

1 Stacy Tolchin (CA SBN #217431)
2 *Email: Stacy@Tolchinimmigration.com*
3 Law Offices of Stacy Tolchin
4 776 E. Green St., Suite 210
5 Pasadena, CA 91101
6 Telephone: (213) 622-7450
7 Facsimile: (213) 622-7233

8
9
10 Counsel for Petitioner
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

Mauricio LEON,

Plaintiff,

v.

Kristi NOEM, Secretary, Department of
Homeland Security; Todd LYONS, in his
official capacity as Acting Director of U.S.
Immigration and Customs Enforcement; Pam
BONDI, Attorney General of the United
States; Ernesto SANTACRUZ Jr., Acting
Director, Los Angeles ICE Field Office; and
Fereti SEMAIA, Warden, Adelanto ICE
Processing Center.

Respondents.

No. 5:25-cv-02582

PETITIONER'S *EX PARTE*
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

Immigration Case

1 For the reasons explained in the accompanying Memorandum of Points and
2 Authorities, Petitioner hereby makes this *Ex Parte* Application for a Temporary
3 Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to
4 Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioner is in lawful
5 deferred action status and is being detained by Respondents as the result of an
6 unlawful arrest. Petitioner is also deaf and nonverbal and is being detained and
7 isolated in violation of Section 504 of the Rehabilitation Act.

8 Petitioner challenges his detention and arrest on Fourth and Fifth
9 Amendment grounds, as well as on statutory and regulatory grounds. Petitioner
10 requests that the Court issue a temporary restraining order and order to show cause
11 re: preliminary injunction in the form of the proposed order submitted concurrently
12 with this Application. This Application is based on the Complaint, Memorandum of
13 Points and Authorities, and the declaration and exhibits in support thereof.

14 Respondents were advised on September 29, 2025 that Petitioner would be
15 filing this ex parte application and of the contents of this application. Tolchin Decl.
16 ¶ 4. *See Local Rule 17-19.1.*

17 Counsel for Respondents is as follows:
18

19 Daniel A. Beck | Assistant United States Attorney
20 Deputy Chief, Complex and Defensive Litigation Section
21 United States Attorney's Office | Central District of California
22 300 N. Los Angeles Street, Suite 7516 | Los Angeles, CA 90012
23 T: (213) 894-2574 | F: (213) 894-7819 | daniel.beck@usdoj.gov

24 Dated : September 30, 2025

/s/ Stacy Tolchin

25 Stacy Tolchin

26

27

28

1 TABLE OF CONTENTS
2

3	I. INTRODUCTION.....	1
4	II. STATEMENT OF FACTS.....	1
5	III. STANDARD OF REVIEW	2
6	IV. ARGUMENT	4
7	A. THE COURT HAS THE AUTHORITY TO ORDER PETITIONER'S RELEASE	4
8	1. Petitioner Is Likely To Prevail On The Challenge To His Detention And Arrest.	10
9	2. Petitioner is Likely to Prevail on the Issue of Whether His Ongoing Detention is Unlawful.....	10
10	3. Petitioner is Likely to Prevail on His Rehabilitation Act Claim.....	11
11	C. PETITIONER WILL SUFFER IRREPARABLE HARM AND THE EQUITIES TIP IN PETITIONER'S FAVOR.....	12
12	D. NO BOND IS NECESSARY	13
13	II. CONCLUSION	13
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 TABLE OF AUTHORITIES
2

3 FEDERAL CASES
4

5 <i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	3
6 <i>Avendano Hernandez v. Decker</i> , 450 F. Supp. 3d 443 (S.D.N.Y. 2020).....	4
7 <i>Avirmed v. U.S. Dep't of Homeland Sec.</i> , No. 25-CV-1310-DMS-DEB, 2025 WL 8 1953230, at *6 (S.D. Cal. July 16, 2025)	11
9 <i>Ayala v. Bondi</i> , No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. 10 Wash. Aug. 4, 2025)	10
11 <i>Barbecho v. Decker</i> , No. 20-CV-2821 (AJN), 2020 WL 2513468, at *7 (S.D.N.Y. 12 May 15, 2020).....	4
13 <i>California v. Azar</i> , 911 F.3d 558 (9th Cir. 2018)	3
14 <i>City & County of San Francisco v. USCIS</i> , 944 F.3d 773 (9th Cir. 2019).....	3
15 <i>Coronel v. Decker</i> , 449 F. Supp. 3d 274, 290 (S.D.N.Y. 2020)	4
16 <i>D'Alessandro v. Mukasey</i> , No. 08 Civ. 914, 2009 WL 799957, at *3 (W.D.N.Y. 17 Mar. 25, 2009)	4
18 <i>Drakes Bay Oyster Co. v. Jewell</i> , 747 F.3d 1073, 1092 (9th Cir. 2014)	12
19 <i>Duvall v. County of Kitsap</i> , 260 F.3d 1124, 1135 (9th Cir. 2001)	11
20 <i>Elkimya v. Dep't of Homeland Sec.</i> , 484 F.3d 151, 154 (2d Cir. 2007)	4
21 <i>Elrod v. Burns</i> , 427 U.S. 347, 373 (1976)	12
22 <i>Enriquez-Perdomo v. Newman</i> , 149 F.4th 623, 627 (6th Cir. 2025)	10
23 <i>Fraihat v. U.S. Immigr. & Customs Enf't</i> , 16 F.4th 613 (9th Cir. 2021)	3
24 <i>Frontline Med. Assoc., Inc. v. Coventry Healthcare Workers Compensation, Inc.</i> , 25 620 F. Supp. 2d 1109 (C.D. Cal. 2009)	3
26 <i>Gebreweldi v. Barr</i> , No. 20-71009, 2020 WL 13017241, at *1 (9th Cir. May 1, 27 2020)	5
28	

1	<i>GoTo.com, Inc. v. Walt Disney Co.</i> , 202 F.3d 1199 (9th Cir. 2000)	2
2	<i>Hernandez v. Sessions</i> , 872 F.3d 976, 995 (9th Cir. 2017).....	12, 13
3	<i>Hill Dermaceuticals, Inc. v. U.S. Food & Drug Admin.</i> , 524 F. Supp. 2d 5 (D.D.C.	
4	2007)	3
5	<i>Johnson v. Couturier</i> , 572 F.3d 1067 (9th Cir. 2009).....	13
6	<i>Jorgensen v. Cassiday</i> , 320 F.3d 906 (9th Cir. 2003).....	13
7	<i>Kiadii v. Decker</i> , 423 F. Supp. 3d 18 (S.D.N.Y. 2018)	4
8	<i>Land v. Deeds</i> , 878 F.2d 318, 318 (9th Cir. 1989)	5
9	<i>Mahdawi v. Trump</i> , No. 2:25-CV-389, 2025 WL 1243135, at *14 (D. Vt. Apr. 30,	
10	2025);	4
11	<i>Maldonado v. Noem</i> , No. 4:25-CV-2541, 2025 WL 1593133, at *3 (S.D. Tex. June	
12	5, 2025)	10
13	<i>Melendres v. Arpaio</i> , 695 F.3d 990, 1002 (9th Cir. 2012).....	12
14	<i>Nadarajah v. Gonzales</i> , 443 F.3d 1069, 1084 (9th Cir. 2006)	5
15	<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	3, 4, 12
16	<i>Noem v. Vasquez Perdomo</i> , 606 U.S. (2025).....	6
17	<i>Ozturk v. Trump</i> , No. 2:25-CV-374, 2025 WL 1420540, at *10 (D. Vt. May 16,	
18	2025)	4
19	<i>S.N.C. v. Sessions</i> , No. 18 Civ. 7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y.	
20	Nov. 26, 2018.....	4
21	<i>Sanchez v. Sessions</i> , 904 F.3d 643, 650 (9th Cir. 2018).....	7, 8
22	<i>Singh v. United States Citizenship & Immigr. Servs</i> , No. SACV171538JVSJCGX,	
23	2018 WL 6265006, at *3 (C.D. Cal. Mar. 8, 2018).....	5
24	<i>Tanner Motor Livery, Ltd. v. Avis, Inc.</i> , 316 F.2d 804 (9th Cir. 1963)	2
25	<i>Tejada-Mata v. I.N.S.</i> , 626 F.2d 721, 725 (9th Cir.1980)	9
26	<i>U.S. Philips Corp. v. KBC Bank N.V.</i> , 590 F.3d 1091 (9th Cir. 2010).....	2
27	<i>United States v. Guerrero</i> , 47 F.4th 984, 985–86 (9th Cir.), amended on denial of	
28	reh'g, 50 F.4th 1291 (9th Cir. 2022)	8

1	<i>United States v. Manzo-Jurado</i> , 457 F.3d 928, 937 (9th Cir. 2006).....	7, 9
2	<i>United States v. Mejia-Flores</i> , No. 8:11CR375, 2012 WL 525485, at *9 (D. Neb. 3 Feb. 16, 2012)	9
4	<i>United States v. Montero-Camargo</i> , 208 F.3d 1122, 1135 (9th Cir. 2000).....	7, 8
5	<i>United States v. Nkanga</i> , 452 F. Supp. 3d 91, 96 (S.D.N.Y. 2020).....	4
6	<i>United States v. Willy</i> , 40 F.4th 1074, 1080 (9th Cir. 2022).....	9
7	<i>Updike v. Multnomah County</i> , 870 F.3d 939, 949 (9th Cir. 2017)	11
8	<i>Vargas v. Jennings</i> , No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. 9 Aug. 23, 2020)	13
10	<i>Vasquez Perdomo et al., v. Noem</i> , __ F. 4th __ No. 25-4312, 2025 WL 2181709 11 (9th Cir. Aug. 1, 2025).....	6
12	<i>Vasquez Perdomo v. Noem</i> , No. 2:25-CV-05605-MEMF-SP, 2025 WL 1915964, at 13 *1 (C.D. Cal. July 11, 2025).....	6, 8
14	<i>Warsoldier v. Woodford</i> , 418 F.3d 989, 1001–02 (9th Cir. 2005).....	12
15	<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	3
16	<u>Federal Statutes</u>	
17	Section 504 of the Rehabilitation Act, 29 U.S.C. § 794,.....	11
18	5 U.S.C. § 705	3
19	8 U.S.C. § 1357(a)(2).....	9
20	29 U.S.C. § 794(a).....	11
21	<u>Federal Regulations</u>	
22	8 C.F.R. § 287.8(c)(2)(i)	9
23	8 C.F.R. § 287.8(c)(2)(ii)	9
24	<u>Rules</u>	
25	Fed. R. Civ. P. 65(b)(1)(A)	2
26		
27		
28		

1 I. INTRODUCTION

Petitioner is a native of Mexico who is in valid deferred action status as a result of a pending U-Visa, an immigration benefit available to noncitizen victims of certain crimes. He was detained and arrested by immigration authorities on September 12, 2025 while working at a car wash, and alleges violations of the Fourth Amendment and governing statutes and regulations regarding his detention and arrest. Further, he remains detained despite being in deferred action status, in violation of his Fifth Amendment rights. Last, he is isolated while detained and unable to communicate, in violation of Section 504 of the Rehabilitation Act.

10 He requires an *ex parte* order from this Court ordering his immediate release.

12 II. STATEMENT OF FACTS

Petitioner was born in Mexico and resides in Southern California with this family, including his United States citizen daughter. Tolchin Dec. Exhs. B and C. He is deaf and nonverbal. Tolchin Dec. Exh. B.

16 Petitioner was granted deferred action status on April 11, 2025, based on a
17 pending application for a U Visa, a benefit for victims of crimes. Tolchin Dec.
18 Exhs. A, B. His deferred action status is confirmed based on the issuance of an
19 Employment Authorization Document (EAD) which is valid from April 11, 2025
20 until April 10, 2029. Tolchin Dec. Exh. A.

21 On September 12, 2025, Petitioner was working at a car wash in El Monte,
22 California. He was wearing his work clothes and had just finished cleaning a car
23 when suddenly someone grabbed him aggressively by the arm. Tolchin Dec. Exh.
24 B. He looked up and realized it was an immigration agent. He saw several
25 unmarked vehicles parked around where he and other workers were, that had not
26 been there moments earlier. They were blocking the entrance and exit. He also saw
27 several other agents in the immediate area around him, grabbing his coworkers.
28 Tolchin Dec. Exh. B.

1 Petitioner was grabbed by an agent and Petitioner attempted to communicate
2 that he was deaf. Tolchin Dec. Exh. B. The agent kept pulling at him. Petitioner
3 attempted to gesture to his pocket, where he keeps his work permit, but the agent
4 said “no” and handcuffed him. Tolchin Dec. Exh. B. At no point did Petitioner
5 attempt to run or hide. Tolchin Dec. Exh. B. He was quickly placed into one of the
6 unmarked vehicles and driven away while handcuffed. The entire interaction took
7 a couple minutes. Tolchin Dec. Exh. B.

8 Petitioner was taken to the Adelanto detention center and is being held there.
9 Tolchin Dec. Exh. B. At Adelanto, Petitioner is being held in a room by himself
10 within the medical unit. Tolchin Dec. Exh. B. In the two weeks he had been at
11 Adelanto he had not been brought to commissary, to recreation, or allowed to go
12 outdoors. Petitioner passes the time by pacing in his room and drawing pictures
13 until his hands hurt. Tolchin Dec. Exh. B. Petitioner is unable to communicate with
14 the staff and has not been provided with a sign language interpreter. Tolchin Dec.
15 Exh. B.

16

17 III. STANDARD OF REVIEW

18 A Temporary Restraining Order (“TRO”) may be issued upon a showing
19 “that immediate and irreparable injury, loss, or damage will result to the movant
20 before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). A
21 trial court may grant a TRO or a preliminary injunction to “preserve the status quo
22 and the rights of the parties” until a decision can be made in the case. *U.S. Philips*
23 *Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in
24 this context “refers not simply to any situation before the filing of a lawsuit, but
25 instead to ‘the last uncontested status which preceded the pending controversy[.]’”
26 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting
27 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). The
28 analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc.*,

1 *Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109,
2 1110 (C.D. Cal. 2009).

3 To obtain a preliminary injunction, a Petitioner “must establish [1] that he is
4 likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
5 absence of preliminary relief, [3] that the balance of equities tips in their favor, and
6 [4] that an injunction is in the public interest.” *City & County of San Francisco v.*
7 *USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019)(quoting *Winter v. Nat. Res. Def.*
8 *Council, Inc.*, 555 U.S. 7, 20 (2008). “Likelihood of success on the merits is the
9 most important factor.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)
10 (quotations omitted). If the first two factors are met, the third and fourth factors
11 merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418,
12 435 (2009).

13 Additionally, in the Ninth Circuit, courts also “employ an alternative ‘serious
14 questions’ standard, also known as the ‘sliding scale’ variant of the *Winter*
15 standard.” *Fraihat v. U.S. Immigr. & Customs Enf’t*, 16 F.4th 613, 635 (9th Cir.
16 2021) (quotations and citations omitted and alterations accepted). “Under that
17 formulation, ‘serious questions going to the merits’ and a balance of hardships that
18 tips sharply towards the Petitioner[s] can support issuance of a preliminary
19 injunction, so long as the Petitioner[s] also show[] that there is a likelihood of
20 irreparable injury and that the injunction is in the public interest.” *Id.* (quoting *All.*
21 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

22 In addition, the APA provides that “to the extent necessary to prevent
23 irreparable injury,” the Court may issue “all necessary and appropriate process . . .
24 to preserve status or rights pending” these proceedings. 5 U.S.C. § 705. The
25 standard used by courts for a request to stay agency action “is the same legal
26 standard as that used in a motion for preliminary injunction.” *Hill Dermaceuticals,*
27 *Inc. v. U.S. Food & Drug Admin.*, 524 F. Supp. 2d 5, 8 (D.D.C. 2007); *Nken*, 556
28

1 U.S. at 428 (describing a stay as “halting or postponing” operation of an action or
2 “temporarily divesting an order of enforceability”).

3 Petitioner meets all the requirements for relief.

4

5 **IV. ARGUMENT**

6 **A. THE COURT HAS THE AUTHORITY TO ORDER PETITIONER’S
7 RELEASE**

8 This Court has the authority to grant Petitioner’s release pending
9 adjudication of his habeas. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001).
10 *Mapp* sets forth that the district court has the “inherent authority” to set bail
11 pending the adjudication of a habeas petition when the petition has raised (1)
12 substantial claims and (2) extraordinary circumstances that (3) “make the grant of
13 bail necessary to make the habeas remedy effective.” *Id.*; *see also Elkimya v. Dep’t
14 of Homeland Sec.*, 484 F.3d 151, 154 (2d Cir. 2007) (discussing standard and
15 holding that the REAL ID Act of 2005 “did not qualify our inherent authority to
16 admit bail to petitioners in immigration cases”). *See e.g. Ozturk v. Trump*, No.
17 2:25-CV-374, 2025 WL 1420540, at *10 (D. Vt. May 16, 2025); *Mahdawi v.
18 Trump*, No. 2:25-CV-389, 2025 WL 1243135, at *14 (D. Vt. Apr. 30, 2025);
19 *United States v. Nkanga*, 452 F. Supp. 3d 91, 96 (S.D.N.Y. 2020); *Avendano
20 Hernandez v. Decker*, 450 F. Supp. 3d 443 (S.D.N.Y. 2020); *Coronel v. Decker*,
21 449 F. Supp. 3d 274, 290 (S.D.N.Y. 2020); *Barbecho v. Decker*, No. 20-CV-2821
22 (AJN), 2020 WL 2513468, at *7 (S.D.N.Y. May 15, 2020); *S.N.C. v. Sessions*, No.
23 18 Civ. 7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018); *Kiadii v.
24 Decker*, 423 F. Supp. 3d 18 (S.D.N.Y. 2018); *D’Alessandro v. Mukasey*, No. 08
25 Civ. 914, 2009 WL 799957, at *3 (W.D.N.Y. Mar. 25, 2009).

26 While the Ninth Circuit has not explicitly adopted the *Mapp* standard, it has
27 recognized that district courts have the inherent authority to order release while a
28 district court action is pending. *See e.g. Nadarajah v. Gonzales*, 443 F.3d 1069,

1 1084 (9th Cir. 2006) (“we grant his motion for immediate release, subject to terms
2 and conditions to be set by the appropriate delegate of the Attorney General.”);
3 *Gebreweldi v. Barr*, No. 20-71009, 2020 WL 13017241, at *1 (9th Cir. May 1,
4 2020) (unpublished) (“the district court can adjudicate petitioner’s request for
5 release under 28 U.S.C. § 2241, and we anticipate that it will do so promptly..”);
6 *Singh v. United States Citizenship & Immigr. Servs.*, No. SACV171538JVSJCGX,
7 2018 WL 6265006, at *3 (C.D. Cal. Mar. 8, 2018) (“The Court further orders that
8 Singh be released from custody forthwith pending further proceedings in this
9 case.”)

10 *Mapp* confirms that the federal courts have the inherent authority to order
11 release in the immigration context but emphasized the “limited” nature of that
12 authority, which is “to be exercised in special cases only,” when “extraordinary or
13 exceptional circumstances exist which make the grant of bail necessary to make the
14 habeas remedy effective” 241 F.3d at 226. As the July 30, 2025 order issued by
15 Magistrate Judge Pym in *Vasquez Perdomo v. Noem*, 2:25-cv-05605-MEMF-SP
16 (CD. Cal. Jul. 30, 2025) Dkt # 132 (Exh. D) found, there are times when original
17 jurisdiction to order release should be exercised favorably.

18 Petitioner was arrested unlawfully while in deferred action status and is
19 being isolated and is unable to communicate. This Court can order Petitioner’s
20 release in the habeas context in “extraordinary cases involving special
21 circumstances or a high probability of success.” *Land v. Deeds*, 878 F.2d 318, 318
22 (9th Cir. 1989). *See also Vasquez Perdomo order* (Tolchin Dec. Exh. D at 7-8).
23 Petitioner presents that case here.

24
25 B. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS
26 CLAIMS
27
28

1 1. Petitioner is Likely to Prevail on the Issue of Whether His Initial
2 Detention and Arrest Were Unlawful

3 Petitioner's Complaint alleges multiple legal violations involving his
4 detention and arrest by immigration officials on September 12, 2025, while he was
5 working at a car wash in El Monte. Dkt # 1 at ¶ 17-¶ 20. Petitioner was detained
6 and arrested as a part of ongoing immigration enforcement actions that are the
7 subject of litigation in *Vasquez Perdomo et al., v. Noem*, 2:25-cv-05605-MEMF-SP
8 (C.D. Cal.). Notably, in the *Vasquez Perdomo* raids litigation, the District Court
9 held that the action of identifying people "based upon race alone, aggressively
10 question them, and then detain them without a warrant, without their consent, and
11 without reasonable suspicion that they are without status" did not meet the standard
12 for reasonable suspicion, a lower standard than the probable cause standard.

13 *Vasquez Perdomo v. Noem*, No. 2:25-CV-05605-MEMF-SP, 2025 WL 1915964, at
14 *1 (C.D. Cal. July 11, 2025). The July 11, 2025 District Court temporary
15 restraining order enjoined the government from detaining individuals in the Central
16 District of California based solely relying on these four factors alone, or in
17 combination. These factors are: 1) Apparent race or ethnicity; 2). Speaking Spanish
18 or speaking English with an accent; 3). Presence at a particular location (e.g. bus
19 stop, car wash, tow yard, day laborer pick up site, agricultural site, etc.); or 4). The
20 type of work one does. *Vasquez Perdomo v. Noem*, No. 2:25-CV-05605-MEMF-
21 SP, 2025 WL 1915964, at *28 (C.D. Cal. July 11, 2025). The Ninth Circuit
22 declined to stay this order on August 1, 2025. *Vasquez Perdomo et al., v. Noem*, __
23 F. 4th __ No. 25-4312, 2025 WL 2181709 (9th Cir. Aug. 1, 2025).

24 On September 8, 2025, the Supreme Court issued a stay of the lower court's
25 order. *Noem v. Vasquez Perdomo*, 606 U.S. (2025). The majority decision issued a
26 stay of the order without any reasoning. *Id.* at *1 ("The application for stay
27 presented to Justice KAGAN and by her referred to the Court is granted. The July
28 11, 2025 order entered by the United States District Court for the Central District of

1 California, case No. 2:25-cv-5605, is stayed pending the disposition of the appeal
2 in the United States Court of Appeals for the Ninth Circuit and disposition of a
3 petition for a writ of certiorari, if such a writ is timely sought. Should certiorari be
4 denied, this stay shall terminate automatically. In the event certiorari is granted, the
5 stay shall terminate upon the sending down of the judgment of this Court.”) While
6 there was a concurring opinion issued by Justice Kavanaugh, that decision was not
7 the majority opinion. Further, as both the concurring and dissenting opinions note,
8 there could have been many reasons for the Supreme Court to issue a stay of the
9 TRO, including issues of standing, the scope of the injunction, as well as the four
10 factor Fourth Amendment test articulated by the district court.

11 Given this, there is no change to this Court’s analysis in light of the stay from
12 the Supreme Court. The law still provides that race, use of the Spanish language,
13 employment, and dress cannot be used as a basis for reasonable suspicion under the
14 Fourth Amendment as established by Ninth Circuit and Supreme Court precedent.
15 *United States v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000)
16 (“Hispanic appearance is, in general, of such little probative value that it may not
17 be considered as a relevant factor where particularized or individualized suspicion
18 is required.”); *Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018) (“On these
19 facts, we agree with Sanchez that it appears he was detained solely on the basis of
20 his race.”); *United States v. Manzo-Jurado*, 457 F.3d 928, 937 (9th Cir. 2006)
21 (“[t]he group’s appearance as a work crew is marginally relevant to establishing
22 reasonable suspicion. A characteristic common to both legal and illegal immigrants
23 does little to arouse reasonable suspicion.”). And, finally, the TRO at issue in
24 *Vasquez Perdomo* dealt with temporary detentive stops under *Terry* which requires
25 the lower reasonable suspicion standard, and not the probable cause standard at
26 issue for arrests, which are also challenged here.

27 Petitioner was detained and arrested as a result of his race, occupation and
28

1 employment. He is a native of Mexico who was working at a Los Angeles area car
2 wash when he was grabbed by an officer after vehicles pulled up to the car wash
3 and blocked the entrance and put him into handcuffs. Tolchin Dec. Exh. *.
4 Petitioner was not able to communicate because he is nonverbal, but gestured to his
5 pocket where his work permit was located. Tolchin Dec. Exh. *. He was
6 nevertheless handcuffed, placed not a car, and driven away. *Id.* If anything, this was
7 an arrest and not a detention. *See United States v. Guerrero*, 47 F.4th 984, 985–86
8 (9th Cir.), amended on denial of reh'g, 50 F.4th 1291 (9th Cir. 2022) (the length of
9 the detention and use of handcuffs under the circumstances transformed a
10 “detention into a de facto arrest. A reasonable person in Guerrero's situation would
11 not have thought that they were free to leave. Instead, Guerrero was not free to
12 leave, and a reasonable person would have realized that departure was not possible.
13 This was more than a brief detention akin to a *Terry* stop, it was a de facto arrest.”).
14

15 Petitioner is likely to prevail in his claim that he was detained and/or arrested
16 based on his race, location, and work, factors that are an impermissible basis to
17 form a reasonable suspicion for detention, let alone for an arrest. *United States v.*
18 *Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (“Hispanic appearance is,
19 in general, of such little probative value that it may not be considered as a relevant
20 factor where particularized or individualized suspicion is required.”); *Sanchez v.*
21 *Sessions*, 904 F.3d 643, 650 (9th Cir. 2018) (“On these facts, we agree with
22 Sanchez that it appears he was detained solely on the basis of his race.”).
23

24 The District Court in *Vasquez Perdomo* also rejected the notion that work
25 formed a reasonable suspicion as a basis for arrest. *Vasquez Perdomo v. Noem*, No.
26 2:25-CV-05605-MEMF-SP, 2025 WL 1915964, at *24 (C.D. Cal. July 11, 2025)
27 (“knowledge that undocumented individuals use and seek work at car washes falls
28 woefully short of the reasonable suspicion needed to target any particular individual
at any particular car wash. The same is true of the other locations and other

1 occupations at issue.”). *See also United States v. Manzo-Jurado*, 457 F.3d 928, 937
2 (9th Cir. 2006) (“[t]he group's appearance as a work crew is marginally relevant to
3 establishing reasonable suspicion. A characteristic common to both legal and illegal
4 immigrants does little to arouse reasonable suspicion.”)

5 ICE detained/arrested Petitioner on account of, at a minimum, his race,
6 location, and work. Tolchin Dec. Exh. B. ICE therefore detained Petitioner without
7 reasonable suspicion based on specific articulable facts that Petitioner was in the
8 United States unlawfully. The failure to meet these requirements is a violation of 8
9 C.F.R. § 287.8(b)(2) and the Fourth Amendment of the United States Constitution.
10

11 Petitioner was placed into handcuffs and forced into the car, constituting an
12 arrest. The law requires two components for an immigration arrest. First, there must
13 be probable cause for an arrest under the Fourth Amendment. 8 C.F.R. §
14 287.8(c)(2)(i). This requirement is tantamount to a constitutional “probable cause”
15 requirement. *Tejada-Mata v. I.N.S.*, 626 F.2d 721, 725 (9th Cir.1980). Second,
16 there must be a warrant. If there is no warrant, there must be a reason to believe that
17 the individual is likely to escape before a warrant can be obtained. 8 U.S.C. §
18 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii). If these requirements are not met, then an
19 arrest is unlawful.

20 As discussed above, there was no probable cause for the arrest when the
21 basic threshold reasonable suspicion test was not met. The “probable cause”
22 standard is a higher standard than the “reasonable suspicion” required to conduct
23 detentive stops. *United States v. Willy*, 40 F.4th 1074, 1080 (9th Cir. 2022). There
24 also was no warrant, and no flight risk assessment. This constituted a violation of
25 the Fourth Amendment, the statute at 8 U.S.C. § 1357, and the regulation at 8
26 C.F.R. § 287.8(c)(2). *United States v. Mejia-Flores*, No. 8:11CR375, 2012 WL
27 525485, at *9 (D. Neb. Feb. 16, 2012) (“Although a warrantless arrest is authorized
28 under INA § 287 [8 U.S.C. § 1357], the regulations promulgated thereunder

1 contemplate a warrantless arrest only if the officer has both a reason to believe that
2 an immigration offense or other felony crime is being committed and a reason to
3 believe that the person is likely to escape before a warrant can be obtained.”). In
4 fact, officers were unable to communicate with Petitioner at all and therefore there
5 was no legal basis for disregarding the warrant requirement or flight risk
6 determination.

7 Petitioner is likely to prevail on the challenge to his detention and arrest.
8
9

10 2. Petitioner is Likely to Prevail on the Issue of Whether His
11 Ongoing Detention is Unlawful

12 Petitioner has deferred action status and cannot be removed from the United
13 States. *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4
14 (W.D. Wash. Aug. 4, 2025). The code in the Employment Authorization Document
15 is “c14.” Tolchin Dec. Exh. A. That is the code for “deferred action.” 8 C.F.R. §
16 2741.12(c)(14). That is based on a U Visa bona fide determination. 8 U.S.C. §
17 1182(p)(6). When such a determination is made, the recipient cannot be removed
18 from the United States. *Id.* As the purpose of detention is to effect removal, it
19 follows that Petitioner also cannot be detained. *Maldonado v. Noem*, No. 4:25-CV-
20 2541, 2025 WL 1593133, at *3 (S.D. Tex. June 5, 2025). *See also Enriquez-*
21 *Perdomo v. Newman*, 149 F.4th 623, 627 (6th Cir. 2025) (noting that detention
22 while in deferred action status is unlawful giving rise to an action on habeas); *Ayala*
23 *v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash.
24 Aug. 4, 2025) (“deferred action status prevents removal. As a result, the Court
25 concludes that the Government has no legal basis to detain Sepulveda Ayala and
26 that Sepulveda Ayala has met his burden on his habeas petition.”). As such,
27 Petitioner is likely to prevail on his unlawful detention claim.
28

C. PETITIONER WILL SUFFER IRREPARABLE HARM AND THE EQUITIES TIP IN PETITIONER'S FAVOR

The Ninth Circuit has recognized the “irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities” and “the economic burdens imposed on detainees and their families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, “[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where, as here, the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted that “unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.” *Hernandez*, 872 F.3d at 999. Here, Petitioner is separated from his family and facing isolation while detained. Tolchin Dec. Exh. B.

18 The balance of the equities and public interest analyses merge when the
19 government is the opposing party, as is the case in this action. *See Drakes Bay*
20 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
21 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that
22 Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar*,
23 No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) (“Given
24 the low risk of Petitioner’s causing harm to others or fleeing, such expenditure in
25 her case would not benefit the public absent a material change in circumstances.”).
26 “Just as the public has an interest in the orderly and efficient administration of this
27 country’s immigration laws, [] the public has a strong interest in upholding
28 procedural protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-

C. PETITIONER WILL SUFFER IRREPARABLE HARM AND THE EQUITIES TIP IN PETITIONER'S FAVOR

The Ninth Circuit has recognized the “irreparable harms imposed on anyone subject to immigration detention” including “subpar medical and psychiatric care in ICE detention facilities” and “the economic burdens imposed on detainees and their families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, “[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where, as here, the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted that “unlawful detention certainly constitutes ‘extreme or very serious’ damage, and that damage is not compensable in damages.” *Hernandez*, 872 F.3d at 999. Here, Petitioner is separated from his family and facing isolation while detained. Tolchin Dec. Exh. B.

18 The balance of the equities and public interest analyses merge when the
19 government is the opposing party, as is the case in this action. *See Drakes Bay*
20 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
21 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that
22 Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar*,
23 No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) (“Given
24 the low risk of Petitioner’s causing harm to others or fleeing, such expenditure in
25 her case would not benefit the public absent a material change in circumstances.”).
26 “Just as the public has an interest in the orderly and efficient administration of this
27 country’s immigration laws, [] the public has a strong interest in upholding
28 procedural protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-

1 5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). On the other hand,
2 “the burden on Respondents in releasing Petitioner from detention is minimal,
3 especially considering Petitioner’s compliance with the requirements of the Order
4 of Supervision...” *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL
5 1993771, at *6 (E.D. Cal. July 16, 2025). Further, the Ninth Circuit has recognized
6 that “[t]he costs to the public of immigration detention are ‘staggering,’ ” and that
7 “[s]upervised release programs cost much less by comparison....” *Hernandez*, 872
8 F.3d at 996. Therefore, the *Winter* factors weigh in favor of a grant of a temporary
9 restraining order and preliminary injunction.

10 **D. NO BOND IS NECESSARY**

11 The Court has discretion to set the amount of security required for a
12 temporary restraining order or preliminary injunction under Rule 65(c), if
13 any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, “[t]he
14 district court may dispense with the filing of a bond when it concludes there is no
15 realistic likelihood of harm to the defendant from enjoining his or her
16 conduct.” *Id.* (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)).
17 Here, it is unlikely any harm will come to Respondents as a result of a grant of
18 temporary relief and Respondents will incur negligible or zero financial costs.
19 Petitioner asks the Court to exercise its discretion to waive the bond requirement.
20

21 **II. CONCLUSION**

22 Petitioner respectfully requests that this Court grant his request for a
23 temporary restraining order and order that he be immediately released from ICE
24 custody.
25

26
27
28

1
2 Dated: September 30, 2025
3

Respectfully Submitted,
S/Stacy Tolchin

4 Stacy Tolchin (CA SBN #217431)
5 Law Offices of Stacy Tolchin
6 776 E. Green St., Ste. 210
7 Pasadena, CA 91101
8 Telephone: (213) 622-7450
9 Facsimile: (213) 622-7233
10 Email: Stacy@Tolchinimmigration.com
11 Counsel for Petitioner

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2
3 I HEREBY CERTIFY that on September 30, 2025, I served a copy of
4 PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING
5 ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION;
6 DECLARATION OF STACY TOLCHIN; AND [PROPOSED] ORDER by email
7 to the following individual:

8
9 Daniel A. Beck | Assistant United States Attorney
10 Deputy Chief, Complex and Defensive Litigation Section
11 United States Attorney's Office | Central District of California
12 300 N. Los Angeles Street, Suite 7516 | Los Angeles, CA 90012
13 T: (213) 894-2574 | F: (213) 894-7819 | daniel.beck@usdoj.gov

14
15
16
17 s/ Stacy Tolchin
18 Stacy Tolchin
19 Counsel for Petitioner

20 **WORD COUNT CERTIFICATION**

21
22 The undersigned, counsel of record for Plaintiff certifies that this Memo contains
23 4200 words, which complies with the word limit of L.R. 11-6.1.

24
25
26
27 s/ Stacy Tolchin
28 Stacy Tolchin
Counsel for Petitioner