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

9 **HAMID NIAZAI**

10 Petitioner

11 vs.

12 **Sixto Marrero**, Warden Imperial Regional
13 **Adult Detention Facility; Markwayne**
14 **Mullin**, Secretary Department of Homeland
15 **Security; Todd M Lyons** Acting Director
16 **United States Immigration and Customs**
17 **Enforcement; Todd Blanche** United States
18 **Attorney General**

19 Respondents

Case No.: 3:26-cv-02221-RSH-MSB

EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER

Court; Hon Robert S. Huie

20 **EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

21 Petitioner respectfully moves this Honorable court for temporary restraining order to remedy
22 petitioner's unlawful detention by the respondents as follows:

23 Dated this April 09, 2026

24
25 _____
26 Sajjad Hussain, Esq.

1 4. This TRO seeks narrowly tailored, temporary relief to prevent ongoing harm in the form
2 of unlawful detention by ordering Petitioner's immediate release under the same terms
3 and conditions that were in place prior to his re-detention on December 30, 2025.
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5 ***II. JURISDICTION AND AUTHORITY***

6 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 2241, which
7 authorizes federal courts to inquire into the legality of executive detention. Habeas
8 corpus is the proper vehicle for challenging civil immigration detention imposed
9 without statutory authorization or in violation of the Constitution. *Zadvydas v. Davis*,
10 533 U.S. 678, 687 (2001). Petitioner is currently detained at the Imperial Regional Adult
11 Detention Facility Calexico, CA, which is located within this Court's territorial
12 jurisdiction. Because Petitioner's immediate custodian is subject to this Court's
13 authority, jurisdiction over Petitioner's habeas claims is proper.
14

15 6. This Court also has authority to issue temporary status-quo-preserving relief necessary
16 to protect its jurisdiction and ensure effective judicial review. Where government action
17 threatens to moot a detention challenge or frustrate review before the Court can resolve
18 the merits, interim injunctive relief may be appropriate. *Nken v. Holder*, 556 U.S. 418,
19 426–27 (2009). Jurisdiction is not barred by 8 U.S.C. §§ 1252(b)(9) or 1252(g).
20 Petitioner does not seek review of a final order of removal, does not challenge the
21 conduct or merits of removal proceedings, and does not contest removability. He
22 challenges only the legality of his current detention and related custody authority. The
23 Ninth Circuit has held that habeas claims challenging immigration detention are
24 collateral to removal proceedings and fall outside the scope of §§ 1252(b)(9) and
25 1252(g). *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006). The Supreme
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1 Court has likewise rejected interpretations of § 1252(b)(9) that would sweep detention
2 challenges into the removal-review scheme. *Jennings v. Rodriguez*, 583 U.S. 281, 293
3 (2018).

- 4
5 7. Accordingly, this Court has jurisdiction to adjudicate Petitioner’s habeas claims and
6 authority to issue limited interim relief necessary to preserve that jurisdiction and
7 prevent irreparable harm during the Court’s review

8 ***III. FACTUAL ALLEGATIONS***

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10 8. Petitioner, **Hamid Niazai**, is a native and citizen of Afghanistan who is currently
11 detained by U.S. Immigration and Customs Enforcement (“ICE”) pending the resolution
12 of his removal proceedings.

- 13 9. Petitioner arrived United States on or about **February 25, 2024**, without being admitted
14 or paroled. Following his encounter with immigration authorities, the Department of
15 Homeland Security (“DHS”) issued a **Notice to Appear (“NTA”)** initiating removal
16 proceedings under section 240 of the Immigration and Nationality Act. The NTA
17 charged Petitioner as removable pursuant to **INA § 212(a)(6)(A)(i)** as a noncitizen
18 present in the United States without admission or parole.

- 19
20 10. After his initial processing, Petitioner was **released from custody on or about April**
21 **2024**, Order Granting Parole, and he remained at liberty while pursuing his claims for
22 relief. During this period, Petitioner complied with immigration requirements and
23 pursued lawful avenues to remain in the United States. Petitioner also applied for and
24 was granted employment authorization, which was approved in July 2025, further
25 demonstrating his compliance with immigration processes.
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1 11. On December 30, 2025, Petitioner was taken into custody by ICE Enforcement and
2 Removal Operations (“ERO”).

3 12. Importantly, Petitioner **has no criminal history whatsoever**. Government records
4 confirm that Petitioner has not been convicted of any crime, has no gang affiliation, and
5 presents no public safety concern. Despite this, he has remained in prolonged
6 immigration detention without a constitutionally adequate custody determination.
7

8 13. Petitioner’s removal proceedings are ongoing before the Immigration Court in Adelanto,
9 California. His case is pending before the Immigration Court.
10

11 14. Petitioner has been actively pursuing relief from removal, including asylum,
12 withholding of removal, and protection under the Convention Against Torture. His fear
13 of return to Afghanistan is documented in the record.

14 15. At present, Petitioner has been **continuously detained since December 30, 2025**, a
15 period of several months, with no indication that his proceedings will conclude in the
16 near future. Given the current posture of his case—including pending relief applications
17 and the likelihood of further proceedings and appeals—his detention is expected to
18 continue for a prolonged and indeterminate period.
19

20 16. Despite the absence of any criminal history, demonstrated compliance with immigration
21 processes, and ongoing pursuit of lawful relief, Petitioner remains detained without a
22 constitutionally sufficient individualized determination of whether his continued
23 detention is justified by clear and convincing evidence of flight risk or danger to the
24 community.
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1 **IV. LEGAL STANDARD**

2 17. A temporary restraining order is an extraordinary remedy governed by Federal Rule of
3 Civil Procedure 65. A court may issue a temporary restraining order where the moving
4 party demonstrates (1) a likelihood of success on the merits, (2) a likelihood of
5 irreparable harm absent relief, (3) that the balance of equities tips in the movant's favor,
6 and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*,
7 555 U.S. 7, 20 (2008).

8
9 18. The Ninth Circuit applies these factors on a sliding-scale basis. Under that approach, a
10 temporary restraining order may issue where serious questions going to the merits are
11 raised and the balance of hardships tips sharply in the movant's favor, provided that the
12 movant also demonstrates irreparable harm and that the requested relief serves the
13 public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th
14 Cir. 2011).

15
16 19. When the government is a party, the balance of equities and the public interest factors
17 merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In the immigration context, courts
18 may issue interim relief where government action threatens to irreparably harm the
19 movant or undermine the availability of meaningful judicial review. *Id.* at 426–27.

20
21 **V. ARGUMENTS**

22 **1. Likelihood of Success on the Merits**

23 20. Petitioner has demonstrated a likelihood of success on the merits. He was summarily re-
24 arrested and detained after more than twenty months of liberty under government
25 supervision, without any individualized determination justifying the deprivation of
26 liberty. This conduct violates the Fifth Amendment's Due Process Clause.
27

1 21. Under Federal Rule of Civil Procedure 65, a temporary restraining order is warranted
2 where the moving party establishes a likelihood of success on the merits. *Winter v. Nat.*
3 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

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5 22. Petitioner's due process claims rests on settled principles: long-term conditional release
6 creates a protected liberty interest; withdrawal of that liberty requires constitutionally
7 adequate process; and summary re-detention without such process fails that requirement.

8 *(i) DHS's summary re-arrest after long-term supervised release violates*
9 *procedural due process*

10 23. *As a threshold matter, the Fifth Amendment prohibits the government from depriving*
11 *any person of liberty without due process of law. These protections apply to all persons*
12 *within the United States and extend to civil immigration detention. *Zadvydas v. Davis*,*
13 *533 U.S. 678, 693 (2001).*

14
15 24. Consistent with this principle, when the government affirmatively releases an individual
16 from custody and permits continued liberty under conditions of supervision or parole, it
17 creates a protected liberty interest in continued freedom absent a violation of those
18 conditions. That liberty interest may not be withdrawn arbitrarily. *Morrissey v. Brewer*,
19 408 U.S. 471, 482 (1972).

20
21 25. Building on this framework, district courts within the Ninth Circuit have recognized that
22 conditional release enhances a noncitizen's due process interest in liberty and that
23 challenges to summary re-detention following such release are properly analyzed under
24 the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) framework. *Kaztashyan v. Warden*
25 *of the Golden State Annex Detention Facility*, No. 1:25-cv-01526-DC-SCR (E.D. Cal.
26 2025); *Khan v. Noem*, No. 1:25-cv-01411-EPG-HC, 2025 WL 3089352, at *5 (E.D.
27 Cal. Nov. 5, 2025).

1 26. Accordingly, once a protected liberty interest is established, the Court determines what
2 process is due by balancing three factors: (1) the private interest affected; (2) the risk of
3 erroneous deprivation through the procedures used and the value of additional
4 safeguards; and (3) the government's interest, including the administrative burden of
5 additional procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *Kentucky Dep't*
6 *of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

8 27. This liberty interest is enhanced where the government has affirmatively released an
9 individual from custody and permitted liberty to persist under conditions. *Morrissey v.*
10 *Brewer*, 408 U.S. 471, 482 (1972).

12 28. Courts in the Eastern District of California have applied this principle directly in the
13 immigration context, holding that prior conditional release enhances a noncitizen's due
14 process interest in liberty. *Kaztashyan v. Warden of the Golden State Annex Detention*
15 *Facility*, No. 1:25-cv-01526-DC-SCR (E.D. Cal. 2025); *Khan v. Noem*, No. 1:25-cv-
16 01411-EPG-HC, 2025 WL 3089352, at *5 (E.D. Cal. Nov. 5, 2025). The court has
17 likewise recognized that a noncitizen released into the community retains a substantial
18 interest in continued freedom and that long-term government acquiescence in that
19 liberty strengthens constitutional protection. *Doe v. Becerra*, 787 F. Supp. 3d 1083, 1093
20 (E.D. Cal. 2025).

22 29. Here, DHS allowed Petitioner to live at liberty for more than twenty months under
23 conditions. This created an implied promise that Petitioner would not be summarily re-
24 detained absent a violation or material change in circumstances. Petitioner relied on that
25 promise and structured his life, accordingly, including his work, community ties, and
26 family unity. DHS's summary withdrawal of that liberty inflicted a serious loss.
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1 Hernandez v. Sessions, 872 F.3d 976, 994 (9th Cir. 2017); Garcia v. Andrews, 2025 WL
2 1927596, at *5 (E.D. Cal. July 14, 2025).

3 35. Moreover, the burden of additional safeguards is modest. Courts have held that the
4 administrative burden of providing notice and a custody hearing does not outweigh due
5 process protections. Khan v. Noem, No. 1:25-cv-01411-EPG-HC, 2025 WL 3089352,
6 at *5 (E.D. Cal. Nov. 5, 2025); Diaz v. Kaiser, 2025 WL 1676854, at *3 (N.D. Cal. June
7 14, 2025).

8
9 *(iv) The Mathews Balance Confirms a Due Process Violation*

10 36. Viewed together, all three Mathews factors favor Petitioner. Petitioner possesses an
11 enhanced liberty interest arising from long-term conditional release; the risk of
12 erroneous deprivation from summary re-arrest is substantial; and the government's
13 interest in dispensing with basic procedural protections is limited. Kaztashyan v.
14 Warden of the Golden State Annex Detention Facility, No. 1:25-cv-01526-DC-SCR
15 (E.D. Cal. 2025); Khan v. Noem, No. 1:25-cv-01411-EPG-HC, 2025 WL 3089352, at
16 *5 (E.D. Cal. Nov. 5, 2025); R.D.T.M. v. Wofford, 2025 WL 2617255, at *4 (E.D. Cal.
17 Sept. 9, 2025); Doe v. Becerra, 787 F. Supp. 3d 1083, 1093 (E.D. Cal. 2025).

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20 37. Moreover, continued detention without a hearing constitutes ongoing and irreparable
21 harm, which will continue to compound Petitioner's hardship absent this Court's
22 intervention

23
24 38. For these reasons, Petitioner has demonstrated a likelihood of success on the merits of
25 his Fifth Amendment procedural due process claim.

1 **2. Irreparable Harm**

2 39. Petitioner will suffer irreparable harm absent immediate injunctive relief. He remains
3 detained following a summary re-arrest. The harm of continued detention is immediate,
4 personal to Petitioner, and not susceptible to meaningful repair through later judicial
5 relief.
6

7 40. To obtain temporary injunctive relief, a petitioner must show that irreparable harm is
8 likely in the absence of relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
9 (2008). The Ninth Circuit has explained that this requirement is not as demanding as
10 some formulations suggest. It is sufficient to demonstrate that irreparable harm is
11 probable, not certain. *Leiva-Perez v. Holder*, 640 F.3d 962, 967 (9th Cir. 2011).
12 Requiring certainty would defeat the purpose of interim relief, which is to allow courts
13 time to act responsibly before the harm occurs, rather than after. *Id.* Viewed in light of
14 this standard; the specific facts of Petitioner’s case demonstrate a concrete and
15 immediate risk of irreparable harm.
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18 ***(i) Continued detention constitutes irreparable harm***

19 41. The ongoing deprivation of physical liberty constitutes irreparable harm. Each
20 additional day of civil immigration detention inflicts a loss that cannot be remedied
21 through later judicial review. *Zadvydas v. Davis*, 533 U.S. 678, 690–93 (2001).
22

23 42. Here, Petitioner has remained detained since his summary re-arrest on December 30,
24 2025, after having lived at liberty under government supervision for more than twenty
25 months. As a result, and absent interim relief, Petitioner will continue to suffer an
26 immediate and ongoing loss of liberty while this Court considers the legality of his
27 detention. That injury cannot be undone by a later favorable ruling.
28

1 3. *Balance of Equities and Public Interest*

2 43. The balance of equities and the public interest weigh decisively in favor of granting
3 temporary injunctive relief. These two factors merge where, as here, the government is
4 a party, and the requested relief is narrowly tailored to preserve the status quo while the
5 Court considers the legality of detention and threatened removal. *Nken v. Holder*, 556
6 U.S. 418, 435 (2009).

7
8 44. On Petitioner's side of the scale are substantial and concrete harms. Petitioner remains
9 detained following a summary re-arrest after more than twenty months of liberty under
10 government supervision.

11
12 45. On the government's side, the requested relief imposes minimal burden. Petitioner seeks
13 only a temporary restraining order. The relief would not grant permanent status,
14 preclude future enforcement of immigration laws, or interfere with ongoing proceedings
15 beyond stopping the ongoing harm.

16
17 46. The public interest likewise favors relief. The public has a strong interest in ensuring
18 that executive detention and removal decisions comport with constitutional due process
19 and statutory safeguards. Preserving access to judicial review before irreparable harm
20 occurs promotes orderly adjudication and confidence in the fair administration of the
21 immigration laws. Conversely, denying interim relief would risk irreversible harm to
22 Petitioner before this Court has an opportunity to consider the merits of his claims.
23 Granting temporary relief ensures that the Court, not the timing of removal, determines
24 whether detention and removal are lawful. Accordingly, both the balance of equities and
25 the public interest strongly support issuance of a temporary restraining order.
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