

FILED

David Betancourt Gomez

A-Number: [REDACTED]

DEC 17 2025

Adelanto, California 92301

Pro Se

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

DAVID BETANCOURT GOMEZ

A# [REDACTED]

Petitioner,

vs.

KRISTI NOEM, Secretary of the U.S.
Department of Homeland Security,
**DEPARTMENT OF HOMELAND
SECURITY; PAM BONDI**, Attorney General of
United States, **CHERYL M. DAVIES**, Director
and/or the Acting Director of the Los Angeles
Field Office of U.S. Immigration and Customs
Enforcement, **WARDEN ADELANTO ICE
PROCESSING CENTER**, and **UNITED
STATES ENFORCEMENT AND REMOVAL
OPERATIONS**,

Respondents.

Case No.:

1:25CV01866 DL-AC(HC)

**PETITIONER'S MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

Moving Party:

David Betancourt Gomez, Pro-Se Petitioner/Plaintiff

Relief Sought:

Pursuant to Local Rule of Civil Procedure 231 in the Eastern District of California, pro-se Petitioner/ Plaintiff respectfully moves the Court for a temporary restraining order pending the adjudication of his Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241.

Papers Submitted in Support: Memorandum of Law

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

Intent to Reply:

Pursuant to Local Rule of Civil Procedure 231 in the Eastern District of California Plaintiff respectfully requests the opportunity to respond to any responses filed by Respondents-Defendants to the instant Motion.

Respectfully submitted,



David Betancourt Gomez

A# 

Dated this 12th of DECEMBER, 2025.

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
NOTICE TO RESPONDENTS-DEFENDANTS	2
FACTUAL BACKGROUND	3
ARGUMENT	5
A. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS REMOVED	6
B. PETITIONER IS LIKELY TO SUCCEED ON HIS PETITION ON THE MERITS	7
C. THE BALANCE OF EQUITIES DECISIVELY TIPS IN PETITIONER'S	8
D. THE PUBLIC INTEREST STRONGLY SUPPORTS IMMEDIATE RELIEF	10
E. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER ...	12
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>Brenntag Int’l Chems., Inc. v. Bank of India</i> , 175 F.3d 245 (2d Cir. 1999).....	6
<i>Diouf v. Napolitano</i> (“Diouf II”), 634 F.3d 1081 (9th Cir. 2011)	9, 10
<i>Faiveley Transport Malmo AB v. Wabtec Corp.</i> , 559 F.3d 110 (2d Cir. 2009).....	5
<i>Foucha v. Louisiana</i> , 504 U.S. 71 (1992);.....	8
<i>Freedom Holdings, Inc. v. Spitzer</i> , 408 F.3d 112 (2d Cir. 2005).....	6
<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017)	10
<i>Jennings v. Rodriguez</i> , 138 S. Ct. 830 (2018).....	9, 11
<i>Jorgensen v. Cassiday</i> , 320 F.3d 906 (9th Cir. 2003)	12
<i>Mendoza v. Garland</i> , No. 2:21-cv-0992-KJM, 2021 WL 6051700 (E.D. Cal. Dec. 21, 2021).....	11
<i>Nadarajah v. Gonzales</i> , 443 F.3d 1069 (9th Cir. 2006)	9, 10
<i>Orantes–Hernandez v. Smith</i> , 541 F. Supp. 351 (C.D. Cal. 1982)	12
<i>Rodriguez v. Robbins</i> , 715 F.3d 1127 (9th Cir. 2013)	9, 11
<i>S.N.C. v. Sessions</i> , No. 18 CIV. 7680 (LGS), 2018 WL 6175902 (S.D.N.Y. Nov. 26, 2018).....	2
<i>Salinger v. Colting</i> , 607 F.3d 68 (2d Cir. 2010).....	6

PETITIONER’S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A TEMPORARY RESTRAINING ORDER

1		
2	<i>Siddique v. Holder,</i>	
3	2011 WL 4855273 (N.D. Cal. Oct. 13, 2011).....	9
4	<i>Toussaint v. Rushen,</i>	
5	553 F. Supp. 1365 (N.D. Cal. 1983).....	12
6	<i>United States v. Ruiz,</i>	
7	536 U.S. 622 (2002).....	5
8	<i>Vasquez v. Wolf,</i>	
9	830 F. App'x 556 (9th Cir. 2020).....	2
10	<i>Winter test. Alliance for the Wild Rockies v. Cottrell,</i>	
11	632 F.3d 1127 (9th Cir. 2011)	5
12	<i>Winter v. Natural Resources Def. Council, Inc.,</i>	
13	555 U.S. 7 (2008).....	5
14	<i>You Xiu Qing v. Nielsen,</i>	
15	321 F. Supp. 3d 451 (S.D.N.Y. Aug. 2, 2018).....	2
16	<i>Zadvydas v. Davis,</i>	
17	533 U.S. 678 (2001).....	8, 11
18	Constitutional Provisions	
19	28 U.S.C. § 2241.....	1, 12, 13
20	U.S.C. § 1231.....	3, 7
21		
22		
23		
24		
25		
26		
27		
28		

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
3 **EASTERN DIVISION**

4 **DAVID BETANCOURT GOMEZ**

5 A# 

6 Petitioner,

7 vs.

Case No.:

**PETITIONER'S MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

8 **KRISTI NOEM**, Secretary of the U.S.
9 Department of Homeland Security,
10 **DEPARTMENT OF HOMELAND**
11 **SECURITY; PAM BONDI**, Attorney General of
12 United States, **CHERYL M. DAVIES**, Director
13 and/or the Acting Director of the Los Angeles
14 Field Office of U.S. Immigration and Customs
15 Enforcement, **WARDEN ADELANTO ICE**
PROCESSING CENTER, and **UNITED**
STATES ENFORCEMENT AND REMOVAL
OPERATIONS,
Respondents.

16
17 **PRELIMINARY STATEMENT**

18 Petitioner-Plaintiff, David Betancourt Gomez, ("Petitioner-Plaintiff") respectfully moves
19 this Court for a temporary restraining order pending its adjudication of his Petition for Writ of
20 Habeas Corpus Pursuant to 28 U.S.C. § 2241. Specifically, Petitioner-Plaintiff requests the Court
21 to order Respondents-Defendants to cease any ongoing actions and refrain from taking any
22 additional actions toward effectuating Petitioner-Plaintiff's removal from the United States until
23 the Court has adjudicated his petition for Writ of Habeas Corpus.

24
25 Petitioner-Plaintiff is a forty-four (44) year-old man. XXXX's petition and complaint does
26 not challenge any potential order of removal that was entered against him or U.S. Immigration and
27 Customs
28

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

1 Enforcement ("ICE")'s authority to remove him. Instead, he challenges the processes ICE
2 has employed and continues to employ in its effectuation of the removal order and removal from
3 the United States while he has a pending application for a T Visa before USCIS.⁸ *See You Xiu*
4 *Qing v. Nielsen*, 321 F. Supp. 3d 451, 457 (S.D.N.Y. Aug. 2, 2018) (finding, as cognizable, a
5 challenge to the manner of removal employed by the government); *see also Vasquez v. Wolf*, 830
6 F. App'x 556 (9th Cir. 2020) (same); *S.N.C. v. Sessions*, No. 18 CIV. 7680 (LGS), 2018 WL
7 6175902, at *5 (S.D.N.Y. Nov. 26, 2018) ("Here, the type of relief Petitioner is seeking, the right
8 to have her [] application adjudicated will not, even if granted, nullify her removal order.")
9

10 Because the Petitioner is likely to succeed in his petition for Writ of Habeas Corpus
11 pursuant to 28 U.S.C. § 2241, as well as to avoid the significant irreparable harm Petitioner would
12 suffer if Respondents-Defendants proceed with any current removal plans—which, upon
13 information and belief, has not been decided and or scheduled at the time of this filing. Petitioner
14 requests the Court to issue an order restraining the Respondents-Defendants from further action at
15 the present time.
16

17 NOTICE TO RESPONDENTS-DEFENDANTS

18
19 Undersigned pro-se Petitioner is currently detained at Adelanto ICE Processing Center with
20 no access to the U.S. Attorney's Office for the Respondent's. However, the Petitioner has made a
21 written request to the Headquarters Post-Order Detention Unit, U.S. Department of Homeland
22 Security to review his prolonged detention/ indefinite detention under the Zadvydas Standard.
23 With said request, Petitioner enclosed several affidavits including but not limited to: Affidavit
24 from the Petitioner's brother family members addressing hardship such as the fact that the
25 Petitioner's brother is the sole caregiver of his father, who health is declining since the passing of
26 the Petitioner's mother; Affidavit's from the Petitioner fiancé wherein she states that the Petitioner
27
28

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

1 will be residing with her if release and he will take on full financial responsibility and make sure
2 that the Petitioner abides with any requirements imposed by immigration; Affidavit from the
3 Petitioner's soon to be step-son, and asking for a change for him to have a father figure.

4
5 It is the Petitioner understanding that in this type of case, once the case is filed this
6 Honorable court will provide copies of the Petition for Writ of Habeas Corpus, the Notice of
7 Motion for Temporary Restraining Order ("TRO"), this memorandum of law, and a proposed
8 Order granting the TRO upon the filing of this motion and in accordance with Local Rule 135, via
9 email and conventional mail.

10 **FACTUAL BACKGROUND**

11
12 Petitioner is a 44-year-old native of Colombia. Since on or about June 7, 2025, he has been
13 detained by ICE at the Adelanto Detention Center, under the agency's 8 U.S.C. § 1231 detention
14 authority. However, overall, the Petitioner has been in ICE custody in several different detention
15 center since on or about June 8, 2024 (over 547 days, 17 months). At a very young age the
16 Petitioner entered the United States as a lawful permanent resident when he was only three years
17 old, growing up with his entire family and knowing no other home. As a young adult, he made a
18 serious mistake and was convicted of possession of MDMA, a crime that ultimately placed him in
19 removal proceedings. Despite having lived nearly his whole life in the United States, the Petitioner
20 was ordered removed to Colombia on or about 2003—a country he barely remembered and had
21 no meaningful ties to. Petitioner resided in Colombia for over 20 years until he became the target
22 of criminal groups who saw him as vulnerable and without protection. Over time, he faced escalating
23 threats and acts of intimidation, eventually being beaten and tortured by these armed actors. The
24 persecution left him traumatized and fearful, and despite having served his sentence in the United
25 States, he now confronted far greater danger in the country to which he had been deported.

26
27
28 **PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

1 After being tortured in Colombia by criminal groups who targeted him repeatedly, he
2 realized that remaining there meant living in constant fear for his life and his family's life. The
3 trauma he endured left him physically and emotionally scared, and the threats showed no sign of
4 ending. Faced with this danger, he made the difficult decision to flee to the United States. The
5 Petitioner entered the United States through the Arizona border on or about January 2024, where
6 he was inspected by immigration authorities, detained for 3 days and subsequently released to
7 continue his process. For several months, he lived quietly and complied with all requirements
8 while trying to rebuild his life. However, on June 8, 2024, everything changed when ICE officers
9 detained him and placed him in custody.
10

11
12 On February 18, 2025, the Petitioner was granted protection under the Convention Against
13 Torture ("CAT"). Since being granted his CAT Deferral the Petitioner has remained in ICE
14 custody for more than 17 months, with no violations while in custody and unable to return to his
15 family or rebuild his life. Despite being legally protected from removal to the country where he
16 was tortured, he continues to live in detention—waiting, uncertain, and separated from the people
17 who need him most. His prolonged confinement has caused significant emotional and physical
18 strain, leaving him feeling trapped in a system that recognizes the danger. Since then, he has
19 remained in detention, hoping for the opportunity to resolve his case and reunite with the loved
20 ones who depend on him.
21

22
23 Since being detained the Petitioner suffered the devastating loss of his mother, who passed
24 away following complications from diabetes and an exhausting 8.5-hour open-heart surgery.
25 Tragically, he was never given the chance to say goodbye, a burden that weighs heavily on him
26 every day. Now, more than anything, he hopes to be released so he can support his family during
27 this difficult time. His brother, who carries a demanding work schedule, needs help managing the
28

**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

responsibilities that have grown since their mother's death, and his father—emotionally shattered and in fragile health—requires constant care and support. All he wants is the opportunity to be present for his family and to help them heal.

ARGUMENT

The standards for granting a TRO and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure are identical. Where a party requests a TRO that enjoins governmental action, the party must demonstrate that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of the preliminary relief, that the balance of equities tip in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, because the Petitioner meets both the irreparable harm and likelihood of success prongs and because the requested relief is not overly burdensome on Respondents-Defendants, he merits such relief. *Winter test. Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

To the extent that the government argues there is a question regarding the Court's jurisdiction, it does not preclude this Court from exercising its inherent authority to issue emergent relief pending further briefing. “[A] federal court always has jurisdiction to determine its own jurisdiction.” *United States v. Ruiz*, 536 U.S. 622, 628 (2002).

Under the four-factor test, “[a] showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.” *Faiveley Transport Malmö AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (internal citation and quotation marks omitted). Under this prong, a party seeking a TRO and PI must show that “but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the position they previously occupied.” *Brenntag Int’l Chems., Inc. v. Bank of India*, 175 F.3d 245,

249 (2d Cir. 1999); *see also Salinger v. Colting*, 607 F.3d 68, 81-82 (2d Cir. 2010). In addition, the harm must be “neither remote nor speculative, but actual and imminent.” *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005) (citation omitted).

Here, the Petitioner satisfies the irreparable harm prong in four ways.

A. PETITIONER WILL SUFFER IRREPARABLE HARM IF HE IS REMOVED

1. The harm here is not speculative; it is happening **right now**. Petitioner has spent more than a year and a half in an ICE jail, enduring the severe and deteriorating physical and psychological effects that inevitably accompany indefinite civil confinement. Courts uniformly recognize that unconstitutional detention is itself an irreparable injury. Every additional day the Government keeps Petitioner locked in Adelanto—despite knowing it cannot remove him—inflicts psychological trauma, exacerbates medical vulnerabilities, and deepens the human cost of unlawful detention. There is no monetary remedy or post-hoc relief that can restore the time, health, or dignity taken from Petitioner by continued illegal imprisonment. Without a TRO, he will continue to suffer harms that are “certain and great, actual and not theoretical,” satisfying the irreparable-injury standard many times over. During detention, Petitioner has suffered profound and permanent personal losses, including the death of his mother, whom he was unable to visit or mourn with family. He is also missing irreplaceable times with his five-year-old child, and his father’s rapidly declining health places him at risk of losing his remaining opportunity to spend the rest of the time with his only living parent.

Petitioners’ mental and physical health have similarly deteriorated while in custody. He has developed severe depression and anxiety, which he is being heavily medicated at Adelanto ICE Detention Center. Additionally, he has been experiencing vision issues, and persistent pain in his back and knee—likely due to or aggravated by the conditions of confinement and possible

1 spinal or joint herniation. These harms continue to compound daily, and no retrospective relief can
2 restore lost time with family, reverse declining health, or compensate for the emotional trauma of
3 prolonged detention. Such harms are immediate, concrete, and unquestionably irreparable.

4
5 Petitioners additionally face irreparable harm if removed to a third country. He has no
6 family, cultural ties, or support networks in any proposed third country, and removal would expose
7 him to extreme vulnerability, lack of stability, and foreseeable hardship. Courts analyzing third-
8 country removal have recognized that transferring a noncitizen to a nation with which they have
9 no meaningful connection creates a substantial and irreparable risk of harm, including danger,
10 dislocation, and inability to meet basic needs. See, e.g., *Nguyen*, noting that third-country transfers
11 contrary to an individual's connections and history run afoul of fundamental fairness
12 considerations and even conflict with the government's own stated policies.

13
14 ICE's own policy guidance acknowledges that removal to a third country where a
15 noncitizen lacks ties, resources, or support may place the individual at risk, reinforcing the
16 significant potential for harm. Because Petitioner has zero ties to any proposed third country,
17 removal would impose immediate and life-altering harms that cannot be undone—further
18 establishing the necessity of a Temporary Restraining Order.

19
20 **B. PETITIONER IS LIKELY TO SUCCEED ON HIS PETITION ON THE MERITS**

21 1. Petitioner easily satisfies the likelihood-of-success requirement because his
22 continued detention—now stretching over 547 days—is flatly unconstitutional and directly
23 contrary to controlling Supreme Court and Ninth Circuit precedent. Petitioner is held under 8
24 U.S.C. §1231, yet he has been granted deferral of removal under the Convention Against Torture.
25 As a matter of law, his removal is **not remotely foreseeable**. The Supreme Court has made clear
26 that post-order detention beyond six months is justified only where removal is reasonably likely
27
28

1 in the near future. *Zadvydas v. Davis*, 533 U.S. 678, 688–702 (2001). The Government cannot
2 meet that burden here—not even close. It cannot remove him now, it cannot remove him soon, and
3 it likely cannot remove him ever.

4 The Government’s insistence on continuing to hold a CAT-protected individual—one
5 whom it is **legally forbidden** to deport—demonstrates not lawful enforcement but arbitrary
6 imprisonment. The Immigration Judge’s previous denial of discretionary bond at Adelanto does
7 nothing to cure this constitutional violation. That hearing occurred long before detention became
8 this prolonged, and it lacked the due-process safeguards required for such extreme confinement.
9 Federal courts across the Ninth Circuit have consistently condemned prolonged detention
10 exceeding one year where, as here, the Government has no viable path to removal. Because
11 Petitioner’s detention now serves no legitimate immigration purpose and violates clearly
12 established law, Petitioner has a **strong likelihood of success on the merits**.

13
14
15 **C. THE BALANCE OF EQUITIES DECISIVELY TIPS IN PETITIONER’S FAVOR**

16
17 1. The balance of equities overwhelmingly favors Petitioner because continued
18 detention serves no legitimate governmental interest, while Petitioner’s liberty interest is at its
19 constitutional apex. The Supreme Court has repeatedly emphasized that freedom from physical
20 restraint lies at the core of the liberty protected by the Due Process Clause. *Foucha v. Louisiana*,
21 504 U.S. 71, 80 (1992); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). When the Government’s
22 interest is weak—or nonexistent—continued civil detention becomes precisely the kind of
23 arbitrary imprisonment the Constitution forbids. Here, because the Government is legally barred
24 from removing a CAT-protected individual, its immigration interest is not merely diminished—it
25 has evaporated.
26
27
28

1 Courts in the Ninth Circuit hold that where removal is not reasonably foreseeable, the
2 Government's justification for detention collapses, and the equities tip sharply toward the
3 noncitizen. *See Diouf v. Napolitano* ("Diouf II"), 634 F.3d 1081, 1092–93 (9th Cir. 2011)
4 (recognizing that prolonged detention without a legitimate immigration purpose creates a "grave
5 due process concern" and that individuals facing such detention are entitled to heightened
6 procedural protections). Likewise, in *Nadarajah v. Gonzales*, 443 F.3d 1069, 1080 (9th Cir. 2006),
7 the Ninth Circuit held that when removal is not reasonably foreseeable, "the government's
8 justification for continued detention evaporates," and release is required absent extraordinary
9 circumstances.
10

11
12 The Government cannot articulately argue hardship here because it cannot remove
13 Petitioner—a reality that destroys any claim of a continued immigration-enforcement interest.
14 Courts consistently find that the Government suffers no cognizable harm when it is restrained from
15 violating the Constitution. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (holding
16 that the balance of hardships favors detained noncitizens, as the government "cannot claim harm
17 from being required to follow the Constitution"), vac'd on other grounds, *Jennings v. Rodriguez*,
18 138 S. Ct. 830 (2018). Similarly, courts in prolonged-detention cases have emphasized that the
19 Government's general interest in detention is greatly outweighed when detention becomes
20 arbitrary. *See Siddique v. Holder*, 2011 WL 4855273, at 5 (N.D. Cal. Oct. 13, 2011) (finding
21 equities favor noncitizen where government could not show removal was likely in the reasonably
22 foreseeable future).
23
24

25 On the other side of the scale lies Petitioner's fundamental right to be free from unlawful
26 confinement—a "weighty" interest that courts treat with heightened protection. *Zadvydas*, 533
27 U.S. at 690. After more than 547 days of incarceration despite a legal prohibition on removal,
28

1 Petitioner continues to suffer severe restrictions on liberty without any legitimate governmental
2 rationale.

3 In short, the Government loses nothing by adhering to constitutional limits, while Petitioner
4 loses everything by remaining indefinitely and illegally jailed. Thus, the balance of equities not
5 only tips in Petitioner's favor—it decisively and overwhelmingly supports immediate injunctive
6 relief.
7

8 **D. THE PUBLIC INTEREST STRONGLY SUPPORTS IMMEDIATE RELIEF**

9 1. The public interest overwhelmingly favors immediate injunctive relief because
10 Petitioner's continued confinement violates core constitutional protections and serves no
11 legitimate governmental purpose. The Ninth Circuit has made clear that the public always has a
12 compelling interest in ensuring the Government acts within constitutional limits. *Hernandez v.*
13 *Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("the public interest is served by ensuring that the
14 government complies with the Constitution"). That principle applies with full force here.
15

16 Petitioner's sole criminal conviction is more than twenty years old, and critically, Petitioner
17 has no criminal record whatsoever since then. This is not a case involving ongoing danger,
18 recidivism, or any evidence of present-day risk. Courts repeatedly hold that old or stale criminal
19 history cannot justify indefinite civil detention, particularly when removal is not reasonably
20 foreseeable. In *Nadarajah v. Gonzales*, the Ninth Circuit rejected the Government's reliance on
21 years-old criminal allegations and ordered release, explaining that "generic public-safety concerns
22 cannot override constitutional limits when removal is not reasonably foreseeable." 443 F.3d 1069,
23 1084 (9th Cir. 2006). Likewise, in *Diouf v. Napolitano* ("Diouf II"), the court held that prolonged
24 post-order detention without a realistic prospect of removal raises "grave" and "serious
25
26
27
28

1 constitutional concerns.” 634 F.3d 1081, 1087–93 (9th Cir. 2011). Those concerns have been even
2 stronger for an individual with no criminal activity in the last two decades.

3 The Supreme Court similarly confirms that immigration detention is civil, not punitive,
4 and that the public interest is advanced—not harmed—when courts stop detention that has become
5 punitive or arbitrary. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Continued incarceration of a
6 CAT-protected individual for 547 days, despite a two-decades-old conviction and a spotless record
7 since, transforms civil detention into unconstitutional punishment—precisely the outcome the
8 public has an interest in preventing.
9

10 The Government cannot plausibly claim any public safety interest here. Petitioner’s long-
11 ago conviction—without any subsequent offenses—fails to establish current dangerousness. Ninth
12 Circuit precedent is clear: the Government suffers no harm when ordered to adhere to
13 constitutional detention requirements. *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)
14 (“the government cannot suffer harm from being required to follow the Constitution”), vacated on
15 unrelated grounds by *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018). And where detention has
16 become prolonged, unjustified, and untethered to the purpose of removal, courts in the Eastern
17 District of California recognize that the public interest favors release. *See Mendoza v. Garland*,
18 No. 2:21-cv-0992-KJM, 2021 WL 6051700, at 5–6 (E.D. Cal. Dec. 21, 2021) (public interest
19 favored release where detention had grown excessive and constitutionally suspect).
20
21

22 In short, the public interest is not merely aligned with Petitioner’s release, it is harmed by
23 anything less. The public has a powerful interest in preventing indefinite civil confinement,
24 enforcing constitutional limits on immigration detention, and ensuring that a 20-year-old
25 conviction does not morph into a justification for unlawful imprisonment. A TRO restoring
26
27
28

**PETITIONER’S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

1 Petitioner's liberty on supervision thus directly serves the public interest in constitutional
2 government, fairness, and the proper functioning of the immigration system.

3 **E. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE SECURITY**
4 **PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER.**

5 Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary
6 injunction or a temporary restraining order only if the movant gives security in an amount that the
7 court considers proper to pay the costs and damages sustained by any party found to have been
8 wrongfully enjoined or restrained." However, "Rule 65(c) invests the district court with discretion
9 as to the amount of security required, if any." *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
10 2003) (internal quotation marks and citation omitted). District courts routinely exercise this
11 discretion to require no security in cases brought by indigent and/or incarcerated people. *See,*
12 *e.g., Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes-*
13 *Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This
14 Court should do the same here.

15
16
17 **CONCLUSION**

18 For all the reasons set forth above, Petitioner respectfully requests that this Court grant his
19 Motion for a Temporary Restraining Order and maintain quo until this Court has an opportunity
20 to assess Petitioner's Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner has
21 demonstrated a clear likelihood of success on the merits of his underlying habeas petition, has
22 established that he is suffering—and will continue to suffer—grave, immediate, and irreparable
23 harm absent injunctive relief, and has shown that the balance of equities and the public interest
24 overwhelmingly favor the issuance of a TRO.

25 Because Petitioner cannot presently be removed due to his grant of protection under the
26 Convention Against Torture, and because his detention has now extended far beyond constitutional

27
28 **PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A
TEMPORARY RESTRAINING ORDER**

1 limits without any legitimate governmental justification, temporary injunctive relief is not only
2 warranted but necessary to prevent further unlawful and irreparable harm.

3 Accordingly, Petitioner respectfully requests that this Court issue an order restraining
4 Respondents from taking any action to remove him from the United States, including removal to
5 any third country, and from transferring him outside of this Court's jurisdiction, pending final
6 adjudication of his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. Petitioner
7 further requests that the Court waive the security requirement under Federal Rule of Civil
8 Procedure 65(c).
9

10
11 Dated: _____, 2025

Respectfully submitted,

12
13 

14 David Betancourt Gomez

15 A# 
16 *Petitioner, Pro Se*
17
18
19
20
21
22
23
24
25
26
27
28