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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

M.D.,

Petitioner,

vs.

LAROSE,

et. al,

Respondents.

Case No.: 3:26-cv-01792-TWR-SBC

PETITIONER'S EXPARTE
EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

NOTICE OF MOTION

For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioner hereby makes this Application for 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 moves for a temporary restraining order enjoining Respondents from violating Petitioner's due process rights and violating statutory and regulatory requirements for arrest and detention under the INA. Specifically, the Petitioner seeks an order (i) enjoining Respondents from continuing to detain Petitioner and ordering his immediate release from detention, (ii) enjoining Respondents from re-detaining Petitioner subject to further order, and (iii) enjoining Respondents from keeping the documents confiscated from Petitioner, including his passport, driver's license, EAD card, mobile phone, money, and any other IDs, documents, or possessions that are the property of Petitioner. This motion is based upon Federal Rule of Civil Procedure 65, the incorporated memorandum of points and authorities, and the simultaneously filed Petition for Writ of Habeas Corpus and exhibits.

Dated: March 23, 2026

Respectfully submitted,

/s/ Cara Jobson

/s/ Joye Wiley

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I. INTRODUCTION

Petitioner, M.D, after filing a petition for writ of habeas corpus, brings this emergency ex parte application for a temporary restraining order and order to show cause re: preliminary injunction seeking relief pursuant to statutory, regulatory, and due process protections after being detained by Respondents without notice and in violation of the law.

Petitioner meets all factors for emergency relief. First, Petitioner is likely to succeed on his due process, statutory, and APA claims because Respondents' detention of Petitioner exceeds Respondents' authority, is procedurally flawed, and violates due process. Second, Petitioner faces irreparable harm if a TRO is not granted, including continued detention and separation from work and community. Third, the balance of interests sharply favors Petitioner, since enjoining Respondents merely preserves the status quo while imposing little burden on the government. Fourth, the public interest is served by ensuring that the government complies with the law, and that taxpayers are not burdened with unnecessary expense of detaining individuals who do not pose a flight risk or danger to the community.

II. STATEMENT OF FACTS

All facts herein are taken from the habeas petition and its attachments. Petitioner is a 43-year-old native and citizen of Kyrgyzstan who, in August 2023, presented himself for inspection at the Hidalgo, Texas border crossing via the CBP One App appointment system. He expressed a fear of returning to his home country. According to the paperwork he received, the U.S. Customs and Border Protection ("CBP") paroled him into the United States pursuant to 8 U.S.C. § 1182(d)(5)(A) and issued an I-94 with "DT" class of admission.¹ (Exhibit 1, habeas petition).

¹ DT" is the notation used for parole pursuant to 8 U.S.C. § 1182(d)(5)(A). See, e.g., "Non-Categorical Parole," USCIS FAQ." Aliens who are outside of the United States may request to be paroled into the United States based on urgent humanitarian reasons or a significant public benefit. These aliens are not paroled into the United States under a categorical parole program or process. Often, the Class of Admission (COA) for these aliens is "DT though other parole related COAs may have been used."

Petitioner subsequently filed a timely Form I-589, Application for Asylum and Withholding. Petitioner's asylum claim is based on political violence he suffered in Kyrgyzstan. He filed for and was granted an Employment Authorization Document. Petitioner worked for a trucking company as a driver before being re-detained.

On or about March 4, 2026, over 2 ½ years after paroling M.D. into the United States, with his asylum application pending, Respondents abruptly re-detained him while he was lawfully working. They did so without any notice or opportunity to be heard on his re-detention and his arrest. This Court is the only neutral arbiter for Petitioner.

III. LEGAL STANDARD

Under Ninth Circuit law, courts employ identical standards to evaluate whether to issue a temporary restraining order or a preliminary injunction. See *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, n. 7 (9th Cir. 2001), and *McCarthy v. Servis One, Inc.* 2017 WL 89422, *4 (N.D. Cal. Mar, 7, 2017). Accordingly, a movant must demonstrate (1) a likelihood of success on the merits--or, alternatively, raise serious questions regarding the merits under a sliding-scale approach; (2) a likelihood of harm to the movant in the absence of preliminary relief; (3) that the balance of equities tips in the movant's favor; and (4) that granting the TRO is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008). Moreover, when the government is the opposing party, the assessment of harm to the opposing party and weighing the public interest merge and are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Alternatively, in the Ninth Circuit, courts can also apply a "sliding scale" approach:

FAQs on the Effect of Changes to Parole and Temporary Protected Status (TPS) for SAVE Agencies | USCIS
<https://www.uscis.gov/save/current-user-agencies/guidance/faqs-on-the-effect-of-changes-to-parole-and-temporary-protected-status-tps-for-save-agencies>

1 if the movant can show that there are serious questions going to the merits -a lesser
2 showing than likelihood of success on the merits -then a temporary restraining order or
3 preliminary injunction may still issue if the balance of hardships tips sharply in the
4 plaintiff's favor, and the other two factors are satisfied. *Alliance for the Wild Rockies v.*
5 *Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011).

7 ARGUMENT

8 A. Petitioner Is Likely to Succeed on the Merits

9 1. *Petitioner is Likely to Succeed on the Merits Due to Respondents' Revocation of* 10 *Parole and Re-detention of Petitioner Without Meeting Statutory or Regulatory* 11 *Requirements.*

12 (a) Petitioner's parole was not lawfully revoked because there was no change in 13 circumstances and there was no rational explanation for the decision to re-detain.

14 Petitioner was paroled pursuant to 8 U.S.C. § 1182(d)(5), which authorizes parole
15 "on a case-by-case basis for urgent humanitarian reasons or significant public benefit."
16 Congress allows for the revocation of parole and the re-detention of the noncitizen
17 "when the purposes of such parole shall, in the opinion of the Secretary of Homeland
18 Security, have been served." 8 U.S.C. § 1182(d)(5)(A). See also, *Y-Z-L-H v. Bostock*,
19 F.Supp.3d 1123(D. Oregon 2025)(Finding that under the Administrative Procedures
20 Act, immigration parolees are entitled to determinations related to their paroled
21 revocations that are not arbitrary, capricious or an abuse of discretion.) Government
22 regulations require that in such case, parole be terminated "on notice...upon
23 accomplishment of the purpose for which parole was authorized or when...neither
24 humanitarian reasons nor public benefit warrants the continued presence of the alien in
25 the United States." 8 C.F.R. § 212.5(e)(2)(i).

26 To survive an APA challenge, the agency must articulate "a satisfactory explanation"
27 for its action, "including a rational connection between the facts found and the choice
28 made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted). See

1 also, *Espinoza v. Kaiser*, No. 1:25-cv-1101 JLT SKO, 2025 WL 2675785, at *7 (E.D.
2 Cal. Sept. 18, 2025) (explaining regulatory framework for parole revocation
3 requirements).

4 Respondents re-detained Petitioner after releasing him under 8 U.S.C. §
5 1182(d)(5)(A) despite the fact that he has no criminal record, was working, had
6 complied with the terms of his release, and had an asylum application pending. There
7 was no reasoned determination or any explanation by Respondents for their action in
8 their re-detention of Petitioner after paroling him into the U.S.

9
10 *2. Petitioner is Likely to Succeed on the Merits as Respondents' Re-Detention Policy*
11 *is Arbitrary and Capricious Under the APA.*

12 Respondents' re-detention policy is "arbitrary and capricious" because Respondents
13 provided no explanation for it when implementing it, any subsequent rationalizations
14 ignore an "important aspect of the problem" and violate noncitizens' reliance interests
15 and liberty interests. *Garro Pinchi v. Noem*, No. 25-cv-05632-PCP, 2025 WL 3691938
16 (N.D. Cal. Dec. 19, 2025) (staying Respondents' re-detention policy in the San
17 Francisco ICE area of jurisdiction as likely violative of the APA).

18 *3. Petitioner is Likely to Succeed on the Merits Due to Respondents' Violation of the*
19 *Constitutional Right to Due Process by Re-Detaining Petitioner without Any*
20 *Notice and With No Change in Circumstances.*

21 The Due Process Clause applies to all persons in the United States, including
22 noncitizens. "Freedom from imprisonment – from government custody, detention, or
23 other forms of physical restraint – lies at the heart of the liberty that Clause protects."
24 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

25 The *Mathews v. Eldridge*, 424 U.S. 319 (1976) three-part balancing test considers:
26 (1) "the private interest that will be affected by the official action"; (2) "the risk of an
27 erroneous deprivation of such interest through the procedures used, and the probative

1 value, if any, of additional or substitute procedural safeguards”; and (3) the
2 [g]overnment’s interest, including the function involved and the fiscal or administrative
3 burdens that the additional or substitute procedural requirement would entail.”

4 *Liberty Interest*

5 When the government releases an individual from physical restraint, that
6 individual gains a constitutionally protected interest in his “continued liberty.”
7 *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972). The government may not unilaterally
8 take that liberty away, but rather typically the Constitution “requires some kind of a
9 hearing *before* the [government] deprives a person of liberty. *Zinermon v. Burch*, 494
10 U.S. 113, 127 (1990)(emphasis in the original). While “the initial decision to detain or
11 release and individual may be within the government’s discretion, the government’s
12 decision to release an individual from custody creates ‘an implicit promise,’ upon which
13 that individual may rely, that their liberty ‘will be revoked only if they fail to live up to
14 the conditions of release.’” *Pinchi v. Noem*, 792 F.Supp.3d 1025, 1032 (N.D. Cal.
15 2025)(alteration marks omitted.)

16 Here, Petitioner’s release was a promise that his liberty would not be revoked
17 unless he failed to live up to the conditions of his release. Petitioner has a protected
18 liberty interest in remaining out of custody absent a showing that he poses a flight risk
19 or danger to the community. Moreover, his liberty interest strengthened with time and
20 reliance. He had been released from custody for over 2 1/2 years and filed an
21 application for asylum and anticipated having his merits heard. He also received work
22 authorization and had a job. Petitioner’s liberty interest was a protected private interest
23 warranting due process protection.

24 *Risk of Erroneous Deprivation*

25 Respondents have provided no process at all for Petitioner to challenge his
26 detention. Respondents arrested Petitioner and refused him any forum to challenge his
27 re-detention. The risk of erroneous deprivation is extremely high under these

1 circumstances where there were no procedural safeguards whatsoever. Petitioner, who
2 is not a flight risk nor a danger to the community, has been erroneously detained.

3 *Government Interest*

4 The government's interest is in ensuring that someone who is a danger to the
5 community or a flight risk is not at liberty. That has not even been evaluated here.
6 Petitioner has no criminal record. He did not attempt lawful entry but presented himself
7 for inspection via an appointment system created by the government and was given
8 parole. He sought and obtained a work permit and was lawfully working when he was
9 abruptly re-detained.

10 Any valid government interest is not served by detaining Petitioner without due
11 process.

12 B. Petitioner Will Suffer Irreparable Harm Without a TRO.

13 The unlawful deprivation of liberty "is a severe form of irreparable injury."
14 *Ferrara v. United States*, 370 F. Supp 2d 351, 360 (D. Mass 2005).

15 In addition, violations of due process rights *per se* constitute irreparable harm.
16 *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) ("It is well established that the
17 deprivation of constitutional rights unquestionably constitutes irreparable injury."
18 (interior citations omitted). Because Petitioner demonstrates a likely due process
19 violation, irreparable harm is presumed.

20 C. The Balance of Equities and Public Interest Tip Sharply in Petitioner's
21 Favor.

22 When the government is the nonmoving party, "the last two Winter factors
23 merge." *Baird v. Bonta*, 81 F.4th 1036, 1040 (9th Cir. 2023) (internal citations omitted).

24 On Petitioner's side, the harm of continued and indefinite detention is drastic. On
25 Respondents' side, a TRO imposes minimal burden. Returning Petitioner to the original
26 status quo does not pose a hardship to the Respondents.

1 The public interest also weighs in Petitioner's favor, as the public "has a strong
2 interest in upholding procedural protections...and the Ninth Circuit has recognized that
3 the costs to the public of immigration detention are staggering." *Diaz v. Kaiser*, No.
4 3:25-CV-05071, 2025 WL 1676854, at *3 (N.D. Cal. June 14, 2025) (citing *Jorge M.F.*
5 *v. Wilkinson*, No. 21-CV-01434-JST, 2021 WL 783561, at *3) (N.D. Cal. Mar. 1, 2021).

6
7 D. Petitioner Should be Returned to the Status Quo Ante Litem.

8 The Petitioner by way of this motion seeks to restore the status quo *ante litem*, or
9 "the last uncontested status which preceded the pending controversy[.]" *GoTo.com, Inc.*
10 *v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th Cir. 2000). See also, *Doe v. Noem*, 781
11 F.Supp.3d. 1055, 1064 (E.D. Cal 2025) (Finding the last uncontested status was before
12 ICE terminated plaintiff's SEVIS record.); *Pablo Sequen v. Kaiser*, 793 F.Supp.3d 1114
13 (N.D. Cal 2025) (Ordering immediate release to return petitioner to status quo). In
14 addition, the proper remedy for a procedural due process violation is a pre-deprivation
15 hearing, rather than a post-one. See, e.g. *Goldberg v. Kelly*, 397 U.S. 254 (1970).
16 Immediate release is the proper remedy here.

17 The placement of electronic monitors, such as ankle monitors, and accompanying
18 restrictions, such as prohibition of traveling out of state, have been found to constitute a
19 significant deprivation of liberty. *Palacio v. Hermosillo*, C25-1983-RSM-MLP, 2025
20 WL 4033287, W.D. WA (December 22, 2025)(Finding that the placement of an ankle
21 monitor without procedural safeguards violated due process.) See also, *A.B.D., C.C.S.,*
22 *v. Cammilla Wamsley, et al* Civ. No. 6:25-cv-02014-AA, 2026 WL 178306, D.OR,
23 (January 1, 2026)(Determining that supervision measures such as ankle monitors are
24 "custody" and Petitioners may be granted habeas relief from the on-going restraints on
25 their liberty.); *Khabazha v. United States Immigration and Customs Enforcement*, 25-
26 CV-5279-JMF, 25 WL 3281514, S.D.NY (November 25, 2025)(Ordering the removal
27 of ankle monitor and other restrictions on liberty).

1 The last uncontested status was before Respondents re-detained Petitioner.
2 Therefore, he should be returned to the last uncontested status, which was under
3 supervised release, without any electronic monitoring device.

4 Also in his last contested status, he was in possession of his identifications and
5 possessions, including his passport, driver's license, EAD card, mobile phone, money,
6 or any other identifications and property. He no longer has those items in his possession,
7 as they were confiscated by ICE. Without these items he is without an ability to resume
8 work, provide identification when necessary, drive, or otherwise resume his daily life in
9 the same uncontested status as he was before detention. See e.g. *C.C. v. Noem et al*, No.
10 26-cv-00373-TLN-EFB, Slip Op. (E.D. Cal Jan. 21, 2026); *A.A.H. v. Chestnut*, No.
11 1:25-CV-01758-DJC-EFB, 2025 WL 3764033, at *1 (E.D. Cal. Dec. 30, 2025)(ordering
12 the return to Petitioner all property confiscated from him during his arrest and
13 processing into detention.)

14 E. No Security Bond or a Nominal Bond Is Appropriate.

15 Under Federal Rule of Civil Procedure 65(c), courts have wide discretion in
16 setting the security amount. Where, as here, the litigation enforces important
17 constitutional rights, courts often waive or impose only nominal bond. Respondents face
18 no financial harm here, and \$0 bond is appropriate.

19 F. Emergency Treatment is Appropriate

20 Petitioner has not delayed in seeking injunctive relief, particularly given the
21 current, historic crisis of mass detention, limited resources and dearth of legal
22 assistance. He is filing this within approximately three weeks of his abrupt re-detention.

23 In any event, “[d]etained individuals are harmed each additional day they are
24 deprived of their liberty.” *Ramirez Perez v. Chestnut*, No. 1:26-cv-00277-DJC-CKD
25 (Jan. 26, 2026). Petitioner suffers additional irreparable harm every day that he is
26 illegally detained, and an emergency temporary restraining order is the proper remedy.

27 G. Immediate Release is the Appropriate Remedy.

1 Immediate release is the appropriate remedy for a due process violation. “The root
2 requirement of the Due Process Clause is that an individual be given an opportunity for
3 a hearing before he is deprived of any significant protected interest.” *Cleveland Bd. Of*
4 *Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) (emphasis added). For that reason, the
5 Supreme Court “usually has held that the Constitution requires some kind of hearing
6 before the State deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S.
7 113, 127 (1990) (emphasis in original).

8 Moreover, the immigration court system is not an independent adjudicative body. It
9 operates under the Department of justice (“DOJ”). In the last year the DOJ and its sub-
10 agencies, the Executive Office for Immigration Review (“EOIR”) and the Board of
11 Immigration Appeals (“BIA”), in apparent coordination with the Department of
12 Homeland Security (“DHS”) have systematically dismantled the integrity of the
13 immigration court system to turn it into an extension of DHS’ deportation and detention
14 operations. The evidence of EOIR’s institutional decline falls into five categories, each
15 independently sufficient to establish bias, but together demonstrating systematic
16 destruction of judicial independence: (1) the ongoing mass-scale purge of immigration
17 judges perceived as obstacles to DHS’ enforcement agenda;² (2) the parallel purge and
18 reconstitution of the BIA,³ resulting in a 97% pro-government decision rate;⁴ (3) the
19 recruitment and installation of explicitly enforcement-aligned “deportation judges” with
20 dramatically reduced qualifications;⁵ (4) EOIR policy directives establishing

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22
23 ² *Trump Administration Continues Firing Immigration Judges -- IFPTE responds*, IFPTE (Sept. 26,
24 2025), <https://www.ifpte.org/news/trump-administration-continues-firing-immigration-judges-ifpte-responds>.

25 ³ Am. Imm. Council, *BIA Decision Strips Immigration Judges of Bond Authority, All but Guaranteeing*
26 *Mandatory Detention for Undocumented Immigrants* (Sept. 12, 2025),
27 [https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-](https://www.americanimmigrationcouncil.org/blog/bia-ruling-immigration-judges-bond-mandatory-detention-undocumented-immigrants/)

28 ⁴ Exec. Off. for Immigr. Rev., *Volume 29*, U.S. Dep’t of Just. (Jan. 21, 2025),
<https://www.justice.gov/eoir/volume-29>.

⁵ *dhsgov*, Instagram (Nov. 21, 2025), <https://www.instagram.com/p/DRVt8DmCQKD/?hl=en>.

1 expectations that adjudications favor the government over noncitizens;⁶ and (5) explicit
2 instructions to defy district court rulings that impede DHS's enforcement goals.⁷

3 At this time, it is not possible for Petitioner to get a fair hearing at the EOIR. For this
4 reason, outright release is the proper remedy. If the Court is inclined to schedule a bond
5 hearing, Petitioner respectfully requests that the Court be the neutral arbiter in the
6 matter rather than ordering a bond hearing with EOIR.

7 IV. CONCLUSION

8 For all the foregoing reasons, Petitioner respectfully requests that the Court grant
9 this Motion for a Temporary Restraining Order pending a hearing on the OSC re:
10 Preliminary Injunction, and on the same grounds for which Petitioner is applying for
11 Preliminary Injunction:

- 12 1. Enjoin Respondents from moving Petitioner from this Court's jurisdiction;
- 13 2. Enjoin Respondents from continued incarceration of Petitioner;
- 14 3. Order Respondents to immediately release Petitioner;
- 15 4. Alternatively, order a bond hearing before a neutral arbiter, not the EOIR, within
16 3 days of the Order where the burden is on the government to prove with clear
17 and convincing evidence that Petitioner is a flight risk or danger to the
18 community;
- 19 5. Enjoin Respondents from confiscating and keeping Petitioner's documents and
20 possessions, including passport, driver's license, EAD, mobile phone, and any
21 other items belonging to Petitioner, in order to return him to status quo prior to
22 Respondents' illegal re-detention;

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24
25 ⁶Cath. Legal Immigr. Network, Inc., *Navigating EOIR Directives Under Trump 2.0: Practical*
26 *Guidance for Advocates and Programs* (Apr. 22, 2025), [https://www.cliniclegal.org/file-](https://www.cliniclegal.org/file-download/download/public/77642)
[download/download/public/77642](https://www.cliniclegal.org/file-download/download/public/77642).

27 ⁷*Immigration judges told to ignore rulings on bond hearings, documents show*, Massachusetts Lawyer
28 Weekly (Jan. 20, 2026), [https://masslawyersweekly.com/2026/01/20/immigration-judges-ignore-bond-](https://masslawyersweekly.com/2026/01/20/immigration-judges-ignore-bond-hearing-rulings/)
[hearing-rulings/](https://masslawyersweekly.com/2026/01/20/immigration-judges-ignore-bond-hearing-rulings/)

- 1 6. Enjoin Respondents from putting additional impositions on his liberty such as
2 electronic monitoring or excessive check-ins without proper pre-deprivation
3 hearing and a showing of flight risk or danger to the community;
- 4 7. Enjoin the Respondents from re-detaining Petitioner without providing at least
5 seven (7) days' notice and a pre-deprivation bond hearing before a neutral arbiter
6 for which petitioner's eligibility for bond must be considered, with the burden on
7 the government to establish with clear and convincing evidence that the Petitioner
8 is a flight risk or danger to the community.

9
10 Dated: March 23, 2026

Respectfully submitted,

11 /s/ Cara Jobson

12 /s/ Joye Wiley

13 Attorneys for Petitioner
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