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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

	) Case No. 25-CR-02551
	)
	)
NESTER PAUL HERNANDEZ-	) EMERGENCY EX PARTE
MORALES,	) APPLICATION FOR
Petitioner,	) TEMPORARY RESTRAINING
	) ORDER AND ORDER TO SHOW
v.	) CAUSE RE: PRELIMINARY
PAM BONDI, Attorney General of the	) INJUNCTION
United States, in her official capacity;	)
KRISTI NOEM, Secretary of the U.S.	)
Department of Homeland Security, in her	)
official capacity; TODD LYONS, Acting	)
Director of U.S. Immigration and Customs	)
Enforcement, in his official capacity;	)
PATRICK DIVVER, ICE Field Office	)
Director for San Diego County, in his	)
official capacity.	)
	)
Respondents.	)
	)

1 Petitioner respectfully moves this Court on an emergency ex parte basis
2 pursuant to Fed. R. Civ. P. 65(b), 5 U.S.C. § 705, and this Court’s habeas
3 jurisdiction under 28 U.S.C. § 2241 to enjoin Respondents from (1) removing him
4 from the United States or (2) transferring him outside the Southern District of
5 California while his habeas petition (ECF No. 25-cv-02551) and his statutory
6 motion to reopen before the Board of Immigration Appeals remain pending.
7

8 This emergency arises because the Department of Homeland Security has
9 signaled its intent to execute a 2012 removal order immediately—despite the
10 pendency of a motion to reopen based on post-2022 country conditions in El
11 Salvador and un rebutted evidence of torture-level risk under the Convention
12 Against Torture (CAT).
13

14 The BIA denied an administrative stay on June 23, 2025. DHS transferred
15 Petitioner to a Louisiana staging facility almost immediately and was preparing to
16 remove him to El Salvador, without an individualized assessment of the likelihood
17 of torture.
18

19 Only the Ninth Circuit’s temporary stay forestalled deportation. That stay
20 was dissolved on September 24, 2025, based solely on the lack of a final
21 determination of the pending motions with the BIA, leaving Petitioner again
22 exposed to imminent removal without any assurance that DHS will refrain from
23 acting before the BIA rules.
24

25 Expedited relief is required because removal at this stage would bypass
26 statutory safeguards under 8 U.S.C. § 1225(b)(1)(A)(ii) that require a credible-fear
27 screening when persecution or torture is alleged, would extinguish Petitioner’s
28 statutory right to reopening under 8 U.S.C. §§ 1229a(c)(7) and 1229b(b), would
cause irreparable injury to Petitioner and his U.S.–citizen spouse and profoundly

1 autistic grandson, and would render this Court's habeas review moot by
2 foreclosing judicial oversight over DHS's statutory violations and Petitioner's still-
3 pending supplemental motion before the BIA, which seeks reconsideration of the
4 Board's prior denial of a stay of removal.
5

6 Petitioner does not seek a class-wide stay of removal under 8 U.S.C. §
7 1252(f)(1), which bars such relief. Rather, he seeks emergency injunctive relief
8 under Fed. R. Civ. P. 65(b), 5 U.S.C. § 705, and 28 U.S.C. § 2241 to preserve this
9 Court's jurisdiction and prevent irreparable harm while his statutory claims remain
10 pending. District courts retain authority to grant such interim relief in individual
11 habeas proceedings. See *Singh v. Holder*, 638 F.3d 1196, 1202–03 (9th Cir. 2011).
12

13 Petitioner has lived in the United States for over two decades without a
14 criminal record, is the sole caregiver for his disabled U.S. citizen wife and
15 profoundly autistic grandson, and is the beneficiary of an approved I-130 petition
16 and a Parole-in-Place request filed by his U.S. service-member stepson. His motion
17 to reopen details the deteriorating conditions in El Salvador—including mass
18 arrests of tattooed individuals and reports of torture and starvation in the CECOT
19 mega-prison—placing him at grave risk if removed.
20

21 Absent immediate injunctive relief, Petitioner faces irreparable harm, his
22 family will suffer extreme hardship, and the public interest in orderly adjudication
23 and statutory compliance will be undermined. This Court should preserve the
24 status quo and enjoin removal until the Board rules on the pending motion, and this
25 Court can exercise its habeas jurisdiction meaningfully.
26

27 Dated September 29, 2025

28 s/Donovan J Dunnion .
Attorney for Petitioner
Nester Paul Hernandez-Morales