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UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

Yemane Berhane Woldegabriel,

Petitioner,

v.

Kristi NOEM, Secretary, Department of Homeland Security; Todd LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement (ICE); Pam BONDI, Attorney General of the United States; Jaime RIOS, Director, Los Angeles ICE Field Office; and Fereti SEMAIA, Warden, Adelanto ICE Processing Center.

Respondents.

No. 5:25-cv-03369-ODW-PVC

PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION

Immigration Case

For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioner hereby makes this Ex Parte Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioner is a native of Ethiopia who was detained in 2014 for more than 6 months after the entry of a removal order by an immigration judge. He was released in 2014 because the government could not remove him from the United States, but was re-detained on December 1, 2025. He challenges his detention as a violation of the Immigration and Nationality Act, the implementing regulations, and Due Process. Expedited relief is necessary to prevent irreparable injury before a hearing on a preliminary injunction may be held.

Petitioner requests that the Court issue a temporary restraining order and order to show case re: preliminary injunction in the form of the proposed order submitted concurrently with this Application. This Application is based on the Complaint, Memorandum of Points and Authorities, and the declaration and exhibits in support thereof.

Respondents were advised on December 16, 2025 that Petitioner would be filing this ex parte application and of the contents of this application. Brewer Decl. ¶ 4. *See* Local Rule 17-19.1.

Counsel for Respondents is as follows:

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Dated : December 17, 2025 /s/ *Megan Brewer*

Megan Brewer

1

2 I. INTRODUCTION

3 Petitioner is a citizen of Ethiopia who came to the United States as a refugee,
4 40 years ago. He is married to a United States citizen and has United States citizen
5 children. He was ordered removed in 2009 by an immigration judge.

6 Petitioner spent more than six months in immigration detention after he was
7 ordered removed on August 19, 2009 but was released because he could not be
8 removed from the United States. He regularly reported to immigration officials on
9 an order of supervision, but was detained by immigration authorities on December
10 1, 2025. His removal is not reasonably foreseeable and is a violation of 8 U.S.C. §
11 1231(a)(6) and Due Process. Petitioner's family is suffering immensely without
12 him, as his wife who is raising their two children alone, in addition to Petitioner's
13 mother who is bed-bound after having a stroke, and running their two businesses.
14 Brewer Dec. Exh. A. He requires an ex parte order from this Court ordering his
15 immediate release.

16 II. STATEMENT OF FACTS

17 Petitioner was born in Ethiopia on [redacted] and is 50 years old.
18 Brewer Dec. Exh. C. Petitioner came to the United States on August 15, 1985 as a
19 refugee, and became a lawful permanent resident on October 7, 1986. Brewer Dec.
20 Exhs. J, K. He has resided continuously in the United States since 1985, for 40
21 years. Brewer Dec. Exh. A. Petitioner married his United States citizen wife on
22 November 26, 2009 in Norwalk, California. Brewer Dec. Exh. L. They have two
23 children together, ages 13 and 15. Brewer Dec. Exh. M.

24 On October 12, 2001, Petitioner was convicted of felony Grand Theft in
25 violation of California Penal Code section 487(a) and was sentenced to 36 months
26 probation and 270 days in jail. Brewer Dec. Exh. I. The conviction was later
27 reduced to a misdemeanor. Brewer Dec. Exh. N.

28 In late August of 2007, Petitioner traveled to Rosarito, Mexico for a few

1 days. Brewer Dec. Exhs. A, I, J. When he returned to the United States through San
2 Ysidro on September 2, 2007, he was stopped by Customs and Border Patrol and
3 was taken into secondary inspection. Brewer Dec. Exh. J. He was also issued a
4 Notice to Appear, placed into removal proceedings, and ordered to appear before
5 the Immigration Judge. Brewer Dec. Exh. I. Petitioner was then paroled into the
6 United States. Brewer Dec. Exh. J. On August 19, 2009, Petitioner was ordered
7 removed in absentia by the immigration judge based on the misdemeanor theft
8 conviction. Brewer Dec. Exh. H. He was ordered removed to Ethiopia. *Id.*

9 On November 15, 2013, Petitioner was detained by DHS and held at the
10 Adelanto Detention Facility. Brewer Dec. Exhs. A, E, F. On December 9, 2013,
11 DHS confirmed with Petitioner's counsel that DHS would seek to remove Petitioner
12 to Ethiopia. Brewer Dec. Exh. D. On February 21, 2014, DHS notified Petitioner's
13 counsel that it would be seeking travel documents to remove Petitioner to Eritrea
14 because it had not been successful in obtaining travel documents to Ethiopia. *Id.*

15 On March 17, 2014, Petitioner filed a motion to reopen with the immigration
16 court, seeking asylum, withholding of removal, and protection under the
17 Convention Against Torture based on DHS' attempt to remove him to Eritrea.
18 Brewer Dec. Exh. G. On April 3, 2014, DHS confirmed with Petitioner's counsel
19 that it was still seeking his removal to Ethiopia and Eritrea. Brewer Dec. Exh. D.
20 On May 13, 2014, DHS informed Petitioner's counsel that it no longer was seeking
21 his removal to Eritrea. *Id.* On May 21, 2014, the San Diego immigration court
22 denied the motion to reopen, noting that if DHS were able to obtain travel
23 documents to Eritrea then reopening would be appropriate. Brewer Dec. Exh. G.

24 On May 28, 2014, Petitioner filed a petition for writ of habeas corpus in this
25 Court. Woldegabriel v. Marin, et. al, Nos. CV 14- 01070 ODW (JPR), CV 14-
26 01073 ODW (JPR) (C.D.Cal.). At the time of filing, he had been detained in
27 immigration custody for 194 days. Brewer Dec. Exh. F.

28 On May 29, 2014, the Immigration Judge ordered Petitioner's release on

bond[1]. Brewer Dec. Exh. E. On May 30, 2014, Petitioner voluntarily dismissed the petition for writ of habeas corpus before this court. Petitioner was released from immigration custody on May 29, 2014 after posting bond. He was ordered to report to immigration authorities once a year, and did so for over 10 years. Brewer Dec. Exh. A.

December 1, 2025, Petitioner was detained by immigration authorities when he appeared for his regular reporting. Brewer Dec. Exhs. A, B. He was not informed of the reasons for the revocation of release or that the government had obtained travel documents to remove him from the United States. Brewer Dec. Exh. A.

III. STANDARD OF REVIEW

A Temporary Restraining Order ("TRO") may be issued upon a showing "that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). A trial court may grant a TRO or a preliminary injunction to "preserve the status quo and the rights of the parties" until a decision can be made in the case. *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in this context "refers not simply to any situation before the filing of a lawsuit, but instead to 'the last uncontested status which preceded the pending controversy[.]' " *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting *Tanner Motor Livery, Ltd. v. Avis*, Inc., 316 F.2d 804, 809 (9th Cir. 1963). The analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc., Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009).

To obtain a preliminary injunction, a Petitioner "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the

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[1] The Immigration Judge relied on Diouf v. Mukasey, 542 F.3d 1222, 1227 (9th Cir. 2008), which was overruled in Jennings v. Rodriguez, 138 S. Ct. 830, 846 (2018).

absence of preliminary relief, [3] that the balance of equities tips in their favor, and [4] that an injunction is in the public interest." *City & County of San Francisco v. USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019)(quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "Likelihood of success on the merits is the most important factor." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) (quotations omitted). If the first two factors are met, the third and fourth factors merge when the Government is the opposing party. *Nken v. Holder,* 556 U.S. 418, 435 (2009).

Additionally, in the Ninth Circuit, courts also "employ an alternative 'serious questions' standard, also known as the 'sliding scale' variant of the *Winter* standard." *Fraihat v. U.S. Immigr. & Customs Enf't*, 16 F.4th 613, 635 (9th Cir. 2021) (quotations and citations omitted and alterations accepted). "Under that formulation, 'serious questions going to the merits' and a balance of hardships that tips sharply towards the Petitioner[s] can support issuance of a preliminary injunction, so long as the Petitioner[s] also show[ ] that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Id.* (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

Petitioner meets all the requirements for relief.

IV. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

1. Petitioner is Likely to Succeed on the Merits of his *Zadvydas* Statutory Claim

Petitioner has been detained for more than 180 days and his removal is not reasonably foreseeable. His ongoing detention violates 8 U.S.C. § 1231(a)(6) and *Zadvydas v. Davis*, 533 U.S. 678 (2001); *see also Clark v. Martinez*, 543 U.S. 371 (2005).

1 In *Zadvydas v. Davis*, 533 U.S. at 682, 689, the Supreme Court held that the
2 post-removal-period detention scheme contains "an implicit 'reasonable time'
3 limitation" and does not permit indefinite detention. The Court reasoned that "[a]
4 statute permitting indefinite detention of an [noncitizen] would raise a serious
5 constitutional problem," because "[t]he Fifth Amendment's Due Process Clause
6 forbids the Government to 'depriv[e]' any 'person ... of ... liberty ... without due
7 process of law.' " *Id.* at 690. The Supreme Court deemed it "practically necessary
8 to recognize some presumptively reasonable period of detention" and deemed a six-
9 month period to be presumptively reasonable. *Id.* at 701. After this 6-month period,
10 once the alien provides good reason to believe that there is no significant likelihood
11 of removal in the reasonably foreseeable future, the Government must respond with
12 evidence sufficient to rebut that showing." *Id.* Additionally, "as the period of prior
13 postremoval confinement grows, what counts as the 'reasonably foreseeable future'
14 conversely would have to shrink" for detention to remain reasonable. *Id.* In *Clark,*
15 the Supreme Court extended this reasoning and acknowledged that the *Zadvydas*
16 framework is applied exactly the same to inadmissible "arriving" noncitizens. 543
17 U.S. at 382.

18 Petitioner is an "arriving alien' because he was inadmissible based on his
19 2001 conviction at the time he last entered the United States. See 8 U.S.C. §
20 1101(a)(13)(C), and he was therefore paroled into the United States rather than
21 admitted. *Clark v. Martinez* controls the assessment of whether his detention is
22 lawful. 543 U.S. 371 (2005). *Clark* confirms that 8 U.S.C. § 1231 applies the same
23 to noncitizens who have been admitted and those who are inadmissible ("arriving
24 aliens"). 543 U.S. at 382. As such, the reasoning and holding of *Zadvydas* applies
25 equally to arriving aliens who are subject to prolonged detention after the entry of a
26 final order of removal.

27 *Zadvydas* and *Clark* place the burden on the noncitizen to show, after a
28 detention period of six months, that there is "good reason to believe that there is no

1 significant likelihood of removal in the reasonably foreseeable future. *Pelich v.*
2 *I.N.S.*, 329 F.3d 1057, 1059 (9th Cir. 2003). The burden then shifts to the
3 government provide evidence sufficient to demonstrate that removal is reasonably
4 foreseeable[2]. 533 U.S. at 701.

5 Here, six months have already elapsed, as Petitioner was in custody for over
6 6 months in 2013-2014 prior to his 2014 release. The six month period does not just
7 restart upon a new arrest. That period does not just automatically reset with a new
8 detention over 11 years later. *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL
9 2419288, at *13 (W.D. Wash. Aug. 21, 2025); *Sied v. Nielsen*, No. 17-CV-06785-
10 LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018).

11 Petitioner demonstrates good reason to believe he cannot be removed from
12 the United States. "[T]his is not your typical first round detainment of an alien
13 awaiting removal." *Escalante v. Noem*, No. 9:25-CV-00182-MJT, 2025 WL
14 2206113, at *3 (E.D. Tex. Aug. 2, 2025). Petitioner's release in 2014 after over 6
15 months in detention, during which time he could not be removed, establishes good
16 reason to believe that he cannot be removed now. Further, ICE failed to obtain
17 removal documents despite trying for several months while he was detained in
18 2013-2014, and has not obtained such documents in the intervening decade since
19 Peitionter's 2014 release. From approximately December 2013 to May 2014, DHS
20 stated that it was attempting to obtain travel documents from both Ethiopia and
21 Eritrea, but was ultimately unable to do so. Brewer Dec. Exh. D. *See Chun Yat Ma*
22 *v. Asher*, No. 11-cv-01797-MJP, 2012 WL 1432229, at *5 (W.D. Wash. Apr. 25,
23 2012) ("An undue delay in removal for an individual alien beyond the typical
24 removal period would naturally suggest that removal is unlikely."); *Liu v. Carter*,
25

26 [2] "And for detention to remain reasonable, as the period of prior postremoval
27 confinement grows, what counts as the 'reasonably foreseeable future' conversely
would have to shrink." 533 U.S. at 701.
28

No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D. Kan. June 17, 2025) (finding that the respondents had not shown that removal was reasonably foreseeable where they did not provide evidence why seeking travel documentation was more likely to be successful this time around or describe other actions taken to make the petitioner's removal more likely). The government cannot meet its burden when no progress has been made in removal. *Misirbekov v. Venegas* No. 1:25-CV-00168, 2025 WL 3033732, at *2 (S.D. Tex. Oct. 29, 2025) (ordering release where no progress been made to remove the petitioner); *Douglas v. Baker,* No. 25-CV-2243-ABA, 2025 WL 2997585, at *4 (D. Md. Oct. 24, 2025) (ordering release where government failed to produce evidence of any efforts to removal the petition beyond one request over three months prior).

Petitioner's detention has exceeded the authorized 180 day period and he has good reason to believe that his removal is not reasonably foreseeable. *Vaskanyan v. Janecka*, No. 5:25-CV-01475-MRA-AS, 2025 WL 2014208, at *4 (C.D. Cal. June 25, 2025). The burden is now on the government to show that there *is* a significant likelihood of removal in the reasonably foreseeable future, and the government has not met that burden. No evidence was provided that Petitioner's removal was now reasonably foreseeable As such, Petitioner is likely to prevail on this claim.

2. Petitioner is Likely to Succeed on the Merits of His Due Process Claim

Petitioner is also likely to prevail on his claim that his detention violates Due Process. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [due process clause] protects." *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Therefore, individuals conditionally released from detention have a protected interest in their "continued liberty." *See Young v. Harper*, 520 U.S. 143, 147, 149, 152–53, 117 S.Ct. 1148, 137 L.Ed.2d 270

(1997) (holding that a pre-parolee released to "reduce prison overcrowding" enjoy a protected liberty interest). It is well-established that the liberty interest that arises upon release is "inherent in the Due Process Clause." *Pruitt v. Heimgartner*, 620 F. App'x 653, 657 (10th Cir. 2015) (quoting *Boutwell v. Keating*, 399 F.3d 1203, 1212 (10th Cir. 2005)) (emphasis in *Pruitt*).

"Petitioner has a liberty interest in his continued release on bond." *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677, at *4 (N.D. Cal. July 17, 2025). Petitioner's detention has exceeded the presumptively reasonable six-month period, and there is no significant likelihood of his removal in the reasonably foreseeable future. As such, Petitioner is clearly likely to prevail on his claim that his detention has become indefinite, violating his right to due process.

3. Petitioner is Likely to Succeed on the Merits of His Regulatory Claim

Petitioner is also likely to prevail on his claim that his detention violates DHS regulations governing re-detention. An agency's failure to follow its regulations that are meant to protect fundamental rights is a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260, 267, 74 S.Ct. 499, 98 L.Ed. 681 (1954); *Sameena Inc. v. U.S. Air Force*, 147 F.3d 1148, 1153 (9th Cir. 1998).

The regulation at 8 C.F.R, § 241.4(l) authorizes the revocation of release only where there has been a violation of the conditions of release or there has been a determination by the Executive Associate Commissioner that "i) The purposes of release have been served; (ii) The alien violates any condition of release; (iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or (iv) The conduct of the alien, or any other circumstance, indicates that release would no longer be appropriate." The regulation at 8 C.F.R, § 241.4(l) is designed to protect the fundamental interest of liberty, and the failure to follow the regulation is a violation of due process.

In this case, Petitioner has not been notified regarding any alleged circumstances meeting the requirements for re-detention under the regulation, depriving him of notice and the opportunity to be heard prior to deprivation of his liberty interest. Brewer Dec. Exh. A. As such, Petitioner is likely to prevail on the merits of his claim that his re-detention violates the regulation.

B. PETITIONER WILL SUFFER IRREPARABLE HARM AND THE EQUITIES TIP IN PETITIONER'S FAVOR

The Ninth Circuit has recognized the "irreparable harms imposed on anyone subject to immigration detention" including "subpar medical and psychiatric care in ICE detention facilities" and "the economic burdens imposed on detainees and their families as a result of detention." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017). Moreover, "[i]t 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)). Where, as here, the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, & Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit has also noted that "unlawful detention certainly constitutes 'extreme or very serious' damage, and that damage is not compensable in damages." *Hernandez*, 872 F.3d at 999. Petitioner separated from his United States citizen family, including his wife, minor children, and mother who is severely medically compromised and for whom he is the primary caregiver. Brewer Dec. Exh. A. He clearly establishes irreparable harm.

The balance of the equities and public interest analyses merge when the government is the opposing party, as is the case in this action. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that

Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar*, No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) ("Given the low risk of Petitioner's causing harm to others or fleeing, such expenditure in her case would not benefit the public absent a material change in circumstances."). "Just as the public has an interest in the orderly and efficient administration of this country's immigration laws, [ ] the public has a strong interest in upholding procedural protections against unlawful detention." *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). On the other hand, "the burden on Respondents in releasing Petitioner from detention is minimal, especially considering Petitioner's compliance with the requirements of the Order of Supervision…" *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *6 (E.D. Cal. July 16, 2025). Further, the Ninth Circuit has recognized that "[t]he costs to the public of immigration detention are 'staggering,' " and that "[s]upervised release programs cost much less by comparison...." *Hernandez*, 872 F.3d at 996. Therefore, the *Winter* factors weigh in favor of a grant of a temporary restraining order and preliminary injunction.

C. NO BOND IS NECESSARY

The Court has discretion to set the amount of security required for a temporary restraining order or preliminary injunction under Rule 65(c), if any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, "'[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.'" *Id.* (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003)). Here, it is unlikely any harm will come to Respondents as a result of a grant of temporary relief and Respondents will incur negligible or zero financial costs. Petitioner asks the Court to exercise its discretion to waive the bond requirement.