

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Bounlay Phommavongsa v. Christopher Chestnut, et al.

Bounlay Phommavongsa v. Christopher Chestnut, No. 1:25-cv-01852-JLT-CDB (HC) (E.D. Cal. Jan. 15, 2026) ·
No. 1:25-cv-01852-JLT-CDB (HC) · Decided January 15, 2026

SUMMARY

These Findings and Recommendations address Bounlay Phommavongsa’s motion for a preliminary injunction in a 28 U.S.C. § 2241 habeas action challenging his immigration detention. The court recommends granting the motion, concluding that prudential exhaustion should be waived and that Petitioner has shown a likelihood of success on an as-applied due process challenge to his prolonged detention under 8 U.S.C. § 1226(c). The requested relief includes release under appropriate supervision and an injunction against removal while the habeas petition is pending.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 BOUNLAY PHOMMAVONGSA, Case No. 1:25-cv-01852-JLT-CDB (HC)
12 Petitioner, FINDINGS AND RECOMMENDATIONS TO GRANT PETITIONER’S MOTION
FOR 13 v. PRELIMINARY INJUNCTION 14 CHRISTOPHER CHESTNUT, et al., (Doc. 6) 15
Respondents. 14-DAY OBJECTION PERIOD 16 17 Pending before the Court is Petitioner
Bounlay Phommavongsa’s (“Petitioner”) motion for 18 preliminary injunction,¹ filed on
December 18, 2025.

(Doc. 6). On December 19, 2025, 19 Respondents were ordered to show cause in writing why the
Court should not grant Petitioner’s 20 motion for preliminary injunction.² (Doc. 8). On December
29, 2025, Respondents filed a response 21 22 1 On December 19, 2025, the presiding district
judge referred the pending motion for preliminary injunction to the undersigned for the
preparation of findings and recommendations or 23 other appropriate action considering the
existing briefing schedule on the merits of the petition.

(Doc. 7); see (Doc. 5). 24 2 The Court ordered that any response by Respondents shall provide the
Court with copies 25 of referenced/relevant portions of Petitioner’s A-File if not already filed and
other supporting documents, including available documentation related to any asserted violations
of release 26 conditions. (Doc. 8). Respondents were ordered to specifically address why the facts
suggest a 27 change in circumstance material to the issue of whether Petitioner is a danger to
public safety or a flight risk.

Id. (citing, e.g., *Chavarria v. Chestnut*, No. 1:25-CV-01755-DAD-AC, 2025 WL 28 3533606, at *4 (E.D. Cal. Dec. 9, 2025); *Bernal v. Albarran*, No. 25-CV-09772-RS, 2025 WL 1 to the Court's order to show cause regarding both Petitioner's pending motion for preliminary injunction and petition. (Doc. 11).

On December 31, 2025, Petitioner filed a reply in support of his motion and petition. (Doc. 12). For the reasons set forth herein, the undersigned recommends that Petitioner's motion for preliminary injunction be granted.³ 5 I. Relevant Background 6 A. Procedural History 7 Petitioner, a federal detainee proceeding by counsel, initiated this action by filing a petition 8 for writ of habeas corpus pursuant to 28 U.S.C. § 2241 on December 14, 2025, while in custody of 9 the Immigration and Customs Enforcement ("ICE") at the California City Detention Facility, 10 located in Kern County, California.

(Doc. 1 at 1). Following the Court's preliminary assessment 11 that Petitioner's petition may be cognizable under 28 U.S.C. § 2241, on December 17, 2025, the 12 Court set a briefing schedule on the merits of the petition. (Doc. 5). 13 B. Factual Background⁴ 14 Petitioner, a 50-year-old man from Laos, entered the United States as a refugee child in 15 1979, was granted lawful permanent resident ("LPR") status in 1980, and has lived in the United 16 States for over 45 years with his family.

(Doc. 1 at 1, 4-5). In November 2006, an immigration 17 judge entered a final order of removal against Petitioner, ordering him removed to Laos, based on 18 a then-approximately four-year old qualifying criminal conviction.⁵ Id. at 5. Petitioner had no 19 3281422, at *6 (N.D. Cal. Nov. 25, 2025)). 20 3 Because neither Petitioner nor Respondents request a hearing on the motion, the motion 21 is submitted for decision without oral argument.

Local Rule 230(g); see generally (Docs. 6, 11, 22 12). 23 4 The factual background is drawn from Petitioner's petition (Doc. 1), his motion for preliminary injunction (Doc. 6), and other evidence in the record. A court "may treat the allegations 24 of a verified... petition [for writ of habeas corpus] as an affidavit." *L. v. Lamarque*, 351 F.3d 919, 924 (9th Cir.

2003) (citing *McElyea v. Babbitt*, 833 F.2d 196, 197–98 (9th Cir. 1987)). 25 5 On December 9, 2002, Petitioner was convicted of violation of California Penal Code 26 ("CPC") § 459 for first-degree burglary and CPC 186.22(a) for street gang membership and was 27 sentenced to four years and eight months imprisonment, respectively. (Doc. 11-1, Declaration of Deportation Officer Samuel Medina, Jr. ("Medina Decl.") ¶ 7).

On November 8, 2006, ICE arrested 28 Petitioner and personally served him with a Form I-862 notice to appear ("NTA") charging him as 1 ongoing criminal issues by the time of his removal proceedings. Id. Following entry of the removal 2 order, ICE took Petitioner into custody around November 2006. Id. 3 Petitioner was held in custody until he was released under an Order of

Supervision on March 4 2, 2007,⁶ after the government was unable to obtain travel documents from Laos to effectuate 5 Petitioner's removal thereto.⁷ Id. When he was released, and for the next 18 years until 2025, 6 Petitioner remained out of custody, supported his family, was gainfully employed, and built his life 7 in the community while fully complying with all supervision requirements, including periodic ICE 8 check-ins, updating his address and contact information, and obeying all laws.

Id. at 5-6. 9 On June 12, 2025, ICE re-detained Petitioner at his most recent check-in appointment and 10 later transported him to the California City Detention Center, where he remains incarcerated 11 indefinitely with no timeline for actual removal.⁸ Id. at 6-7, 8. 12 On September 10, 2025, an immigration judge granted Petitioner's motion to reopen and 13 issued an emergency stay of removal, making Petitioner's prior removal order no longer 14 administratively final.

Id. at 9 (citing Doc. 1-3, Exhibit 1 ("Ex. 1")) (September 10, 2025, Order 15 of the Immigration Judge in Matter of Bounlay Phommavongsa (A023-837-353) granting motion 16 an alien who is removable from the United States for having been convicted of a burglary offense 17 aggravated felony for which a term of imprisonment of at least one year was imposed under the Immigration and Nationality Act ("INA") § 237(a)(2)(iii).

Id. ¶ 8. Petitioner later pled to charges 18 on the NTA and the immigration judge sustained the factual allegations and the charge of removability and designated Laos as the country of removal should removal become necessary. Id. 19 ¶ 9.

On November 30, 2006, Petitioner appeared in immigration Court and was ordered removed to Laos, and Petitioner waived appeal. Id. ¶ 10. 20 6 Respondents' evidence indicates Petitioner was released from custody and commenced 21 ICE supervision on March 8, 2007 (not March 2, 2007). Medina Decl. ¶ 12. 22 7 Petitioner alleges that ICE released him and acknowledged that his continued detention 23 had become unreasonable and unjustified absent a realistic prospect of removal.

(Doc. 1 at 5-6). Petitioner alleges that critical impediments prevented the execution of his removal, including the 24 lack of a repatriation agreement between Laos and the United States, and Laos's historic non- cooperation with U.S. deportation efforts. Id. 25 8 DO Medina declares that Petitioner was detained at the Mesa Verde ICE Processing 26 Facility in Bakersfield, California from June 12, 2025, until September 5, 2025, when he was 27 transferred to California City Detention Facility.

Medina Decl. ¶¶ 13, 17. He declares that on July 30, 2025, Laos issued travel documents for Petitioner, and that August 2025, ICE attempted, but 28 was unable to facilitate, Petitioner's return to Laos via air. Id. ¶¶ 13, 15. 1 to reopen and issuing an emergency stay of removal). 2 On

December 16, 2025, DHS filed a pending motion to change venue to Adelanto 3 immigration court.

Medina Decl. ¶ 22. The government intends to file a Form I-261 Additional 4 Charges of Inadmissibility/Deportability charging Petitioner as removable under INA § 5 237(a)(2)(B) if the immigration judge grants the motion to change venue. Id. Petitioner's next 6 immigration court hearing is pending scheduling by the immigration court. Id. ¶ 23. 7 II. Governing Authority9 8 "A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat.*

Res. Def. Council, Inc., 555 U.S. 7, 24 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689–90 10 (2008)). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on 11 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the 12 balance of equities tips in his favor, and that an injunction is in the public interest." *Glossip v. 13 Gross*, 576 U.S. 863, 876 (2015) (quoting *Winter*, 555 U.S. at 20); *Weinberger v. Romero-Barcelo*, 14 456 U.S. 305, 311–12 (1982)). "Under *Winter*, plaintiffs must establish that irreparable harm is 15 likely, not just possible, in order to obtain a preliminary injunction." *Alliance for the Wild Rockies 16 v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.

2011). Likelihood of success on the merits is a threshold 17 inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 18 797 (9th Cir. 2025) (quoting *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020)). 19 "[I]f a plaintiff can only show that there are serious questions going to the merits—a lesser showing 20 than likelihood of success on the merits—then a preliminary injunction may still issue if the balance 21 of hardships tips sharply in the plaintiff's favor, and the other two *Winter* factors are satisfied." 22 *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir.

2014) (internal quotation marks 23 and citations omitted). 24 Preliminary injunctions are intended "merely to preserve the relative positions of the parties 25 until a trial on the merits can be held, and to balance the equities at the litigation moves forward." 26 27 9 The Court has jurisdiction over Petitioner's claim that he is improperly detained, pursuant to 28 U.S.C. § 2241.

See (Docs. 1, 5). In opposing issuance of a preliminary injunction, 28 Respondents do not challenge the Court's jurisdiction over this claim. See generally (Doc. 11). 1 *Lackey v Stinnie*, 604 U.S. 192, 200 (2025) (citations and quotations omitted). "The status quo 2 refers to 'the last uncontested status which preceded the pending controversy.'" *E.A.P.C. v. 3 Wofford*, No. 1:25-cv-01546-JLT-CDB, 2025 WL 3289185, at *8 (E.D.

Cal. Nov. 25, 2025) 4 (quoting *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963)). 5 III. Parties' Contentions 6 Petitioner moves for a preliminary injunction ordering his immediate release from ICE 7 custody and enjoining the Department of Homeland Security ("DHS") from removing him from 8 the United States while his habeas petition is pending.

(Doc. 6 at 1). He contends that this relief 9 is necessary to prevent ongoing irreparable harm from his harmful and prolonged detention for over 10 six months since June 12, 2025, despite an immigration judge reopening and entering a stay of his 11 removal proceedings. Id. Petitioner asserts that his continued detention serves no legitimate 12 purpose because it is unlikely he will be removed to Laos in the reasonably foreseeable future given 13 Laos's refusal to issue travel documents for his repatriation, and ICE has not provided Petitioner a 14 bond hearing or other procedural safeguards that would apply under INA § 236, the pre-removal 15 detention statute which he contends governs his custody.

Id. at 2. Petitioner argues that he meets 16 the criteria for preliminary injunctive relief as he is likely to succeed on the merits of his petition. 17 Id. He contends that ICE's authority to detain him under INA § 241 ceased once his removal order 18 was stayed and reopened, and in any event his indefinite detention without a realistic prospect of 19 removal violates the limits set by *Zadvydas v. Davis*, 533 U.S. 678 (2001) and its progeny.

Id. 20 Petitioner contends that he is suffering irreparable harm each day he remains unlawfully detained, 21 losing his liberty, and separated from his family in violation of his constitutional rights. Id. 22 Petitioner argues that the balance of equities strongly favor him as his harm greatly outweighs any 23 interest the government has in his detention when removal cannot be effectuated in the near future.

24 Id. He argues that the public interest is served by preventing unlawful detention, especially here 25 where Petitioner is a long-time lawful resident with deep community ties and a record of 26 compliance on supervised release. Id. 27 Respondents contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 28 1226(c) as an alien who is deportable by reason of having committed a qualifying offense covered 1 in 8 U.S.C. § 1227(a)(2)(B), and that the Court should dismiss Petitioner's petition.

(Doc. 11 at 1). 2 Respondents argue that upon Petitioner's re-detention on June 12, 2025, his detention was 3 mandatory under 8 U.S.C. § 1231 pursuant to a final order of removal. Id. at 2. Respondents assert 4 that though Petitioner is correct that, upon the reopening of an immigration case, that order serves 5 to revoke the final order of removal and thereby change the detention status to discretionary under 6 8 U.S.C. § 1226(a), here, upon the reopening of his immigration case, Petitioner's qualifying 7 criminal conviction makes him subject to mandatory detention under § 1226(c) rather than under § 8 1231.

Id. at 2-3. Respondents concede in response to the Court's minute order (Doc. 8) that the 9 government has no knowledge of any facts suggesting a change in circumstances that is material to 10 the issue of whether Petitioner is a danger to public safety or a flight risk. Id. 11 Petitioner argues in reply that Respondents' opposition does not cure the defect in the 12 government's

revocation of his longstanding Order of Supervision and Petitioner's re-detention 13 based on a claim of "imminent removal" that DHS's record does not support.

(Doc. 12 at 1). 14 Petitioner contends that the June 12, 2025, Notice of Revocation of Release served on him does not 15 allege any violation of supervision conditions and instead invokes "changed circumstances" and 16 asserts that "ICE is in possession of a travel document to effect [his] imminent removal[.]" Id. 17 Petitioner argues that the discrepancy in the government's misrepresentation is not immaterial as it 18 shows DHS cannot justify Petitioner's re-detention and the deprivation of his liberty.

Id. at 2. 19 Discussion 20 A. Exhaustion 21 1. Governing Authority 22 "Section 2241 ... 'does not specifically require petitioners to exhaust direct appeals before 23 filing petitions for habeas corpus.'" *Laing v. Ashcroft*, 370 F.3d 994, 997 (9th Cir. 2004) (citing 24 *Castro-Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001)).

The Ninth Circuit, however, requires 25 "as a prudential matter, that habeas petitioners exhaust available judicial and administrative 26 remedies before seeking relief under § 2241." *Castro-Cortez*, 239 F.3d at 1047 (citing *United 27 States v. Pirro*, 104 F.3d 297, 299 (9th Cir. 1997)). "Under the doctrine of exhaustion, 'no one is 28 entitled to judicial relief for a supposed or threatened injury until the prescribed... remedy has been 1 exhausted.'" *Laing*, 370 F.3d at 997-98 (citing *McKart v. United States*, 395 U.S. 185, 193 (1969)).

2 "Exhaustion can be either statutorily or judicially required. If exhaustion is required by statute, it 3 may be mandatory and jurisdictional, but courts have discretion to waive a prudential requirement." 4 Id. at 998 (citing *El Rescate Legal Servs., Inc. v. Executive Office of Immigration Review*, 959 F.2d 5 742, 746 (9th Cir. 1991); *Stratman v. Watt*, 656 F.2d 1321, 1325-26 (9th Cir.

1981)). "Although 6 courts have discretion to waive the exhaustion requirement when it is prudentially required, this 7 discretion is not unfettered.... Lower courts ... [must] first determin[e whether] the exhaustion 8 requirement has been satisfied or properly waived." Id. (internal citations omitted); see *Murillo v. 9 Mathews*, 588 F.2d 759, 762 n.8 (9th Cir.

1978) ("Although the application of the rule requiring 10 exhaustion is not jurisdictional, but calls for the sound exercise of judicial discretion, it is not lightly 11 to be disregarded."). 12 2. Analysis 13 Petitioner contends in his petition that to the extent any administrative remedies are deemed 14 to apply, he has either exhausted them or exhaustion should be excused.

(Doc. 1 at 3 ¶ 3). He 15 asserts that ICE has already conducted the initial 90-day post-order custody review and informed 16 Petitioner that his detention would continue. Id. He contends that because he remains detained 17 with no realistic prospect of removal and because further administrative review would not alter the 18 legal impossibility of his removal to Laos, any

additional administrative remedies are either 19 exhausted or futile, and any further administrative delay would be futile and only prolong his 20 unlawful detention.

Id. 21 Respondents do not address exhaustion of administrative remedies in their response to the 22 OSC. See (Doc. 11). 23 The undersigned finds that the prudential exhaustion requirement should be waived as it 24 would be futile to seek release by administrative means. Specifically, because Respondents 25 contend that Petitioner is subject to mandatory detention under 8 U.S.C. § 1226(c)(1)(B) as an alien 26 who is deportable by reason of having committed a qualifying criminal offense under § 27 1227(a)(2)(A)(ii), (A)(iii), (B), (C), or (D), of Title 8, (see Doc.

11 at 2-3), and Petitioner must 28 remain incarcerated under that framework without individualized process while the government 1 seeks to litigate removal proceedings in immigration court, (see Medina Decl. ¶¶ 18, 21-23), and it 2 does not appear likely that Petitioner's removal to Laos is imminent, Petitioner therefore lacks 3 recourse statutory or administrative means.

Avilez v. Garland, 69 F.4th 525, 533-34 (9th Cir. 2023) 4 (citing *Jennings v. Rodriguez*, 583 U.S. 281, 303, 305-06 (2018) (“We hold that § 1226(c) mandates 5 detention of any alien falling within its scope and that detention may end prior to the conclusion of 6 removal proceedings ‘only if’ the alien is released for witness-protection purposes” and “§ 1226(c) 7 makes clear that detention of aliens within its scope must continue ‘pending a decision on whether 8 the alien is to be removed from the United States.’”)); see *Hernandez v. Sessions*, 872 F.3d 976, 9 998 (9th Cir.

2017) (“[A] court may waive the prudential exhaustion requirement if ‘administrative 10 remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile 11 gesture, irreparable injury will result, or the administrative proceedings would be void.’”) (quoting 12 *Laing*, 370 F.3d at 1000); *Chavez v. Noem*, -- F. Supp. 3d. --, 2025 WL 2730228, at *4 (S.D.

Cal. 13 Sept. 24, 2025) (“The Court therefore finds the prudential exhaustion requirements waived for 14 futility. Because Petitioners need to show only one of the *Laing* factors applies, ... the Court need 15 not address the other factors.”) (internal citation omitted). 16 Further, Petitioner has demonstrated irreparable harm. He has been detained for over six 17 months since June 12, 2025, and not has received a bond hearing despite the government conceding 18 that it “has no knowledge of any facts suggesting a change in circumstances that is material to the 19 danger to public safety or flight risk” of Petitioner to justify his re-detention.

Therefore, and 20 because Respondents do not object to and do not otherwise address Petitioner's arguments that 21 exhaustion should be waived for futility and on grounds that continued detention causes him 22 irreparable harm, waiver of the prudential exhaustion requirement for Petitioner's claim for habeas 23 corpus relief is appropriate. See, e.g., *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1254-55 (W.D.

24 Wash. 2025) (waiving exhaustion requirement); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 25 962 (N.D. Cal. 2019) (same); *Cortez v. Sessions*, 318 F. Supp. 1134, 1138-39 (N.D. Cal. 2018) 26 (same); *Carmelo Beltran v. Kristi Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837, at *4 (S.D. 27 Cal. Nov. 4, 2025) (same); *J.A.C.P. v. Wofford*, No. 1:25-cv-01354-KES-SKO (HC), 2025 WL 28 3013328, at *7, n.9 (E.D.

Cal. Oct. 27, 2025) (same); *Kuzmenko v. Phillips*, No. 25-cv-00663-DJC- 1 AC, 2025 WL 779743, at *4 (E.D. Cal. Mar. 10, 2025) (same)). 2 B. Likelihood of Success on the Merits 3 1. Relevant Statutory Detention Authority 4 Respondents maintain that Petitioner is “subject to mandatory detention under 8 U.S.C. § 5 1226(c)(1)(B).” (Doc. 11 at 2-3). This Court previously condensed the holdings of the key 6 Supreme Court and Ninth Circuit rulings applicable here, and the undersigned adopts that analysis 7 herein (see *Kakkar v. Chestnut*, No. 1:25-CV-1627 JLT SAB, 2025 WL 3638298, at *4-5 (E.D.

8 Cal. Dec. 15, 2025)): 9 Under 8 U.S.C. § 1226(a)(2), DHS “may continue to detain” or “may release the 10 alien” on bond or conditional parole, “pending a decision on whether the alien is to be removed from the United States.” Such conditional release, however, may be 11 revoked by DHS “at any time.” 8 U.S.C. § 1226(b).

The Board of Immigration Appeals (“BIA”) has placed the following limitation on this authority: “where a 12 previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.” *Matter of Sugay*, 13 17 I&N Dec. 637, 640 (BIA 1981). 14 Alternatively, under Section 1226(c), DHS “shall take into custody any alien who 15 is deportable by reason of having committed any offense covered in section 1227(a) (2)(A)(iii) of this title.” 8 U.S.C. § 1226(c).

This includes any “alien who 16 is convicted of an aggravated felony.” 8 U.S.C. § 1227(a)(2)(A) (iii). Under this provision, non-citizens may be released “only if the Attorney General decides... 17 that release... is necessary to provide protection to a witness, a potential witness, a 18 person cooperating with an investigation... and the alien will not pose a danger to the safety of other[s]... and is likely to appear for any scheduled proceeding.” *Id.* 19 at § 1226(c)(4).

Thus, noncitizens detained under this category are not entitled to bond hearings as those detained under § 1226(a) are. See *Jennings v. Rodriguez*, 20 583 U.S. 281, 303–304 (2018) (“By expressly stating that the covered aliens may be released ‘only if’ certain conditions are met, § 1226(c)(2), the statute expressly 21 and unequivocally imposes an affirmative prohibition on releasing detained aliens 22 under any other conditions.”) (emphasis in original).

23 Section 1226(c)’s mandatory detention requirement applies even if the government does not immediately detain a criminal non-citizen upon immediate release from a 24 correctional facility. See *Nielsen v. Preap*, 586 U.S. 392, 396 (2019) (finding that the Ninth Circuit’s interpretation—

namely, that criminal aliens not arrested 25 immediately upon release from criminal custody are exempt from § 1226(c)'s 26 mandatory detention and thus entitled to a bond hearing—is wrong).

However, the Supreme Court expressly noted that its decision, “on the meaning of that statutory 27 provision[,] does not foreclose as-applied challenges—that is, constitutional challenges to applications of the statute.” *Id.* at 420. Courts routinely review as- 28 1 applied constitutional challenges to § 1226(c) detention. See e.g., *Perera v. Jennings*, No. 21-cv-04136-BLF, 2021 WL 2400981, at *4 (N.D.

Cal. June 11, 2021); *Pham v. Becerra*, No. 23-cv-01288-CRB, 2023 WL 2744397, at *5 (N.D. Cal. March 31, 2023); *Carballo v. Andrews*, No. 1:25-cv-00978-KES-EPG, 2025 3 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025). 4 5 As Respondents correctly note, § 1226(c) also authorizes immigration authorities to take 6 into custody noncitizens deportable by reason of having committed any offense covered in § 7 1227(a)(2)(B).

See (Doc. 11 at 3). This includes any noncitizen who (1) is convicted at “any time 8 after admission of a violation of (or a conspiracy or attempt to violate) any law or regulation of a 9 State, the United States, or a foreign country relating to a controlled substance ..., other than a 10 single offense involving possession for one’s own use of 30 grams or less of marijuana[,]” or (2) 11 any noncitizen “who is, or at any time after admission has been, a drug user or addict[.]” 8 U.S.C. 12 § 1227(a)(2)(B)(i)&(ii).

Because Respondents show that Petitioner is subject to mandatory 13 detention under § 1226(c) based on his conviction of violation of California Health and Safety Code 14 § 11370.1(A) for possession of a controlled substance while armed, (see *Medina Decl.* ¶ 6), under 15 the statutory framework above, Petitioner is subject to § 1226(c)(4)'s release provision and 16 therefore is not entitled to bond hearings in the same fashion as those detained under § 1226(a).

17 Notwithstanding the undersigned’s finding that Petitioner is subject to mandatory detention 18 under § 1226(c), here, Petitioner raises a due process argument that his detention under § 1226(c) 19 “is being applied in an unconstitutional manner by maintaining prolonged detention without the 20 process due in this posture[,]” e.g., a bond hearing. See (Doc.

6 at 9) (emphasis added). As 21 explained in the statutory scheme above, Preap “does not foreclose as-applied challenges ... to 22 applications of [§ 1226(c)].” *Preap*, 586 U.S. at 420; *Kakkar*, 2025 WL 3638298 at *5. 23 Therefore, the undersigned considers Petitioner’s as-applied challenge to his re-detention 24 raised in his due process claim. See (Doc. 1 at 16-22).

25 2. Due Process 26 a. Governing Authority 27 “The Due Process Clause of the Fifth Amendment mandates that ‘[n]o person shall... be 28 deprived of life, liberty, or property, without due process of law.’” *United States v. Quintero*, 995 1 F.3d 1044, 1051 (9th Cir. 2021) (citing U.S. Const. amend. V). “The Due Process Clause ‘protects 2 individuals against two types of

government action’: violations of substantive due process and 3 procedural due process.” Id. (citing *United States v. Salerno*, 481 U.S. 739, 746 (1987)).

4 “Procedural due process imposes constraints on governmental decisions which deprive 5 individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the 6 Fifth ... Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). “[F]reedom from 7 imprisonment—from government custody, detention, or other forms of physical restraint—lies at 8 the heart of the liberty that Clause protects.” *Zadvydas*, 533 U.S. at 690. “Procedural due process 9 requires that, even where a deprivation of liberty survives substantive due process scrutiny, the 10 action ‘be implemented in a fair manner.’” *Quintero*, 995 F.3d at 1051-52 (citing *Salerno*, 481 11 U.S. at 746). “The ‘right to be heard before being condemned to suffer grievous loss of any kind, 12 even though it may not involve the stigma and hardships of a criminal conviction, is a principle 13 basic to our society.’” *Mathews*, 424 U.S. at 902 (citation omitted). “The fundamental requirement 14 of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” 15 Id. (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). “[D]ue process is flexible and calls for 16 such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 17 471, 481 (1972).

18 “[T]he Due Process Clause applies to all ‘persons’ within the United States, including 19 aliens, whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 20 U.S. at 693 (citations omitted); see *Hernandez*, 872 F.3d at 990 (“[I]t is well-established that the 21 Due Process Clause stands as a significant constraint on the manner in which the political branches 22 may exercise their plenary authority.”). “In the context of immigration detention, it is well-settled 23 that ‘due process requires adequate procedural protections to ensure that the government’s asserted 24 justification for physical confinement outweighs the individual’s constitutionally protected interest 25 in avoiding physical restraint.’” *Hernandez*, 872 F.3d at 990 (quoting *Singh v. Holder*, 638 F.3d 26 1196, 1203 (9th Cir.

2011)). 27 b. Liberty Interest and Mathews Factor Test 28 The issue here is whether Petitioner has shown a likelihood of success on the merits of his 1 due process claim that he is entitled to immediate release under appropriate supervision and for 2 enjoinder of further unlawful detention unless there is a material change in his removal situation 3 or other circumstances that would justify his detention.

See (Doc. 1 at 22-23). On Petitioner’s as- 4 applied challenge, the Court considers (1) “whether there exists a protected liberty interest under 5 the Due Process Clause, and ...[(2)] the procedures necessary to ensure any deprivation of that 6 protected liberty interest accords with the Constitution.” *Garcia v. Andrews*, No. 2:25-cv-01884- 7 TLN-SCR, 2025 WL 1927596, at *2 (E.D.

Cal. July 14, 2025) (citing *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989)). 9 Here, Petitioner shows that, under due procedural due process, he has an underlying, 10 continuing liberty interest from re-detention. Specifically, Petitioner was released on an Order of 11 Supervision in March 2007. (Doc. 1 at 5); see *Medina Decl.* ¶ 12.

The decision to release Petitioner 12 appears to be a tacit acceptance that Petitioner was not a flight risk nor a danger to the community. 13 Petitioner remained released from immigration detention for a significant amount of time—over 18 14 years—while supporting his family, building a life in the community, and without violating the 15 terms of his supervised release.

Id. at 5-6. Indeed, Respondents do not assert that Petitioner failed 16 to comply with the conditions of his release, nor do they have any facts to suggest Petitioner is a 17 danger to the public or a flight risk. See (Doc. 11). 18 The undersigned agrees with other courts and other judges of this Court that noncitizens 19 released from immigration custody on general orders of supervision (like Petitioner here) have a 20 liberty interest in their freedom that implicates protections under principles of procedural due 21 process.

See *Kakkar*, 2025 WL 3638298 at *5 (discussing, *inter alia*, *Perera*, which “involv[ed] a 22 legal permanent resident, convicted of possession with intent to distribute controlled substances, 23 released from prison in 2015, and detained by ICE for the first time in April 2021” but “successfully 24 reintegrated into their communities for several years before being detained pursuant to § 1226(c)” 25 and succeeded in “raising [an] as-applied due process challenge[] to [his] detention without a bond 26 hearing[.]”); *Guillermo M.R. v. Kaiser*, 791 F. Supp. 3d 1021, 1031 (N.D.

Cal. 2025) (“The fact 27 that Petitioner is subject to discretionary conditions of release likewise does not mean he lacks a 28 protectable liberty interest and can be re-detained without process.”); see *id.* (“[E]ven if 1 immigration detainees must wait months before a periodic re-review of their detention, those 2 already released on immigration bond possess an interest in their continued liberty, which grows 3 over time, and a due process right to a hearing before being re-detained.”); *Nak Kim Chhoeun v. 4 Marin*, 442 F. Supp. 3d 1233, 1245 (C.D.

Cal. 2020). Accord *Doe v. Becerra*, 787 F. Supp. 3d 5 1083, 1099 (E.D. Cal. 2025) (considering in connection with a petitioner’s procedural due process 6 claim that “[t]he lengthy duration of his conditional release as well as the meaningful connections 7 Petitioner seems to have made with his community during that time create a powerful interest for 8 Petitioner in his continued liberty”); *Ramazan M. v. Tonya Andrews*, No. 1:25-cv-01356-KES-SKO 9 (HC), 2025 WL 3145562, at *5-6 (E.D.

Cal. Nov. 10, 2025) (“Even when a statute allows the 10 government to arrest and detain an individual, a protected liberty interest under the Due Process 11 Clause may entitle the individual

to procedural protections not found in the statute”). Cf. *Daley v. 12 Andrews*, No. 1:25-cv-00922-KES-CDB, 2026 WL 101840, at *9-10 (E.D. Cal. Jan. 14, 2026) 13 (finding a petitioner mandatorily detained pursuant to § 1226(c) did not have a protectible liberty 14 interest because he had remained in continuous custody and never released on supervision).

15 Because Petitioner has shown he has a protected liberty interest to remain free from re- 16 detention based on his supervised release, the undersigned must determine what process is due 17 before the government may terminate that liberty interest.

To determine this, the undersigned 18 considers the following factors articulated in *Mathews*: “[(1)] the private interest that will be 19 affected by the official action; [(2)] the risk of an erroneous deprivation of such interest through 20 the procedures used, and the probable value, if any, of additional or substitute procedural 21 safeguards; and [(3)] the Government's interest, including the function involved and the fiscal and 22 administrative burdens that the additional or substitute procedural requirement would entail.” 23 *Mathews*, 424 U.S. at 335; see *Hernandez*, 872 F.3d at 993-94 (applying *Mathews* test in 24 immigration detention context), at 993 (“The appropriateness of the requirement that ICE and IJs 25 consider financial circumstances and alternative conditions of release is confirmed by the balance 26 of factors under *Mathews*[.]”).

27 As to the first factor, Petitioner has shown he has a significant private interest in remaining 28 on release from detention. He has been out of immigration custody for over 18 years, and during 1 that time, has supported his family, maintained gainful employment, built his life in the community, 2 and has complied with all obligations of his supervised release, including periodic ICE check-ins, 3 and updating his address and contact information.

Petitioner’s continued liberty interest in 4 remaining on release is undermined by his re-detention without a bond hearing. *Doe*, 787 F. Supp. 5 3d at 1093-94 (“Freedom from imprisonment is at the core of the Due Process Clause....

The 6 lengthy duration of his conditional release [for over five years] as well as the meaningful 7 connections [he] seems to have made with his community during that time create a powerful interest 8 for [him] in his continued liberty.”). 9 As to the second factor, the risk of an erroneous deprivation of Petitioner’s liberty interest 10 is considerable here where he has not received any bond or custody redetermination.

Id. at 1094; 11 *A.E. v. Andrews*, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 12 2025). Because there were no procedural safeguards to determine if Petitioner’s re-detention was 13 justified, ICE has already conducted the initial 90-day post-order custody review and informed 14 Petitioner that his detention would continue (see Doc. 1 at 3), and Respondents concede there are 15 no facts indicating any change in circumstances while Petitioner was on release sufficient to justify 16 Petitioner’s re-detention, the probable value of the

additional procedural safeguard of a bond hearing to determine whether Petitioner is a flight risk or a danger to the community is high such that this factor weighs in favor of granting a bond hearing.

See *Doe*, 787 F. Supp. 3d at 1094 (“[G]iven that Petitioner was previously found to not be a danger or risk of flight and the unresolved questions about the timing and reliability of the new information, the risk of erroneous deprivation remains high.”); *A.E.*, 2025 WL 1424382 at *5; *Ramazan*, 2025 WL 3145562, at *6.

Therefore, this factor weighs in favor of granting a bond hearing. Third, the government’s interest in detaining Petitioner without a bond hearing is low. *Doe*, 787 F. Supp. 3d at 1094 (citation omitted); see *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019)); see also *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 26, 2025) (“And, like other Courts in this district, the Court concludes that the government’s interest in re-detaining Petitioner-[] without a hearing is ‘low,’ particularly in light of the fact that Petitioner[] has long complied with his reporting requirements.”). “The effort and cost to provide 1 Petitioner with [a bond hearing] is minimal[.]” *Doe*, 787 F. Supp. 3d at 1094.

Therefore, any 2 additional burden from requiring the government to seek a bond hearing before it may re-detain 3 Petitioner does not outweigh his liberty interest and the risk of erroneous deprivation. Accordingly, 4 this factor weighs in favor of granting a bond hearing. 5 In sum, the undersigned finds that, under *Mathews*, Petitioner demonstrates a likelihood of 6 success on the merits of his claims asserting violations of his procedural due process rights.

7 C. Irreparable Harm 8 The Court now turns to the second Winter factor. “It is well established that the deprivation 9 of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Hernandez*, 872 F.3d at 994 10 (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)). “When an alleged deprivation 11 of a constitutional right is involved, most courts hold that no further showing of irreparable injury 12 is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir.

2005) (quoting *Wright, 13 Miller, & Kane*, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)). 14 Petitioner contends that absent a preliminary injunction, he will continue to suffer 15 irreparable injury each day he remains unlawfully detained and the attendant injuries to his 16 constitutional and statutory rights and well-being. (Doc. 6 at 17-18).

The Court agrees. As noted 17 above, Petitioner shows that he is likely to succeed on the merits of his claim that his detention 18 violates procedural due process. Therefore, Petitioner faces irreparable harm absent a preliminary 19 injunction. This Winter factor weighs in favor of preliminary injunctive relief. 20 D. Balance of Equities and Public Interest 21 “When ... the

nonmovant is the government, the last two Winter factors ‘merge.’” *Baird v. 22 Bonta*, 81 F.4th 1036, 1040 (9th Cir.

2023) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009); 23 *Roman v. Wolf*, 977 F.3d 935, 940-41 (9th Cir. 2020) (per curiam)). 24 Here, Respondents do not address the balance of the equities and public interest factors. 25 See (Doc. 11).

Thus, Respondents fail to show that any harm they face here is more than minimal, 26 and do not identify any material burden they would experience from issuance of the requested 27 injunction. Therefore, the Court has “‘little difficulty concluding that the balance of hardships tips 28 decidedly in [Petitioner’s] favor.’” See *Hernandez*, 872 F.3d at 996 (quoting *Lopez v. Heckler*, 713 1 F.2d 1432, 1437 (9th Cir.

1983)). 2 Additionally, the Court finds that the public interest also weighs in Petitioner’s favor. “It 3 is always in the public interest to prevent the violation of a party’s constitutional rights.” *Index 4 Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citation omitted); 5 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“[P]ublic interest concerns are implicated 6 when a constitutional right has been violated, because all citizens have a stake in upholding the 7 Constitution.”) (citations omitted). “The public has a strong interest in upholding procedural 8 protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the 9 public of immigration detention are staggering.” *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 10 1676854, at *3 (N.D.

Cal. June 14, 2025) (citing *Jorge M.F. v. Wilkinson*, No. 21-CV-01434-JST, 11 2021 WL 783561, at *3 (N.D. Cal. Mar. 1, 2021)). 12 Therefore, these Winter factors weigh in favor of granting preliminary injunctive relief. 13 E. Remedy 14 Based on the foregoing, the undersigned finds that Petitioner has met the requirements to 15 issue a preliminary injunction.

Petitioner shows a likelihood of success regarding his due process 16 claim sufficient to warrant his release ICE custody unless there is a material change in his removal 17 situation or other circumstances would justify his lawful re-detention under § 1226(c).

As 18 Respondents do not provide any other basis to detain Petitioner and concede there are no facts 19 suggesting Petitioner is any risk of flight or danger to the community, the appropriate remedy is 20 Petitioner’s immediate release. 21 Further, the undersigned will recommend the government from re-arresting and detaining 22 Petitioner for more than 14 days without a bond hearing before a neutral arbiter at which the 23 government bears the burden of justifying Petitioner’s re-detention by clear and convincing 24 evidence that he is a flight risk or danger to the community or that there is a material change in his 25 removal situation that would justify his re-detention under the law.

26 IV. Conclusion and Recommendation 27 Accordingly, IT IS RECOMMENDED that: 28 1. Petitioner's motion for preliminary injunction (Doc. 6) be GRANTED; 1 2. Respondents be ORDERED to release Petitioner immediately; 2 3. Respondents be ENJOINED from re-detaining Petitioner for more than 14 days without 3 a bond hearing before a neutral arbiter at which the government must demonstrate by 4 clear and convincing evidence that Petitioner is a flight risk or danger to the community 5 or that there is a material change in his removal situation such that physical custody is 6 legally justified; and 7 4.

The parties be ordered to file, no later than 14 days from any adoption of these Findings 8 and Recommendations, a joint status report as to Petitioner's status and address therein 9 whether a further briefing schedule need be set to address the petition on the merits. 10 These Findings and Recommendations will be submitted to the United States District Judge 11 || assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)().

Within 14 days after 12 | being served with a copy of these Findings and Recommendations, a party may file written 13 | objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to 14 | Magistrate Judge's Findings and Recommendations" and shall not exceed 15 pages without leave 15 | of Court and good cause shown.

The Court will not consider exhibits attached to the Objections, 16 | but a party may refer to exhibits in the record by CM/ECF document and page number. Any pages 17 | filed in excess of the 15-page limitation may be disregarded by the District Judge when reviewing 18 | these Findings and Recommendations under 28 U.S.C. § 636(b)(I)(C). A party's failure to file any 19 | objections within the specified time may result in the waiver of certain rights on appeal.

Wilkerson 20 | v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 21 | IT IS SO ORDERED. | Dated: _ January 15, 2026 | Word bo 23 UNITED STATES MAGISTRATE JUDGE 24 25 26 27 28 17