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9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **'25CV3408 JLS VET**

13 **FERNANDO NAVA SANDOVAL,**

14 **CIVIL CASE NO.: 25-CV-**

15 **Petitioner,**

16 **v.**

17 **Notice of Motion**
18 **and**
19 **Memorandum of Law**
20 **in Support of**
21 **Temporary Restraining Order**

22 **CHRISTOPHER LAROSE, Warden at**
23 **Otay Mesa Detention Center, KRISTI**
24 **NOEM, Secretary of the Department of**
25 **Homeland Security, PAMELA JO**
26 **BONDI, Attorney General, TODD M.**
27 **LYONS, Acting Director, Immigration**
28 **and Customs Enforcement, GREGORY J**
ARCHAMBEAULT, Field Office
Director, San Diego Field Office, US
ICE, US DHS,

Respondents.

1 INTRODUCTION

2 Petitioner Fernando Nava Sandoval (“Petitioner” or Mr. Nava) faces
3 immediate irreparable harm because the government is detaining him on the false
4 premise that he is not eligible for bond. Because he is very likely to succeed on the
5 merits, his illegal detention works irreparable harm, and the public interest favors
6 releasing him on bond, this Court should grant a temporary restraining order
7 (“TRO”) for his immediate release.

8 ARGUMENT

9 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on
10 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
11 relief, that the balance of equities tips in his favor, and that an injunction is in the
12 public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);
13 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7
14 (9th Cir. 2001) (noting that a TRO and preliminary injunction involve
15 “substantially identical” analysis). A “variant[] of the same standard” is the
16 “sliding scale”: “if a plaintiff can only show that there are ‘serious questions
17 going to the merits—a lesser showing than likelihood of success on the merits—
18 then a preliminary injunction may still issue if the balance of hardships tips
19 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”
20 *Immigrant Defenders Law Center v. Noem*, 145 F.4th 972, 986 (9th Cir. 2025)
21 (internal quotation marks omitted). Under this approach, the four *Winter* elements
22 are “balanced, so that a stronger showing of one element may offset a weaker
23 showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131
24 (9th Cir. 2011). A TRO may be granted where there are “‘serious questions going
25 to the merits’ and a hardship balance. . . tips sharply toward the plaintiff,” and so
26 long as the other *Winter* factors are met. *Id.* at 1132.

27 Applying these factors here, Mr. Nava should be immediately released.
28

1 **I. Petitioner is likely to succeed on the merits, or at a minimum, raises**
2 **serious merits questions.**

3 Concurrent with this TRO motion, Mr. Nava files a habeas petition setting
4 forth in detail why he is likely to succeed on the merits. He incorporates those
5 arguments by reference here and provides this list of recent cases across the country
6 holding that inadmissible persons are eligible for bond under 8 U.S.C. § 1226(a):
7 *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.);
8 *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*,
9 2025 WL 2084238 (D. Mass. July 24, 2025); *Lopez Benitez v. Francis*, 2025 WL
10 2371588 (S.D.N.Y. Aug. 13, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025
11 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27,
12 2025); *Lopez-Campos v. Raycroft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025);
13 *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *5 (D. Neb.
14 Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530, at *7 (C.D. Cal.
15 Sept. 8, 2025); *Hernandez Nieves v. Kaiser*, 2025 WL 2533110 (N.D. Cal. Sept. 3,
16 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025). Based on
17 these authorities, he is likely to succeed on the merits, or at least raises a serious
18 merits question.

19 **II. Petitioner will suffer irreparable harm absent injunctive relief.**

20 Petitioner also meets the second factor, irreparable harm. “It is well
21 established that the deprivation of constitutional rights ‘unquestionably constitutes
22 irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
23 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where the “alleged deprivation
24 of a constitutional right is involved, most courts hold that no further showing of
25 irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02
26 (9th Cir. 2005) (quoting 11A Charles Alan Wright et al., *Federal Practice and*
27 *Procedure*, § 2948.1 (2d ed. 2004)). Here, ICE is detaining Mr. Nava on the false
28

1 premise that he is not eligible for bond. That violates due process, and deprivation
2 of those due process rights constitutes irreparable harm.

3 The irreparable harm to Petitioner is even more concrete in this case. The
4 Ninth Circuit has specifically recognized the “irreparable harms imposed on anyone
5 subject to immigration detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th
6 Cir. 2017). That is because “[u]nlawful detention constitutes ‘extreme or very
7 serious damage, and that damage is not compensable in damages.’” *Hernandez v.*
8 *Sessions*, 872 F.3d 976, 999 (9th Cir. 2017).

9 Detention has proved to be a serious hardship for Mr. Nava and his family.
10 Because of his detention, Mr. Nava has lost possession of his company van with all
11 the equipment he has amassed for his business, Navas Handyman. Exh. A of Habeas
12 Petition. Mr. Nava is also separated from his two U.S. citizen grandchildren, who
13 live with him and depend on him to provide childcare while their father works and
14 their mother lives out-of-state and only sees them on weekends. *Id.*

15 **III. The balance of hardships and the public interest weigh heavily in**
16 **petitioner’s favor.**

17 The final two factors for a TRO—the balance of hardships and public
18 interest—“merge when the Government is the opposing party.” *Nken v. Holder*,
19 556 U.S. 418, 435 (2009). That balance tips decidedly in Petitioner’s favor. On the
20 one hand, the government “cannot reasonably assert that it is harmed in any legally
21 cognizable sense” by being compelled to follow the law. *Zepeda v. I.N.S.*, 753 F.2d
22 719, 727 (9th Cir. 1983). Moreover, it is always in the public interest to prevent
23 violations of the U.S. Constitution and ensure the rule of law. *See Moreno Galvez*
24 *v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (when government’s
25 treatment “is inconsistent with federal law, . . . the balance of hardships and public
26 interest factors weigh in favor of a preliminary injunction.”). The government
27 cannot even claim that detention furthers its interest in protecting the public or
28 assuring Ms. Tomas’ appearance at immigration proceedings. An immigration

1 judge bond would suffice for assuring Mr. Nava’s appearance, and she has no
2 criminal record anywhere in the world. On the other hand, Petitioner faces weighty
3 hardships, as described in the previous section. The balance of equities thus favors
4 preventing the violation of “requirements of federal law,” *Arizona Dream Act Coal.*
5 *v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014), by granting emergency relief to
6 protect against unlawful detention.

7 **IV. Petitioner is providing the government notice of this TRO, and the TRO**
8 **should remain in place throughout habeas litigation.**

9 Counsel will provide a courtesy copy of the Habeas Petition and this TRO
10 Motion to Respondents’ counsel via email as agreed upon.

11 Additionally, Petitioner requests that this TRO remain in place until the
12 habeas petition is decided. Fed. R. Civ. Pro. 65(b)(2). Good cause exists, because
13 the same considerations will continue to warrant injunctive relief throughout this
14 litigation, and habeas petitions must be adjudicated promptly. *See In re Habeas*
15 *Corpus Cases*, 216 F.R.D. 52 (E.D.N.Y. 2003).

16
17
18 Respectfully submitted,

19
20 Dated: December 2, 2025

s/ Beatriz Valente

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