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

D.D.

Petitioner-Plaintiff,

v.

Chistopher J. LAROSE, Senior Warden, Otay  
Mesa Detention Center

Gregory J. ARCHAMBEAULT, Acting Field  
Office Director of San Diego Office of Detention  
and Removal, U.S. Immigrations and Customs  
Enforcement; U.S. Department of Homeland  
Security;

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

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

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

Respondents-Defendants.

Case No. 3:25-cv-02581-BJC-JLB

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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

**NOTICE OF MOTION**

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for an order enjoining Respondents Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), and Pamela Bondi, in her official capacity as the U.S. Attorney General, from (1) removing or transferring Plaintiff outside of the Southern District of California while this action is pending; and (2) continuing to detain the Petitioner without providing him within 14 days an individualized bond hearing in which the government has the burden that there is clear and convincing evidence establishing that Plaintiff is a danger to the community or a flight risk, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; if the government cannot meet its burden, the immigration judge must order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Natalie Cadwalader-Schultheis with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and Ex-Parte Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner asserts that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing prolonged deprivation without an individualized bond hearing. Plaintiff has been detained in Department of Homeland Security custody in excess of six months without the opportunity to seek an individualized bond hearing due.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from continuing to detain him absent an individualized bond hearing that meets the requirements described above.

Dated: October 1, 2025

Respectfully Submitted

/s/ Warren Craig  
Warren Craig  
Attorney for Mr. D

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1 **I. INTRODUCTION**

2 Petitioner-Plaintiff, D.D.,<sup>1</sup> by and through undersigned counsel, hereby files this motion  
3 for a temporary restraining order and preliminary injunction to enjoin the Respondents from  
4 continuing to detain him without an individualized bond hearing at which the Department of  
5 Homeland Security (DHS) must establish by clear and convincing evidence that he is a danger to  
6 the community or a flight risk.

7 As discussed below, Mr. D is an asylum seeker from Iran, a member of religious and  
8 ethnic minority groups in that country, who came to the United States to flee the terrible  
9 persecution he suffered in Iran for those reasons and because of his pro-democracy and human  
10 rights protest activities in Iran. Mr. D entered the United States on March 2, 2025 and was  
11 immediately detained by DHS. That same month, Mr. D passed a fear screening where DHS  
12 determined that he would more likely than not be tortured if returned to Iran; yet, Mr. D had to  
13 wait months before a removal hearing was scheduled in his case. Subsequently, his proceedings  
14 have dragged out for months, and his individual hearing is not scheduled until January 6, 2026.  
15 As discussed further below, regardless of the outcome of that hearing, it is likely that Mr. D's  
16 proceedings will continue for months, if not years. Meanwhile, Mr. D is not eligible to seek a  
17 bond hearing before the Immigration Judge as a result of recent Board of Immigration Appeals  
18 precedents, which have made bond hearings unavailable to the vast majority of noncitizens in  
19 immigration detention. *See Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025); *Matter of Yajure*  
20 *Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, Mr. D has remained detained in DHS custody for  
21 nearly seven months with no end in sight. As documented further below, such prolonged detention  
22 has caused significant hardships for Mr. D.

23 As at least three district court judges within the Southern District of California have  
24 determined under similar circumstances, such prolonged detention without an individualized  
25 bond hearing violates a noncitizen's right to due process under the Fifth Amendment of the United  
26 States Constitution. *See Durand v. Allen*, 2024 WL 711607 (S.D. Cal. Feb. 21, 2024); *Sibomana*

27  
28 <sup>1</sup> Mr. D is currently identifying himself using his initials (D.D.) and will concurrently file a motion to proceed under a pseudonym.

1 v. *LaRose*, WL 3028093 (S.D. Cal. April 20, 2023); *Sanchez-Rivera v. Matuszewski*, 2023 WL  
2 139801 (S.D. Cal. Jan. 9, 2023). Thus, Mr. D is likely to succeed on the merits of his due process  
3 claim as presented in his accompanying petition for writ of habeas corpus. Furthermore, as  
4 documented below, such ongoing violation of Mr. D's constitutional rights will cause Mr. D  
5 immediate and irreparable injury, and the balance of equities and the public interest strongly  
6 favors remedying this ongoing constitutional violation by granting a temporary protective order  
7 ordering the Respondents to provide Mr. D with an individualized bond hearing within 14 days  
8 of the Court's order. To prevent loss of access to local counsel, Mr. D also requests the Court  
9 grant a temporary restraining order preventing the Respondents from removing or transferring  
10 Mr. D outside of the jurisdiction of the Southern District of California while this matter is pending.  
11 *See Domingo-Ros v. Archambeault*, 2025 WL 1425558, at \*5 (S.D. Cal May 18, 2025).

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

13 Mr. D is a citizen of Iran who came to the United States to seek asylum. *See* Declaration  
14 of Natalie Cadwalader-Schultheis at ¶ 10. Mr. D. is a member of an ethnic and religious minority  
15 in Iran and has participated in political activities against the ruling regime in Iran. *Id.* If returned  
16 to Iran, Mr. D fears that he will be arrested, prosecuted, imprisoned, tortured, and killed by state  
17 agents on account of his ethnicity, religion, and political activities. *Id.*

18 Fleeing persecution from the Iranian government, Mr. D entered the United States without  
19 inspection at or near Roma, Texas on March 2, 2025. *See id.* at ¶ 4; Exh 1. Upon entry, Mr. D.  
20 was detained by the Department of Homeland Security (DHS) and was transferred from Texas to  
21 Otay Mesa Detention Center, a privately run for-profit prison located in San Diego, California.  
22 Cadwalader-Schultheis Decl. at ¶ 5. He has remained in DHS custody since his entry on March  
23 2, 2025. *Id.*

24 On March 20, 2025, Mr. D. was interviewed by an asylum officer regarding his fear of  
25 torture in Iran. *See* Cadwalader-Schultheis Decl. ¶ 7. This fear screening was apparently  
26 conducted under 8 U.S.C. § 1182(f) of the Immigration and Nationality Act (INA) in response  
27 to a presidential proclamation issued on January 20, 2025 entitled "Guaranteeing the States  
28

Protection Against Invasion.”<sup>2</sup> *See id.* at n.1. Pursuant to this proclamation, DHS in many cases declined to place noncitizens entering the United States into expedited removal proceedings under 8 U.S.C. § 1225 where the noncitizen would receive a credible fear screening to determine whether they were eligible to apply for asylum or withholding of removal. *Id.* Instead, many noncitizens expressing a fear of return received a screening that only considered their eligibility for protection under the Convention Against Torture. *Id.* Unlike traditional expedited removal proceedings, individuals processed under § 1182(f) were not given the opportunity for a lawyer to be present, to have immigration judges review negative decisions, or to obtain copies of the screening officer’s interview notes. *Id.* Additionally, when an individual obtained a positive screening result, DHS in some cases would not immediately provide them with an opportunity to pursue their claim in immigration court but would rather seek to deport them to a third country. *Id.*; *see also RAICES v. Noem*, No. 25-306, 2025 WL 1825431, at \*12-16 (D.D.C. July 2, 2025) (providing a comprehensive overview of the proclamation and implementing guidance).

Following the interview, Mr. D was provided with a single page documenting the result of that interview, in which the USCIS officer checked the box stating that he had “established it is more likely than not that you will be tortured in IRAN.” *See* Exh 2. After this determination, DHS staff told Mr. D’s counsel that this determination did not mean that Mr. D would be placed into removal proceedings but rather that DHS would try to remove him to a third country. Cadwalader-Schultheis Decl. at ¶ 7. Mr. D. would wait until June 4, 2025 before DHS provided him with a Notice to Appear placing him in removal proceedings and another twelve days before his first appearance before an Immigration Judge at the Otay Mesa Immigration Court. *See* Exh 1.

On May 16, 2025, Mr. D., through counsel, filed a request for parole with Mr. D’s deportation officer. *See* Cadwalader-Schultheis Decl. at ¶ 8. The parole request included identity documents, proof of address, proof of income, and a letter of support from his sponsor, a member

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<sup>2</sup> On July 2, 2025, a district court in Washington D.C. held that this declaration was unlawful and issued an injunction prohibiting its implementation, which was partially stayed by the D.C. Circuit Court on August 1, 2025. *See RAICES v. Noem*, No. 25-306, 2025 WL 1825431 (D.D.C. July 2, 2025); *RAICES v. Noem*, No. 25-5243 (D.C. Cir. Aug. 1, 2025).

1 of his religious community who lives in Los Angeles, California and is willing to let Mr. D. live  
2 with her and her family and introduce him to her community if he is released. *See id.* While DHS  
3 never outright denied Mr. D.'s request for parole, nor did they ever agree to release him. *See id.*

4 On July 14, 2025, Mr. D, through counsel, filed his application for asylum, withholding  
5 of removal, and protection under the Convention Against Torture with the Otay Mesa  
6 Immigration Court. *See id.* at 10; Exh 3. The Immigration Judge scheduled a second master  
7 calendar hearing in Mr. D's removal proceeding on July 17, 2025, but this hearing was  
8 rescheduled because the Immigration Judge was unavailable on that day. Cadwalader-Schultheis  
9 Decl. at ¶ 11. The Immigration Judge continued proceedings on several other occasions asking  
10 Mr. D to submit a declaration and then evidence in support of his asylum claim. *See* Cadwalader-  
11 Schultheis Decl. at ¶¶ 12-17. Mr. D timely complied with all the Immigration Judge's deadlines.  
12 *See id.* At a master calendar hearing on September 9, 2025, the Immigration Judge set an  
13 individual calendar hearing on Mr. D's applications for relief for January 6, 2025. *See*  
14 Cadwalader-Schultheis Decl. at ¶ 18. Mr. D, through counsel, filed a motion to advance the  
15 hearing date, which was granted; Mr. D's merits hearing is now scheduled for November 7, 2025.  
16 *Id.* at ¶¶ 19-20.

17 Notwithstanding the grant of the motion to advance, Mr. D's proceedings are likely to  
18 continue for some time. As his counsel explains, Mr. D may not receive a decision on the day of  
19 his individual hearing as it is common for Immigration Judges to continue proceedings for further  
20 testimony and/or to take the matter under advisement for an indefinite period of time before  
21 issuing a decision. *See id.* at 21. Further, regardless of whether his application is granted, either  
22 side may appeal the case to the Board of Immigration Appeals (BIA), which could prolong  
23 proceedings by six months or longer. *See id.* at ¶ 22. Even following an appeal, the matter could  
24 be remanded to the Immigration Judge for further proceedings or Mr. D could file a petition for  
25 review with the Court of Appeals for the Ninth Circuit. *See id.* All the while, Mr. D would remain  
26 in immigration custody as the BIA recently held that noncitizens like Mr. D who enter the United  
27 States without inspection and are apprehended at the border are subject to mandatory detention  
28 and may not be afforded a bond hearing before an Immigration Judge. *See Matter of Q. Li*, 29

1 I&N Dec. 66 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, absent  
2 intervention from this Court, Mr. D's detention could drag on for months or even years.

3 Mr. D. has no criminal history and is in no way a danger to property or persons. *See*  
4 Cadwalader-Schultheis Decl. at ¶ 23. He is seeking asylum based on his ethnicity, his religion,  
5 and his pro-democracy and human rights protest activities in Iran that have caused him enduring  
6 physical and psychological harm. *See id.* at 24. He has complied with the immigration court's  
7 requirements to file all case materials. *See id.* at ¶ 23. If released, Human Rights First, which has  
8 an office in Los Angeles, will continue to represent Mr. D. in his removal proceedings. *See id.*  
9 For all these reasons, Mr. D. cannot be considered a flight risk.

10 Yet, Mr. D has now been detained in DHS custody for over six months. He reports that he  
11 is feeling increasing numbness in his hand and arm as a result of back injuries he suffered at the  
12 hands of Iranian state agents and fears that the issue could become chronic. Cadwalader-  
13 Schultheis Decl. at ¶ 24. A psychological and medical evaluation shows that Mr. D. is  
14 experiencing post-traumatic stress disorder and generalized anxiety and that he shows elements  
15 of subclinical depression. *See id.* Releasing Mr. D. would provide an opportunity for Mr. D. to  
16 establish care with local physicians in the Los Angeles area while living in a non-detained setting  
17 and being able to attend religious services without fear for the first time in his life. *See id.*

18 Intervention from this Court is therefore required to ensure that Mr. D is not unlawfully  
19 subject to continued prolonged detention without an individualized bond hearing. Such unlawful  
20 conduct would cause Mr. D to suffer immediate and irreparable harm.

### 21 **III. LEGAL STANDARD**

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

1 raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in  
2 his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v.*  
3 *Cottrell*, 632 F.3d 1127 (9th Cir. 2011). The purpose of a temporary restraining order is to prevent  
4 irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc.*  
5 *v. Brotherhood Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423,  
6 439 (1974). As set forth in more detail below, Mr. D’s prolonged detention without an  
7 individualized bond hearing violates his right to due process, and Mr. D will continue to suffer  
8 irreparable injury each day that he remains detained without such a hearing. Furthermore, the  
9 balance of equities and the public interest tip in his favor.

10 **IV. ARGUMENT**

11 **1. Mr. D is Likely to Succeed on the Merits of His Claim That His**  
12 **Prolonged Detention Without an Individualized Bond Hearing**  
13 **Violates His Right to Due Process.**

14 Mr. D is likely to succeed on his claim that, in his particular circumstances involving  
15 prolonged detention, the Due Process Clause of the Constitution prevents the Respondents from  
16 continuing to detain Mr. D without bond absent an individualized bond hearing where the  
17 government demonstrates by clear and convincing evidence that there he is a danger to the  
18 community or a flight risk, as district courts within the Southern District of California have  
19 ordered under similar circumstances involving prolonged detention. *See Durand v. Allen*, 2024  
20 WL 711607 (S.D. Cal. Feb. 21, 2024); *Sibomana v. LaRose*, WL 3028093 (S.D. Cal. April 20,  
21 2023); *Sanchez-Rivera v. Matuszewski*, 2023 WL 139801 (S.D. Cal. Jan. 9, 2023). As a result of  
22 recent BIA case law, Mr. D is presently unable to seek an individualized bond hearing before an  
23 Immigration Judge because the BIA regards him as an “applicant for admission” who is subject  
24 to mandatory detention under 8 U.S.C. § 1225(b)(1)(A). *See Matter of Q. Li*, 29 I&N Dec. 66  
25 (BIA 2025); *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). Thus, action from this  
26 Court is necessary to remedy this constitutional violation.<sup>3</sup>

27  
28 <sup>3</sup> As a result of the case law cited above, Mr. D has not sought a bond hearing with the Immigration Court as doing so  
would be entirely futile. *See Hernandez v. Sessions*, 872 F.3d 976, 988, 989 (9th Cir. 2017) (exhaustion of remedies  
may be waived where doing so would be a “futile gesture”).

1 “It is well established that the Fifth Amendment entitles [noncitizens] to due process of  
2 law in deportation proceedings.” *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v.*  
3 *Flores*, 507 U.S. 292, 306 (1993)). “Freedom from imprisonment—from government custody,  
4 detention, or other forms of physical restraint—lies at the heart of the liberty” that the Due Process  
5 Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J.,  
6 dissenting) (“Liberty under the Due Process Clause includes protection against unlawful or  
7 arbitrary personal restraint or detention.”). This fundamental due process protection applies to all  
8 noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J.,  
9 dissenting) (“[B]oth removable and inadmissible [noncitizens] are entitled to be free from  
10 detention that is arbitrary or capricious”). Due process requires “adequate procedural protections”  
11 to ensure that the government’s asserted justification for physical confinement “outweighs the  
12 individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S.  
13 at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has  
14 recognized only two valid purposes for civil detention—to mitigate the risks of danger to the  
15 community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

16 Due process requires that the government provide bond hearings to noncitizens facing  
17 prolonged detention. “The Due Process Clause foresees eligibility for bail as part of due process”  
18 because “[b]ail is basic to our system of law.” *Jennings v. Rodriguez*, 138 S. Ct. 830, 862 (2018)  
19 (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the  
20 mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the  
21 petitioner’s concession of deportability and the Court’s understanding at the time that such  
22 detentions are typically “brief.” *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been  
23 detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief,  
24 due process requires an individualized determination that such a significant deprivation of liberty  
25 is warranted. *Id.* at 532 (Kennedy, J., concurring) (“[I]ndividualized determination as to his risk  
26 of flight and dangerousness” may be warranted “if the continued detention became unreasonable  
27 or unjustified”); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention  
28 beyond the “initial commitment” requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*,

1 407 U.S. 245, 249-50 (1972) (holding that “lesser safeguards may be appropriate” for “short-term  
2 confinement”); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth  
3 Amendment context, the length of confinement cannot be ignored in deciding whether [a]  
4 confinement meets constitutional standards”); *Reid v. Donelan*, 17 F.4th 1, 7 (1st Cir. 2021)  
5 (holding that “the Due Process Clause imposes some form of reasonableness limitation upon the  
6 duration of detention” under section 1226(c)) (internal quotation marks omitted).

7 Mr. D asserts that detention without an individualized bond hearing is per se  
8 unconstitutional when it exceeds six months. *See Demore*, 538 U.S. at 529-30 (upholding only  
9 “brief” detentions under Section 1226(c), which last “roughly a month and a half in the vast  
10 majority of cases in which it is invoked, and about five months in the minority of cases in which  
11 the [noncitizen] chooses to appeal”); *Zadvydas*, 533 U.S. at 701 (“Congress previously doubted  
12 the constitutionality of detention for more than six months.”); *Rodriguez v. Nielsen*, 2019 WL  
13 7491555, at \*6 (N.D. Cal. Jan. 7, 2019) (“[D]etention becomes prolonged after six months and  
14 entitles [Petitioner] to a bond hearing”).

15 The recognition that six months is a substantial period of confinement—and is the time  
16 after which additional process is required to support continued incarceration—is deeply rooted in  
17 U.S. legal tradition. With few exceptions, “in the late 18th century in America crimes triable  
18 without a jury were for the most part punishable by no more than a six-month prison term.”  
19 *Duncan v. Louisiana*, 391 U.S. 145, 161 & n. 34 (1968). Consistent with this tradition, the  
20 Supreme Court has found six months to be the limit of confinement for a criminal offense that a  
21 federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*,  
22 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a  
23 benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407  
24 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without  
25 individualized inquiry for civil commitment). The Court has likewise recognized the need for  
26 bright line constitutional rules in other areas of law. *See Maryland v. Shatzer*, 559 U.S. 98, 110  
27 (2010) (holding that 14 days must elapse following invocation of *Miranda* rights before re-  
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1 interrogation is permitted); *Cnty. of Riverside v. McLaughlin*, 500 U.S. 44, 55-56 (1991) (holding  
2 that a probable cause hearing must take place within 48 hours of warrantless arrest).

3 Because Mr. D has been detained in DHS custody without an individualized bond hearing  
4 for more than six months, his continued detention without such a hearing would violate the Due  
5 Process Clause of the Fifth Amendment as a matter of law. However, even without a bright line  
6 rule requiring an individualized bond hearing when detention exceeds the six-month mark, Mr. D  
7 would still prevail.

8 Courts in the Southern District of California have taken the position that the three-factor  
9 test outlined in *Lopez v. Garland*, 631 F.Supp.3d 870 (E.D. Cal. Sept. 29, 2022), is appropriate to  
10 consider when determining whether a non-citizen detainee's prolonged detention has become so  
11 unreasonable as to require an initial bond hearing. *See Durand*, 2024 WL 711607; at 4; *Sanchez-*  
12 *Rivera*, 2023 WL 139801, at \*6; *Sibomana*, 2023 WL 3028093, at \*4.<sup>4</sup> The *Lopez* factors, in turn,  
13 look at the total length of detention to date, the likely duration of future detention, and the delays  
14 in the removal proceedings caused by the petitioner and the government. *Lopez*, 631 F. Supp. 3d  
15 at 869. As explained below, each of these three factors favors Mr. D.

16 First, Mr. D has been detained for nearly seven months. As the Supreme Court stated in  
17 *Zadvydas* stated, "We do have reason to believe . . . that Congress previously doubted the  
18 constitutionality of detention for more than six months." 533 U.S. at 701. As noted above, the  
19 Supreme Court has found six months to be the limit of confinement for a criminal offense that a  
20 federal court may impose without the protection afforded by jury trial. *Cheff*, 384 U.S. at 380  
21 (plurality opinion). The Court has also looked to six months as a benchmark in other contexts  
22 involving civil detention. *See McNeil*, 407 U.S. at 249, 250-52 (recognizing six months as an  
23 outer limit for confinement without an individualized inquiry for civil commitment). Thus, even  
24 in the absence of a bright line six-month rule, Mr. D's detention in excess of six months must be  
25 considered as a factor weighing in his favor.

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28 <sup>4</sup> These cases addressed mandatory detention in the context of 8 U.S.C. § 1226(c), which stemmed from criminal convictions in all three cases, but such logic would apply with equal force to detention under 8 U.S.C § 1225(b)(2)(A), which similarly blocks access to a bond determination before the Immigration Judge.

1 The likely duration of future detention also weights in Mr. D's favor. Mr. D's individual  
2 hearing is not currently scheduled to go forward until November 7, 2025. It is possible that Mr.  
3 D's proceedings may not conclude on that day—indeed, the Immigration Judge may continue  
4 proceedings for additional testimony or may take the matter under advisement for an  
5 undetermined length of time before issuing a decision—both of which are common practice in  
6 Immigration Court. *See* Cadwaldader-Scheltheis Dec at ¶ 21. Further, following the decision on  
7 Mr. D's removal proceedings, either side could appeal to the BIA, which often takes six months  
8 or longer to resolve appeals. *See id.* at ¶ 22. Even following a decision by the BIA, further delays  
9 are possible if the case goes up to the Ninth Circuit or is remanded back to the Immigration Court.  
10 *See id.* Thus, absent intervention from this Court, it is reasonably foreseeable that Mr. D could  
11 remain detained for months or even years. In *Sibomana*, the court found that “the pending  
12 administrative appeal and the potential judicial review process will be sufficiently lengthy such  
13 that this factor weighs in Petitioner's favor.” 2023 WL 3028093 at \*4. The courts in *Durand* and  
14 *Sanchez-Rivera* also held that the possibility of lengthy appeals weighed in the favor of the  
15 respective petitioners. 2024 WL 711607 at \*5; 2023 WL 139801 at \*6. Unlike the above three  
16 cases, Mr. D's case has not yet hit the appellate stage and could take longer than the above cases  
17 to conclude. Accordingly, this factor weighs strongly in Mr. D's favor.

18 Finally, the delays in this case are mostly attributable to the government. Following his  
19 entry on March 2, 2025, Mr. D was not issued a Notice to Appear until June 4, 2025—nearly  
20 three months later—and did not receive his first hearing until June 16, 2025. *See* Cadwaldader-  
21 Scheltheis Decl. at ¶ 7; Exh 1. After Mr. D's first hearing and the filing of his application for  
22 asylum, the Immigration Judge continued Mr. D's proceedings on multiple occasions without  
23 request from Mr. D, contributing to further delay.<sup>5</sup> *See id.* at ¶ 11-18. Mr. D, however, has acted  
24 diligently and has complied with all the deadlines set forth by the Immigration Judge and, indeed,  
25 even filed a motion to advance. *See id.* at ¶¶ 10-17. Nevertheless, as a result of the court's backlog,  
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28 <sup>5</sup> There was confusion regarding the date of Mr. D's master calendar hearing in early September that led to a delay of seven days between his hearings on September 2nd and September 9th, which could arguably be attributed to Mr. D's counsel. However, this seven-day delay, in the context of nearly seven months of detention to date, is not material.

1 his case remains pending, and his individual hearing is not scheduled for more than a month.  
2 Thus, this factor also weighs in Mr. D's favor.

3 Considering that all three factors weigh in Mr. D's favor, his continued detention without  
4 an individualized bond hearing violates his right to due process. In each of the three cases cited  
5 above, the district courts for the Southern District of California agreed that the appropriate remedy  
6 is to order the Immigration Judge to conduct an individualized bond hearing at which the  
7 government has the burden of proof to demonstrate by clear and convincing evidence that the  
8 noncitizen presents a flight risk or is a danger to the community—the same request that Mr. D  
9 makes with this motion for a TRO. *See Durand*, 2024 WL 711607 at \*5; *Sanchez-Rivera*, 2023  
10 WL 139801 at \*7; *Sibomana*, 2023 WL 3028093 at \*4. Mr. D also asks this Court order that the  
11 Respondents shall not deny Mr. B's bond request on the basis that § 1225(b)(2) requires  
12 mandatory detention. *See Garcia v. Noem*, 2025 WL 2549431, at \*8 (S.D. Cal. Sept. 3, 2025).  
13 Given the authorities cited above, the Court in this matter should find that Mr. D is likely to  
14 succeed in his due process claim.

15 **2. Mr. D will Suffer Irreparable Harm Absent Injunctive Relief.**

16 Mr. D will suffer irreparable harm were he to continue to be subject to prolonged detention  
17 without being provided the constitutionally adequate process that this motion for a temporary  
18 restraining order seeks. Detainees in DHS custody are held in “prison-like conditions.” *Preap v.*  
19 *Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016), *vacated on other grounds by Nielsen v. Preap*, 139  
20 S. Ct. 954 (2019). As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has  
21 a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it  
22 enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat’l Ctr. for*  
23 *Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth  
24 Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to  
25 immigration detention” including “subpar medical and psychiatric care in ICE detention facilities,  
26 the economic burdens imposed on detainees and their families as a result of detention, and the  
27 collateral harms to children of detainees whose parents are detained.” *Hernandez v. Sessions*, 872  
28 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has documented alarmingly poor

1 conditions in DHS detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary  
2 of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024)  
3 (reporting violations of environmental health and safety standards; staffing shortages affecting  
4 the level of care detainees received for suicide watch, and detainees being held in administrative  
5 segregation in unauthorized restraints, without being allowed time outside their cell, and with no  
6 documentation that they were provided health care or three meals a day).<sup>6</sup>

7 Mr. D's individual circumstances also demonstrate the harm he will experience from  
8 continuing prolonged detention. Mr. D reports that he is feeling increasing numbness in his hand  
9 and arm as a result of back injuries inflicted on him by Iranian state agents and fears that the issue  
10 could become chronic. *See* Cadwaldader-Scheltheis Dec at ¶ 24. A psychological and medical  
11 evaluation shows that Mr. D. is experiencing post-traumatic stress disorder and generalized  
12 anxiety and that he shows elements of subclinical depression. *See id.* If Mr. D were released from  
13 custody, he would have an opportunity to establish care with local physicians in the Los Angeles  
14 area while living in a non-detained setting and being able to attend religious services without fear  
15 for the first time in his life. *See id.*

16 Finally, as detailed above, Mr. D contends that his continued detention absent an  
17 individualized bond hearing before an Immigration Judge would violate his due process rights  
18 under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably  
19 constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting  
20 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to  
21 prevent Mr. D from suffering irreparable harm by being subject to unlawful and unjust prolonged  
22 detention.

### 23 **3. The Balance of Equities and the Public Interest Favor Granting the** 24 **Temporary Restraining Order**

25 The balance of equities and the public interest also strongly favor granting this temporary  
26 restraining order.

27 First, the balance of hardships strongly favors Mr. D. The government cannot suffer harm

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28 <sup>6</sup> Available at <https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf> (last accessed Sept, 30, 2025).

1 from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*,  
2 753 F.2d 719, 727 (9th Cir. 1983) (“[T]he INS cannot reasonably assert that it is harmed in any  
3 legally cognizable sense by being enjoined from constitutional violations.”). Therefore, the  
4 government cannot allege harm arising from a temporary restraining order or preliminary  
5 injunction ordering it to comply with the Constitution.

6 Second, any burden imposed by requiring an individualized bond hearing for Mr. D is  
7 both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he remains  
8 subject to prolonged detention. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)  
9 (“Society’s interest lies on the side of affording fair procedures to all persons, even though the  
10 expenditure of governmental funds is required.”).

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

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

## 27 **V. CONCLUSION**

28 For all the above reasons, this Court should find that Mr. D warrants a temporary

1 restraining order and a preliminary injunction ordering that Respondents refrain from continuing  
2 to detain the Respondent unless he is afforded within 14 days an individualized bond hearing  
3 before an Immigration Judge at which the government bears the burden of proof to show by clear  
4 and convincing evidence that he is a danger to the community or a flight risk, even after  
5 consideration of alternatives to detention that could mitigate any risk that Mr. D's release would  
6 present. If the government cannot meet its burden, the Immigration Judge must order Mr. D's  
7 release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a  
8 bond. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

9 To prevent loss of access to local counsel, Mr. D also requests the Court grant a temporary  
10 restraining order preventing the Respondents from removing or transferring Mr. D outside of the  
11 jurisdiction of the Southern District of California while this matter is pending.

12 Dated: October 1, 2025

Respectfully submitted,

13 /s/ Warren Craig

14 Warren Craig

15 Attorney for Mr. D  
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