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9
10 Attorney for Petitioner, KAVEH MOMTAZIAN

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 LOS ANGELES, CALIFORNIA

14 KAVEH MOMTAZIAN

15 Petitioner,

16 V.

17
18 KRISTI NOEM, Secretary of Homeland
19 Security; PAMELA J. BONDI,
20 Attorney General of the US; THOMAS
21 GILES, LA Field Office Director, ICE-
22 ERO; JAMES PILKINGTON, Assistant
23 Field Office Director, Adelanto
24 Detention Facility; Warden, Geo Group
25 Inc, Adelanto Detention Facility and,
26 DOES 5 through 10, inclusive, Jointly
27 and Severally.

28 Respondents.

} CASE NO.

} PETITIONER'S MOTION FOR A
} TEMPORARY RESTRAINING
} ORDER AND ORDER TO SHOW
} CAUSE RE: PRELIMINARY
} INJUNCTION

1 Petitioner, by and through his undersigned counsel, hereby files this motion
2 for a temporary restraining order pursuant to Fed. R. Civ. P. 65(d). Petitioner
3 seeks an order to preserve the status quo prior to his unlawful detention – namely,
4 his release on an Order of Supervision (OSUP) on or about February 16, 2006.
5

6
7 The TRO sought by Petitioner is an order: (1) requiring Respondents to
8 immediately release him back on OSUP and enjoining them from re-detaining him
9 absent further order of this Court; (2) in the alternative, ordering Petitioner's
10 immediate release from Respondents' custody and enjoining Respondents from re-
11 detaining him unless they demonstrate factors arose subsequent to the OSUP that
12 necessitated his re-detention, by clear and convincing evidence, namely, that he is
13 a flight risk or danger to the community, such that his physical custody is required.
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16
17 WHEREFORE, for the reasons set forth in the accompanying memorandum
18 of points and authorities, Petitioner respectfully requests this Court to grant the
19 Temporary Restraining Order and Enjoin the government from re-detaining and/or
20 moving Petitioner and should the court require, set the case for further briefing.
21

22
23 Respectfully submitted,
24 BERJIS | MYERS PLC

25
26 /s/ Robert E Myers
27 Robert Myers, Esq.
28 Counsel for Petitioner

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28 Respondents.

} CASE NO.

} **MEMORANDUM OF POINTS AND**
} **AUTHORITIES IN SUPPORT OF**
} **MOTION FOR TEMPORARY**
} **RESTRAINING ORDER AND**
} **PRELIMINARY INJUNCTION**

1 **I. INTRODUCTION**

2 On December 17, 2025, KAVEH MOMTAZIAN (Petitioner), filed a
3
4 petition for a writ of habeas corpus challenging the unlawful revocation of his
5 Order of Supervision and excessive detention.
6

7 **II. NOTICE TO RESPONDENTS**

8 Undersigned counsel Robert E Myers spoke with counsel for
9
10 Respondents, Daniel Beck, on December 17, 2025 at approximately 10:50 AM.
11 Counsel indicated that Respondents oppose this motion. Undersigned counsel,
12 Robert E Myers, confirmed the proper email to provide documents to Respondents
13 and will do so upon filing.
14

15 **III. FACTUAL BACKGROUND**

16
17 Petitioner entered the United States on or about September 22, 1996, and
18 was released from ICE custody on an Order of Supervision (USUP) on or about
19 February 16, 2006. ICE determined that Petitioner was not a flight risk or danger
20 to the community before releasing him. Not only did Petitioner at all times
21 complied with the terms of his OSUP, but he also had negative factors then and has
22 since he was placed on OSUP, he has not had any negative factors.
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25 The Department of Homeland Security (DHS) has allowed Petitioner to be
26 on an order of Supervision and he has always been in compliance. See Exh. A
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1 (OSUP paperwork and recent QR codes). Petitioner owns a company called [REDACTED]

2 [REDACTED] which his partner/brother-in-law is currently running without him.
3

4 On June 22, 2025, for an unknown reason, Petitioner was detained. He was
5 taken to the Adelanto Detention Center, where he remains detained to this date.
6

7 On information and belief, while detained, Petitioner requested to be released or
8 interviewed regarding his fear to return to Iran or anywhere.
9

10 Petitioner was taken away from his wife and his four (4) US Citizen children
11 which at the time, the youngest was 2 months old. When detained, along with
12 requesting to be released and expressing his fear, he worked on vacating his old
13 criminal convictions. He did the Motions to Vacate first and while undersigned
14 counsel was preparing his Motion to Reopen. His Motion to Reopen was filed
15 once in August but was filed with a Fee Waiver given that he was in custody, xbut
16 the Fee Waiver was denied so he refiled the Motion to Reopen with a fee on or
17 about October 9, 2025. The Motion to Reopen was denied and is currently on
18 appeal.
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22 Prior to his detention, Petitioner was given no notice of ICE's intention to
23 re-detain him, and he was not provided with any information about why his OSUP
24 was revoked. ICE has no particularized evidence that Petitioner is a danger to the
25 community or a flight risk. Petitioner has not received an individualized hearing
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1 before a neutral decisionmaker to assess whether his recent re-detention is
2 warranted due to danger or flight risk.
3

4 IV. ARGUMENT

5 A temporary restraining order is governed by a four-factor test. Courts must
6 consider whether Petitioner has shown: (1) a likelihood of success on the merits,
7 (2) that he is likely to suffer irreparable harm in the absence of such relief, (3) that
8 the balance of equities tips in his favor, and (4) that an injunction is in the public
9 interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008); see also *Friends*
10 *of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014). If Petitioner can
11 demonstrate serious questions going to the merits of his claim – a lesser showing
12 than a likelihood of success on the merits – and the balance of hardship tips sharply
13 in his favor, an injunction may be issued, assuming the other two *Winter* factors
14 have been met. *Friends of the Wild Swan*, 767 F.3d at 942.
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20 A temporary restraining order preserves the status quo ante litem, which
21 refers to the “last uncontested status which preceded the pending controversy.”
22 *Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1191 (9th
23 Cir. 2024); *Shilling v. United States*, 2025 WL 926866, at *11 (W.D. Wash. Mar.
24 27, 2025) (granting preliminary injunction).
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1 Here, Petitioner meets both the irreparable harm and likelihood of success
2 prongs, and the requested relief is not overly burdensome on Respondents.
3

4 Accordingly, Petitioner merits issuance of a TRO.

5 A. Petitioner Has Shown He is Likely to Succeed on the Merits of his Claim.
6

7 Petitioner's ongoing detention violates his Fifth Amendment substantive due
8 process right because he is neither a flight risk nor a danger to the community. In
9 addition, his ongoing detention violates his procedural due process rights because
10 his OSUP was revoked without any notice or any opportunity to contest his
11 detention before a neutral arbiter.
12

13
14 The Constitution establishes due process rights for "all 'persons' within the
15 United States, including [noncitizens], whether their presence here is lawful,
16 unlawful, temporary, or permanent." *Hernandez v. Sessions*, 872 F.3d 976, 990
17 (9th Cir. 2017) (quoting *Zadvydas*, 533 U.S. at 693). These due process rights are
18 both substantive and procedural. These protections extend to noncitizens facing
19 detention, as "[i]n our society liberty is the norm, and detention prior to trial or
20 without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S.
21 739, 755 (1987). Accordingly, "[f]reedom from imprisonment—from government
22 custody, detention, or other forms of physical restraint—lies at the heart of the
23 liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.
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1 Substantive due process thus requires that all forms of civil detention—
2 including immigration detention—bear a “reasonable relation” to a non-punitive
3 purpose. *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court
4 has recognized only two permissible non-punitive purposes for immigration
5 detention: ensuring a noncitizen’s appearance at immigration proceedings and
6 preventing danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also*
7 *Demore v. Kim*, 538 U.S. 510 at 519–20, 527–28, 31 (2003).

11 Here, Petitioner is not a flight risk or a danger to the community. Prior to
12 his detention, he complied with all terms of his OSUP (See Exhibit A). Petitioner
13 was detained shortly before his next scheduled OSUP check-in. Simply put, he has
14 never absconded from immigration authorities, but rather, has been engaging with
15 the legal procedures laid out in the immigration law for those who cannot be
16 removed to their country or cannot be removed there is a reasonable amount of
17 time. Simply put, Petitioner’s re-detention serves no non-punitive purpose.

21 In addition, the procedural component of the Due Process Clause prohibits
22 the government from imposing even permissible physical restraints without
23 adequate procedural safeguards. Generally, “the Constitution requires some kind
24 of a hearing before the State deprives a person of liberty or property.” *Zinerman v.*
25 *Burch*, 494 U.S. 113, 127 (1990). Non-citizens who are released from immigration
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1 custody, as Petitioner was in 2006, have a recognized liberty interest in continuing
2 to be free from government detention. *See Ortega v. Bonnar*, 415 F. Supp.3d 963,
3 970 (N.D. Ca. 2019). Once a non-citizen has a protected liberty interest, the
4 *Mathews* test applies to determine what procedural protections are due before
5 immigration officials can re-detain the non-citizen. Under that test, this Court
6 must weigh: (1) the private interest affected; (2) the risk of erroneous
7 deprivation and probable value of procedural safeguards; and (3) the government's
8 interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976),
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11 In this case, the private interest at stake is clearly weighty – Petitioner's
12 liberty has been severely curtailed for almost six months as he has remained in ICE
13 custody without the ability to seek release on bond from an immigration judge and
14 one review of custody which clearly did not evaluate or analyze the law pursuant
15 to 8 CFR 241.4.
16

17
18 In addition, the risk of erroneous deprivation is high. When Respondents
19 released Petitioner after his removal order in 2006, they did so because they
20 determined he was not a flight risk or a danger to the community. Prior to his re-
21 detention in June 2025, Petitioner had no notice of Respondents' intention to re-
22 detain him and no opportunity to contest that action. In the nearly six months that
23 he has been in ICE custody, he has not received a bond or custody redetermination
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1 hearing; however, he did receive a 90-day review wherein counsel was not
2 permitted to be present, he provided evidence that his convictions were vacated
3 and his significant ties to the community, family ties, at that time, pending Motion
4 to Reopen and yet, he received a boilerplate letter indicating that he must continue
5 to be detained.. Because the private interest in freedom from immigration
6 detention is substantial, due process requires the government to bear the burden of
7 proving by clear and convincing evidence that Petitioner is a flight risk or danger
8 to the community before re-detaining him. *See e.g., Espinoza v. Kaiser*, 2025 WL
9 2675785, *14 (E.D. Ca. Sept. 18, 2025) (unpub); *Hernandez v. Wofford*, 2025 WL
10 2624426, *2 (E.D. Ca. Sept. 10, 2025) (unpub); *Salazar v. Kaiser*, 2025 WL
11 2456232, *13 (E.D. Ca. Aug. 26, 2025) (unpub); *Garcia v. Andrews*, 2025 WL
12 2420068, *13 (E.D. Ca. Aug, 21, 2025) (unpub); *Pinchi v. Noem*, 2025 WL
13 1853763, *1 (N.D. Ca. July 4, 2025) (unpub); *Valencia Zapata v. Kaiser*, 2025 WL
14 2578207, *4 (N.D. Ca. Sept. 5, 2025) (unpub); *Rosado v. Figueroa*, 2025 WL
15 2337099, *19 (D. Az. Aug. 11, 2025) (unpub); *Martinez v. Clark*, 124 F.4th 775,
16 785-86 (9th Cir. 2024).

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24 Finally, the government's interest in re-detaining Petitioner without first
25 providing notice and a custody hearing is minimal. Bond hearings are a routine
26 part of immigration court proceedings, imposing a minimal cost to the government.
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1 *See Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, *6 (E.D. Ca. March 3,
2 2025). Petitioner is represented by counsel and has a demonstrated record of
3 attendance at his check-ins. There is no reason to think that his compliance will
4 change if he is released pending a pre-deprivation custody hearing.
5

6
7 Thus, all three *Mathews* favor Petitioner, and he has established a likelihood
8 of success on his due process claims.
9

10 B. Petitioner will Suffer Irreparable Harm Absent Issuance of a Temporary
11 Restraining Order.

12 In the absence of a TRO, Petitioner is at risk of continued unlawful
13 detention. Deprivation of Petitioner's due process rights constitutes irreparable
14 injury. *See Sun v. Santacruz*, 2025 WL 2730235, *7 (C.D. Ca. Aug. 26, 2025)
15 (citing *Hernandez*, 872 F.3d at 994). In addition, Petitioner's detention is
16 preventing him from working, running his business, supporting his wife and four
17 children especially given the age of his children.
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21 C. The Balance of Equities Tip in Petitioner's Favor and the Public Interest
22 Favors Issuance of a Temporary Restraining Order.

23
24 The balance of equities and public interest merge in cases against the
25 government. *See Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, the balance
26 favors Petitioner.
27
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1 Petitioner does not contest Respondents' ability to prosecute criminal
2 offenses, detain noncitizens, and remove noncitizens under the immigration laws.
3
4 Here, the likelihood of Petitioner's success on the merits, combined with the
5 established constitutional framework that requires the government to proceed
6 lawfully when detaining non-citizens, strongly tips the balance of equities in
7 Petitioner's favor. "There is generally no public interest in the perpetuation of
8 unlawful agency action. To the contrary, there is a substantial public interest in
9 having governmental agencies abide by the federal laws that govern their existence
10 and operations." *See League of Women Voters of United States v. Newby*, 838 F.3d
11 1, 12 (D.C. Cir. 2016) (internal quotation marks and citations omitted).

15 Petitioner's constitutional right to be free of unlawful detention weighs
16 heavily in the public interest. As the revocation of Petitioner's OSUP without
17 notice or the opportunity to contest the revocation, coupled with his continued
18 detention without any hearing before a neutral arbiter, violate his due process
19 rights, there can be no public interest in prolonging that circumstance. *See e.g.*,
20 *Washington v. DeVos*, 481 F.Supp.3d 1184, 1197 (W.D. Wash. 2020).

24 Respondents cannot show here how the government's interests overcome the
25 irreparable injury to Petitioner. As noted above, the hardship for Petitioner is
26 concrete and severe, while the imposition on the government is minimal. At worst,
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1 if Respondents truly believe Petitioner is a flight risk or a danger to the
2 community, they will be required to provide him with a bond hearing, during
3 which they will need to prove one of those factors exist before they can re-detain
4 him. The continued deprivation of Petitioner's liberty, when weighed against the
5 minimal imposition of release and a pre-deprivation bond hearing, tip sharply in
6 favor of the issuance of a TRO.
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10 V. THE COURT SHOULD NOT REQUIRE PETITIONER TO
11 PROVIDE SECURITY

12 The Court should not require a bond under Fed. R. Civ. P. Rule 65(c). This
13 rule permits a court to grant preliminary injunctive relief "only if the movant gives
14 security in an amount that the court considers proper to pay the costs and damages
15 sustained by any party found to have been wrongfully enjoined or restrained."
16

17 FRCP 65(c). But it is well established that Rule 65(c) does not impose a
18 mandatory requirement for a bond, but rather "invests the district court 'with
19 discretion as to the amount of security required, if any.'" *Jorgensen v. Cassiday*,
20 320 F.3d 906, 919 (9th Cir. 2003) (quoting *Barahona-Gomez v. Reno*, 167 F.3d
21 1228, 1237 (9th Cir. 1999)). In particular, "[t]he district court may dispense with
22 the filing of a bond when it concludes there is no realistic likelihood of harm to the
23 defendant from enjoining his or her conduct." *Johnson v. Courturier*, 572 F.3d
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1 1067, 1086 (9th Cir. 2009). Here, there is no realistic likelihood of harm to
2 Respondents if the Court grants the requested TRO, and it would pose a significant
3 hardship on Petitioner who is incarcerated to have a bond imposed. The Court
4 should exercise its discretion and waive the requirement to post a bond under Rule
5 65(c).
6

7
8 VI. CONCLUSION

9
10 For the foregoing reasons, Petitioner respectfully submits that he has met the
11 criteria for a temporary restraining order. He asks the Court to order his immediate
12 release and to enjoin Respondents from re-detaining him: (1) absent further order
13 of this Court; or (2) absent the provision of a pre-deprivation hearing before a
14 neutral arbiter, at which Respondents will bear the burden of proving by clear and
15 convincing evidence that he is a flight risk or a danger to the community.
16

17
18 DATED this 17 of December 2025.

19
20 Respectfully submitted,
21 BERJIS | MYERS PLC

22
23 _____/s/ Robert E Myers_____
24 Robert Myers, Esq.
25 Counsel for Petitioner

26 **TABLE OF EXHIBITS**

27 **Exhibit A: Order of Supervision and Proof of Check-ins**
28