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6 *Attorney for Petitioner*

7 **IN THE UNITED STATES DISTRICT COURT  
8 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

9 In the Matter of )

10 Yonathan Donaldo Santos Zelaya )

11 *Petitioner,* )

12 vs. )

13 **DANIEL BRIGHTMAN**, in his )  
14 official capacity as Field Office )  
15 Director of the Immigration and )  
16 Customs Enforcement, Enforcement )  
17 and Removal Operations San Diego )  
18 Field Office; **KRISTI NOEM**, in her )  
19 official capacity as Secretary of the )  
20 Department of Homeland Security; )  
21 **U.S. DEPARTMENT OF )  
22 HOMELAND SECURITY;** )

23 *Respondents* )  
24 )  
25 )

Case No. '25CV3489 LL DDL

Agency No. 

**MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
SUPPORTING MEMORANDUM**

**ORAL ARGUMENT  
REQUESTED**

**Expedited hearing requested**

**MOTION**

**MOTION AND MEMORANDUM FOR TEMPORARY RESTRAINING ORDER**  
Page 1 of 9

1 Petitioner moves the court for the following relief by way of a temporary  
2 restraining order (“TRO”):

3 a) Issuance of an immediate order barring the Respondents from removing  
4 Petitioner from the Southern District Court’s jurisdiction, should the Petitioner be  
5 present in the State of California at the time such order is issued, without notice to  
6 the court and approval by the court;

7 b) Issuance of an order to show cause why this petition should not be  
8 granted within three (3) days.

9 **SUPPORTING MEMORANDUM**

10 **I. LEGAL STANDARD**

11 The standard for a TRO is the same as for preliminary injunction. See *New*  
12 *Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A  
13 TRO is “an extraordinary remedy that may only be awarded upon a clear showing  
14 that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*,  
15 555 U.S. 7, 24 (2008).

16 For preliminary relief, a party must show (a) likelihood of success on the  
17 merits, (b) likely irreparable harm without preliminary relief, (c) the balance of  
18 equities tips in party, and (d) an injunction is in the public interest. *Stormans, Inc.*  
19 *v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

20 As alternative test is if “serious questions going to the merits were raised and  
21 the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing  
22 preservation of the status quo when complex legal questions require further  
23 inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,

1 1134- 35 (9th Cir. 2011).

2 **II. ARGUMENT.**

3 **A. Petitioner will likely suffer irreparable harm.**

4 Without a TRO, Petitioner will be imminently transferred out of the  
5 jurisdiction of the Southern District of California. This will transfer Petitioner  
6 away from his lawyers and his family, possibly seeking to undermine this court's  
7 jurisdiction.

8 Furthermore, Petitioner is the sole caregiver of his three U.S. citizen  
9 children, ages 2, 3 and 6. Their mother has been absent from their lives, leaving  
10 Petitioner as their only consistent source of care, emotional stability and financial  
11 support. If he is removed from the District's jurisdiction, the children will be left  
12 without a parent to look after them. While extended family members reside  
13 locally, none are able or legally authorized to assume full-time parental  
14 responsibility. This abrupt separation would result in significant psychological and  
15 emotional trauma to both Petitioner and his children.

16 Petitioner's transfer would also cause the immediate loss of his  
17 employment, which is the sole source of financial support for his family, creating  
18 an economic hardship that would exacerbate the emotional distress he and his  
19 children are already at risk of experiencing.

20 Additionally, Petitioner heavily relies on the support of his Lawful  
21 Permanent Resident parents, his U.S. citizen siblings and extended relatives, all of  
22 whom reside in the Southern District of California. Removal from this jurisdiction  
23 would sever him from this essential support system, leaving him isolated and  
24

1 hindering his ability to remain stable.

2 Moreover, relocating Petitioner would substantially impair him from  
3 communicating and assisting counsel. Such constraints would limit counsel's  
4 capacity to represent Petitioner effectively. All of these combined impacts  
5 constitute irreparable harm. See e.g., *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70  
6 (9th Cir. 2011) (describing "separation from family members" and the mental  
7 damage concomitant with such separation as irreparable harm) (quotation marks  
8 omitted); see also *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013) ("The  
9 right to live with and not be separated from one's immediate family is 'a right that  
10 ranks high among the interests of the individual' and that cannot be taken away  
11 without procedural due process.") (quoting *Landon v. Plasencia*, 459 U.S. 21, 34-  
12 35 (1982)).

13 **B. Likely to succeed on the merits.**

14 Due process requires government action not be irrational and arbitrary. See  
15 *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Here, Petitioner has  
16 been under an Order of Supervision (OSUP) since his release on bond on or about  
17 November 18, 2015, following withholding only proceedings that began after he  
18 was transferred to ICE custody on or about February 26, 2014. On August 25, 2015,  
19 the Immigration Judge presiding over his proceedings ordered that his removal to  
20 his home country of Honduras be withheld and granted him protection under the  
21 Convention Against Torture (CAT). That order became final on December 8, 2015.  
22 From that date to present, Petitioner has been constructively detained through his  
23 OSUP, while fully complying with all requirements, including living in San Diego

1 County and attending check-in appointments. No issues surrounding these  
2 appointments have occurred and none have been alleged.

3 Despite Petitioner's long-standing compliance, on November 14, 2025,  
4 Petitioner was placed in an Alternatives to Detention (ATD) Intensive Supervision  
5 Appearance Program (ISAP), drastically intensifying the conditions of his custody.  
6 Between November 17 and December 3, 2025, he was required to attend four check-  
7 ins, including an in-home visit, a sudden and dramatic escalation from his prior  
8 annual check-in, with all events occurring in just *sixteen days*.

9 Petitioner's prolonged custody or custody-like restrictions exceed the limits  
10 set by 8 U.S.C. § 1231(a), which governs post-removal-order detention. Although  
11 he has a final order of removal to Honduras, he cannot be removed there due to  
12 Withholding of Removal under the CAT. The scope of his post-order custody is  
13 therefore limited by § 1231(a)(6) and implementing regulations, 8 C.F.R. §§ 241.4–  
14 241.5. Because removal to Honduras is barred and no other removal is foreseeable,  
15 Petitioner's continued custody and increased restrictions clearly violate the Due  
16 Process Clause (*Zadvydas*, 533 U.S. at 699; *Diouf II*, 634 F.3d at 1086–87).

17 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court analyzed the  
18 due process rights of noncitizens held during and after a removal period. *Zadvydas*  
19 concerned a resident noncitizen who could not be deported because none of the  
20 relevant countries would accept him. *Id.* at 684. Because indefinite detention  
21 without adequate safeguards could violate noncitizens' due process rights, the  
22 Supreme Court established a presumption of six months as a reasonable period of  
23 detention while an order of removal is carried out. *Id.* at 701. After that period

1 elapses, a noncitizen who “provides good reason to believe that there is no  
2 significant likelihood of removal in the reasonably foreseeable future” must be  
3 released, unless the government can “respond with evidence sufficient to rebut that  
4 showing.” Courts have found that individuals subject to an Order of Supervision  
5 may be considered in custody for purposes of 28 U.S.C. § 2241 where they  
6 challenge the conditions of their release. *See, e.g., Doe v. Barr*, 479 F. Supp. 3d 20,  
7 26 (S.D.N.Y. 2020); *Devitri v. Cronen*, 290 F. Supp. 3d 86, 90 (D. Mass. 2017);  
8 *Xiao Biao Li v. Barr*, 839 F. App’x 589, 591 (2d Cir. 2020); *Alvarez v. Holder*, 454  
9 F. App’x 769, 772-73 (11th Cir. 2011) (citing *Dawson v. Scott*, 50 F.3d 884, 886 n  
10 2 (11th Cir. 1995)); *Gozo v. Mayorkas*, No. 1:23-cv-159, 2024 WL 2027510, at \*1  
11 (S.D. Tex. Mar. 4, 2024).

12 Respondents’ increase in custodial restrictions exceeds the lawful scope of §  
13 1231(a)(6) and the INA. In the Ninth Circuit, post-order detention may not be  
14 prolonged, increased, or reimposed without individualized findings and procedural  
15 safeguards (*Diouf II; Franco-Gonzalez*, 767 F. Supp. 2d at 1054). Respondents have  
16 not made any such showing.

17 Moreover, a civil detainee's confinement is unconstitutional under the Fifth  
18 Amendment if his conditions of confinement "amount to punishment." *Bell v.*  
19 *Wolfish*, 441 U.S. 520, 535 (1979); *Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir.  
20 2004) (quoting *Bell*, 441 U.S. at 535); *accord Bent v. Barr*, 445 F. Supp. 3d 408,  
21 413-14 (N.D. Cal. 2020). "[P]unitive conditions may be shown (1) where the  
22 challenged restrictions are expressly intended to punish, or (2) where the challenged  
23 restrictions serve an alternative, non-punitive purpose but are nonetheless excessive  
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1 in relation to the alternative purpose, . . . or are employed to achieve objectives that  
2 could be accomplished in so many alternative and less harsh methods." *Jones*, 393  
3 F.3d at 932, *also Jones v. Cunningham*, 371 U.S. 236, 239-40, 83 S. Ct. 373, 9 L.  
4 Ed. 2d 285 (1963) (recognizing that restraints on liberty other than physical  
5 confinement may constitute custody for habeas purposes.).

6 Respondent's increased custody conditions are unwarranted because there  
7 has been no change in circumstances. The increased conditions are therefore  
8 punitive and excessive in relation to their purpose. There are less harsh methods  
9 that were previously in place and that functioned well from his release on or about  
10 November 18, 2015, to present, totally over ten years. Accordingly, the increase in  
11 custody conditions violates the Fifth Amendment because it does not serve a  
12 purpose other than to punish Petitioner.

13  
14 **C. Balance of equities and public interest tips sharply in favor of**  
15 **TRO.**

16 The balance of hardships tips substantially in favor of Petitioner. "[I]n  
17 addition to the potential hardships facing Plaintiffs in the absence of the  
18 injunction, the court 'may consider . . . the indirect hardship to their friends and  
19 family members.'" *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017),  
20 quoting *Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112,  
21 1126 (9th Cir. 2008).

22 Removal from this jurisdiction would separate Petitioner from his three  
23 U.S. citizen children – ages 2, 3 and 6 –for whom he is the sole caregiver. Such  
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1 separation would cause immediate emotional distress. The loss of parental  
2 guidance and support, combined with the loss of financial security, would expose  
3 them to anxiety, fear and other behavioral regressions. At their young age,  
4 consistent parental care is essential, and being without their father would place  
5 them in a situation of extreme hardship and risk, both emotionally and financially.

6 The children rely on Petitioner for basic daily needs, including meals  
7 transportation, schooling and supervision. Disruption of these routines would  
8 interfere with their development and stability. Additionally, no one else is able to  
9 provide full-time care for the children, leaving them unprotected. All three  
10 children are also U.S. citizens. Given their ages, any harm resulting from  
11 separation would be immediate and irreparable. Preventing this separation is  
12 crucial for the preservation of their physical, emotional and psychological well-  
13 being.

14 The merits of the petition weigh the public interest toward a TRO.  
15 “Generally, public interest concerns are implicated when a constitutional right has  
16 been violated, because all citizens have a stake in upholding the Constitution.”  
17 *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); see also *Zepeda v. U.S.*  
18 *I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (“INS cannot reasonably assert that it is  
19 harmed in any legally cognizable sense by being enjoined from constitutional  
20 violations”). “The public interest also benefits from a preliminary injunction that  
21 ensures that federal statutes are construed and implemented in a manner that  
22 avoids serious constitutional questions.” *Rodriguez v. Robbins*, 715 F.3d 1127,  
23 1146 (9th Cir. 2013).

1 **III. CONCLUSION**

2 For the above reasons, a TRO should be granted.

3  
4 Respectfully submitted,

5  
6 Date: December 9, 2025

/s/ Rose M. Thompson  
7 Rose M. Thompson  
8 Attorney at Law

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25 *Attorney for Petitioner*