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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9
10 Case No.: 3:26-cv-01633

11 **AYHAN GUMUSTEKIN,**



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 Respondents.
28

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

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I. INTRODUCTION

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

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

II. JURISDICTION AND VENUE

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

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

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III. FACTUAL BACKGROUND

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

a. Mr. Gumustekin was arrested in the interior of the United States, not at a port of entry, and has been physically present in the United States since on or about July 26, 2024.

b. For approximately one year and seven months, Mr. Gumustekin fully complied with his immigration requirements and pursued his pending asylum case.

c. On February 23, 2026, ICE abruptly re-arrested him during an interior enforcement operation, without alleging any criminal history or flight risk.

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

IV. LEGAL STANDARD

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

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

V. ARGUMENT

A. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS

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

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

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

B. PETITIONER FACES IMMEDIATE AND IRREPARABLE HARM

11. It is well-established that the "deprivation of constitutional rights 'unquestionably

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

5 12. Finally, Respondents retain unilateral authority to transfer Mr. Gumustekin at any
6 time without notice. Such a transfer would substantially impair this Court's ability to
7 adjudicate the habeas petition and risks mootng the relief sought.
8

9 **C. THE BALANCE OF EQUITIES AND PUBLIC INTEREST SHARPLY**
10 **FAVOR PETITIONER**
11

12 13. The public interest and the balance of equities weigh heavily in favor of granting
13 injunctive relief because the government has no legitimate interest in continuing an
14 unlawful practice. As the Ninth Circuit recently reaffirmed, "[i]t is always in the public
15 interest to prevent the violation of a party's constitutional rights." *Fellowship of Christian*
16 *Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 695 (9th Cir. 2023) (en
17 banc).
18

19 14. The government "cannot suffer harm from an injunction that merely ends an
20 unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).
21 Conversely, Petitioner faces a severe threat to his physical health and liberty. The cost to
22 taxpayers to house Petitioner—who poses no flight risk and has no criminal record—is
23 substantial and unwarranted.
24

25 **D. EX PARTE RELIEF IS WARRANTED UNDER RULE 65(b)(1)**
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27 15. Ex parte relief is appropriate because Mr. Gumustekin remains in continuous
28 custody subject to transfer at any time without advance notice.

VI. REQUEST FOR RELIEF

Petitioner respectfully requests that the Court:

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

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

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

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

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

Respectfully submitted,

/s/ Utku Galip Akcok

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

I represent Petitioner, Ayhan Gumustekin, 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 17th day of March 2026.

/s/ Utku Galip Akcok
Utku Galip Akcok