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10
11 UNITED STATES DISTRICT COURT
12
13 FOR THE DISTRICT OF NEW MEXICO

14 Hugo E. VALLE VARGAS,

15 Petitioner-Plaintiff,

16 v.

17 Mary De ANDA-YBARRA, Field Office
18 Director of Albuquerque Office of Detention and
19 Removal, U.S. Immigrations and Customs
20 Enforcement; U.S. Department of Homeland
21 Security;

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

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

Pam BONDI, in her Official Capacity, Attorney
General of the United States; and

Ryan ELISON, in his Official Capacity, U.S.
Attorney of New Mexico.

27
28 Respondents-Defendants.

Case No.

A-240-464-378

**MOTION FOR TEMPORARY
RESTRANDING ORDER**

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

Challenge to Unlawful Incarceration;
Request for Declaratory and Injunctive
Relief

NOTICE OF MOTION

Petitioner, by and through undersigned counsel, respectfully moves this Court for a Temporary Restraining Order (“TRO”) and Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65, enjoining Respondents from continuing his unlawful detention and ordering his immediate release, or in the alternative, a constitutionally adequate bond hearing within seven (7) days at which the government bears the burden of proving, by clear and convincing evidence, that his detention is necessary. If the Court deems oral argument necessary, Petitioner requests to appear by video.

Dated: August 27, 2025

Respectfully submitted,

Karen Monreal

Karen S. Montreal, Esq.
Attorney for Petitioner

1 **I. INTRODUCTION**

2 This case concerns the liberty of Petitioner, a man who has lived in the United States since
3 August 22, 2016, who fled his native Mexico after being targeted by cartel actors due to his
4 education, wealth, and refusal to comply with criminal demands. He has never been convicted of
5 a crime, has no history of violence, and has a pending application for a T-Visa based on
6 trafficking-related harm.

7 On March 12, 2025, Petitioner was taken into ICE custody as collateral following the
8 arrest of his son. He was not the target of any investigation. He was not charged with a crime. He
9 was simply in the wrong place at the wrong time.

10 At his custody redetermination hearing, the Immigration Judge denied bond based solely
11 on a misinterpretation of his testimony. Petitioner testified that he feared the cartel in Mexico; the
12 IJ erroneously treated this as an admission of affiliation with the cartel. No evidence was
13 introduced to substantiate this allegation.

14 On appeal, filed May 20, 2025, the Board of Immigration Appeals (BIA) agreed that the
15 Immigration Judge's finding was "speculative" and unsupported by the record. *Matter of D-R-*,
16 25 I&N Dec. 445, 454 (BIA 2011), makes clear that "[a]n Immigration Judge's conclusions must
17 be based on reasonable, substantial, and probative evidence. Speculation and conjecture cannot
18 serve as substitutes for evidence." Yet Petitioner remains detained on nothing more than
19 conjecture.

20 The Constitution does not permit detention based on speculation. Each day Petitioner
21 remains confined is an irreparable deprivation of liberty, particularly given the disappearance of
22 his son in Mexico under cartel threats. Petitioner seeks this Court's immediate intervention to
23 prevent continued unlawful detention.

24 Therefore, at a minimum, to lawfully continue detaining Mr. Valle Vargas without bond
25 or a bond redetermination hearing, the government must first establish, by clear and convincing
26 evidence and before a neutral adjudicator, that he is now a danger to the community or a flight
27 risk, such that his re-incarceration is necessary.

28 Mr. Valle Vargas meets the standard for a temporary restraining order. He will suffer

1 immediate and irreparable harm absent an order from this Court enjoining the government from
2 continuing his unlawful custody and prohibiting the government to re-arrest him at any future
3 time, unless and until he first receives a hearing before a neutral adjudicator, as demanded by the
4 Constitution. Because holding federal agencies accountable to constitutional demands is in the
5 public interest, the balance of equities and public interest are also strongly in Mr. Valle Vargas's
6 favor.

7 **II. STATEMENT OF FACTS AND CASE**

8 Mr. Valle Vargas is a citizen and national of Mexico who entered the U.S. in August of
9 2016 using a B-2 Visitor Visa and has since remained in the U.S. Petitioner is a well-educated
10 man who studied law and owned multiple businesses in Mexico. Because of his success, he was
11 targeted by cartel groups who sought to extort money and force his cooperation. When Petitioner
12 refused to comply, he was threatened. He knew that refusal would place him at imminent risk of
13 death.

14 After Petitioner fled, his son remained in Mexico. Cartel members kidnapped him and
15 demanded ransom. His son eventually escaped and fled to the United States to join his father,
16 both seeking safety.

17 In early 2025, ICE arrested Petitioner's son. When agents went to Petitioner's home, they
18 detained Petitioner as collateral, despite having no warrant for him and no evidence that he posed
19 a danger. He was taken into ICE custody on March 12, 2025, and has remained detained since.

20 At his custody redetermination hearing, DHS argued that Petitioner had ties to the cartel.
21 When pressed, DHS claimed this information came from the FBI, but no evidence was ever
22 presented to Petitioner or his counsel. Petitioner testified truthfully that he feared the cartel. The
23 Immigration Judge distorted this testimony into an admission of membership, asking no clarifying
24 questions and providing no factual findings beyond the allegation.

25 Petitioner appealed on May 20, 2025. On August 8, 2025, the BIA denied the appeal but
26 noted that the IJ's conclusion was "speculative" and unsupported by the record. The BIA cited
27 *Matter of D-R-*, 25 I&N Dec. 445, 454 (BIA 2011), emphasizing that Immigration Judges may
28 not base decisions on conjecture.

1 Petitioner's son, who was pressured into accepting removal, has since disappeared in
2 Mexico. He called his family saying he was being followed, missed a doctor's appointment, and
3 has not been heard from again. Petitioner remains helpless in detention, unable to assist his family
4 or respond to the unfolding tragedy.

5 On May 24, 2025, undersigned counsel submitted Form I-914, Application for T
6 Nonimmigrant status on behalf of Mr. Valle Vargas after thoroughly assessing his circumstances
7 and determined that he qualifies for relief. This status is designed for individuals who have
8 endured severe hardships, and in his case, it is based on a harrowing history of labor trafficking
9 that began soon after his entry in the U.S.

10 Petitioner has no criminal record, no evidence links him to gang or cartel activity, and
11 DHS has provided no documentation to substantiate its allegations that are keeping Mr. Valle
12 Vargas detained without bond.

13 It is essential for this Court to intervene to guarantee that Mr. Valle Vargas is released
14 from custody due to this unlawful ongoing detention. He should be returned to his family home
15 in South Lake Tahoe, California, or in the alternative, provide Mr. Valle Vargas with a new,
16 constitutionally adequate, bond hearing date where the government bears the burden to justify
17 detention. This unlawful conduct taken against Mr. Valle Vargas is already cause for suffering
18 and irreparable harm to him and his family

19 **III. LEGAL STANDARD**

20 Mr. Valle Vargas is entitled to a temporary restraining order if he establishes that he is
21 "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary
22 relief, that the balance of equities tips in [his] favor, and that an injunction is in the public interest."
23 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D.*
24 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and
25 temporary restraining order standards are "substantially identical"). Even if Mr. Valle Vargas
26 does not show a likelihood of success on the merits, the Court may still grant a temporary
27 restraining order if he raises "serious questions" as to the merits of his claims, the balance of
28 hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance*

1 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As set forth in more detail below,
2 Mr. Valle Vargas overwhelmingly satisfies both standards.

3 Rule 65 of the Federal Rules of Civil Procedure authorizes courts to issue a TRO or
4 preliminary injunction when a movant demonstrates:

- 5 (1) A likelihood of success on the merits;
- 6 (2) A likelihood of suffering irreparable harm absent relief;
- 7 (3) That the balance of equities tips in his favor; and
- 8 (4) That the injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555
9 U.S. 7, 20 (2008).

10 Courts apply these standards with flexibility, recognizing that “serious questions going to
11 the merits” combined with a strong showing of irreparable harm can suffice. *Alliance for the Wild
12 Rockies v. Cottrell*, 632 F.3d 1127, 1131–35 (9th Cir. 2011).

13 In the immigration detention context, courts have repeatedly granted TROs and
14 injunctions where detention is prolonged or based on insufficient evidence. See, e.g.:

- 15 • *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing liberty as the core of due
16 process protection).
- 17 • *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (government bears burden of proof
18 at bond hearings).
- 19 • *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017) (detention without adequate
20 process is arbitrary and unlawful).
- 21 • *Matter of D-R-*, 25 I&N Dec. at 454 (IJ findings cannot be based on speculation).

22 Thus, the TRO standard is satisfied where, as here, the deprivation of liberty is based only on
23 speculation and unsupported allegations.

24 ARGUMENT

25 1. MR. VALLE VARGAS WARRANTS A TEMPORARY RESTRAINING 26 ORDER

27 A temporary restraining order should be issued if “immediate and irreparable injury, loss,
28 or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P.

1 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a
2 preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters &*
3 *Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). Mr. Valle Vargas
4 is likely to remain in unlawful custody in violation of his due process rights without intervention
5 by this Court. Mr. Valle Vargas will continue to suffer irreparable injury if he continues to be
6 detained without due process.

7 **a. Petitioner is likely to succeed on the Merits**

8 Mr. Valle Vargas is likely to succeed on his claim that, in his particular circumstances, his
9 current detention is unlawful because the Due Process Clause of the Constitution prevents
10 Respondents from detaining him without first providing a hearing before a neutral adjudicator
11 where the government demonstrates by clear and convincing evidence that he is now a danger or
12 a flight risk.

13 The government has failed to justify Petitioners ongoing detention, and multiple
14 authorities confirm that speculation cannot substitute for evidence. *Zadvydas v. Davis*, 533 U.S.
15 678, 690 (2001) the Supreme Court emphasized “Freedom from imprisonment—from
16 government custody, detention, or other forms of physical restraint—lies at the heart of the liberty
17 that the Clause protects.”

18 Petitioners’ liberty cannot be curtailed absent a lawful, evidence-based justification.
19 Detention based solely on an IJ’s speculation offends the core protection recognized in *Zadvydas*.

20 While upholding limited detention on certain criminal aliens, the courts reference *Demore*
21 *v. Kim*, 538 U.S. 510, 518–19 (2003) which states “Detention during removal proceedings is a
22 constitutionally permissible part of that process... [but] Congress may make rules that would be
23 unacceptable if applied to citizens.”

24 Here, Petitioner is not a criminal alien, nor has DHS shown he is dangerous or a flight
25 risk. Unlike *Demore*, his detention has no lawful basis.

26 In Petitioners case, the government offered no evidence, let alone clear and convincing
27 evidence, of either risk. In *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011), the Ninth Circuit
28

1 held that “The government must prove by clear and convincing evidence that an alien is a flight
2 risk or a danger to the community to justify denial of bond.” The IJ relied on a poorly
3 misinterpreted statement, and the BIA admitted that the conclusion was speculative.

4 It was the BIA in *Matter of D-R* 25 I&N Dec. 445, 454 (BIA 2011) who stated
5 unequivocally that “Speculation and conjecture cannot serve as substitutes for evidence, and an
6 Immigration Judge’s findings must be based on reasonable, substantial, and probative evidence.”
7 Here, the IJ did exactly what D-R forbids: denied bond based on conjecture. Even DHS’s
8 reference to “information from the FBI” was unsupported by documents, testimony, or
9 corroboration.

10 Petitioners’ detention is punitive, not regulatory. Without evidence of risk, his
11 confinement serves no legitimate government interest. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).
12 “If a restriction or condition is not reasonable related to a legitimate governmental objective, it
13 amounts to punishment.”

14 The Ninth Circuit has warned that “When the government detains noncitizens without
15 providing adequate procedural protections, the detention becomes arbitrary and unlawful.”
16 *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017). As petitioners bond hearing lacked
17 procedural protections such as no disclosure of evidence, no opportunity to rebut allegations, and
18 an IJ’s mischaracterization of testimony, his detention is thus arbitrary and unlawful.

19 Courts analyze procedural due process claims such as this one in two steps: the first asks
20 whether there exists a protected liberty interest under the Due Process Clause, and the second
21 examines the procedures necessary to ensure any deprivation of that protected liberty interest
22 accords with the Constitution. See *Kentucky Dep’t of Corrections v. Thompson*, 490 U.S. 454,
23 460 (1989).

24 Taken together, these authorities confirm Petitioner is likely to succeed on the merits.

25 **b. Petitioner Faces Irreparable Harm**

26 The Supreme Court has long recognized that unjustified confinement is itself irreparable
27 harm. *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) “The loss of liberty produced by an
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1 involuntary confinement... is indisputably a massive curtailment of liberty." No subsequent relief
2 can compensate Petitioner for each day lost in confinement.

3 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) "Government detention violates [the Due
4 Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural
5 protections, or, in certain special and narrow nonpunitive circumstances, where a special
6 justification... outweighs the individual's constitutionally protected interest in avoiding physical
7 restraint."

8 No such justification exists here. Petitioner is suffering daily harm by being confined
9 absent evidence or lawful basis. Moreover, Petitioner's son has disappeared in Mexico after
10 removal, leaving Petitioner unable to act. This compounds the harm: he cannot investigate,
11 advocate, or support his family while detained.

12 **c. The Balance of Equities Favors Petitioner**

13 The equities in this case weigh entirely toward Petitioner's release.

14 The government has no valid interest in detaining someone where it cannot show, by
15 clear and convincing evidence, that he is dangerous or a flight risk. *Singh*, 638 F.3d at 1203.

16 Petitioner's liberty, safety, and ability to assist his family are at stake. As *Bell v. Wolfish*
17 explained, restrictions not reasonably related to legitimate objectives "amount to punishment,"
18 441 U.S. at 535, and punishment without conviction is unconstitutional.

19 Thus, the equities favor Petitioner's immediate release.

20 **d. The Public Interest Supports Injunctive Relief**

21 Courts repeatedly affirm that the public interest is advanced by upholding constitutional
22 rights and preventing arbitrary detention.

23 *Hernandez v. Sessions*, 872 F.3d at 991: "When the government detains noncitizens
24 without providing adequate procedural protections, the detention becomes arbitrary and
25 unlawful."

26 *Zadvydas*, 533 U.S. at 690: "The basic purpose of [the Due Process Clause] is to protect
27 the individual from the arbitrary exercise of the powers of government."

28 Public confidence in the immigration system depends on preventing arbitrary detention.

1 Ordering Petitioner's release—where the government cannot substantiate its allegations—serves
2 not only Petitioner's rights but the broader public interest in constitutional governance.

3 Further, any burden imposed by requiring the ICE to release Mr. Valle Vargas from
4 unlawful custody and refrain from re-arrest unless and until he is provided a hearing before a
5 neutral is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he
6 is detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on
7 the side of affording fair procedures to all persons, even though the expenditure of governmental
8 funds is required.”).

9 A temporary restraining order is in the public interest. First and most importantly, “it
10 would not be equitable or in the public’s interest to allow [a party] . . . to violate the requirements
11 of federal law, especially when there are no adequate remedies available.” *Ariz. Dream Act Coal.*
12 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d
13 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would
14 effectively be granted permission to detain Mr. Valle Vargas in violation of the requirements of
15 Due Process. “The public interest and the balance of the equities favor ‘prevent[ing] the violation
16 of a party’s constitutional rights.’” *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*,
17 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 (“The public interest benefits from an
18 injunction that ensures that individuals are not deprived of their liberty and held in immigration
19 detention because of bonds established by a likely unconstitutional process.”); *cf. Preminger v.*
20 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005) (“Generally, public interest concerns are implicated
21 when a constitutional right has been violated, because all citizens have a stake in upholding the
22 Constitution.”).

23 Therefore, the public interest overwhelmingly favors entering a temporary restraining
24 order and preliminary injunction.

25 **IV. CONCLUSION**

26 For all the above reasons, this Court should find that Mr. Valle Vargas warrants a
27 temporary restraining order and a preliminary injunction ordering that Respondents (1) release
28 him from his unlawful custody; (2) refrain from re-arresting him unless and until he is afforded a

1 hearing before a neutral adjudicator on whether a change in custody is justified by clear and
2 convincing evidence that he is a danger to the community or a flight risk; and (3) refrain from
3 sending him to any place outside of the United States.

4 Dated: August 27, 2025

Respectfully submitted,

5 *Karen Monreal*

6 Karen S. Monreal, Esq.
7 Attorney for Petitioner-Plaintiff

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