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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FAUDELIN DAT,

Petitioner

v.

JEREMEY CASEY, Senior Warden,
Imperial Regional Detention Facility;
DANIEL A. BRIGHTMAN, San Diego
Field Office Director, U.S. Immigration
Immigration & Customs Enforcement
(ICE); TODD LYONS, Acting Director,
U.S. ICE; KRISTI NOEM, U.S. Secretary
of Homeland Security; PAMELA BONDI,
Attorney General of the United States

Respondents.

Case No. '26CV0717 TWR JLB

Agency No. 

**PETITIONER'S MOTION
FOR TEMPORARY
RESTRAINING ORDER**

CASE SUMMARY

Petitioner, Mr. Dat, is a non-citizen who was previously released from immigration custody but was re-detained for no legitimate reason. Respondents determined that he was neither a flight risk nor a danger to the community when it previously released him from its custody.

On February 13, 2020, Mr. Dat, entered the United States with his wife and his minor child seeking asylum. He was apprehended shortly after his entry but was released a day later on his own recognizance. The conditions of his release included GPS monitoring and monthly in-person check-ins with Immigration and Customs Enforcement (ICE). About a year later, ICE removed his GPS monitoring, and his required check-ins were switched to monthly telephone appointments. A few months later ICE told Mr. Dat that he was no longer required to check in. Mr. Dat has never missed any ICE check-ins and has not otherwise violated any terms of the conditions of his release. He has also never been convicted of a crime. Since his release he has been living in Margate, Florida.

After his release, Mr. Dat filed an affirmative asylum application and an application for Temporary Protected Status (TPS) with US Citizenship and Immigration Services (USCIS), obtained a work permit and a Social Security Card and started working and supporting his minor children - in addition to the child that he traveled to the US with he now also has a US born child. His affirmative asylum

application was later forwarded to the Immigration court. He is currently separated from his wife but continues to provide financial support for both her and their children. At the time of his re-arrest, he was working as a truck driver. Without Mr. Dat's financial support, his wife and children are now facing eviction.

On December 10, 2025, Mr. Dat was detained at a Border Patrol checkpoint. He was transporting cargo from Calexico to Los Angeles. Although Mr. Dat presented his valid employment authorization card, his driver's license and proof of his TPS status and informed the border officers of his pending asylum application, he was told the President had terminated TPS and he was in the country illegally and arrested. At the time of his arrest, his TPS was still valid. Mr. Dat was handcuffed and eventually taken to the Imperial Regional Detention Facility (IRDF), where he remains to this day.

On information and belief, at the time of his arrest, immigration officers were aware that Mr. Dat was from Haiti with a valid TPS and had a pending asylum application.

Before re-detaining him on December 10, 2025, Respondents did not provide Mr. Dat with any written notice explaining the basis for the revocation of his release. Nor did they provide a hearing before a neutral decision-maker where ICE was required to justify the basis for re-detention or explain why Mr. Dat is a flight risk or danger to the community.

Mr. Dat is seeking a temporary restraining order (TRO) requiring Respondents for his immediate release from detention. The law makes clear that Petitioner should not be in detention currently. As several judges in this district have recently held individuals who have lived in the United States after their initial release by the Department of Homeland Security (DHS) and who are then re-detained without a pre-deprivation hearing or showing by ICE that they now constitute a flight risk or danger must be released immediately. *See e.g. Sanchez v. Larose*, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26, 2025) (internal citations omitted).

Because Petitioner is likely to succeed on the merits of his habeas petition and because his continued detention is causing and will continue to cause him irreparable harm, he hereby moves for a temporary restraining order to allow him his freedom while the court completes its adjudication of his habeas petition.

LEGAL STANDARD

A plaintiff seeking preliminary injunctive relief “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 the equities tips in his favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2011) (quoting *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). To grant preliminary injunctive relief a court must find that “a certain threshold showing [has been] made on each factor.”

Leiva-Perez v. Holder, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). If this threshold is met, “serious questions going to the merits and a balance of the hardships that tip sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Here, because Mr. Dat meets both the irreparable harm and likelihood of success prongs and because the relief is not overly burdensome on Respondents, he merits such relief.

1. Petitioner Is Likely to Succeed on the Merits

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. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil detention, including that of a non-citizen, violates due process in the absence of a “special justification” sufficient to outweigh one’s “constitutionally protected interest in avoiding physical restraint.” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (internal quotation marks omitted). “[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 679.

A person at risk of suffering a serious loss being given notice and an opportunity to be heard, in a meaningful manner and at a meaningful time, is the essence of procedural due process. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). This interest in freedom from detention is particularly keen for individuals whose release is subject to termination. In *Morrissey v. Brewer*, the Supreme Court held that an individual who is re-detained after being released- has a “valuable” liberty interest notwithstanding the “indeterminate” nature of his freedom. 408 U.S. 471, 482 (1972). Subject to the conditions of his release, a noncitizen released on bond “can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.” *Id.* The noncitizen’s liberty therefore “includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the noncitizen and often others.” *Id.* See, *Carballo v. Andrews*, No. 1:25-CV-00978- KES-EPG (HC), 2025 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025)(There is “a meaningful distinction between a challenge to an initial period of detention . . . and a challenge to *redetention* after a court has previously granted release on bond pending immigration proceedings.”)

“In practice, the DHS re-arrests individuals only after a ‘material’ change in circumstances. To satisfy due process, those changed circumstances must represent individualized legal justification for detention.” *Sanchez v. Larose*, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26, 2025)(internal citations omitted). Because no

discretion was exercised and no individual circumstances have changed—materially or otherwise—Mr. Dat’s detention was and continues to be patently unlawful.

The Respondents arrest and continued detention of Mr. Dat has unlawfully deprived him of his liberty without due process of law because the Government failed to: (1) provide written notice justifying the revocation of his release, (2) determine whether he presented a flight risk or danger to the community before rearresting him, or (3) provide him a hearing before a neutral decision maker prior to his re-detention. These failures are a violation of his right to due process, which requires Respondents to afford Mr. Dat a hearing before a neutral decision maker where ICE is required to justify re-detention *before* it occurs. The Petitioner is likely to succeed on the merits.

2. Petitioner Will Suffer Irreparable Harm If A TRO Is Not Issued

“It is well-established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover, the Ninth Circuit has recognized that those subject to immigration detention incur irreparable harm due to the economic burdens they face and their separation from family members. *Hernandez v. Sessions*, 872 Fj.3d 976, 995 (9th Cir. 2017).

Mr. Dat has been at liberty for five years, living in Miami, Florida. During that time, he has timely filed his asylum application and for Temporary Protected

Status with USCIS and obtained his work permit. He has been working to support his three minor children. His wife, from whom he is separated, does not work, and he is solely responsible for financially supporting their children. His family has spent all their savings, and his wife and children are now facing eviction. His inability to see and support his children, combined with the possibility that they may soon become homeless, is adversely impacting his mental health. Mr. Dat is also worried that his continued detention will likely result in the loss of his job if it has not been lost already. Since he is not working, he has not been able to secure counsel to assist him in his removal proceedings, which is now in Imperial, California, away from all his community support in Margate, Miami.

For all these reasons, Mr. Dat's continued detention is causing and will continue to cause irreparable harm.

3. The Balance of the Equities Tips in the Petitioners' Favor and Injunctive Relief is in the Public Interest

When the government is the opposing party, the balance of equities and the public interest merge. *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011). "The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million [in 2017 dollars]." *Hernandez v. Sessions*, 872 F.3d

976, 996 (9th Cir. 2017); *Diaz v. Kaiser*, 2025 WL 1676854, at *3 (citing e.g., Jorge M.F., 2021 WL 783561, at *3). “Generally public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Without injunctive relief, the harm being unlawfully imposed on Mr. Dat for the almost two months will continue at taxpayer expense.

Respondents have clearly violated the Petitioners’ Constitutionally protected liberty interest and should be enjoined from continuing to do so while this case is being adjudicated.

4. A Security Is Unnecessary Because For five Years Mr. Dat has complied with his conditions of release.

Although Federal Rule of Civil Procedure 65(c) can require a security for a temporary restraining order, a district court “has discretion as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.2003). No security is appropriate where there is no quantifiable harm to the restrained party and where the order is in the public interest. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir 2005), *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Here, for 5 years Mr. Dat has complied with the terms of his release and appeared for all his check-in appointments with ICE. It is unnecessary to impose a security to ensure his compliance with orders of this court.

5. Petitioners Have Complied with Civ. LR 83.3(g)

Undersigned counsel has taken efforts to ensure the Respondents are on notice of Petitioner's Motion for Temporary Restraining Order. Petitioner's counsel is filing this motion electronically in the Southern District of California, which automatically effects service on the U.S. Attorney's Office.

CONCLUSION

Petitioner Mr. Faudelin Dat respectfully requests that this Court grant His motion for a Temporary Restraining Order. In doing so, the Court should order the Respondents to release the Petitioner from detention until such time as his habeas petition can be adjudicated by the Court.

Respectfully submitted on this the 5th day of February 2026.

/s/R.Sherif
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Motion. On the basis of those discussions, I hereby verify that the statements made in this Motion are true and correct to the best of my knowledge.

Dated: February 5, 2026

/s/ R.Sherif
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Petitioner

V.

CHRISTOPHER J. LAROSE, Senior
Warden, Otay Mesa Detention Center;
JOSEPH FREDEN, Acting Field Office

Director, U.S. Immigration & Customs Enforcement (ICE); TODD LYONS, Acting Director, U.S. ICE; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States

Upon review of Petitioner's Mr. Faudelin Dat's Motion for Temporary Restraining Order, Petition for Habeas Corpus, and all supporting affidavits and exhibits, and any response to this motion, the Court HEREBY FINDS:

1. Petitioner is likely to succeed on the merits of his claims.
2. Petitioner is likely to suffer irreparable harm in the absence of a temporary restraining order, the balance of the equities tips in his favor, and a temporary restraining order is in the public interest.

Therefore, Petitioner Faudelin Dat's Motion for Temporary Restraining Order is GRANTED. THE COURT HEREBY ORDERS THAT:

1. Respondents release Petitioner Faudelin Dat from detention immediately.
2. No security shall be required.
4. Petitioner's Motion for Temporary Restraining Order shall also be considered a Motion for Preliminary Injunction. Respondents are to file any opposition no later than _____, 2026. Petitioners' Motion for Preliminary Injunction shall be heard on _____, 2026 at _____ AM/PM.

Dated: _____, 2026

Time and Hour: _____ AM/PM

Hon.
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on February 5, 2026, through the ECF system and that it will be sent electronically to the registered participants as identified on the Notice Of Electronic Filing.

Dated: February 5, 2026

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