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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **EASTERN DIVISION**
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12 Bayron Rovidio Marin,

13 Petitioner,

14 v.

15 Kristi NOEM, Secretary, U.S.
16 Department of Homeland Security, et al.,

17 Respondents.
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Case No. 2:25-cv-09343-CV-SSC

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

Honorable Cynthia Valenzuela

United States District Judge

1 Respondents' opposition to Petitioner's TRO application confirms that
2 Respondents have not obtained a warrant for Petitioner's arrest (Resp't Opp., Dkt 7,
3 p. 1), have not determined based on prima facie evidence that Petitioner is present
4 in the United States unlawfully (*Id.*, p. 2), and have not determined under what
5 authority his custody is authorized and whether he should be released on bond. *Id.*,
6 p. 4 (stating officials have not determined whether there is prima facie evidence to
7 refer Petitioner to removal proceedings, order him removed pursuant to expedited
8 removal process, or take other action). Therefore Petitioner must be released from
9 Respondents' custody.

13 Respondents state that Petitioner's prolonged presence in the hospital while
14 he receives treatment for a broken leg is an extraordinary circumstance that excuses
15 an examination by an immigration official pursuant to 8 C.F.R. § 287.3(c), but
16 Respondents do not explain why it is so extraordinary that an examining officer
17 cannot make the requisite determinations. Petitioner is in the custody of ICE, and
18 ICE officers have been present in his hospital room and questioned Petitioner about
19 his immigration status. (*See* Pet'r Ex. A, Declaration of Cynthia Santiago
20 ("Santiago Decl."), ¶ 15, p. 3.) While Petitioner's presence at the hospital is
21 certainly an inconvenient circumstance, Respondents fail to identify any reason
22 why- after 37 days since Petitioner's arrest and emergency- an examining officer
23 cannot currently make the determinations required by 8 C.F.R. § 287.3(c).

1 Respondents argue that the regulatory 48-hour timeline prescribed by 8
2 C.F.R. § 287.3(c) is not required when there are extraordinary circumstances.
3
4 Resp't Opp., Dkt. 7, p. 4 Respondents neglect the remaining text of the regulation
5 that requires a "determination [] be made within an additional reasonable period of
6 time" in the event of an emergency or extraordinary circumstances. 8 C.F.R. §
7 287.3(c)). Respondents do not address Petitioner's argument that his ongoing
8 detention for more than month without charges or custody determination is an
9 unreasonable additional period of time beyond the regulatory 48 hours. *See* Pet'r
10 Memorandum in Support of TRO, Dkt. 2, p. 7.
11

13 Further, Respondents suggest that Petitioner will continue to be detained
14 indefinitely without charges until he is released from the hospital. Resp't Opp, Dkt.
15 7, p. 1 (stating that "ICE intends to take further action consistent with the laws
16 prescribed under the Immigration and Nationality Act once Petitioner is released
17 from medical care."). We agree with Respondents' statement that "the fact that
18 Petitioner is currently in the hospital does not prevent future immigration
19 enforcement action." Resp't Opp., Dkt. 7, p. 8. But Respondents' future intention
20 to take any action in compliance with the law does not provide a lawful basis for
21 Petitioner's current and ongoing detention.
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25 Petitioner had questioned whether Respondents made an initial determination
26 that he was present without admission and subject to mandatory detention (Pet'r
27 Memorandum in Support of TRO, Dkt. 2, p. 7), but Respondents' response specifies
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1 that no determination has been made regarding whether Petitioner's presence in the
2 U.S. is in violation of immigration law. Resp't Opp., Dkt. 7, p. 4. Therefore,
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4 Respondents' contention that Petitioner must be detained pending outcome of
5 removal proceedings under 8 U.S.C. § 1225 (b)(2) is not applicable.

6 Relatedly, Respondents contend that Petitioner has not shown irreparable
7 harm because " 'loss of liberty' is 'common to all [noncitizens] seeking review of
8 their custody or bond determinations.'" Resp't Opp., Dkt. 7, p. 8 (citing *Resendiz v.*
9 *Holder*, 2012 WL 5451162, at *5 (N.D. Cal. Nov. 7, 2012).) But this does not
10
11 apply to Petitioner because Petitioner has not had a custody or bond determination,
12 does not have an alien number, and cannot seek review of any determination.
13
14 Petitioner was arrested without a warrant in a raid on a car wash business, allegedly
15 on the *suspicion* of violating immigration law, and has been detained for over a
16 month based on a suspicion. Petitioner's "loss of liberty" is not authorized and in
17 violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3(c), and the Fifth
18
19 Amendment Due Process clause.

20
21 Respondents seem to suggest Petitioner's unlawful detention does not
22 constitute irreparable harm because he is "already confined at the hospital by nature
23 of his injury." Resp't Opp, Dkt. 7, p. 8. This assertion undermines Respondents'
24 contention that Petitioner's arrest and detention without a warrant is authorized by 8
25 U.S.C. § 1357(a)(2) because Petitioner's hospitalization reduces the risk of "escape
26
27 before a warrant can be obtained for his arrest."
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1 Respondents also do not acknowledge ICE's imposition of significant
 2 restraints on Petitioner's liberty in the hospital. Guards are present in Petitioner's
 3 hospital room always. *See* Ex. A., Santiago Decl. ¶¶ 9-10, p. 2. He is prevented
 4 from seeing family and friends, he cannot eat, sleep and use the bathroom without
 5 guards watching him, he cannot speak privately with medical providers and has
 6 limited access to his attorneys. *Id.* Freedom from government custody and forms
 7 of physical restraint "lies at the heart of liberty" that Due Process Clause seeks to
 8 protect. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The unconstitutional
 9 deprivation of liberty constitutes irreparable harm. *Moreno Galvez v. Cuccinelli*,
 10 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated*
 11 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
 12 821 (9th Cir. 2022), *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir.
 13 2012) (citation modified).

14 For the foregoing reasons, the Court should grant Petitioners' Application for
 15 a Temporary Restraining Order and Order to Show Cause.

16 Dated: October 3, 2025

17 Respectfully submitted,

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioners certifies that this Memo contains 908 words, which complies with the word limit of L.R. 11-6.1.

s/ Jean Reisz

Jean Reisz
Attorney for Petitioner