

1 UTKU GALIP AKCOK
ATTORNEY FOR PLAINTIFF
2 State Bar No. 338452
3 AKCOK LAW OFFICE,
A PROFESSIONAL LAW CORPORATION
4 330 PRIMROSE RD., STE 510
BURLINGAME CA 94010
5 PHONE: (650) 373-0706
6 FACSIMILE: (650) 373-0709

7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA

9 Case No.: 3:26-cv-01455

10 **ERCAN CETINKAYA,**



11
12 Petitioner,

13 v.

14 **PAMELA BONDI**, Attorney General of the
15 U.S.;

16 **KRISTI NOEM**, Secretary of the U.S.
17 Department of Homeland Security;

18 **TODD M. LYONS**, in his official capacity
19 as Acting Director of U.S. Immigration and
20 Customs Enforcement;

21 **DANIEL A. BRIGHTMAN**, in his official
22 Capacity as Acting Field Office Director of
23 the Field Office of the San Diego, California,
24 U.S. Immigration and Customs Enforcement
(or successor); and

25 **CHRISTOPHER J. LAROSE**, Warden of
26 the Imperial Regional Detention Facility

27
28 Respondents.

**EX PARTE EMERGENCY
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

I. INTRODUCTION

1 1. Petitioner Ercan Cetinkaya respectfully moves for an ex parte Temporary Restraining
2 Order ("TRO") to preserve this Court's habeas jurisdiction and prevent immediate and
3 irreparable constitutional and physical harm while his Petition for Writ of Habeas Corpus under
4 28 U.S.C. § 2241 is pending.

5
6 2. Respondents are detaining Mr. Cetinkaya pursuant to a recent and legally erroneous
7 reinterpretation of 8 U.S.C. § 1225(b) that conflicts with Supreme Court precedent, binding
8 federal court injunctions, and decades of agency practice. Although Mr. Cetinkaya was arrested
9 in the interior of the United States, successfully lived in the community for four years on an
10 Order of Release on Recognizance (I-220A), and has an asylum application pending, ICE
11 abruptly re-detained him and now asserts he is subject to mandatory detention under § 1225(b)
12 without bond eligibility.

13
14 3. Crucially, ICE previously released Mr. Cetinkaya in March 2022 specifically because
15 he is a Fraihat class member with documented chronic medical conditions that place him at a
16 "heightened risk of severe illness and death" in custody. Every day Petitioner remains
17 incarcerated in violation of his Fifth Amendment Due Process rights—and at severe risk to his
18 health—constitutes irreparable harm. Petitioner seeks immediate release under reasonable
19 supervision conditions or an immediate individualized bond hearing.

II. JURISDICTION AND VENUE

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21
22 4. This Court has jurisdiction and authority to issue a TRO pursuant to 28 U.S.C. § 2241,
23 28 U.S.C. § 1651(a) (All Writs Act), Federal Rule of Civil Procedure 65, and the Due Process
24 Clause of the Fifth Amendment.

25
26 5. Federal courts in the Ninth Circuit possess inherent authority to issue injunctive relief
27 necessary to preserve habeas jurisdiction, including orders prohibiting the transfer of
28 detainees. See *Ex parte Endo*, 323 U.S. 283, 304 (1944); *Nken v. Holder*, 556 U.S. 418, 435
(2009).

III. FACTUAL BACKGROUND

1
2 6. The relevant facts are set forth in detail in the accompanying Petition for Writ of
3 Habeas Corpus and are incorporated by reference. In brief:

4 a) Mr. Cetinkaya was arrested in the interior of the United States, not at a port of
5 entry, and has been physically present in the United States since on or about February 28,
6 2022.

7 b) On March 8, 2022, ICE formally evaluated Mr. Cetinkaya and determined he
8 suffered from Chronic Care Conditions. ICE's own Notice of Custody Determination
9 concluded these conditions placed him at "heightened risk of severe illness and death" upon
10 contracting a virus. Consequently, ICE released him on his own recognizance as a Fraihat
11 class member.

12 c) For four years, Mr. Cetinkaya fully complied with his immigration
13 requirements and pursued his pending asylum case.

14 d) On February 25, 2026, ICE abruptly re-arrested him during an interior
15 enforcement operation, without alleging any criminal history or flight risk.

16 e) ICE has classified him as subject to mandatory detention under 8 U.S.C. §
17 1225(b), rendering any administrative request for a bond hearing before an Immigration
18 Judge legally futile under current agency policy. He is currently detained at the Imperial
19 Regional Adult Detention Facility within this District.
20
21

22 IV. LEGAL STANDARD

23 7. In the Ninth Circuit, a TRO may issue where the movant demonstrates either: a
24 likelihood of success on the merits and irreparable harm; or serious questions going to the
25 merits and a balance of hardships that tips sharply in the movant's favor, provided that the
26 injunction is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
27 1134-35 (9th Cir. 2011).
28

1 8. For ex parte relief under Rule 65(b)(1), the movant must further show immediate and
2 irreparable injury before the opposing party can be heard, and certification of efforts to give
3 notice or reasons notice should not be required..
4

5 **V. ARGUMENT**
6

7 **A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS**
8

9 9. Mr. Cetinkaya has demonstrated a strong likelihood of success on his habeas
10 claims. The Supreme Court has made clear that 8 U.S.C. § 1225(b) applies primarily to
11 arriving noncitizens, whereas 8 U.S.C. § 1226(a) governs noncitizens already present in
12 the United States and permits bond hearings. See *Jennings v. Rodriguez*, 583 U.S. 281,
13 297-303 (2018).
14

15 10. Mr. Cetinkaya was arrested inside the United States, placing him squarely
16 within § 1226(a). Respondents' contrary position rests on a recent agency
17 reinterpretation by the Board of Immigration Appeals in *Matter of Yajure Hurtado*, 29 I. &
18 N. Dec. 216 (BIA 2025), which has been uniformly rejected by federal district courts.
19

20 11. In *Maldonado Bautista v. Noem*, No. 5:25-CV-1873 (C.D. Cal. Dec. 18, 2025), a
21 federal court in California explicitly struck down the application of § 1225(b) to interior
22 arrestees. Other courts have reached the exact same conclusion. See *Guzman v. Bondi*,
23 No. 1:25-CV-2055-RP (W.D. Tex. Dec. 23, 2025); *Camacho v. Hollinshead*, No. 1:25-
24 cv-00593-BLW (D. Idaho Nov. 19, 2025). Furthermore, stripping a compliant
25 individual of their liberty without a hearing after four years of peaceful residence violates
26 the Due Process Clause. See *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017).
27 Accordingly, Petitioner has shown a substantial likelihood of success on the merits.
28

B. PETITIONER FACES IMMEDIATE AND IRREPARABLE HARM

1 12. It is well-established that the "deprivation of constitutional rights 'unquestionably
2 constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
3 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Petitioner is currently suffering a loss of
4 liberty that cannot be compensated by damages.

5
6 13. Most urgently, this deprivation of liberty is accompanied by a severe, documented risk
7 to Petitioner's life and health. ICE's own 2022 custody determination conceded that Mr.
8 Cetinkaya's chronic health conditions place him at a "heightened risk of severe illness and
9 death" if kept in an ICE detention facility. Detaining an individual with acknowledged, severe
10 medical vulnerabilities without even affording him a bond hearing constitutes an immediate,
11 irreparable, and potentially fatal injury.

12
13 14. Finally, Respondents retain unilateral authority to transfer Mr. Cetinkaya at any time
14 without notice. Such a transfer would substantially impair this Court's ability to adjudicate the
15 habeas petition and risks mooted the relief sought.
16

17
18 **C. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SHARPLY FAVOR**
19 **PETITIONER**

20 15. The public interest and the balance of equities weigh heavily in favor of granting
21 injunctive relief because the government has no legitimate interest in continuing an unlawful
22 practice. As the Ninth Circuit recently reaffirmed, "[i]t is always in the public interest to
23 prevent the violation of a party's constitutional rights." *Fellowship of Christian Athletes v. San*
24 *Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023) (en banc).
25

26 16. The government "cannot suffer harm from an injunction that merely ends an unlawful
27 practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Conversely, Petitioner
28 faces a severe threat to his physical health and liberty. The cost to taxpayers to house
Petitioner—who poses no flight risk and has no criminal record—is substantial and
unwarranted.

1 **D. EX PARTE RELIEF IS WARRANTED UNDER RULE 65(b)(1)**

2 17. Ex parte relief is appropriate because Mr. Cetinkaya remains in continuous custody
3 subject to transfer at any time without advance notice. Furthermore, his documented medical
4 vulnerability means any delay risks irreparable physical harm before Respondents can be
5 heard. Notice would therefore be impracticable and could defeat the purpose of the requested
6 TRO.

7
8 **VI. REQUEST FOR RELIEF**

9
10 Petitioner respectfully requests that the Court:

11
12 18. Issue an ex parte Temporary Restraining Order Prohibiting Respondents from
13 transferring Mr. Cetinkaya outside the Southern District of California;

14 19. Enjoin Respondents from continuing Mr. Cetinkaya's detention absent lawful
15 authority, pending further order of the Court;

16 20. Issue an Order to Show Cause requiring Respondents to respond within three (3) days
17 pursuant to 28 U.S.C. § 2243;

18 21. Waive the security requirement under Rule 65(c), as Petitioner seeks to vindicate
19 constitutional rights and lacks financial means; and

20 22. Grant such other and further relief as the Court deems just and proper.

21
22 Respectfully submitted,

23 /s/ Utku Galip Akcok

24 Utku Galip Akcok

25 State Bar No. 338452

Akcok Law Office

26 330 PRIMROSE ROAD STE 510

27 BURLINGAME, CALIFORNIA 94010

28 TELEPHONE (650) 373-0706

FAX (650) 373-0709

Dated: March 9, 2026

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Ercan Cetinkaya, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Ex Parte Emergency Motion for Temporary Restraining Order and Order to Show Cause are true and correct to the best of my knowledge. Dated this 9th day of March 2026.

/s/ Utku Galip Akcok
Utku Galip Akcok