UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Sanjiv Kakkar v. Chestnut et al.

Case No. 1:25-CV-1627 JLT SAB (E.D. Cal. Dec. 15, 2025) · No. 1:25-CV-1627 · Decided December 15, 2025

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 SANJIV KAKKAR, Case No. 1:25-CV-1627 JLT SAB 12 Petitioner, ORDER GRANTING IN PART REQUEST FOR TEMPORARY RESTRAINING ORDER 13 v. AND REFERRING MATTER TO ASSIGNED MAGISTRATE JUDGE 14 CHESTNUT et al., (Doc. 3) 15 Respondents. 16 I. INTRODUCTION 17 Before the Court for decision is Sanjiv Kakkar's ("Petitioner") request for a temporary 18 restraining order (Doc.

3) filed in conjunction with his petition for a writ of habeas corpus 19 brought under 28 U.S.C. § 2241 challenging his ongoing immigration detention. (Doc. 1.) 20 Having evaluated the TRO request, (Doc. 3), Respondents' opposition, (Doc. 8), and Petitioner's 21 reply (Doc. 10) in light of the entire record, the Court GRANTS IN PART the requested TRO 22 and REFERS the matter to the assigned magistrate judge for a determination on the merits.

23 II. FACTUAL & PROCEDURAL BACKGROUND 24 Petitioner is a 64-year-old national of India and citizen of the United Kingdom. (Doc. 1 at 25 2; Doc. 1-1 at 8.) He entered the United States as a lawful permanent resident on May 27, 1992, 26 and has lived in the country since then. (Id.) He is married to a U.S. citizen with whom he shares 27 four U.S. citizen children.

(Id.) He is self-employed and runs his own business. (Doc. 8-1 at 46.) 28 On November 8, 2016, Petitioner was convicted under 18 U.S.C. §§ 1014 and 2 for 1 making false statements to a bank and aiding and abetting, and 18 U.S.C. § 1343 for wire fraud. 2 (Doc. 1 at 2 n.1; Doc. 8 at 2; Doc. 8-1 at 22.)

On April 3, 2017, the court sentenced him to 48 3 months in federal prison and ordered him to pay $4,208,566.36 in restitution. (Doc. 1 at 2; Doc. 4 8-1 at 22–26, 45); see also United States v. Kakkar, No. 5:13-cr-00736-EJD.

The court also 5 imposed a three-year term of supervised release from April 13, 2021, to April 12, 2024. (Doc. 8 6 at 2; Doc. 8-1 at 45.) Petitioner's crimes constituted aggravated felonies since the loss to the 7 victim exceeded $10,000. (Doc. 8 at 2); see also 8 U.S.C. § 1101(a)(43)(M)(i). Apart from this 8 conviction, Petitioner has no further criminal history.

(Doc. 1 at 3.) 9 While incarcerated, on October 12, 2018, Immigration Customs and Enforcement 10 encountered the Petitioner at the Taft Federal Correctional Facility and interviewed him. (Doc.

1 11 at 2; Doc. 8-1 at 19.)

On November 2, 2018, Department of Homeland Security issued a Notice 12 to Appear which placed the Petitioner into removal proceedings. (Doc. 1 at 2; Doc. 1-1 at 6.) 13 DHS charged the respondent with removability under the Immigration and Nationality Act § 14 237(a)(2)(A)(iii), as an alien who has committed an aggravated felony as defined in INA § 15 101(a)(43)(M).

(Doc. 8-1 at 8, 11.) Petitioner began attending removal proceedings while 16 incarcerated under the Institutional Hearing Program, which allows non-citizens to undergo 17 removal proceedings while serving time in certain correctional facilities. (Doc. 1 at 2.)

On April 18 26, 2019, Petitioner filed a Motion to Terminate arguing that DHS had not met its burden in 19 establishing removability. (Doc. 8-1 at 12.) At a master hearing on May 22, 2019, the 20 Immigration Court denied Petitioner's Motion to Terminate and sustained the charge of removal. 21 (Id.) 22 On August 27, 2019, United States Citizenship and Immigration Services approved the I- 23 130 Petition for Alien Relative filed by Petitioner's spouse.

(Doc. 8-1 at 3.) Petitioner was 24 subsequently released from prison on April 13, 2021, (Doc. 8-1 at 42), and was not detained by 25 ICE at that time. (Doc. 1 at 2.) Upon release, Petitioner continued to attend his removal 26 proceedings in a non-detained setting. (Doc. 1 at 2.)

On December 6, 2023, Petitioner submitted 27 an I-485 application to register permanent residence or adjust status and requested an I-601 28 waiver of inadmissibility. (Doc. 8-1 at 3.) 1 On April 8, 2024, at the end of his supervised release term, a U.S. Probation Officer 2 recommended that Petitioner's supervision terminate as scheduled because he has "remained in 3 compliance with the release conditions, apart from his outstanding restitution balance." (Doc.

8-1 4 at 45–46.) The Officer indicated that Petitioner understood that he had an obligation to continue 5 making restitution payments in the outstanding amount of $2,674,415.06 1, even after the 6 expiration of his supervision term. (Id. at 46.) Throughout the Petitioner's term of supervision, 7 "he maintained a stable residence in Saratoga, California" and has been "gainfully self-employed 8 with Kakkar Hotel Group LLC in Whitethorn, CA, as an owner, since April 20, 2021, while 9 earning $2,000/ month." (Id.)

10 On August 20, 2025, Petitioner returned to the United States from the United Kingdom, 11 where he had travelled to visit his elderly mother-in-law. (Doc. 1 at 3; Doc. 8 at 3.) When he 12 arrived at the San Francisco International Airport, he was referred to passport control for further 13 inspection because of a biometric match. (Doc. 8-1 at 3, 18.) Through the biometric match, 14 Customs and Border Protection ("CBP") learned about Petitioner's criminal history.

(Doc. 8-1 at 15 2, 18–19.) Petitioner was then detained by CBP. (Doc. 1 at 3; Doc. 8-1 at 3.) According to the 16 Petitioner, he was kept at the airport for approximately one week. (Doc. 1 at

3.) Petitioner claims 17 that he was detained without notice or the opportunity for a due process hearing. (Id.)

On August 18 21, 2025, Petitioner requested CBP release him from custody on his own recognizance, or on the 19 payment of a bond, to which CBP never responded. (Id.) On August 26, 2025, CBP transferred 20 him to ICE custody. (Id.) Petitioner is now currently detained at California City ICE Detention 21 Facility in California City, California. (Id.) 22 On November 12, 2025, Petitioner appeared before the Immigration Court.

(Doc. 1 at 3; 23 Doc. 8-1 at 4.) At that time, the Immigration Judge scheduled a final hearing for January 12, 24 2026, to adjudicate Petitioner's I-485 application to register as permanent residence and his 25 waiver of inadmissibility under INA § 212(h). (Id.)

However, according to Petitioner's counsel, 26 27 1 Although Petitioner repeatedly claims to have "fully paid the court-ordered restitution," (Doc. 1 at 18; Doc. 3 at 26), such claim is directly contrary to the declaration of the Probation Officer who stated that the "outstanding 28 restitution balance as of April 8, 2024, is $2,674,415.04" as only "$1,534,200.30 has been collected." (Doc.

8-1 at 1 it is unclear whether this hearing will occur as scheduled because "the Immigration Judge 2 assigned to [the] case—Judge Jerome M. Rothschild, Jr.—is currently on leave from the court for 3 an indefinite period." (Doc. 10-1 at 2.) 4 On November 24, 2025, Petitioner filed a petition for writ of habeas corpus pursuant to 28 5 U.S.C. § 2241, alleging that his Fifth Amendment due process rights have been violated because 6 (1) he was detained without a pre-deprivation hearing before a neutral adjudicator and (2) 7 Petitioner's civil immigration detention does not serve any permissible purpose because he is not 8 a flight risk or dangerous to the community.

(Doc. 1 at 23–24.) Petitioner brings an as-applied 9 challenge to his mandatory detention. (Id.) Petitioner requests this Court (1) enjoin Respondents 10 from transferring him outside the jurisdiction of the Eastern District pending resolution of this 11 case; (2) order his immediate release from DHS custody on any basis this Court finds proper; (3) 12 order Respondents to provide a pre-deprivation hearing prior to any future re-detention where 13 Respondents demonstrate that he is a flight risk or danger to the community; and (4) declare that 14 DHS's detention of him violates the Fifth Amendment.

2 (Doc. 1 at 24–25.) On the same day, 15 Petitioner also filed a motion for a temporary restraining order, reiterating the same arguments 16 and requesting the same relief. (Doc. 3 at 14–31.) 17 On November 25, 2025, the Court issued a Minute Order calling for the filing of an 18 opposition and reply related to the temporary restraining order. (Doc. 6.)

Having considered the 19 entire record, the Court GRANTS IN PART the request for preliminary injunctive relief and 20 refers the matter to the assigned magistrate judge. 21 III. JURISDICTION 22 A. Habeas Corpus 23 Under 28 U.S.C. § 2241, the Court has the authority to determine a

petition for writ of 24 habeas corpus in which the petitioner asserts he is being held in custody "in violation of the 25 Constitution or laws or treaties of the United States." "The essence of habeas corpus is an attack 26 by a person in custody upon the legality of that custody, and that the traditional function of the 27 28 2 The petition for writ of habeas corpus also seeks reasonable costs and attorney fees, and such further relief as the 1 writ is to secure release from illegal custody." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973).

2 Petitioner seeks his immediate release from custody, which he contends violates the Fifth 3 Amendment Due Process Clause under the United States Constitution. (See Doc. 1; Doc. 3.) 4 Thus, he properly invokes the Court's habeas jurisdiction. 5 B. Judicial Review under the INA 6 The INA limits judicial review in many instances. Though 8 U.S.C § 1252(g) precludes 7 this Court from exercising jurisdiction over the executive's decision to "commence proceedings, 8 adjudicate cases, or execute removal orders against any alien," there is no removal order at issue 9 here and the central issue is Petitioner's continued detention.

Thus, this Court has the authority to 10 review the termination of Petitioner's release. See Jennings v. Rodriguez, 583 U.S. 281, 294 11 (2018) (holding that § 1252(g) precludes judicial review only as to the three areas specifically 12 outlined in the subsection); see also Reno v. American–Arab Anti–Discrimination Comm., 525 13 U.S. 471, 482 (1999). 14 IV.

ANALYSIS 15 The standard for issuing a TRO is the same as the standard for issuing a preliminary 16 injunction. See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n. 7 (9th Cir. 17 2001) (explaining that the analysis for temporary restraining orders and preliminary injunctions is 18 "substantially identical"). When seeking a TRO, plaintiffs must establish: (1) they are "likely to 19 succeed on the merits" of their claims, (2) they are "likely to suffer irreparable harm in the 20 absence of a preliminary injunction," (3) "the balance of equities tips in [their] favor" and (4) "an 21 injunction is in the public interest." Winter v. Nat.

Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). 22 The moving party has the burden to "make a showing on all four prongs" of the Winter test to 23 obtain a preliminary injunction. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 24 (9th Cir. 2011).

Thus, the moving party has "the burden of persuasion." Mazurek v. Armstrong, 25 520 U.S. 968, 972 (1997); Hecox v. Little, 104 F.4th 1061, 1073 (9th Cir. 2023). The Court may 26 weigh the request for a preliminary injunction with a sliding-scale approach. Alliance, at 1135 27 (9th Cir. 2011).

Accordingly, a stronger showing on the balance of hardships may support the 28 issuance of a preliminary injunction where there are "serious questions on the merits... so long 1 as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is 2 in the public

interest." Id. 3 The status quo refers to "the last uncontested status which preceded the pending 4 controversy." Tanner Motor Livery, Ltd. v. Avis, Inc., 316 F.2d 804, 809 (9th Cir.

1963) (quoting 5 Westinghouse Elec. Corp. v. Free Sewing Mach. Co., 256 F.2d 806, 808 (7th Cir. 1958)). In the 6 Court's view, that is the status before Petitioner was arrested. See Kuzmenko v. Phillips, No. 25- 7 CV-00663, 2025 WL 779743, at *3 (E.D. Cal. Mar. 10, 2025) (granting a temporary restraining 8 order requiring immediate release of the petitioner back to home confinement from custody, as a 9 restoration of the status quo).

10 A. Likelihood of Success on the Merits 11 This first factor "is the most important" under Winter, and "is especially important when a 12 plaintiff alleges a constitutional violation and injury." Baird v. Bonta, 81 F.4th 1036, 1041 (9th 13 Cir. 2023). Petitioner argues he is likely to succeed on his due process claim that he is entitled to 14 a pre-deprivation hearing.

(Doc. 3 at 14.) Specifically, Petitioner argues that Respondent 15 violated his due process because (1) he is a non-citizen who was formerly released on conditional 16 parole—as evidenced by ICE's decision not to detain him when released from criminal 17 incarceration in April 2021; (2) ICE failed to give him a pre-deprivation hearing before arbitrarily 18 arresting him in August 2025 thereby revoking his prior release; (3) there are no changed 19 circumstances in his case that justify the revocation his prior release (e.g., he has diligently 20 complied with immigration proceedings, has no further criminal history, has completed with his 21 conditions of supervised release); and (4) for the past four years, preceding his detention on 22 August 2025, he developed a liberty interest and made enduring attachments of normal life.

(See 23 id. at 14–18, 24–26; see also Doc. 1 at 12, 14, 18.) 24 a. Relevant Statutory Detention Authority 25 Under 8 U.S.C. § 1226(a)(2), DHS "may continue to detain" or "may release the alien" on 26 bond or conditional parole, "pending a decision on whether the alien is to be removed from the 27 United States." Such conditional release, however, may be revoked by DHS "at any time." 28 8 U.S.C. § 1226(b).

The Board of Immigration Appeals ("BIA") has placed the following 1 limitation on this authority: "where a previous bond determination has been made by an 2 immigration judge, no change should be made by [the DHS] absent a change of circumstance." 3 Matter of Sugay, 17 I&N Dec. 637, 640 (BIA 1981). 4 Alternatively, under Section 1226(c), DHS "shall take into custody any alien who is 5 deportable by reason of having committed any offense covered in section 1227(a)(2)(A)(iii) of 6 this title." 8 U.S.C. §1226(c).

This includes any "alien who is convicted of an aggravated 7 felony." 8 U.S.C. § 1227(a)(2)(A)(iii). Under this provision, non-citizens may be released "only 8 if the Attorney General decides... that release... is necessary to provide protection to a witness, 9 a potential witness, a person

cooperating with an investigation... and the alien will not pose a 10 danger to the safety of other[s]... and is likely to appear for any scheduled proceeding." Id. at § 11 1226(c)(4).

Thus, noncitizens detained under this category are not entitled to bond hearings as 12 those detained under § 1226(a) are. See Jennings v. Rodriguez, 583 U.S. 281, 303–304 (2018) 13 ("By expressly stating that the covered aliens may be released 'only if' certain conditions are met, 14 § 1226(c)(2), the statute expressly and unequivocally imposes an affirmative prohibition on 15 releasing detained aliens under any other conditions.") (emphasis in original).

16 Section 1226(c)'s mandatory detention requirement applies even if the government does 17 not immediately detain a criminal non-citizen upon immediate release from a correctional facility. 18 See Nielsen v. Preap, 586 U.S. 392, 396 (2019) (finding that the Ninth Circuit's interpretation— 19 namely, that criminal aliens not arrested immediately upon release from criminal custody are 20 exempt from § 1226(c)'s mandatory detention and thus entitled to a bond hearing—is wrong).

21 However, the Supreme Court expressly noted that its decision, "on the meaning of that statutory 22 provision[,] does not foreclose as-applied challenges—that is, constitutional challenges to 23 applications of the statute." 3 Id. at 420. Courts routinely review as-applied constitutional 24 challenges to § 1226(c) detention. See e.g., Perera v. Jennings, No. 21-cv-04136-BLF, 2021 WL 25 2400981, at *4 (N.D.

Cal. June 11, 2021); Pham v. Becerra, No. 23-cv-01288-CRB, 2023 WL 26 27 3 Similarly, Jennings only considered the text of § 1226(c), but did not consider any as-applied challenges based on constitutional due process grounds. Jennings, 583 U.S. at 304–306, 312 ("Because the Court of Appeals... had no 28 occasion to consider respondents' constitutional arguments on their merits[,]... we do not reach those arguments.").

1 2744397, at *5 (N.D. Cal. March 31, 2023); Carballo v. Andrews, No. 1:25-cv-00978-KES-EPG, 2 2025 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025). 3 The parties acknowledge that 8 U.S.C. § 1226(c) is the applicable statutory detention 4 authority at issue here.4 Respondents argue that Petitioner is unlikely to succeed on the merits 5 because he fails to establish that under 8 U.S.C. §§ 1226(c), 1231(a)(6), and 1227(a)(2)(A)(iii), 6 ICE lacked authority to detain him, or that he is entitled to a bond hearing under these provisions.

7 (See Doc. 8 at 4–5 ("[N]either the INA nor implementing regulations provides Petitioner with 8 such a right.").) Respondents contend that under Demore v. Kim, 538 U.S. 510, 526–531 (2003), 9 mandatory detention under Section 1226(c) does not violate due process, but rather "serves the 10 purpose of preventing deportable criminal aliens from fleeing prior to or during their removal 11 proceedings." Id. However, Demore involved only a facial challenge, as did Nielsen and 12 Jennings.

Demore, 538 U.S. at 517 (“[R]espondent challenges the statutory framework that 13 permits his detention without bail.”). Here, Petitioner argues that his detention under § 1226(c) 14 without a bond hearing, four years after his release from incarceration, violates the Fifth 15 Amendment as applied to him. (Doc. 1 at 24; Doc. 3 at 14–18.)

As explained above, Preap, 16 which post-dates Demore, expressly indicates that its decision “does not foreclose as-applied 17 challenges... to applications of [§ 1226(c)].” Preap, 586 U.S. at 420. 18 b. Petitioner’s Right to a Bond Hearing 19 The issue before the Court is whether petitioner has shown a likelihood of success on his 20 argument he is entitled to a pre-deprivation hearing under the Fifth Amendment due process 21 clause.

On Petitioner’s as-applied challenge, the analysis proceeds “in two steps: the first asks 22 whether there exists a protected liberty interest under the Due Process Clause, and the second 23 examines the procedures necessary to ensure any deprivation of that protected liberty interest 24 accords with the Constitution.” Garcia v. Andrews, No. 2:25-cv-01884-TLN-SCR, 2025 WL 25 1927596, at *2 (E.D.

Cal. July 14, 2025) (citing Kentucky Dep’t of Corrections v. Thompson, 490 26 4 In their opposition to the TRO, Respondents state, “Petitioner is currently in ICE detention pursuant to [INA §] 27 236(c)... as a criminal alien. Petitioner remains removable pursuant to [INA §] 237(a)(2)(A)(iii)... as Petitioner was convicted of an aggravated felony...” (Doc. 8-1 at 4.)

These two provisions correspond to 8 U.S.C. §§ 1226(c) 28 and 1227(a)(2)(A)(iii), respectively. Petitioner acknowledges this when he states, “Respondents indicate, for the first 1 U.S. 454, 460 (1989)). The Court finds that Petitioner is likely to succeed on the merits. 2 i. Liberty Interest 3 First, Petitioner has a protected liberty interest under the Due Process clause.

In Perera 4 and Pham, the petitioners were non-citizens who had been convicted of aggravated felonies, and 5 their detention was statutorily mandated under § 1226(c). See Perera, 2021 WL 2400981, at *1– 6 2 (involving a legal permanent resident, convicted of possession with intent to distribute 7 controlled substances, released from prison in 2015, and detained by ICE for the first time in 8 April 2021); Pham, 2023 WL 2744397, at *1–2 (involving a legal permanent resident, convicted 9 of sexual assault, released from prison in 2015, and detained by ICE for the first time in 2023).

In 10 these cases, ICE did not immediately detain the petitioners upon their release from prison. Id. 11 Instead, the petitioners successfully reintegrated into their communities for several years before 12 being detained pursuant to § 1226(c). Id. Both petitioners then filed habeas petitions and TROs 13 raising as-applied due process challenges to their detention without a bond hearing, which were 14 granted.

Perera, 2021 WL 2400981, at *3–6; Pham, 2023 WL 2744397, at *4–7. 15 In Perera, the court explained that petitioner had an "overwhelming interest" to be free 16 from government custody. Perera, 2021 WL 2400981, at *4. It explained that during the six 17 years while petitioner was free from ICE custody, he had rehabilitated since his incarceration, 18 completed probation, avoided further criminal charges, got engaged, and committed himself to his 19 education, career, church, and growing family.

Id. at *1, 4. In Pham, the court found that 20 petitioner had a "clear liberty interest in freedom from detention without any process after seven 21 years as a productive member of his community." Pham, 2023 WL 2744397, at *5. During those 22 seven years, petitioner completed three years of probation, registered as a sex offender, got 23 married, had his first child, and applied for U.S. citizenship.

Id. at *1. 24 Similarly, Petitioner was released from prison in April 2021, (Doc. 8-1 at 42), but was not 25 detained by ICE until August 2025, (Doc. 8-1 at 3), about 4 years and 4 months later. He 26 completed his three-year term of supervised release, has paid back some of the restitution owed 27 (Doc. 8-1 at 45–46) and has not committed additional criminal offenses.

(Doc. 1 at 3.) According 28 to the probation officer, Petitioner "remained in compliance with the release conditions," paid 1 back $1,534,200.30 in restitution, and "understands he must continue making payments... after 2 the expiration of his term of supervision." (Doc. 8-1 at 46.)

For the past four years, he has been 3 "gainfully self-employed," has "maintained a stable residence in Saratoga, California," has 4 reconnected with his family and community, and has applied for adjustment of status under I-130 5 Petition for Alien Relative, I-485 application to adjust status, and I-601 waiver of inadmissibility. 6 (See id; see also Doc. 3 at 18, 28; Doc.

8-1 at 3.) On the other hand, the evidence from the 7 government is that Petitioner has not complied with the court orders to pay his restitution amount, 8 having not made a since April 2024 and still owing $2,673,592.58, and he has not paid his 9 $20,000 court-imposed fine (Doc. 8 at 3 n.2). Even still, the Court finds Petitioner has developed 10 a liberty interest during his four years of post-conviction freedom and developed attachments of 11 normal life.

5 See Carballo, 2025 WL 2381464, at *6 ("The courts in [Perera and Pham] found 12 that the petitioners possessed a protected liberty interest arising from their several years of post- 13 conviction freedom..."); Morrissey v. Brewer, 408 U.S. 471, 482 (1972) (explaining that parole 14 "enables [the parolee] to do a wide range of things open to persons" who have never been in 15 custody or convicted of any crime, including to live at home, work, and "be with family and 16 17 5 This case does not present as strong of a liberty interest as those seen in Carballo and Duong—where criminal non-citizens were detained immediately by ICE upon release from prison, then

released based on criteria that they did 18 not pose a flight risk or danger, and then re-detained years later without bond.

Carballo, 2025 WL 2381464, at *2–3 (explaining that upon petitioner's release from prison on July 13, 2020, ICE immediately detained him until August 19 5, 2020, when a district court presiding over a class action in which petitioner was a member ordered ICE to release the petitioner upon a finding that he was not a danger or flight risk, but was re-detained by ICE on August 5, 2025 20 without a bond determination); Duong v. Kaiser, No. 25-cv-07598-JST, 2025 WL 2689266, at *1–2 (N.D.

Cal. Sept. 19, 2025) (explaining that upon petitioner's release from prison on March 2020, ICE immediately detained him until 21 June 2020, when a district court presiding over the same class action ordered ICE to release the petitioner upon a finding that he was not a danger or flight risk, but was re-detained by ICE on September 2025 without a bond 22 determination).

However, as Carballo indicates, a petitioner could prevail under Perera and Pham on lesser grounds: 23 Here, the present record indicates that petitioner was not only successful on release 24 status in the community and in compliance with all requirements for five years, but the district court ordered his release in 2020 based on criteria including that he did 25 not post a flight risk or present danger to the community.

In contrast, the petitioners in Perera and Pham were found entitled to a post-deprivation bond 26 hearing even though they had not previously been granted release pending immigration proceedings. This case presents a stronger due process concern 27 because there has already been a court determination that petitioner did not present a flight risk or danger...

28 1 friends and to form the other enduring attachments of normal life"). 2 ii. Due Process Requirements 3 Second, the value of providing the Petitioner with a bond hearing is high. Having found a 4 protected liberty interest, the Court examines what process is necessary to ensure any deprivation 5 of that protected interest accords with the Constitution. Garcia, 2025 WL 1927596, at *3.

To 6 determine this, the Court considers the following factors: (1) the private interest that will be 7 affected by the official action; (2) the risk of an erroneous deprivation of such interest through the 8 procedures used and the probative value of having procedural safeguards; (3) the Government's 9 interest, including the function involved and the fiscal and administrative burdens that the 10 procedural safeguards would entail.

Matthews v. Eldridge, 424 U.S. 319, 335 (1976). 11 Turning to the first factor, Petitioner has significant private interest in remaining free from 12 detention. Zadvydas v. Davis, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment—from 13 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty 14 that [the Due Process] Clause

protects.") As explained above, Petitioner has been out of custody 15 for four years and four months before being re-detained.

During that time, has lived successfully 16 in his community. (Doc. 8-1 at 45–46; Doc. 3 at 18, 28.) Thus, Petitioner has an "overwhelming 17 interest," and Respondents offer no argument to the contrary. (See Doc. 8 at 4–5); Perera, 2021 18 WL 2400981, at *4. 19 Turning to the second factor, the risk of erroneous deprivation of Petitioner's liberty is 20 high where, as here, "[the petitioner] has not received [and will not receive] any bond or custody 21 redetermination hearing." A.E. v. Andrews, No. 1:25-cv-00107-KES-SKO, 2025 WL 1424382, at 22 *5 (E.D.

Cal. May 16, 2025). After his arrest, Petitioner's counsel asked CBP to release the 23 Petitioner on the payment of bond, but CBP never responded, and to date, Petitioner has not 24 received a bond hearing. (Doc. 3 at 12–13.)

As Petitioner points out, the Immigration Court has 25 denied bond hearings in similar circumstances. (Doc. 10 at 3); see Pham, 717 F. Supp. 3d 877, 26 880 (N.D. Cal. 2024) ("In February 2023, an IJ determined that under 8 U.S.C. § 1226(c), Pham 27 was not entitled to a bond hearing."). 28 Civil immigration detention, which is supposed to be "nonpunitive in purpose and 1 effect[,]" is justified when a non-citizen presents a risk of flight or danger to the community.

See 2 Zadvydas, 533 U.S. at 690. It is not the province of this Court to make a finding as to whether 3 Petitioner is a flight risk or danger. See Perera, 2021 WL 2400981, at *4; Pham, 2023 WL 4 2744397, at *6. Even still the Court observes that the record shows that Petitioner has 5 rehabilitated since his incarceration.

After spending four years in prison for a crime dating back 6 to 2008, he has completed three years of supervised release, avoided further criminal arrests, and, 7 until April 2024, steadily paid back the restitution owed. (See (Doc. 1-1 at 2–3; Doc. 8-1 at 22– 8 24, 45–46). He is now "gainfully self-employed," maintains a "stable residence," contributes to 9 his community, and helps provide for his family.

(See Doc. 1-1 at 2; Doc. 8-1 at 46.) On the 10 other hand, he stopped making restitution payments in April 2024 and has not paid his criminal 11 fine. (Doc. 8 at 3 n. 2). To date, no neutral decisionmaker has considered and weighed this 12 evidence. (Doc. 3 at 12–13); Perera, 2021 WL 2400981, at *4 (citing Nielsen, 586 U.S. at 438 13 (Breyer, J., dissenting) (emphasizing the constitutional concern implicated by denying a non- 14 citizen a bond hearing "who committed a crime many years before and has since reformed, living 15 productively in a community").

Accordingly, the need for a bond hearing is high. 16 Turning to the last factor, the government's interest in keeping Petitioner detained without 17 bond is low. In immigration court, custody hearings are routine and impose a "minimal" cost. 18 Carballo, 2025 WL 2381464, at *8 (citations omitted).

The government may have a significant 19 interest in protecting the public from dangerous criminal aliens. However, such argument is 20 undermined somewhat by the fact that Respondents waited four years to arrest the Petitioner and 21 have not identified changed circumstances that now justify his arrest. Id ("The government has 22 thus far not argued or identified any new factual circumstances in the past five years that would 23 affect such a determination."); Perera, 2021 WL 2400981 ("The government's interest... is 24 further diluted by the fact that it waited six years to detain him.

ICE was aware of Perera's 25 potential removability as early as 2010... This time lapse significantly undermines the 26 government's interest in mandatorily detaining him."); (Doc. 8 at 3–5). 27 B. Irreparable Harm 28 As for the second Winters factor, it is "well established that the deprivation of 1 constitutional rights 'unquestionably constitutes irreparable injury.'" Hernandez v. Sessions, 872 2 F.3d 976, 994 (9th Cir.

2017) (citations omitted). Because Petitioner is likely to succeed on the 3 merits of his due process claim, he has "carried [his] burden as to irreparable harm." Id. at 995. 4 As the Supreme Court has recognized, incarceration "has a detrimental impact on the individual" 5 because "it often means loss of a job" and "disrupts family life." Barker v. Wingo, 407 U.S. 514, 6 532–33 (1972).

Accordingly, the Court finds that Petitioner faces irreparable harm absent 7 injunctive relief. 8 C. The Balance of the Equities and Public Interest 9 Finally, the balance of the equities and the public interest tip in favor of granting 10 injunctive relief. When the government is the nonmoving party, "the last two Winter factors 11 merge." Baird v. Bonta, 81 F.4th 1036, 1040 (9th Cir.

2023) (citations omitted). As discussed 12 above, Petitioner has a strong interest in an individualized bond hearing so he can exercise his 13 rights under the Constitution and have an opportunity to abate the imminent harms described 14 above. Perera, 2021 WL 2400981, at *5. And granting relief would not deprive the government 15 of the opportunity to prove to a neutral decisionmaker whether Petitioner poses a threat to the 16 community or a flight risk such that detainment is necessary.

Id. 17 The public interest also weighs in Petitioner's favor. "The public has a strong interest in 18 upholding procedural protections against unlawful detention, and the Ninth Circuit has 19 recognized that the costs to the public of immigration detention are staggering." Diaz v. Kaiser, 20 No. 3:25-cv-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (citing Jorge M.F. v. 21 Wilkinson, No. 21-CV-01434-JST, 2021 WL 783561, at *3 (N.D.

Cal. Mar. 1, 2021)); see also 22 Preminger v. Principi, 422 F.3d 815, 826 (9th Cir. 2005). 23 All this leads the Court to conclude that Petitioner has demonstrated a due process 24 violation regarding the applicable regulations sufficient to warrant a bond hearing. 25 D. Bond 26 "The court may issue a preliminary injunction or a temporary restraining order only if the 27 movant

gives security in an amount that the court considers proper to pay the costs and damages 28 sustained by any party found to have been wrongfully enjoined or restrained." Fed.

R. Civ. P. 1 | 65(c). The Court has "discretion as to the amount of security required, if any," and it "may 2 || dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the 3 | defendant from enjoining his or his conduct." Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 4 | 2003) (citation modified).

Because "the [Government] cannot reasonably assert that it is harmed 5 | in any legally cognizable sense by being enjoined from constitutional violations," Zepeda, 753 6 | F.2d at 727, the Court finds that no security is required here. Vz CONCLUSION AND ORDER 8 1. Petitioner's Motion for Temporary Restraining Order (Doc. 3) is GRANTED in 9 | PART. 10 2. Petitioner SHALL be provided a substantive parole revocation hearing no later 11 | than December 29, 2025, at which the Immigration Judge will determine whether Petitioner 12 | poses arisk of flight or a danger to the community if he is released.

13 3. At any such hearing, the Government SHALL bear the burden of establishing, by 14 | clear and convincing evidence, that Petitioner poses a danger to the community or a risk of flight, 15 || and Petitioner SHALL be allowed to have counsel present. 16 4.

The government may file a further brief on the merits of the habeas petition within 17 | 45 days. Alternatively, as soon as it can within that 30-day period, the government may file a 18 || notice that it does not intend to file further briefing. If the government files an additional brief, 19 | Petitioner may file a further brief within 30 days thereafter.

20 5. The matter is referred to the assigned magistrate judge for consideration of the 21 | merits of the petition as quickly as possible. 22 73 IT IS SO ORDERED. 24 | Dated: _ December 15, 2025 Charis [Tourn TED STATES DISTRICT JUDGE 25 26 27 28

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