UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Tajdinali MOMIN Petitioner, Kristi Noem, Secretary of Homeland Security; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Miguel Vergara San Antonio Field Office Director; Charlotte Collins, Warden of T. Don Hutto Residential Center Respondents.	**Civil Case No. 5:25-cv-01017**

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

In the morning hours of Friday at approximately 4:00 am, the Respondents transferred the Petitioner, Tajdinali Momin, to the Florence Service Processing Center in Arizona without any prior notice. Petitioner has a pending, properly filed and pending application to adjust status to a lawful permanent resident under 8 U.S.C. § 1255, based on an immediate relative petition filed by his U.S. citizen daughter. *See* Exh. A (Adjustment of Status Receipt Notices). Removal at this stage would irreparably harm him by depriving him of the right to obtain a decision on his application before removal, thereby violating his Fifth Amendment due process right and permanently separating him from his family, including his naturalized U.S. citizen daughter and son.

Petitioner arrived in the United States over 30 years ago and was ordered excluded by an Immigration Judge (IJ) on July 5, 1994. In 2009, U.S. Immigration and Customs Enforcement (ICE) detained him pursuant to that decades-old order. After several months, ICE was unable to carry out his removal and released Petitioner under an order of supervision (OSUP), which he has

fully complied with without incident. Despite no change in circumstances, Respondents have re-detained Petitioner without bail, in violation of his OSUP. His detention is unlawful because removal remains not reasonably foreseeable given his pending adjustment application, and revocation of his OSUP without notice or opportunity to respond violates his Fifth Amendment right to due process.

Given his abrupt transfer to Arizona, Petitioner faces the risk of sudden removal without the opportunity to obtain a decision on his application or to seek judicial review. Accordingly, the Court should grant a temporary restraining order prohibiting the Respondents from removing the Petitioner while the habeas petition is being decided.

I. LEGAL FRAMEWORK REGARDING ADJUSTMENT OF STATUS

Adjustment of status is governed by 8 U.S.C. § 1255. Under § 1255(a), an applicant must (i) have been inspected and admitted or paroled into the United States, (ii) be eligible to receive an immigrant visa and admissible for permanent residence under 8 U.S.C. § 1182(a), and (iii) have an immigrant visa immediately available at the time the application is filed. Section 1255(i) creates a narrow exception to the "admission or parole" requirement for individuals who entered the United States without inspection and would otherwise be barred under § 1255(a). To qualify under § 1255(i), the applicant must be the beneficiary of a qualifying immigrant petition or labor certification filed on or before April 30, 2001, and must satisfy the statutory physical presence and admissibility requirements. Where the qualifying petition or labor certification was filed after January 14, 1998, the applicant must also establish physical presence in the United States on December 21, 2000.[1]

[1]8 U.S.C. § 1255(c) bars certain categories of noncitizens from adjusting status, including individuals who are in unlawful immigration status, who have failed to maintain lawful status, or who have engaged in unauthorized employment. However, these bars do not apply to the immediate relatives of U.S. citizens. *See* 8 U.S.C. § 1255(c)(2),

Jurisdiction over adjustment applications is divided between U.S. Citizenship & Immigration Services (USCIS) and the immigration courts. USCIS retains jurisdiction over applications filed by arriving aliens. *See* 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(ii). In addition, USCIS retains jurisdiction over adjustment applications filed by individuals with exclusion orders. *See* 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1).

USCIS's Policy Manual provides that once an adjustment application has been filed and accepted, the applicant is considered in a period of authorized stay. *See* USCIS, Policy Manual, Vol. 7, Pt. B, Ch. 3, *Unlawful Immigration Status at the Time of Filing*, https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-3 (last visited Sept. 1, 2025). At the same time, the regulations state that the departure from the United States of an applicant who is under an exclusion order "shall be deemed an abandonment of the application constituting grounds for termination for the proceeding by reason of the departure." 8 CFR § 1245.2 (a)(4). Deportation prior to adjudication would therefore extinguish that authorized stay and unlawfully deprive the Petitioner of his statutory right to receive a decision on the pending application under 8 U.S.C. § 1255.

II. STATUTORY AND REGULATORY FRAMEWORK GOVERNING RE-DETENTION

When an individual is ordered removed, 8 U.S.C. § 1231(a) authorizes the government to detain the individual during the "removal period," defined as the 90-day period during which "the Attorney General shall remove the [noncitizen] from the United States." 8 U.S.C. §1231(a)(1)(A). The removal period begins on the latest of the following:

(1) the date the order of removal becomes administratively final;

(4); 8 C.F.R. § 245.1(b)(4). Because Petitioner is the immediate relative of a U.S. citizen, § 1255(c) does not preclude his eligibility to adjust status.

(2) if the removal order is judicially reviewed and the court orders a stay, the date of the court's final order; and

(3) if the noncitizen is released from non-immigration detention or confinement, the date of that release.

8 U.S.C. § 1231(a)(1)(B)(i-iii). In this case, only 8 U.S.C. §1231(a)(1)(A)(1) is applicable. Critically, § 1231 "contains no provisions for pausing, reinitiating, or refreshing the removal period after the 90-day clock runs to zero." Transcript of Motions Hearing at 32, *Cordon-Salguero v. Noem, et al.*, 1:25-cv-01626-GLR (D. Md. June 18, 2025).

Once the removal period has expired, the government "may" detain a noncitizen only if they fall into one of the four categories under § 1231(a)(6): (1) individuals who are inadmissible; (2) individuals who are removable on specified grounds; (3) individuals determined to be a danger to the community; or (4) individuals determined to be unlikely to comply with the order of removal. However, under § 1231(a)(6) "[o]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute," and the noncitizen must be released. *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001). In *Zadvydas*, the Supreme Court held that six months is a presumptively reasonable for post-order detention. *Id.*

Upon release, a noncitizen subject to a final order of removal is typically placed under an order of supervision with conditions. 8 U.S.C. § 1231(a)(3), (6). Revocation of such release is governed by 8 C.F.R. § 241.13(i). The regulation purports to allow ICE to revoke supervised released only if the noncitizen "violates any of the conditions of release" or if "on account of changed circumstances," there is a "significant likelihood that the [noncitizen] may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(1)–(2); *see also* 8 C.F.R. § 241.4(b)(4).

"These regulations clearly indicate, upon revocation of supervised release, it is the Service's burden to show a significant likelihood that the [noncitizen] may be removed." *Escalante*

v. Noem, No. 9:25-CV-00182-MJT, 2025 U.S. Dist. LEXIS 148899, *8 (E.D. Tex. Aug. 2, 2025) (citing *Nguyen v. Hyde*, No. 25-cv-11470, 2025 U.S. Dist. LEXIS 117495, 2025 WL 1725791 (D. Mass. June 20, 2025 ("finding *Zadvydas* 6-month presumption not applicable where [noncitizen] is 're-detained' after having been on supervised release and that respondents failed to meet their burden to show a substantial likelihood of removal is now reasonably foreseeable") and *Tadros v. Noem*, No. 25-cv-4108, 2025 U.S. Dist. LEXIS 113198, 2025 WL 1678501 (D. N.J. June 13, 2025) ("finding 6-month presumption had long lapsed while petitioner was on supervised release and it is respondent's burden to show removal is now likely in the reasonably foreseeable future")).

Upon a determination of a change in circumstances, the regulations provide the following "procedures" that the Respondents must follow when they revoke a noncitizen's release:

> [T]he [noncitizen] will be notified of the reasons for revocation of his or her release. The Service will conduct an initial informal interview promptly after his or her return to Service custody to afford the alien an opportunity to respond to the reasons for revocation stated in the notification. The [noncitizen] may submit any evidence or information that he or she believes shows there is no significant likelihood he or she be removed in the reasonably foreseeable future, or that he or she has not violated the order of supervision. The revocation custody review will include an evaluation of any contested facts relevant to the revocation and a determination whether the facts as determined warrant revocation and further denial of release.

8 C.F.R. § 241.13(i)(3). The prevailing statute 8 U.S.C. § 1231(a)(6), unlike the regulation, contains no such allowance for re-detention upon a finding of changed circumstances.

Although 8 U.S.C. § 1231(a) was implemented in 1996 pursuant to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (1996) (codified as amended in scattered sections of 8 U.S.C.), the legal framework still applies to noncitizens ordered excluded pre-IIRIRA. *See* IIRIRA § 309(d)(2) ("[A]ny reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation."); *see also Cardoso v. Reno*, 216 F.3d 512, 515 n.3 (5th Cir. 2000).

III. STATEMENT OF FACTS

Petitioner is a 61-year-old citizen of Pakistan who has resided in the United States for over 30 years. He has strong ties to the United States, including his naturalized U.S. citizen daughter and son.[2] Petitioner suffers from Type 2 diabetes with severe complications, including [redacted] *See* Exh. B (Medical Records). He requires long-term insulin use and takes several prescribed medications to manage these conditions. Continued detention, especially in ICE facilities that are ill-equipped to manage chronic illnesses, poses a significant risk to Petitioner's health.

Petitioner applied for admission to the United States on or about June 2, 1994. *See* Exh. C (Exclusion Order). His admission was deferred, and his case was referred to an IJ for a determination of his admissibility. Petitioner did not receive sufficient notice of his hearing and therefore failed to appear at the scheduled hearing. Consequently, on July 6, 1994, the IJ entered an order of exclusion against the Petitioner *in absentia. Id.*

In or around September 2009, Respondents detained Petitioner and attempted to deport him to Pakistan. *See* Exh. D (OSUP). Concluding that the Petitioner's deportation to Pakistan was not reasonably foreseeable, he was released and placed on an OSUP on May 24, 2010. For the last 15 years, the Petitioner has dutifully complied with his OSUP. He reports whenever ICE requires it. He has held work authorization and maintained gainful employment. *See* Exh. E (Employment Authorization Document). He has had no criminal arrests and has not violated his OSUP in any way whatsoever.

On or around June 6, 2025, ICE re-detained the Petitioner based on the nearly 31-year-old exclusion order. Although the Respondents have previously been unable to remove the Petitioner

[2] Petitioner's son naturalized on August 20, 2025.

to Pakistan, they revoked his OSUP in violation of law—without any change in circumstances that would make removal reasonably foreseeable, without providing meaningful notice or an opportunity to respond, and without conducting a prompt interview as required by the regulations.

On or about July 9, 2025, Petitioner applied for adjustment of status based on a family-based petition filed concurrently by his adult U.S. citizen daughter. *See* Exh. A. Petitioner applied for adjustment of status under 8 U.S.C. § 1255(i) as he was not admitted or paroled when he applied for admission on June 2, 1994, and he is the principal beneficiary of a labor certification that was filed on March 22, 2001 with the U.S. Department of Labor. Additionally, Petitioner was physically present in the United States on December 21, 2000. While this application is pending, Petitioner is in a period of authorized stay in the United States. *See* USCIS, Policy Manual, Vol. 7, Pt. B, Ch. 3, *Unlawful Immigration Status at the Time of Filing*, https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-3 (last visited Sept. 1, 2025). This authorized stay further reduces the likelihood of deportation to Pakistan.

From June 6, 2025 to August 29, 2025, Petitioner was detained at the T. Don Hutto Residential Center in Taylor, Texas. However, in the early hours of August 29, 2025, Respondents transferred the Petitioner to Arizona without any prior notice. *See* Exh. F (ICE's Detainee Locator Results).

IV. ARGUMENT

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)(1)(A). 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). The movant must establish

four factors: "(1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interests." *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015).

In constitutional cases, the first factor above is often dispositive. *See Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (citing *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (order). That is because "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Moreover, since no cognizable harm results from halting unconstitutional conduct, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001) (citation omitted).

Here, Petitioner has a properly filed adjustment of status application under 8 U.S.C. § 1255. Deportation at this stage would irreparably harm him by extinguishing his statutory right to have his application adjudicated and permanently separating him from his family in the United States. Deportation prior to adjudication violates both the Immigration and Nationality Act and the Fifth Amendment, which protects procedural rights, including the opportunity to be heard. Moreover, Petitioner's re-detention was procedurally improper, as ICE failed to provide notice of revocation of his OSUP and did not demonstrate a change in circumstances or violation of the OSUP in violation of the U.S. Department of Homeland Security's (DHS) regulations and the Petitioner's Fifth Amendment right to due process. Insofar as previous removal attempts were unsuccessful and his adjustment of status application is currently pending, removal is not reasonably

foreseeable, and the equities strongly favor maintaining the status quo. The public interest supports preserving statutory rights and ensuring due process. Accordingly, a temporary restraining order is necessary to temporarily prevent the government from removing Petitioner and release him from unlawful detention while the Court considers the merits of his claim.

A. Petitioner is likely to succeed on the merits of his claim that his continued detention violates his due process rights under the Fifth Amendment.

The Fifth Amendment's Due Process Clause prohibits the government from depriving an individual of life, liberty, or property without due process of law. The Due Process Clause applies to all "persons" within the borders of the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. When the Government interferes with a protected interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). Courts will engage in a two-step process to determine whether a procedural due process claim occurred: first, whether a protected interest is at stake; and second, whether the procedures used to deprive that interest are constitutionally adequate. *See id.* (citations omitted).

Petitioner is likely to succeed on the merits for two independent reasons, either of which is sufficient to establish a due process violation. First, removal prior to adjudication of his properly filed adjustment of status application under 8 U.S.C. § 1255 would unlawfully deprive him of a statutory property entitlement to have his application decided and extinguish the period of authorized stay created by USCIS's policy. Second, ICE's re-detention of Petitioner after more than fifteen years of compliance with an OSUP violated both his liberty interests and the agency's own governing regulations. Each claim separately demonstrates that the Respondents have deprived Petitioner of protected interests without constitutionally adequate procedures, in violation of the Fifth Amendment.

i. Petitioner is likely to success on his claim that removal from the United States before the adjudication of his adjustment of status application would violate the Fifth Amendment due process clause.

Petitioner has a properly filed adjustment of status application under 8 U.S.C. § 1255. Removal at this stage would irreparably harm him by extinguishing his statutory right to have his application adjudicated under the standards created by Congress. *See I.N.S. v. St. Cyr*, 533 U.S. 289, 308 (2001) ("Eligibility that was 'governed by specific statutory standards' provided 'a right to a ruling on an applicant's eligibility, even though the actual granting of relief was … a matter of grace.'"); *see also United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) ("If the word 'discretion' means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience."). Moreover, the filing of an adjustment of status application confers a period of authorized stay while USCIS considers the application. Removing Petitioner before adjudication would extinguish this authorized stay, deny him the statutory opportunity to have his application considered, and irreparably harm him by permanently separating him from his family and rendering any judicial relief meaningless. Indeed, Petitioner's departure from the United States would deem his application for adjustment of status abandoned by operation of law.

Because Petitioner has a statutorily protected interest in the adjudication of his application, and the Respondents' actions deprive him of a meaningful opportunity to pursue that interest, deportation before adjudication constitutes a violation of procedural due process. *See Mathews*, 424 U.S. at 333 ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'").

ii. Petitioner's re-detention is unlawful insofar as it violates the Fifth Amendment Due Process Clause.

Petitioner was released under an order of supervision over fifteen years ago and has fully complied with his OSUP without incident. As part of his release, he was authorized to work, live freely with his wife and U.S. citizen children, and build a stable life in the United States. He reasonably relied on ICE's representations that his supervised released would continue unless he violated the terms of his release or removal to Pakistan became reasonably foreseeable. As such, Petitioner has a protected liberty interest in his continued release and its termination must comply with due process. *See, e.g., Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Fifth Amendment's Due Process Clause] protects."); *Morrisey v. Brewer*, 408 U.S. 471, 482 (1972); *see also Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) ("Just as people on pre-parole, parole, and probation status have a liberty interest, so too does Ortega have a liberty interest in remaining out of custody on bond."). The process used by the Defendants to re-detain Petitioner fails to satisfy even minimal due process under the Fifth Amendment.

Here, Petitioner has a properly filed adjustment of status application under 8 U.S.C. § 1255, which by DHS's own policy places him in a period of authorized stay while USCIS adjudicates the application. Further, as stated above, removal before the adjudication of the adjustment of status would violate his due process rights. As such, removal is not reasonably foreseeable. Because Petitioner's pending adjustment application confers a period of authorized stay, his continued detention serves no legitimate purpose and violates both statute and due process.

The Defendants have also failed to follow the regulatory procedures under § 241.13(i)(3). Indeed, the Defendants did not provide Petitioner with any notice about the reason for the revocation of his release, did not conduct any interview, and did not provide him an opportunity to rebut their claim that removal is now foreseeable or that he has violated the order of supervision,

as required by regulations. *See* 8 C.F.R. 241.13(i)(2), (3). Courts have recognized that when ICE revokes supervised release, it must follow the process prescribed by regulation, including providing notice, conducting an interview, and allowing the noncitizen to respond. *See, e.g.*, *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 U.S. Dist. LEXIS 84258, at *48–52 (W.D.N.Y. May 2, 2025) (finding petitioner was not afforded even minimal due process protections when ICE failed to provide petitioner an informal interview upon his re-detainment); *Hoac v. Becerra*, No. 2:25-cv-01740-DC-JDP, 2025 U.S. Dist. LEXIS 136002, at *9 (E. D. Cal. July 16, 2025) ("Government agencies are required to follow their own regulations. Because there is no indication that an informal interview was provided to Petitioner, the court finds Petitioner is likely to succeed on his claim that his re-detainment was unlawful.") (internal citations omitted); *Liu v. Carter*, No. 25-cv-03036-JWL, 2025 U.S. Dist. LEXIS 115275, 2025 WL 1696526, at *2 (D. Kan. Jun. 17, 2025) ("The Court finds that officials did not properly revoke petitioner's release pursuant to Section 241.13, for multiple reasons."); *Phan v. Beccerra*, No. 2:25-CV-01757-DC-JDP, 2025 U.S. Dist. LEXIS 136000, at *8–9 (E.D. Cal. July 16, 2025) ("Petitioner has shown he is likely to succeed on his claim that Respondents did not properly revoke Petitioner's release pursuant to § 241.13."); *Tang v. Noem*, No. 2:25-cv-04638-MRA-PD, 2025 U.S. Dist. LEXIS 102445, at *13 (C.D. Cal. May 29, 2025) (finding due process violation where petitioner was "not notified of the reasons for the revocation, nor was he promptly interviewed or otherwise afforded an opportunity to respond to the government's purposes reasons for redetention."); *Torres-Jurado v. Biden*, No. 19 Civ. 3595 (AT), 2023 U.S. Dist. LEXIS 193725, at *14 (S.D.N.Y Oct. 29, 2023) ("Defendants cannot decide to revoke the ICE stay without affording Plaintiff an opportunity to be heard in a meaningful time and in a meaningful manner.") (internal citation and quotations omitted). Defendant's failure to provide any notice for Petitioner's re-detention and opportunity to submit

evidence to challenge his re-detention, renders such action unlawful under both constitutional and regulatory standards.

Moreover, government agencies are required to follow their own regulations. *See United States ex rel. Accardi* 347 U.S. at 268; *Phan*, 2025 U.S. Dist. LEXIS 136000, at *16. A violation of the *Accardi* doctrine may itself constitute a violation of the Fifth Amendment Due Process Clause and justify release from detention. *See, e.g., United States v. Teers*, 591 F. App'x 824, 840 (11th Cir. 2014); *Ceesay*, 2025 U.S. Dist. LEXIS 84258, at *48 (citing *Rombot v. Souza*, 296 F. Supp. 3d 383 (D. Mass. 2017)).

Finally, even if the Defendants were to demonstrate a changed circumstance, Petitioner asserts that 8 C.F.R. § 241.13(i)(2) is invalid and *ultra vires* to 8 U.S.C. § 1231(a)(6), which contains no allowance for re-detention upon a finding of changed circumstances. The Court should refuse to apply a regulation mandating re-detention without bail without a clear statement in the statute reflecting a Congressional intent for such an extreme interpretation.

B. Petitioner will suffer irreparable harm absent injunctive relief.

The right to be free from unconstitutional detention constitutes an irreparable injury. *See, e.g., Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 U.S. Dist. LEXIS 90261, at *6 (N.D. Cal. May 12, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.")). Courts have also found that family separation and prolonged detention qualify as irreparable injury. *See, e.g., Angelica S. v. United States HHS*, No. 25-cv-1405 (DLF), 2025 U.S. Dist. LEXIS 109051, at *27 (D.D.C. June 9, 2025) (citing *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (noting that family "[s]eparation irreparably harms plaintiffs every minute it persists"). In this case, the Petitioner is experiencing irreparable harm in multiple respects. First,

his detention deprives him of his constitutional right to due process. Second, it is causing him to be separated from his family in the United States. Finally, his serious and chronic medical conditions make continued detention dangerous to his health, further establishing irreparable injury.

C. The balance of equities and the public interest favor granting the temporary restraining order.

The balance of equities and the public interest overwhelmingly favor granting injunctive relief. As stated above, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001). This principle is particularly compelling here, where Petitioner seeks only to secure the constitutional and statutory protections Congress has afforded him while his adjustment application remains pending.

The public also has a strong interest in ensuring that individuals are not deprived of their liberty or subjected to unconstitutional detention. *See Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention . . ."). On the other side of the scale, the government suffers no legally cognizable harm from being enjoined from unconstitutional conduct. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.").

Thus, the equities tip sharply in Petitioner's favor. Granting a temporary restraining order will preserve the status quo, safeguard Petitioner's constitutional rights, and ensure that his statutory entitlement to have his application adjudicated is not extinguished.

D. Notice under Federal Rule of Civil Procedure 65.

Pursuant to Rule 65(b)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse party can be heard in opposition; and 2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, due to the abrupt transfer of Petitioner to another state without prior notice, Petitioner is unable to provide an affidavit detailing the immediate and irreparable injury. However, Petitioner presents evidence of his pending adjustment of status application and health records demonstrating irreparable injury. *See* Exh. A & B. Requiring a sworn affidavit or verified complaint from Petitioner under these circumstances would frustrate the purpose of emergency relief. The undersigned complied with Rule 65(b)(1)(B) by certifying in writing the efforts made to provide notice and the reasons why notice cannot be given at this time. *See* Exh. G (Declaration from Alejandra Martinez and Email to U.S. Assistant Attorney Lacy L. McAndrew dated September 1, 2025). The U.S. Attorney's Office represents Respondents in civil litigation in which they are named as respondents. While proper service may not have been made on Respondent's counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(B) have been met. *See id.*

Rule 65(c) also states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of the instant suit, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to

temporarily stay removal and release Petitioner from unconstitutional detention, should not result in any conceivable financial damages to Respondents.

V. CONCLUSION

For the foregoing reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction prohibiting the Respondents from temporarily removing him and continuing to detain him pending the resolution of his Writ of Habeas Corpus.

Respectfully submitted,

/s/ Alejandra Martinez
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CERTIFICATE OF SERVICE

I certify that on today's date, September 1, 2025, I electronically filed the above Motion for Temporary Restraining Order and Preliminary Injunction by using the Court's CM/ECF system which will automatically send a notice of electronic filing to Defendants' counsel.

/s/ Alejandra Martinez
Alejandra Martinez