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ANDREY BERNIK

**United States District Court
Central District of California
Eastern Division**

Andrey Bernik

Petitioner,

v.

Kristi Noem, et al.

Respondents.

No.

**Motion for a Preliminary
Injunction and
for a Temporary Restraining
Order**

Simultaneously with this document, Andrey Bernik has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Because he is almost certain to prevail on at least one of his claims, he respectfully asks the Court to order his immediate release from custody while this case is litigated.

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Planned*

1 *Parenthood Great Northwest v. Labrador*, 122 F.4th 825, 843-44 (9th Cir.
2 2024) (quoting *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
3 1131 (9th Cir. 2011)). “Alternatively, a preliminary injunction may issue
4 where serious questions going to the merits were raised and the balance
5 of hardships tips sharply in plaintiff’s favor if the plaintiff also shows
6 that there is a likelihood of irreparable injury and that the injunction is
7 in the public interest.” *Id.* at 844 (quoting *Alliance for the Wild Rockies*,
8 632 F.3d at 1135). The standards for granting a temporary restraining
9 order are the same as the standards for granting a preliminary
10 injunction. *See O.M. v. Nat’l Women’s Soccer League, LLC*, 541 F. Supp.
11 3d 1171, 1177 (D. Or. 2021).

12 First, Bernik is almost certain to succeed on the merits of his
13 habeas petition for the reasons set forth in his petition. And this factor,
14 after all, is “the most important factor.” *Chamber of Commerce of the*
15 *United States v. Bonta*, 62 F.4th 473, 481 (9th Cir. 2023) (quoting
16 *California ex. Rel. Becerra v. Azar*, 950 F.3d 1067, 1083 (9th Cir. 2020)
17 (en banc)).

18 Second, illegal confinement is quintessentially irreparable harm,
19 because “the deprivation of constitutional rights unquestionably
20 constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002
21 (9th Cir. 2012). Here, Bernik’s illegal confinement is the heart of his
22 petition.

23 Third, and finally, when the government is a party, as it is here,
24 “the balance of equities and public interest factors merge.” *Pimentel-*
25 *Estrada v. Barr*, 464 F. Supp. 3d 1225, 1237 (W.D. Wash. 2020) (citing
26 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014)). The

1 risk of harm to Bernik far outweighs the government's interest in
2 illegally detaining him, for it is "always in the public interest to prevent
3 the violation of a party's constitutional rights." *Melendres*, 695 F.3d at
4 1002.

5 Therefore, the Court should grant a preliminary injunction and
6 temporary restraining order, order Bernik's immediate release from
7 custody, and order that the Government not remove him or take him from
8 the Central District of California until the resolution of this case.

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10 Respectfully submitted,

11 Cuauhtemoc Ortega
Federal Public Defender

12 Dated: October 30, 2025

13 By: /s/ Devon L. Hein
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Deputy Federal Public Defender

14 *Proposed Attorneys for Petitioner*
15 ANDREY BERNIK
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