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9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 Marc STEIGLEDER,

14 Petitioner,

15 v.

16 Kristi NOEM, Secretary, Department of
17 Homeland Security; Pam BONDI, Attorney
18 General; IMMIGRATION AND CUSTOMS
19 ENFORCEMENT; and Todd LYONS,
20 Acting Los Angeles Field Office Director,
21 Immigration and Customs Enforcement.

22 Respondents.
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No. 2:25-cv-09048

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

Immigration Case

1 For the reasons explained in the accompanying Memorandum of Points and
2 Authorities, Petitioner hereby makes this *Ex Parte* Application for a Temporary
3 Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to
4 Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioner has been a lawful
5 permanent resident of the United States for 39 years. He is the recipient of a full and
6 unconditional gubernatorial pardon from former California Governor Brown. The
7 Department of Homeland Security itself represented in May 2022 to the
8 immigration judge when Petitioner was in pending removal proceedings that it “has
9 reviewed the facts and circumstances of these cases and determined that
10 circumstances after issuance of the Notice to Appear have changed to such an
11 extent that continuation is no longer in the best interest of the government. 8 C.F.R.
12 §§ 1239.2(c), 239.2(a)(7) and (c).” Nevertheless, while Petitioner’s application for
13 naturalization was pending and after litigation was filed in this Court requesting a
14 de novo hearing on the application for naturalization, the Department of Homeland
15 Security arrested Petitioner with no notice and placed him into removal proceedings
16 with the same charges it had previously abandoned. Tolchin Decl. Exhs. A, K.

17 Petitioner challenges his detention on Fifth and First Amendment grounds.
18 Petitioner requests that the Court issue a temporary restraining order and order to
19 show case re: preliminary injunction in the form of the proposed order submitted
20 concurrently with this Application. This Application is based on the Complaint,
21 Memorandum of Points and Authorities, and the declaration and exhibits in support
22 thereof.

23 Respondents were advised on September 23, 2025 that Petitioner would be
24 filing this ex parte application and of the contents of this application. Tolchin Decl.
25 ¶ 4. See Local Rule 17-19.1.
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9 Dated : September 24, 2025 /s/ Stacy Tolchin
10 Stacy Tolchin
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1 I. INTRODUCTION

2 Petitioner is a native of Germany who has been a lawful permanent resident
3 for 39 years. He was convicted of misdemeanor cultivation of marijuana, with a
4 sentence to probation, and placed into removal proceedings. He received a full and
5 unconditional gubernatorial pardon from the California Governor on November 21,
6 2018, and while he remained subject to removal for the misdemeanor conviction,
7 the Department of Homeland Security moved to dismiss the removal proceeding
8 on February 6, 2019, representing to the immigration court that continuation of the
9 removal proceeding was no longer in the best of interest of the government.

10 Petitioner then sought United States citizenship on November 24, 2023.
11 After his application languished for 357 days, he sought this Court's intervention
12 and requested a *de novo* hearing on his application for naturalization. *Steigleder v.*
13 *USCIS*, No. 2:25-cv-04250-SVW (C.D. Cal.). On July 22, 2025, the parties
14 stipulated to remand the case to USCIS to issue a decision on the naturalization
15 application within 90 days. The stipulation was approved on July 30, 2025 and the
16 Court ordered that USCIS issue a decision on the pending naturalization
17 application within 90 days.

18 Petitioner was never notified that circumstances again changed and that
19 DHS intended to once again try and remove him, and detain him, on the same
20 charges it had abandoned in 2022. Instead, Petitioner appeared at an interview on
21 September 10, 2025, where he was told that the case had been recommended for
22 approval but had to be reviewed by a supervisor. Despite this, on September 23,
23 2025, Petitioner was detained by immigration authorities and a new proceeding
24 was initiated on the previously abandoned charges.

25 Due process requires that a long-time permanent resident like Petitioner be
26 given notice before he is detained, when the Department of Homeland Security had
27 previously abandoned removal proceedings and informed him that it was not in the
28 best interests of the government to seek removal. Had Petitioner received such

1 notice, he could have continued to seek *de novo* review of his naturalization claim
2 and/or to vacate his misdemeanor conviction in order to preserve his liberty and
3 freedom from detention.

4 He requires an *ex parte* order from this Court ordering his immediate release.
5

6 **II. STATEMENT OF FACTS**

7 Petitioner is a native of Germany who became a lawful permanent
8 resident of the United States in 1986 at the age of 10. He has resided in the
9 United States continuously since that time. Tolchin Dec. Exhs. B, E. He has
10 a United States citizen son, with whom he shares custody, who is age 13.
11 Tolchin Dec. Exhs. B, L.

12 On September 19, 2003, Petitioner was convicted of cultivation of
13 marijuana, in violation of California Health and Safety Code § 11358 and
14 was given three years probation. His conviction was reduced to a
15 misdemeanor. Tolchin Dec. Exh. B.

16 On September 7, 2011, he was placed into removal proceedings upon a
17 returning trip to the United States and charged with inadmissibility for a
18 controlled substance. 8 U.S.C. § 1182(a)(2)(A)(i)(I). Tolchin Dec. Exh. K.
19 He was not detained during this process. Tolchin Dec. Exh. B. Petitioner
20 was ordered removed by an immigration judge on September 10, 2013.
21 Tolchin Dec. Exh. B, I. He was ineligible for a waiver of removal under the
22 cancellation of removal statute, 8 U.S.C. § 1229b(a) because the cultivation
23 conviction constituted an aggravated felony offense. 8 U.S.C. §
24 1101(a)(43)(B).

25 Petitioner received a full and unconditional gubernatorial pardon from
26 California Governor Brown on November 21, 2018, which eliminated the
27 aggravated felony ground that otherwise barred eligibility for cancellation of
28 removal. Tolchin Dec. Exh. J. The pardon did not eliminate the controlled

1 substance ground of inadmissibility or deportability, but did eliminate the
2 aggravated felony ground which had otherwise barred eligibility for
3 cancellation of removal. *Matter of Suh*, 23 I. & N. Dec. 626, 627 (BIA
4 2003).

5 Petitioner moved to reopen the removal proceeding as a result of the
6 pardon to apply for cancellation of removal on February 6, 2019. The
7 motion was granted April 10, 2019 by the immigration judge. Tolchin Dec.
8 Exh. I. On May 4, 2020, Petitioner filed for cancellation of removal before
9 the immigration judge in the pending removal case. Tolchin Dec. Exh. H; 8
10 U.S.C. §1229b(a). On May 17, 2022, the Department of Homeland Security
11 (DHS) and Petitioner filed a joint motion to dismiss the removal proceeding.
12 In that motion, DHS stated as follows:

13 The Department has reviewed the facts and circumstances of these
14 cases and determined that circumstances after issuance of the Notice
15 to Appear have changed to such an extent that continuation is no
16 longer in the best interest of the government. 8 C.F.R. §§ 1239.2(c),
239.2(a)(7) and (c).

17 Tolchin Dec. Exh. G. The immigration judge granted the motion to dismiss
18 the removal proceeding without prejudice on May 23, 2022. Tolchin Dec.
19 Exh. G.

20 Petitioner applied for naturalization to become a United States citizen
21 on November 24, 2023. Tolchin Dec. Exh. B. He left and departed the
22 United States five times after his removal case was dismissed, and was
23 admitted by DHS each time without incident. Tolchin Dec. Exhs. B, C. His
24 last admission was on July 7, 2024. Tolchin Dec. Exh. C. He was never
25 denied admission to enter the United States or given any indication that the
26 government sought his removal. Tolchin Dec. Exh. B.

27 Petitioner's application for naturalization sat pending for 357 days
28 after the interview, and he proceeded to file a lawsuit in this Court

1 requesting de novo adjudication pursuant to 8 U.S.C. § 1447(b) on May 12,
2 2025. *Steigleder v. USCIS*, No. 2:25-cv-04250-SVW (C.D. Cal.). Tolchin
3 Dec. Exh. D.

4 On July 22, 2025, the parties stipulated to remand the case to USCIS
5 to issue a decision on the naturalization application within 90 days. Tolchin
6 Dec. Exh. D. The stipulation was approved on July 30, 2025 and the Court
7 ordered that USCIS issue a decision on the pending naturalization
8 application within 90 days. Tolchin Dec. Exh. D.

9 On September 10, 2025, USCIS required Petitioner to appear for an
10 interview on the naturalization application. Tolchin Dec. Exh. B. Petitioner
11 was informed that the case was recommended for approval but needed to be
12 reviewed by a supervisor. Tolchin Dec. Exh. B.

13 On the morning of September 23, 2025, Petitioner was detained by
14 immigration authorities outside of his home and taken to downtown Los
15 Angeles. Tolchin Dec. Exh. B.

16 At no time was Petitioner notified that the joint motion filed May 17,
17 2022 no longer applied to the government's position and that removal
18 proceedings were now in the interests of the government. Tolchin Dec. Exh.
19 B.

20 Had he been provided notice, Petitioner would not have agreed to
21 remand his naturalization case to USCIS for adjudication, as this Court had
22 *de novo* jurisdiction over the application and could have independently
23 considered the application for naturalization. 8 U.S.C. § 1447(b). Tolchin
24 Dec. Exh. B. Petitioner also could have sought a legal vacatur of his
25 misdemeanor conviction under California Penal Code §1473.7 had he
26 known that seeking removal proceedings on the abandoned charges was *now*
27 in the interests of the government. Tolchin Dec. Exh. B and F.
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1 III. STANDARD OF REVIEW

2 A Temporary Restraining Order (“TRO”) may be issued upon a showing
3 “that immediate and irreparable injury, loss, or damage will result to the movant
4 before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). A
5 trial court may grant a TRO or a preliminary injunction to “preserve the status quo
6 and the rights of the parties” until a decision can be made in the case. *U.S. Philips*
7 *Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in
8 this context “refers not simply to any situation before the filing of a lawsuit, but
9 instead to ‘the last uncontested status which preceded the pending controversy[.]’ ”
10 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting
11 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). The
12 analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc.,*
13 *Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109,
14 1110 (C.D. Cal. 2009).

15 To obtain a preliminary injunction, a Petitioner “must establish [1] that he is
16 likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
17 absence of preliminary relief, [3] that the balance of equities tips in their favor, and
18 [4] that an injunction is in the public interest.” *City & County of San Francisco v.*
19 *USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019)(quoting *Winter v. Nat. Res. Def.*
20 *Council, Inc.*, 555 U.S. 7, 20 (2008). “Likelihood of success on the merits is the
21 most important factor.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)
22 (quotations omitted). If the first two factors are met, the third and fourth factors
23 merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418,
24 435 (2009).

25 Additionally, in the Ninth Circuit, courts also “employ an alternative ‘serious
26 questions’ standard, also known as the ‘sliding scale’ variant of the *Winter*
27 standard.” *Fraihat v. U.S. Immigr. & Customs Enft.*, 16 F.4th 613, 635 (9th Cir.
28 2021) (quotations and citations omitted and alterations accepted). “Under that

1 formulation, ‘serious questions going to the merits’ and a balance of hardships that
2 tips sharply towards the Petitioner[s] can support issuance of a preliminary
3 injunction, so long as the Petitioner[s] also show[] that there is a likelihood of
4 irreparable injury and that the injunction is in the public interest.” *Id.* (quoting *All.*
5 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

6 In addition, the APA provides that “to the extent necessary to prevent
7 irreparable injury,” the Court may issue “all necessary and appropriate process . . .
8 to preserve status or rights pending” these proceedings. 5 U.S.C. § 705. The
9 standard used by courts for a request to stay agency action “is the same legal
10 standard as that used in a motion for preliminary injunction.” *Hill Dermaceuticals,*
11 *Inc. v. U.S. Food & Drug Admin.*, 524 F. Supp. 2d 5, 8 (D.D.C. 2007); *Nken*, 556
12 U.S. at 428 (describing a stay as “halting or postponing” operation of an action or
13 “temporarily divesting an order of enforceability”).

14 Petitioner meets all the requirements for relief.

15
16 IV. ARGUMENT

17 A. THE COURT HAS THE AUTHORITY TO ORDER PETITIONER’S
18 RELEASE

19 This Court has the authority to grant Petitioner’s release pending
20 adjudication of his habeas. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001).
21 *Mapp* sets forth that the district court has the “inherent authority” to set bail
22 pending the adjudication of a habeas petition when the petition has raised (1)
23 substantial claims and (2) extraordinary circumstances that (3) “make the grant of
24 bail necessary to make the habeas remedy effective.” *Id.*; *see also Elkimya v. Dep’t*
25 *of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007) (discussing standard and
26 holding that the REAL ID Act of 2005 “did not qualify our inherent authority to
27 admit bail to petitioners in immigration cases”). *See e.g. Ozturk v. Trump*, No.
28 2:25-CV-374, 2025 WL 1420540, at *10 (D. Vt. May 16, 2025); *Mahdawi v.*

1 *Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *14 (D. Vt. Apr. 30, 2025);
2 *United States v. Nkanga*, 452 F. Supp. 3d 91, 96 (S.D.N.Y. 2020); *Avendano*
3 *Hernandez v. Decker*, 450 F. Supp. 3d 443 (S.D.N.Y. 2020); *Coronel v. Decker*,
4 449 F. Supp. 3d 274, 290 (S.D.N.Y. 2020); *Barbecho v. Decker*, No. 20-CV-2821
5 (AJN), 2020 WL 2513468, at *7 (S.D.N.Y. May 15, 2020); *S.N.C. v. Sessions*, No.
6 18 Civ. 7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018); *Kiadii v.*
7 *Decker*, 423 F. Supp. 3d 18 (S.D.N.Y. 2018); *D'Alessandro v. Mukasey*, No. 08
8 Civ. 914, 2009 WL 799957, at *3 (W.D.N.Y. Mar. 25, 2009).

9 While the Ninth Circuit has not explicitly adopted the *Mapp* standard, it has
10 recognized that district courts have the inherent authority to order release while a
11 district court action is pending. *See e.g. Nadarajah v. Gonzales*, 443 F.3d 1069,
12 1084 (9th Cir. 2006) (“we grant his motion for immediate release, subject to terms
13 and conditions to be set by the appropriate delegate of the Attorney General.”);
14 *Gebreweldi v. Barr*, No. 20-71009, 2020 WL 13017241, at *1 (9th Cir. May 1,
15 2020) (unpublished) (“the district court can adjudicate petitioner's request for
16 release under 28 U.S.C. § 2241, and we anticipate that it will do so promptly..”);
17 *Singh v. United States Citizenship & Immigr. Servs.*, No. SACV171538JVSJCGX,
18 2018 WL 6265006, at *3 (C.D. Cal. Mar. 8, 2018) (“The Court further orders that
19 Singh be released from custody forthwith pending further proceedings in this
20 case.”)

21 *Mapp* confirms that the federal courts have the inherent authority to order
22 release in the immigration context but emphasized the “limited” nature of that
23 authority, which is “to be exercised in special cases only,” when “extraordinary or
24 exceptional circumstances exist which make the grant of bail necessary to make the
25 habeas remedy effective” 241 F.3d at 226. As the July 30, 2025 order issued by
26 Magistrate Judge Pym in *Vasquez Perdomo v. Noem*, 2:25-cv-05605-MEMF-SP
27 (CD. Cal. Jul. 30, 2025) Dkt # 132 (Exh. M) found, there are times when original
28

jurisdiction to order release should be exercised favorably. Petitioner will not be eligible for bond before an immigration judge until removal proceedings are complete because his misdemeanor pardoned cultivation of marijuana conviction triggers mandatory custody. 8 U.S.C. §1226(c). That means he will have to stay detained until an immigration judge completes the new removal proceeding. But this Court can order Petitioner's release in the habeas context in "extraordinary cases involving special circumstances or a high probability of success." *Land v. Deeds*, 878 F.2d 318, 318 (9th Cir. 1989). *See also Vasquez Perdomo order* (Tolchin Dec. Exh. M at 7-8). Petitioner presents that case here.

B. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS DUE PROCESS CLAIM

Petitioner has been a lawful permanent resident for 39 years. Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be "deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. Procedural due process requires notice and an opportunity to be heard before being deprived of a liberty or property interest. *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

Petitioner has a liberty interest in being free from immigration detention. *Morrissey v. Brewer*, 408 U.S. 471, 482, 92 S. Ct. 2593, 2601, 33 L. Ed. 2d 484 (1972). On May 17, 2022, DHS represented to the immigration court that:

The Department has reviewed the facts and circumstances of these cases and determined that circumstances after issuance of the Notice to Appear have changed to such an extent that continuation is no longer in the best interest of the government. 8 C.F.R. §§ 1239.2(c), 239.2(a)(7) and (c).

Tolchin Dec. Exh. G. This led to the immigration judge's order dismissing removal proceedings on May 23, 2022. Tolchin Dec. Exh. G.

1 Due Process required that Petitioner have notice from DHS that there was a
2 change in circumstances so that it intended to seek Petitioner's detention and
3 removal from the United States. A similar issue was addressed by this Court in *Nak*
4 *Kim Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1247 (C.D. Cal. 2020), where the
5 Court issued an injunction that 14 days notice as required before class members
6 with final orders of removal could be detained. *Id.* ("Before the Court issued its
7 January 2018 preliminary injunction, the government detained Petitioners without
8 notice. Petitioners therefore had no opportunity to contact counsel, evaluate the
9 latest legal developments, or gather documents relating to their immigration and
10 conviction histories necessary to file motions to reopen.") *See also id.* at 1249 ("but
11 even if notice does not change the decision to re-detain the class member, notice
12 still provides great value, including because it provides the class member an
13 opportunity to contact an attorney, gather any documents they have, make FOIA
14 requests for other documents, say goodbye to their families and loved ones, and
15 wrap up their affairs, including ensuring adequate childcare and notifying their
16 employers.") The Court applied the *Mathews v. Eldridge* balancing test, "to protect
17 Petitioners' due process rights, the government must give them notice before re-
18 detaining them for purposes of removal." *Id.* at 1251.

19 In *Mathews*, the Supreme Court identified the factors to be considered in
20 determining whether additional due process is required:

21 [I]dentification of the specific dictates of due process generally requires
22 consideration of three distinct factors: First, the private interest that will be
23 affected by the official action; second, the risk of an erroneous deprivation of
24 such interest through the procedures used, and the probable value, if any, of
25 additional or substitute procedural safeguards; and finally, the Government's
26 interest, including the function involved and the fiscal and administrative
burdens that the additional or substitute procedural requirement would entail.

27 *Mathews*, 424 U.S. at 335, 96 S.Ct. 893. *See Oliveros v. Noem*, No. 25-CV-07117-
28 BLF, 2025 WL 2677125, at *7 (N.D. Cal. Sept. 18, 2025) ("The Court will

1 accordingly join other courts in the Ninth Circuit and apply the *Mathews* factors to
2 determine the constitutionally sufficient procedures to protect Petitioner's liberty
3 interest.”).

4 Here, the private interest affected is Petitioner’s interest in being free from
5 detention. It “is the most elemental of liberty interests—the interest in being free
6 from physical detention by one's own government.” *Hamdi v. Rumsfeld*, 542 U.S.
7 507, 529, 124 S. Ct. 2633, 2646, 159 L. Ed. 2d 578 (2004). *See also Nak Kim*
8 *Chhoeun v. Marin*, 442 F. Supp. 3d 1233, 1246 (C.D. Cal. 2020) (“Petitioners have
9 a strong liberty interest in remaining in this country to live, work, and raise
10 families.”)

11 Next, the *Mathews* test requires consideration of “the risk of an erroneous
12 deprivation of such interest through the procedures used, and the probable value, if
13 any, of additional or substitute procedural safeguards.” Petitioner now faces
14 erroneous deprivation of his liberty interests based on DHS’ “about face” of its
15 May 17, 2022 representation that it was no longer in the interests of the government
16 to seek Petitioner’s removal.

17 Last, the government has only a minimal countervailing interest in providing
18 notice. There was no indication that Petitioner would abscond from any
19 immigration proceeding. He is a long term resident who was applying for United
20 States citizenship. *Oliveros v. Noem*, No. 25-CV-07117-BLF, 2025 WL 2677125,
21 at *8 (N.D. Cal. Sept. 18, 2025) (“Respondents have not shown any evidence that
22 Petitioner is a flight risk or a danger to the community.”) Providing him with notice
23 of his detention would not have provided a risk to the government. It would,
24 however, have provided him with notice to pursue a motion to vacate the remaining
25 misdemeanor conviction. Tolchin Dec. Exhs. B, F.

26 The standard for prejudice in such a case is whether the outcome *may* have
27 been affected if not for the violation. *Zolotukhin v. Gonzales*, 417 F.3d 1073, 1076
28 (9th Cir. 2005). The standard does not demand absolute certainty; rather prejudice

1 is shown if the violation “*potentially* ... affects the outcome of the
2 proceedings.” *Agyeman v. INS*, 296 F.3d 871, 884 (9th Cir.2002) (internal
3 quotation marks omitted). Petitioner suffered prejudice as a result of this lack of
4 notice that he would be detained and placed into removal proceedings. In fact, this
5 Court had de novo jurisdiction over the naturalization application in *Steigleder v.*
6 *USCIS*, No. 2:25-cv-04250-SVW (C.D. Cal.), pursuant to 8 U.S.C. § 1447(b), and
7 Petitioner could have continued with that case even if he was placed into removal
8 proceedings. *Yith v. Nielsen*, 881 F.3d 1155, 1165 (9th Cir. 2018). However, he
9 agreed to a remand to USCIS because there had been no change represented in
10 DHS’ position that it was not in the best interests of the government to seek his
11 removal. Tolchin Dec. Exh. B. Further, Petitioner could have sought to vacate the
12 misdemeanor conviction had he had notice, so that removal proceedings were
13 irrelevant. Tolchin Dec. Exh. B, F. However now, he is detained in the mandatory
14 custody of DHS and the subject of a pending removal proceeding which had been
15 abandoned three years ago.

16
17 **C. PETITIONER WILL SUFFER IRREPARABLE HARM AND**
18 **THE EQUITIES TIP IN PETITIONER’S FAVOR**

19 The Ninth Circuit has recognized the “irreparable harms imposed on anyone
20 subject to immigration detention” including “subpar medical and psychiatric care in
21 ICE detention facilities” and “the economic burdens imposed on detainees and their
22 families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th
23 Cir. 2017). Moreover, “[i]t is well established that the deprivation of constitutional
24 rights ‘unquestionably constitutes irreparable injury.’ ” *Melendres v. Arpaio*, 695
25 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
26 Where, as here, the “alleged deprivation of a constitutional right is involved, most
27 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier*
28 *v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, &*

1 *Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit
2 has also noted that “unlawful detention certainly constitutes ‘extreme or very
3 serious’ damage, and that damage is not compensable in damages.” *Hernandez*, 872
4 F.3d at 999. Here, Petitioner is separated from his family and concerned for his
5 health while detained. Tolchin Dec. Exh. B.

6 The balance of the equities and public interest analyses merge when the
7 government is the opposing party, as is the case in this action. *See Drakes Bay*
8 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
9 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that
10 Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar*,
11 No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) (“Given
12 the low risk of Petitioner’s causing harm to others or fleeing, such expenditure in
13 her case would not benefit the public absent a material change in circumstances.”).
14 “Just as the public has an interest in the orderly and efficient administration of this
15 country's immigration laws, [] the public has a strong interest in upholding
16 procedural protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-
17 5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). On the other hand,
18 “the burden on Respondents in releasing Petitioner from detention is minimal,
19 especially considering Petitioner's compliance with the requirements of the Order
20 of Supervision...” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
21 1993771, at *6 (E.D. Cal. July 16, 2025). Further, the Ninth Circuit has recognized
22 that “[t]he costs to the public of immigration detention are ‘staggering,’ ” and that
23 “[s]upervised release programs cost much less by comparison....” *Hernandez*, 872
24 F.3d at 996. Therefore, the *Winter* factors weigh in favor of a grant of a temporary
25 restraining order and preliminary injunction.
26
27
28

1 **D. NO BOND IS NECESSARY**

2 The Court has discretion to set the amount of security required for a
3 temporary restraining order or preliminary injunction under Rule 65(c), if
4 any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, “[t]he
5 district court may dispense with the filing of a bond when it concludes there is no
6 realistic likelihood of harm to the defendant from enjoining his or her
7 conduct.” *Id.* (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)).
8 Here, it is unlikely any harm will come to Respondents as a result of a grant of
9 temporary relief and Respondents will incur negligible or zero financial costs.
10 Petitioner asks the Court to exercise its discretion to waive the bond requirement.

11
12 **II. CONCLUSION**

13 Petitioner respectfully requests that this Court grant his request for a
14 temporary restraining order and order that he be immediately released from ICE
15 custody.

16
17 Dated: September 24, 2025

Respectfully Submitted,

S/Stacy Tolchin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 24, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF STACY TOLCHIN; AND [PROPOSED] ORDER by email to the following individual:

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo contains 3941 words, which complies with the word limit of L.R. 11-6.1.

s/ Stacy Tolchin
Stacy Tolchin
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