

Katie Hurrelbrink
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, California 92101-5030
Telephone: (619) 234-8467
Facsimile: (619) 687-2666
katie_hurrelbrink@fd.org

Attorneys for Mr. Perez-Gonzalez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROMAN PEREZ-GONZALEZ,

CIVIL CASE NO.: 25-CV-2727-JO

11 Petitioner,

V.

13 CHRISTOPHER LAROSE, Warden at
14 Otay Mesa Detention Center, KRISTI
15 NOEM, Secretary of the Department of
16 Homeland Security, PAMELA JO
17 BONDI, Attorney General, TODD M.
LYONS, Acting Director, Immigration
and Customs Enforcement, GREGORY J.
ARCHAMBEAULT, Field Office
Director, San Diego Field Office, US
ICE, US DHS,

Respondents.

**Notice of Motion
and
Memorandum of Law
in Support of
Temporary Restraining Order**

INTRODUCTION

Petitioner Roman Perez-Gonzalez (“Petitioner”) faces immediate irreparable harm because the government is detaining him on the false premise that he is not eligible for bond—even though an immigration judge (“IJ”) set bond in August. Because he is very likely to succeed on the merits, his illegal detention works irreparable harm, and the public interest favors releasing him on bond imposed by the IJ, this Court should grant a temporary restraining order (“TRO”) for his immediate release.

ARGUMENT

To obtain a TRO, a plaintiff “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 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve “substantially identical” analysis). A “variant[] of the same standard” is the “sliding scale”: “if a plaintiff can only show that there are ‘serious questions going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.” *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025) (internal quotation marks omitted). Under this approach, the four *Winter* elements are “balanced, so that a stronger showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so long as the other *Winter* factors are met. *Id.* at 1132.

1 Applying these factors here, Mr. Perez-Gonzalez should be immediately
2 released.

3 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises**
4 **serious merits questions.**

5 Concurrent with this TRO motion, Mr. Perez-Gonzalez files an amended
6 habeas petition setting forth in detail why he is likely to succeed on the merits. He
7 incorporates those arguments by reference here and provides this list of recent cases
8 across the country holding that inadmissible persons are eligible for bond under 8
9 U.S.C. § 1226(a): *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3,
10 2025) (Sabraw, J.); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025);
11 *Martinez v. Hyde*, 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v.*
12 *Francis*, 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*,
13 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136
14 (W.D. La. Aug. 27, 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D.
15 Mich. Aug. 29, 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL
16 2531521, at *5 (D. Neb. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL
17 2591530, at *7 (C.D. Cal. Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL
18 2533110 (N.D. Cal. Sept. 3, 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D.
19 Ariz. Aug. 11, 2025). Based on these authorities, he is likely to succeed on the
20 merits, or at least raises a serious merits question.

21 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

22 Petitioner also meets the second factor, irreparable harm. “It is well
23 established that the deprivation of constitutional rights ‘unquestionably constitutes
24 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
25 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation
26 of a constitutional right is involved, most courts hold that no further showing of
27 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02
28

1 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*
2 *Procedure*, § 2948.1 (2d ed. 2004)). Here, ICE is detaining Mr. Perez-Gonzalez on
3 the false premise that he is not eligible for bond, even though an IJ initially set bond
4 in his case. That violates due process, and deprivation of those due process rights
5 constitutes irreparable harm.

6 The irreparable harm to Petitioner is even more concrete in this case. The
7 Ninth Circuit has specifically recognized the “irreparable harms imposed on anyone
8 subject to immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th
9 Cir. 2017). That is because “[u]nlawful detention constitutes ‘extreme or very
10 serious damage, and that damage is not compensable in damages.” *Hernandez v.*
11 *Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

12 Detention has proved to be a serious hardship for Mr. Perez-Gonzalez. A few
13 months ago, he moved to San Diego with his oldest daughter and girlfriend. Exhibit
14 A to Habeas Petition at ¶ 5. They signed a year lease. *Id.* But because he was
15 detained, he could not make money to pay the rent. *Id.* After paying for two months,
16 the family ran out of funds. *Id.* The landlord imposed a \$6,000 fee for breaking the
17 lease. *Id.*

18 Now, Mr. Perez-Gonzalez faces the possibility of losing his auto shop. *Id.* at
19 ¶ 6. The rent is high, and though Mr. Perez-Gonzalez’s brother is trying to work
20 and pay the bills, he is not making enough money to cover it. *Id.*

21 Finally, Mr. Perez-Gonzalez has two, loving daughters, including a minor
22 daughter who lives with him part time. *Id.* at ¶ 2. Thus, the deprivation of
23 constitutional rights, loss of liberty, financial hardships, and separation from family
24 all constitute irreparable harms.

25 **III. The balance of hardships and the public interest weigh heavily in
26 petitioner’s favor.**

27 The final two factors for a TRO—the balance of hardships and public
28 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,

1 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner's favor. On the
2 one hand, the government "cannot reasonably assert that it is harmed in any legally
3 cognizable sense" by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d
4 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent
5 violations of the U.S. Constitution and ensure the rule of law. *See Moreno Galvez*
6 *v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government's
7 treatment "is inconsistent with federal law, . . . the balance of hardships and public
8 interest factors weigh in favor of a preliminary injunction."). The government
9 cannot even claim that detention furthers its interest in protecting the public or
10 assuring Mr. Perez-Gonzalez's appearance at immigration proceedings. An
11 immigration judge already found that a \$1,500 bond suffices for that. Exhibit B to
12 Habeas Petition. On the other hand, Petitioner faces weighty hardships, as described
13 in the previous section. The balance of equities thus favors preventing the violation
14 of "requirements of federal law," *Arizona Dream Act Coal. v. Brewer*, 757 F.3d
15 1053, 1069 (9th Cir. 2014), by granting emergency relief to protect against unlawful
16 detention.

17 **IV. Petitioner gave the government notice of this TRO, and the TRO should
18 remain in place throughout habeas litigation.**

19 When Federal Defenders first started filing TROs in immigration habeas
20 cases, a Federal Defenders attorney called the U.S. Attorney's Office and was put
21 in touch with Janet Cabral. Ms. Cabral requested that Federal Defenders provide
22 notice of these motions via email after the motion has been filed with the court.
23 Here, that will occur automatically via CM/ECF.

24 Additionally, Petitioner requests that this TRO remain in place until the
25 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
26 the same considerations will continue to warrant injunctive relief throughout this
27 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
28 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003).

1

2

3

Respectfully submitted,

4

5

Dated: October 22, 2025

s/ Katie Hurrelbrink

6

Katie Hurrelbrink

7

Federal Defenders of San Diego, Inc.

8

Attorneys for Mr. Perez-Gonzalez

9

Email: katie_hurrelbrink@fd.org

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28