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7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10 **San Diego Division**

11 ABELINO PEREZ ALVAREZ

12 **Petitioner,**

13 **v.**

14 CHRISTOPHER J. LAROSE, Senior
Warden Core Civic, Otay Mesa, CA.;
15 PATRICK DIVVER, San Diego Field
Office Director, Immigration and
16 Customs Enforcement and Removal
Operations (ICE/ERO); TODD LYONS,
17 Acting Director of Immigration and
Customs Enforcement (ICE); MARK.
18 MULLIN, Acting Secretary of the
Department of Homeland Security; and
19 Todd BLANCHE, Acting Attorney
General of the United States,
20

21 **Respondents.**

Case No: 26-cv-02566-LL-DEB
Agency No. 

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

22 Petitioner, a 59 year-old Guatemalan National, who last entered the U.S. in
23 1989 and has not left the U.S. since 1989.

24 Petitioner has no criminal convictions.

25 Petitioner has a pending U-Visa.

26 Petitioner's U.S. Citizen daughter has begun the process of immigrating
27 Petitioner.

28 Petitioner is currently in Respondents' custody and has been in said custody

1 since June 25, 2025.

2 Petitioner's removal order is currently before the Board of Immigration
3 Appeals. Briefing was completed March 2, 2026, yet the Board has not yet ruled
4 on Petitioner's appeal.

5 Respondents who work for the U.S. Government have announced that even
6 if Petitioner were to request a bond hearing from an immigration judge;
7 Respondents would refuse to allow Petitioner to provide evidence why Petitioner
8 should be released and would find that Petitioner is subject to mandatory custody.

9 This Court should therefore enter a temporary restraining order (TRO)
10 pending further litigation.

11 ARGUMENT

12 To obtain a TRO, a plaintiff "must establish that he is likely to succeed on
13 the merits, that he is likely to suffer irreparable harm in the absence of preliminary
14 relief, that the balance of equities tips in his favor, and that an injunction is in the
15 public interest." *Winter v. Nat. Res. Def. Council, INC.*, 555 U.S. 7, 20 (2008);
16 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839-40 & n.7 (9th
17 Cir. 2001) (noting that a TRO and a preliminary injunction involve "substantially
18 indential" analysis).

19 A "variant of the same standard" is the "sliding scale"; "if a plaintiff can
20 only show that there are 'serious questions going to the merits-a lesser showing
21 than likelihood of success on the merits-then a preliminary injunction may still
22 issue if the balance of hardships tips *sharply* in the plaintiff's favor, and the other
23 two *Winter* factors are satisfied.'" *Immigrant Defenders Law Center v. Noem*, 145
24 F.4th 972, 986 (9th Cir. 2025). Under this approach, the four *Winter* elements are
25 "balanced, so that a stronger showing of one element may offset a weaker showing
26 of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.
27 2011). A TRO may be granted where there are "serious questions going to the
28

merits' and a hardship balance...tips sharply toward the plaintiff," and so long as the other Winter factors are met. *Id.* at 1132.

Here, this Court should issue a temporary restraining order because Petitioner's continuing unlawful immigration detention has caused, continues to cause and will cause Petitioner "immediate and irreparable injury...or damage." Fed. R. Civ. P. 65 (b). This Court should therefore order Petitioner's release and enjoin removal to a third country unless Respondents provide proper and adequate notice and a reasonable opportunity to respond.

I. Petitioner is likely to succeed on the merits:

Concurrent with the instant TRO motion; Petitioner, has filed a Petition for Writ of Habeas Corpus setting forth in detail why Petitioner is likely to succeed on the merits. In summary of that argument, Petitioner has already been held in Respondents' custody considerably longer than the presumptive maximum 180 days provided in *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Petitioner notes that the Southern District of California has recently granted numerous Habeas petitions against Respondents for the same /similar reasons as Petitioner's.

II. Petitioner will suffer irreparable harm absent injunctive relief:

Petitioner also meets the second factor, irreparable harm. "It is well established that the deprivation of a constitutional right 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

Where the "alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary." *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005).

1 Immigration detention in violation of the law is irreparable harm. It
2 represents extreme or very serious damage which is not compensable in damages.
3 *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

4
5 **III. The balance of the hardships and public interest weigh in Petitioner's**
6 **favor:**

7 The final two factors for a TRO are a balancing of the hardships and public
8 interest. These factors “merge when the Government is the opposing party”. *Nken*
9 *v. Holder*, 556 U.S. 418, 435 (2009).

10 That balance tips decidedly in Petitioner's favor.

11 The government cannot assert that is harmed because it is being compelled
12 to follow the law. *Zepeda v. I.N.S.*, 753 F.2d 719 (9th Cir. 1983).

13 It is always in the public interest to prevent violations of Constitutional
14 protections of due process and to ensure the rule of law. See *Nken* at 436.

15 Petitioner on the other hand presently faces weighty hardships such as
16 unlawful and indefinite detention.

17 Petitioner also faces potential persecution and torture in Guatemala which
18 Petitioner was denied the opportunity to seek protection from. Petitioner's fears
19 are justified.

20 By granting Petitioner emergency relief, the Court will protect against the
21 continued unlawful detention of Petitioner and prevent the unlawful removal of
22 Petitioner to Guatemala.

23 Dated: April 22, 2026

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