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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

Gabriel Alejandro Vivas Ávila,
[redacted]
Petitioner, pro se
Otay Mesa Detention Center
7488 Calzada de la Fuente
San Diego, CA 92154

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

Gabriel Alejandro Vivas Ávila
Proceeding Pro Se,
Petitioner,
v.
WARDEN, OTAY MESA DETENTION CENTER; TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement; MARKWAYNE MULLIN, Secretary of Homeland Security; and TODD BLANCHE, Acting Attorney General of the United States,
Respondents.

Case No.: '26CV4137 BJC JAC

PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. INTRODUCTION

1. Pursuant to Federal Rule of Civil Procedure 65 and 28 U.S.C. § 2241, Petitioner Gabriel Alejandro Vivas Ávila, currently detained at the Otay Mesa Detention Center, respectfully submits this ex parte application for a Temporary Restraining Order ("TRO") and Motion for a Preliminary Injunction. This application is filed concurrently with a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 and is supported by the sworn Declaration of Gabriel Alejandro Vivas Ávila ("Vivas Decl."), attached as Exhibit A to the Petition.
2. **Petitioner does not seek an ordinary discretionary bond redetermination. He challenges the legality of his summary re-detention after living and complying in the community under an ICE order of release. He requests restoration of his liberty and immediate release under reasonable nonmonetary conditions.**
3. Petitioner was released from custody on October 30, 2021, and lived at liberty for approximately four years and eight months, fully complying with all conditions of his release. On June 25, 2026, Respondents summarily re-detained him without notice, a hearing, or any stated justification, violating his rights under the Fifth Amendment's Due

Process Clause.

4. Emergency *ex parte* relief is necessary because Petitioner is currently detained and suffering irreparable harm each day his unlawful detention continues. He faces the imminent risk of transfer to a more remote facility or removal from the United States before this Court can adjudicate his habeas petition on a standard briefing schedule. Immediate judicial intervention is required to prevent these harms and to preserve the Court's ability to render a meaningful decision on the merits.

II. FACTUAL BACKGROUND

5. The facts supporting this application are detailed in Petitioner's concurrently filed Petition for Writ of Habeas Corpus and his sworn Declaration. A brief summary is provided here.
6. Petitioner, a national of Venezuela, was released from immigration custody on October 30, 2021, on an Order of Release on Recognizance. For approximately four years and eight months, he fully complied with ICE's supervision, built a stable life with his family in Florida, obtained employment authorization, worked, and paid taxes.
7. On June 25, 2026, Petitioner voluntarily appeared for a scheduled check-in with ICE in Miami, Florida. During this routine appointment, he was arrested and taken into custody without any prior notice, explanation, or opportunity to be heard before a neutral decisionmaker.
8. Petitioner was held at the Krome Detention Center in Florida for about one week before being transferred across the country to the Otay Mesa Detention Center in this District. He has been detained since June 25, 2026, without any form of custody hearing.
9. This detention is causing Petitioner immediate and irreparable harm, including the deprivation of his fundamental right to liberty, the exacerbation of his stomach condition and other medical issues, significant psychological distress, the loss of his employment, and separation from his U.S. citizen and lawful permanent resident family members. (Vivas

Decl. ¶¶ 8-9).

III. LEGAL STANDARD

A. Ex Parte TRO Standard under Fed. R. Civ. P. 65(b) 10. Federal Rule of Civil Procedure 65(b)(1) authorizes a court to issue a TRO without notice to the adverse party if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." The movant must also certify in writing the efforts made to give notice or the reasons why notice should not be required. Fed. R. Civ. P. 65(b)(1)(B). 11. Petitioner is proceeding *pro se* and is currently detained at the Otay Mesa Detention Center. Due to his confinement, he has severely limited access to communication and no practical ability to provide advance notice to counsel for Respondents at the U.S. Attorney's Office. The emergency nature of his confinement, including the irreparable harm he suffers daily and the risk of imminent transfer or removal, warrants immediate *ex parte* consideration by this Court.

B. Preliminary Injunction Standard — *Winter* Factors 12. To obtain a preliminary injunction, a movant must establish four factors: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in their favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). 13. In the Ninth Circuit, the *Winter* factors can be evaluated on a "sliding scale." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). An injunction may issue where a petitioner demonstrates "that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor," so long as the other two *Winter* factors are also met. *Id.* at 1135. The likelihood of success on the merits is the most important factor.

C. Habeas Standard — 28 U.S.C. § 2243 14. The habeas statute provides for swift judicial action, directing that the Court "shall summarily hear and determine the facts, and dispose of the matter as

law and justice require." 28 U.S.C. § 2243. The Court may also advance the trial on the merits and consolidate it with the preliminary injunction hearing. Fed. R. Civ. P. 65(a)(2).

IV. ARGUMENT

A. Petitioner Is Likely to Succeed on the Merits 15. Petitioner's habeas petition raises serious questions going to the merits, and he is likely to succeed. Petitioner possesses a constitutionally protected liberty interest in his continued freedom, which was established upon his release in October 2021 and strengthened over the approximately four years and eight months he lived peacefully and productively in the community. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (recognizing liberty interest in release and the development of "enduring attachments of normal life"); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment...lies at the heart of the liberty that [the Due Process] Clause protects."). 16. Federal courts have consistently held that noncitizens released from custody have a protected liberty interest in remaining out of custody, and the government's actions in allowing them to remain in the community for years strengthens that interest. *See Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *6 (N.D. Cal. Sept. 12, 2025); *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025). 17. Respondents' summary re-detention of Petitioner without any prior notice or hearing violated his procedural due process rights. Under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), the profound private interest in liberty, the high risk of an erroneous deprivation where no process is afforded, and the minimal governmental burden of providing a hearing all weigh decisively in Petitioner's favor. At a minimum, he has raised serious questions about the constitutionality of his confinement.

B. Petitioner Is Suffering Irreparable Harm 18. The Ninth Circuit has held that the "deprivation of physical liberty by detention constitutes irreparable harm." *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018). The court has also recognized the "irreparable harms imposed on anyone subject to immigration detention," including the severe economic burdens on detainees and their

families. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). 19. Petitioner is suffering multiple forms of irreparable harm: (1) the unconstitutional deprivation of his liberty; (2) potential for unaddressed medical and psychological harm; (3) the loss of his employment and his family's financial stability; (4) severe emotional distress from separation from his family; (5) prejudice to his ability to prepare his asylum case; and (6) the ongoing risk of transfer or removal before his habeas petition is decided. Each day of unlawful detention inflicts an injury that cannot be undone.

C. The Balance of Equities Tips Sharply in Petitioner's Favor 20. The balance of equities pits Petitioner's profound interest in his liberty against the government's minimal interest in detaining him without a hearing. When the government is a party, the balance of equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). 21. The government has no legitimate interest in perpetuating an unconstitutional detention. *See Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022) ("[N]either equity nor the public's interest are furthered by allowing violations of federal law to continue."). The *status quo ante*—the last uncontested status before this controversy arose—was Petitioner's liberty. An order releasing him would restore, not alter, that status quo. The administrative burden on Respondents to provide due process is negligible compared to the severe harm of continued detention.

D. An Injunction Is in the Public Interest 22. The public has a profound interest in ensuring that the government does not deprive individuals of their liberty without due process of law. *See Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020) ("[T]he public has a strong interest in upholding procedural protections against unlawful detention."). The public interest is served by safeguarding constitutional rights and ensuring that executive detention is subject to meaningful judicial oversight.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that the Court issue an order that: A. Grants this application for a Temporary Restraining Order and immediately releases Petitioner from custody

under reasonable nonmonetary conditions; B. In the alternative, if the Court declines to order immediate release, orders Respondents to provide Petitioner with a hearing before a neutral decisionmaker within a strictly limited period (e.g., 72 hours) at which Respondents bear the burden, by clear and convincing evidence, of establishing that continued detention is necessary; C. Enjoins Respondents from re-detaining Petitioner based on the same circumstances absent materially changed circumstances, reasonable advance notice, and a meaningful opportunity to be heard before a neutral decisionmaker, except where Respondents establish a genuine and immediate emergency requiring temporary action; D. Waives the security bond requirement of Fed. R. Civ. P. 65(c), as Petitioner is indigent and there is no risk of monetary harm to Respondents from being enjoined from an unconstitutional detention; and E. Grants such other and further relief as the Court deems just and proper.

VI. CERTIFICATION REGARDING NOTICE

Pursuant to Federal Rule of Civil Procedure 65(b)(1)(B), I, Gabriel Alejandro Vivas Ávila, declare that:

1. I am proceeding *pro se* and am currently confined by Respondents at the Otay Mesa Detention Center.
2. Due to my detention, I have no meaningful access to legal counsel, a telephone for making unmonitored legal calls, or the resources necessary to provide advance notice of this application to the United States Attorney's Office for the Southern District of California.
3. Immediate *ex parte* consideration is required because: (a) I face a substantial risk of being transferred to a different, more remote detention facility or being removed from the United States, which would moot my Petition and deprive this Court of jurisdiction; (b) each additional day of my unlawful detention constitutes a continuing irreparable injury to my liberty; and (c) I am suffering ongoing medical and psychological harm that is exacerbated by my confinement.

4. For these reasons, notice should not be required before the Court considers this emergency application. In the alternative, I respectfully request that the Court order Respondents to file an expedited response within 24 to 48 hours.

VII. CONCLUSION

Petitioner does not seek an ordinary discretionary bond redetermination. He challenges the legality of his summary re-detention after living and complying in the community under an ICE order of release. He requests restoration of his liberty and immediate release under reasonable nonmonetary conditions. For all the foregoing reasons, Petitioner respectfully requests that this Court grant his Ex Parte Application for a Temporary Restraining Order.

Dated: July 14, 2026

Respectfully submitted,

[redacted]

Gabriel Alejandro Vivas Avila,
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Petitioner, pro se
Otay Mesa Detention Center
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