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12
13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA
15

16 Edgar De Jesus Rivera Sanchez,
17 Petitioner,

18 v.

19 Kristi Noem, Secretary of The Department
of Homeland Security, Pam Bondi,
20 Attorney General, Todd Lyons, Acting
Director, Immigration and Customs
21 Enforcement, Luis Rosa, Jr., Warden,
22 Florence Servicing Processing Center,
23 Respondents.

Case No. 2:25-cv-04424-SHD-MTM

**MOTION AND MEMORANDUM IN
SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

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1 **TO ALL PARTIES AND ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Petitioner, Edgar de Jesus Rivera Sanchez
3 (“Petitioner”) hereby applies pursuant to Federal Rule of Civil Procedure 65 for a Temporary
4 Restraining Order and Order to Show Cause regarding Preliminary Injunction. As detailed
5 below and in the accompanying Memorandum of Points and Authorities, the present motion is
6 necessary to prevent further irreparable harm before a hearing on a preliminary injunction may
7 be held.

8 Petitioner has resided in the United States since 2024. In November 2024, Petitioner
9 crossed into the United States from Mexico with his wife, Myriam Roa Restrepo (“Ms.
10 Restrepo”) to join his two (2) adult children living in the United States and was apprehended
11 by border patrol. Petitioner was then released on his own recognizance pursuant to an Order of
12 Release on Recognizance (“OROR”) and upon the determination that he posed neither a danger
13 to the community nor a flight risk. On June 24, 2025, Petitioner appeared in-person for his first
14 hearing in Immigration Court in Van Nuys, California. After Mr. Rivera Sanchez’s case was
15 called, the Department of Homeland Security (“Department”) moved to dismiss the
16 proceedings. Outside of court, Petitioner was then arrested without a pre-deprivation hearing.
17 Because Petitioner was not afforded a pre-deprivation hearing, and has not subsequently had a
18 custody redetermination hearing, his Fifth Amendment due process rights are being violated.
19 At the time of this filing, Petitioner has been in ICE custody for more than five (5) months.

20 Petitioner requests that the Court issue a temporary restraining order and order to show
21 cause regarding the preliminary injunction in the form of the proposed order submitted
22 concurrently herewith. This Application is based on the Petition for Writ of Habeas Corpus, the
23 Memorandum of Points and Authorities in support of the Application for a TRO submitted
24 herewith, and the declaration of Lee Sheldon and the exhibits thereto.

25
26 Dated: December 19, 2025

LITTLER MENDELSON, P.C.

27 /s/ Lee E. Sheldon
28 Lee E. Sheldon
Attorneys for Petitioner
Edgar De Jesus Rivera Sanchez

1 **I. INTRODUCTION**

2 Petitioner brings the present Application for a Temporary Restraining Order (“TRO”)
3 and asks the Court to grant his TRO and Order to Show Cause regarding Preliminary Injunction
4 and to order his release under the same conditions he was subject to immediately prior to his
5 detention on June 24, 2025.

6 Petitioner meets all of the requirements that would merit the grant of the present
7 application for a TRO. First, as described below, Petitioner is likely to succeed on the merits
8 of his Fifth Amendment claim. In November 2024, Petitioner crossed into the United States
9 and was apprehended at the border. Petitioner was released on his own recognizance and upon
10 the determination that he posed neither a danger to the community nor a flight risk. On June
11 24, 2025, Petitioner reported to Immigration Court in Van Nuys, California. He was then re-
12 arrested without any pre-deprivation hearing. Because Petitioner was not afforded a pre-
13 deprivation hearing, his Fifth Amendment due process rights are being violated. Petitioner is
14 likely to prevail on his claim that his arrest on June 24, 2025 was unlawful because procedural
15 due process requires that he be provided with the opportunity to contest his re-detention before
16 a neutral decision-maker.

17 Next, the other TRO factors also weigh in favor of Petitioner. There is ample case law
18 supporting Petitioner’s position that continued detention without a pre-deprivation hearing
19 would and is causing immediate and irreparable injury. Lastly, the balance of hardships and
20 public interest factors weigh in favor of the TRO because the government’s position is
21 inconsistent with federal law.

22 Petitioner respectfully requests that the Court grant his Application for a Temporary
23 Restraining Order ordering his release under the same conditions he was subject to immediately
24 prior to his detention on June 24, 2025, and enjoining Respondents from re-detaining him
25 unless he is provided with a pre-deprivation hearing before an immigration judge.

26 **II. STATEMENT OF FACTS**

27 Petitioner is a 57-year-old native and citizen of Colombia. In 2017, Petitioner was in
28 a near fatal car accident. Petitioner suffered a traumatic brain injury, broken ribs, was in a

1 coma for approximately 20 days, and thereafter stayed in a palliative care facility for six (6)
2 months. Following his discharge, Petitioner was left with permanent disabilities and mental
3 health conditions including aphasia and ataxia that render it difficult for him to walk and
4 communicate. In 2019, Petitioner was registered as a disabled person in the country of
5 Colombia. In 2020, he was diagnosed with schizophrenia and bipolar disorder and was
6 prescribed antipsychotics and antidepressants, including [REDACTED], to
7 manage his ongoing illnesses.

8 In November 2024, Petitioner crossed into the United States from Mexico with his
9 wife, Ms. Restrepo, to join their two (2) adult children living in the United States and was
10 apprehended by border patrol. Petitioner was then released on his own recognizance
11 pursuant to an OROR and upon the determination that he posed neither a danger to the
12 community nor a flight risk. Petitioner was ordered to appear before an immigration judge
13 in Van Nuys, California approximately seven (7) months later.

14 On June 24, 2025, Petitioner appeared in-person, with his wife and without
15 representation, for his first hearing before the Van Nuys Immigration Court. After
16 Petitioner's case was called, the Department of Homeland Security ("Department") moved
17 to dismiss the proceedings without prejudice pursuant to 8 C.F.R. §§ 239.2(a)(7), 1239(c),
18 having determined that circumstances after issuance of the Notice to Appear had allegedly
19 changed to such an extent that continuation was no longer in the best interest of the
20 government.

21 Outside of court, and following his in-person appearance, Petitioner was arrested
22 without a pre-deprivation hearing. Because Petitioner was not afforded a pre-deprivation
23 hearing, and has not subsequently had a custody redetermination hearing, his Fifth
24 Amendment due process rights are being violated. Petitioner has now been held in detention
25 in excess of five (5) months. Petitioner has not been receiving adequate medical care or
26 medication, and his health is rapidly deteriorating.

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1 **III. LEGAL ARGUMENT**

2 **A. Legal Standard**

3 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
4 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
5 that the balance of equities tips in his favor, and that an injunction is in the public interest.”
6 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citing *Munaf v. Geren*, 553 U.S.
7 674, 689–90 (2008); *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 542 (1987);
8 *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311–12 (1982)). “Likelihood of success on the
9 merits is a threshold inquiry and is the most important factor.” *Simon v. City & Cnty. of San*
10 *Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (quoting *Env’t Prot. Info. Ctr. v. Carlson*, 968
11 F.3d 985, 989 (9th Cir. 2020)). “[I]f a plaintiff can only show that there are serious questions
12 going to the merits—a lesser showing than likelihood of success on the merits—then a
13 preliminary injunction may still issue if the balance of hardships tips sharply in the plaintiff’s
14 favor, and the other two Winter factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767
15 F.3d 936, 942 (9th Cir. 2014) (internal quotation marks and citations omitted).

16 Here, as discussed further below, Petitioner is likely to succeed on the merits, is
17 currently suffering irreparable harm, and the balance of equities and public interest weigh
18 strongly in Petitioner’s favor.

19 **B. Petitioner is Likely to Succeed on the Merits of his Fifth Amendment Claim**

20 Petitioner is likely to succeed on his claim that his Fifth Amendment due process
21 rights are being violated because he should have been afforded a pre-deprivation hearing
22 prior to being re-detained in June 2025 following his in-person appearance in immigration
23 court. As discussed above, Petitioner was released in 2024 upon the determination that he
24 posed neither a danger to the community nor a flight risk. (Sheldon Decl. at ¶ 3; see also,
25 **Exhibits “A” and “B”** to Sheldon Decl.). Case law is clear that the Due Process Clause
26 entitles Petitioner to a hearing before an immigration judge prior to any arrest or detention.
27 *Pinchi v. Noem*, ---F. Supp. 3d ----, No. 25-cv-05632-PCP, 2025 WL 2084921, at *2-6 (N.D.
28 Cal., July 24, 2025) (applying three-part test established by *Matthews v. Eldridge*, 424 U.S.

1 319 (1976) to similar circumstances); *see also*, *Pablo Sequen v. Kaiser*, --- F. Supp. 3d ----,
2 No. 25-cv-06487-PCP, 2025 WL 2203419, at *2 (N.D. Cal. Aug. 1, 2025) (collecting cases).

3 Further, Petitioner possesses a protected liberty interest under the Fifth Amendment.
4 The due process clause of the Fifth Amendment applies to all “persons” within the United
5 States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.
6 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). *see also Perez-Mendez v. Lyons*, Case No.
7 2:25-cv-07727-VBF-RAO, 2025 U.S. Dist. LEXIS 207266 (C.D. Cal. Sept. 11, 2025)
8 (finding that “Petitioner is likely to prevail on his claims because he has shown that his
9 freedom from redetention is a protected liberty interest under the Due Process Clause of the
10 Fifth Amendment.”). Thus, Petitioner’s continued detainment violates his due process rights.

11 Petitioner also has not had a custody redetermination hearing. (Sheldon Decl. at ¶ 5).
12 The United States Supreme Court has made it clear that Title 8 U.S.C. § 1226(a) sets out the
13 “default rule” for detention of noncitizens already present in the country. *Lepe v. Andrews*, —
14 F. Supp. 3d —, No. 1:25-cv-01163-KES-SKO (HC), 2025 WL 2716910, at *3 (E.D. Cal.
15 Sept. 23, 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018)). Section 1226(a)
16 provides that “an alien may be arrested and detained pending a decision on whether the alien
17 is to be removed from the United States. . . . [T]he Attorney General (1) may continue to
18 detain the arrested alien; and (2) may release the alien on [bond or conditional parole].” 8
19 U.S.C. § 1226(a). The § 1226(a) framework is discretionary and requires that “[a]n
20 immigration officer make[] the initial determination to either detain or release the
21 noncitizen,” but once, as here, the petitioner is released pursuant to an OROR, 8 U.S.C. §
22 1226(a) governs his detention, not 8 U.S.C. § 1225(b)(2), and his ongoing detention by
23 Respondents under 8 U.S.C. § 1225(b)(2) is unlawful. *Lepe*, 2025 WL 2716910, at *3.

24 The same issues presented in the present Application for TRO have been addressed in
25 Federal Courts in the Eastern and Central District Courts of California, the Western District
26 of Washington and across the nation. *Perez v. Albarran*, No. 1:25-cv-01540-DAD-CSK
27 (HC), 2025 U.S. Dist. LEXIS 224966, at *9 (E.D. Cal. Nov. 14, 2025) (granting petitioner’s
28 application for a preliminary injunction and concluding that Respondents are enjoined and

1 restrained from re-detaining petitioner for any purpose, absent exigent circumstances, without
2 providing petitioner notice and a pre-detention hearing before an immigration judge where
3 respondents will have the burden to demonstrate a change in circumstances by clear and
4 convincing evidence.); *Polo v. Chestnut*, No. 1:25-CV-01342 JLT HBK, 2025 WL 2959346,
5 at *39-40 (E.D. Cal. Oct. 17, 2025) (granting a preliminary injunction in favor of petitioner
6 and permanently enjoining respondents from rearresting petitioner without constitutional
7 protections, which “include at a minimum, predeprivation notice of at least seven days before
8 a deprivation hearing at which the government will bear the burden of demonstrating by clear
9 and convincing evidence that [Petitioner] is likely to flee or pose a danger to the community
10 if not arrested and at which Petitioner may be represented by her counsel.” Respondents were
11 also ordered to not impose further additional restrictions on petitioner, like electronic
12 monitoring, unless that is determined to be necessary at a later custody hearing.); *Perez-*
13 *Mendez*, 2025 U.S. Dist. LEXIS 207266, at *2. (granting petitioner’s application for
14 preliminary injunction and finding “Respondents may not re-detain Petitioner without a bond
15 hearing on the merits where the government must prove by clear and convincing evidence
16 that Petitioner is a danger to the community and a flight risk such that physical custody is
17 required.”); *see also Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at
18 *16 (W.D. Wash. Apr. 24, 2025) (granting petitioner’s preliminary injunction, and finding
19 that petitioner is likely to succeed on the merits, that his detention should be governed under
20 Section 1226(a), ordering a bond hearing, and enjoining respondents from denying bond on
21 the basis that he is detained pursuant to 8 U.S.C. § 1225(b)(2).); *see also Bautista v.*
22 *Santaacruz*, No. 5:25-cv-01873-SSSBFM, 2025 U.S. Dist. LEXIS 171364, *24 (C.D. Ca. Jul.
23 28, 2025) (ordering that “Respondents are enjoined from continuing to detain Petitioners
24 unless they are provided an individualized bond hearing before an immigration judge
25 pursuant to 8 U.S.C. § 1226(a) within 7 days of the date of this Order”).

26 The same result is warranted here.

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1. Petitioner Has a Strong Private Interest

“Due process ‘is a flexible concept that varies with the particular situation.’” *Zinermon v. Burch*, 494 U.S. 113, 127 (1990)). The Supreme Court has identified three factors that the court must consider in determining what process is constitutionally required: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

As to the first factor, as noted above, Petitioner was released on his own recognizance in 2024 prior to being re-detained in 2025. (Sheldon Decl. at ¶¶ 4-7). The length of time of the release strengthens Petitioner’s interest in his continued release. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025) (“Moreover, the actions of the Government in allowing Petitioner to remain in the community for over five years strengthen Petitioner’s liberty interest. Governmental actions may create a liberty interest entitled to the protections of the Due Process Clause.”); *see also Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *7 (N.D. Cal. Sept. 12, 2025) (noting the release on own recognizance order “implied a promise that she would not be re-detained so long as she abided by the terms of her release.”)

The first factor therefore weighs in favor of granting Petitioner the requested relief.

2. Risk of Erroneous Deprivation is High

As to the second factor, the risk of erroneous deprivation is high without a bond or custody redetermination hearing. Several courts have already found that such a risk is high in similar cases. *See, e.g., Salcedo Aceros*, 2025 WL 2637503, at *12 (finding that the petitioner’s risk of erroneous deprivation was high because a bond hearing would likely reveal that the petitioner still presented no public safety or flight risk); *see also Calderon*, 2025 WL 2430609, at *3 (“Where an individual has not received a bond or redetermination

1 hearing, the risk of an erroneous deprivation of liberty is high.”); *Pinchi v. Noem*, No. 25-cv-
2 05632-RMI-RFL, 2025 WL 1853763, at *2 (N.D. Cal. July 4, 2025) (finding a risk of
3 erroneous deprivation without a bond hearing pre-detention where the petitioner was re-
4 detained after having been released on her own recognizance at the border by immigration
5 officials).

6 Accordingly, this factor also weighs in favor of granting Petitioner the relief he seeks.

7 **3. The Government’s Interest is Minimal**

8 “In immigration court, custody hearings are routine and impose a minimal cost.”
9 *Salcedo Aceros*, 2025 WL 2637503, at *12 (internal quotation marks omitted) (*quoting Singh*,
10 2025 WL 1918679, at *7). Respondents’ interest in detaining Petitioner should not outweigh
11 the cost of providing the additional process to which Petitioner is due.

12 Accordingly, the final factor weighs in favor of granting Petitioner the relief he seeks.

13 **C. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO**

14 In the absence of a TRO, Petitioner will continue to be unlawfully detained. Petitioner
15 has already been detained for more than five (5) consecutive months and has medical
16 conditions that require careful monitoring and regular medication. “It is well established that
17 the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”
18 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S.
19 347, 373 (1976)). “[U]nlawful detention certainly constitutes ‘extreme or very serious’”
20 injury which “is not compensable in damages.” *Hernandez v. Sessions*, 872 F.3d 976, 999
21 (9th Cir. 2017). Moreover, the Ninth Circuit has recognized the “irreparable harms imposed
22 on anyone subject to immigration detention,” including “subpar medical and psychiatric care
23 in ICE detention facilities, the economic burdens imposed on detainees and their families as a
24 result of detention, and the collateral harms to children of detainees whose parents are
25 detained.” *Id.* at 995; *see also Warsoldier v. Woodford*, 418 3d 989, 1001-02 (9th Cir. 2005);
26 *Bautista*, No. 2025 U.S. Dist. LEXIS 171364, *24 (“[T]he Court finds that the potential for
27 Petitioners’ continued detention without an initial bond hearing would cause immediate and
28 irreparable injury, as this violates statutory rights afforded under § 1226(a)”).

1 “When an alleged deprivation of a constitutional right is involved, most courts hold
2 that no further showing of irreparable injury is necessary.” *Warsoldier*, 418 F.3d at 1001–02
3 (*quoting* Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)). As
4 the Supreme Court has recognized, incarceration “has a detrimental impact on the individual”
5 because “it often means loss of a job” and “disrupts family life.” *Barker v. Wingo*, 407 U.S.
6 514, 532–33 (1972).

7 “Freedom from imprisonment—from government custody, detention, or other forms of
8 physical restraint—lies at the heart of the liberty” that the Due Process Clause protects.
9 *Zadvydas*, 533 U.S. at 690. Detention constitutes “a loss of liberty that is . . . irreparable.”
10 *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II),
11 *aff’d in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*,
12 52 F.4th 821 (9th Cir. 2022).

13 Thus, due to Petitioner’s continued detention, he faces irreparable harm absent a
14 temporary restraining order.

15 **D. The Balance of Equities and Public Interest Weighs in Petitioner’s Favor**

16 When the government is the nonmoving party, “the last two Winter factors merge.”
17 *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023). Petitioner has established that the public
18 interest factor weighs in his favor because classifying Petitioner under § 1225(b)(2) deprives
19 him of due process and is in violation of federal laws. *Index Newspapers LLC v. U.S.*
20 *Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (“It is always in the public interest to
21 prevent the violation of a party’s constitutional rights.”) (citing *Padilla*, 953 F.3d at 1147–
22 48).

23 Because detaining Petitioner in violation of his Fifth Amendment due process rights
24 “is inconsistent with federal law, . . . the balance of hardships and public interest factors
25 weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d
26 1208, 1218 (W.D. Wash. 2019) (Moreno I); *see also Moreno Galvez*, 52 F.4th at 832
27 (affirming in part permanent injunction issued in Moreno II and quoting approvingly district
28 judge’s declaration that “it is clear that neither equity nor the public’s interest are furthered by

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1 allowing violations of federal law to continue”). This is because “it would not be equitable or
2 in the public’s interest to allow the [government] . . . to violate the requirements of federal
3 law, especially when there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*,
4 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted).

5 Thus, the balance of equities and public interest weigh in Petitioner’s favor.

6 **IV. CONCLUSION**

7 For the foregoing reasons, Petitioner respectfully asks the Court to grant the
8 Application for a Temporary Restraining Order and order Petitioner’s release pursuant to the
9 conditions set forth in the attached proposed order.

10
11 Dated: December 19, 2025

LITTLER MENDELSON, P.C.

12
13 /s/ Lee. E Sheldon

14 Lee Sheldon
15 Attorneys for Petitioner
16 Edgar De Jesus Rivera Sanchez

17 I hereby certify that I electronically
18 transmitted the attached document to the
19 Clerk’s Office using the CM/ECF System
20 for filing and transmittal of a Notice of
21 Electronic Filing to the following
22 CM/ECF registrants, and mailed and/or
23 emailed a copy of same to the following if
24 non-registrants, 12/19/2025:

25
26 s/ Diana Al-Awadhi
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28