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9  
10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **NORMA MARILANDA TOMAS**  
13 **HERNANDEZ,**

14 **Petitioner,**

15 **v.**

16 **CHRISTOPHER LAROSE, Warden at**  
17 **Otay Mesa Detention Center, KRISTI**  
18 **NOEM, Secretary of the Department of**  
19 **Homeland Security, PAMELA JO**  
20 **BONDI, Attorney General, TODD M.**  
21 **LYONS, Acting Director, Immigration**  
22 **and Customs Enforcement, GREGORY J**  
23 **ARCHAMBEAULT, Field Office**  
24 **Director, San Diego Field Office, US**  
25 **ICE, US DHS,**

26 **Respondents.**

27 **CIVIL CASE NO.: 25-CV-**  
28 **'25CV3187 BAS AHG**

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

1 INTRODUCTION

2 Petitioner Norma Marilanda Tomas Hernandez (“Petitioner” or Ms. Tomas)  
3 faces immediate irreparable harm because the government is detaining her on the  
4 false premise that she is not eligible for bond. Because she is very likely to succeed  
5 on the merits, her illegal detention works irreparable harm, and the public interest  
6 favors releasing her on bond, this Court should grant a temporary restraining order  
7 (“TRO”) for her immediate release.

8 ARGUMENT

9 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on  
10 the merits, that he is likely to suffer irreparable harm in the absence of preliminary  
11 relief, that the balance of equities tips in his favor, and that an injunction is in the  
12 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
13 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7  
14 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve  
15 “substantially identical” analysis). A “variant[] of the same standard” is the  
16 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions  
17 going to the merits—a lesser showing than likelihood of success on the merits—  
18 then a preliminary injunction may still issue if the balance of hardships tips  
19 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”  
20 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)  
21 (internal quotation marks omitted). Under this approach, the four *Winter* elements  
22 are “balanced, so that a stronger showing of one element may offset a weaker  
23 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131  
24 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going  
25 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so  
26 long as the other *Winter* factors are met. *Id.* at 1132.

27 Applying these factors here, Ms. Tomas should be immediately released.  
28

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

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

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

20 Petitioner also meets the second factor, irreparable harm. “It is well  
21 established that the deprivation of constitutional rights ‘unquestionably constitutes  
22 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)  
23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation  
24 of a constitutional right is involved, most courts hold that no further showing of  
25 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02  
26 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*  
27 *Procedure*, § 2948.1 (2d ed. 2004)). Here, ICE is detaining Ms. Tomas on the false  
28

1 premise that she is not eligible for bond. That violates due process, and deprivation  
2 of those due process rights constitutes irreparable harm.

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

9 Detention has proved to be a serious hardship for Ms. Tomas. Because of her  
10 detention, Ms. Tomas is separated from her seven-year-old daughter for the first  
11 time in her life. Exhibit E to Habeas Petition. Her daughter does not have the care  
12 of either parent because Ms. Tomas’ husband—her daughter’s father—was  
13 deported at the time DHS detained Ms. Tomas.

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

16 The final two factors for a TRO—the balance of hardships and public  
17 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,  
18 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the  
19 one hand, the government “cannot reasonably assert that it is harmed in any legally  
20 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d  
21 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent  
22 violations of the U.S. Constitution and ensure the rule of law. *See Moreno Galvez*  
23 *v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government’s  
24 treatment “is inconsistent with federal law, . . . the balance of hardships and public  
25 interest factors weigh in favor of a preliminary injunction.”). The government  
26 cannot even claim that detention furthers its interest in protecting the public or  
27 assuring Ms. Tomas’ appearance at immigration proceedings. An immigration  
28 judge bond would suffice for assuring Ms. Tomas’ appearance, and she has no

1 criminal record anywhere in the world. On the other hand, Petitioner faces weighty  
2 hardships, as described in the previous section. The balance of equities thus favors  
3 preventing the violation of “requirements of federal law,” *Arizona Dream Act Coal.*  
4 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to  
5 protect against unlawful detention.

6 **IV. Petitioner is providing the government notice of this TRO, and the TRO**  
7 **should remain in place throughout habeas litigation.**

8 Counsel will provide a courtesy copy of the Habeas Petition and this TRO  
9 Motion to DHS Office of Principal Legal Advisor via email.

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

15  
16  
17 Respectfully submitted,

18 Dated: November 17, 2025

s/ Amanda Bernardo

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ABA Immigration Justice Project

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