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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Dzhokhar Gutsiev

Petitioner's DHS Number: [redacted]

Petitioner

v.

Todd Blanche In his official capacity as Acting Attorney General of the United States

Markwayne Mullin, In his official capacity as Secretary of the U.S. Department of Homeland Security;

Todd M. Lyons, In his official capacity as Acting Director Immigration & Customs Enforcement

Rodney S. Scott, in his official capacity as the Commissioner of U.S. Customs and Border Protection

Michael W. Banks in his official capacity as Chief of the United States Border Patrol

Gregory Bovino in his official capacity as the Chief Patrol Agent of the El Centro Sector, U.S. Border Patrol;

Respondents.

Civil Action No. 3:26-cv-02575-JAO-AHG

PETITIONER'S NOTICE OF MOTION AND MOTION FOR TEMPORARY RESTRAINING ORDER; MOTION FO R PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Petitioner Dzhokhar Gutsiev, by and through undersigned counsel, respectfully moves this Court to issue a Temporary Restraining Order restraining Respondents from transferring Mr. Gutsiev out of the Southern District of California, or out of the Country, while his habeas petition is pending and a preliminary injunction ordering the release of Mr. Gutsiev on the same terms

and conditions he was on prior to detention and prohibiting Respondents from re-detaining him without changed circumstances and due process if he is released.

Mr. Gutsiev recognizes the Court's preference for resolving matters on the briefings and does not request an oral hearing. He requests that the Court issue a Temporary Restraining Order ("TRO") to preserve the status quo and set an expedited briefing schedule for the Preliminary Injunction.

Respondents were advised on April 25, 2026, that Mr. Gutsiev would be filing this ex parte application and of the contents of this application. *See Local Rule 83.3(g).*

Mr. Gutsieva is currently detained at Imperial Regional Detention Facility and argues that continued detention without a prompt ruling causes irreparable harm and violates his due process rights as set forth in his habeas corpus petition and related filings. Mr. Gutsiev incorporates these filings into this motion. For the reasons set forth in his petition and related documents, this Court should grant Mr. Gutisev's petition or, at the very least, grant him a preliminary injunction (1) requiring Respondents to immediately release him under the same conditions he was released previously and (2) enjoining Respondents from re-detaining him without changed circumstances and due process.

II. STATEMENT OF FACTS

Mr. Gutsiev is 29-years-old, Russian citizen and an ethnic Chechen. He fled Russia in May of 2022, and came to the United States, fleeing persecution in his country of citizenship, the Russian Federation, on account of torture and persecution he experienced.

On May 3, 2022, Mr. Gutsiev was paroled into the United States, pursuant to 8 USC §1182(d)(5) to pursue his asylum claim and for humanitarian reasons.

Mr. Gutiev's credible fear interview took place on June 3, 2022. At the conclusion of the interview, the USCIS asylum officer found that Mr. Gutsiev had a credible fear of persecution if he returned to Russia. This meant that Mr. Gutsiev had demonstrated "a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's

claim and such other facts as are known to the officer, that the alien can establish eligibility for asylum." 8 CFR §208.30(e)(2).

On June 6, 2022, the Department of Homeland Security initiated removal proceedings against Mr. Gutsiev. Mr. Gutsiev diligently hired an attorney and dutifully participated in his removal proceedings.

He timely filed his defensive application for asylum with the Executive Office of Immigration Review on March 16, 2023. Accordingly, he fulfilled all of his requirements to pursue his request for asylum in the United States.

During over forty-six (46) months that Mr. Gutsiev resided in the United States, was a productive and valuable member of our community. He has never been charged with any crimes or violations, he has never been arrested by law enforcement prior to his current detention, and he has had no other derogatory contact with law enforcement.

On September 13, 2023, Respondents granted Mr. Gutisev work authorization. Since that time, Mr. Gutsiev engaged in gainful employment here in the United Staes.

Mr. Gutsiev lives with and supports his little brother, [redacted] who also resides in the United States.

On April 20, 2026, Mr. Gutsiev was traveling in the Imperial County, California, area for work related purposes. Unexpectedly, he did not contact his little brother that day.

On the following day, April 21, 2026, Mr. Gutsiev had still not contacted his little brother, which was highly unusual. When his little brother check the location of Mr. Gutsiev's cellphone, it showed Mr. Gutsiev's telephone as being located near the U.S. Customs and Border Protection, Border Patrol, El Centro Station.

On April 21, 2026, undersigned counsel for Mr. Gutsiev attempted to contact the U.S. Customs and Border Protection, Border Patrol, El Centro Station, in order to verify whether Mr. Gutsiev was in fact located at the station and whether she could speak with him. (See Exhibit F). Despite leaving a message for the duty supervisor, undersigned counsel did not receive any

response from any officer at the U.S. Customs and Border Protection, Border Patrol, El Centro Station. To date undersigned counsel has not been able to speak with Mr. Gutsiev and has not received a response from the U.S. Customs and Border Protection, Border Patrol, El Centro Station.

On April 22, 2026, the Department of Homeland Security detainee locator website showed, for the first time, that Mr. Gutsiev is in "CBP Custody." As of April 22, 2026, Mr. Gutsiev's cellphone showed that it was last turned on at the U.S. Customs and Border Protection, Border Patrol, El Centro Station.

In the early morning of April 23, 2026, then Petitioner first filed his verified petition, the Department of Homeland Security detainee locator website continues to show that Mr. Gutsiev is in "CBP Custody."

Later in the day on April 23, 2026, the Department of Homeland Security detainee locator website began to show Mr. Gutsiev in Respondents custody and being held at the Imperial Regional Detention Facility.

Mr. Gutsiev was arrested without a warrant and without an individualized assessment regarding whether he poses a danger to any person or property, or whether he is a flight risk. His parole was revoked, also without an individualized assessment.

Mr. Gutsiev seeks a Temporary Restraining Order ("TRO") enjoining Respondents from transferring him out of this judicial district during the pendency of this Petition or ordering them to return him if he has already been transferred. He also moves this Court to require Respondents to release him from custody within one day, or alternatively, order that Respondents provide him a bond hearing under § 1226(a) within seven days.

III. MEMORANDUM OF POINTS AND AUTHORITIES

The requirements for granting a Temporary Restraining Order are "substantially identical" to those for granting a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*,

240 F.3d 832, 839 n.7 (9th Cir. 2001). Mr. Gutsiev must demonstrate that (1) he is likely to succeed on the merits of his claims; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). A sliding scale test may be applied, and an injunction should be issued when there is a stronger showing on the balance of hardships, if there are "serious questions on the merits … so long as the plaintiff also shows a likelihood of irreparable harm and that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir. 2024). Mr. Gutsiev satisfies the criteria, and a TRO should be granted.

A. **Petitioner Is Likely to Succeed on the Merits of His Claims.**

Mr. Gutsiev's Verified Petition for Writ of Habeas Corpus (Petition) raises four claims for relief based on violations of substantive and procedural due process under the Fifth Amendment, Fourth Amendment, and based on statutory and regulatory violations by DHS. (See generally Pet.) Mr. Gutsiev is likely to succeed on the merits of his claim that his detention without an individualized hearing violated due process and is depriving him of his constitutional liberty interest.

For purposes of his Motion for Temporary Restraining Order, the Ninth Circuit has "long recognized that likelihood of success on the merits is the most important factor—and even more so when a constitutional injury is alleged." *Matsumoto v. Labrador*, 122 F.4th 787, 804 (9th Cir. 2024). In fact, successfully proving that he is likely to succeed on the merits of his habeas petition can be decisive in the Court's determination to issue a temporary restraining order. "The first factor—likelihood of success on the merits—is the most important (and usually decisive) one in cases where a plaintiff brings a constitutional claim…" *Baird v. Bonta*, 81 F.4th 1036, 1041 (9th Cir. 2023).

Mr. Gutsiev's detention by Respondents under 8 U.S.C. § 1225(b)(2)(A) and the denial of a bond hearing is unlawful. The text, structure, and legislative history of the INA all demonstrate that 8 U.S.C. § 1226(a) governs his detention. Since Respondents adopted their new policies,

dozens of federal courts have rejected DHS's and the BIA's new interpretation of the INA's detention authorities, including at least eight cases in the Eastern District of California.

1. Mr. Gutsiev has been egregiously deprived of his private liberty interest without any governmental purpose or public interest being served

Mr. Gutsiev is likely to succeed on the merits of his habeas petition because his current detention blatantly violates his constitutionally protected liberty interest. This Court, along with numerous Federal District Courts in this Circuit, have recognized a liberty interest for individuals like Mr. Gutsiev, who have lived in the United States for years and have formed meaningful ties to the United Staets. *Jackeline Yessica Torres Sotomayor Plaintiff, V. Pamela Bondi, et al. Defendants.* No. 5:25-CV-02939-CV (SSCX), 2025 WL 3691398, at *3 (C.D. Cal. Nov. 14, 2025) See also *Calderon v. Kaiser*, No. 25-CV-06695-AMO, 2025 WL 2430609, at *3 (N.D. Cal. Aug. 22, 2025); *Lara v. Noem*, No. 5:25-CV-3072-ODW (JCX), 2025 WL 3255001, at *3 (C.D. Cal. Nov. 19, 2025).

Respondents are currently violating Mr. Gutsiev's fundamental liberty interest. "Noncitizen detainees charged with being in the U.S. illegally are entitled to procedural due process, meaning 'notice and opportunity to be heard appropriate to the nature of the case.'" *Soledad Cruz Ramirez, Petitioner, v. Kristi Noem, et al., Defendants-Respondents.*, No. 2:25-CV-02110-RFB-DJA, 2025 WL 3563294, at *5 (D. Nev. Dec. 12, 2025) quoting *Trump v. J. G. G.*, 604 U.S. 670, 672, 145 S. Ct. 1003, 1006, 221 L. Ed. 2d 529 (2025).

Mr. Gutsiev can meet the second factor in the Mathews test because his current detention erroneously deprives him of his procedural due process rights. Mr. Gutsiev was not provided any opportunity to contest his detention prior to being detained. He was not given any procedural safeguard before being unjustifiably detained.

> The Court considers the risk of an erroneous deprivation of [Petitioner's] interest through the procedures used, and the probable value, if any, of additional procedures. The risk of erroneous deprivation is extraordinarily high where ICE and DHS agency officials have sole, unguided, and unreviewable discretion to detain Petitioner despite their failure to make an individualized

> showing that [his] detention is warranted. . . . These procedures substantially mitigate the risk of erroneousdeprivation of Petitioner's liberty, because they require the government to establish that he presents a flight risk or danger to the community to continue detaining her for the pendency of removal proceedings. These procedures enforce the constitutional requirement that "once the flight risk justification evaporates, the only special circumstance [ ] present is the alien's removable status itself, which bears no relation to a detainee's dangerousness.

Soledad Cruz Ramirez, Petitioner, v. Kristi Noem, et al., Defendants-Respondents., No. 2:25-CV-02110-RFB-DJA, 2025 WL 3563294, at *6–7 (D. Nev. Dec. 12, 2025) [internal citations omitted].

Mr. Gutsiev has no criminal record and does not have any derogatory history in the United States. Mr. Gutisev's private liberty interest is being erroneously deprived by Respondents. Mr. Gutsiev is likely to succeed in proving the due process claims of his habeas petition.

As to the third and fourth *Mathews* factors, although DHS has an interest in ensuring that Mr. Gutsiev appear in his removal proceedings

> "[t]hese interests are in fact served by the individualized determination by an immigration judge, based on a review of evidence presented by the government and the noncitizen, as to whether an individual is dangerous or at risk of fleeing removal proceedings, under existing, well-established procedures. In failing to articulate any individualized reason why detaining Petitioner is necessary to enforce immigration law, the question arises 'whether the detention is not to facilitate deportation, or to protect against risk of flight or dangerousness, but to incarcerate for other reasons.' And the government has no interest in the unjustified deprivation of a person's liberty. Moreover, . . . limiting the use of detention to only those noncitizens who are dangerous or a flight risk through existing bond procedures serves the government and public's interest by reducing the fiscal and administrative burdens attendant to immigration detention.

Soledad Cruz Ramirez, Petitioner, v. Kristi Noem, et al., Defendants-Respondents., No. 2:25-CV-02110-RFB-DJA, 2025 WL 3563294, at *7 (D. Nev. Dec. 12, 2025) quoting *Demore v. Kim*, 538 U.S. 510, 532-533 (2003) (Kennedy, J. concurring) and *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017).

Mr. Gutsiev has resided in the United States for over forty-six (46) months without any incidents that would point to his intention to hide from Respondents in the course of his removal proceedings. There can be no claim on the part of Respondents that Mr. Gutsiev absconded or hid or did something that would cause them to doubt that he would continue to cooperate in his removal proceedings.

Again, because Mr. Gutsiev will likely succeed on the merits of his habeas petition - because he can favorably demonstrate all four Mathews factors - the Court should grant him his Motion for a Temporary Restraining Order. *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) ("[B]ecause of the importance of the first Winter factor in cases where a [Petitioner] alleges a constitutional injury, it is no surprise that our caselaw clearly favors granting preliminary injunctions to a plaintiff ... who is likely to succeed on the merits of his [constitutional] claim.")

2. The Text Of § 1226(a) And § 1225(b)(2) Demonstrate That Petitioner Is Not Subject To Mandatory Detention.

The plain text of 8 USC §1226 demonstrates that subsection (a) applies to Mr. Gutsiev. By its own terms, §1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." *8 U.S.C. § 1226(a).* Section 1226 explicitly confirms that this authority includes not just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens, such as Mr. Gutsiev, who are inadmissible pursuant to 8 U.S.C. § 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens from being released—including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C).

If Respondents' position that § 1226(a) did not apply to inadmissible noncitizens such as Mr. Gutsiev who is present without a valid immigrant document were correct, there would be no reason to specify that § 1226(c) governs certain persons who are *inadmissible*; instead, the statute would only have needed to address people who are *deportable* for certain offenses.

The text of § 1225(b) clearly demonstrates that Mr. Gutsiev cannot be subject to mandatory detention. As the Supreme Court recognized, § 1225 is concerned "primarily [with those]

seeking entry," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible," *id.* at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here. Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A).

By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Mr. Gutsiev, who has already entered and is now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive here, as only those who take affirmative acts, like submitting an "application for admission," are those who can be said to be "seeking admission" within § 1225(b)(2)(A). Otherwise, that language serves no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] *arriving* from contiguous territory," i.e. those "*arriving* on land." 8 U.S.C. § 1225(b)(2)(C) (emphasis

added). This language further underscores Congress's focus in § 1225 on those who are arriving in the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible *arriving*" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute).

Significantly, in deeming that all noncitizens who entered without inspection are encompassed by the mandatory detention provision at § 1225(b)(2), the DHS and BIA policy ignores that the provision does not simply address applicants for admission but applies only to those "seeking admission"—in other words, those who have applied to be admitted or paroled. The new policy ignores this text. Thus, Mr. Gutsiev prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission" because classification as an "applicant for admission," is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Mr. Gutsiev.

In sum, 8 USC §1226 governs this case. Section 1225 and its mandatory detention provision applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission and are now present and residing in the United States.

3. Mr. Gutsiev's Humanitarian Parole was effetively revoked by Respondents without adherence to the statutory and regulatory requirements

Respondents' arrest and re-detention of Mr. Gutsiev effectively prematurely terminated his parole which he received on May 30, 2022.

Although the Attorney General's parole authority is discretionary, it is not without limits by mandatory guidelines. To terminate the previously granted parole, Respondents must comply with the applicable regulatory requirements set forth in 8 C.F.R. § 212.5(e)(2)(i).

Mr. Gutsiev was paroled into the United States at the border after he presented to immigration officials and requested to apply for asylum in the United States. He was issued an

I-94 document, which documented his parole. Mr. Gutsiev's parole pursuant to 8 USC §1182(d)(5) is for the purpose of his seek asylum.

"Under the governing regulation, [§ 1182(d)(5)(A)] parole may be terminated only if the purpose of parole is accomplished, or humanitarian reasons and the public benefit no longer warrant parole." *Loaiza Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *3 (S.D. Cal. Nov. 25, 2025) (citing 8 C.F.R. § 212.5(e)); *Dorvis Jesus Rodriguez Martinez, v. Raycraft et al.,* No. 1:25-CV-1504, 2025 WL 3511093, at *5 (W.D. Mich. Dec. 8, 2025). Section 1182(d)(5) "is a grant of discretionary authority, but it has a mandatory requirement—parole may be terminated or revoked only when in the Secretary's opinion the parole's purposes have been met. . . Agency action is not 'specified ... to be in the discretion' of the official where the action 'was not performed in accordance with the mandatory ... procedures.'" *Y-Z-L-H v. Bostock,* 792 F. Supp. 3d 1123, 1137–38 (D. Or. 2025), *quoting Sharkey v. Quarantillo, 541 F.3d 75, 86 (2d Cir. 2008).*

At the time that Respondents detained Mr. Gutsiev, effectively revoking his parole, he was still pursuing his application for asylum in the United States, therefore the purpose of his parole had not been accomplished. "Petitioner was paroled into the United States based on his intent to seek asylum—the purpose of his parole. He applied for asylum and was still in the middle of those proceedings when Respondents issued and executed the revocation." *Noori v. LaRose*, No. 25-CV-1824-GPC-MSB, 2025 WL 2800149, at *13 (S.D. Cal. Oct. 1, 2025); *see also*. "Moreover, there is nothing before the Court to suggest that the humanitarian reason or public benefit that justified Petitioner's parole no longer applies." *Dorvis Jesus Rodriguez Martinez, v. Raycraft et al.,* No. 1:25-CV-1504, 2025 WL 3511093, at *5 (W.D. Mich. Dec. 8, 2025).

Furthermore, Mr. Gutsiev was re-detained without an individualized assessment of whether he warrants a termination of his parole. *Dorvis Jesus Rodriguez Martinez, v. Raycraft et al.,* No. 1:25-CV-1504, 2025 WL 3511093, at *5 (W.D. Mich. Dec. 8, 2025), citing *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 146 (W.D.N.Y. 2025).

Because the purpose of Mr. Gutsiev's parole had not been completed and because Respondents did not conduct an individualized assessment to determine whether there were changed circumstances that would support a finding that he poses a danger to the public or a flight risk, DHS cannot "articulate[] a satisfactory explanation for [their] action to revoke [Mr. Gutsiev's] parole. Moreover, by denying [Mr. Gutsiev] the required procedure before purporting to terminate his parole, Respondents acted arbitrarily and capriciously and violated the APA." *Perez v. LaRose*, No. 3:25-CV-02620-RBM-JLB, 2025 WL 3171742, at *7 (S.D. Cal. Nov. 13, 2025), *quoting Altera Corp. & Subsidiaries v. Comm'r,* 926 F.3d 1061, 1080 (9th Cir. 2019) and *Y-Z-L-H v. Bostock,* 792 F. Supp. 3d 1123, 1137–38 (D. Or. 2025).

Mr. Gutisev's detention and effective revocation of his parole failed to comply with statutory and regulatory requirements. Respondents actions also violate the Administrative Procedure Act because their revocation of Mr. Gutsiev's parole is arbitrary, capricious and an abuse of discretion. *5 U.S.C. § 706(2)(a)*; *see also Luz Loaiza Arias, Petitioner, v. CHRISTOPHER LAROSE, Warden, Otay Mesa Det. Ctr., et al*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *2 (S.D. Cal. Nov. 25, 2025).

This Court *shall* set aside such agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." *5 U.S.C. § 706(2)(a)*; *see also Luz Loaiza Arias, Petitioner, v. CHRISTOPHER LAROSE, Warden, Otay Mesa Det. Ctr., et al*, No. 3:25-CV-02595-BTM-MMP, 2025 WL 3295385, at *2 (S.D. Cal. Nov. 25, 2025).

B. **Petitioner Will Suffer Irreparable Harm in the Absence of A TRO.**

In the absence of a TRO, Mr. Gutsiev will continue to be unlawfully detained by Respondents. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention constitutes "a loss of liberty that is . . . irreparable." *Moreno Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020)

(*Moreno II*), *aff'd in part, vacated in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022).

It "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) ("Thus, it follows inexorably from our conclusion that the government's current policies [which fail to consider financial ability to pay immigration bonds] are likely unconstitutional—and thus that members of the plaintiff class will likely be deprived of their physical liberty unconstitutionally in the absence of the injunction—that Plaintiffs have also carried their burden as to irreparable harm.")

Mr. Gutsiev has also already been grievously harmed by his unlawful detention. He was taking care of his little brother, helping him financially and serving as his guardian. "Since being [detained], Petitioner has been unable to work or see his family. Thus, Petitioner and his family have suffered a 'grievous loss' from his [detention]. Under these circumstances, Petitioner and his family are – and will continue to be – irreparably harmed absent relief from this Court." *Medrano-Rocha v. Santacruz*, No. CV 26-00404-KK-AGRX, 2026 WL 411355, at *5 (C.D. Cal. Jan. 23, 2026), *quoting Morrissey v. Brewer,* 408 U.S. 471, 482 (1972). This Court can take into consideration "the collateral harms to children of detainees whose parents are detained." *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

Further, Petitioner's potential transfer out of the Eastern District will deprive him of access to his attorney, who is based in Los Angeles, California.

C. The Balance of Equities Tips in Petitioner's Favor and A TRO Is in the Public Interest.

Because the government is a party, these two factors are considered together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Mr. Gutsiev has established that the public interest factor weighs in his favor.

Mr. Gutsiev does not contest Respondents' ability to detain noncitizens and remove noncitizens under the immigration laws. But those interests cannot outweigh Mr. Gutsiev's fundamental constitutional interests. "The Ninth Circuit has recognized that 'neither equity nor the public's interest are furthered by allowing violations of federal law to continue.'" *SOLEDAD CRUZ RAMIREZ, Petitioner, V. KRISTI NOEM, Et Al., Defendants-respondents.*, No. 2:25-CV-02110-RFB-DJA, 2025 WL 3563294, at *8 (D. Nev. Dec. 12, 2025) quoting *Galvez v. Jaddou,* 52 F.4th 821, 832 (9th Cir. 2022). Respondents "cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012).

In fact, a grant of the Temporary Restraining Order and immediate release of Mr. Gutsiev could benefit Respondents. "[C]ontinuing to enforce [Mr. Gutsiev's] detention would likely impose more costs upon the Government, as it would be required to continue funding and overseeing [Mr. Gutsiev's] detention." *Eliezer Tezara Munoz, Petitioner, v. Robert Lynch et al., Respondents*, No. 1:25-CV-1632, 2025 WL 3687338, at *5 (W.D. Mich. Dec. 19, 2025). "[T]he Ninth Circuit has recognized that the costs to the public of immigration detention are staggering." *Parvinder Singh S. B., Petitioner, v. Christopher Chestnut, et al., Respondents,* No. 1:25-CV-01981-TLN-CSK, 2025 WL 3718833, at *2 (E.D. Cal. Dec. 23, 2025) Respondents cannot show here how the government's interests overcome the irreparable injury to Mr. Gutsiev. As noted above, the hardship for Mr. Gutsiev is concrete and severe and weigh sharply in favor of granting the requested TRO. Respondents "cannot reasonably assert that [they are] harmed in any legally cognizable sense by being enjoined from constitutional violations." *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) see also *Rodriguez v. Robbins*, 715 F. 3d 1127, 1145 (9th Cir. 2013) ("[The Government] cannot suffer harm from an injunction that merely ends an unlawful practice[.]"). Moreover, the public has a strong interest in ensuring its government follows the law and the Ninth Circuit has recognized that the "costs to the public of immigration detention are staggering[.]" *Hernandez*, 872 F.3d at 996.

D. **The Court Should Not Require Petitioner to Provide Security.**

The Court should not require a bond under Fed. R. Civ. P. 65(c). This rule permits a court to grant preliminary injunctive relief "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). But it is well established that Rule 65(c) does not impose a mandatory requirement for a bond, but rather "invests the district court 'with discretion as to the amount of security required, *if any*.'" *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)). In particular, "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct." *Johnson v. Courturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Here, there is no realistic likelihood of harm to Respondents if the Court grants the requested TRO, and it would pose a significant hardship on Petitioner who is incarcerated to have a bond imposed. The Court should exercise its discretion and waive the requirement to post a bond under Rule 65(c).

E. **Prudential Exhaustion Is Not Required.**

Prudential exhaustion does not require Mr. Gutsiev to be forced to endure the very harm he is seeking to avoid by requesting bond from an Immigration Judge and subsequently appealing a denial of bond to the BIA and waiting many months for a decision from the BIA."[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious,... [or] irreparable injury will result..." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted).

In addition, a court may waive an exhaustion requirement when "requiring resort to the administrative remedy may occasion undue prejudice to subsequent assertion of a court action." *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001). "Such prejudice may result... from an unreasonable or indefinite time frame for administrative action." *Id.* at 147 (citing cases). Here,

the exceptions regarding irreparable injury and agency delay apply and warrant waiving any prudential exhaustion requirement.

1. **Futility**

Futility is an exception to the prudential exhaustion requirement. Here, Mr. Gutsiev has been charged by Respondents as an arriving alien. It is predetermined that the Immigration Judge will find that she or he has no jurisdiction to grant bond for Mr. Gutsiev. *8 C.F.R. § 1003.19(h)(2)(i)(B).* Mr. Gutsiev has not requested bond because IJs lack jurisdiction and requesting bond would be futile. Until EOIR "no longer applies a [mandatory detention] policy that likely violates federal law, the circumstances do not present a need for requiring prudential exhaustion." *Zaragoza Mosqueda v. Noem*, No. 5:25-cv-2304-CAS-BFM, 2025 U.S. Dist. LEXIS 174828 at *17 (C.D. Cal. Sept. 8, 2025)

2. **Irreparable Injury**

Irreparable injury is an exception to any prudential exhaustion requirement. District courts have repeatedly recognized that, "because of delays inherent in the administrative process, BIA review would result in the very harm that the bond hearing was designed to prevent: prolonged detention without due process." *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, "if Petitioner is correct on the merits of his habeas petition, then Petitioner has *already* been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional day that Petitioner is detained without a [lawful] bond hearing would cause him harm that cannot be repaired." *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these points.

Mr. Gutsiev asserts both statutory and constitutional claims and has a "fundamental" interest in a bond hearing, as "freedom from imprisonment is at the 'core of the liberty protected by the Due Process Clause.'" *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

Moreover, the irreparable injury Mr. Gutsiev faces extends beyond a chance at physical liberty. There are other "irreparable harms imposed on anyone subject to immigration detention[.]" *Hernandez*, 872 F.3d at 995.

3. **Agency Delay**

Third, the BIA's delays in adjudicating bond appeals warrant excusing any exhaustion requirement. A court's ability to waive exhaustion based on delay is especially broad here given the interests at stake. As the Ninth Circuit has explained, Supreme Court precedent "permits a court under certain prescribed circumstances to excuse exhaustion where 'a claimant's interest in having a particular issue resolved promptly is so great that deference to the agency's judgment [of a lack of finality] is inappropriate.'" *Klein v. Sullivan*, 978 F.2d 520, 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)). Of course, as noted above, Mr. Gutsiev's interest here in physical liberty is a "fundamental" one. *Hernandez*, 872 F.3d at 993. Moreover, the Supreme Court has explained that "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

Despite this fundamental interest and the Supreme Court's admonition that only speedy relief is meaningful, the BIA takes over half a year in most cases to adjudicate an appeal of a decision denying bond. In these cases, noncitizens in removal proceedings often remain locked up in a detention facility with conditions "similar . . . to those in many prisons and jails" and separated from family. *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g.*, *Hernandez*, 872 F.3d at 996.

District courts facing situations similar to the one at issue here have acknowledged that the BIA's months-long review is unreasonable and results in ongoing injury to the detained individual. *See, e.g.*, *Perez*, 445 F. Supp. 3d at 286. Indeed, as one district judge observed, "the vast majority of . . . cases . . . have 'waived exhaustion . . . where several additional months may pass before the BIA renders a decision on a pending appeal [of a custody order]." *Montoya Echeverria*, 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301, at *5); *see also Hechavarria*, 358 F. Supp. 3d at 237–38 (citing *McCarthy* and BIA delays as reason to waive prudential exhaustion requirement).

CONCLUSION

For the foregoing reasons, the Court should grant Petitioner's Application for a Temporary Restraining Order and Order to Show Cause.

DATED: April 25, 2026 Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 25 2025, I served a copy of PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF ATTORNEY; AND [PROPOSED] ORDER by email to the following individuals:

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