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UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

Federico Reyes Vasquez,

Petitioner

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security,

TODD LYONS, in his official capacity as
Acting Director of Immigration and Customs
Enforcement,

Michael Bernacke, in his official capacity as
ICE Field Officer Director and Warden in
current custody of Petitioner,

PAMELA BONDI, in her official capacity as
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs
Enforcement.

Respondents

Civil No.: **2:25-cv-01146-JNP**

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

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2 Petitioner Federico Reyes Vasquez respectfully moves this Court pursuant to Federal Rule of
3 Civil Procedure 65(b) for an Emergency Temporary Restraining Order prohibiting Respondents—
4 including the United States Department of Homeland Security (“DHS”), United States Immigration
5 and Customs Enforcement (“ICE”), and the Executive Office for Immigration Review (“EOIR”)—
6 from continuing Petitioner’s unlawful detention, effectuating any removal, or taking any enforcement
7 action inconsistent with this Court’s prior orders while this Court adjudicates Petitioner’s habeas corpus
8 claims arising under 28 U.S.C. § 2241, the Due Process Clause of the United States Constitution, and
9 the Immigration and Nationality Act.
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12 Emergency relief is necessary to preserve this Court’s jurisdiction, restore the status quo ante,
13 and prevent continuing constitutional injury. Petitioner was previously removed from the United States
14 in direct violation of this Court’s non-removal directive, was subsequently returned to the United States
15 pursuant to judicial process rather than any unlawful reentry, and now remains detained without lawful
16 statutory authority. Absent immediate intervention, Respondents’ ongoing detention and threatened
17 enforcement actions will perpetuate the consequences of their prior unlawful conduct, undermine the
18 authority of the federal judiciary, and inflict irreparable deprivation of Petitioner’s liberty and access
19 to judicial review before this Court can resolve the merits of his claims.
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22 Petitioner does not seek a determination of ultimate immigration status through this motion.
23 Instead, he seeks narrowly tailored, jurisdiction-preserving relief—immediate release from unlawful
24 detention, or at minimum a prompt constitutionally adequate custody determination—so that this Court
25 may meaningfully adjudicate whether Respondents’ past and ongoing conduct violates federal law and
26 the Constitution.
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1 **I. INTRODUCTION**

2 Emergency relief is necessary to prevent immediate and irreparable harm and to preserve this
3 Court’s jurisdiction and authority. Petitioner is currently detained by federal immigration authorities
4 following a prior removal that occurred in direct violation of this Court’s non-removal directive and a
5 subsequent government-facilitated return to the United States pursuant to judicial process rather than
6 any unlawful reentry. Despite these extraordinary circumstances, Respondents continue to detain
7 Petitioner without lawful statutory authority and maintain the ability to impose further enforcement
8 consequences that would compound the effects of their prior unlawful conduct and undermine
9 meaningful judicial review.
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11 Petitioner does not seek through this motion a final determination of his immigration status,
12 termination of removal proceedings, or any permanent restraint on the Executive’s lawful enforcement
13 authority. Instead, Petitioner seeks only narrowly tailored, jurisdiction-preserving relief—immediate
14 release from unlawful detention, or at minimum a prompt constitutionally adequate custody
15 determination—so that this Court may adjudicate whether Respondents’ past removal, continued
16 detention, and asserted enforcement authority violate the Constitution, the Immigration and Nationality
17 Act, and the federal habeas statute.
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19 Absent a Temporary Restraining Order, Respondents’ ongoing detention and potential
20 enforcement actions threaten to perpetuate unconstitutional restraint on Petitioner’s liberty, risk
21 renewed interference with this Court’s jurisdiction, and deprive Petitioner of meaningful access to
22 judicial review before the merits of his claims can be resolved. Temporary injunctive relief is therefore
23 necessary to restore the status quo, prevent further irreparable injury, and ensure that this Court retains
24 the ability to grant effective relief.
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1 Emergency relief is further warranted because Respondents' own evidence confirms both the
2 immediacy of the threat to Petitioner and the absence of any countervailing justification for continued
3 detention. ICE acknowledges that its local field office lacks facilities capable of housing detainees for
4 more than seventy-two hours and therefore routinely transfers individuals for the purpose of
5 effectuating rapid removal, reflecting an operational posture directed toward prompt deportation rather
6 than sustained lawful custody. Ex. 1. Respondents likewise concede that internal communication delays
7 prevented ICE personnel responsible for removal from receiving timely notice of this Court's non-
8 removal directive, an admission that underscores the concrete risk that Petitioner could again be
9 removed before judicial review is completed. *Id.* That risk is not speculative: government counsel has
10 repeatedly indicated that, upon Petitioner's return to the United States, ICE intends to detain him and
11 pursue removal pursuant to the reinstated order. Ex. 2.
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14 By contrast, nothing in the record suggests that Petitioner poses any flight risk or danger to the
15 community. To the contrary, Petitioner voluntarily sought return to the United States—knowing he
16 would be taken into immigration custody—in order to vindicate his legal rights and comply with this
17 Court's directive restoring the status quo. *Id.* His willingness to submit to custody to pursue judicial
18 review powerfully demonstrates that continued detention is not necessary to secure his presence, but
19 instead serves only to facilitate the very enforcement action that previously violated this Court's order.
20 In these circumstances, the combination of Respondents' expedited-removal posture, acknowledged
21 communication failures, and stated intent to detain and remove Petitioner creates a substantial and
22 immediate risk of renewed unlawful deportation absent emergency judicial intervention.
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25 **II. JURISDICTION AND AUTHORITY TO ISSUE INJUNCTIVE RELIEF**

26 This Court has subject-matter jurisdiction over Petitioner's claims under 28 U.S.C. § 1331 and
27 28 U.S.C. § 2241 because Petitioner is in federal custody and challenges the legality of that detention
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1 and the Government’s asserted authority to remove him. Federal courts have long exercised habeas
2 jurisdiction to review the lawfulness of immigration detention and to order release where custody
3 violates the Constitution or federal law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas v.*
4 *Davis*, 533 U.S. 678, 687 (2001).

5
6 This Court likewise possesses authority to issue temporary injunctive relief necessary to
7 preserve its jurisdiction and ensure the availability of meaningful habeas review. The Supreme Court
8 has recognized that federal courts may grant equitable relief to maintain the status quo and prevent
9 executive action from mooted pending judicial proceedings. *Nken v. Holder*, 556 U.S. 418, 428–29
10 (2009); *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966). That authority is reinforced by the All
11 Writs Act, which empowers courts to issue orders “necessary or appropriate in aid of their respective
12 jurisdictions.” 28 U.S.C. § 1651(a).

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14 These principles apply with particular force where removal during the pendency of habeas
15 proceedings would extinguish the court’s ability to grant effective relief. Judicial review of executive
16 detention and removal is a core structural safeguard of the constitutional system, ensuring that the
17 political branches remain subject to the rule of law. *INS v. St. Cyr*, 533 U.S. 289, 300–01 (2001);
18 *Boumediene v. Bush*, 553 U.S. 723, 765 (2008). Accordingly, federal courts routinely enjoin removal
19 or order release where necessary to prevent jurisdiction-defeating enforcement and preserve
20 meaningful review of detention claims. *Nken*, 556 U.S. at 428–29.

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22 Because Petitioner remains in federal custody within this Court’s territorial jurisdiction and
23 alleges ongoing detention and threatened removal in violation of federal law and the Constitution, this
24 Court has both jurisdiction and equitable authority to issue the temporary restraining order requested
25 here.
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1 **III. LEGAL STANDARD**

2 A Temporary Restraining Order is appropriate where the movant demonstrates:

- 3 1. A likelihood of success on the merits;
- 4 2. A likelihood of irreparable harm absent relief;
- 5 3. That the balance of equities tips in the movant’s favor; and
- 6 4. That an injunction is in the public interest.

7 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

8 Where ongoing immigration enforcement threatens to moot pending judicial review or

9 foreclose access to congressionally authorized relief, courts routinely find these factors satisfied. *Nken*

10 *v. Holder*, 556 U.S. 418, 428–29 (2009); *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966); *Trump*

11 *v. International Refugee Assistance Project*, 582 U.S. 571, 579–80 (2017).

12 **IV. ARGUMENT**

13 **A. Petitioner Is Likely to Succeed on the Merits**

14 Petitioner’s habeas petition challenges the legality of Respondents’ prior removal, present

15 detention, and asserted enforcement authority under the Constitution, the Immigration and Nationality

16 Act, and the federal habeas statute, 28 U.S.C. § 2241. The petition does not seek adjudication of

17 ultimate immigration status or any permanent restraint on lawful executive enforcement. Rather, it

18 seeks restoration of the status quo, termination of detention that lacks statutory authorization, and

19 protection against repetition of the same unlawful removal that has already occurred. Government

20 conduct that obstructs access to the courts or frustrates congressionally created immigration protections

21 violates both constitutional guarantees and the statutory framework governing humanitarian relief. See

22 U.S. Const. amend. I; 8 U.S.C. § 1101(a)(15)(U).

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1 The extraordinary procedural history of this case establishes a substantial likelihood of success
2 on the merits. Petitioner was removed from the United States in direct violation of this Court’s express
3 non-removal order and later returned to the United States pursuant to government action and court-
4 ordered relief rather than any voluntary or unlawful reentry. Reinstatement of a prior removal order,
5 however, applies only where a noncitizen “has reentered the United States illegally after having been
6 removed.” 8 U.S.C. § 1231(a)(5). Because Petitioner’s present presence results from government-
7 authorized return rather than unlawful reentry, Respondents lack statutory authority to invoke
8 reinstatement or to detain him on that basis. Continued detention predicated on an invalid reinstatement
9 theory is therefore ultra vires and contrary to the limited civil-detention authorities Congress has
10 enacted. *See Jennings v. Rodriguez*, 583 U.S. 281, 293–94 (2018) (explaining that immigration
11 detention authority must derive from specific statutory authorization).
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14 Independent of the reinstatement defect, Respondents’ ongoing confinement lacks any lawful
15 statutory predicate and violates the Fifth Amendment. Civil immigration detention is permissible only
16 within the bounds established by 8 U.S.C. §§ 1225, 1226, and 1231, and prolonged detention without
17 individualized custody review raises serious constitutional concerns. *See Zadvydas v. Davis*, 533 U.S.
18 678, 690 (2001) (holding that civil immigration detention is limited by constitutional due process
19 principles); *Jennings*, 583 U.S. at 302–03 (distinguishing the statutory bases for immigration
20 detention). Where detention is untethered to a valid statutory ground or meaningful custody process,
21 habeas relief is appropriate. *See Demore v. Kim*, 538 U.S. 510, 517 (2003) (recognizing habeas review
22 of immigration detention).
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25 Respondents’ inability to lawfully maintain Petitioner in stable custody, combined with their
26 prior removal in violation of a court order, creates a concrete and immediate risk that Petitioner could
27 again be deported before judicial review is completed, thereby nullifying this Court’s jurisdiction.
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1 Removal during the pendency of habeas proceedings would foreclose Petitioner's ability to pursue
2 congressionally authorized U-visa protection, notwithstanding Congress's provision of broad waiver
3 authority and deferred-action mechanisms designed to prevent the removal of qualifying victims before
4 adjudication of their claims. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1182(d)(14); 8 C.F.R. § 214.14. Courts
5 have long recognized that interim equitable relief is warranted where government action threatens to
6 moot judicial review or eliminate access to statutory relief. *See Nken v. Holder*, 556 U.S. 418, 428–29
7 (2009); *FTC v. Dean Foods Co.*, 384 U.S. 597, 604 (1966).

9 The relief requested in this motion is therefore procedural, jurisdiction-preserving, and
10 narrowly tailored. Petitioner does not ask this Court to resolve the merits of his immigration
11 proceedings. Instead, he seeks temporary relief sufficient to halt ongoing unconstitutional detention
12 and prevent enforcement actions that would perpetuate Respondents' prior violation of this Court's
13 order, interfere with Petitioner's access to humanitarian protection created by Congress, and deprive
14 this Court of the ability to adjudicate the claims properly before it.

16 Absent a Temporary Restraining Order, Respondents' continued detention and threatened
17 removal would risk repetition of unlawful deportation, prolong unconstitutional deprivation of liberty,
18 and effectively extinguish this Court's jurisdiction before meaningful review can occur. Preservation
19 of judicial authority, prevention of unlawful detention, and maintenance of the status quo pending
20 habeas review therefore strongly support a finding of likelihood of success and the issuance of
21 immediate interim relief. *See Nken*, 556 U.S. at 428–29.

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24 **B. Petitioner Will Suffer Immediate and Irreparable Harm Absent a Temporary
Restraining Order**

25 Absent immediate injunctive relief, Petitioner faces a substantial and irreparable deprivation of
26 liberty that cannot be remedied after the fact. Although a second unlawful removal is not certain, the
27 risk is concrete, immediate, and magnified by Respondents' prior conduct in this very case, removing
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1 Petitioner in direct violation of this Court’s non-removal order and thereby demonstrating both the
2 capability and willingness to effectuate removal before judicial review is completed. Even the credible
3 risk of removal during pending habeas proceedings threatens to extinguish Petitioner’s access to the
4 courts, foreclose congressionally authorized relief, and nullify this Court’s jurisdiction to grant
5 meaningful relief—harms long recognized as irreparable. *See Nken v. Holder*, 556 U.S. 418, 435
6 (2009); *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966).

8 More fundamentally, Petitioner’s ongoing detention itself, because it is unlawful, constitutes
9 irreparable harm independent of any future removal. The Supreme Court has repeatedly emphasized
10 that “[f]reedom from imprisonment—from government custody, detention, or other forms of physical
11 restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas v. Davis*,
12 533 U.S. 678, 690 (2001). Deprivation of physical liberty, even for a limited period, is an injury that
13 cannot be undone through later judicial relief. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). Consistent
14 with these principles, the Tenth Circuit recognizes that harm is irreparable where it is certain, great,
15 actual, and incapable of later remediation. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1267 (10th Cir.
16 2005). Unlawful civil detention squarely meets that standard because time spent in unconstitutional
17 confinement cannot be recovered. *See also Demore v. Kim*, 538 U.S. 510, 517 (2003) (recognizing
18 habeas as the traditional vehicle for challenging unlawful immigration detention).

21 The equities are especially compelling given the extraordinary factual posture of this case.
22 Petitioner was arrested and removed from the United States only days before Christmas, abruptly
23 separating him from his family and preventing any meaningful opportunity for farewell or preparation.
24 He remained outside the country longer than this Court ordered before Respondents effectuated his
25 return, prolonging both his separation from loved ones and the deprivation of his ability to participate
26 in these proceedings. These harms are not abstract, they reflect the real and continuing human
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1 consequences of unlawful detention and removal. Petitioner's family have still not been able to see him
2 since he was taken days before Christmas. If he is moved from Utah, which is likely to happen, they
3 will be unable to see him further.

4 Removal would compound these injuries by irreparably interfering with Petitioner's ability to
5 pursue U-visa protection, a statutory safeguard Congress created to ensure that victims of qualifying
6 crimes may remain available to courts and law enforcement while their claims are adjudicated. *See* 8
7 U.S.C. §§ 1101(a)(15)(U), 1182(d)(14); 8 C.F.R. § 214.14. Deportation prior to adjudication would
8 extinguish access to that humanitarian process and permanently frustrate Congress's remedial design—
9 an injury no later court order could repair.

10 Finally, the threatened harm is imminent and real, even if not absolutely certain. Petitioner is
11 presently detained; Respondents previously executed an unlawful removal in this very litigation; and
12 nothing in the current posture prevents repetition absent judicial intervention. Where unlawful
13 detention is ongoing, liberty is presently restrained, family separation continues, and jurisdiction-
14 defeating removal remains a credible possibility, the irreparable-harm requirement for temporary
15 injunctive relief is not merely satisfied—it is compelling. *See Schrier*, 427 F.3d at 1267; *Nken v.*
16 *Holder*, 556 U.S. 418, 428–29 (2009); *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966).

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20 **C. The Balance of Equities Strongly Favors Petitioner**

21 The balance of equities weighs decisively in Petitioner's favor. The relief requested, a
22 temporary restraining order prohibiting removal and requiring release from unlawful detention, or at
23 minimum a prompt constitutionally adequate custody determination, is narrowly tailored to preserve
24 the status quo and this Court's jurisdiction while the merits of the habeas petition are adjudicated.
25 Granting such interim relief imposes minimal burden on Respondents, who retain full authority to
26 pursue lawful immigration enforcement should they ultimately prevail. *See Nken v. Holder*, 556 U.S.
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1 418, 435 (2009) (recognizing the Government’s interest in enforcement of immigration law but
2 requiring equitable balancing against the noncitizen’s liberty interests and the court’s authority to
3 review).

4 By contrast, denial of relief would subject Petitioner to continued detention alleged to be
5 unlawful, prolonged separation from his family, and the credible risk of removal before judicial review
6 is completed, harms that are immediate, irreversible, and incapable of later remediation. The Supreme
7 Court has long emphasized that physical liberty occupies a central place in the constitutional scheme
8 and that wrongful deprivation of that liberty constitutes profound injury. *Zadvydas v. Davis*, 533 U.S.
9 678, 690 (2001). Where, as here, the Government’s requested course of action risks extinguishing both
10 liberty and access to judicial review, the equities necessarily tip toward preserving the individual’s
11 rights pending adjudication. *Nken v. Holder*, 556 U.S. 418, 428–29 (2009); *F.T.C. v. Dean Foods Co.*,
12 384 U.S. 597, 604 (1966).
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15 The equities are further strengthened by the unique procedural posture of this case. Respondents
16 have already removed Petitioner once in violation of this Court’s order, demonstrating that the risk of
17 jurisdiction-defeating enforcement is not theoretical. Requiring temporary restraint on removal and
18 detention merely restores the lawful status quo that should have existed absent that violation. Courts
19 sitting in equity routinely favor interim relief where necessary to prevent a party from benefiting from
20 its own potentially unlawful conduct or from mooted pending judicial review. *See FTC v. Dean Foods*
21 *Co.*, 384 U.S. 597, 604 (1966).
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23 Ultimately, the choice before the Court is stark. Granting temporary relief preserves liberty,
24 family unity, statutory protections, and this Court’s ability to adjudicate the merits, while imposing
25 only a limited and reversible constraint on Respondents’ enforcement authority. Denying relief, by
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1 contrast, risks permanent and irreversible harm based solely on timing. In such circumstances, equity
2 overwhelmingly favors interim injunctive relief. *See Nken*, 556 U.S. at 435.

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4 **D. The Public Interest Supports Injunctive Relief**

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6 The public interest is served when federal courts are able to provide meaningful review of
7 executive action and when government officials comply with constitutional and statutory limits on their
8 authority. *Nken v. Holder*, 556 U.S. 418, 436 (2009). Granting a Temporary Restraining Order here
9 preserves this Court's jurisdiction, prevents ongoing deprivation of liberty alleged to be unlawful, and
10 ensures that the legality of Respondents' conduct is resolved through orderly judicial process rather
11 than irreversible enforcement action. Courts have long recognized that there is generally no public
12 interest in the perpetuation of unlawful agency action and that the public interest is instead vindicated
13 by adherence to the rule of law. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir.
14 2016); *see also Nken v. Holder*, 556 U.S. 418, 436 (2009) (explaining that the public interest and the
15 Government's interests merge where the Government is a party but must be balanced against the court's
16 duty to ensure lawful conduct).

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19 This case implicates especially strong public-interest concerns. Respondents previously
20 removed Petitioner in violation of this Court's non-removal directive and now continue to detain him
21 while retaining the ability to effectuate removal before judicial review is complete. Preventing
22 repetition of conduct that threatens to nullify federal jurisdiction is itself a core public interest. *See FTC*
23 *v. Dean Foods Co.*, 384 U.S. 597, 604 (1966) (recognizing courts' authority to issue equitable relief
24 necessary to preserve jurisdiction and ensure effective review). The public has a profound stake in the
25 faithful execution of court orders and in the constitutional separation of powers that requires the
26 Executive to remain subject to judicial review.
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1 The public also has a compelling humanitarian and constitutional interest in freedom from
2 unlawful detention and in the preservation of family unity during the pendency of legal proceedings.
3 Physical liberty lies at the heart of the Due Process Clause, and preventing unconstitutional restraint
4 on liberty serves, not harms, the public good. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
5 Ensuring that individuals retain access to congressionally created immigration protections while courts
6 determine their legal entitlement likewise advances the public's interest in faithful implementation of
7 federal law.
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9 Conversely, the public has no legitimate interest in enforcement actions that risk mootng active
10 litigation, foreclosing statutory relief, or depriving a federal court of the opportunity to adjudicate
11 claims properly before it. Temporary preservation of the status quo imposes minimal cost on the
12 Government while safeguarding constitutional structure, humanitarian protections, and the integrity of
13 judicial review. Accordingly, the public interest strongly favors issuance of a Temporary Restraining
14 Order.
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16 **V. RELIEF REQUESTED**

17 For the foregoing reasons, Petitioner respectfully requests that the Court:
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19 A. Issue an Emergency Temporary Restraining Order prohibiting Respondents, including DHS
20 and ICE, from removing Petitioner from the United States or taking any enforcement action that would
21 moot this Court's jurisdiction or interfere with adjudication of Petitioner's habeas claims;

22 B. Order Respondents to immediately release Petitioner from unlawful detention, or in the
23 alternative, to provide a prompt and constitutionally adequate individualized custody determination
24 before a neutral decisionmaker within a time certain set by the Court;
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1 C. Order that the status quo be preserved pending final resolution of this action, including
2 prohibiting any transfer, removal, or other action that would frustrate this Court's ability to grant
3 effective habeas relief;

4 D. Award Petitioner his reasonable attorneys' fees and costs as permitted by law; and

5 E. Grant such other and further relief as the Court deems just and proper.
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7 DATED: February 6, 2026

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Respectfully submitted,

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