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Cal. State Bar No.: 185731

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Counsel for Petitioner

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANA LESIC & NIKICA LESIC	)	Case No. <u>25-cv-02746-LL-BJW</u>
Petitioners	)	Agency Nos. A [REDACTED] & A [REDACTED]
v.	)	
CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center;	)	
JOSEPH FREDEN, Acting Field Office Director, U.S. Immigration & Customs Enforcement (ICE); TODD LYONS, Acting Director, U.S. ICE; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States	)	<b>PETITIONERS' MOTION FOR TEMPORARY RESTRANDING ORDER</b>
Respondents.	)	JUDGE: Hon. Linda Lopez
	)	
	)	

## CASE SUMMARY

On October 6, 2025, the Petitioners, Ana and Nikica Lesic, a married couple, were both unlawfully detained by the Respondents at Ana's ICE check-in. On October 13, 2025, the Petitioners filed a Petition for Writ of Habeas Corpus with this court. In its Return, filed on October 23, 2025, the government cited inapplicable law and blanket policy to justify its detention of the Petitioners. Briefing on the Habeas Petition was complete as of October 26, 2025 when Petitioners filed their Traverse.

Because Petitioners are likely to succeed on the merits of their habeas petition and because their continued detention is causing and will continue to cause them irreparable harm, they hereby move for a temporary restraining order to allow them their freedom while the court completes its adjudication of their habeas petition.

## LEGAL STANDARD

A plaintiff seeking preliminary injunctive relief "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest." Am. Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9<sup>th</sup> Cir. 2011) (quoting Winters v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)). To grant preliminary injunctive relief a court

must find that “a certain threshold showing [has been] made on each factor.”

Leiva-Perez v. Holder, 640 F.3d 962, 966 (9<sup>th</sup> Cir. 2011)(per curiam). If this threshold is met, “serious questions going to the merits and a balance of the hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9<sup>th</sup> Cir. 2011).

### **1. Petitioners Are Likely to Succeed on the Merits**

Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty [the Due Process] Clause protects.” Zadvydas v. Davis, 533 U.S. 678, 690 (2001). Civil detention, including that of a non-citizen, violates due process in the absence of a “special justification” sufficient to outweigh one’s ““constitutionally protected interest in avoiding physical restraint.”” *Id.* (quoting Kansas v. Hendricks, 521 U.S. 346, 356 (1997)) (internal quotation marks omitted).

This interest in freedom from detention is particularly keen for individuals whose release is subject to termination. In Morrissey v. Brewer, the Supreme

Court held that an individual who is re-detained after being released- has a “valuable” liberty interest notwithstanding the “indeterminate” nature of his freedom. 408 U.S. 471, 482 (1972). Subject to the conditions of his release, a noncitizen released on bond “can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.” Id. The noncitizen’s liberty therefore “includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the noncitizen and often others.” Id. See, Carballo v. Andrews, No. 1:25-CV-00978- KES-EPG (HC), 2025 WL 2381464, at \*4 (E.D. Cal. Aug. 15, 2025)(There is “a meaningful distinction between a challenge to an initial period of detention . . . and a challenge to *re-detention* after a court has previously granted release on bond pending immigration proceedings.”)

As the Respondent’s Return and the documents attached to it clearly show, the Respondents detained Mr. and Mrs. Lesic under the inapplicable regulations of 8 CFR § 214.4 and 8 CFR§ 241.13. As discussed in their Traverse, these regulations only apply to those with final orders of removal. Traverse, at 2-5. Neither Ana nor Nikica Lesic has a final order of removal. Ana has an order of removal from an immigration judge that is currently on appeal to the Board of Immigration Appeals. Nikica Lesic does not have an order of removal at all, having been granted a period of voluntary departure by the immigration judge,

which period has been stayed during the pendency of Ana's appeal. Their detention under 8 CFR § 214.4 / 8 CFR§ 241.13 was and is patently unlawful.

Moreover, even if Respondents acted under the provision of law that actually pertains to those without final orders who have previously been granted bond by an immigration judge (8 U.S.C. § 1226(b)), they abused their discretion because, “Where a previous bond determination has been made by an immigration judge, no change should be made by a District Director absent a change in circumstance[.]”

Matter of Sugay, 17 I&N Dec. 637, 640 (BIA 1981). The change in circumstance must be material and individual. Tran v. Noem, No. 25cv2334-JES-MSB, at \*6-7 (S.D. Cal. Sep. 29, 2025)(citing Ying Fong v. Ashcroft, 317 F.Supp. 2d 398, 403 (S.D.N.Y. 2004). “In practice, the DHS re-arrests individuals only after a ‘material’ change in circumstances. To satisfy due process, those changed circumstances must represent individualized legal justification for detention.”

Sanchez v. Larose, No. 25cv2396-JES-MMP (S.D. Cal. Sep. 26, 2025)(internal citations omitted). The only changed circumstance the Respondents point to in their Return is a new policy mandated by Executive Order that, “ICE ERO no longer has priority categories and each individual is deemed an immigration priority[.]” Return, at 8-9. Because no discretion was exercised and no individual circumstances have changed—materially or otherwise—the Lesics’ detention was

and continues to be patently unlawful under 8 U.S.C. § 1226(b) as well. Traverse, at 5-8.

Thus, under the factors set out by the Supreme Court in Mathews v. Eldridge, the Petitioners have a strong private interest in their continued liberty and the procedures, or lack thereof, used by the government have erroneously deprived them of that liberty interest. 424 U.S. 319, 335 (1976). The substitute procedural safeguards, i.e., the bonds under which both Lesics have been at liberty for years, as well as Ana Lesic's periodic check-ins and monitoring by ISAP, are perfectly adequate to ensure that the Respondents can monitor and, if it comes to it, enforce the Lesics' removal from the United States. Id. Finally, the government's interest in avoiding the cost of detention through the use of the procedures in place since 2018 (Ana Lesic) and 2022 (Nikica Lesic) is significant. Id. In 2017, the Ninth Circuit noted that the cost of detention was "\$158 each day per detainee, amounting to a total daily cost of \$6.5 million." Hernandez v. Sessions, 872 F.3d 976, 996 (9<sup>th</sup> Cir. 2017). The Lesics' continued detention is an exceedingly poor use of government resources. The government's interest in re-detaining Ana Lesic and detaining Nikica Lesic for the first time, is very low given that both were complying fully with the terms of their bonds right up until the moment the Respondents took them into custody at Ana's previously scheduled check-in with ICE.

The Respondents' arrest and continued detention of Mr. and Mrs. Lesic has unlawfully deprived the petitioners of their liberty without due process of law. The Petitioners are likely to succeed on the merits.

## **2. Petitioners Will Suffer Irreparable Harm If A TRO Is Not Issued**

"It is well-established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" Melendres v. Arpaio, 695 F.3d 990, 1002 (9<sup>th</sup> Cir. 2012)(quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)).

Moreover, the Ninth Circuit has recognized that those subject to immigration detention incur irreparable harm due to the economic burdens they face and their separation from family members. Hernandez v. Sessions, 872 Fj.3d 976, 995 (9<sup>th</sup> Cir. 2017).

Petitioners Ana and Nikica Lesic are a married couple. While in detention, they have been physically separated from each other, living in sex-segregated pods. They are only allowed to see each other once a week for only a few hours at a time. They are also separated from their adult son and daughter-in-law who live in San Diego. They also own a dog, Luna, who is having to be looked after by a neighbor. Exhibit 1, Declaration of Cheryl-Ann Margaret Kish.

When not detained, the Lesics reside in a rented apartment. They are the only tenants of that apartment. Their rent has not been paid since they were detained one month ago. Tomorrow, October 6, 2025, their apartment management

will serve a 3-day notice to pay or quit and if the rent is not paid, eviction proceedings will begin on November 10. Exhibit 2, Email from Building Management to Ms. Kish. If Petitioners are allowed to remain detained, they will not have a home to return to. The Lesics have also been unable to make car payments and stand to lose their vehicles. The neighbor who has been caring for their dog Luna is a disabled veteran and may not be able to continue to do so for much longer, which may result in Luna being surrendered to the Humane Society.

Exhibit 1, Declaration of Cheryl-Ann Margaret Kish.

Both Lesics work to support themselves, but have not been able to do so since they were detained. On the date he was detained, Mr. Lesic had just started a new job with an international watch company. As he was a new hire, his inability to work will likely result in the loss of his job if it has not been lost already.

Finally, both Petitioners are taking prescription drugs for anxiety and depression, and additionally in Ana's case, for bi-polar disorder, post-traumatic stress disorder, and the prevention of seizures. The detention facility has swapped out some of their medications, leaving their psychological conditions only partially addressed. Their continued detention is having a deleterious effect on their mental health and additionally in Ana's case may threaten her life if she has a seizure while detained.

For all these reasons, the Petitioners have already, and will continue to, suffer irreparable harm.

**3. The Balance of the Equities Tips in the Petitioners' Favor and Injunctive Relief is in the Public Interest**

When the government is the opposing party, the balance of equities and the public interest merge. Leiva-Perez v. Holder, 640 F.3d 962, 970 (9<sup>th</sup> Cir. 2011). “The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million [in 2017 dollars].” Hernandez v. Sessions, 872 F.3d 976, 996 (9<sup>th</sup> Cir. 2017); Diaz v. Kaiser, 2025 WL 1676854, at \*3 (citing e.g., Jorge M.F., 2021 WL 783561, at \*3). “Generally public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.” Preminger v. Principi, 422 F.3d 815, 826 (9<sup>th</sup> Cir. 2005).

Without injunctive relief, the harm being unlawfully imposed on the Petitioners for the last month will continue at taxpayer expense. As the briefing and evidence submitted in this case has thus far shown, the Respondents have clearly violated the Petitioners’ Constitutionally protected liberty interest and should be enjoined from continuing to do so while this case is being adjudicated.

**4. A Security Is Unnecessary Because the Petitioners Have Pre-Existing Bonds and Are Now Indigent**

Although Federal Rule of Civil Procedure 65(c) can require a security for a temporary restraining order, a district court “has discretion as to the amount of security required, if any.” Jorgensen v. Cassiday, 320 F.3d 906, 919 (9<sup>th</sup> Cir. 2003). No security is appropriate where there is no quantifiable harm to the restrained party and where the order is in the public interest. Save Our Sonoran, Inc. v. Flowers, 408 F.3d 1113, 1126 (9<sup>th</sup> Cir 2005), Johnson v. Couturier, 572 F.3d 1067, 1086 (9<sup>th</sup> Cir. 2009). The Respondents unlawfully cancelled the bonds already set by two different immigration judges in the amounts of \$10,000 (Ana) and \$500 (Nikica). This money is still in the possession of the Respondents as the Lesics’ obligors have not requested it be refunded. The amount already paid to the Respondents is sufficient security. Moreover, district courts routinely exercise their discretion to require no security in cases brought by indigent or incarcerated people. See, e.g., Vaskanyan v. Janecka, No. 5:25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025), at \*8, Diaz v. Kaiser, 2025 WL 1676854, at \*3. After a month of detention and consequent inability to work, the Petitioners are indigent. Accordingly, the Court should not require them to post security.

## **5. Petitioners Have Complied with Civ. LR 83.3(g)**

Petitioners' undersigned counsel has taken efforts to ensure the Respondents are on notice of Petitioner's Motion for Temporary Restraining Order.

Petitioners' counsel is filing this motion electronically in the Southern District of California, which automatically effects service on the U.S. Attorney's Office.

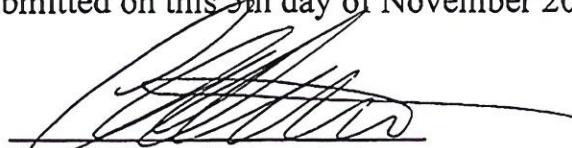
The underlying Petition for Habeas Corpus was filed on October 13, 2025, the case was assigned to AUSA McKenna Rackleff who filed the Respondents' return on October 23, 2025. The electronic filing will be directed to her specifically as she is already counsel of record for the Respondents. As this case has already been briefed by Respondents' counsel, she is already aware of the nature of the case and has stated the government's position on the merits.

Additionally, a copy of this motion was emailed directly to Ms. Rackleff at McKenna.Rackleff@usdoj.gov.

## **CONCLUSION**

Petitioners Ana and Nikica Lesic respectfully request that this Court grant their motion for a Temporary Restraining Order. In doing so, the Court should order the Respondents to release the Petitioners from detention and rescind the cancellation of their respective bonds until such time as their habeas petition, which has been fully briefed since October 26, 2025, can be adjudicated by the Court.

Respectfully submitted on this 5th day of November 2025



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANA LESIC & NIKICA LESIC	)	Case No. <u>25-cv-02746-LL-BJW</u>
Petitioners	)	Agency Nos. A [REDACTED] & A [REDACTED]
v.	)	
CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center;	)	
JOSEPH FREDEN, Acting Field Office Director, U.S. Immigration & Customs Enforcement (ICE); TODD LYONS, Acting Director, U.S. ICE; KRISTI NOEM, U.S. Secretary of Homeland Security; PAMELA BONDI, Attorney General of the United States	)	<b>[PROPOSED] ORDER GRANTING PETITIONERS' MOTION FOR TEMPORARY RESTRAINING ORDER</b>
Respondents.	)	JUDGE: Hon. Linda Lopez

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Upon review of Petitioners Ana and Nikica Lesic's Motion for Temporary Restraining Order, Petition for Habeas Corpus, Respondents' Return, Petitioners' Traverse, and all supporting affidavits and exhibits, and any response to this motion, the Court HEREBY FINDS:

1. Petitioners are likely to succeed on the merits of their claims.
2. Petitioners are likely to suffer irreparable harm in the absence of a temporary restraining order, the balance of the equities tips in their favor, and a temporary restraining order is in the public interest.

Therefore, Petitioners Ana and Nikica Lesic's Motion for Temporary Restraining Order is GRANTED. THE COURT HEREBY ORDERS THAT:

1. Respondents release Petitioners Ana and Nikica Lesic from detention immediately.
2. Respondents rescind their cancellation of the Petitioners' bonds that were previously set by immigration judges in 2018 and 2022.
3. No security shall be required.
4. Petitioners' Motion for Temporary Restraining Order shall also be considered a Motion for Preliminary Injunction. Respondents are to file any opposition no later than \_\_\_\_\_, 2025. Petitioners' Motion for Preliminary Injunction shall be heard on \_\_\_\_\_, 2025 at \_\_\_\_\_ AM/PM.

Dated: \_\_\_\_\_, 2025

Time and Hour: \_\_\_\_\_ AM/PM

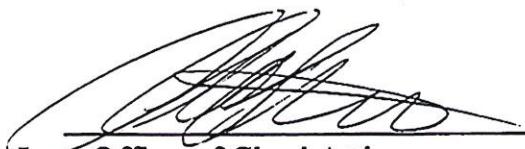
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Hon. Linda Lopez  
United States District Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was filed on November 5, 2025 through the ECF system and that it will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: November 5, 2025



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**DECLARATION OF CHERYL-ANN MARGARET KISH**

I, Cheryl-Ann Margaret Kish, declare as follows:

1. I have known **Ana and Nick** for approximately six years as my neighbors at [REDACTED] in San Diego, California. Over that time, we have become close friends and have provided mutual support to one another.
2. Since their detention, I have witnessed firsthand the severe harm and disruption it has caused in their lives including but not limited to their dog. They are now at risk of eviction, having their vehicle repossessed due to missed payments, which would further destabilize their situation and make it difficult to meet daily needs.
3. Both Ana and Nick are suffering emotionally and psychologically from being separated from their home, work, and community. During our phone calls, their distress is clear. Ana also suffers from a serious medical condition and has missed critical medical appointments and treatments essential to her well-being.
4. They now face eviction from their home. I have been doing my best to care for their beloved dog and to also remove and safeguard their belongings so they do not lose everything, but this has caused considerable hardship on me and others who care for them. Ana and Nick are well known and deeply missed in our community.
5. I am a medical social worker but also disabled veteran and have relied on Ana and Nick for caregiving assistance when needed. Their detention has placed an additional burden on me, making it difficult to manage my own needs and to care for their dog. This situation has also limited my ability to accept new positions in my field of medical social work, resulting in lost income. The cost of caring for their dog has added financial strain, and if they are not released soon, I may have no choice but to surrender the dog to the Humane Society, which would be devastating to everyone involved.
6. This detention has caused profound harm not only to Ana and Nick but also to those of us who depend on and care about them. It has disrupted multiple lives and has deeply affected our community.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of November, 2025, in San Diego, California.



Cheryl-Ann Margaret Kish

[REDACTED]

San Diego, CA 9210

**From:** Cheryl K cakish97@gmail.com  
**Subject:** Fwd: Email  
**Date:** November 5, 2025 at 11:21 AM  
**To:** cheriattix@icloud.com



----- Forwarded message -----

**From:** Ehren Yap <ehreny@esselmanagerinc.com>  
**Date:** Wed, Nov 5, 2025 at 11:00 AM  
**Subject:** Re: Email  
**To:** Cheryl K <cakish97@gmail.com>, Jessica Tapia <jessicat@esselmanagerinc.com>

If rent is not received by the 6th of the month, we issue a **3-Day Notice to Pay or Quit**. Once the 3-day period expires without payment or resolution, the file is submitted to our attorneys to begin the formal eviction process.

From there, the **court filing and service of notice typically take about 1–2 weeks**, depending on court availability and processing times. If the tenant does not respond, a **default judgment can usually be obtained within another 1–2 weeks**, followed by a **lockout scheduled by the Sheriff's Department**, which can take an **additional 1–2 weeks**.

Overall, from the date the case is sent to the attorney, the full eviction process typically takes **approximately 4–6 weeks**, though this can vary depending on court and Sheriff scheduling. However, from what I have seen, this process can take up to 3 months.

Best Regards,

**Ehren Yap**  
Community Manager

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**4<sup>TH</sup> Avenue Apartments**

4250 4<sup>th</sup> Avenue Suite A San Diego CA 92103  
Office (619) 297-3801 | Fax (619) 297-3602 | Cell 619-892-2618  
Email [ehreny@esselmanagerinc.com](mailto:ehreny@esselmanagerinc.com)

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**From:** Cheryl K <cakish97@gmail.com>  
**Sent:** Wednesday, November 5, 2025 10:54 AM  
**To:** Ehren Yap <ehreny@esselmanagerinc.com>; Jessica Tapia <jessicat@esselmanagerinc.com>  
**Subject:** Email

Hi Ehren and Jessica-can you please write me out what you did yesterday with regard to the timeline for Ana and Nick's apartment?

So-if you could write me back the timeline again?

Thanks-Cheryl