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Attorney for Petitioner-Plaintiff

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

I.E.,

Petitioner-Plaintiff,

v.

Jeremy CASEY, Warden, Imperial Regional Detention Facility;

Gregory J. ARCHAMBEAULT, Acting Field Office Director of San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security;

Todd M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security;

Kristi NOEM, in her Official Capacity, Secretary, U.S. Department of Homeland Security; and

Pamela BONDI, in her Official Capacity, Attorney General of the United States;

Respondents-Defendants.

Case No. 3:25-cv-03227-DMS-DDL

MOTION FOR TEMPORARY RESTRAINING ORDER

POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION

NOTICE OF MOTION

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Petitioner hereby moves this Court for an order enjoining the Respondents from (1) removing Petitioner from the United States or transferring Petitioner outside of the Southern District of California while this action is pending; and (2) continuing to detain the Petitioner without providing him within 7 days an individualized bond hearing in which the government has the burden that there is clear and convincing evidence establishing that Petitioner is a danger to the community or a flight risk, even after consideration of alternatives to detention that could mitigate any risk that Petitioner's release would present; if the government cannot meet its burden, the immigration judge must order Petitioner's release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond.

The reasons in support of this Motion are set forth in the accompanying Memorandum of Points and Authorities. This Motion is based on the attached Declaration of Natalie Cadwalader-Schultheis with Accompanying Exhibits in Support of Petition for Writ of Habeas Corpus and *Ex-Parte* Motion for Temporary Restraining Order. As set forth in the Points and Authorities in support of this Motion, Petitioner asserts that he warrants a temporary restraining order due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in preventing prolonged deprivation without an individualized bond hearing. Plaintiff has been detained in Department of Homeland Security custody for nearly ten months without the opportunity to seek an individualized bond hearing due.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and a preliminary injunction enjoining Respondents from continuing to detain him absent an individualized bond hearing that meets the requirements described above.

Dated: November 20, 2025

Respectfully Submitted

/s/ Warren Craig
Warren Craig
Attorney for Mr. E.

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I. INTRODUCTION

Petitioner-Plaintiff, I.E.,[1] by and through undersigned counsel, hereby files this motion for a temporary restraining order and preliminary injunction to enjoin the Respondents from continuing to detain him without an individualized bond hearing at which the Department of Homeland Security (DHS) must establish by clear and convincing evidence that he is a danger to the community or a flight risk.

As discussed below, Mr. E. is an asylum seeker from Uzbekistan, who came to the United States to flee the terrible persecution he suffered in Uzbekistan on account of his status as a gay man. Mr. E. entered the United States on January 27, 2025 and was immediately detained by DHS. Thereafter, Mr. E passed a fear screening in which DHS determined that he would more likely than not be tortured if forced to return to Uzbekistan. Subsequently, his proceedings dragged out for months until his individual hearing was finally completed on September 23, 2025. As discussed further below, despite the fact that Mr. E. was granted asylum by an Immigration Judge, it is likely that Mr. E.'s proceedings will continue for months, if not years, because DHS has refused to release Mr. E. pending their appeal of the Immigration Judge's order. Meanwhile, Mr. E. is not eligible to seek a bond hearing before the Immigration Judge as he is subject to mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). Thus, Mr. E. has remained detained in DHS custody for nearly 10 months with no end in sight. As documented further below, such prolonged detention has caused significant hardships for Mr. E.

As multiple district court judges within the Southern District of California have determined under similar circumstances, such prolonged detention without an individualized bond hearing violates a noncitizen's right to due process under the Fifth Amendment of the United States Constitution. *See Hoyos Amado v. U.S. DOJ,* No.: 25cv2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025); *Gao v. LaRose*, No.: 25-cv-2084-RSH-SBC, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025); *Sadeqi v. LaRose*, No.: 25-cv-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal. Nov. 12, 2025); *Abdul Kadir v. LaRose*, No.: 25cv1045-LL-MMP, 2025 WL 2932654 (S.D.

[1] Mr. I.E. is currently identifying himself using his initials (I.E.) and will file a motion to proceed under a pseudonym.

Cal Oct. 15, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. Nov. 4, 2020); *Durand v. Allen*, No.: 3:23-cv-00279-RBM-BGS 2024, WL 711607 (S.D. Cal. Feb. 21, 2024); *Sibomana v. LaRose*, No.: 3:22-cv-933-LL-NLS, 2023 WL 3028093 (S.D. Cal. April 20, 2023); *Sanchez-Rivera v. Matuszewski*, No.: 22-cv-1357-MMA (JLB), 2023 WL 139801 (S.D. Cal. Jan. 9, 2023); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582 (S.D. Cal. Mar. 29, 2019). Thus, Mr. E. is likely to succeed on the merits of his due process claim as presented in his accompanying petition for writ of habeas corpus. Furthermore, as documented below, such ongoing violation of Mr. E.'s constitutional rights will cause Mr. E. immediate and irreparable injury, and the balance of equities and the public interest strongly favors remedying this ongoing constitutional violation by granting a temporary protective order requiring the Respondents to provide Mr. E. with an individualized bond hearing within 7 days of the Court's order. To prevent loss of access to local counsel, Mr. E. also requests the Court grant a temporary restraining order preventing the Respondents from removing or transferring Mr. E. outside of the jurisdiction of the Southern District of California while this matter is pending. *See Domingo-Ros v. Archambeault*, 2025 WL 1425558, at *5 (S.D. Cal May 18, 2025).

II. STATEMENT OF FACTS AND CASE

Mr. E. is a citizen of Uzbekistan who came to the United States to seek asylum. *See* Declaration of Natalie Cadwalader-Schultheis at ¶ 4. Mr. E. is a gay man who has suffered violence and threats at the hands of family, ordinary citizens, and law enforcement in Uzbekistan on account of his identity as a gay man. *Id.* If forcibly returned to Uzbekistan, Mr. E. fears that he will be arrested, prosecuted, imprisoned, tortured, and killed by state agents or ordinary citizens on account of his identity as a gay man. *See id.*

Fleeing persecution from the Uzbek government and members of Uzbek society, Mr. E. entered the United States at the port of entry in Calexico, California on January 27, 2025. *See id.* at ¶ 5; Exh. 1. Upon entry, Mr. E. was detained by the Department of Homeland Security (DHS) and was transferred to the Imperial Regional Detention Facility (IRDF), a privately run for-profit prison located in Calexico, California. *See* Cadwalader-Schultheis Decl. at ¶ 6. He has remained in DHS custody since his entry on January 27, 2025. *See id.*

On March 10, 2025, Mr. E. was interviewed by an asylum officer regarding his fear of torture in Uzbekistan. *See* Cadwalader-Schultheis Decl. at ¶ 7. This fear screening was apparently conducted under 8 U.S.C. § 1182(f) of the Immigration and Nationality Act (INA) in response to a presidential proclamation issued on January 20, 2025 entitled "Guaranteeing the States Protection Against Invasion."[2] *See id.* at n.2. Pursuant to this proclamation, DHS in many cases declined to place noncitizens entering the United States into expedited removal proceedings under 8 U.S.C. § 1225 where the noncitizen would receive a credible fear screening to determine whether they were eligible to apply for asylum or withholding of removal. *Id.* Instead, many noncitizens expressing a fear of return received a screening that only considered their eligibility for protection under the Convention Against Torture. *Id.* Unlike traditional expedited removal proceedings, individuals processed under § 1182(f) were not given the opportunity for a lawyer to be present, to have immigration judges review negative decisions, or to obtain copies of the screening officer's interview notes. *Id.* Additionally, when an individual obtained a positive screening result, DHS in some cases would not immediately provide them with an opportunity to pursue their claim in immigration court but would rather seek to deport them to a third country. *See id.*; *see also RAICES v. Noem*, No. 25-306, 2025 WL 1825431, at *12-16 (D.D.C. July 2, 2025) (providing a comprehensive overview of the proclamation and implementing guidance).

Following the interview, DHS provided Mr. E. with a single page documenting the result of that interview, in which the USCIS officer checked the box stating that he had "established it is more likely than not that you will be tortured in UZBEKISTAN." *See* Exh. 3. Mr. E's first master calendar hearing was not scheduled until March 26, 2025, and his individual hearing was scheduled on September 8, 2025. *See* Decl. at ¶¶ 8, 16. The government further delayed proceedings on September 8, 2025. On that day, the Immigration Judge completed the hearing and stated that he would have been prepared to issue an order that day, but he had to reschedule the individual hearing because DHS has failed to complete routine background checks on Mr. E.

[2] On July 2, 2025, a district court in Washington D.C. held that this declaration was unlawful and issued an injunction prohibiting its implementation, which was partially stayed by the D.C. Circuit Court on August 1, 2025. See *RAICES v. Noem*, No. 25-306, 2025 WL 1825431 (D.D.C. July 2, 2025); *RAICES v. Noem*, No. 25-5243 (D.C. Cir. Aug. 1, 2025).

See id. at ¶ 17. The result was that the individual hearing was reset to September 23, 2025. *See id.* At the September 23rd hearing, the Immigration Judge issued an order granting Mr. E. asylum, and the government reserved appeal, waiting until the deadline to file their notice of appeal on October 23, 2025. *See id.* at ¶¶ 20, 22,

On October 13, 2025, Mr. E., through counsel, filed a request for parole with Mr. E's deportation officer. *See* Cadwalader-Schultheis Decl. at ¶ 20. The parole request included identity documents, proof of address, proof of income, and a letter of support from his sponsor, who lives in Los Angeles, California and is willing to support Mr. E. upon release. *See id.* Despite having been granted asylum by the Immigration Judge and providing proof of a sponsor in the same city where his counsel maintains an officer, DHS refuses to release him, stating only that Mr. E. would remain detained while the case is on appeal. *See id.* at ¶ 21.

Despite having been granted asylum, Mr. E.'s proceedings are likely to continue for some time. As his counsel explains, DHS is pursuing an appeal of the asylum grant in immigration court, which could prolong proceedings by six months or longer. *See id.* at ¶ 24. Even following an appeal, the matter could be remanded to the Immigration Judge for further proceedings, or Mr. E. could file a petition for review with the Court of Appeals for the Ninth Circuit. *See id.* All the while, Mr. E. would remain in immigration custody pursuant to 8 U.S.C. § 1225(b)(2)(A). Thus, absent intervention from this Court, Mr. E.'s detention could drag on for months or even years.

Mr. E. has no criminal history and is in no way a danger to property or persons. *See* Cadwalader-Schultheis Decl. at ¶ 25. He is seeking asylum based on his status as a gay man in Uzbekistan, which has caused him enduring physical and psychological harm. *See id.* at ¶ 26. He has complied with the immigration court's requirements and been granted asylum by an Immigration Judge. *See* Exh. 4. If released, Human Rights First, which has an office in Los Angeles, will continue to represent Mr. E. in his removal proceedings while DHS appeals their loss. *See* Decl. at ¶ 25. For all these reasons, Mr. E. cannot be considered a flight risk.

Yet, Mr. E. has now been detained in DHS custody for over nine months. A psychological and medical evaluation shows that Mr. E. is experiencing post-traumatic stress disorder and depression. *See id.* at ¶ 26. Releasing Mr. E. would provide an opportunity for Mr. E. to establish

care with local physicians in the Los Angeles area while living in a non-detained setting, and he would be to be his authentic self without fear for the first time in his life. *See id.*

Intervention from this Court is therefore required to ensure that Mr. E. is not unlawfully subject to continued prolonged detention without an individualized bond hearing. Such unlawful conduct would cause Mr. E. to suffer immediate and irreparable harm.

III. LEGAL STANDARD

Mr. E. is entitled to a temporary restraining order if he establishes that he is "likely to succeed on the merits, . . . 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 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are "substantially identical"). Even if Mr. E. does not show a likelihood of success on the merits, the Court may still grant a temporary restraining order if he raises "serious questions" as to the merits of his claims, the balance of hardships tips "sharply" in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As set forth in more detail below, Mr. E.'s prolonged detention without an individualized bond hearing violates his right to due process, and Mr. E. will continue to suffer irreparable injury each day that he remains detained without such a hearing. Furthermore, the balance of equites and the public interest tip in his favor.

IV. ARGUMENT

1. Mr. E. is Likely to Succeed on the Merits of His Claim That His Prolonged Detention Without an Individualized Bond Hearing Violates His Right to Due Process.

Mr. E. is likely to succeed on his claim that, in the particular circumstances involving his prolonged detention, the Due Process Clause of the Constitution prevents the Respondents from continuing to detain Mr. E. without bond absent an individualized bond hearing where the

government must demonstrate by clear and convincing evidence that he is a danger to the community or a flight risk, as numerous district courts within the Southern District of California have held under similar circumstances involving prolonged detention. *See Hoyos Amado v. U.S. DOJ,* No.: 25cv2687-LL(DDL), 2025 WL 3079052 (S.D. Cal. Nov 4, 2025); *Gao v. LaRose*, No.: 25-cv-2084-RSH-SBC, 2025 WL 2770633 (S.D. Cal. Sept. 26, 2025); *Sadeqi v. LaRose*, No.: 25-cv-2587-RSH-BJW, 2025 WL 3154520 (S.D. Cal Nov 12, 2025); *Abdul Kadir v. LaRose*, No.: 25cv1045-LL-MMP, 2025 WL 2932654 (S.D. Cal Oct 15, 2025); *Kydyrali v. Wolf*, 499 F. Supp. 3d 768 (S.D. Cal. Nov. 4, 2020); *Durand v. Allen*, No.: 3:23-cv-00279-RBM-BGS 2024, WL 711607 (S.D. Cal. Feb. 21, 2024); *Sibomana v. LaRose*, No.: 3:22-cv-933-LL-NLS, 2023 WL 3028093 (S.D. Cal. April 20, 2023); *Sanchez-Rivera v. Matuszewski*, No.: 22-cv-1357-MMA (JLB), 2023 WL 139801 (S.D. Cal. Jan. 9, 2023); *Yagao v. Figueroa*, No. 17-cv-2224-AJB-MDD, 2019 WL 1429582 (S.D. Cal. Mar. 29, 2019). Pursuant to 8 U.S.C. § 1225(b)(2)(A), Mr. E. is presently unable to seek an individualized bond hearing before an Immigration Judge because the statute regards him as an "applicant for admission" who is subject to mandatory detention. Thus, action from this Court is necessary to remedy this constitutional violation.[3]

"'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings.'" *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *see also id.* at 718 (Kennedy, J., dissenting) ("Liberty under the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention."). This fundamental due process protection applies to all noncitizens, including both removable and inadmissible noncitizens. *See id.* at 721 (Kennedy, J., dissenting) ("[B]oth removable and inadmissible [noncitizens] are entitled to be free from detention that is arbitrary or capricious"). Due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the

[3] As a result of the statute cited above, Mr. E. has not sought a bond hearing with the Immigration Court as doing so would be entirely futile. *See Hernandez v. Sessions*, 872 F.3d 976, 988, 989 (9th Cir. 2017) (exhaustion of remedies may waived where doing so would be a "futile gesture").

individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted). In the immigration context, the Supreme Court has recognized only two valid purposes for civil detention—to mitigate the risks of danger to the community and to prevent flight. *Id.*; *Demore*, 538 U.S. at 528.

Due process requires that the government provide bond hearings to noncitizens facing prolonged detention. "The Due Process Clause foresees eligibility for bail as part of due process" because "[b]ail is basic to our system of law." *Jennings v. Rodriguez*, 138 S. Ct. 830, 862 (2018) (Breyer, J., dissenting) (internal quotation marks omitted). While the Supreme Court upheld the mandatory detention of a noncitizen under Section 1226(c) in *Demore*, it did so based on the petitioner's concession of deportability and the Court's understanding at the time that such detentions are typically "brief." *Demore*, 538 U.S. at 522 n.6, 528. Where a noncitizen has been detained for a prolonged period or is pursuing a substantial defense to removal or claim to relief, due process requires an individualized determination that such a significant deprivation of liberty is warranted. *Id.* at 532 (Kennedy, J., concurring) ("[I]ndividualized determination as to his risk of flight and dangerousness" may be warranted "if the continued detention became unreasonable or unjustified"); *see also Jackson v. Indiana*, 406 U.S. 715, 733 (1972) (holding that detention beyond the "initial commitment" requires additional safeguards); *McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249-50 (1972) (holding that "lesser safeguards may be appropriate" for "short-term confinement"); *Hutto v. Finney*, 437 U.S. 678, 685-86 (1978) (holding that, in the Eighth Amendment context, the length of confinement cannot be ignored in deciding whether [a] confinement meets constitutional standards"); *Reid v. Donelan,* 17 F.4th 1, 7 (1st Cir. 2021) (holding that "the Due Process Clause imposes some form of reasonableness limitation upon the duration of detention" under section 1226(c)) (internal quotation marks omitted).

Courts have continually expressed concern about the constitutionality of detention without a bond hearing that lasts longer than six months. *See Demore*, 538 U.S. at 529-30 (upholding only "brief" detentions under Section 1226(c), which last "roughly a month and a half in the vast majority of cases in which it is invoked, and about five months in the minority of cases in which the [noncitizen] chooses to appeal"); *Zadvydas*, 533 U.S. at 701 ("Congress previously doubted

the constitutionality of detention for more than six months."); *Rodriguez v. Nielsen*, 2019 WL 7491555, at *6 (N.D. Cal. Jan. 7, 2019) ("[D]etention becomes prolonged after six months and entitles [Petitioner] to a bond hearing"). Indeed, the recognition that six months is a substantial period of confinement—and is the time after which additional process is required to support continued incarceration—is deeply rooted in U.S. legal tradition. With few exceptions, "in the late 18th century in America crimes triable without a jury were for the most part punishable by no more than a six-month prison term." *Duncan v. Louisiana*, 391 U.S. 145, 161 & n. 34 (1968). Consistent with this tradition, the Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff v. Schnackenberg*, 384 U.S. 373, 380 (1966) (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil v. Dir., Patuxent Inst.*, 407 U.S. 245, 249, 250-52 (1972) (recognizing six months as an outer limit for confinement without individualized inquiry for civil commitment).

Courts in the Southern District of California have taken the position that an individualized analysis is appropriate to determine whether a non-citizen detainee's prolonged detention has become so unreasonable as to require an initial bond hearing. *See Hoyos Amado*, 2025 WL 3079052, at *5; *Gao*, 2025 WL 2770633, at *4; *Sadeqi*, 2025 WL 3154520, at *3; *Abdul Kadir*, 2025 WL 2932654, at *4; *Kydyrali*, 499 F. Supp. 3d at 773. These cases have generally relied on a six-factor analysis from *Banda v. McAleenan*, 385 F. Supp. 3d 1099 (W.D. Wash. 2019), which considers the following factors in determining whether detention has become so prolonged that violates the Due Process Clause: (1) the total length of detention to date; (2) the likely duration of future detention; (3) conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal. *Id.* at 1106. As explained below, each of these factors favors Mr. E in this case.

First, Mr. E. has been detained for nearly ten months. As the Supreme Court stated in *Zadvydas* stated, "We do have reason to believe . . . that Congress previously doubted the constitutionality of detention for more than six months." 533 U.S. at 701. As noted above, the

Supreme Court has found six months to be the limit of confinement for a criminal offense that a federal court may impose without the protection afforded by jury trial. *Cheff*, 384 U.S. at 380 (plurality opinion). The Court has also looked to six months as a benchmark in other contexts involving civil detention. *See McNeil*, 407 U.S. at 250-52 (recognizing six months as an outer limit for confinement without an individualized inquiry for civil commitment). Further, an injunction remains in place in the Central District of California requiring a bond hearing once immigration detention has reached six months. *See Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018). As one district court judge in this district observed, "Courts have found detention over seven months without a bond hearing weighs toward a finding that it is unreasonable." *Hoyos Amado*, 2025 WL 3079052, at *5 (citing *Masood v. Barr*, No. 19-CV-07623-JD, 2020 WL 95633, at *3 (N.D. Cal. Jan. 8, 2020) (finding detention for nearly nine months weighs in favor of the petitioner); *Cabral v. Decker*, 331 F. Supp. 3d 255, 261 (S.D.N.Y. 2018) (over seven months); *Perez v. Decker*, No. 18-CV-5279 (VEC), 2018 WL 3991497, at *5 (S.D.N.Y. Aug. 20, 2018) (over nine months); *Brissett v. Decker*, 324 F. Supp. 3d 444, 452 (S.D.N.Y. 2018) (over nine months)). In this case, Mr. E's detention well exceeds the 6-7-month mark cited in the cases above. Indeed, Mr. E has been detained for around the same period of time as the petitioner in *Gao*, where the court found that "Petitioner's detention for over 10 months without a bond hearing, in the context of the specific circumstances described above, has become unreasonable and violates due process." 2025 WL 2770633, at *4. As such, the length of detention in this case must be considered a factor in Mr. E's favor.

The likely duration of future detention also weighs in Mr. E.'s favor. Mr. E. was granted asylum by the Immigration Judge on September 23, 2025, but DHS still refuses to release him while they appeal the decision. Appeals to the BIA often take six months or longer to resolve. *See* Cadwalader-Schultheis Decl. at ¶ 24. Even following a decision by the BIA, further delays are possible if the case goes up to the Ninth Circuit or is remanded back to the Immigration Court. *See id.* In *Banda*, the court noted that an appeal to the BIA and subsequent judicial review "may take up to two years or longer." 385 F. Supp. 3d at 1119. Thus, absent intervention from this Court, it is reasonably foreseeable that Mr. E. could remain detained for months or even years. In

Sibomana, the court found that "the pending administrative appeal and the potential judicial review process will be sufficiently lengthy such that this factor weighs in Petitioner's favor." 2023 WL 3028093 at *4. The courts in *Durand* and *Sanchez-Rivera* also held that the possibility of lengthy appeals weighed in the favor of the respective petitioners. 2024 WL 711607 at *5; 2023 WL 139801 at *6. Accordingly, this factor weighs strongly in Mr. E's favor.

The conditions of detention also favor Mr. E in this case. The Ninth Circuit has noted that detainees in DHS custody are held in "prison-like conditions." *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016), vacated on other grounds by *Nielsen v. Preap*, 139 S. Ct. 954 (2019). Moreover, the conditions inside the Imperial Regional Detention Facility (IRDF), which is a for-profit privately run detention center where Mr. E is detained, are both indistinguishable from penal confinement and increasingly disturbing. *See* Cadwaldader-Schultheis Decl. at ¶ 6. In a recent article on the conditions in IRDF in the aftermath of the death of a detainee there in September of this year, a former DHS Assistant Inspector General stated that the facility "has a history of violating ICE's own standards when it comes to medical care." Exh. 2; Kori Suzuki, *Imperial County Detention Center Seeks Doctor after Detainee Dies in Custody*, KPBS (Nov. 10, 2025), *available at* https://www.kpbs.org/news/borderimmigration/2025/11/10/imperial-county-detention-center-seeks-doctor-after-detaineedies-in-custody. State and federal inspectors found that the facility "repeatedly failed to provide adequate medical care over recent years." *Id.* During a 2020 surprise inspection, investigators found "moldy, rusty showers and expired food in the kitchens. Staff were checking the health of detainees at night while they were sleeping, without actually speaking to them – sometimes taking less than 30 seconds for each person." *Id.* The inspection also revealed that the facility was short-staffed in the medical department, with only 6 of their 9 full-time nurse positions filled. *Id.* A report from this year by the California Department of Justice found that the facility had no medical director and that several nurse positions were unfilled. *Id.* Detainees have continued to report denial of care for pain and access to specialists as well as delays in accessing emergency care. *Id.*

Further, the delays in this case are mostly attributable to the government. First, the government delayed proceedings by failing to docket Mr. E's case on the Immigration Court

calendar for nearly two months after he was detained. *See* Cadwaldader-Schultheis Decl. at ¶¶ 6-8. Second, DHS's failure to complete routine background checks before the twice-rescheduled hearing resulted in another delay in the case. *See id.* at ¶ 17. Third, DHS's decision to file their notice of appeal in Mr. E.'s case on the last date in their 30-day window to file their notice of appeal has further delayed proceedings. *See id.* at 22. Conversely, Mr. E. has acted diligently and has complied with all the deadlines set forth by the Immigration Judge. *See id.* at ¶¶ 10-19. Any continuances that Mr. E requested in this matter were short in duration and were granted based on good cause shown. *See id.* at ¶¶ 12-14; *see also Abdul Kadir*, 2025 WL 2932654, at *5 (finding that continuances requested by petitioner did not result in undue delays). Thus, both of the delay factors also weigh in Mr. E.'s favor.

Finally, the likelihood that Mr. E's proceeding will result in a final order of removal is low. As noted above, the Immigration Judge granted Mr. E asylum. Indeed, DHS previously found that Mr. E is more likely than not to be tortured if returned. *See* Cadwaldader-Schultheis Decl. at ¶ 7; *see also* Exh. 3. While DHS has appealed, the facts that the proceedings before the Immigration Court turned in Mr. E's favor and that DHS previously found he would more likely than not be tortured indicate that Mr. E is likely to succeed. In *Hoyos Amado*, the court found that the mere fact that petitioner had a "good faith challenge to removal" on appeal where the Immigration Judge had denied relief was still enough for this factor to weigh in the petitioner's favor. *See* 2025 WL 3079052, at *4-5. In *Gao*, the court found that the petitioner's grant of withholding of removal suggested "that his asylum claim—whether or not his appeal will ultimately be successful—is not wholly without merit." 2025 WL 2770633, at *4. Since the Immigration Judge actually granted asylum in Mr. E's case, he stands in a stronger position than the respondents in both cases. Accordingly, this factor strongly weighs in Mr. E's favor.

Considering that all six factors weigh in Mr. E.'s favor, his continued detention without an individualized bond hearing violates his right to due process. In the cases cited above, the district courts for the Southern District of California agreed that the appropriate remedy is to order the Immigration Judge to conduct an individualized bond hearing at which the government has the burden of proof to demonstrate by clear and convincing evidence that the noncitizen presents

a flight risk or is a danger to the community—the same request that Mr. E. makes with this motion for a TRO. *See Hoyos Amado*, 2025 WL 3079052, at *7; *Gao*, 2025 WL 2770633, at *5; *Sadeqi*, 2025 WL 3154520, at *4; *Abdul Kadir*, 2025 WL 2932654, at *6; *Kydyrali*, 499 F. Supp. 3d at 775-76; *Durand,* 2024 WL 711607 at *5; *Sanchez-Rivera*, 2023 WL 139801 at *7; *Sibomana*, 2023 WL 3028093 at *4. Mr. E. also asks this Court order that the Respondents shall not deny Mr. E.'s bond request on the basis that § 1225(b) requires mandatory detention. *See Garcia v. Noem*, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025). Given the authorities cited above, the Court in this matter should find that Mr. E. is likely to succeed in his due process claim.

2. Mr. E. will Suffer Irreparable Harm Absent Injunctive Relief.

Mr. E. will suffer irreparable harm if he continues to be subject to prolonged detention without being provided the constitutionally adequate process that this motion for a temporary restraining order seeks. Detainees in DHS custody are held in "prison-like conditions." *Preap*, 831 F.3d at 1195. As the Supreme Court has explained, "[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness." *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); *accord Nat'l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in "concrete terms the irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Finally, the government itself has documented alarmingly poor conditions in DHS detention centers. *See, e.g.*, DHS, Office of Inspector General (OIG), Summary of Unannounced Inspections of ICE Facilities Conducted in Fiscal Years 2020-2023 (2024) (reporting violations of environmental health and safety standards; staffing shortages affecting the level of care detainees received for suicide watch, and detainees being held in administrative segregation in unauthorized restraints, without being allowed time outside their cell, and with no documentation that they were provided health care or three meals a day).[4]

[4] *Available at* https://www.oig.dhs.gov/sites/default/files/assets/2024-09/OIG-24-59-Sep24.pdf (last accessed Sept, 30, 2025).

Mr. E.'s individual circumstances also demonstrate the harm he will experience from continuing prolonged detention. A psychological and medical evaluation shows that Mr. E. is experiencing post-traumatic stress disorder and depression. *See* Cadwaldader-Schultheis Decl. at ¶ 26. If Mr. E. were released from custody, he would have an opportunity to establish care with local physicians in the Los Angeles area while living in a non-detained setting and being able to be his authentic self without fear for the first time in his life. *See id.*

Finally, as detailed above, Mr. E. contends that his continued detention absent an individualized bond hearing before an Immigration Judge would violate his due process rights under the Constitution. It is clear that "the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is necessary to prevent Mr. E. from suffering irreparable harm by being subject to unlawful and unjust prolonged detention.

3. The Balance of Equities and the Public Interest Favor Granting the Temporary Restraining Order

The balance of equities and the public interest also strongly favor granting this temporary restraining order.

First, the balance of hardships strongly favors Mr. E. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) ("[T]he INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations."). Therefore, the government cannot allege harm arising from a temporary restraining order or preliminary injunction ordering it to comply with the Constitution.

Second, any burden imposed by requiring an individualized bond hearing for Mr. E. is both *de minimis* and clearly outweighed by the substantial harm he will suffer as if he remains subject to prolonged detention. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) ("Society's interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.").

Finally, a temporary restraining order is in the public interest. Importantly, "it would not be equitable or in the public's interest to allow [a party] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014) (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)). If a temporary restraining order is not entered, the government would effectively be granted permission to continue detaining Mr. E. indefinitely in violation of the requirements of the Due Process Clause. "The public interest and the balance of the equities favor 'prevent[ing] the violation of a party's constitutional rights.'" *Ariz. Dream Act Coal.*, 757 F.3d at 1069 (quoting *Melendres*, 695 F.3d at 1002); *see also Hernandez*, 872 F.3d at 996 ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention because of bonds established by a likely unconstitutional process."); *cf. Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Therefore, the public interest overwhelmingly favors entering a temporary restraining order and preliminary injunction.

V. CONCLUSION

For all the above reasons, this Court should find that Mr. E. warrants a temporary restraining order and a preliminary injunction ordering that Respondents refrain from continuing to detain the Respondent unless he is afforded within 7 days an individualized bond hearing before an Immigration Judge at which the government bears the burden of proof to show by clear and convincing evidence that he is a danger to the community or a flight risk, even after consideration of alternatives to detention that could mitigate any risk that Mr. E.'s release would present. If the government cannot meet its burden, the Immigration Judge must order Mr. E.'s release on appropriate conditions of supervision, taking into account Petitioner's ability to pay a bond. *See Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017).

To prevent loss of access to local counsel, Mr. E. also requests the Court grant a temporary restraining order preventing the Respondents from removing or transferring Mr. E. outside of the

jurisdiction of the Southern District of California while this matter is pending.

Dated: November 20, 2025

Respectfully submitted,

/s/ Warren Craig
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