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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

JOSE PEDRO ORTEGA

Petitioner,
vs.

Case No.

Kristi NOEM, Secretary, U.S. Department of Homeland Security;
Pamela BONDI, U.S. Attorney General; Todd LYONS, Acting Director, Immigration and Customs Enforcement; Sergio ALBARRAN, Acting Director, San Francisco Field Office, Immigration and Customs Enforcement, Enforcement and Removal Operations; Tonya ANDREWS, Warden, Mesa Verde ICE Processing Center; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; IMMIGRATION AND CUSTOMS ENFORCEMENT; and U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents

**PETITIONER'S MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

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**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER**

HEARING REQUESTED

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I. INTRODUCTION

On November 25, 2025, JOSE PEDRO ORTEGA (Petitioner), filed a petition for a writ of habeas corpus challenging the unlawful revocation of his Order of Release on Recognizance (OREC). This Motion for Temporary Restraining Order is filed concurrently. The request in this order is to restore Petitioner to the status quo prior to his detention, which is release from custody on an order of supervision and without GPS monitoring.

II. NOTICE TO RESPONDENTS

Undersigned counsel Emily L. Robinson emailed counsel for Respondents, Edward Olsen, on November 24, 2025, at 1:23 pm, informing him of the intended filing of this motion. At the time of filing, counsel for Respondents had not yet responded to this email.

III. FACTUAL BACKGROUND

Petitioner was paroled into the United States on approximately November 10, 2018 with his family unit which includes his wife Sandra Garcia Carranza, (A [REDACTED]); and three minor children J [REDACTED] (A [REDACTED] age 15); D [REDACTED] (A [REDACTED] [REDACTED], age 12); and P [REDACTED] (A [REDACTED] age 10). After entry, they were released from the custody of Customs and Border Patrol on an OREC as a family unit and their removal proceedings have also been as a family unit. They had to flee from Mexico after he and his father

[REDACTED]

[REDACTED] When the family entered Petitioner was given a GPS monitoring bracelet. This was removed after about approximately two years due to his exemplary compliance.

1 Petitioner is lead Respondent in his family's case, and his case being separated by his
2 detention causes myriad vulnerabilities for the family. At the time of release ICE determined that
3 Petitioner and his family were not flight risks or danger to the community before releasing them.
4 Petitioner at all times complied with the terms of his OREC. Petitioner filed for asylum in the
5 United States timely in 2019. Prior to being detained, Petitioner was in removal proceedings,
6 actively pursuing his asylum application alongside his family. On September 30, 2025, Petitioner
7 was asked to come to an unscheduled check-in. He was told that there were "changes" to the
8 check-in phone application. Upon information and belief, he rushed to comply, just to be then
9 detained by Immigration and Customs Enforcement (ICE) at what has become a pattern and
10 practice by ICE of detaining individuals in compliance with the terms of their release.

11 Prior to his detention, Petitioner was given no notice of ICE's intention to re-detain him,
12 and he was not provided with any information about why his OREC was revoked. ICE has no
13 particularized evidence that Petitioner is a danger to the community or a flight risk. Petitioner
14 has not received an individualized hearing before a neutral decisionmaker to assess whether his
15 recent re-detention is warranted due to danger or flight risk.

16 **IV. ARGUMENT**

17 A temporary restraining order is governed by a four-factor test. Courts must consider
18 whether Petitioner has shown: (1) a likelihood of success on the merits, (2) that he is likely to
19 suffer irreparable harm in the absence of such relief, (3) that the balance of equities tips in his
20 favor, and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555
21 U.S. 7, 20 (2008); *see also Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014).
If Petitioner can demonstrate serious questions going to the merits of his claim – a lesser showing

1 than a likelihood of success on the merits – and the balance of hardship tips sharply in his favor,
2 an injunction may be issued, assuming the other two Winter factors have been met. *Friends of*
3 *the Wild Swan*, 767 F.3d at 942.

4 A temporary restraining order preserves the *status quo ante litem*, which refers to the “last
5 uncontested status which preceded the pending controversy.” *Flathead-Lolo-Bitterroot Citizen*
6 *Task Force v. Montana*, 98 F.4th 1180, 1191 (9th Cir. 2024); *Shilling v. United States*, 2025 WL
7 926866, *11 (W.D. Wash. Mar. 27, 2025) (unpub) (granting preliminary injunction).

8 Here, Petitioner meets both the irreparable harm and likelihood of success prongs, and the
9 requested relief is not overly burdensome on Respondents. Accordingly, Petitioner merits
10 issuance of a TRO.

11 **A. Petitioner Has Shown He is Likely to Succeed on the Merits of her Claim.**

12 Petitioner’s ongoing detention violates his Fifth Amendment substantive due process right
13 because he is neither a flight risk nor a danger to the community. In addition, his ongoing
14 detention violates his procedural due process rights because his OREC was revoked without any
15 notice or any opportunity to contest his detention before a neutral arbiter.

16 The Constitution establishes due process rights for “all ‘persons’ within the United States,
17 including [noncitizens], whether their presence here is lawful, unlawful, temporary, or
18 permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Zadvydas v.*
19 *Davis*, 533 U.S. 678, 693 (2001)). These due process rights are both substantive and procedural.
20 These protections extend to noncitizens facing detention, as “[i]n our society liberty is the
21 norm, and detention prior to trial or without trial is the carefully limited exception.” *United*
States v. Salerno, 481 U.S. 739, 755 (1987). Accordingly, “[f]reedom from

1 imprisonment—from government custody, detention, or other forms of physical restraint—lies at
2 the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

3 Substantive due process thus requires that all forms of civil detention—including
4 immigration detention—bear a “reasonable relation” to a non-punitive purpose. *See Jackson v.*
5 *Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has recognized only two permissible
6 non-punitive purposes for immigration detention: ensuring a noncitizen’s appearance at
7 immigration proceedings and preventing danger to the community. *Zadvydas*, 533 U.S. at 690–
8 92; *see also Demore v. Kim*, 538 U.S. 510, 519–520, 527–528, 531 (2003). Even the Department
9 of Homeland Security’s discretionary parole authority under 8 U.S.C. § 1182(d)(5) is not
10 “unbounded,” but must be “reasonable and reasonably explained.” *De Andrade v. Moniz*, ---
11 F.Supp.3d ----, 2025 WL 2841844, * 3 (D. Mass. Oct. 7, 2025) (quoting *Biden v. Texas*, 597 U.S.
12 785, 806-807 (2022)).

12 Here, Petitioner is not a flight risk or a danger to the community. Prior to his detention, he
13 complied with all terms of her OREC, including attending non-detained removal hearings alongside
14 his wife and three minor children. He has been in compliance since his release in 2018. He
15 diligently filed for asylum in the United States, and that application remains pending. *See e.g.*,
16 *Noori v. Larose*, 2025 WL 2800149, *13 (S.D. Ca. Oct. 1, 2025) (unpub) (noting that a paroled
17 non-citizen should not be returned to custody unless the purposes of the parole have been served);
18 *Orellana v. Francis*, 2025 WL 2402780, *5 (E.D.N.Y. Aug, 19, 2025) (unpub) (noting that the
19 purpose of parole was not satisfied when an asylum seeker had not completed the asylum process
20 and granting the petitioner release because his re-detention violated the Administrative Procedure
21 Act). Simply put, he has never absconded from immigration authorities, but rather, has been
engaging with the legal procedures laid out in the immigration law for those who wish to request

1 immigration status in the United States. In addition, he has no criminal history anywhere in the
2 world, and there is no evidence that he otherwise presents a danger to the community. Simply put,
3 Petitioner’s re-detention can serve no purpose that is non-punitive. It is instead part of a larger
4 pattern and practice targeting immigrants irrespective of them properly availing themselves to our
5 legal process.

6 In addition, the procedural component of the Due Process Clause prohibits the
7 government from imposing even permissible physical restraints without adequate procedural
8 safeguards. Generally, “the Constitution requires some kind of a hearing *before* the State
9 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127 (1990). Non-
10 citizens who are released from immigration custody, as Petitioner was in 2018, have a recognized
11 liberty interest in continuing to be free from government detention. *See Ortega v. Bonnar*, 415 F.
12 Supp.3d 963, 970 (N.D. Ca. 2019). Once a non-citizen has a protected liberty interest, the
13 *Mathews* test applies to determine what procedural protections are due before immigration
14 officials can re-detain the non-citizen. Under that test, this Court must weigh: (1) the private
15 interested affected; (2) the risk of erroneous deprivation and probable value of procedural
16 safeguards; and (3) the government’s interest. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

17 In this case, the private interest at stake is clearly weighty – Petitioner’s liberty has been
18 severely curtailed since apprehension and he has remained in ICE custody without the ability to
19 seek release on bond from an immigration judge. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B); *Fernandez*
20 *Lopez v. Wofford*, 2025 WL 2959319, *4 (E.D. Ca. Oct. 17, 2025) (unpub) (finding a non-citizen
21 granted parole at the border has a liberty interest in her conditional release and that such a parolee
has a implicit right entitlement to remain at liberty if she complies with the conditions of her
parole); *Abduraimov v. Andrews*, 2025 WL 2912307, *6 (E.D. Ca. Oct. 14, 2025) (unpub)

1 (finding that immigration parole has a “legitimate and reasonably strong private liberty interest”);
2 *Noori*, 2025 WL 2800149 at *10 (parolee developed a private interest in remaining free in the
3 one year he has resided in the United States since entry); *Munoz Materano v. Arteta*, 2025 WL
4 2630826, *13 (S.D.N.Y. Sept. 12, 2025) (unpub); *Ramirez Tesara v. Wamsley*, --- F.Supp.3d ----,
5 2025 WL 2637663, *3 (W.D. Wash. Sept. 12, 2025) (finding that parolee’s liberty interest did not
6 expire with his parole agreement); *see also Y-Z-L-H- v. Bostock*, --- F.Supp.3d ----, 2025 WL
7 1898025, *14 (D. Ore. July 9, 2025) (finding detention of a parolee who had not completed his
8 asylum process to be arbitrary and capricious and ordering immediate release).

9 In addition, the risk of erroneous deprivation is high. When Respondents released
10 Petitioner with his family after his entry into the country in 2018, they did so because they
11 determined he was not a flight risk or a danger to the community. *See e.g., Fernandez Lopez*,
12 2025 WL 2959319 at *4 (quoting 8 U.S.C. § 1182(d)(5)(A)). Prior to his re-detention in
13 September of 2025, Petitioner had no notice of Respondents’ intention to re-detain him and no
14 opportunity to contest that action. In the three months that he has been in ICE custody, he has not
15 received a bond or custody redetermination hearing, and the regulations strip an immigration
16 judge of any authority to release her on bond, cutting off any avenue for review of her custody
17 status in the existing immigration court framework. Because the private interest in freedom from
18 immigration detention is substantial, due process requires the government to bear the burden of
19 proving by clear and convincing evidence that Petitioner is a flight risk or danger to the
20 community before re-detaining her. *See e.g., Fernandez Lopez*, 2025 WL 2959319 at *8;
21 *J.S.H.M. v. Wofford*, 2025 WL 2938808, *16 (E.D. Ca. Oct. 16, 2025) (unpub); *Abduraimov*,
2025 WL 2912307 at *9; *Mata Velasquez v. Kurzdorfer*, --- F.Supp.3d ----, 2025 WL 1953796,

1 *17 (W.D.N.Y. July 16, 2025) (detention of parolee without a reasoned explanation or changed
2 circumstances and without a meaningful opportunity to be heard violates due process).

3 Finally, the government's interest in re-detaining Petitioner without first providing notice
4 and a custody hearing is minimal. *See e.g., Fernandez Lopez*, 2025 WL 2959319 at *6; *J.S.H.M.*,
5 2025 WL 2938808 at *18; *Noori*, 2025 WL 2800149 at *11 ("Respondents did not provide
6 Petitioner individualized notice and reasoning prior to his arrest and detention on June 12, 2025
7 and have presented no legitimate reason for why those decisions were made. Any governmental
8 interest of efficient administration of immigration laws . . . does not outweigh these first two
9 factors."). Bond hearings are a routine part of immigration court proceedings, imposing a
10 minimal cost to the government. *See Doe v. Becerra*, --- F.Supp.3d ---, 2025 WL 691664, *6
11 (E.D. Ca. March 3, 2025). Petitioner is represented by counsel and has a demonstrated record of
12 attendance at her immigration proceedings. There is no reason to think that her compliance will
13 change if she is released pending a pre-deprivation custody hearing.

14 Thus, all three *Mathews* favor Petitioner, and she has established a likelihood of success
15 on his due process claims.

16 **B. Petitioner will Suffer Irreparable Harm Absent Issuance of a Temporary Restraining
17 Order.**

18 In the absence of a TRO, Petitioner is at risk of continued unlawful detention.
19 Deprivation of Petitioner's due process rights constitutes irreparable injury. *See Sun v.*
20 *Santacruz*, 2025 WL 2730235, *7 (C.D. Ca. Aug. 26, 2025) (unpub) (citing *Hernandez*, 872 F.3d
21 at 994). In addition, Petitioner's detention is preventing him from caring for his wife and 3 minor
children, and being part of the lives. They have extreme trauma due to family separation. He is

1 the primary financial provider for his family and they are struggling with bills and housing
2 stability.

3 **C. The Balance of Equities Tip in Petitioner’s Favor and the Public Interest Favors**
4 **Issuance of a Temporary Restraining Order.**

5 The balance of equities and public interest merge in cases against the government. *See*
6 *Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, the balance favors Petitioner.

7 The likelihood of Petitioner’s success on the merits, combined with the established
8 constitutional framework that requires the government to proceed lawfully when detaining non-
9 citizens, strongly tips the balance of equities in Petitioner’s favor. “There is generally no public
10 interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial
11 public interest in having governmental agencies abide by the federal laws that govern their
12 existence and operations.” *See League of Women Voters of United States v. Newby*, 838 F.3d 1,
12 (D.C. Cir. 2016) (internal quotation marks and citations omitted).

13 Petitioner’s constitutional right to be free of unlawful detention weighs heavily in the
14 public interest. As the revocation of Petitioner’s OREC without notice or the opportunity to
15 contest the revocation, coupled with his continued detention without any hearing before a neutral
16 arbiter, violate his due process rights, there can be no public interest in prolonging that
16 circumstance. *See e.g., Washington v. DeVos*, 481 F.Supp.3d 1184, 1197 (W.D. Wash. 2020).

17 Respondents cannot show here how the government’s interests overcome the irreparable
18 injury to Petitioner. As noted above, the hardship for Petitioner is concrete and severe, while the
19 imposition on the government is minimal. At worst, if Respondents truly believe Petitioner is a
20 flight risk or a danger to the community, they will be required to provide him with a bond
21 hearing, during which they will need to prove one of those factors exist before they can re-detain

1 him and separate him from his family unit who remain non-detained and in the same procedural
2 posture as Petitioner. The continued deprivation of Petitioner's liberty, when weighed against the
3 minimal imposition of release and a pre-deprivation bond hearing, tip sharply in favor of the
4 issuance of a TRO.

5 **V. THE COURT SHOULD NOT REQUIRE PETITIONER TO PROVIDE**
6 **SECURITY**

7 The Court should not require a bond under Fed. R. Civ. P. Rule 65(c). This rule permits a
8 court to grant preliminary injunctive relief "only if the movant gives security in an amount that
9 the court considers proper to pay the costs and damages sustained by any party found to have
10 been wrongfully enjoined or restrained." FRCP 65(c). But it is well established that Rule 65(c)
11 does not impose a mandatory requirement for a bond, but rather "invests the district court 'with
12 discretion as to the amount of security required, if any.'" *Jorgensen v. Cassidy*, 320 F.3d 906,
13 919 (9th Cir. 2003) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). In
14 particular, "[t]he district court may dispense with the filing of a bond when it concludes there is
15 no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Johnson v.*
16 *Courturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Here, there is no realistic likelihood of harm to
17 Respondents if the Court grants the requested TRO, and it would pose a significant hardship on
18 Petitioner who is incarcerated to have a bond imposed. The Court should exercise its discretion
19 and waive the requirement to post a bond under Rule 65(c).

20 **VI. CONCLUSION**

21 For the foregoing reasons, Petitioner respectfully submits that he has met the criteria for a
temporary restraining order. He asks the Court to order his immediate release pursuant to the
status quo (which is no GPS monitoring) and to enjoin Respondents from re-detaining him: (1)

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absent further order of this Court; or (2) absent the provision of a pre-deprivation hearing before a neutral arbiter, at which Respondents will bear the burden of proving by clear and convincing evidence that he is a flight risk or a danger to the community.

RESPECTFULLY SUBMITTED this 25th day of November, 2025

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