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8 Counsel for Petitioner

9
10 **UNITED STATES DISTRICT COURT FOR THE**
11 **EASTERN DISTRICT OF CALIFORNIA**
12

13 Carlos ALVARADO,

14 Plaintiff,

15 v.

16 Kristi NOEM, Secretary, Department of
17 Homeland Security; Todd LYONS, in his
18 official capacity as Acting Director of U.S.
19 Immigration and Customs Enforcement; Pam
20 BONDI, Attorney General of the United
21 States; Nancy GONZALEZ, Acting Director,
22 Bakersfield, ICE Field Office; and Ron
23 MURRAY, Warden, Mesa Verde ICE
24 Processing Center.

25 Respondents.
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No. 1:25-CV-01959-DJC-CSK

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

Immigration Case

1 For the reasons explained in the accompanying Memorandum of Points and
2 Authorities, Petitioner hereby makes this *Ex Parte* Application for a Temporary
3 Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to
4 Federal Rule of Civil Procedure 65. Petitioner is in lawful deferred action status and
5 is being detained by Respondents, even though he cannot be removed from the
6 United States.

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

12 Respondents were advised on December 21, 2025 that Petitioner would be
13 filing this ex parte application and of the contents of this application. Tolchin Decl.
14 ¶ 4. See Local Rule 231(a).

15 Counsel for Respondents is as follows:

16 Edward A. Olsen, Chief Civil Division
17 501 I St Ste 10100, Sacramento, CA 95814-7306
18 Phone: 916-554-2821 | Fax: 916-554-2900
Email: edward.olsen@usdoj.gov

19
20
21 Dated : December 22, 2025

/s/ Stacy Tolchin

22 Stacy Tolchin
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1 I. INTRODUCTION

2 Petitioner is a native of Honduras who subject to an order of removal, but is
3 in valid deferred action status as a result of a pending U-Visa, an immigration
4 benefit available to noncitizen victims of certain crimes. He cannot be removed
5 from the United States and therefore cannot be detained. Nevertheless, Petitioner
6 was detained on December 16, 2025 by immigration authorities and is currently
7 being held at the Mesa Verde immigration detention center in Bakersfield,
8 California.

9 He requires an *ex parte* order from this Court ordering his immediate release.

10
11 II. STATEMENT OF FACTS

12 Petitioner was born in Honduras and resides in Southern California with his
13 family, including his United States citizen wife and three United States citizen
14 children. Tolchin Dec. Exhs. F, C. He is the subject of a final order of removal.
15 Tolchin Dec. Exhs. D, E. However, he was granted deferred action status on June
16 18, 2024, based on a pending application for a U Visa, a benefit for victims of
17 crimes.¹ Tolchin Dec. Exh. B, C.

18 On December 16, 2025, Petitioner was detained by immigration authorities.
19 Tolchin Dec. Exh. E. Petitioner was taken to the Mesa Verde immigration detention
20 center and is being held there. *Id.* Petitioner is now detained without lawful
21 authority and separated from his United States citizen family.

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23 III. STANDARD OF REVIEW

24 A Temporary Restraining Order (“TRO”) may be issued upon a showing
25 “that immediate and irreparable injury, loss, or damage will result to the movant
26 before the adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). A

27
28 ¹ <https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions>

1 trial court may grant a TRO or a preliminary injunction to “preserve the status quo
2 and the rights of the parties” until a decision can be made in the case. *U.S. Philips*
3 *Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). The status quo in
4 this context “refers not simply to any situation before the filing of a lawsuit, but
5 instead to ‘the last uncontested status which preceded the pending controversy[.]’ ”
6 *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000) (quoting
7 *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th Cir. 1963). The
8 analysis for a TRO and a preliminary injunction is the same. *Frontline Med. Assoc.,*
9 *Inc. v. Coventry Healthcare Workers Compensation, Inc.*, 620 F. Supp. 2d 1109,
10 1110 (C.D. Cal. 2009).

11 To obtain a preliminary injunction, a Petitioner “must establish [1] that he is
12 likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
13 absence of preliminary relief, [3] that the balance of equities tips in their favor, and
14 [4] that an injunction is in the public interest.” *City & County of San Francisco v.*
15 *USCIS*, 944 F.3d 773, 788-89 (9th Cir. 2019)(quoting *Winter v. Nat. Res. Def.*
16 *Council, Inc.*, 555 U.S. 7, 20 (2008). “Likelihood of success on the merits is the
17 most important factor.” *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018)
18 (quotations omitted). If the first two factors are met, the third and fourth factors
19 merge when the Government is the opposing party. *Nken v. Holder*, 556 U.S. 418,
20 435 (2009).

21 Additionally, in the Ninth Circuit, courts also “employ an alternative ‘serious
22 questions’ standard, also known as the ‘sliding scale’ variant of the *Winter*
23 standard.” *Frailhat v. U.S. Immigr. & Customs Enft.*, 16 F.4th 613, 635 (9th Cir.
24 2021) (quotations and citations omitted and alterations accepted). “Under that
25 formulation, ‘serious questions going to the merits’ and a balance of hardships that
26 tips sharply towards the Petitioner[s] can support issuance of a preliminary
27 injunction, so long as the Petitioner[s] also show[] that there is a likelihood of
28

1 irreparable injury and that the injunction is in the public interest.” *Id.* (quoting *All.*
2 *for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)).

3 Petitioner meets all the requirements for relief.

4
5 IV. ARGUMENT

6 A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS
7 CLAIMS

8
9 I. Petitioner is Likely to Prevail on the Issue of Whether His
10 Ongoing Detention is Unlawful

11 Petitioner has deferred action status and cannot be removed from the United
12 States. Tolchin Dec. Exh. B. That is based on a U Visa bona fide determination. 8
13 U.S.C. § 1182(p)(6). When such a determination is made, the recipient cannot be
14 removed from the United States. Deferred action is issued to U Visa applicants
15 because the “number of U visas that U.S. Citizenship and Immigration Services
16 (“USCIS”) may issue annually is statutorily capped, and that cap has been reached
17 each year since 2009.” *De Sousa v. Dir. of U.S. Citizenship & Immigr. Servs.*, 755
18 F. Supp. 3d 1266, 1268 (N.D. Cal. 2024). “Thus, USCIS places petitioners who
19 qualify for a U visa but who cannot obtain one due to the statutory cap on a waiting
20 list, where they receive interim benefits. For petitioners living in the United States,
21 those interim benefits include deferred action, which protects them against removal
22 from the United States, as well as employment authorization.” *Id.* “The defining
23 feature of deferred action is the decision to defer removal (and to notify the affected
24 alien of that decision).” *Dep’t of Homeland Sec. v. Regents of the Univ. of*
25 *California*, 140 S. Ct. 1891, 1911 (2020). Petitioner’s detention violates the
26 Immigration and Nationality Act and his right to substantive due process.
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1 First, even though Petitioner has a final order of removal, he cannot be held
2 in immigration custody if he cannot be removed from the United States. The
3 government is authorized to detain an individual who is to be removed from the
4 United States. 8 U.S.C. § 1231(a)(6). Detention is only permissible “until it has
5 been determined that there is no significant likelihood of removal in the reasonably
6 foreseeable future.” *Zadvydas v. Davis*, 533 U.S. 678 (2001). “Whether a set of
7 particular circumstances amounts to detention within, or beyond, a period
8 reasonably necessary to secure removal is determinative of whether the detention
9 is, or is not, pursuant to statutory authority.” *Zadvydas*, 533 U.S. at 699.

10 Petitioner has deferred action status and cannot be removed from the United
11 States. It therefore is unlawful to detain Petitioner if he cannot be removed, in
12 violation of 8 U.S.C. § 1231(a)(6). *Patel v. Hyde*, No. CV 25-12518-RGS, 2025
13 WL 3169875, at *2 (D. Mass. Nov. 12, 2025); *F.R.P. v. Wamsley*, 2025 WL
14 3037858, at *5-6 (D. Or. Oct. 30, 2025); *Maldonado v. Noem*, No. 4:25-CV-2541,
15 2025 WL 1593133, at *3 (S.D. Tex. June 5, 2025). *See also Enriquez-Perdomo v.*
16 *Newman*, 149 F.4th 623, 627 (6th Cir. 2025) (noting that detention while in
17 deferred action status is unlawful giving rise to an action on habeas); *Ayala v.*
18 *Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2209708, at *4 (W.D. Wash.
19 Aug. 4, 2025) (“deferred action status prevents removal. As a result, the Court
20 concludes that the Government has no legal basis to detain Sepulveda Ayala and
21 that Sepulveda Ayala has met his burden on his habeas petition.”).

22 In addition, Petitioner’s detention when he cannot be removed violates his
23 right to substantive due process. *Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF,
24 2025 WL 2209708, at *4 (W.D. Wash. Aug. 4, 2025). “Substantive due process
25 protects individuals from state action that interferes with fundamental rights.”
26 *Regino v. Staley*, 133 F.4th 951, 959–60 (9th Cir. 2025). The government may not
27 deprive a person of life, liberty, or property without due process of law. U.S. Const.
28 amend. V. “Freedom from imprisonment—from government custody, detention, or

1 other forms of physical restraint—lies at the heart of the liberty that the Clause
2 protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S.Ct. 2491, 150 L.Ed.2d 653
3 (2001). Petitioner has a fundamental interest in liberty and being free from official
4 restraint. Petitioner’s detention when he cannot be removed is a violation of his
5 right to substantive due process. *Id.* at 701 (due process requires release where there
6 is “good reason to believe there is no significant likelihood of removal in the
7 reasonably foreseeable future.”).

8 As such, Petitioner is likely to succeed on the merits.

9
10 **B. PETITIONER WILL SUFFER IRREPARABLE HARM AND**
11 **THE EQUITIES TIP IN PETITIONER’S FAVOR**

12 The Ninth Circuit has recognized the “irreparable harms imposed on anyone
13 subject to immigration detention” including “subpar medical and psychiatric care in
14 ICE detention facilities” and “the economic burdens imposed on detainees and their
15 families as a result of detention.” *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th
16 Cir. 2017). Moreover, “[i]t is well established that the deprivation of constitutional
17 rights ‘unquestionably constitutes irreparable injury.’ ” *Melendres v. Arpaio*, 695
18 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
19 Where, as here, the “alleged deprivation of a constitutional right is involved, most
20 courts hold that no further showing of irreparable injury is necessary.” *Warsoldier*
21 *v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting *Wright, Miller, &*
22 *Kane, Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). The Ninth Circuit
23 has also noted that “unlawful detention certainly constitutes ‘extreme or very
24 serious’ damage, and that damage is not compensable in damages.” *Hernandez*, 872
25 F.3d at 999. Here, Petitioner is separated from his family and his detained,
26 implicating his right to liberty. Tolchin Dec. Exhs. D, E.

27 The balance of the equities and public interest analyses merge when the
28 government is the opposing party, as is the case in this action. *See Drakes Bay*

1 *Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
2 556 U.S. 418, 435 (2009)). An injunction is in the public interest, given that
3 Petitioner seeks to protect constitutionally protected liberty. *See Meza v. Bonnar*,
4 No. 18-CV-02708-BLF, 2018 WL 2554572, at *4 (N.D. Cal. June 4, 2018) (“Given
5 the low risk of Petitioner’s causing harm to others or fleeing, such expenditure in
6 her case would not benefit the public absent a material change in circumstances.”).
7 “Just as the public has an interest in the orderly and efficient administration of this
8 country’s immigration laws, [] the public has a strong interest in upholding
9 procedural protections against unlawful detention.” *Vargas v. Jennings*, No. 20-cv-
10 5785-PJH, 2020 WL 5074312, at *4 (N.D. Cal. Aug. 23, 2020). Further, the Ninth
11 Circuit has recognized that “[t]he costs to the public of immigration detention are
12 ‘staggering,’ ” *Hernandez*, 872 F.3d at 996. Therefore, the *Winter* factors weigh in
13 favor of a grant of a temporary restraining order and preliminary injunction.

14 **C. NO BOND IS NECESSARY**

15 The Court has discretion to set the amount of security required for a
16 temporary restraining order or preliminary injunction under Rule 65(c), if
17 any. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) Indeed, “[t]he
18 district court may dispense with the filing of a bond when it concludes there is no
19 realistic likelihood of harm to the defendant from enjoining his or her
20 conduct.” *Id.* (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)).
21 Here, it is unlikely any harm will come to Respondents as a result of a grant of
22 temporary relief and Respondents will incur negligible or zero financial costs.
23 Petitioner asks the Court to exercise its discretion to waive the bond requirement.
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1 **II. CONCLUSION**

2 Petitioner respectfully requests that this Court grant his request for a
3 temporary restraining order and order that he be immediately released from ICE
4 custody.

5 Dated: December 22, 2025

Respectfully Submitted,

6 S/Stacy Tolchin

7 Stacy Tolchin (CA SBN #217431)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 22, 2025, I served a copy of PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF STACY TOLCHIN; AND [PROPOSED] ORDER by email to the following individual:

Edward A. Olsen, Chief Civil Division
501 I St Ste 10100, Sacramento, CA 95814-7306
Phone: 916-554-2821 | Fax: 916-554-2900
Email: edward.olsen@usdoj.gov

s/ Stacy Tolchin
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