UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Jose Luis Torres-Villasana Petitioner, Kristi Noem, Secretary of Homeland Security; Pamela Bond, U.S. Attorney General; Todd M. Lyons, Acting Director of Immigration and Customs Enforcement; Sylvester Ortega, San Antonio Field Office Director; Bobby Thompson, Warden of South Texas ICE Processing Center Respondents.	**Civil Case No. 5:25-cv-01579-OLG**

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. INTRODUCTION

The petitioner, Mr. Torres, is a longtime lawful permanent resident (LPR) who suffers from an intellectual disability and who is pursuing a U-visa as the victim of domestic violence perpetrated by his U.S. citizen ex-wife. He was released on his own recognizance by DHS more than 13 years ago, and there is no reason whatsoever to justify his recent redetention one month ago.

Throughout the more than 13 years that he has been in immigration removal proceedings, Mr. Torres has had no further criminal arrests, and he has complied with all terms of his release on recognizance. Despite this, ICE suddenly redetained Mr. Torres on October 22, 2025, after he was stopped by officials from the Texas Department of Public Safety conducting immigration

enforcement in San Antonio. He has not engaged in any conduct since his release in 2012 that would suggest that he is dangerous or a flight risk.

Redetention, without a reason and without any manner in which to challenge it, violates the Petitioner's due process right to liberty because it provides the Petitioner with no opportunity to contest his detention. Indeed, several district courts have determined that redetention by DHS without any showing of changed circumstances violates the Fifth Amendment's right to due process *See, e.g.*, *Erazo Rojas v. Noem et al.*, No. EP-25-CV-443-KC, 2025 WL 3038262 (W.D. Tex. Oct. 30, 2025); *Lopez-Arevelo v. Ripa*, --- F. Supp. 3d ----, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025); *Rojas v. Almodovar*, 25-CV-7189 (LJL), 2025 WL 3034183 (S.D.N.Y. October 30, 2025); *Artiga v. Genalo*, 25-CV-5208 (OEM) (E.D.N.Y. October 5, 2025); *Guzman v. Andrews*, No. 1:25-cv-01015-KES-SKO (HC), 2025 WL 2617256 (E.D. Cal. Sept. 9, 2025); *Diaz-Diaz v. Mattivelo*, No. 1:25-cv-122226-JEK (D. Mass. Aug. 27, 2025); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK (D. Mass. Aug. 14, 2025). This Court should follow suit and grant the Petitioner a temporary restraining order prohibiting the Respondents from continuing to unlawfully detain Petitioner during the pendency of his Petition for Writ of Habeas Corpus.

II. LEGAL FRAMEWORK GOVERNING RELEASE DECISIONS BY DHS AND THE PROCESS FOR REDETENTION

Under 8 U.S.C. § 1226(a), DHS has authority to arrest and detain certain noncitizens "pending a decision on whether the alien is to be removed from the United States . . ." However, the DHS "may release the alien on bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General . . . ." 8 U.S.C. § 1226(a)(2)(A). Upon arrest and detention pending a removal proceeding, DHS will make a determination on whether to allow the noncitizen to be released pending the posting of a bond. 8 C.F.R. § 1236. "Custody and

bond determinations made by the [DHS] pursuant to 8 C.F.R. § 1236 may be reviewed by an Immigration Judge pursuant to 8 C.F.R. § 1236." 8 C.F.R. § 1003.19(a).

Once a bond or release on recognizance has been granted by DHS or the immigration judge, the DHS is only authorized to revoke a bond upon a finding of materially changed circumstances meriting the noncitizen's return to custody. *See, e.g.*, *Matter of Sugay*, 17 I&N at 640 (BIA found a change in circumstances, in part, when it was determined that the noncitizen was "wanted for murder in the Philippines....").

III. STATEMENT OF FACTS

Mr. Torres was born in Mexico [redacted] and he entered the United States lawfully when he was only eleven years old, more than thirty years ago, using a visitors visa. In 2005, more than twenty years ago, he became a lawful permanent resident via marriage to his ex-spouse, and he has remained a permanent resident ever since. He is the father of three U.S. citizen children.

According to medical records from Mexico, Mr. Torres was born by cesarean section after suffering acute fetal distress. From birth, he was under supervision of doctors for psychomotor development disorders and seizures. While in the United States, he was treated as a student with special needs and placed in a special education program. In Mexico, medical professionals concluded that he has an IQ of 63, meeting the threshold for intellectual disability. See Exhibit A, parole request.

In 2012, ICE arrested Mr. Torres and charged him with deportability following a federal conviction for conspiracy to transport non-citizens within the United States. Despite this conviction, however, ICE officials chose to release Mr. Torres on his own recognizance, thus

finding that he did not present a danger to the community or a flight risk. See Exhibit B, letter granting release on recognizance.

In 2014, Mr. Torres was the victim of domestic violence perpetrated by his U.S. citizen ex-wife. In 2018, he obtained necessary certification from the San Antonio Police Department to apply for protection against removal in the form of a U-visa. That application has been pending since 2019 and remains pending. See Exhibit C, U-visa application and receipts.

In immigration court, Mr. Torres's removal proceedings until very recently were administratively closed in order to allow USCIS to adjudicate his U-visa application. He is currently scheduled for his next master calendar hearing in October 2026.

Throughout the more than 13 years that he has been in immigration removal proceedings, Mr. Torres has had no further criminal arrests, and he has complied with all terms of his release on recognizance. Despite this, ICE suddenly redetained Mr. Torres on October 22, 2025, after he was stopped by officials from the Texas Department of Public Safety conducting immigration enforcement in San Antonio. He has not engaged in any conduct since his release in 2012 that would suggest that he is dangerous or a flight risk.

The Petitioner is afforded no process or opportunity to challenge his redetention. The Petitioner and his family are suffering as a result of his prolonged, unconstitutional detention.

IV. ARGUMENT

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of an order. Fed. R. Civ. P. 65(b)(1)(A). 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. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). The movant must establish

four factors: "(1) a likelihood of success on the merits; (2) a substantial threat of irreparable injury; (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted; and (4) that the grant of an injunction will not disserve the public interests." *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015).

In constitutional cases, the first factor above is often dispositive. *See Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (citing *Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (order). That is because "[w]hen constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Moreover, since no cognizable harm results from halting unconstitutional conduct, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson Cnty.*, 274 F.3d 377, 400 (6th Cir. 2001) (citation omitted).

Here, the Petitioner is detained in clear violation of his Fifth Amendment right to due process. DHS released the Petitioner on his own recognizance in 2012 and has provided no justification for his recent redetention. They would not be able to provide one as during the 13 years that he has been released, he has attended all of his court hearings, filed for immigration relief, and has had no further contact with criminal law enforcement. This ongoing deprivation of liberty, without due process, is causing irreparable harm that cannot be remedied after the fact. It is firmly in the public interest to enjoin such unconstitutional conduct. Accordingly, a temporary restraining order is necessary to prevent the government from continuing to infringe upon Petitioner's constitutionally protected liberty interest while the Court considers the merits of his claim.

A. Petitioner is likely to succeed on the merits of his claim that his redetention violated Petitioner's due process rights under the Fifth Amendment.

The Fifth Amendment's Due Process Clause prohibits the government from depriving an individual of life, liberty, or property without due process of law. The Due Process Clause applies to all "persons" within the borders of the United States, "including [noncitizens], whether their presence is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). When the Government interferes with a liberty interest, "the procedures attendant upon that deprivation [must be] constitutionally sufficient." *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 460 (1989). The constitutional sufficiency of procedures is determined by weighing three factors: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of that interest through the available procedures; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). These three *Mathews* factors strongly weigh in favor of granting Petitioner's motion.

1. Petitioner has a significant liberty interest in being free from confinement.

The Petitioner has a compelling interest in remaining free from government confinement—an interest that "lies at the heart of the liberty" protected by the Fifth Amendment's Due Process Clause. *See Zadvydas*, 533 U.S. at 690; *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) ("The interest in being free from physical detention" is "the most elemental of liberty interests."). The impact of this deprivation is substantial insofar as continued confinement has separated Petitioner from his three U.S. citizen children. Additionally, it has prevented him from earning income to provide for his family, which is causing significant financial hardship. *See Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) ("The deprivation he experienced while incarcerated was, on any calculus, substantial. He was locked up in jail. He could not maintain employment or

see his family or friends . . . ."); *see also Gunaydin*, 2025 U.S. Dist. LEXIS 99237, at *20 ("He is experiencing all the deprivations of incarceration, including loss of contact with friends and family, loss of income earning . . . lack of privacy, and most fundamentally, the lack of freedom of movement."). Given the magnitude of this constitutional interest, any deprivation of liberty must strictly comply with the requirements of due process.

2. *Petitioner's redetention has created a substantial risk of erroneous deprivation.*

Second, the risk of erroneous deprivation of Petitioner's liberty interest is high. See *Lopez v. Sessions*, 2018 WL 2932726, at *11 (S.D.N.Y. June 12, 2018) (finding a risk of erroneous deprivation in the context of re-detention absent a change in circumstances, procedure, or evidentiary findings). There is no credible basis to conclude that Petitioner has become a flight risk such that detention is now warranted.

While the Petitioner does have a serious conviction on his record, Respondents nonetheless chose to release him shortly after that conviction was entered, more than 13 years ago. Since that time, the Petitioner has been checking in with Respondents as ordered and attending all court proceedings. He has had no further contact with criminal law enforcement.

Petitioner also has nowhere else to go——and is seeking lawful protection in this country in the form of a U-visa as the victim of domestic violence. Petitioner's behavior therefore shows that he is not a flight risk. See *Valdez v. Joyce*, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) ("[T]he record evidence shows that in the 14 months that Petitioner has been in the United States, he has voluntarily appeared at two immigration court proceedings in two different locations, timely filed an asylum application, obtained employment, and volunteered in his community.").

Re-detention under these circumstances—despite the absence of any change in material facts and despite Petitioner's demonstrated compliance—creates a substantial risk of erroneous

deprivation of a protected liberty interest. See *Mathews*, 424 U.S. at 335; *Lopez*, 2018 WL 2932726, at *11 (finding a risk of erroneous deprivation in the context of re-detention absent a change in circumstances, procedure, or evidentiary findings).

3. *DHS' interest in the Petitioner's continued detention is minimal.*

Third, the government lacks any legitimate purpose for Petitioner's continued detention. Respondents have discretion to detain a noncitizen only "where [detention] advances a legitimate governmental purpose." *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2nd Cir. 2020). While Respondents may have legitimate interests in "ensuring the appearance of aliens at future immigration proceedings" and "[p]reventing danger to the community," neither is applicable here. *Zadvydas,* 533 U.S. at 690; see also *Velasco Lopez*, 978 F.3d at 854.

As discussed above, Petitioner is not a flight risk and has consistently demonstrated his intent to comply with immigration obligations. Nor can Respondents legitimately claim that he poses a danger to the community, given that he has only been convicted of one nonviolent offense more than 13 years ago and has had no contact with criminal law enforcement since then.

Respondents also afforded Petitioner no process before re-detaining him. "[A]n Individual [like Petitioner] whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022); see also *Lopez*, 2018 WL 2932726, at *12 ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.") (citation omitted).

As other courts have made clear, "[o]nce immigration court proceedings are underway, decisions regarding continued release are to be made by the Immigration Judge with the

protections of judicial due process." *Valdez*, 2025 WL 1707737, at *4. Here, Respondents provided no process whatsoever: no prior notice, no opportunity to be heard, and no showing of changed circumstances. Their actions plainly violate Petitioner's due process rights. See *Lopez*, 2018 WL 2932726, at *15 (finding a due process violation when the petitioner was re-detained by immigration authorities with no "deliberative process prior to, or contemporaneous with," the detention).

B. Petitioner will suffer irreparable harm absent injunctive relief.

The right to be free from unconstitutional detention constitutes an irreparable injury. *See, e.g.*, *Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 U.S. Dist. LEXIS 90261, at *6 (N.D. Cal. May 12, 2025) (quoting *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.")). Courts have also found that family separation and prolonged detention qualify as irreparable injury. *See, e.g.*, *Angelica S. v. United States HHS*, No. 25-cv-1405 (DLF), 2025 U.S. Dist. LEXIS 109051, at *27 (D.D.C. June 9, 2025) (citing *Jacinto-Castanon de Nolasco*, 319 F. Supp. 3d at 502 (noting that family "[s]eparation irreparably harms plaintiffs every minute it persists"). In this case, Petitioner's unlawful detention has caused his U.S. citizen children to suffer emotional and financial hardship. Accordingly, this irreparable harm warrants immediate injunctive relief.

C. The balance of equities and the public interest favor granting the temporary restraining order.

As stated above, "it is always in the public interest to prevent violation of a party's constitutional rights." *Deja Vu of Nashville, Inc. v.*, 274 F.3d at 400; *see also Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017) ("The public interest benefits from an injunction that ensures that individuals are not deprived of their liberty and held in immigration detention. . .").

The government suffers no cognizable harm from being enjoined from unconstitutional conduct. *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."). Here, the Respondents reasonably concluded 13 years ago that Petitioner poses neither a danger to the community nor a flight risk. The record shows that Petitioner has demonstrated rehabilitation, has not reoffended in over 13 years, and has shown that he is not a flight risk by attending all immigration proceedings and filing for relief from removal in the form of a U-visa.

There is no evidence of changed circumstances or imminent risk to justify continued detention. Nor is there any public or governmental interest served by preventing Petitioner from returning to his family and livelihood while this case is adjudicated. The government cannot plausibly claim harm from a temporary order requiring it to comply with constitutional mandates.

Any administrative burden imposed on Respondents by temporarily halting unlawful detention is minimal and far outweighed by the substantial harm Petitioner continues to suffer each day his liberty is denied. *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."). As such, the balance of equities and the public interest weigh decisively in favor of issuing a temporary restraining order and preliminary injunction.

D. Petitioner has complied with the requirements of Federal Rule of Civil Procedure 65.

Petitioner asks this Court to find that he has complied with the requirements of Fed. R. Civ. P. 65, for the purpose of granting a temporary restraining order. Pursuant to Rule 65(b)(1), this Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if a) "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the Petitioner before the adverse

party can be heard in opposition; and 2) the Petitioner's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Here, Petitioner's verified petition clearly demonstrates immediate and irreparable injury. The undersigned's motion also contains a certification regarding notice to opposing counsel. The U.S. Attorney's Office represents Respondents in civil litigation in which they are named as respondents. While proper service may not have been made on Respondent's counsel, for the purpose of Rule 65(b)(1), this Court should find that written notice has, in fact, been provided to the adverse party. In the event this Court finds that not to be the case, it should nevertheless find that the requirements of Rule 65(b)(1)(A) and (B) have been met.

Rule 65(c) also states that the court may issue a preliminary injunction or temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Under the circumstances of the instant suit, however, Petitioner respectfully asks this Court to find that such a requirement is unnecessary, since an order requiring Respondents to release Petitioner from unconstitutional detention, should not result in any conceivable financial damages to Respondents. *See, e.g.*, *Enamorado v. Kaiser*, No. 25-cv-04072-NW, 2025 WL 1382859, *6 (N.D. Cal. May 12, 2025).

V. CONCLUSION

For the foregoing reasons, this Court should find that Petitioner warrants a temporary restraining order and a preliminary injunction prohibiting the Respondents from continuing to detain him pending the resolution of his Writ of Habeas Corpus and to order that he be released. *See Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release."). Alternatively, the Court should grant this motion, find that the Respondent is

eligible for a bond hearing under 8 U.S.C. § 1226(a) at which DHS bears the burden to demonstrate by clear and convincing evidence that the Petitioner's detention is justified, and order the Respondents hold the hearing without delay.

Respectfully submitted,

/s/ Kathrine Russell
Kathrine Russell
Texas Bar No. 24070538
Kat.Russell@dmcausa.com

/s/ Alejandra Martinez
Alejandra Martinez
Texas Bar No. 24096346
Alejandra.Martinez@dmcausa.com

/s/ Lance Curtright
Lance Curtright
Texas Bar No. 24032109
Lance@dmcausa.com

De Mott, Curtright, Armendariz, LLP
8023 Vantage Drive, Ste. 800
San Antonio, Texas 78230
(210)590-1844 (telephone)
(210)212-2116 (facsimile)

ATTORNEYS FOR PETITIONER

CERTIFICATE OF CONFERENCE

On November 26, 2025, the undersigned counsel emailed opposing counsel about this motion but has been unable to obtain a position on this motion at this time.

/s/ Kathrine Russell 11/26/2025

Kathrine Russell Date

CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 65(B)

The undersigned certifies that on November 26, 2025, she emailed Assistant United States Attorney Fidel Esparza notice of Petitioner's intention to file the motion for TRO. The undersigned further certifies that on November 26, 2025, a copy of the verified writ of habeas corpus, and this motion, along with all exhibits, is being served to the Respondents by certified mail return receipt requested and by electronic mail to fidel.esparza@usdoj.gov and usatxw.civil.immigration.notices@usdoj.gov.

/s/ Kathrine Russell
Kathrine Russell