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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 GURWINDER SINGH,
12 

Petitioner,

13 v.

14 TONYA ANDREWS, *et. al.*,

15 Respondents.
16

CASE NO. 1:26-CV-05073-JLT-FJS

RESPONSE TO WRIT OF HABEAS CORPUS
AND OPPOSITION TO TEMPORARY
RESTRAINING ORDER [ECF 1&2]; RESPONSE
TO ORDER TO SHOW CAUSE [ECF 4]

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18 I. INTRODUCTION

19 Respondent is amenable to converting the motion for temporary restraining order to a motion for
20 preliminary injunction. Respondent is further amenable to the Court ruling on the underlying petition for
21 writ of habeas corpus (Petition).

22 Petitioner's detention remains lawful under 8 U.S.C. §§ 1225 and 1226 based on his manner of
23 entry, repeated convictions for driving under the influence, lack of any lawful status, and the absence of
24 any approved applications for immigration relief. Petitioner is present in the United States without
25 having been admitted, inspected, or paroled, and his criminal and immigration history demonstrates that
26 he poses both a danger to the community and a flight risk. The motion for habeas corpus should be
27 denied.
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II. BACKGROUND

Petitioner is a twenty-nine-year-old native and citizen of India who entered the United States without inspection in November 2022 and has no lawful status. *See* Exhibit 1. (Form I-213). On June 27, 2026, Petitioner was arrested in Fresno, California, for driving under the influence and placed in jail. *See* Exhibit 2. (RAP). Criminal contacts – particularly DUI conduct – is legally recognized as a significant marker of dangerousness. The BIA in *Matter of Siniauskas*, 27 I. & N. Dec. 207, 209-10 (BIA 2018), held that DUI is a “significant adverse consideration” in bond assessments and strongly suggests danger to the community. These precedents confirm that Petitioner’s June 2026 DUI arrest materially altered the government’s earlier assessment of his risk profile a justified immediate custodial action without a pre-deprivation hearing.

III. LEGAL STANDARD

Under 28 U.S.C. § 2241, the Court has the authority to determine a Petition for writ of habeas corpus in which the Petitioner asserts he is being held in custody “in violation of the Constitution or laws or treaties of the United States.” “The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

IV. PETITIONER IS MANDATORILY DETAINED UNDER 8 U.S.C. §1225

For purposes of preserving this issue for appellate review, Petitioner qualifies as an “applicant for admission” subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A). The statutory text plainly mandates detention of noncitizens who entered without inspection, regardless of the duration of their U.S. residency. This interpretation now in dispute between circuits is still reflected in the Ninth Circuit as potentially read the same. In the Fifth Circuit, *Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), confirmed that § 1225(b)(2)(A) applies broadly to individuals present without admission, even long-term residents, mandating detention without bond. Similarly, the Eighth Circuit in *Herrera Avila v. Bondi*, No. 25-3248 (8th Cir. Mar. 25, 2026), echoed this conclusion, affirming that interior-apprehended noncitizens or persons present with admission or parole (PWAP) remain “applicants for admission” under § 1225(b)(2). Additionally, although the Second Circuit in *Cunha v. Freden*, No. 25-3141 (2d Cir. Apr. 28, 2026), took the opposing view holding that interior-apprehended, long-

term noncitizens that entered without admission or parole are governed by § 1226(a) and entitled to bond hearings, the acknowledged circuit split does not mean the statutory language is incorrect. Despite the split, the Ninth Circuit has temporarily stayed a class action relief attempt in *Maldonado Bautista v. DHS* pending its appeal, because § 1225(b)(2) detentions are valid by the text expressly stated. To further support this argument, USCIS confirms that parole under INA § 212(d)(5)(A) is not an admission or entry, and that the “paroled alien is treated as an applicant for admission.”¹

Congress designed § 1225 as the statutory framework for “applicants for admission,” and the existence of waivers proves these applicants must remain available for adjudication - not released as a matter of right. Petitioner entered the United States without inspection, admission, or parole. During his illegal stay within the United States Petitioner had contact with criminal law enforcement. Because Petitioner was arrested and detained by law enforcement and placed into Fresno County jail in Fresno, CA, the Department of Homeland Security acted within its lawful authority in placing him into removal proceedings and immigration custody. *See* 8 C.F.R § 236.1(c)(9). The Supreme Court and the Board have affirmed for a long time that noncitizens in the United States are applicants for admission under 8 U.S.C. § 1225(a) and are seeking admission under 8 U.S.C. § 1225(b). Here, Petitioner is an arriving alien and remains an arriving alien because he was present without inspection.²

V. PETITIONER IS MANDATORILY DETAINED UNDER 8 U.S.C. § 1226

Even if the Court finds that Petitioner is detained under section 1226(a) rather than section 1225(b), his detention remains lawful. Section 1226(a) authorizes DHS to detain a noncitizen pending removal proceedings or release the individual on bond or conditional parole. The Supreme Court has repeatedly upheld the government’s broad authority to detain noncitizens for immigration purposes pending removal proceedings. *See Demore v. Kim*, 538 U.S. 510, 523-531 (2003); *Carlson v. Landon*,

¹ USCIS, Parole, USCIS Glossary: Parole (last visited July 6, 2026).

² The Supreme Court and the Board have long recognized that aliens paroled into the United States are legally in the position of aliens standing at the border, regardless of the duration of their parole. *See Leng May Ma v. Barber*, 357 U.S. 185, 190 (1958); *Matter of Abebe*, 16 I&N Dec. 171, 173 (BIA 1976) (citing, *inter alia*, *Leng May Ma*, 357 U.S. at 185; *Kaplan v. Tod*, 267 U.S. 228 (1925)); *Matter of L-Y-Y-*, 9 I&N Dec. 70 (BIA; A.G. 1960); *see also, e.g., Duarte v. Mayorkas*, 27 F.4th 1044, 1059-60 (5th Cir. 2022); *Ibragimov v. Gonzales*, 476 F.3d 125, 134 (2d Cir. 2007).

1 342 U.S. 524, 534-537, (1952); *Reno v. Flores*, 507 U.S. 292, 301-307, (1993). Under 8 C.F.R.
2 § 1236.1(c)(8), a noncitizen may be released from Immigration and Customs Enforcement (ICE) custody
3 only if an immigration officer determines that the individual poses no danger to property or persons and
4 is likely to appear for future proceedings. The Northern District reaffirmed this standard in *Pinchi v.*
5 *Noem*, 792 F. Supp. 3d 1025, 1034 (N.D. Cal. 2025), holding that dangerousness and flight risk are
6 appropriate considerations in bond decisions. Specifically, that DHS assess whether the noncitizen
7 “would not pose a danger to property or persons” and that the individual is “likely to appear for any
8 future proceeding”. *Id.*

9 Petitioner entered the United States at an unknown time and location in November 2022 and was
10 encountered by ICE in Fresno County California, on June 27, 2026. The Board of Immigration Appeals
11 (BIA) has held that DUI offenses constitute a “significant adverse consideration” in bond hearings,
12 strongly suggesting danger to the community. *See Matter of Siniauskas*, 27 I. & N. Dec. 207, 209–10
13 (BIA 2018). This established dangerous conduct justifies prompt custodial action under 8 U.S.C.
14 § 1226(a) without requiring a pre-deprivation hearing.

15 In *Jennings v. Rodriguez*, 138 S. Ct. 830, 847–48 (2018), the Supreme Court rejected judicially
16 imposed procedural requirements beyond those in § 1226(a), affirming that noncitizens are entitled only
17 to those hearings Congress prescribed. Similarly, *Demore v. Kim*, 538 U.S. 510 (2003), upheld the
18 constitutionality of civil immigration detention during removal proceedings.

19 Under 8 C.F.R. § 236.1(c)(9), DHS has discretionary authority on aliens placed in removal
20 proceedings. DHS properly exercised that authority in this case. This dangerous conduct justified DHS’s
21 custodial action under 8 U.S.C. § 1226(a) without the need for a pre-deprivation hearing, and supports a
22 risk assessment finding that he poses both a significant danger to the community and a substantial risk of
23 flight.

24 VI. CONCLUSION

25 If the Court determines that Petitioner is entitled to any relief on his TRO request, Respondents
26 respectfully request that the Court limit that relief to a bond hearing before an Immigration Judge. Given
27 Petitioner’s entry without inspection, criminal convictions, and probation violations, he must bear the
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1 burden of proving that he is not a danger and is not a flight risk. This is consistent with longstanding
2 precedent and with the statutory and regulatory framework governing detention under section 1226(a).

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5 Dated: July 8, 2026

Respectfully submitted,

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8 By: /s/ NISREEN F. ASSAF
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