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UNITED STATES DISTRICT COURT
EASTERN DISTRICT

ZAMIR FAIZI,

Petitioner,

Case No.

v.

SERGIO ALBARRAN, San Francisco Field
Office Director of Enforcement and Removal
Operations,
SAN FRANCISCO Field Office, Immigration
and Customs Enforcement;
MARKWAYNE MULLEN, Secretary, U.S.
Department of Homeland Security;
U.S. DEPARTMENT OF HOMELAND
SECURITY;
TODD BLANCHE, U.S. Attorney General;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW;
TONYA ANDREWS, Warden of California
Golden State Annex

**PETITIONER'S EX-PARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

Respondents.

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and Rule 231 of the Local
rules of this Court, Petitioner hereby moves this Court for an order enjoining Respondents
Department of Homeland Security ("DHS"), United States Immigration and Customs

1 Enforcement ("ICE"), Pam Bondi, in her official capacity as the U.S. Attorney General, and
2 Christopher Chestnut, in his official capacity as Facility Administrator at California City
3 Detention Center to release Petitioner-Petitioner ANMOL SINGH ("Petitioner") until he is
4 afforded a hearing, as required by the Due Process clause of the Fifth Amendment, to determine
5 whether there is clear and convincing evidence that Petitioner is a danger to public safety or a
6 flight risk such that Petitioner's detention is warranted. Petitioner also seeks to enjoin
7 Respondents from transferring Petitioner outside the jurisdiction of the San Francisco Field
8 Office and the Eastern District of California pending the resolution of this case.

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10 The reasons in support of this Motion are set forth in the accompanying Exhibits and
11 Habeas Corpus. This Motion is based on the attached Declaration of Anmol Singh in Support of
12 Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set
13 forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a
14 temporary restraining order due to his weighty liberty interest under the Due Process Clause of
15 the Fifth Amendment in remedying his unlawful re-detention, where that detention appears
16 indefinite and which was imposed absent a pre-deprivation due process hearing.

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18 WHEREFORE, Petitioner prays that this Court grant his request for a temporary
19 restraining order enjoining ICE from transferring him out of the Eastern District, ordering his
20 release her from custody immediately, and enjoining the government from re-detaining Petitioner
21 unless and until he is afforded a hearing before a neutral decision maker on the question of
22 whether there is clear and convincing evidence that he is a risk to public safety or a flight risk
23 with an opportunity for bond. The only mechanism to ensure that he is not continuously
24 unlawfully detained in violation of her due process rights is an ex-parte temporary restraining
25 order from this Court.

26
27 Respectfully Submitted,
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Dated: February 13, 2026


/s/Karen Pedraza
Attorney for Petitioner

I. INTRODUCTION

Petitioner-Petitioner Petitioner, by and through undersigned counsel, hereby file this motion for a temporary restraining order and preliminary injunction to order the U.S. Department of Homeland Security's ("DHS") Immigration and Customs Enforcement ("ICE") to release him from custody immediately because he has been deprived of a hearing prior to his detention and after a request for a bond re-determination, provided a legally deficient bond hearing. In the alternative, he requests a hearing before a neutral decision maker on the question of whether there is clear and convincing evidence that he is a danger to public safety or a flight risk such that Petitioner's re-detention is warranted.

Petitioner, ZAMIR FAIZI, is a Afghan citizen currently detained by Immigration and Customs Enforcement, ("ICE") at the Golden State Annex. The Petitioner entered the United States on November 21, 2023. *Notice to Appear, I-862, dated February 1, 2024.* The same day he was placed in INA §240/8 U.S.C. 1229(a) proceedings. *Id.* The Petitioner lawfully entered the United States to seek asylum under 8 U.S.C. §1158(a)(1) of the statute. The Petitioner is fleeing from political and ethnic based persecution in Afghanistan which are both viable grounds to seek asylum. On the date the Petitioner was detained, March 2026, he had been lawfully present in the United States for over two years.

1 By statute and regulation, the Immigration and Nationality Act, “INA” allows habeas review
2 of certain determinations made in expedited removal proceedings. *See* 8 U.S.C. §1252(e)(2). The
3 court has the authority to review the termination of Petitioner’s parole. *Jennings v. Rodriguez*,
4 583 U.S. 281, 294 (2018) (holding that § 1252(g) precludes judicial review only as to the three
5 areas specifically outlined in the subsection); *see also Reno v. American-Arab Anti-*
6 *Discrimination Committee*, 525 U.S. 471, 482 (1999). Most recently, in *Coalition for Humane*
7 *Immigrant Rights, et al., v. Kristi Noem*, the U.S. District Court of the District of Columbia
8 granted the stay for agency (DHS) action, stayed the Huffman Memorandum, to the extent that
9 the Challenged Actions subjected to expedited removal individuals who were at any point in time
10 paroled into the United States at any point of entry. *Coal. for Humane Immigrant Rts. v. Noem*,
11 No. 25-CV-872, 39 (JMC), 2025 WL 2192986 (D.D.C. Aug. 1, 2025). To clarify, Coalition
12 concluded that the statute “forbids the expedited removal of noncitizens who have been, at any
13 point in time, paroled into the United States.” 2025 WL 2192986, at *22.6 Coalition at *22-*27
14 conducts an exhaustive analysis of 1225(b)(1)(A)(iii)/§ 235.3(b)(1), relevant directives, and case
15 authority to come to its holding. Coalition holds that § 1225(b)(1)(A)(iii) “forbids the expedited
16 removal of noncitizens who have been, at any point in time, paroled into the United States.” 2025
17 WL 2192986, at *22. *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO, 2025 WL 2581185, at
18 *5 (E.D. Cal. Sept. 5, 2025)

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23 Most relevant, in *Espinoza v. Kaiser*, the United States Eastern District of California
24 ordered a motion for a temporary restraining order, their immediate release, and no additional
25 restrictions such as electronic monitoring, unless it was determined to be necessary at a future
26 pre-deprivation/custody hearing for a series of petitioners including Ms. *Lorgia* who had been
27 placed in expedited removal proceedings. *Espinoza v. Kaiser*, No. 1:25-CV-01101 JLT SKO,
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2025 WL 2581185, at *2 (E.D. Cal. Sept. 5, 2025).

Mr. Faizi meets the standard for a temporary restraining order. He will suffer immediate and irreparable harm absent an order from this Court enjoining the government to release him from detention unless and until he receives a hearing before a neutral adjudicator, as demanded by the constitution. Since holding federal agencies accountable to constitutional demands is in the public interest, the balance of equities and public interest are also strongly in Petitioner's favor.

II. STATEMENT OF FACTS¹

The Petitioner is fleeing political and ethnic persecution in Afghanistan on account of his work at Bagram Airfield in Afghanistan and his support and allyship with the U.S. Army.

Petitioner's declaration at ¶ 1-5. [REDACTED]

[REDACTED] *Id. at ¶ 3.* The Petitioner entered the United States on November 21, 2023, and he was released on his own recognizance *Id. at ¶1. Notice of Parole, Order of Release of Recognizance.*

The Respondents placed the Petitioner in INA 240 removal proceedings when they issued him a Notice to Appear on February 1, 2024. They allege that under INA212(a)(6)(A)(i) he is an "alien present without being admitted or paroled." *Notice to Appear, dated February 1, 2024.* The Petitioner then lawfully applied for asylum on March 26, 2024, before his one year filing deadline. The Petitioner regularly attended all his immigration court hearings. The Petitioner became ill with the stress and pressure of life in the United States. *Sworn Declaration of Sharon Howard at page 13.* He had several instances where he showed suicidal ideation. *Id. at 13.* The Petitioner started showing signs of PTSD and Major Depression. *Id. at 12* As the Petitioner's

¹ All the facts mentioned in this pleading document are true and accurate and mentioned in the affidavit in support of the motion for a temporary restraining order. The petitioner has told the attorney the facts mentioned above in person prior to her detention, over video, or over the phone.

1 condition worsened he had multiple encounters with law enforcement.

2 On April 22, 2025, the Petitioner was arrested and charged with PC 245(a)(1), PC 273.6(A),
3 PC 417(A)(1). On April 27, 2025, he was arrested and charged with 199.280.3 and 9.18.020. He
4 plead guilty and was fined. On May 8, 2025, he was charged with 166(A)(4). On May 9, 2025, he
5 was charged with 273.6(A). On May 28, 2025 he was charged with 166(A)(4) and VC10851. On
6 June 14, 2025 he was charged with PC 595(A)(2) and PC 166 (A)(4). On June 18, 2025, the
7 petitioner was charged with VC 10851A(A) and PC 242. All the charges in West Sacramento are
8 still pending a trial or resolution, and they have been consolidated as of August 14, 2025. Despite
9 the arrests, the Petitioner is not a dangerous person that makes him a danger to public safety or a
10 flight risk. The Petitioner instead is an individual with mental health disorder who needs
11 attention, medical care, and stability. ("While Mr. Faizi is currently prescribed medication in ICE
12 detention, his response to the medication is only partial. He reports ongoing symptoms of anxiety
13 and depression, as well as excessive fatigue during the day and disrupted sleep at night. He
14 continues to ruminate and experience ongoing distress...Should his mental health deteriorate, he
15 should be immediately assessed for hospitalization.") Dr. Sharon Howard met with the Petitioner
16 and diagnosed him with PTSD and Major Depression Disorder. *Id.* at 13.

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19 The Petitioner has been unlawfully detained in immigration custody for over three months
20 even though no neutral decision maker—federal judge or immigration judge "IJ" has conducted a
21 hearing to determine whether his length incarceration is warranted based on danger or flight risk.
22 In detention, the Petitioner has been exposed to terrible food quality, food that is not appropriate
23 to his religious background, infectious diseases, improper medical attention, and a high stress
24 environment which as exacerbated his PTSD and Major Depression Disorder. *Petitioner's*
25 *Declaration.*
26

27 On March 27, 2026, the Petitioner was notified that his hearing was scheduled for June
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1 26, 2026 at 8:30am. He worked diligently with his attorney to prepare his case for trial. Then,
2 without conferring with counsel or asking for counsel's availability EOIR advanced his hearing.
3 On May 20, 2026, EOIR unilaterally advanced Mr. Faizi's hearing for July 15, 2026. *Notice of*
4 *Advanced Hearing Notice*. The timeline created irreparable hardship to the Petitioner because he
5 was working diligently to secure experts and a psychological evaluation for the Petitioner. This
6 timeline had to be rushed and the Petitioner was unable to secure important witnesses for his case.
7 The Petitioner's counsel filed Motions to Continue with the above mentioned good cause, but the
8 immigration court refused to review the motions until the day of the hearing. On July 15, 2026,
9 again Petitioner's counsel asked for a continuance citing the previously agreed upon hearing date,
10 the hardship to the Petitioner in securing an expert, and the availability of his psychologist. The
11 Immigration Court only granted the Petitioner's Continuance after asking the Respondent's if
12 they also wanted more time. The IJ granted the Department more time to find evidence against
13 the client via fingerprints, not to ensure Due Process.
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16 Subsequently, on June 18, 2026, the Petitioner's counsel was notified that bond had been
17 denied for the Petitioner without a hearing. *Order of the Immigration Judge Denying Bond*. The
18 Petitioner is increasingly nervous and afraid of being deported to Afghanistan. He fears removal
19 to a third country and removal to his own country on account of his intelligence work for the
20 United States. The Petitioner feels that while in detention is unable to properly prepare for his
21 case because he does not have secure communication with his attorney and his ability to testify
22 has suffered because of his mental health. *Sworn Statement of Sharon Howard*. The Petitioner
23 needs additional safeguards to protect his final day in court. The Petitioner's final hearing is
24 scheduled for July 21 2026 therefore the Petitioner seeks this temporary restraining order
25 enjoining the government from transferring him out of this Courts jurisdiction and requesting
26 immediate release so that he can take care of his mental health and properly prepare his asylum
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1 application. The Petitioner is scared of another advance of his hearing. Altogether, the
2 Petitioner's arrest prior to providing a hearing deprives the petitioner of his right to due process
3 and his continued prolonged detention without a hearing on danger or flight risk violates the Due
4 Process Clause of the Fifth Amendment.

5 6 7 **III. STANDARD OF REVIEW**

8 An ex parte Temporary Restraining Order ("TRO") may be issued upon a showing that
9 "immediate and irreparable injury, loss, or damage will result to the movant before the adverse
10 party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). As discussed below, Petitioner
11 readily meets the requirements for a TRO because her current detention is prohibited by law; he is
12 irreparably harmed by this imprisonment by way of her health and right to apply for asylum; and
13 because the balance of the equities plainly favors an order enjoining the government from
14 continuing to violate federal law.

15
16 The standard for a TRO is the same as the standard for a preliminary injunction.
17 *Velazquez-Hernandez v. ICE*, 500 F.Supp.3d 1132, 1141 (S.D. Cal. 2020). The party seeking
18 relief "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer
19 irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in their
20 favor, and [4] that an injunction is in the public interest." *City & County of San Francisco v.*
21 *USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555
22 U.S. 7, 20 (2008)). "Likelihood of success on the merits is the most important factor." *California*
23 *v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quotations omitted). Where the government is the
24 opposing party, the third and fourth factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

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26 Additionally, in the Ninth Circuit, courts may "employ an alternative 'serious questions'
27 standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v. ICE*, 16
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1 F.4th 613, 635 (9th Cir. 2021) (quotations and citations omitted and alterations accepted). Under
2 that test, “serious questions going to the merits and a balance of hardships that tips sharply toward
3 the Petitioner[s] also show[] that there is a likelihood of irreparable injury and that the injunction
4 is in the public interest.” *Id.* (internal citations omitted). Petitioner meets all requirements for
5 relief under the TRO and Preliminary Injunction standard.
6

7 **IV. ARGUMENT**

8 9 **A. Petitioner is likely to succeed on the merits of their claim that their re-** 10 **detention is unconstitutional because they should have been afforded a** 11 **hearing before a neutral adjudicator prior to any re-detention by ICE** 12

13 The first Winter factor, the likelihood of success on the merits, “is a threshold inquiry and
14 is the most important factor in any motion for preliminary injunction.” *Baird v. Bonta*, 81 F.4th
15 1036, 1040 (9th Cir. 2023) (cleaned up). This is especially true where, as here, the moving party
16 alleges a constitutional violation and injury. *Id.* Here, the Petitioner has established a likelihood of
17 success on the merits based on the violation of his due process rights.

18 The Fifth Amendment Due Process Clause prohibits government deprivation of an
19 individual's life, liberty, or property without due process of law. *Hernandez*, 872 F.3d at 990.
20 While noncitizens located outside the country are not granted the full protections of the
21 Constitution, the Due Process Clause applies to all “persons” within the borders of the United
22 States, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491,
23 150 L.Ed.2d 653 (2001) (“[T]he Due Process Clause applies to all “persons” within the United
24 States, including noncitizens, whether their presence here is lawful, unlawful, temporary, or
25 permanent.”). These due process rights extend to immigration proceedings, including final
26 deportation orders. *Id.* at 693–94, 121 S.Ct. 2491; see *Demore v. Kim*, 538 U.S. 510, 523, 123
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1 S.Ct. 1708, 155 L.Ed.2d 724 (2003) (Recognizing that Fifth Amendment due process protections
2 extend to deportation proceedings but noting that “detention during deportation proceedings [is] a
3 constitutionally valid aspect of the deportation process.”).

4 The Petitioner is a noncitizen who has been present in the United States for over two years
5 prior to his detention. The Respondent’s released him into the United States on November 21,
6 2023, and they detained him on March 6, 2026. *Notice to Appear, dated November 22, 2023; I-*
7 *830, dated March 6, 2026.* As a person inside the United States, the Petitioner is entitled to the
8 protections of the Due Process Clause. *See Zadvydas*, 533 U.S. at 693, 121 S. Ct. 2491. This
9 Court must first consider whether the Petitioner has a liberty interest. If the Petitioner possesses a
10 cognizable liberty interest, the court must evaluate what procedure under the framework provided
11 by *Mathews. v. Eldridge*, 424, U.S. 319, 96 S. Ct. 893, 47 L.Ed. 2d 18 (1976).
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13

14 **1. The Respondent is not in expedited removal proceedings, is**
15 **not an arriving alien, and is entitled to a bond hearing**
16 **under 1226(a)**

17 The INA prescribes three basic forms of detention for the vast majority of noncitizens in
18 removal proceedings. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard
19 removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are
20 generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§
21 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of
22 certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c). Second, the INA
23 provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. §
24 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2). Last,
25 the INA also provides for detention of noncitizens who have been ordered removed, including
26 individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b). This case concerns the
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28

1 detention provisions at §§ 1226(a) and 1225(b)(2). The detention provisions at § 1226(a) and §
2 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility
3 Act (IIRIRA) of 1996, Pub. L. No. 104—208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582
4 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the
5 Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025). Following the enactment of the IIRIRA,
6 EOIR drafted new regulations explaining that, in general, people who entered the country without
7 inspection were not considered detained under § 1225 and that they were instead detained under §
8 1226(a). *See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;*
9 *Conduct of Removal Proceedings; Asylum Procedures*, 62 Fed. Reg. 10312, 10323 (Mar. 6,
10 1997). Thus, in the decades that followed, most people who entered without inspection and were
11 placed in standard removal proceedings received bond hearings, unless their criminal history
12 rendered them ineligible pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many
13 more decades of prior practice, in which noncitizens who were not deemed “arriving” were
14 entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);
15 *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the
16 detention authority previously found at § 1252(a)).

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19 Here, the Petitioner was not deemed an arriving alien at entry. The Respondent’s conceded
20 to that point when they issued an NTA confirming that he was in INA § 240 proceedings and the
21 “arriving alien” box was not checked off on the NTA. *Notice to Appear, DHS Form I-862*.
22 Instead the box that was checked off was, “You are an alien present in the United States who has
23 not been admitted or paroled” and the Petitioner was released into the United States on an order
24 of release of recognizance. *Id.*; *Order of Release on Recognizance, dated November 22, 2023*.
25

26 On July 8, 2025, ICE, “in coordination with” DOJ, announced a new policy that rejected
27 well-established understanding of the statutory framework and reversed decades of practice. The
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1 new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for
 2 Admission,”² claims that all persons who entered the United States without inspection shall now
 3 be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless
 4 of when a person is apprehended, and affects those who have resided in the United States for
 5 months, years, and even decades. However, on August 1, 2025, the Central District of Columbia
 6 stayed the Huffman Memorandum pending the conclusion of proceedings in *Coalition for Human*
 7 *Rights v. Noem*. (“For the foregoing reasons, Plaintiffs’ motion for a stay of agency action, ECF
 8 22, is **GRANTED**. The Challenged Actions (the January 23 Huffman Memorandum, February 18
 9 ICE Directive, and March 25 CHNV Termination Notice) are hereby **STAYED**, pending
 10 conclusion of these review proceedings, to the extent the Challenged Actions subject to expedited
 11 removal individuals who have been, at any time, paroled into the United States at a point of
 12 entry.”) *Coal. for Humane Immigrant Rts. v. Noem*, 805 F. Supp. 3d 48, 105 (D.D.C. 2025)
 13 However, on September 5, 2025, the BIA adopted this same position in a published decision,
 14 *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United
 15 States without admission or parole are subject to detention under § 1225(b)(2)(A) and are
 16 ineligible for IJ bond hearings. Thereafter the court in the Central District of California
 17 “vacate[d]” the DHS policy under *Matter of Yajure Hurtado* as contrary to the law under the
 18 APA. *Bautista v. Santacruz*, 813 F. Supp. 3d 1084 (C.D. Cal. 2025), judgment entered sub
 19 nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D.
 20 Cal. Dec. 18, 2025).

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 22 Since Respondents adopted their new policies, dozens of federal courts have rejected their
 23 new interpretation of the INA’s detention authorities. Courts have likewise rejected *Matter of*
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 28 ² Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

1 *Yajure Hurtado*, which adopts the same reading of the statute as ICE.

2 Even before ICE or the BIA introduced these nationwide policies, IJs in the Tacoma, Washington,
3 immigration court stopped providing bond hearings for persons who entered the United States
4 without inspection and who have since resided here. There, the U.S. District Court in the Western
5 District of Washington found that such a reading of the INA is likely unlawful and that § 1226(a),
6 not § 1225(b), applies to noncitizens who are not apprehended upon arrival to the United States.
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8 *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. 2025). Subsequently, court
9 after court has adopted the same reading of the INA's detention authorities and rejected ICE and
10 EOIR's new interpretation. *See, e.g., Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL
11 1869299 (D. Mass. July 7, 2025); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.
12 3d ----, 2025 WL 2084238 (D. Mass. July 24, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX
13 DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*,
14 No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Lopez Benitez*
15 *v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Maldonado*
16 *v. Olson*, No. 0:25-cv-03142-SRN-SGE, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-*
17 *Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMx), 2025 WL 2379285 (C.D. Cal. Aug. 15,
18 2025); *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb*
19 *v. Joyce*, No. 25 CIV. 6373 (DEH), 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez*
20 *Clavijo v. Kaiser*, No. 25-CV-06248-BLF, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-*
21 *Hernandez v. Noem*, No. 1:25-cv-02428-JRR, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak*
22 *v. Trump*, No. 3:25-cv-01093-JE-KDM, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose*
23 *J.O.E. v. Bondi*, No. 25-CV-3051 (ECT/DJF), --- F. Supp. 3d ----, 2025 WL 2466670 (D. Minn.
24 Aug. 27, 2025) *Lopez-Campos v. Raycraft*, No. 2:25-cv-12486-BRM-EAS, 2025 WL 2496379
25 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MM, 2025 WL
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1 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, No. 5:25-CV-02304 CAS
2 (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, No. 25-CV-
3 12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, No. 1:25-CV-11981-
4 JEK, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g., Palma Perez v. Berg*, No.
5 8:25CV494, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that “[t]he Court tends to
6 agree” that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, No. 4:25-cv-
7 03161-JFB-RCC, 2025 WL 2402271 at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*,
8 No. 4:25-cv-03158-JFB-RCC, 2025 WL 2374224 at *2 (D. Neb. Aug. 14, 2025) (same). Courts
9 have uniformly rejected DHS’s and EOIR’s new interpretation because it defies the INA. As the
10 *Rodriguez Vazquez* court and others have explained, the plain text of the statutory provisions
11 demonstrates that § 1226(a), not § 1225(b), applies to people like Petitioner.
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13
14 Section 1226(a) applies by default to all persons “pending a decision on whether the
15 [noncitizen] is to be removed from the United States.” These removal hearings are held under
16 § 1229a, to “decid[e] the inadmissibility or deportability of a[] [noncitizen].” The text of § 1226
17 also explicitly applies to people charged as being inadmissible, including those who entered
18 without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)’s reference to such people
19 makes clear that, by default, such people are afforded a bond hearing under subsection (a). As the
20 *Rodriguez Vazquez* court explained, “[w]hen Congress creates ‘specific exceptions’ to a statute’s
21 applicability, it ‘proves’ that absent those exceptions, the statute generally applies.” *Rodriguez*
22 *Vazquez*, 779 F. Supp. 3d at 1257 (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins.*
23 *Co.*, 559 U.S. 393, 400 (2010)); *see also Gomes*, 2025 WL 1869299, at *7. Section §1226
24 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the
25 United States, including those who are present without admission or parole. By contrast, §1225(b)
26 applies to people arriving at U.S. ports of entry or who recently entered the United States. The
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1 statute's entire framework is premised on inspections at the border of people who are "seeking
2 admission" to the United States. 8 U.S.C. §1225(b)(2)(A). Indeed, the Supreme Court has
3 explained that this mandatory detention scheme applies "at the Nation's borders and ports of
4 entry, where the Government must determine whether a[] [noncitizen] seeking to enter the
5 country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).
6

7 Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to
8 people like Petitioner, who already entered and were residing in the United States for over two
9 years at the time they were apprehended. *Order of Release on Recognizance dated November 22,*
10 *2023; Petitioner's Declaration; Petitioner's 2025 Tax Documents;*

11 **2. The Petitioner's arrests do not place him under mandatory**
12 **detention**
13

14 The Respondent's will contend that the Petitioner's arrests place him under mandatory
15 detention under 1226(c). The Petitioner contends that they do not. Therefore, we conduct an
16 analysis below. Despite the Laken Riley Act (LRA), the Petitioner was deprived of a hearing
17 prior to his revocation of his parole, thereby violating his right to due process under the 5th
18 Amendment.
19

20 **i. The Petitioner's arrests did not "result in the**
21 **death or serious bodily injury to another**
22 **person" under 1226(c)(1)(E)**
23

24 The LRA expanded §1226(c) to include aliens who are inadmissible under
25 §1182(a)(i)(6)(A), such as the Petitioner, and who have been "charged with, is arrested for...acts
26 which constitute the essential elements of any burglary...or any crime that results in death or
27 serious bodily injury to another person." See 1226(c)(1)(E). Respondents will contend that the
28

1 Petitioner's arrest for PC 273.6A violation of court order preventing domestic violence and PC
2 242 Battery on Person, mandates the Petitioners detention under §1226(c). However, when Mr.
3 Faizi made the bond redetermination request, the Respondents did not provide any proof that any
4 alleged crime resulted in "death or serious bodily injury to another." The Petitioner also alleges
5 that for all his arrests, except the Humboldt County arrests, he was not afforded complete due
6 process in a criminal proceeding to determine his guilt, nor due process by way of a bond hearing
7 to evaluate whether he poses a flight risk or public safety risk were he to remain free on the order
8 of recognizance. This Court made a similar finding in *SE v. Petitioner v. Kristi Noem* and did not
9 require the Petitioner to post bond under FRE Civil Procedure 65(c). *S.E. v. Petitioner v. Kristi*
10 *Noem. S.E. v. Noem, No. 1:26-CV-00356-DAD-SCR, 2026 WL 206085 (E.D. Cal. Jan. 27, 2026)*
11

12 The Petitioner also contends that merely being arrested and mandatorily detained under the
13 LRA for an arrest without a full criminal proceeding violates his due process rights. *See Doe v.*
14 *Moniz*, 800 F. Sup.. 3d. 203, 216 (D. Mass. Sep. 5, 2025). The *Moniz* court noted that the
15 Supreme Court had only upheld mandatory detention without a bond hearing for nonresidents
16 already present in the United States in cases where individual had sustained convictions that
17 "were obtained following the full procedural protections our criminal justice system offers."
18 *Demore v. Kim*, 5338 U.S. 510, 513 (2003); *See also Zadvydas v. Davis*, 533 U.S. 678, 684,- 86
19 (2001). The Petitioner points out that applying §1226(c) to him under the LRA solely due to an
20 arrest would subject him to mandatory detention without ever receiving due process, either for a
21 criminal proceeding to adjudicate guilt, or a bond hearing to evaluate flight risk or dangerousness.
22

23
24 Next, the Respondent's will argue that because Mr. Faizi was convicted for resisting a
25 police officer under 199.280.3 it places him in mandatory detention for causing "serious bodily
26 injury."

27 However, the Petitioner may bring an as applied constitutional challenge to the application
28

1 of §1226(c). Nielsen v. Preap, 586 U.S. 392, 420 (2019) . If the Court orders a bond hearing
2 based on this ground, the government bears the burden of proof where the Petitioner is detained
3 pursuant to §1226(c). Martinez v. Clark, 124 F.4th 775, 785 (9th Cir. 2024) (reviewing an IJ's
4 public safety risk determination); *see also* Carballo v. Andrews, No. 1:25-cv-00978-KES-EPG
5 (HC), 2025 WL 2381464, at *8 (E.D. Cal. Aug. 15, 2025) (ordering the government to provide a
6 post-deprivation bond hearing to § 1226(c) detainee where the government bears the burden of
7 proof). At the Petitioner's bond redetermination request, the Respondent's were not held up to
8 this burden of proof. No evidence was offered by the Respondent's demonstrating that serious
9 bodily injury was caused at the above conviction. The Respondent's merely provided a self-
10 created I-213 that was not certified by any court and thereby unreliable. The Immigration Judge
11 did not hold the government to it's burden. *Order of the Immigration Judge denying Bond*.
12 Without requiring evidence, the IJ determined that the Respondent was subject to mandatory
13 detention under the LRA thereby denying the Respondent's right to due process. *Order Denying*
14 *Bond, EOIR*. In not holding the government to its burden and not requiring evidence prior to
15 applying the Laken Riley Act and mandatory detention, the Immigration Judge also demonstrated
16 it's bias against the Petitioner. *Order Denying Bond, EOIR*. The Immigration Court states that the
17 "court interprets the terms is charged with, is arrested for and is convicted of to delineate separate
18 triggering events for the Laken Riley Act to apply." Without an individualized assessment of the
19 application of the Laken Riley Act, the court violated the Respondent's right to due process as
20 well. Since the Respondents did not proffer any evidence of the Petitioner causing great bodily
21 injury, the Court wrongfully determined that the LRA applied to the Petitioner. Altogether, there
22 are several issues with the denial of bond by the Immigration Court. First, the IJ makes a finding
23 that it does not have jurisdiction to consider bond, then it makes a finding that Mr. Faizi is subject
24 to the Laken Riley Act without an analyses of which convictions place the petitioner in
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1 mandatory detention, The court does not even cite to a RAP sheet to support its findings. As
2 such, the court abused it's discretion and it's finding are unfounded as applied to his case.

3
4 **ii. The Petitioner's arrest does not constitute**
5 **"theft"**

6 Under 8 USCA §1226(c)(1)(E)(i)-(ii), "the Attorney General shall take into custody any
7 alien who is charged with, is arrested for, is convicted of, admit having committed, or admits
8 committing acts which constitute the essential elements of burglary, theft, larceny, shoplifting, or
9 assault of a law enforcement officer offense, or any crime that results in death or serious bodily
10 injury to another person." Under 8 USCA §1226(c)(2), "for purposes of paragraph 1(E), the terms
11 "burglary," "theft," "larceny, "shoplifting," "assault of a law enforcement officer" and "serious
12 bodily injury" have the meanings given such terms in the jurisdiction in which the acts occurred.

13
14 On approximately May 28, 2025, Mr. Faizi was arrested under VC 10851 "Take of a
15 Vehicle without own consent." Cal. Veh. Code § 10851 (West). He was not arrested for "theft"
16 which falls under PC 484. Cal. Penal Code § 484 (West). The statute is clear that VC10851 is
17 never a crime of immoral turpitude. VC 10851 is not theft, larceny or a burglary offense under
18 CA law and thus does not fall under LRA. VC 10851 is not a theft offense because it requires
19 only a temporary intent, or no intent, to deprive the owner. "When a defendant pleads guilty to an
20 offense encompassing multiple, alternative ways of satisfying a particular element, the conviction
21 is deemed to rest on only the least of the acts criminalized. *Mellouli v. Lynch*, — U.S. —, 135
22 S.Ct. 1980, 1986, 192 L.Ed.2d 60 (2015). Thus, under the modified categorical approach,
23 *Almanza-Arenas*' conviction necessarily establishes only that he took the victim's vehicle with
24 the intent to temporarily deprive her of possession. That version of the offense, as noted earlier, is
25 not a categorical match for the generic theft offense that counts as a crime involving moral
26 turpitude." *Almanza-Arenas v. Lynch*, 815 F.3d 469, 488 (9th Cir. 2016). VC 10851, vehicle
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1 taking, is wrongfully taking a vehicle with intent “either to permanently or temporarily deprive”
2 the owner. *People v. Page* (2017) 3 Cal.5th 1175, 1182. Similarly, the Ninth Circuit held that
3 10851 is not “divisible” between permanent and temporary because the two kinds of intent are
4 means, not elements. The result is that under the categorical approach, every 10851 conviction is
5 treated as an offense requiring temporary intent thereby supporting an argument that it is not
6 theft. *Almanza-Arenas v. Lynch*, 815 F.3d 469, 482 (9th Cir. 2016) (en banc) (holding that it is
7 not a crime involving moral turpitude due to temporary intent). The Petitioner also contends that
8 merely being arrested and mandatorily detained under the LRA for an arrest without a full
9 criminal proceeding violates his due process rights. *See Doe v. Moniz*, 800 F. Supp. 3d 203, 216
10 (D. Mass. Sep. 5, 2025). He has been charged with a statute that but not received a full criminal
11 proceeding. For the reasons stated above, the Laken Riley Act should not apply for the Petitioner
12 for his arrest under VC10851.
13
14

15 If this Court finds that the Laken Riley Act does apply, the Petitioner requests an
16 individualized bond hearing before a neutral decision maker, that complies with the requirements
17 in *Singh v. Holder*, where the government must prove by clear and convincing evidence that the
18 Petitioner is a flight risk or a danger to the community to justify the denial of bond similar to
19 *Simranjeet Singh v. Warden of California City*. “Within 14 days of the date of service of this
20 order, unless Petitioner consents to a later date, Respondents are ordered to provide Petitioner
21 with an individualized bond hearing before an immigration judge that complies with the
22 requirements set forth in *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), where “the government
23 must prove by clear and convincing evidence that [Petitioner] is a flight risk or a danger to the
24 community to justify denial of bond,” *id.* at 1203. In the event Petitioner is “determined not to be
25 a danger to the community and not to be so great a flight risk as to require detention without
26 bond,” the immigration judge should consider Petitioner's financial circumstances and alternative
27
28

1 conditions of release. *Hernandez v. Sessions*, 872 F.3d 976, 1000 (9th Cir. 2017).” SIMRANJEET
2 SINGH (A No. XXX-XX3-051), Petitioner, v. WARDEN OF CALIFORNIA CITY CORRECTIONS
3 CENTER FACILITY, et al., Respondents., No. 1:26-CV-01936-JLT-SAB (HC), 2026 WL
4 1831068, at *2 (E.D. Cal. June 25, 2026)

5
6 iii. **The Petitioner’s arrests and convictions do**
7 **not show that he “assaulted a law**
8 **enforcement officer.”**

9 On April 27, 2025, Mr. Faizi was arrested under 199.280.3, resisting a police officer not
10 “assaulting a law enforcement officer.” In Nevada, assault on a police officer is codified under
11 NRS 200.300. However, the Petitioner was not arrested under an assault charge. The statute under
12 which the Respondent was arrested reads, “a person who, in any case, or under any circumstances
13 not otherwise specially provided for willfully resists, delays or obstructs a public officer in
14 discharging or attempting to discharge any legal duty of his or her office shall be punished 3.
15 Where no dangerous weapon is used during such resistance, obstruction or delay, for a
16 misdemeanor.” *Nevada CP 199.280.3* Similar to Mr. Faizi’s case, *Padilla* was granted a habeas
17 and TRO despite pleading guilty to NRS 199.280(3) because the issue, as is here, is that the
18 Respondent was deprived of a hearing prior to re-detention. *Padilla v. Mullin*, No. 3:26-CV-270-
19 *ART-CSD*, 2026 WL 1245462 (D. Nev. May 6, 2026). In *Padilla*, the Court concludes that
20 Respondents violated Mr. Arce Padilla’s procedural due process rights. As a person who had been
21 released from detention on parole, Mr. Arce Padilla was owed prior notice, individualized
22 assessment, and an opportunity to be heard before re-detention. To reach this conclusion, it is not
23 necessary to decide whether Mr. Arce Padilla was subject to mandatory detention. The subject of
24 this analysis is not Respondents’ authority to detain, but the adequacy of the process by which
25 they detained Mr. Arce Padilla. See *Caisa Telenchana v. Hermosillo*, No. 2:26-CV-00363-GJL,
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1 2026 WL 696806, at *10; Rodriguez Cabrera v. Mattos, 808 F. Supp. 3d 1159, 1178 (D. Nev.
2 2025). Padilla v. Mullin, No. 3:26-CV-270-ART-CSD, 2026 WL 1245462, at *3 (D. Nev. May 6,
3 2026). Similar to *Padilla*, a court should find that Mr. Faizi's re-detention violated his due
4 process because the Respondent's did not provide a hearing prior to his re-detention. The court
5 should also find that the LRA does not apply to the Petitioner because he did not "assault" a law
6 enforcement officer.
7

8 9 **3. The Petitioner's bond hearing was legally deficient**

10 On June 9th, 2026, the Petitioner requested a bond hearing, but the Immigration Judge
11 denied the hearing and bond. *Bond Redetermination Request; Order Denying bond. June 18,*
12 *2026.* The denial and the lack of a hearing were legally deficient thereby violating the
13 Respondent's right to due process. The EOIR denied the Petitioner bond because it states that it
14 has "no jurisdiction" without citing relevant law or statutes. *Id.* Then, despite stating that it has
15 no jurisdiction, it proceeds to state without making an individualized assessment that "pursuant to
16 Laken Riley Act, a respondent is subject to mandatory detention." It does not point to which
17 arrests subject him to mandatory detention nor does it make a risk to public safety or fleeing
18 analyses. *Executive Office of Immigration Review, Bond Denial, Order June 18, 2026.*
19

20 Prior to the hearing, the Petitioner provided 46 pages of evidence including his pending
21 asylum application, sponsors letter of support, sponsors tax return and tax receipts, sponsors W-2,
22 proof of employment, letters from friends and family members, letter from his brother, and
23 income tax returns proving that he is not a danger or a flight risk. *Zamir Faizi Request for Bond*
24 *Redetermination, pg. 1-46.* The Petitioner also had a sponsor who would ensure that the
25 Petitioner's presence at all future court dates and financial support. *Id., Page. 2.* Contrary to the
26 Respondent's allegations, the Petitioner argues that his continued detention without a legally
27
28

adequate bond hearing violates his Fifth Amendment right to procedural due process right. The Petitioner seeks an order granting the Petitioner's release in light of the deprivation to his liberty without a bond hearing and the subsequent resulting legally deficient order denying him bond and mandating his detention without a hearing. *quoting Hernandez, 872 F.3d at 981*)

a. Legal Standard

"In light of *Martinez*, courts may review an IJ's finding that an alien poses a flight risk for abuse of discretion." *Zaitsev v. Warden of Adelanto ICE Processing Center, No. 2:26-CV-00454-SPG-AS, 2026 WL 391429, at *10 (C.D. Cal. Feb. 9, 2026) (citing 124 F. 4th at 784)*. "[A]buse of discretion' review does not involve 'reweigh[ing] evidence' but rather determining whether the IJ 'applied the correct legal standard.'" *Loba L.M. v. Andrews, No. 1:25-CV-00611-JLT-SAB, 2026 WL 710307, at *5 (E.D. Cal. Mar. 13, 2026) (quoting Martinez, 124 F. 4th at 784)* (alterations in original). Thus, "the Court must decide whether the IJ 'relied upon proof that—as a matter of law—could not establish'" the conclusion drawn. *Kharis v. Sessions, No. 18-CV-04800-JST, 2018 WL 5809432, at *5 (N.D. Cal. Nov. 6, 2018) (quoting Nguti v. Sessions, No. 16-CV-6703, 2017 WL 5891328, at *3 (W.D.N.Y. Nov. 29, 2017))*. The scope of this Court's review remains the same whether the government or petitioner bears the burden of proof. *Id.* Lastly, "the reviewing court must bear in mind that 'the government's discretion to incarcerate non-citizens is always constrained by the requirements of due process.'" *Loba L.M., 2026 WL* Because this Court is tasked with determining whether the IJ applied the correct legal standard, the Court starts with identifying the legal standard at issue. At Petitioner's 1226(a) hearing, he bore the burden of showing by a preponderance of the evidence that he was not a danger to the community or a flight risk. *See Rodriguez Diaz v. Garland, 53 F 4th 1189, 1197(9th Cir. 2022)*. "To determine whether an alien is a danger to the community or a risk of flight and IJ weighs nine factors under BIA precedent." *Martinez v. Clark, 124 F. 4th 775 (9th Cir. 2022)*. "To determine whether an alien is a

1 danger to the community or a risk of flight, an IJ weighs nine factors under BIA precedent.”

2 *Martinez v. Clark*, 124 F4th 775 (9th Cir. 2024)(citing *In re Guerra*, 24 I&N Dec. 37, 40 (BIA

3 2006)). An IJ “may” consider “any or all of the following”:

4 (1) whether the alien has a fixed address in the United States

5 (2) the alien’s length of residence in the United States;

6 (3) the alien’s family ties in the United States, and whether they entitle the

7 alien to reside permanent in the United States in the future;

8 (4) the alien’s employment history

9 (5) the alien’s record of appearance in court

10 (6) the alien’s criminal record, including the extensiveness of criminal

11 activity, the recency of such activity, and the seriousness of the offenses;

12 (7) the alien’s history of immigration violations;

13 (8) any attempts by the alien to flee prosecution or otherwise escape from

14 the authorities; and (9) the alien’s manner of entry to the United States

15 *Id.* (quoting *Guerra*, 24 I&N Dec. At 40). An IJ has “broad discretion” in weighing these factors,

16 “as long as the decision is reasonable.” *Guerra*, 24 I&N Dec. at 40. Indeed, an IJ may “consider

17 any evidence in the record...when assessing flight risk, provided that such evidence is “probative

18 and specific” *Garcia*, --- F. Supp. 3d---, 2025 WL 3466312, at *8 (quoting *Guerra*, 24 I &N Dec.

19 at 40-41). Though what constitutes flight risk is “malleable and involves agency discretion,” it is

20 “still a legal standard so long as federal courts can assess whether an IJ correctly applied the

21 statutory standard to a given set of facts.” *Martinez*, 1124 F. 4th I at 783 (quoting *Wilkinson v.*

22 *Garland*, 1601 U.S. 209, 221 (2024).

23 The IJ abused its discretion when it denied the Petitioner’s bond request hearing. The

24 Immigration Judge simply stated, “No jurisdiction,” without assessing the *Guerra* factors. *EOIR*,

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1 *Order of the Immigration Judge, Bond Denied, dated June 18, 2026.* The Immigration Judge did
2 not consider that the Petitioner's evidence submitted on June 9, 2026 including evidence of
3 support from a sponsor, sponsor tax documents, or the Petitioner's income tax returns or evidence
4 of rehabilitation. The Petitioner is the economic provider for his youngest brother who is
5 struggling significantly without him. ("The IJ did not consider the "significant evidence showing
6 the Petitioner is fixed and stable with his family in his community." *See Soriano, ---F. Supp. 3d---*
7 *2026, WL 969764, at *5.* There is also no evidence that the IJ considered any of the *Guerra*
8 factors or applied them to the set of facts before him. Therefore, the IJ abused its discretion. The
9 IJ's misapplication of the legal standard also bears on Petitioner's due process rights. "[D]ue
10 process requires [an] IJ to consider the relevant evidence[.]" *Vilchez v. Holder*, 682 F.3d 1195,
11 1198 (9th Cir. 2012) (citing *Larita-Martinez v. I.N.S.*, 220 F.3d 1092, 1095 (9th Cir. 2000)). The
12 Court notes that the IJ's order states prior to even considering the evidence that the Court lacks
13 jurisdiction over his request for custody redetermination. Therefore, on the outset, they were
14 unwilling to consider the bond request and without doing an analysis of whether the Petitioner
15 falls under mandatory detention.

16
17
18 The Respondents may argue, that in the absence of red flags, federal courts generally take
19 immigration courts "at [their] word" regarding their consideration of evidence. *Martinez*, 124
20 F.4th at 785. *See also Cole v. Holder*, 659 F.3d 762 (9th Cir. 2011). Further, "[a]n IJ's failure to
21 cite every piece of evidence in the record does not amount to clear error." *See Larita-Martinez v.*
22 *INS*, 220 F.3d 1092, 1096 (9th Cir. 2000). However, when there is an indication that an IJ failed
23 to actually consider all the evidence—such as if the IJ "fail[s] to mention highly probative of
24 potentially dispositive evidence"—the Court will not credit an IJ's vague assertion. *Cole*, 659
25 F.3d at 771-72. Altogether, the court should find that the bond hearing was legally deficient and
26 that the IJ abused its discretion when it refused to hold a hearing, assess the Respondent's arrests
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1 as applied to the LRA, or do a public safety and risk analyses. For the reasons mentioned above,
 2 Petitioner asserts that a bond hearing will not cure the cost to his life and liberty because the
 3 immigration judge is unlikely to be neutral or provide a proper analyses of his case. In light of
 4 his medical issues, including PTSD and Major Depression and the need for continuous medical
 5 treatment, the Petitioner seeks immediate release. *Sworn Declaration of Sharon Howard*.

7 **B. Petitioner has a protected liberty interest in his release**

8 A protected liberty interest may arise from a conditional release from physical restraint.
 9 *Young v. Harper*, 520 U.S. 143, 147-49 (1997). Even when a statute allows the government to
 10 arrest and detain an individual, a protected liberty interest under the Due Process Clause may
 11 entitle the individual to procedural protections not found in the statute. See *id.* (Due Process
 12 requires pre-deprivation hearing before revocation of pre parole); *Gagnon v. Scarpelli*, 411 U.S.
 13 778, 782 (1973)(same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972)
 14 (same, in parole context). (“the liberty interest that arises upon release [from immigration
 15 detention] is inherent in the Due Process Clause.” *Guillermo M. R. v. Kaiser*, No. 25-CV_05436-
 16 RFL, 2025 WL1983677, at *4 (N.D. Cal. July 17, 2025) To determine whether a specific
 17 conditional release rises to the level of a protected liberty interest, “[c]ourts have resolved the
 18 issue by comparing the specific conditional release in the case before them with the liberty
 19 interest in parole as characterized by *Morrissey*.” *Gonzalez-Fuentes v. Molina*, 607 F. 3d 864, 887
 20 (1st Cir. 2010)(internal quotation marks and citation omitted). Section 1226(a) provides that
 21 immigration officers may, in their discretion, detain noncitizens or may release them on
 22 conditional parole (also called an Order of Release *1198 on Recognizance, or “OREC”). 8
 23 U.S.C. § 1226(a); *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1115 (9th Cir. 2007) (“It is
 24 apparent that the INS used the phrase ‘released on recognizance’ as another name for ‘conditional
 25 parole’ under § 1226(a)”). The corresponding regulation requires that, before granting release, the
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1 immigration officer must determine that such “release would not pose a danger to property or
2 persons, and that the [noncitizen] is likely to appear for any future proceeding.” 8 C.F.R. §
3 236.1(c)(8). “When Ledesma Gonzalez arrived in the United States, ICE detained him briefly,
4 then released him on an OREC. Dkt. Nos. 36-1 ¶ 4; 31-2. By issuing the OREC, ICE necessarily
5 determined that Ledesma Gonzalez would not pose a danger and was likely to appear for future
6 proceedings. See 8 C.F.R. § 236.1(c)(8).” Ledesma Gonzalez v. Bostock, 808 F. Supp. 3d 1189,
7 11987-1998 (W.D. Wash. 2025)
8

9 In Morrissey, the Supreme Court explained that parole “enables [the parolee] to do a wide
10 range of things open to persons” who have never been in custody or convicted of any crime,
11 including to live at home, work, and “be with family and friends and to form the other enduring
12 attachments of normal life.” Morrissey, 408 U.S. at 482. “Though the [government] properly
13 subjects [the parolee] to many restrictions not applicable to other citizens,” such as monitoring
14 and seeking authorization to work and travel, her “condition is very different from that of
15 confinement in a prison.” *Id.* “The parolee has relied on at least an implicit promise that parole
16 will be revoked only if [he] fails to live up to the parole conditions.” *Id.* The revocation of parole
17 undoubtedly “inflicts a grievous loss on the parolee.” *Id.* (quotations omitted). Therefore, a
18 parolee possesses a protected liberty interest in her “continued liberty.” *Id.* at 481–84.
19
20

21 The Petitioner has a liberty interest because he was released into the interior of the United
22 States under an order of release on recognizance similar to Ledezma to seek asylum on November
23 21, 2023. *Order of Release on Recognizance (OREC-G-56)*, dated November 22, 2023. The
24 Petitioner has an interest in remaining free in the United States to pursue his asylum claim, work,
25 maintain his health and start a new life with his brothers. In addition, the petitioner has brothers
26 that are waiting for his return and he has a job to return to at a jewelry shop. The Petitioner needs
27 to talk with his family in Afghanistan who has not been able to speak with. They are very worried
28

1 about him. International calls to Afghanistan are very expensive from detention. The revocation
2 of his parole has inflicted a huge loss on the Petitioner's health and finances.

3 Ever since the Petitioner entered the United States, he was a contributing member to
4 society. He prepared his asylum application and sought counsel. He worked a security guard, at a
5 restaurant, and helped grow a family jewelry shop. *Zamir Faizi's Declaration in Support of Writ*
6 *of Habeas Corpus, Id. at ¶ 8-22.* As such, the Petitioner has an interest in becoming free from
7 incarceration to use his work permit that he paid for, improving his health, and gathering evidence
8 for his asylum application. *Morrissey*, 408 U.S. at 482.

10 **1. Petitioner's liberty interest mandated a due**
11 **process hearing before any re-detention**

12 To determine what process is due, the Court considers three factors: (1) "the private
13 interest that will be affected by the official action[.]" (2) "the risk of an erroneous deprivation of
14 such interest through the procedures used, and the probable value, if any, of additional or
15 substitute procedural safeguards[.]" and (3) "the Government's interest, including the function
16 involved and the fiscal and administrative burdens that the additional or substitute procedural
17 requirement would entail." *Mathews*, 424 U.S. at 335, 96 S.Ct. 893.; *Doe v. Becerra*, No. 2:25-
18 CV-00647-DJC-DMC, 2025 WL 691664, at *5 (E.D. Cal. Mar. 3, 2025);
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21
22 **a. Petitioner's private**
23 **interest in their liberty is**
24 **profound**

25 Turning to the first factor, petitioner has a significant private interest in remaining free
26 from detention. "Freedom from imprisonment—from government custody, detention, or other
27 forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects."
28

1 Zadvydas v. Davis, 533 U.S. 678, 690 (2001).

2 The petitioner had been out of custody since November 22, 2023. *Order of Release on*
3 *Recognizance (OREC)*, dated November 22, 2023. During that time, he began a life in West
4 Sacramento, CA. He rented an apartment with his brothers, worked, and prepared his asylum
5 application. Most importantly he had gained a sense of stability and started building a new home
6 after the Taliban had forced him to leave his country. *Zamir's Faiz's Declaration*. However, now
7 in detention he has lost significant weight and his mental health has worsened. Prior to detention
8 the Petitioner was learning to cope with PTSD and Major Depression. But this condition has
9 worsened in detention. *Id. at 53-59. Sworn Declaration of Sharon Howard*. Respondent's
10 detention of the Petitioner denies him freedom and health. It also denies him the opportunity to
11 lawfully build up his case for asylum with evidence that only he has access to. Similar to *Doe v.*
12 *Becerra*, the "lengthy duration of [her] conditional release as well as the meaningful connections
13 the Petitioner has made with her community during that time create[ed] a powerful interest for the
14 Petitioner in her continued liberty." *Doe v. Becerra*, No. 2:25-CV-00647-DJC-DMC, 2025 WL
15 691664, at *5 (E.D. Cal. Mar. 3, 2025).

16
17
18 **b. The risk of an erroneous**
19 **deprivation of liberty is**
20 **high**
21

22 The risk of erroneous deprivation is also considerable in this case because the
23 Respondents seeks to deport the Petitioner to Afghanistan, a country that is trying to kill him for
24 his work protecting the U.S. Army from harm. *Petitioner's Declaration Id at ¶ 1-7*. In the
25 alternative the Respondent' may also attempt to deport him to a third country. A third country
26 cannot afford the Petitioner the protections and due process of asylum. Petitioner was previously
27 released on parole because ICE believed that he was not danger to the community or a flight risk
28

1 and because they did not have enough bed space. *OREC and I-213*. While Respondents may
 2 argue that there has been a change in circumstances in that the Petitioner had been arrested
 3 multiple times. The Petitioner is still entitled to a hearing before a neutral decision maker prior to
 4 the revocation of his order of release. At a hearing, a neutral decisionmaker could have
 5 considered all of the facts and evidence before him to determine whether Petitioner in fact
 6 presents a risk of flight or dangerousness." *Doe v. Becerra, No. 2:25-CV-00647-DJC-DMC, 2025*
 7 *WL 691664, at *5 (E.D. Cal. Mar. 3, 2025)*. In addition, in light of the brazen deportations to
 8 third countries and transfers to detention centers away from counsel by the Respondent, the risk
 9 of erroneous deprivation of due process is high. Additionally, the risk of erroneous deportation is
 10 especially high for this respondent because he suffers from PTSD and Major Depression and his
 11 hearing is scheduled for July 21, 2026. *Notice of Hearing; Sworn Declaration of Sharon Howard*.

12
 13
 14 **c. The government's**
 15 **interest in keeping**
 16 **petitioner in detention is**
 17 **low and the burden of**
 18 **the government to**
 19 **release them from**
 20 **custody is minimal**

21
 22 The final Mathews factor is simple as the Government's interest in placing Petitioner in
 23 detention without a hearing. *Ortega*, 415 F. Supp. 3d at 970; see *Hernandez*, 872 F.3d at 994.
 24 The Respondent may argue that Petitioner intends to change the status quo or that revoking parole
 25 is under the U.S. Department of Homeland Security's sole discretion. The government's interest
 26 in detaining petitioner without a hearing is "low." *Ortega*, 415 F. Supp. 3d 963, 970 (N.D. Cal.
 27 2019); *Doe*, 2025 WL 691664, at *6.
 28

1 First, in immigration court, custody hearings are routine and impose a “minimal” cost.
2 *Doe*, 2025 WL 691664, at *6. The Government will argue that it has a strong interest in the
3 efficient administration of immigration laws, including those regarding detention of noncitizens.
4 “However, the Government’s interests will still be adequately protected if immigrants are
5 afforded some minimal procedural guarantees.” Rodriguez Cabrera, 808 F. Supp. 3d at 1182; see
6 *Gaitan Coreas*, 2026 WL 1121974, at *7 (“[T]he government’s interest in detaining Petitioner
7 without a hearing is low”). The Respondent’s may also argue that providing notice of re-detention
8 and an opportunity to be heard is costly. However, “custody hearings are routine and impose a
9 ‘minimal cost.’”). See *Gaitan Coreas*, 2026 WL 1121974, at *7 . Therefore, a court should find
10 that the third Mathew’s factor favors the Petitioner.
11

12 Second, the Petitioner argues that his request for an injunction seeks to return to the status
13 quo not change it. The Petitioner states that he was released on recognizance by the Respondent
14 prior to their re-detention. The Petitioner seeks that the Respondent restore the status quo ante
15 litem. “The status quo ante litem refers not simply to any situation before the filing of a lawsuit,
16 but instead to the last uncontested status which preceded the pending controversy[.]” *GoTo.com*,
17 *Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (citation omitted). The last
18 uncontested status that existed before the Respondents took the Petitioner in custody was simply
19 that he had his liberty, health, and access to counsel.
20

21 The Petitioner establishes that he has a strong likelihood of success in showing that he has
22 an interest in his continued liberty and that it would violate their due process rights unless he is
23 afforded adequate process.
24

25 **2. The Petitioner is suffering Irreparable Harm**
26 **without injunctive relief**

27 Each day that Petitioner remains in ICE custody his physical and mental health
28

deteriorates and his ability to defend his asylum case diminishes. *Petitioner's Declaration, Id. at*
 ¶ 1-59. It has been increasingly difficult for counsel to get confidential phone calls and to ensure
 his due process protections given his mental health issues. On one occasion, counsel was told the
 best the detention center could do was to have the client sitting in front of an ICE officer for a
 confidential phone call. "It is well established that the deprivation of constitutional rights
 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
 Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The Ninth Circuit has specifically
 recognized irreparable harm imposed on anyone subject to unconstitutional immigration
 detention. *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017).

The Petitioner is suffering irreparable harm because his detention until this day remains
 indefinite. Absent a review of his detention before a neutral decision maker, he risks remaining in
 custody or that the Respondents deport him to Afghanistan where the Taliban will kill him. There
 is a lot at stake for the Petitioner and he has suffered irreparable harm to his mental health. He is
 now taking medication for depression and counsel is concerned that the Petitioner's suicidal
 ideation will return in detention. There have been reports of people committing suicide because of
 the pressure and stressors to be detained including poor food quality and treatment.³ He is also
 being exposed to poor hygienic conditions that has even led to an infestation of scabies among
 inmates. The Petitioner more than satisfies the irreparable harm requirement.

3. Balance of Equities and the public interest
favor granting the temporary restraining
order

³ Ryan J Foley, Michale Biesecker and Morgan Lee, "ICE detainees are dying by suicide at an alarming rate and AP investigation finds," <https://apnews.com/article/ice-suicide-deaths-detention-custody-d902169055292dfd27f5079e609e86ad>

1 The public interest weighs strongly in the petitioners favor. “The public has a strong
2 interest upholding procedural protections against unlawful detention, and the Ninth Circuit has
3 recognized that the costs to the public of immigration detention are staggering.” *Diaz*, 2025 WL
4 1676854, at *3 (citing *Jorge M.G. v. Wilkonson*, No. 21-CV_01434-JST, 2021 WL 783561, at *3)
5 (N.D. Cal. Mar. 1, 2021); see also *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817,
6 838 (9th Cir. 2020) (“It is always in the public interest to prevent the violation of a party’s
7 constitutional rights.” (citing *Padilla*, 953 F.3d at 1147-48). “[N]either equity nor the public’s
8 interest are furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52
9 F.4th 821, 832 (9th Cir. 2022); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)
10 (“Generally, public interest concerns are implicated when a constitutional right has been violated,
11 because all citizens have a stake in upholding the Constitution”); see also *Hernandez*, 872 F.3d at
12 996 (“The public interest benefits from an injunction that ensures that individuals are not
13 deprived of their liberty and held in immigration detention because of bonds established by a
14 likely unconstitutional process”).

15 In addition, based on the evidence now before the court, public safety is not jeopardized
16 because the Petitioner has shown that he can be employed and be a contributing member of
17 society. The only argument that the Respondents may have is that they have control over
18 immigration as a sovereign. The Plaintiff’s life up to before detention has proven that he is an
19 essential component of her community in Sacramento, California. His brothers rely on him for his
20 portion for rent and they look forward to seeing him and caring for him upon his release. His
21 employer also looks forward to his return.

22 **V. CONCLUSION**

23 For the foregoing reasons, this Court should issue a temporary restraining order or
24 preliminary injunction and instruct Respondents to immediately release Petitioner. This Court
25
26
27
28

1 should make a finding that the Petitioner was denied a hearing before a neutral decision maker
2 prior to his re-detention and that it has caused him irreparable harm The court should also enjoin
3 the Respondent from re-detaining the petitioner prior to providing a hearing before a neutral
4 decision maker and enjoin the Respondent from transferring the Petitioner to another detention
5 center outside of the jurisdiction of the Eastern District of California.
6

7
8 Dated: July 2, 2026


Respectfully submitted,
Karen Pedraza
Attorney for Petitioner

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14 **PRAYER FOR RELIEF**

15 Wherefore, Petitioner respectfully requests this Court to grant the following:

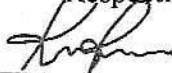
- 16 1. Assume jurisdiction over this matter;
- 17 2. Order that Petitioner shall not be transferred outside the Eastern District while this
18 habeas petition is pending;
- 19 3. Issue an Order to Show Cause ordering Respondents to show cause why this
20 Petition should not be granted within three days;
- 21 4. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in
22 the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C.
23 §1226(a) within seven days;
- 24 5. Enjoin and restrain the Respondents from re-detaining or re-arresting petitioner
25 absent compliance with constitutional protections, which include at a minimum, a
26 pre-deprivation notice- describing the change of circumstances necessitating his
27
28

1 arrest and detention, and a timely hearing. At any hearing, the Government shall
2 bear the burden of establishing by a clear and convincing evidence that Petitioner
3 poses a danger to the community or a risk of flight, and Petitioner shall have her
4 counsel present.

- 5
6 6. Respondents must return to the Petitioner all property confiscated from him during
7 her arrest and processing into detention, including but not limited to any personal
8 identification, employment authorization document, medical insurance card,
9 money, and documents received upon entry and release into the United States.
10 7. Release the Petitioner immediately from Respondent's custody and not impose any
11 additional restrictions on him such as electronic monitoring, unless that it is
12 determined to be necessary at a future pre-deprivation/custody hearing.
13

- 14 8. Declare that Petitioners' detention is unlawful under the Due the Process Clause;

- 15 24. Grant any other and further relief that this court deems just and proper
16 Respectfully submitted,

17 

18 Dated this July 2, 2026
19 Karen Pedraza
20 Attorney for the Petitioner
21

22
23 **VERIFICATION PURSUANT TO 28 U.S.C. § 2242**
24

25 I represent Petitioner, ZAMIR FAIZI, and submit this verification on her behalf. I hereby
26 verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are
27 true and correct to the best of my knowledge.
28

Dated this July 2, 2026

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Karen Pedraza