

Steven K. Ridgill (SBN 338535)
LAW OFFICE OF JUDITH L. WOOD
201 S. Santa Fe Avenue, Suite 101
Los Angeles, CA 90012
Tel : (213) 680-7801
Email : Steven@judy-wood.com
Attorney for Petitioner, ROLAND TUMASOV

DETAINED

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

ROLAND TUMASOV, an individual,

Petitioner,

v.

DOE 1, Director of San Diego Field
Office, U.S. Immigration and Customs
Enforcement; TODD M. LYONS, Acting
Director, U.S. Immigration and Customs
Enforcement; KRISTI NOEM, Secretary,
U.S. Department of Homeland Security;
PAMELA BONDI, U.S. Attorney
General; and DOE 2, Warden of Otay
Mesa Detention Center,

Respondents.

Case No.: '25CV2704 AGS JLB

**PETITIONER ROLAND TUMASOV'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

Agency file no.:



EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

I. MOTION

1. Under FRCP 65 and 5 U.S.C. §705, the petitioner moves this Court for an Emergency Temporary Restraining Order, requiring his immediate release from Otay Mesa Detention Center (OMDC), located at 7488 Calzada de la Fuente, San Diego, CA 92154.

2. Petitioner respectfully requests that the Court regard the concurrently filed Petition for Writ of Habeas Corpus, with its exhibits, as being fully incorporated herein in support of this request for emergency relief.

II. BASIS FOR MOTION

3. In his concurrently filed habeas petition, Mr. Tumasov seeks release from his 372-day confinement at Respondent's Otay Mesa Detention Center in San Diego, California, because there is "no significant likelihood of [his] removal in the reasonably foreseeable future," *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001), the detention has been greatly prolonged, Mr. Tumasov has now been granted withholding of removal, and he has been recently diagnosed as suffering from Major Depressive Disorder, Generalized Anxiety Disorder, and Post-Traumatic Stress Disorder. These last conditions constitute substantial and material changed circumstances justifying relief.

1 4. Mr. Tumasov has been detained at the Otay Mesa Detention Center,
2 located, since October 3, 2024 – that is, for 372 days as of the date of filing. The
3 Otay Mesa Detention Center, on information and belief, is owned and operated by
4 Respondents or their agents.
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6 5. Mr. Tumasov seeks immediate release from custody at the Otay Mesa
7 Detention Center, on the basis that his continued detention violates the Due
8 Process Clause of the Fifth Amendment and the Immigration and Nationality Act
9 (INA).
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11 6. Mr. Tumasov's prolonged detention is grievously affecting his mental
12 health and is causing him undue mental and emotional anguish. This is
13 exacerbated by the fact that Mr. Tumasov was recently diagnosed by a clinical
14 psychologist with conditions labeled as (1) Major Depressive Disorder, Recurrent
15 and Severe without Psychotic Features; (2) Generalized Anxiety Disorder; and (3)
16 Post-Traumatic Stress Disorder. (*See* Exhibit 7 and Exhibit 8 to Petition for Writ
17 of Habeas Corpus, filed concurrently.)
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21 7. Because Mr. Tumasov has now been granted Withholding of
22 Removal, and because Mr. Tumasov is married to a U.S. Citizen who is
23 petitioning for a family-based visa for him, Mr. Tumasov should be released to
24 await the adjudication of his petition with his wife.
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1 10. The traditional test, which remains viable in the Ninth Circuit, is
2 known as the “sliding scale” test and requires the plaintiff to prove “serious
3 questions going to the merits” and “a hardship balance that tips sharply toward the
4 plaintiff.” *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir.
5 2011). As under the *Winter* test, the plaintiff must also show a likelihood of
6 irreparable injury and that the injunction is in the public interest. “Under this
7 approach, the elements of the preliminary injunction test are balanced, so that a
8 stronger showing of one element may offset a weaker showing of another.”
9 *Alliance For The Wild Rockies*, 632 F.3d at 1131.

10 11. Mr. Tumasov meets both of these tests.

11 **B. Mr. Tumasov is likely to succeed on the merits and has raised serious**
12 **legal questions.**

13 12. Immigration detention is civil in nature and must not be punitive. The
14 U.S. Supreme Court has made clear in *Zadvydas v. Davis*, 533 U.S. 678, 690
15 (2001), that the government’s power to detain is limited by constitutional
16 principles. When removal is not reasonably foreseeable, detention becomes
17 constitutionally suspect.

18 13. Mr. Tumasov has been granted Withholding of Removal. Therefore,
19 the government lacks a current statutory basis to effectuate removal to Mr.
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1 Tumasov's country of origin, and Mr. Tumasov's continued detention violates
2 Zadvydas.

3 14. In *Hernandez v. Lynch*, 872 F.3d 976, 991 (9th Cir. 2017), the court
4 emphasized that prolonged detention without individualized bond hearings raises
5 serious due process concerns. Here, Mr. Tumasov has remained in detention for at
6 least 372 days and is without a *meaningful* possibility of removal in the foreseeable
7 future.
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10 15. Furthermore, Mr. Tumasov is married to a U.S. Citizen and he is the
11 beneficiary of a pending Form I-130 filed by his U.S. Citizen wife.
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13 **C. Mr. Tumasov faces irreparable harm, and a hardship balance tips sharply**
14 **toward him.**

15 16. Mr. Tumasov faces substantial hardship and irreparable harm if he is
16 not immediately released. Mr. Tumasov has been experiencing severe emotional
17 and mental anguish and has been diagnosed with Major Depressive Disorder,
18 Generalized Anxiety Disorder, and Post-Traumatic Stress Disorder, such that
19 continued detention without a substantial need to do so is grievously inhumane.
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22 17. Furthermore, Mr. Tumasov is the beneficiary of a pending Form I-130
23 filed by his U.S. Citizen wife, and childhood sweetheart. Mr. Tumasov should be
24 permitted to await the adjudication of the petition with his U.S. Citizen wife.
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1 18. The balance of hardships clearly tips in Petitioner's favor. The harm
2 to Petitioner—death or irreversible injury—vastly outweighs any speculative
3 harm to the government from temporary release, particularly when less restrictive
4 alternatives are available.
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6 19. It is in the public interest to uphold constitutional protections and
7 prevent cruel and unusual treatment of detainees. The Due Process Clause
8 prohibits punishment of civil detainees; immediate relief is required to prevent a
9 grave injustice.
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11 **D. The balance of equities tips in favor of Mr. Tumasov, and an injunction is**
12 **in the public interest.**
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14 20. The remaining two factors for an injunction are the same under both
15 legal tests, and they both favor Mr. Tumasov.
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17 21. As to the balance of equities, these are clearly in Mr. Tumasov's
18 favor. Mr. Tumasov has been detained by Respondent's for 372 days,
19 undoubtedly a prolonged detention. Mr. Tumasov has been granted withholding
20 of removal, such that Respondents no longer have warrant to attempt to remove
21 him to his country of origin. Furthermore, Respondent has experienced severe
22 mental and emotional anguish since and because of detention and has recently
23 been diagnosed with Major Depressive Disorder, Generalized Anxiety Disorder,
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1 and Post-Traumatic Stress Disorder, such that continued detention without a
2 substantial need to do so is grievously inhumane.

3 22. It is in the public interest to uphold constitutional protections and
4 prevent cruel and unusual treatment of detainees. The Due Process Clause
5 prohibits punishment of civil detainees; immediate relief is required to prevent a
6 grave injustice.
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9 **IV. CONCLUSION**

10 23. Under FRCP 65, the petitioner moves this Court to issue an
11 Emergency Temporary Restraining Order:
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- 13 a. Grant a Temporary Restraining Order immediately enjoining
14 Respondents from continuing to detain Petitioner.

15 WHEREFORE, for the reasons set forth in his Petition for Writ of
16 Mandamus, and in this Motion the Petitioner respectfully requests this Court:
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- 18 1. Grant this Emergency Motion for Temporary Restraining Order forthwith;
19 2. Enter the Proposed Order Granting Petitioner's Emergency Motion for
20 Temporary Restraining Order forthwith; and
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1 3. Grant such other and further relief as justice may require.
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3 Dated this 10th day of October, 2025.
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5 /s/ [Steven Ridgill]

6 Steven Ridgill, CalBar #338535
7 LAW OFFICE OF JUDITH L. WOOD
8 201 South Santa Fe Ave., Suite 101
9 Los Angeles, CA 90012
10 (213) 680-7801
11 steven@judy-wood.com

12 *Attorney for Petitioner*
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