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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 Toribio Felipe Castanon Domingo,

14 Petitioner-Plaintiff,

15 v.

16 Polly KAISER, Acting Field Office Director of
17 San Francisco Office of Detention and Removal,
18 U.S. Immigrations and Customs Enforcement;
19 U.S. Department of Homeland Security;

20 Todd M. LYONS, Acting Director, Immigration
21 and Customs Enforcement, U.S. Department of
22 Homeland Security; and

23 Kristi NOEM, in her Official Capacity,
24 Secretary, U.S. Department of Homeland
25 Security,

26 Respondents-Defendants.
27
28

Case No. 3:25-cv-5893

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

**POINTS AND AUTHORITIES
IN SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
MOTION FOR PRELIMINARY
INJUNCTION**

Challenge to Unlawful Incarceration:
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Pursuant to Rules 65(a) and 65(b) of the Federal Rules of Civil Procedure and Rule 65-1 of the Local rules of this Court, Petitioner hereby moves this Court for a temporary restraining order and/or preliminary injunction: (1) ordering Petitioner Mr. Toribio Felipe Castanon Domingo's immediate release from ICE custody pending his scheduled merits hearing; or alternatively, (2) enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and their agents and employees, from transferring Petitioner Mr. Castanon outside the Northern District of California until he is afforded his scheduled individual merits hearing before the San Francisco Immigration Court on July 15, 2025, or in the case that his proceedings before the Immigration Court are continued, a later date, and from interfering with his constitutional right to due process and effective assistance of counsel.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declarations of Badria Mryyan and Leah McLean with Accompanying Exhibits in Support of Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner raises that he warrants a temporary restraining order and/or preliminary injunction due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing his unlawful transfer absent adequate procedural protections and his right to a fair hearing before a neutral adjudicator.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and/or preliminary injunction (1) ordering Petitioner's immediate release from ICE custody pending his merits hearing and resolution of his removal proceedings; or alternatively, (2) enjoining Respondents from transferring him outside the Northern District of California unless

1 and until he is afforded his scheduled merits hearing and the opportunity to pursue relief from
2 removal with effective assistance of counsel. Petitioner is currently scheduled to appear before the
3 San Francisco Immigration Court on July 15, 2025 for his individual merits hearing.
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5
6 Dated: July 14, 2025

Respectfully Submitted

7 /s/ Jose Marin

8 Attorney for Toribio Felipe Castanon Domingo
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I. INTRODUCTION

Petitioner-Plaintiff Mr. Toribio Felipe Castanon Domingo ("Mr. Castanon") by and through undersigned counsel, hereby files this ex parte motion for a temporary restraining order to enjoin the U.S. Department of Homeland Security's (DHS), U.S. Immigration and Customs Enforcement (ICE) from continuing his unlawful detention, or alternatively, from transferring him outside the Northern District of California unless and until he is afforded his scheduled individual merits hearing before the San Francisco Immigration Court and the opportunity to pursue relief from removal with effective assistance of counsel.

DHS detained Mr. Castanon on July 14, 2025 during a routine interview, just one day before his scheduled individual merits hearing before Immigration Judge Howard Davis on July 15, 2025. This sudden detention has fundamentally disrupted his ability to prepare for and participate in his removal proceedings. The detention appears to be part of ICE's pattern of arbitrary arrests driven by enforcement quotas rather than individualized determinations of flight risk or danger to the community.

Upon information and belief, ICE intends to transfer Petitioner outside this judicial district, which would compound the constitutional violations by effectively denying him access to counsel, disrupting his ability to present evidence and witnesses, and rendering his removal proceedings fundamentally unfair.

Mr. Castanon meets the standard for a temporary restraining order. His detention violates due process because he is not subject to mandatory detention and ICE has provided no individualized determination justifying his incarceration. He will suffer immediate and irreparable harm absent an order from this Court ordering his release or, alternatively, enjoining the government from transferring him outside the Northern District of California without the due

1 process protections required by the Constitution. Because holding federal agencies accountable to
2 constitutional demands is in the public interest, the balance of equities and public interest are also
3 strongly in Mr. Castanon's favor.

4 II. STATEMENT OF FACTS AND CASE

5 Mr. Castanon is a Guatemalan national who has been residing in the United States since
6 2003, and has been diligently litigating his case before the Executive Office for Immigration
7 Review ("EOIR"), including by filing an application for Asylum, Withholding of Removal, or
8 protection under the Convention Against Torture (I-589) and an application for Cancellation of
9 Removal and Adjustment of Status for Certain Nonpermanent Residents (EOIR-42B).
10

11 Mr. Castanon is from San Marcos, Guatemala, and is an indigenous Guatemalan who
12 speaks Mam as his native language. He arrived to the United States in 2003 after fleeing his
13 country when non-indigenous Guatemalans (known as *ladinos*) forced him and his indigenous
14 neighbors from their land under threat of death. Since then he has started a family in Santa Rosa,
15 California, where he works as a cook in two restaurants to provide for his children.
16

17 Mr. Castanon was initially detained by ICE on April 22, 2013 pursuant to INA § 236, 8
18 U.S.C. § 1226, and was released under bond in the amount of \$2,000.00. Upon his release he was
19 issued a Notice to Appear, alleging that he arrived in the United States without being admitted or
20 paroled after inspection, and charging him with removability under INA 212(a)(6)(A)(i). *See* 8
21 U.S.C. § 1182(a)(6)(A)(i).
22

23 Mr. Castanon currently has an individual merits hearing scheduled for July 15, 2025 before
24 Immigration Judge Howard Davis at the San Francisco Immigration Court. He is represented by
25 counsel and has been preparing extensively for this hearing, including gathering evidence,
26 preparing witness testimony, and coordinating with his attorney. He is an applicant for EOIR-42B
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28

1 Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, pursuant
2 to section 240A of the Immigration and Nationality Act ("INA"). 8 U.S.C. § 1229b(b). This relief
3 is afforded to those who can demonstrate their continuous presence in the United States for at least
4 ten years prior to the issuance of the Notice to Appear initiating INA § 240 removal proceedings,
5 who have been a person of good moral character during that time, who have not been convicted of
6 a crime that would render them inadmissible, and who can establish that their removal would result
7 in exceptional and extremely unusual hardship to their spouse, parent, or child, who are either a
8 United States citizen or a Lawful Permanent Resident. 8 U.S.C. § 1229b(b)(1).
9

10 Mr. Castanon is the father of two United States citizens, one of whom is a minor. He is the
11 primary breadwinner of the family, and the sole caretaker of his wife, who suffers from Diabetes
12 and Graves Disease. His daughter has been diagnosed with Separation Anxiety Disorder,
13 particularly as it relates to being separated from her father.
14

15 On July 14, 2025, Mr. Castanon attended his scheduled interview with ICE Enforcement
16 and Removal Operations (ERO) at 630 Sansome Street in San Francisco, as required, per a notice
17 sent to his obligor on June 16, 2025. At that time, ICE officers detained him without prior notice
18 or warning.
19

20 Prior to the July 14, 2025 ICE interview, Mr. Castanon's immigration attorney made
21 several attempts to have the interview re-scheduled, citing the administrative efficiency
22 of postponing a formal interview until the results of the next day's individual merits hearing would
23 be uncovered. Mryyan Dec. Representatives from the ICE Enforcement and Removal Operations
24 informed Mr. Castanon's attorney that it was "just an interview" and would not be rescheduled.
25 McLean Dec. Another attorney on Mr. Castanon's immigration case accompanied him to the
26 interview at 630 Sansome, where Mr. Castanon was detained without any reasons provided and
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1 despite Mr. Castanon's many positive equities presented by his counsel. *Id.* At the time of filing,
2 Mr. Castanon appears to remain in ICE custody at 630 Sansome Street in San Francisco,
3 California.¹

4 On information and belief, numerous other noncitizens in the San Francisco Bay Area and
5 across the country have received similar treatment—being detained during routine interviews or
6 appointments that they attended in compliance with ICE directives.²

8 Numerous credible reports demonstrate that across the country, including in San Francisco
9 and other Bay Area cities, individuals are being called in for ISAP check-ins or other check-ins
10 with ICE and then arrested by ICE.³

11 The timing of this detention—one day before his merits hearing—has fundamentally
12 disrupted his ability to prepare for and participate in his removal proceedings. Upon information
13 and belief, ICE intends to transfer Mr. Castanon outside the Northern District of California to a
14 detention facility in another jurisdiction.
15
16

17
18 ¹ A search of the ICE Detainee Locator at 5:18 Pacific time on July 14 yielded a result of
19 "CALL FIELD OFFICE."

20 ² "Immigrants at ICE check-ins detained, held in basement of federal building in Los Angeles,
21 some overnight," CBS News (June 7, 2025), <https://www.cbsnews.com/news/immigrants-at-ice-check-ins-detained-and-held-in-basement-of-federal-building-in-los-angeles/>; "They followed
22 the government's rules. ICE held them anyway," LAist (Updated June 20, 2025),
23 <https://laist.com/news/politics/ice-raids-los-angeles-family-detained>.

24 ³ "ICE confirms arrests made in South San Jose," NBC Bay Area (June 4, 2025),
25 <https://www.nbcbayarea.com/news/local/ice-agents-san-jose-market/3884432/> ("The Rapid
26 Response Network, an immigrant watchdog group, said immigrants are being called for meetings
27 at ISAP – Intensive Supervision Appearance Program – for what are usually routine
28 appointments to check on their immigration status. But the immigrants who show up are taken
from ISAP to a holding area behind Chavez Supermarket for processing and apparently to be
taken to a detention center, the Rapid Response Network said."); "ICE arrests 15 people,
including 3-year-old child, in San Francisco, advocates say," San Francisco Chronicle (June 5,
2025), <https://www.sfchronicle.com/bayarea/article/ice-arrests-sf-immigration-trump-20362755.php>; "Cincinnati high school graduate faces deportation after routine ICE check-in,"
ABC News (June 9, 2025), <https://abcnews.go.com/US/cincinnati-high-school-graduate-faces-deportation-after-routine/story?id=122652262>.

In recent months, ICE has engaged in highly publicized arrests of individuals who presented no flight risk or danger, often with no prior notice that anything regarding their status was amiss or problematic, whisking them away to faraway detention centers without warning.⁴ This pattern appears to be driven by the new administration's directive for ICE to significantly increase arrest quotas rather than individualized enforcement priorities.⁵

Such transfer would effectively deny Mr. Castanon access to his counsel, who is located in this district, disrupt his family relationships, and render his removal proceedings fundamentally unfair. Mr. Castanon's counsel and potential witnesses are located in the San Francisco Bay Area, and transfer would create insurmountable barriers to effective representation and case preparation.

Intervention from this Court is therefore required to ensure that Mr. Castanon is not unlawfully transferred in violation of his constitutional rights. Such unlawful conduct would cause him to suffer irreparable harm.

⁴ See, e.g., McKinnon de Kuyper, *Mahmoud Khalil's Lawyers Release Video of His Arrest*, N.Y. Times (Mar. 15, 2025), available at <https://www.nytimes.com/video/us/politics/100000010054472/mahmoud-khalils-arrest.html> (Mahmoud Khalil, arrested in New York and transferred to Louisiana); "What we know about the Tufts University PhD student detained by federal agents," CNN (Mar. 28, 2025), <https://www.cnn.com/2025/03/27/us/rumeysa-ozturk-detained-what-we-know/index.html> (Rumeysa Ozturk, arrested in Boston and transferred to Louisiana); Kyle Cheney & Josh Gerstein, *Trump is seeking to deport another academic who is legally in the country, lawsuit says*, Politico (Mar. 19, 2025), available at <https://www.politico.com/news/2025/03/19/trump-deportation-georgetown-graduate-student-00239754> (Badar Khan Suri, arrested in Arlington, Virginia and transferred to Texas).

⁵ See "Trump officials issue quotas to ICE officers to ramp up arrests," *Washington Post* (January 26, 2025), available at: <https://www.washingtonpost.com/immigration/2025/01/26/ice-arrests-raids-trump-quota/>; "Stephen Miller's Order Likely Sparked Immigration Arrests And Protests," *Forbes* (June 9, 2025), <https://www.forbes.com/sites/stuartanderson/2025/06/09/stephen-millers-order-likely-sparked-immigration-arrests-and-protests/> ("At the end of May 2025, 'Stephen Miller, a senior White House official, told Fox News that the White House was looking for ICE to arrest 3,000 people a day, a major increase in enforcement. The agency had arrested more than 66,000 people in the first 100 days of the Trump administration, an average of about 660 arrests a day,' reported the New York Times. Arresting 3,000 people daily would surpass 1 million arrests in a calendar year.").

III. LEGAL STANDARD

Mr. Castanon is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . 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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. Castanon does not show a likelihood of success on the merits, the Court may still grant a preliminary injunction if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). As set forth in more detail below, Mr. Castanon overwhelmingly satisfies both standards.

IV. ARGUMENT

A. MR. CASTANON'S CIRCUMSTANCES WARRANT A TEMPORARY RESTRAINING ORDER

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Castanon is likely to be transferred outside this jurisdiction absent material changes in circumstances and prior to receiving his scheduled merits hearing, in violation of his due process rights, without intervention by this Court. Mr. Castanon will continue suffering irreparable injury if he is transferred outside this District and separated from his counsel and scheduled proceedings.

1. Mr. Castanon is Likely to Succeed on the Merits of His Claims That His Detention Violates Due Process and That Transfer Would Compound Constitutional Violations

Mr. Castanon is likely to succeed on his claim that: (a) his detention itself violates due process because he is not subject to mandatory detention and ICE has failed to provide constitutionally adequate process; and (b) transferring him outside this jurisdiction would violate his constitutional rights to due process and effective assistance of counsel.

a. ICE lacked the authority to re-detain Mr. Castanon

As a threshold matter, ICE lacks statutory authority to re-detain Mr. Castanon absent changed circumstances. The Board of Immigration Appeals has recognized an implicit limitation on ICE's authority to re-arrest noncitizens who have been released on bond. In *Matter of Sugay* the BIA held that “where a previous bond determination has been made by an immigration judge, no change should be made by [the DHS] absent a change of circumstance.” 17 I&N Dec. 637, 640 (BIA 1981). The Ninth Circuit has assumed that, under *Matter of Sugay*, ICE lacks authority to re-detain an individual absent changed circumstances. *Panosyan v. Mayorkas*, 854 F. App'x 787, 788 (9th Cir. 2021). Moreover, ICE has limited its own authority, stating that it “generally only re-arrests [noncitizens] pursuant to § 1226(b) after a material change in circumstances.” *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1197 (N.D. Cal. 2017).

Here, ICE's own conduct contradicts any claim that material circumstances justify Mr. Castanon's detention. Despite knowledge of a 2022 conviction, ICE required no supervision, check-ins, or monitoring for three years, demonstrating their assessment that he posed no flight risk to the community. If his conviction truly warranted detention, ICE would not have continued to require zero supervision for three years. The only material change is ICE's enforcement priorities under the current administration, but a change in agency policy does not constitute a

1 material change in an individual's circumstances justifying re-detention. Beyond this statutory
2 violation, Mr. Castanon's detention also violates the Due Process Clause.

3 *b. Mr. Castanon's Detention Violates Due Process*

4 Mr. Castanon is not subject to mandatory detention under 8 U.S.C. § 1226(c) (mandatory
5 detention), and therefore any detention must comply with the requirements of 8 U.S.C. § 1226(a)
6 (discretionary detention) and the Constitution. Under the Supreme Court's decision in *Zadvydas*
7 *v. Davis*, "freedom from imprisonment—from government custody, detention, or other forms of
8 physical restraint—lies at the heart of the liberty that [the Due Process Clause] protects." 533 U.S.
9 678, 690 (2001).
10

11 The government's authority to detain individuals in immigration proceedings is not
12 unlimited. Courts must apply the *Mathews v. Eldridge* balancing test to determine what process
13 is due. Under that test, courts consider: (1) the private interest affected; (2) the risk of erroneous
14 deprivation through existing procedures and the value of additional safeguards; and (3) the
15 government's interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).
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18 Here, Mr. Castanon has a substantial liberty interest in his freedom from physical restraint.
19 The risk of erroneous deprivation is high because ICE detained him without any individualized
20 assessment of flight risk or danger to the community—the only legitimate bases for civil
21 immigration detention. The government's interest in detention is minimal where, as here, ICE
22 required no supervision of Mr. Castanon for twelve years, including three years after his 2022
23 conviction, demonstrating their assessment that he posed no flight risk or danger.
24

25 Recent decisions from this District have recognized that similar sudden detentions violate
26 due process. In *Ortega v. Kaiser*, this Court granted a temporary restraining order to prevent the
27 detention of an individual who had been out of custody for years and was contributing to his
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1 community. No. 25-5259, 2025 WL 1771438. Reasonably believing ICE planned to detain him at
2 his next appointment, the petitioner in *Ortega* sought to enjoin ICE from doing so. The Court found
3 serious questions about whether detention was constitutionally justified.

4 *c. Mr. Castanon Has a Protected Liberty Interest in Fair Immigration Proceedings*

5 "Immigration proceedings, although not subject to the full range of constitutional
6 protections, must conform to the Fifth Amendment's requirement of due process." *Salgado-Diaz*
7 *v. Gonzales*, 395 F.3d 1158, 1162 (9th Cir. 2005). "A full and fair hearing is one of the due process
8 rights afforded to [noncitizens] in deportation proceedings." *Gutierrez v. Holder*, 662 F.3d 1083,
9 1091 (9th Cir. 2011).

10 The court will grant relief on due process grounds if "the proceeding was so fundamentally
11 unfair that the alien was prevented from reasonably presenting his case." *Ibarra-Flores v.*
12 *Gonzales*, 439 F.3d 614, 620-21 (9th Cir. 2006). "Where an alien is given a full and fair opportunity
13 to be represented by counsel, prepare an application for . . . relief, and to present testimony and
14 other evidence in support of the application, he or she has been provided with due process."
15 *Vargas-Hernandez v. Gonzales*, 497 F.3d 919, 926-27 (9th Cir. 2007).

16 *d. Sudden Detention and Threatened Transfer Violate Due Process*

17 Mr. Castanon's sudden detention one day before his merits hearing violates due process by
18 preventing him from "reasonably presenting his case." The timing of this detention—immediately
19 before his scheduled hearing—creates precisely the type of fundamental unfairness that violates
20 constitutional protections.

21 Moreover, this detention appears to be part of a broader pattern of ICE targeting individuals
22 at routine check-ins, regardless of their individual circumstances or compliance history. Such
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1 pattern-based enforcement driven by arrest quotas rather than individualized determinations
2 violates substantive due process principles.

3 Mr. Castanon's detention fundamentally disrupts his ability to prepare his defense in
4 violation of due process. As the Supreme Court held in *Mathews v. Eldridge*, due process requires
5 consideration of "the private interest that will be affected by the official action" and "the probable
6 value, if any, of additional or substitute procedural safeguards." 424 U.S. at 335. Here, detention
7 prevents Mr. Castanon from working with his counsel to gather evidence, coordinate with
8 witnesses, and prepare his Cancellation of Removal application. These interests are central to his
9 ability to avoid removal to a country where he faces persecution, and where his removal would
10 create an extreme hardship on his United States citizen daughter.
11

12
13 The threatened transfer would compound this violation by creating additional barriers to
14 effective representation. Transfer outside this jurisdiction would effectively deny Mr. Castanon
15 meaningful access to counsel for his scheduled hearing, violating his constitutional right to
16 effective assistance.
17

18 *e. Right to Counsel is Constitutionally Protected*

19 "The right to be represented by counsel at one's own expense is protected as an incident of
20 the right to a fair hearing under the Due Process Clause of the Fifth Amendment." *Gomez-Velazco*
21 *v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018). The statutory right to counsel under 8 U.S.C. §
22 1362 "exists so that an alien has a competent advocate acting on his or her behalf at removal
23 proceedings." *Hernandez-Gil v. Gonzales*, 476 F.3d 803, 808 (9th Cir. 2007).
24

25 Transfer outside this District would interfere with Mr. Castanon's fundamental right to
26 counsel by preventing adequate preparation and consultation before his merits hearing. Courts
27
28

1 recognize that geographical separation from counsel can violate due process, particularly where it
2 effectively denies meaningful access to representation for scheduled proceedings.

3 **2. Mr. Castanon will Suffer Irreparable Harm Absent Injunctive Relief**

4
5 Mr. Castanon will suffer irreparable harm if he is transferred outside this jurisdiction and
6 deprived of his constitutional right to due process and effective assistance of counsel in his
7 scheduled immigration proceedings.

8 "[T]he deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"
9
10 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,
11 373 (1976)). Transfer outside this District would cause multiple irreparable harms:

12 **Continued Unlawful Detention:** Mr. Castanon's continued detention without
13 constitutional justification causes ongoing irreparable harm. As the Supreme Court has
14 recognized, "freedom from bodily restraint has always been at the core of the liberty
15 protected by the Due Process Clause." This detention separates him from his family,
16 disrupts his employment, and prevents him from adequately preparing for his hearing.

17
18 **Denial of Fair Hearing:** Transfer would prevent Mr. Castanon from meaningfully
19 participating in his scheduled merits hearing tomorrow, effectively denying him the fair
20 hearing guaranteed by due process.

21
22 **Interference with Right to Counsel:** Physical separation from counsel would render
23 effective representation impossible for the scheduled hearing and would deny Mr.
24 Castanon the ability to coordinate last-minute preparation essential for his case.

25 **Separation from Evidence and Witnesses:** Transfer would prevent access to witnesses
26 and evidence located in this jurisdiction, fundamentally undermining his ability to present
27 his case.
28

1 **Risk of Erroneous Removal:** These violations could result in wrongful removal to a
2 country where Mr. Castanon faces persecution or other serious harm.

3 These constitutional violations cannot be remedied through monetary compensation. Once
4 Mr. Castanon is transferred and his hearing proceeds without adequate representation, or he is
5 erroneously removed from the United States without a full and fair hearing, the damage to his case
6 will be irreversible.

7
8 **3. The Balance of Equities and the Public Interest Favor Granting the Temporary**
9 **Restraining Order**

10 The balance of equities and the public interest undoubtedly favor granting this temporary
11 restraining order.

12
13 First, the balance of hardships strongly favors Mr. Castanon. The government cannot suffer
14 harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v.*
15 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in
16 any legally cognizable sense by being enjoined from constitutional violations."). Ordering Mr.
17 Castanon's release pending his removal proceedings imposes no burden on Respondents while
18 remedying the constitutional violation of unlawful detention. ICE required no supervision for
19 twelve years, demonstrating their assessment that he posed no flight risk or danger. Maintaining
20 Mr. Castanon within this District imposes minimal burden on Respondents while preventing severe
21 constitutional violations.

22
23 In the alternative, if the Court finds some form of custody appropriate, maintaining Mr.
24 Castanon within this District imposes minimal burden on Respondents—he is already detained in
25 a facility within this jurisdiction—while preventing further severe constitutional violations.

26
27 By contrast, continued detention or transfer would cause severe and irreversible harm to
28 Mr. Castanon's constitutional rights and ability to pursue relief from removal.

1 Further, any burden imposed by requiring the DHS to refrain from transferring Mr.
2 Castanon outside this District is both *de minimis* and clearly outweighed by the substantial harm
3 he will suffer if transferred. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's
4 interest lies on the side of affording fair procedures to all persons, even though the expenditure of
5 governmental funds is required.").
6

7 Finally, a temporary restraining order is in the public interest. "It would not be equitable or
8 in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially
9 when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053,
10 1069 (9th Cir. 2014). The public interest strongly favors ensuring constitutional compliance in
11 immigration proceedings and preventing arbitrary government action that undermines
12 fundamental fairness.
13

14 Therefore, the public interest overwhelmingly favors entering a temporary restraining
15 order.
16

17 **4. No Security is Required**

18 Federal Rule of Civil Procedure 65(c) provides that a court may issue a temporary
19 restraining order "only if the movant gives security in an amount that the court considers proper to
20 pay the costs and damages sustained by any party found to have been wrongfully enjoined or
21 restrained." However, the court has discretion to waive any security requirement where there is no
22 realistic likelihood of harm to the defendant. *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.
23 2003). Because "the [Government] cannot reasonably assert that it is harmed in any legally
24 cognizable sense by being enjoined from constitutional violations," the Court should waive any
25 security requirement. *See Zepeda*, 753 F.2d at 727. No security is required here.
26
27
28

V. CONCLUSION

For all the above reasons, this Court should find that Mr. Castanon warrants a temporary restraining order ordering his release from ICE custody, and/or enjoining Respondents from transferring him outside the Northern District of California unless and until he is afforded his scheduled merits hearing and the opportunity to pursue relief from removal with effective assistance of counsel. Additionally, Petitioner requests that this Court order expedited production of his A-file and detention records to enable proper review of whether his detention violates due process.

Dated: July 14, 2025

Respectfully submitted,

/s/Jose Marin

Attorney for Toribio Felipe Castanon Domingo

CERTIFICATE OF EMERGENCY CIRCUMSTANCES

Pursuant to F.R.C.P. 65(b)(1)(B) and Civ. L.R. 65-1(a)(5), undersigned counsel certifies that this matter involves emergency circumstances requiring immediate judicial intervention. Petitioner is scheduled for a merits hearing tomorrow, July 15, 2025 at 10:00 AM, and faces immediate transfer that would render his proceedings fundamentally unfair. Notice to opposing counsel was not provided due to the emergency nature of this motion and the risk that advance notice could result in Petitioner's immediate transfer, defeating the purpose of this emergency relief.

Dated: July 14, 2025

/s/ Jose Marin

Attorney for Toribio Felipe Castanon Domingo

CERTIFICATE OF SERVICE

I, , hereby certify that on July 14, 2025, I electronically filed the foregoing documents with the Clerk of the Court for the United States District Court for the Northern District of California using the Court's CM/ECF system, which will send notification of such filing to all registered CM/ECF participants.

Those parties who are not registered or do not receive electronic service of process may access this filing at any time through the Court's CM/ECF system. I am not aware of any errors or delays that prevented timely submission through the electronic system.

Date: July 14, 2025

/s/Jose Marin

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