success on the merits of
9 his Fifth Amendment procedural due process claim.
10

11 ***2. Irreparable Harm***

12 34. Petitioner will suffer irreparable harm absent immediate injunctive relief. He remains
13 detained following a summary re-arrest, faces an imminent risk of transfer outside this
14 Court's jurisdiction. These harms are immediate, personal to Petitioner, and not
15 susceptible to meaningful repair through later judicial relief.
16

17 35. To obtain temporary injunctive relief, a petitioner must show that irreparable harm is
18 likely in the absence of relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
19 (2008). The Ninth Circuit has explained that this requirement is not as demanding as
20 some formulations suggest. It is sufficient to demonstrate that irreparable harm is
21 probable, not certain. *Leiva-Perez v. Holder*, 640 F.3d 962, 967 (9th Cir. 2011).
22 Requiring certainty would defeat the purpose of interim relief, which is to allow courts
23 time to act responsibly before the harm occurs, rather than after. *Id.* Viewed in light of
24 this standard; the specific facts of Petitioner's case demonstrate a concrete and
25 immediate risk of irreparable harm.
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1 41. On Petitioner's side of the scale are substantial and concrete harms. Petitioner remains
2 detained following a summary re-arrest. He faces the imminent risk of transfer outside
3 this Court's jurisdiction or removal. These harms are immediate and irreversible.

4 42. On the government's side, the requested relief imposes minimal burden. Petitioner seeks
5 only a temporary restraining order preventing transfer or removal for a brief period to
6 allow this Court to review his claims. The relief would not grant permanent status,
7 preclude future enforcement of immigration laws, or interfere with ongoing proceedings
8 beyond preserving the status quo. Where removal is not imminent for lawful reasons
9 and judicial review is pending, the government's interest in immediate execution of
10 removal is reduced.
11

12 43. The public interest likewise favors relief. The public has a strong interest in ensuring
13 that executive detention and removal decisions comport with constitutional due process
14 and statutory safeguards. Preserving access to judicial review before irreparable harm
15 occurs promotes orderly adjudication and confidence in the fair administration of the
16 immigration laws. Conversely, denying interim relief would risk irreversible harm to
17 Petitioner before this Court has an opportunity to consider the merits of his claims.
18 Granting temporary relief ensures that the Court, not the timing of removal, determines
19 whether detention and removal are lawful. Accordingly, both the balance of equities and
20 the public interest strongly support issuance of a temporary restraining order.
21

22 **VI. CONCLUSION AND PRAYER FOR RELIEF**

23 44. Petitioner has satisfied the requirements for temporary injunctive relief under Federal
24 Rule of Civil Procedure 65. He has demonstrated a likelihood of success on the merits
25 of his constitutional claims, a substantial risk of irreparable harm absent immediate
26 relief, and that the balance of equities and the public interest favor preserving the status
27

1 quo while this Court considers the legality of his detention and threatened transfer or
2 removal.

3 45. Absent relief, Petitioner faces continued detention and the imminent risk of transfer
4 outside this Court's jurisdiction before this Court has an opportunity to adjudicate his
5 claims. Once effectuated, those actions would result in irreparable harm that cannot be
6 remedied through later judicial review.

7 Accordingly, Petitioner respectfully requests that the Court grant the following relief:

- 8
- 9 1. Order Petitioner's immediate release from immigration detention, subject to the same
10 conditions that were in effect immediately before his re-detention.
 - 11 2. Enjoin Respondents, their officers, agents, employees, and all persons acting in concert
12 with them from removing Petitioner from the United States or transferring him outside this
13 Court's jurisdiction pending further order of the Court.
 - 14 3. Direct that Respondents maintain Petitioner within this District while this Court considers
15 his anticipated habeas petition and any additional briefing the Court may order: and
16
 - 17 4. Grant such other and further relief as the Court deems just and proper.

18 Dated: March 16, 2026, Respectfully Submitted,

19 By: _____

20 /s/Sajjad Hussain
21 Sajjad Hussain, Esq.
22 Indus Pacific Law Office, Law Corp
Attorney for Petitioner

23 /s/Beyza Candelen
24 (motion for *pro hac vice* admission forthcoming)
25 Merit Law, LLP
11011 Richmond Ave, Ste 840
Houston, Texas 77042
26 +1 (862) 459-2608
27 info@meritllp.com