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

13 *R.M., Detainee, Otay Mesa*
14 *Detention Center,*

15 *Petitioner,*

16 *v.*

17 *CHRISTOPHER J. LAROSE, as*
18 *Senior Warden, Otay Mesa*
19 *Detention Center; U.S.*
20 *DEPARTMENT OF*
21 *HOMELAND SECURITY; U.S.*
22 *IMMIGRATION AND CUSTOMS*
23 *ENFORCEMENT; KRISTI NOEM,*
24 *as Secretary of the United States*
25 *Department of Homeland Security;*
26 *TODD LYONS, as Acting Director*
27 *of U.S. Immigration and Customs*
28 *Enforcement; DOE 1, ICE*
Enforcement and Removal Office
Field Operations Director for San
Diego; and DOES 2–10.

Respondents.

Case No: 25-cv-3186-AGS-DEB

**PETITIONER’S MOTION FOR A
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

Judge: Hon. Andrew G. Schopler

No hearing date required per
chambers instructions

I. INTRODUCTION

Petitioner R.M. (“Petitioner” or “R.M.”), pursuant to Federal Rule of Civil Procedure Rule 65, respectfully moves this Court to grant him a temporary restraining order and preliminary injunction releasing him from Respondents’ custody pending final resolution of his Petition for Writ of *Habeas Corpus*. Dkt. No. 1 (“Petition”). R.M. filed his Petition on November 17, 2025, after more than four months of unlawful detention, alleging violations of his Fifth Amendment Due Process rights and the Administrative Procedure Act (“APA”). Petition ¶¶ 37–54. He now requests the court grant him release while he vindicates his rights.

II. FACTUAL BACKGROUND

R.M. is an Azerbaijani man who fears persecution in that country. He entered the United States on or around March 6, 2024, without inspection, and he has no criminal history. Petition ¶ 1. After initial contact with immigration officials, he was issued a Notice to Appear before an immigration and but was released into the United States without detention. *See id.* ¶ 5; Exhibit 1 to Barrett Decl. Within one year of his entry into the United States, R.M. applied for asylum. *Id.*

At a mandatory immigration hearing before an immigration judge on July 11, 2025, Respondent Department of Homeland Security (“DHS”) orally moved to dismiss his case without notice, and the immigration judge granted that motion. Petition ¶ 20, 22. Respondent Immigration and Customs Enforcement (“ICE”) arrested R.M. in the hallway of the immigration court in San Diego and R.M. has been detained ever since. *Id.* ¶¶ 22–26. After his arrest, Respondent Department of Homeland Security (“DHS”) placed R.M. in “expedited removal” proceedings under INA § 235 (8 U.S.C. § 1225(b)) (“Section 235 proceedings”) to retroactively justify his detention. *See* Exhibit 2 to Barrett Decl. On or around September 4, 2025, R.M. received a positive finding of credible fear during a credible fear interview and was placed back in standard removal proceedings

1 8 U.S.C. § 1229a, INA § 240 (“Section 240 proceedings”). See Exhibit 3 to Barrett
2 Decl. Despite this procedural posture, R.M. remains detained. Petition ¶¶ 22–26.

3 **III. LEGAL ARGUMENT¹**

4 Petitioner requests the Court grant his motion for a temporary restraining
5 order and preliminary injunction because: (1) he is likely to succeed on the merits of
6 his Fifth Amendment and APA claims; (2) every day of his unlawful detention
7 represents an irreparable harm so long as it continues; and (3) the equities balance
8 in Petitioner’s favor and injunction promotes the public interest, as the government
9 would suffer minimal harm from injunction and the injunction promotes the public
10 interest in the rule of law. See *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
11 (2008) see also *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (“When . . . the
12 nonmovant is the government,” the balancing equities and public interest factors
13 “merge”). Further: (4) interlocutory injunctive relief is appropriate here.

14 **1. Petitioner is likely to succeed on his Fifth Amendment and APA claims**

15 First, Petitioner is likely to succeed on his claims, as they mirror similar
16 successful claims brought by identically placed petitioners before other courts. To
17 demonstrate he is likely to proceed, Petitioner need not demonstrate a greater than
18 fifty percent chance that he will ultimately prevail, but only “a fair chance of
19 success” on his claims. *In re Focus Media Inc.*, 387 F.3d 1077, 1089 (9th Cir. 2004)
20 (quoting *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)
21 (*en banc*)). Petitioner’s pleadings here establish clear APA and Fifth Amendment
22 violations of the type that district courts now routinely resolve in petitioners’ favor.

23 District courts nationwide, assessing situations like Petitioner’s, have found
24 that the facts he alleges constitute violations of both the APA and Fifth Amendment.

25 _____
26 ¹ Counsel for Petitioner informed the U.S. Attorney’s Office of Petitioner’s intent to
27 file this motion, and the U.S. Attorney’s Office is e-served this motion upon filing,
28 as required by Rule 65. See Barrett Decl. ¶ 2.

1 As to his APA claims, courts have routinely ruled that the I.N.A. and implementing
2 statutes require both: (1) notice of the government’s intent to revoke release; and
3 (2) an individualized hearing as to the immigrant’s flight risk or danger to the
4 community, prior to revocation of release during the pendency of removal
5 proceedings. *See, e.g., Noori v. Larose*, No. 25-CV-1824-GPC-MSB, 2025 WL
6 2800149 *12–13 (S.D. Cal. Oct. 1, 2025); *Y-Z-L-H v. Bostock*, 792 F. Supp. 3d 1123,
7 1144–46 (D. Or. 2025).

8 Turning to Petitioner’s Fifth Amendment due process claim, all persons have
9 a liberty interest in remaining free from immigration detention. *See Hernandez v.*
10 *Sessions*, 872 F.3d 976, 993 (9th Cir. 2017) (“[F]reedom from imprisonment is at
11 the core of the liberty protected by the Due Process Clause.”) (internal quotation
12 marks omitted). This interest is heightened where, like Petitioner, an individual has
13 lived in the country free from detention for a substantial time while their immigration
14 proceedings unfold. *See Pablo Sequen v. Kaiser*, --- F. 3d. ----, No. 25-CV-06487-
15 PCP, 2025 WL 2650637 *1, 5–6 (N.D. Cal. Sept. 16, 2025) (granting motion for
16 preliminary injunction); *Noori*, 2025 WL 2800149 at *9–11; *Salcedo Aceros v.*
17 *Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503 *5–7, 12 (N.D. Cal.
18 Sept. 12, 2025) (granting post-release motion for preliminary injunction); *Lopez*
19 *Benitez v. Francis*, --- F. Supp. 3d ----, No. 25 CIV. 5937 (DEH), 2025 WL 2371588
20 *9–13 (S.D.N.Y. Aug. 13, 2025).

21 As such, taking into consideration Petitioner’s liberty interests, the risk of
22 erroneous deprivation, and the government’s asserted interests, Petitioner is entitled
23 to both notice and a pre-deprivation hearing before detention—rights the
24 government cannot evade by attempting a *post hoc* reclassification to “expedited
25 removal” proceedings. *Pablo Sequen*, ---F. 3d. ----, 2025 WL 2650637 at *6–9
26 (“Because each of the *Mathews* factors supports [Petitioner’s] right to a bond hearing
27 before an immigration judge prior to any re-arrest or detention, she has shown a

1 likelihood of success on the merits of her due-process claim.”); *Noori*, 2025 WL
2 2800149 at *11–12; *Salcedo Aceros*, 2025 WL 2637503 at *12 (“[E]very court in
3 this district to address the issue” found that a pre-deprivation hearing is required.);
4 *Lopez-Benitez*, --- F. Supp. 3d ----, 2025 WL 2371588 at *3 (“DHS has consistently
5 treated [Petitioner] as subject to detention on a discretionary basis under § 1226(a),
6 which is fatal to Respondents’ claim that he is subject to mandatory detention under
7 § 1225(b).”). When the government fails to provide notice and a pre-deprivation
8 hearing before re-detention, release is required.

9 Petitioner alleges that he entered the United States on or about March 6, 2024,
10 without inspection but with no criminal history and, after an initial interaction with
11 immigration agents on or around that date, he was released into the United States
12 without detention and with a Notice to Appear in Section 240 proceedings. Petition
13 ¶¶ 17–18. Though he timely applied for asylum and attended his mandatory
14 immigration hearings, he was nonetheless arrested and detained, without a bond
15 hearing on his individualized circumstances, after a mandatory hearing—following
16 more than one year of living free in the United States. *Id.* ¶¶ 22–26. Respondents
17 attempt to justify this detention, only after initiating it, by invoking Section 235
18 “expedited removal” proceedings and categorically denying him bond. *Id.* Petitioner
19 presents these allegations in a verified complaint under 28 U.S.C. § 2242 and the
20 exhibits attached to this motion. *See generally* Petition; Barrett Decl. at Ex. 1–3.

21 The government’s behavior here is identical to that ruled unlawful in the cases
22 discussed above. DHS officers encountered Petitioner, allowed him to live free, and
23 then—without notice or hearing—took him into custody and held him in indefinite
24 detention over a year later. Indeed, at least one district court in the Southern District
25 of California granted a Petition for writ of *habeas corpus* on nearly identical facts.
26 *See C.L.V. v. LaRose*, 25-cv-02795-JO-AHG (S.D. Cal. 2025) Dkt. Nos. 1, 19. Other
27 courts in the district, and outside, agree. *See, e.g., Noori*, 2025 WL 2800149, *Garcia*

1 v. *Noem*, --- F. Supp. 3d. ---- No. 25-CV-02180-DMS-MMP, 2025 WL 2549431
2 (S.D. Cal. Sept. 3, 2025); *Lopez Benitez*, --- F.Supp.3d ----, 2025 WL 2371588 at
3 *15 (discussing national DHS policies and practices). Indeed, this Court, screening
4 the Petition, noted that “[f]unctionally identical cases across California have been
5 found to have a ‘likelihood of success on the merits’ or have resulted in the writ
6 being issued.” Dkt. No. 6 at 4. Thus, R.M. has, at minimum, a fair chance of success
7 on both his Fifth Amendment and APA claims.

8 **2. Petitioner will face irreparable harm absent preliminary injunctive relief.**

9 Because he will remain unlawfully detained during pendency of his Petition,
10 Petitioner will face irreparable harm absent a temporary restraining order and
11 preliminary injunction. “Deprivation of physical liberty by detention constitutes
12 irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018);
13 *Hernandez*, 872 F.3d at 994 (“Plaintiffs have established a likelihood of irreparable
14 harm by virtue of the fact that they are likely to be unconstitutionally detained for
15 an indeterminate period of time.”). Indeed, deprivation of any constitutional right,
16 including freedom of speech, constitutes “irreparable injury.” *Arevalo*, 882 F.3d at
17 766; *Hernandez*, 872 F.3d at 994.

18 Where, like here, a movant brings seeks injunction due to alleged
19 constitutional violations, a showing that he is likely to prevail on the merits “will
20 almost always demonstrate he is suffering irreparable harm as well.” *Baird*, 81 F.4th
21 at 1042. Petitioner makes such a showing and faces continued, unlawful detention
22 in violation of his constitutional rights. Indeed, district courts have held that even
23 brief immigration detention before a post-detention hearing, when unlawful,
24 amounts to irreparable harm. *See, e.g., Pablo Sequen*, --- F.Supp.3d ----, 2025 WL
25 2650637 at *9 (“The likely unconstitutional deprivation of liberty that Ms. Pablo
26 Sequen faces is an immediate and irreparable harm, even if it lasts only until a post-
27 detention bond hearing.”). As such, irreparable harm is certain absent an injunction.

1 **3. The equities weigh in Petitioner’s favor, and an injunction is in the**
2 **public’s interest**

3 Plaintiff’s interest in remaining free from unconstitutional detention
4 outweighs the minimal harm—if any—that the government faces by releasing him,
5 and granting the injunction so is in the public’s interest. “A [movant’s] likelihood of
6 success on the merits of a constitutional claim also tips the merged third and fourth
7 factors decisively in his favor.” *Baird*, 81 F.4th at 1042. Every day, Plaintiff faces
8 unconstitutional detention, civil in name but carceral in reality. *See Hernandez*, 872
9 F.3d at 993 (comparing immigration detention to criminal detention). He is deprived
10 freedom of movement, shackled, and his detention causes his family constant
11 concern.² *See id.* at 996 (“[I]n addition to the potential hardships facing Plaintiffs in
12 the absence of the injunction, the court ‘may consider . . . the indirect hardship to
13 their friends and family members.’”). The harm he faces is acute and visceral, and
14 his interest in release is strong and tied to his fundamental, constitutional right to
15 freedom.

16 The government, conversely, suffers little—if any—harm by R.M.’s
17 immediate release. First, “the government has no legitimate interest in detaining
18 individuals who have been determined not to be a danger to the community and
19 whose appearance at future immigration proceedings can be reasonably ensured by
20 a lesser bond or alternative conditions.” *Hernandez*, 872 F.3d at 994. R.M. has
21 diligently appeared for his immigration proceedings throughout his time in the
22 United States—a diligence that ultimately led to his arrest after a mandatory hearing.
23 The government has never asserted that R.M. poses either risk, from initial encounter
24 to courthouse arrest. Thus, there is no harm in his release.

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² Barrett Decl. ¶ 3

1 Likewise, “[t]he only potential injury the government faces is a short delay
2 in detaining [Petitioner] if it ultimately demonstrates to a neutral decisionmaker by
3 the preponderance of the evidence that her detention is necessary to prevent danger
4 to the community or flight.” *Salcedo Acevedes*, 2025 WL 263750 at *14. Further,
5 the Court’s requiring a pre-deprivation hearing as to one person would not
6 meaningfully divert resources from its legitimate immigration enforcement needs.
7 *See id.* “If anything, it is the Government that has thrown into turmoil the steady
8 enforcement of immigration law through repeated, highly public arrests in
9 courtroom hallways.” *Id.* Ultimately, “[f]aced with such a conflict between financial
10 concerns and preventable human suffering . . . the balance of hardships tips
11 decidedly in [a movant’s] favor.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v.*
12 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).

13 As to the public’s interest, an injunction would substantially serve the public’s
14 interest in ensuring constitutional compliance and effective use of taxpayer funds.
15 First, the injunction “serves the interests of the general public by ensuring that the
16 government’s initial bond determination procedures comply with the Constitution.”
17 *Hernandez*, 872 F.3d at 996. By enforcing constitutional and statutory requirements,
18 the Court protects not only R.M.’s rights, but the rights of all people. Likewise, as
19 the Ninth Circuit recognizes, “[t]he costs to the public of immigration detention are
20 ‘staggering’” *Id.* The costs, drawn from public coffers, are wasted entirely when
21 used to conduct unlawful detention rather than spent to ensure the public is safe from
22 individuals who actually pose a risk of flight or danger to public safety. Therefore,
23 “the general public’s interest in the efficient allocation of the government’s fiscal
24 resources favors granting the injunction.” *Hernandez*, 872 F.3d at 996. Accordingly,
25 the third and fourth factors weigh in Petitioner’s favor, and the Court should issue a
26 TRO and preliminary injunction.

1 **5. Interlocutory injunctive relief is proper**

2 Finally, because Petitioner’s case provides a clear-cut violations of the APA
3 and Fifth Amendment and “unlawful detention certainly constitutes ‘extreme or very
4 serious damage,” injunction here is appropriate whether mandatory or prohibitory in
5 nature. *Hernandez*, 872 F.3d at 999. “Mandatory injunctions are most likely to be
6 appropriate when the status quo . . . is exactly what will inflict the irreparable injury
7 upon complainant.” *Id.* (internal quotation marks omitted). Here, the status quo is
8 ongoing violation of Petitioner’s rights. Thus, the Court should order Respondents
9 to release Petitioner immediately.

10 **IV. CONCLUSION**

11 Respondents seek *carte blanche* to obviate the Constitution and statutorily
12 required procedure. They have no such right. Based on the foregoing, Petitioner
13 respectfully requests the Court:

- 14 1. **GRANT** Petitioner’s motion for a temporary restraining order and
15 preliminary injunction.
- 16 2. **ISSUE** a temporary restraining order releasing Petitioner from detention
17 at Otay Mesa Detention Center pending resolution of his Petition for Writ
18 of *Habeas Corpus*.
- 19 3. **CONVERT** the temporary restraining order to a preliminary injunction
20 after hearing.
- 21 4. **ISSUE** forthwith an order to show cause as to why R.M.’s Petition should
22 not be granted.
- 23 5. **ORDER** Respondents to respond to Petitioner’s petition within the
24 timeframe set by 28 U.S.C. § 2243.

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DATED: November 24, 2025

Respectfully submitted,

SINGLETON SCHREIBER, LLP

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Kimberly S. Hutchison
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