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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
PHOENIX DIVISION

JOSE GARCIA ROMERO)
Petitioner,)

Case No.

v.)

DAVID RIVAS, Warden, San Luis)
Regional Detention Center; PATRICK)
DIVVER, San Diego Field Office)
Director, Immigration and Removal)
Operations (ICE/ERO); U.S.)
Immigration and Customs)
Enforcement; KRISTI NOEM,)
Secretary of the Department of)
Homeland Security; U.S. Department of)
Homeland Security (DHS); PAMALA)
BONDI, Attorney General of the United)
States, and TODD LYONS, Director,)
Immigration and Customs Enforcement)
in their official capacities.)

PETITIONER'S MOTION FOR
TEMPORARY RESTRAINING
ORDER

CASE SUMMARY

Petitioner, Jose Garcia Romero (Mr. Gracia) is a citizen of Mexico who Respondents have detained at the San Luis Regional Detention Center (AKA San Luis) for (4) three months. On November 28, 2025, IJ Perry of the Imperial Immigration Court denied Petitioner's bond despite Petitioner's class membership in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner brings this action to seek enforcement of their rights as a member of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Because Petitioner is likely to succeed on the merits of his habeas petition and his continued detention is causing and will continue to cause him irreparable harm, he moves for a temporary restraining order to allow him his freedom while the court completes its adjudication of his habeas petition.

LEGAL STANDARD

A plaintiff seeking preliminary injunctive relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2011) (quoting *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). To grant preliminary injunctive relief a court must find that “a certain threshold showing [has been] made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011)(per curiam). If this threshold is met, “serious questions going to the merits and a balance of the hardships that tips sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury

and that the injunction is in the public interest.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

1. Petitioner Is Likely To Succeed On The Merits

Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil detention, including that of a non-citizen, violates due process in the absence of a “special justification” sufficient to outweigh one’s “constitutionally protected interest in avoiding physical restraint.” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (internal quotation marks omitted).

This interest in freedom from detention is particularly keen for individuals whose release is subject to termination. In *Morrissey v. Brewer*, the Supreme Court held that an individual who is re-detained after being released—has a “valuable” liberty interest notwithstanding the “indeterminate” nature of his freedom. 408 U.S. 471, 482 (1972). Subject to the conditions of his release, a noncitizen released on bond “can be gainfully employed and is free to be with family and friends and to form the other enduring attachments of normal life.” *Id.* The noncitizen’s liberty therefore “includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the noncitizen and often others.” *Id.* See, *Carballo v. Andrews*, No. 1:25-CV-00978- KES-EPG (HC), 2025 WL 2381464, at *4 (E.D. Cal. Aug. 15, 2025)(There is “a meaningful distinction between a challenge to an initial

period of detention . . . and a challenge to re- detention after a court has previously granted release on bond pending immigration proceedings.”)

On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (Nov. 25, 2025 C.D. Cal.) (Order Granting Plaintiff-Petitioners’ Motion for Class Certification, incorporating declaratory judgment from Order Granting Petitioners’ Motion for Partial Summary Judgment). The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A).

Petitioner Jose Garcia Romero is a member of the Bond Denial Class, as he:

- a. does not have lawful status in the United States and is currently detained at the San Luis Detention Facility after being apprehended by U.S. Immigration and Customs Enforcement (ICE) on or about July 11, 2025];
- b. entered the United States without inspection over 22 years ago and was not apprehended upon arrival, *cf. id.*; and
- c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

After apprehending Petitioner on or about July 11, 2025, the Department of Homeland Security (DHS) placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

The Supreme Court in *Mathews v. Eldridge*, supports finding Petitioner has a strong private interest in his continued liberty and the government's failure to abide by the proper interpretation of the law have erroneously deprived him of that liberty interest. 424 U.S. 319, 335 (1976). Additionally, the government's interest in avoiding the cost of detention is also significant. *Id.* In 2017, the Ninth Circuit noted that the cost of detention was "\$158 each day per detainee, amounting to a total daily cost of \$6.5 million." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017). Petitioner's continued detention is an exceedingly poor use of government resources. The government's interest in re-detaining Ana Lesic and detaining Nikica Lesic for the first time, is very low given that both were complying fully with the terms of their bonds right up until the moment the Respondents took them into custody at Ana's previously scheduled check-in with ICE. The Respondents' arrest and continued detention of Mr. and Mrs. Lesic has unlawfully deprived the petitioners of their liberty without due process of law. The Petitioners are likely to succeed on the merits.

2. Petitioner Will Suffer Irreparable Harm if a TRO Is Not Issued

"It is well-established 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)). Moreover, the Ninth Circuit has recognized that those subject to immigration detention incur irreparable harm due to the economic burdens they face and their separation from family members. *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Petitioner is married, and while in custody his spouse has been left to fend for herself. Like Petitioner, she is a senior citizen. She is currently living with her son Jose Luis Garcia. Petitioner has not only left his spouses' well being to their children but similarly suffers from his separation from all four of his adult children and grandchildren. Exhibit 1, Declaration Maria G Garcia.

Petitioner is 69 years old and suffers from various medical conditions, including diabetes, that require ongoing maintenance care. Exhibit 2, Medial Letter. Petitioner's health has been declining since his detention in July 2025. His continued detention is having a deleterious effect on his physical and mental health. For all these reasons, Petitioner has and will continue to suffer irreparable harm.

3. The Balance of the Equities Tips in the Petitioner's Favor and Injunctive Relief is in the Public Interest.

When the government is the opposing party, the balance of equities and the public interest merge. *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011). "The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million [in 2017 dollars]." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz v. Kaiser*, 2025 WL 1676854, at *3 (citing e.g., *Jorge M.F.*, 2021 WL 783561, at *3). "Generally public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). Without injunctive relief, the harm being unlawfully imposed on the Petitioner for the four months will continue at taxpayer expense. As the briefing and evidence submitted in this case has thus far shown, the Respondents have clearly violated the Petitioner's Constitutionally protected liberty interest and should be enjoined from continuing to do so while this case is being adjudicated.

4. A Security is Unnecessary

A Security Is Unnecessary Because the Petitioner is 69 years old, and incarcerated. His inability to work during the past four months effectively makes him indigent. idistrict courts

routinely exercise their discretion to require no security in cases brought by indigent or incarcerated people. See, e.g., *Vaskanyan v. Janecka*, No. 5:25-cv-01475-MRA-AS, 2025 WL 2014208 (C.D. Cal. June 25, 2025), at *8, *Diaz v. Kaiser*, 2025 WL 1676854, at *3. After a month of detention and consequent inability to work, the Petitioners are indigent. Accordingly, the Court should not require them to post security.

5. Petitioners Have Complied with Civ. LR 83.3(g)

Petitioners' undersigned counsel has taken efforts to ensure the Respondents are on notice of Petitioner's Motion for Temporary Restraining Order. Petitioners' counsel is filing this motion electronically in the Southern District of California, which automatically effects service on the U.S. Attorney's Office. The underlying Petition for Habeas Corpus was filed on October 13, 2025, the case was assigned to AUSA McKenna Rackleff who filed the Respondents' return on October 23, 2025. The electronic filing will be directed to the AUSA which assigned to the concurrently filed underlying Petition for Habeas Corpus.

CONCLUSION

Petitioner Jose Garcia Romero respectfully requests that this Court grant his motion for a Temporary Restraining Order. In doing so, the Court should order the Respondents to release the Petitioners from detention as their habeas petition, can be adjudicated by the Court.

. Respectfully submitted on this 2, day of December 2025,

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Counsel for Petitioner

Upon review of Petitioners Ana and Nikica Lesic's Motion for Temporary Restraining Order, Petition for Habeas Corpus, Respondents' Return, Petitioners' Traverse, and all supporting affidavits and exhibits, and any response to this motion, the Court HEREBY FINDS:

1. The Petitioner is likely to succeed on the merits of their claims.
2. Petitioners is likely to suffer irreparable harm in the absence of a temporary restraining order, the balance of the equities tips in their favor, and a temporary restraining order is in the public interest.

Therefore, Petitioners Ana and Nikica Lesic's Motion for Temporary Restraining Order is GRANTED. THE COURT HEREBY ORDERS THAT:

1. Respondents release Petitioner Jose Garcia Romero from detention immediately.
2. No security shall be required.
3. Petitioners' Motion for Temporary Restraining Order shall also be considered a Motion for Preliminary Injunction. Respondents are to file any opposition no later than _____, 2025. Petitioner's Motion for Preliminary Injunction shall be heard on _____, 2025 at _____ AM/PM.

Dated: _____, 2025

Time and Hour: _____ AM/PM

Hon. _____

United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on December 2, 2025 through
The ECF system and that it will be sent electronically to the registered participants as
identified on the Notice of Electronic Filing.

Date: December 2, 2025

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