

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

H.J.G.G. v. Minga Wofford, et al.

Case No. 1:25-cv-01718-JLT-EPG-HC (E.D. Cal. Dec. 29, 2025) · No. 1:25-cv-01718-JLT-EPG-HC · Decided
December 30, 2025

OPINION

Wofford

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8

EASTERN DISTRICT OF CALIFORNIA

9 10 H.J.G.G., Case No. 1:25-cv-01718-JLT-EPG-HC 11 Petitioner, FINDINGS AND
RECOMMENDATION TO

GRANT PRELIMINARY INJUNCTION

12 v. (ECF No. 2) 13 MINGA WOFFORD, et al.,¹

ORDER GRANTING PETITIONER’S

14 Respondents. MOTON TO PROCEED VIA PSEUDONYM 15 (ECF No. 3) 16 17 Petitioner,
represented by counsel, is an immigration detainee proceeding with a petition 18 for writ of
habeas corpus pursuant to 28 U.S.C. § 2241. For the reasons stated herein, the 19 undersigned
recommends granting a preliminary injunction and ordering Petitioner’s immediate 20 release. 21
1 Respondents argue that the “Court should dismiss all respondents other than the Warden of the
Mesa 22 Verde ICE Processing Center because the only proper respondent to a habeas petition is
the custodian having immediate custody of the petitioner.” (ECF No. 10 at 1 n.1.) “[L]ongstanding
practice confirms 23 that in habeas challenges to present physical confinement—‘core
challenges’—the default rule is that the proper respondent is the warden of the facility where the
prisoner is being held” *Rumsfeld v. Padilla*, 24 542 U.S. 426, 435 (2004). The Ninth Circuit
has “affirm[ed] the application of the immediate custodian and district of confinement rules to
core habeas petitions filed pursuant to 28 U.S.C. § 2241, including 25 those filed by immigrant
detainees.” *Doe v. Garland*, 109 F.4th 1188, 1199 (9th Cir. 2024). Although *Doe* held that “*Padilla*
set forth a clear rule requiring core habeas petitioners challenging their present physical 26
confinement to name their immediate custodian, the warden of the facility where they are
detained, as the respondent to their petition,” 109 F.4th at 1197, *Doe* did not necessarily preclude
naming more than one 27 respondent so long as the immediate custodian is named. Given that
Petitioner has named her immediate custodian as a Respondent, the undersigned recommends
declining to dismiss all the other named 1 I.

2 BACKGROUND

3 Petitioner, a citizen of Ecuador, left Ecuador due to persecution he suffered on account of 4 his race and ethnicity as a member of the Kichwa Indigenous group. (ECF No. 1-2 at 1–2.2) On 5 August 27, 2023, Petitioner crossed the United States border through Arizona and turned himself 6 over to immigration officers. He was immediately detained. (Id. at 2.) 7 On September 19, 2023, U.S. Citizenship and Immigration Services (“USCIS”) 8 conducted a credible fear interview and determined that Petitioner had a credible fear of torture. 9 (ECF No. 1-2 at 2; ECF No. 10-1 at 10–15.) After this interview, Petitioner was released from 10 custody.³ (ECF No. 1-2 at 2.) When Petitioner was released, he was fingerprinted and told to 11 appear for a hearing at the immigration court in Boston in February 2026. (Id. at 2–3.) Petitioner 12 did not receive any conditions for his release, was not asked to pay a bond, and was not told to 13 report regularly to Immigration and Customs Enforcement (“ICE”).⁴ Petitioner was only asked 14 for a phone number and an address.⁵ (Id. at 3.) 15 About two months after his release at the border, Petitioner tried to check his A-number 16 in the online system, but he could not find anything. He went to an immigration “consultant” to 17 ask about getting a work permit. She told Petitioner she could not help because his A-number did 18 not appear in the system and that he did not have an open case. Petitioner did not understand and 19 kept waiting to talk with the immigration court at his 2026 hearing. (ECF No. 1-2 at 3.) 20 On July 13, 2025, Petitioner was arrested in Buffalo, New York, while he was helping a 21 friend move. Petitioner was parking the van “when about four unmarked cars, with no visible 22 identification, showed up, and six or seven agents got out.” (ECF No. 1-2 at 3.) “The agents did 23 not show any documentation or identify themselves[.]” (Id. at 4.) Petitioner was taken to an 24 2 Page numbers refer to the ECF pagination stamped at the top of the page. 25 3 Petitioner claims that he “remained in detention for around two months” and “[a]fter two months, [he] had a credible fear interview.” (ECF No. 1-2 at 2.) The motion for TRO repeatedly references October 19, 26 2023 as the date of Petitioner’s release from custody. (ECF No. 2 at 8, 14, 17, 21–23.) However, documentation of the credible fear interview establishes that the interview occurred on September 19, 27 2023. 4 Neither Petitioner nor Respondents have provided any documentation regarding Petitioner’s release. 1 office in Buffalo and after answering questions, he was moved to Batavia Detention Center 2 where he stayed until September 8, 2025. (ECF No. 1-2 at 3.) 3 On August 13, 2025, the Department of Homeland Security (“DHS”) issued a notice to 4 appear (“NTA”), charging Petitioner with removability under section 212(a)(6)(A)(i) of the 5 Immigration and Nationality Act (“INA”). (ECF No. 10-1 at 5–7.) On August 26, 2025, 6 Petitioner had his first court hearing in front of an immigration judge, who informed Petitioner 7 for the first time that he needed to file an asylum application. Petitioner was given a form and 8 told to complete it by the next hearing scheduled for September 11, 2025. (ECF No. 1-2 at 4.) 9 Before the hearing took place, Petitioner was transferred, and the hearing date was changed to 10 October 8. (Id. at 5.) Petitioner left Batavia the night of September 8, 2025, moved through 11 several places, and on September 11 or 12, eventually arrived at Mesa Verde ICE Processing 12

Center where Petitioner is still detained. (ECF No. 1-2 at 5.) 13 On December 3, 2025, Petitioner filed a petition for writ of habeas corpus and a motion 14 for temporary restraining order (“TRO”). (ECF Nos. 1, 2.) The Court converted the motion for 15 TRO to a motion for preliminary injunction, ordered further briefing, and referred the motion for 16 preliminary injunction to the undersigned. (ECF No. 6.) On December 23, 2025, Respondents 17 filed an opposition to the motion for TRO and the habeas petition. (ECF No. 10.) On December 18 28, 2025, Petitioner filed a reply in support of the motion for TRO. (ECF No. 11.) 19 II.

20 DISCUSSION

21 A. Motion to Proceed via Pseudonym 22 “[M]any federal courts, including the Ninth Circuit, have permitted parties to proceed 23 anonymously when special circumstances justify secrecy.” Does I thru XXIII v. Advanced 24 Textile Corp., 214 F.3d 1058, 1067 (9th Cir. 2000). “In this circuit, we allow parties to use 25 pseudonyms in the ‘unusual case’ when nondisclosure of the party’s identity ‘is necessary ... to 26 protect a person from harassment, injury, ridicule or personal embarrassment.’” Id. at 1067–68 27 (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)). “[A] party may preserve 1 anonymity outweighs prejudice to the opposing party and the public’s interest in knowing the 2 party’s identity.” *Advanced Textile Corp.*, 214 F.3d at 1068. 3 To determine whether to allow a party to proceed anonymously when the opposing party has objected, a district court must balance 4 five factors: “(1) the severity of the threatened harm, (2) the reasonableness of the anonymous party’s fears, ... (3) the 5 anonymous party’s vulnerability to such retaliation,” (4) the prejudice to the opposing party, and (5) the public interest. 6 7 *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1042 (9th Cir. 2010) 8 (quoting *Advanced Textile Corp.*, 214 F.3d at 1068). 9 Petitioner has moved to proceed using his initials because requiring Petitioner “to 10 disclose his identity publicly risks further traumatizing H.J.G.G. and puts him at risk of 11 harassment and persecution.” (ECF No. 3 at 5.) Specifically, Petitioner “has a pending asylum 12 claim based on harm and mistreatment he experienced in Ecuador because of his race and 13 ethnicity as a man of the Kichwa Indigenous group” and “litigation may require disclosure of 14 H.J.G.G.’s private mental and physical health information,” which “is highly personal, and 15 disclosure of such information could lead to stigma and further harm for H.J.G.G.” (ECF No. 3 16 at 2–3.) Respondents have not filed an opposition to the motion to proceed via pseudonym. 17 Courts have granted motions to file pseudonymously based on the petitioners’ fears of 18 persecution and retaliation should their identities be revealed. See, e.g., *Doe v. Becerra*, 732 F.

19 Supp. 3d 1071, 1091 (N.D. Cal. 2024) (“Given the circumstances of Mr. Doe’s petition and his 20 allegations that he will face torture or death if he returns to Mexico, the Court previously granted 21 Mr. Doe’s motions to proceed under pseudonym[.]”); *E.O.P. v. Andrews*, No. 1:25-cv-00721- 22 SKO (HC), 2025 WL 1735396, at *1 (E.D. Cal. June 23, 2025); *Doe v. Wofford*, No. 1:24-cv- 23 00943-EPG-HC, 2025 WL 1305859, at *4 (E.D. Cal. May 6, 2025); *A.E. v. Andrews*, No. 1:25- 24 cv-00107-KES-SKO (HC), 2025 WL 871334, at *1 (E.D. Cal. Mar. 19, 2025). The

Court finds 25 that upon balance, the factors weigh in favor of Petitioner. Accordingly, the Court will grant 26 Petitioner's motion to proceed via pseudonym. 27 /// 1 B. Preliminary Injunction Legal Standard 2 "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter* 3 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citation omitted). "A plaintiff seeking a 4 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to 5 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his 6 favor, and that an injunction is in the public interest." *Glossip v. Gross*, 576 U.S. 863, 876 (2015) 7 (internal quotation marks omitted) (quoting *Winter*, 555 U.S. at 20). The Ninth Circuit "has 8 adopted the 'serious questions' test—a 'sliding scale' variant of the *Winter* test—under which a 9 party is entitled to a preliminary injunction if it demonstrates": 10 (1) "serious questions going to the merits," (2) "a likelihood of irreparable injury," (3) "a balance of hardships that tips sharply 11 towards the plaintiff," and (4) "the injunction is in the public interest." *Id.* at 1135.6 As to the first factor, the serious questions 12 standard is "a lesser showing than likelihood of success on the merits." *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 13 (9th Cir. 2017). 14 *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024) 15 (footnote added). 16 C. Likelihood of Succeeding on the Merits 17 Petitioner contends that he "is likely to succeed on his claim that, in his particular 18 circumstances, his current detention is unlawful because the Due Process Clause of the 19 Constitution prevents Respondents from re-arresting him without first providing a pre- 20 deprivation hearing before a neutral adjudicator where the government demonstrates by clear and 21 convincing evidence that there has been a material change in circumstances such that he is now a 22 danger or a flight risk." (ECF No. 2 at 15.) Petitioner notes that "[f]ederal district courts in 23 California have repeatedly recognized that the demands of due process and the limitations on 24 DHS's authority to revoke a noncitizen's bond or parole set out in DHS's stated practice and 25 *Matter of Sugay* both require a pre-deprivation hearing for a noncitizen on ICE release, like 26 *H.J.G.G.*, before ICE re-detains him." (*Id.* at 16.) 27 1 Respondents argue that Petitioner is unlikely to succeed on the merits because: (1) the 2 Supreme Court has upheld the constitutionality of mandatory detention for certain noncitizens 3 and Petitioner, as an "applicant for admission," is mandatorily detained pursuant to INA 4 § 235(b)(1)(B)(ii), 8 U.S.C. § 1225(b) (1)(B)(ii), while his asylum application is being 5 considered; (2) Petitioner's release from DHS custody did not change his status as an applicant 6 for admission within the meaning of 8 U.S.C. § 1225(b), nor does the Due Process Clause entitle 7 him to a predetention hearing; and (3) changed circumstances were not required for re-detention; 8 and (4) the *Mathews* factors do not govern due process claims raised by detained aliens and do 9 not mandate a remedy. (ECF No. 10 at 4–12.) 10 Respondents argue that "detention during immigration proceedings is 'a constitutionally 11 valid aspect of the deportation process.'" (ECF No. 10 at 4 (quoting *Demore v. Kim*, 538 U.S. 12 510, 523 (2003)).) "While the temporary detention of non-citizens may sometimes be justified by 13 concerns about public safety or flight risk, the government's discretion to incarcerate non- 14

citizens is always constrained by the requirements of due process[.]” *Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (emphasis added). Demore’s rejection of a facial challenge to the constitutionality of 8 U.S.C. § 1226(c), a provision not at issue in this matter, does not render Petitioner’s detention constitutional. Respondents also argue that “Petitioner’s due process rights are limited to whatever statutory rights Congress provides.” (ECF No. 10 at 5.) In support of this position, Respondents rely on *Kleindienst v. Mandel*, 408 U.S. 753 (1972), *Landon v. Plasencia*, 459 U.S. 21, 32 (1982), *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950), and *DHS v. Thuraissigiam*, 591 U.S. 103 (2020). These cases addressed due process rights with respect to admission, as evidenced by the language from these cases quoted by Respondents. Here, however, Petitioner is not raising claims regarding the admission process. See *Padilla v. U.S. Immigr. & Customs Enf’t*, 704 F.

Supp. 3d 1163, 1171 (W.D. Wash. 2023) (“Defendants ask the Court to extract from *Thuraissigiam* a broad rule that any inadmissible noncitizen possesses only those due process But such a conclusion is untethered to the claim in *Thuraissigiam* and the Court’s reasoning. *Thuraissigiam*’s discussion of due process is necessarily constrained to challenges to admissibility to the United States.”), appeal filed, No. 24-2801 (9th Cir. argued May 21, 2025); *Castillo v. Wofford*, No. 1:25-CV-01586-JLT-HBK, 2025 WL 3466064, at *8 (E.D. Cal. Dec. 2, 2025) (finding *Barrea-Echavarria v. Rison*, 44 F.3d 1441 (9th Cir. 1995) (en banc) and *Thuraissigiam* “inapposite and reject[ing] Respondents’ argument that ‘entry fiction’ cases guide the analysis for cases not involving an expedited removal process”); *J.E.H.G. v. Chesnut*, No. 1:25-cv-01673-JLT SKO, 2025 WL 3523108, at *10 n.10 (E.D. Cal. Dec. 9, 2025) (rejecting similar government argument); *Carmen G.C. v. Robbins*, No. 1:25-cv-01648-KES-HBK (HC), 2025 WL 3521304, at *3–4 (E.D. Cal. Dec. 8, 2025) (rejecting similar government argument). 8 U.S.C. § 1226(a) “is the default detention statute for noncitizens in removal proceedings.” *Avilez*, 69 F.4th at 529. Detention under § 1226(a) “is discretionary” and “provides for release on bond or conditional parole.” *Avilez*, 69 F.4th at 529. The Supreme Court has described 8 U.S.C. § 1225 as follows: Under § 302, 110 Stat. 3009–579, 8 U.S.C. § 1225, an alien who “arrives in the United States,” or “is present” in this country but “has not been admitted,” is treated as “an applicant for admission.” § 1225(a)(1). Applicants for admission must “be inspected by immigration officers” to ensure that they may be admitted into the country consistent with U.S. immigration law. § 1225(a)(3). As relevant here, applicants for admission fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2). Section 1225(b)(1) applies to aliens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation. See § 1225(b)(1)(A)(i) (citing §§ 1182(a)(6)(C), (a)(7)). Section 1225(b)(1) also applies to certain other aliens designated by the Attorney General in his discretion. See § 1225(b)(1)(A)(iii). Section 1225(b)(2) is broader. It serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) (with

specific exceptions not relevant here). See §§ 1225(b)(2)(A), (B). 24 Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of 25 certain aliens. Aliens covered by § 1225(b)(1) are normally ordered removed “without further hearing or review” pursuant to 26 an expedited removal process. § 1225(b)(1)(A)(i). But if a § 1225(b)(1) alien “indicates either an intention to apply for 27 asylum ... or a fear of persecution,” then that alien is referred for an asylum interview. § 1225(b)(1)(A)(ii). If an immigration officer 1 persecution, “the alien shall be detained for further consideration of the application for asylum.” § 1225(b)(1)(B)(ii). Aliens who are 2 instead covered by § 1225(b)(2) are detained pursuant to a different process. Those aliens “shall be detained for a [removal] 3 proceeding” if an immigration officer “determines that [they are] not clearly and beyond a doubt entitled to be admitted” into the 4 country. § 1225(b)(2)(A). 5 Regardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on 6 parole “for urgent humanitarian reasons or significant public benefit.” § 1182(d)(5)(A); see also 8 C.F.R §§ 212.5(b), 235.3 7 (2017). Such parole, however, “shall not be regarded as an admission of the alien.” 8 U.S.C. § 1182(d)(5)(A). Instead, when 8 the purpose of the parole has been served, “the alien shall forthwith return or be returned to the custody from which he was paroled and 9 thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United 10 States.” Ibid. 11 *Jennings v. Rodriguez*, 583 U.S. 281, 287–88 (2018). 12 Until this year, DHS has applied section 1226(a) and its regime of discretionary release and review of detention “to the vast majority 13 of noncitizens allegedly in this country without valid documentation”—a practice codified by regulation. Id. As early as 14 1997, in the regulations implementing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, the 15 Immigration and Naturalization Service and the Executive Office for Immigration Review stated that “[d]espite being applicants for 16 admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without 17 inspection) will be eligible for bond and bond redetermination.” Inspection and Expedited Removal of Aliens, 62 Fed. Reg. at 18 10323. The government’s briefing in this case acknowledges that its position historically was that section 1226(a) was “an available 19 detention authority for aliens [present without being admitted or paroled] placed in full removal proceedings under § 1229a.” (Dkt.

20 No. 16 (“Opp.”) at 12.)

21 However, the government now disavows its prior position in light of subsequent “legal developments,” including its 2025 designation 22 “restor[ing] the scope of expedited removal to the fullest extent authorized by Congress,” 90 Fed. Reg. at 8139. (Opp. at 12.) It 23 contends that section 1225 is “the sole applicable detention authority for all applicants for admission” and asserts that all 24 applicants for admission are “subject to the mandatory detention framework” of section 1225(b). (Opp. at 12, 14.) 25 26 *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2741654, at *4 (N.D. Cal. Sept. 27 26, 2025), appeal filed, No. 25-7472 (9th Cir. filed Nov. 26, 2025). /// 1 “Here in the Eastern District of California, recent decisions have largely rejected

the 2 government’s interpretation of Section 1225(b)(2) as applicable to all ‘applicants for 3 admission.’” Valencia v. Chestnut, No. 1:25-cv-01550 WBS JDP, 2025 WL 3205133, at *2 4 (E.D. Cal. Nov. 17, 2025) (citing Lepe v. Andrews, No. 1:25-cv-01163-KES-SKO (HC), --- F. 5 Supp. 3d ----, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025); Rodriguez v. Kaiser, No. 1:25-cv-6 01111-KES-SAB (HC), 2025 WL 2855193 (E.D. Cal. Oct. 8, 2025); Ortiz Donis v. Chestnut, 7 No. 1:25-cv-01228 JLT SAB, 2025 WL 2879514 (E.D. Cal. Oct. 9, 2025); Menjivar Sanchez v. 8 Wofford, No. 1:25-cv-01187-SKO (HC), 2025 WL 2959274 (E.D. Cal. Oct. 17, 2025)). Contra 9 Valencia, 2025 WL 3205133, at *2 (declining to follow said cases, finding “petitioner is unlikely 10 to prevail on his statutory arguments,” and denying temporary restraining order); Alonzo v. 11 Noem, No. 1:25-cv-01519 WBS SCR, 2025 WL 3208284, at *3, 5 (E.D. Cal. Nov. 17, 2025) 12 (finding that “[n]otwithstanding the majority view,” petitioner failed to make “a sufficient 13 showing of the likelihood of success on his statutory claim” yet noting “[t]his finding should not 14 be understood an affirmative endorsement of the view that respondents’ interpretation of 15 § 1225(b)(2)(A) -- which is in line with the expansive understanding of mandatory detention 16 applicability -- is correct” but rather “only that petitioner has failed to show a likelihood of 17 success on it”). 18 Additionally, “[o]ther district courts have also reached the result that Section 1226(a), not 19 Section 1225(b)(2), provides the appropriate framework for noncitizens already residing in the 20 United States.” Valencia, 2025 WL 3205133, at *2 (citing Garcia v. Noem, No. 25-cv-02180-21 DMS-MMP, --- F.Supp.3d ----, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); Martinez v. Noem, 22 No. EP-25-CV-430 KC, 2025 WL 2965859 (W.D. Tex. Oct. 21, 2025) (acceptance of DHS’s 23 new interpretation represents “a minority view”); Buenrostro-Mendez v. Bondi, No. CV H-25- 24 3726, 2025 WL 2886346 (S.D. Tex. Oct. 7, 2025)). Contra Chavez v. Noem, No. 3:25-cv-02325-25 CAB-SBC, --- F.Supp.3d ----, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025); Mejia Olalde v. 26 Noem, No. 1:25-cv-001568-JMD, 2025 WL 3131942 (E.D. Mo. Nov. 10, 2025). 27 This Court will follow the majority approach in finding that “Respondents’ proposed 1 disregards the relationship between sections 1225 and 1226; (3) would render a recent 2 amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory 3 interpretation and practice.” Sharan S. v. Chestnut, No. 1:25-cv-01427-KES-SKO (HC), 2025 4 WL 3167826, at *5 (E.D. Cal. Nov. 12, 2025). See Paz Aguilera v. Albarran, No. 1:25-cv-01619 5 JLT SAB, 2025 WL 3485016, at *9 (E.D. Cal. Dec. 4, 2025) (“acknowledg[ing] that two recent 6 decisions in this district accepted Respondents’ new interpretation of § 1225(b)(2),” but 7 distinguishing those decisions because “unlike Petitioner, the petitioners in Valencia and Alonzo 8 had never been encountered, let alone processed, by immigration officials, and had not been 9 released on recognizance pending completion of Section 240 removal proceedings”). 10 1. Procedural Due Process 11 “We examine procedural due process questions in two steps: the first asks whether there 12 exists a liberty or property interest which has been interfered with by the State; the second 13 examines whether the procedures attendant upon that deprivation were constitutionally

14 sufficient.” *Kentucky Dep’t of Corr. v. Thompson*, 490 U.S. 454, 460 (1989) (internal citations
15 omitted). 16 a. Liberty Interest 17 Petitioner contends that “[s]ince October 19, 2023, H.J.G.G.
has exercised that freedom 18 under DHS’s own grant of parole,” and thus, “he retains a weighty
liberty interest under the Due 19 Process Clause of the Fifth Amendment in avoiding unlawful re-
incarceration,” citing *Young v. 20 Harper*, 520 U.S. 143, 146–47 (1997), *Gagnon v. Scarpelli*, 411
U.S. 778, 781–82 (1973), and 21 *Morrissey v. Brewer*, 408 U.S. 471, 482–83 (1972). (ECF No. 2
at 17.) 22 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including
23 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v.*
24 *Davis*, 533 U.S. 678, 693 (2001). “Freedom from imprisonment—from government custody,
25 detention, or other forms of physical restraint—lies at the heart of the liberty that Clause 26
protects.” *Id.* at 690. In *Morrissey v. Brewer*, 408 U.S. 471 (1972), the Supreme Court addressed
27 whether due process requires a parolee be afforded some opportunity to be heard prior to 1 his
continued liberty,” the Supreme Court stated: 2 The liberty of a parolee enables him to do a wide
range of things open to persons who have never been convicted of any crime. The 3 parolee has
been released from prison based on an evaluation that he shows reasonable promise of being able
to return to society and 4 function as a responsible, self-reliant person. Subject to the conditions of
his parole, he can be gainfully employed and is free 5 to be with family and friends and to form
the other enduring attachments of normal life. Though the State properly subjects him 6 to many
restrictions not applicable to other citizens, his condition is very different from that of
confinement in a prison. . . . The 7 parolee has relied on at least an implicit promise that parole
will be revoked only if he fails to live up to the parole conditions. 8 9 *Morrissey*, 408 U.S. at 482.
The Supreme Court found “that the liberty of a parolee, although 10 indeterminate, includes many
of the core values of unqualified liberty and its termination inflicts 11 a ‘grievous loss’ on the
parolee and often on others” and held that “the liberty is valuable and 12 must be seen as within
the protection of” due process. *Morrissey*, 408 U.S. at 482. 13 Relying on *Morrissey*, courts in this
district have consistently held that noncitizens who 14 have been released from immigration
custody pending civil removal proceedings have a 15 protected liberty interest in remaining out of
immigration custody. See, e.g., *Doe v. Becerra*, 787 16 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025);
J.A.E.M. v. Wofford, No. 1:25-cv-01380-KES-HBK 17 (HC), 2025 WL 3013377, at *3–6 (E.D.
Cal. Oct. 27, 2025); *J.C.L.A. v. Wofford*, No. 1:25-cv- 18 01310-KES-EPG (HC), 2025 WL
2959250, at *3–5 (E.D. Cal. Oct. 17, 2025); *Qazi v. Albarran*,
19 No. 2:25-cv-02791-TLN-CSK, 2025 WL 3033713, at *4 (E.D. Cal. Oct. 10, 2025); *Martinez*
20 *Hernandez v. Andrews*, No. 1:25-cv-01035 JLT HBK, 2025 WL 2495767, at *10 (E.D. Cal.
21 Aug. 28, 2025); *Yang v. Kaiser*, No. 2:25-cv-02205-DAD-AC (HC), 2025 WL 2791778, at *8
22 (E.D. Cal. Aug. 20, 2025); *Maklad v. Murray*, No. 1:25-cv-00946 JLT SAB, 2025 WL
2299376, 23 at *7–8 (E.D. Cal. Aug. 8, 2025). Accordingly, the Court finds that Petitioner is likely
to 24 demonstrate that he has a protected liberty interest in remaining out of immigration custody.
25 b. Mathews Test 26 Respondents contend that “Mathews does not, however, appear to govern

due process 27 claims raised by detained aliens. Indeed, the Supreme Court has not adjudicated due process 1 *Rodriguez Diaz v. Garland*, 53 F.4th at 1189, 1206, 1214 (9th Cir. 2022) (Bumatay, J., 2 concurring). (ECF No. 10 at 10–11.) However, in *Rodriguez Diaz*, which concerned a noncitizen 3 detained pursuant to 8 U.S.C. § 1226(a) and whether “continued detention was unconstitutional 4 because under the Due Process Clause of the Fifth Amendment, he is entitled to a second bond 5 hearing at which the government bears the burden of proof by clear and convincing evidence,” 6 the panel majority “assume[d] without deciding” that the *Mathews* test applied, noting that the 7 Ninth Circuit has “regularly applied *Mathews* to due process challenges to removal 8 proceedings,” and finding “*Mathews* remains a flexible test that can and must account for the 9 heightened governmental interest in the immigration detention context.” *Rodriguez Diaz*, 53 10 F.4th at 1193, 1206. Similarly, the dissent “agree[d] that the test developed in *Mathews v. 11 Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), is the appropriate legal framework 12 to determine whether there was a due process violation.” *Rodriguez Diaz*, 53 F.4th at 1219 13 (Wardlaw, J., dissenting). See *Rocha Chavarria v. Chestnut*, No. 1:25-cv-01755-DAD-AC, 2025 14 WL 3533606, at *3 (E.D. Cal. Dec. 9, 2025) (“Many district courts in the Ninth Circuit have 15 found that non-citizens paroled into the United States pursuant to § 1182(d) (5) have a liberty 16 interest in their continued release, entitling them to certain due process protections, the extent of 17 which are determined by applying the test provided in *Mathews v. Eldridge*, 424 U.S. 319, 335 18 (1976).”); J.E.H.G., 2025 WL 3523108, at *10–11 (finding “liberty interest created by the fact 19 that the Petitioner in this case was released on recognizance” and “[t]hus, the Court must 20 evaluate the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), to 21 determine whether the procedures (or lack thereof) that have been applied to Petitioner are 22 sufficient to protect the liberty interest at issue”). 23 Based on the foregoing, the Court finds that the *Mathews* test is appropriate in this 24 instance. In *Mathews*, the Supreme Court held that “identification of the specific dictates of due 25 process generally requires consideration of three distinct factors”: 26 First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through 27 the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s 1 administrative burdens that the additional or substitute procedural requirements would entail. 2 3 *Mathews*, 424 U.S. at 334. 4 With respect to the first factor, the Court finds that the private interest at issue is 5 fundamental. The Ninth Circuit has recognized that it “is beyond dispute” an immigration 6 detainee’s “private interest at issue here is ‘fundamental’: freedom from imprisonment is at the 7 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at 993 (quoting 8 *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). 9 With respect to the second factor, “‘the risk of an erroneous deprivation [of liberty] is 10 high’ where, as here, ‘[the petitioner] has not received any bond or custody redetermination 11 hearing.’” J.A.E.M., 2025 WL 3013377, at *7 (alterations in original) (quoting A.E., 2025 WL 12 1424382, at *5). “Civil immigration detention, which is ‘nonpunitive in purpose and effect[,]’ is

13 justified when a noncitizen presents a risk of flight or danger to the community.” *Omer G. G. v.*
14 *Kaiser*, No. 1:25-cv-01471-KES-SAB (HC), 2025 WL 3254999, at *7 (E.D. Cal. Nov. 22,
2025) 15 (alteration in original) (quoting *Zadvydas*, 533 U.S. at 690). Petitioner’s release on
recognizance 16 necessarily required a determination that he posed neither a flight risk nor a
danger. *Rocha* 17 *Chavarria*, 2025 WL 3533606, at *4 (citing 8 C.F.R. § 212.5(b); *Noori v. Larose*,
No. 25-cv- 18 1824-GPC-MSB, 2025 WL 2800149, at *3 (S.D. Cal. Oct. 1, 2025)); *Saravia v.*
Sessions, 280 F.

19 *Supp.* 3d 1168, 1176 (N.D. Cal. 2017) (“The federal government sometimes releases
noncitizens

20 on bond or parole while their removal proceedings are pending. Release reflects a
determination 21 by the government that the noncitizen is not a danger to the community or a
flight risk.”), *aff’d* 22 *sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137 (9th Cir. 2018).
Respondents do not argue 23 that Petitioner is now a flight risk or a danger to the community.
“[A]s there have been no 24 procedural safeguards to determine if petitioner’s re-detention is
justified, ‘the probable value of 25 additional procedural safeguards, i.e., a bond hearing, is
high.’” *Sharan S.*, 2025 WL 3167826, at 26 *10 (quoting *A.E.*, 2025 WL 1424382, at *5). 27 With
respect to the third and final factor, “although the government has a strong interest in enforcing
the immigration laws, the government’s interest in detaining petitioner without a 1 hearing is
‘low.’” *J.A.E.M.*, 2025 WL 3013377, at *7 (citing *Ortega v. Bonnar*, 415 F. Supp. 3d 2 963, 970
(N.D. Cal. 2019); *Doe*, 787 F. Supp. 3d at 1094). See *Henriquez v. Garland*, No. 5:22- 3 cv-00869-
EJD, 2022 WL 2132919, at *5 (N.D. Cal. June 14, 2022) (“Although the Government 4 has a
strong interest in enforcing the immigration laws and in ensuring that lawfully issued 5 removal
orders are promptly executed, the Government’s interest in detaining Petitioner without 6
providing an individualized bond hearing is low.”). Courts generally have found that the cost of 7
providing a custody hearing is relatively minimal, and there is nothing in the record before this 8
Court demonstrating that providing Petitioner with a pre-deprivation hearing would be fiscally or
9 administratively burdensome. See *J.A.E.M.*, 2025 WL 3013377, at *7 (“In immigration court,
10 custody hearings are routine and impose a ‘minimal’ cost.” (citing *Doe*, 787 F. Supp. 3d at 11
1094)). 12 On balance, the *Mathews* factors show that Petitioner is entitled to notice and a bond
13 hearing and “[t]hat hearing should have occurred before petitioner was re-detained.” *Carmen*
14 *G.C. v. Robbins*, No. 1:25-cv-01648-KES-HBK (HC), 2025 WL 3521304, at *7 (E.D. Cal.
Dec. 15 8, 2025). 16 “[T]he root requirement’ of the Due Process Clause” is “‘that an individual
be given an opportunity for a hearing before he is 17 deprived of any significant protected
interest.’” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (quoting *Boddie v. 18*
Connecticut, 401 U.S. 371, 379 (1971)); see *Zinermon*, 494 U.S. at 127 (“Applying [the *Mathews*]
test, the Court usually has held that 19 the Constitution requires some kind of a hearing before the
State deprives a person of liberty”). Courts typically require evidence 20 of urgent concerns or
an especially strong government interest to justify a post-deprivation hearing. See *Guillermo M.*

R., 2025 WL 21 1983677, at *9; *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53, 59–61 (1993) (“We tolerate some exceptions to the general rule requiring predeprivation notice and hearing, but only in extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event[.]” such as “executive urgency.” (internal quotations omitted)). *Carmen G.C.*, 2025 WL 3521304, at *7. At such a predeprivation hearing, the government bears the burden of proving by clear and convincing evidence that Petitioner is a danger to the community or a flight risk such that re- 1 that the government bears the “clear-and-convincing burden of proof” at an immigration bond 2 hearing ordered pursuant to the Due Process Clause); *Carmen G.C.*, 2025 WL 3521304, at *7 3 (“On balance, the Mathews factors show that petitioner is entitled to a bond hearing where the 4 government must prove that she is a flight risk or danger to the community by clear and 5 convincing evidence.”); *J.E.H.G.*, 2025 WL 3523108, at *14 (“[T]he immigrant’s initial release 6 reflected a determination by the government that the noncitizen is not a danger to the community 7 or a flight risk. Since it is the government that initiated re-detention, it follows that the 8 government should be required to bear the burden of providing a justification for the re- 9 detention.”). 10 Based on the foregoing, Petitioner has demonstrated that he is likely to succeed in 11 showing that he has a strong liberty interest in remaining out of custody, that the risk of 12 erroneous deprivation will be meaningfully reduced by requiring notice and a pre-detention 13 hearing before a neutral decisionmaker, and that the governmental burden in providing such 14 procedure is quite minimal.⁷ 15 D. Likelihood of Suffering Irreparable Harm 16 “In addition to a likelihood of success on the merits, ‘[a] plaintiff seeking a preliminary 17 injunction must establish . . . that he is likely to suffer irreparable harm in the absence of 18 preliminary relief.’” *Hernandez*, 872 F.3d at 994 (quoting *Winter*, 555 U.S. at 20). In *Hernandez*, 19 the Ninth Circuit found the district court did not abuse its discretion in entering an injunction that 20 required immigration officials to consider financial circumstances and alternative conditions of 21 release at the bond hearings of a class of noncitizens in removal proceedings who were detained 22 pursuant to 8 U.S.C. § 1226(a). *Hernandez*, 872 F.3d at 981–82. With respect to the second 23 Winter factor, the Ninth Circuit found: 24 Here, Plaintiffs have established a likelihood of irreparable harm by virtue of the fact that they are likely to be unconstitutionally 25 detained for an indeterminate period of time. 26 “It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. 27 Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. 1 Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)). Thus, it follows inexorably from our conclusion that the 2 government’s current policies are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their 3 physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to 4 irreparable harm. 5 *Hernandez*, 872 F.3d at 994–95. Similarly, here, the Court has concluded that Petitioner is likely 6 to succeed on the merits of his due process claim, and thus, Petitioner has “established a 7 likelihood of irreparable harm by virtue of the fact

that [he is] likely to be unconstitutionally 8 detained for an indeterminate period of time” in the absence of preliminary relief. *Hernandez*, 9 872 F.3d at 994. See *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (“It is well-established 10 that the first factor is especially important when a plaintiff alleges a constitutional violation and 11 injury. If a plaintiff in such a case shows he is likely to prevail on the merits, that showing 12 usually demonstrates he is suffering irreparable harm no matter how brief the violation.”). 13 E. Balance of Equities and the Public Interest 14 To obtain a preliminary injunction, Petitioner must also demonstrate that “the balance of 15 equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. 16 “When, like here, the nonmovant is the government, the last two *Winter* factors ‘merge.’” *Baird*, 17 81 F.4th at 1040 (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Roman v. Wolf*, 977 F.3d 18 935, 940–41 (9th Cir. 2020) (per curiam)). “A plaintiff’s likelihood of success on the merits of a 19 constitutional claim also tips the merged third and fourth factors decisively in his favor.” *Baird*, 20 81 F.4th at 1042. “Because ‘public interest concerns are implicated when a constitutional right 21 has been violated, . . . all citizens have a stake in upholding the Constitution,’ meaning ‘it is 22 always in the public interest to prevent the violation of a party’s constitutional rights.’” *Baird*, 81 23 F.4th at 1042 (first quoting *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); then 24 quoting *Riley’s American Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022)). “The 25 government also ‘cannot reasonably assert that it is harmed in any legally cognizable sense by 26 being enjoined from constitutional violations.’” *Baird*, 81 F.4th at 1042 (quoting *Zepeda v. INS*, 27 753 F.2d 719, 727 (9th Cir. 1983)). Accordingly, the Court finds that the balance of equities tips in Petitioner’s favor and that an injunction is in the public interest. 1 F. Conclusion 2 In sum, the Court finds that the requirements for issuing a preliminary injunction are 3 satisfied. Accordingly, the undersigned recommends that the motion for preliminary injunction 4 be granted. 5 The Court now turns to the appropriate remedy. “The ‘purpose of a preliminary 6 injunction is to preserve the status quo ante litem pending a determination of the action on the 7 merits.’” *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 2016) (quoting *Sierra 8 Forest Legacy v. Rey*, 577 F.3d 1015, 1023 (9th Cir. 2009)). “‘Status quo ante litem’ refers to 9 ‘the last uncontested status which preceded the pending controversy.’” *Boardman*, 822 F.3d at 10 1024 (quoting *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000)). 11 Courts in this district have taken differing approaches to the relief granted to petitioners 12 who have been released, subsequently re-detained, and denied bond hearings based on the 13 government’s new interpretation of 8 U.S.C. § 1225(b). In some cases, the immediate release of 14 the petitioner has been ordered. See, e.g., *Ortiz Donis v. Chestnut*, No. 1:25-CV-01228 JLT 15 SAB, 2025 WL 2879514, at *15 (E.D. Cal. Oct. 9, 2025) (ordering immediate release “because 16 the government has no evidence that Mr. Ortiz poses a risk of flight or poses a danger to the 17 community”); *Yurani Hortua v. Chestnut*, No. 1:25-cv-01670-TLN-JDP, 2025 WL 3525916 18 (E.D. Cal. Dec. 9, 2025) (ordering immediate release of petitioner who had been released from 19 immigration detention on parole, was arrested for theft but the case was resolved with 20 community service

and did not result in a conviction, and was re-detained at a routine six-month 21 check-in); Carmen G.C., 2025 WL 3521304 (ordering immediate release of petitioner who 22 allegedly violated reporting requirements four times); Rocha Chavarria, 2025 WL 3533606 23 (ordering immediate release of petitioner who allegedly “incurred compliance violations” that 24 were not identified and where respondents did not suggest the alleged violations were the reason 25 for petitioner’s re-detention). 26 In other cases, bond hearings have been ordered rather than immediate release. See, e.g., 27 J.E.H.G., 2025 WL 3523108 (ordering bond hearing for petitioner who allegedly violated 1 Aguilera, 2025 WL 3485016 (ordering bond hearing for petitioner who allegedly violated 2 reporting requirements one time and was re-detained based on said violation); Sharan S., 2025 3 WL 3167826 (ordering bond hearing for petitioner who allegedly violated reporting 4 requirements eight times). 5 Here, there is nothing before this Court demonstrating that Petitioner is a flight risk or a 6 danger to the community. Accordingly, the undersigned recommends that Petitioner be released 7 from immigration detention. 8 G. Bond 9 “The court may issue a preliminary injunction or a temporary restraining order only if the 10 movant gives security in an amount that the court considers proper to pay the costs and damages 11 sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 12 65(c). “The district court retains discretion ‘as to the amount of security required, if any.’” Diaz 13 v. Brewer, 656 F.3d 1008, 1015 (9th Cir. 2011) (quoting Johnson v. Couturier, 572 F.3d 1067, 14 1086 (9th Cir. 2009)). “The district court may dispense with the filing of a bond when it 15 concludes there is no realistic likelihood of harm to the defendant from enjoining his or her 16 conduct.” Jorgensen v. Cassidy, 320 F.3d 906, 919 (9th Cir. 2003). “Courts regularly waive 17 security in cases like this one,” J.A.E.M., 2025 WL 3013377, at *9 (collecting cases), and given 18 the government “cannot reasonably assert that it is harmed in any legally cognizable sense by 19 being enjoined from constitutional violations,” Zepeda, 753 F.2d at 727, the undersigned 20 recommends that no security be required. 21 III.

22 RECOMMENDATION & ORDER

23 Accordingly, the undersigned HEREBY RECOMMENDS that: 24 1. Petitioner’s motion for preliminary injunction (ECF No. 2) be granted. 25 2. Respondents be directed to immediately release Petitioner. 26 3. Respondents be enjoined and restrained from re-detaining Petitioner absent compliance 27 with constitutional protections, which include at a minimum, predeprivation notice of at 1 burden of demonstrating by clear and convincing evidence that he is likely to flee or pose 2 a danger to the community if not arrested. 3 Further, the Court HEREBY ORDERS that Petitioner’s motion to proceed via 4 | pseudonym (ECF No. 3) is GRANTED. 5 This Findings and Recommendation is submitted to the assigned United States District 6 | Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local 7 | Rules of Practice for the United States District Court, Eastern District of California. Within 8 | FOURTEEN (14) days after service of the Findings and Recommendation, any party may file 9 | written objections, no longer than fifteen (15) pages, including exhibits, with the Court and 10 | serve a copy on all parties.

Such a document should be captioned “Objections to Magistrate 11 | Judge’s Findings and Recommendation.” Replies to the objections shall be served and filed 12 | within fourteen (14) days after service of the objections. The assigned United States District 13 | Court Judge will then review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C). 14 | The parties are advised that failure to file objections within the specified time may waive the 15 | right to appeal the District Court’s order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 16 | 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 17 18 IT IS SO ORDERED. 19} Dated: _ December 29, 2025 [Jee hey —
0 UNITED STATES MAGISTRATE JUDGE
21 22 23 24 25 26 27 28