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6
7 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA

8
9 **Flores Millan, Marco Polo,**

)
) Case No.
)

10 Petitioner,

11 v.

12 **Warden, Mesa Verde Detention Center;**

13 and

14 **Director of San Francisco Field Office,**
15 **U.S. Immigration and Customs**
16 **Enforcement; and**

17 In their official capacities.

18 Respondents.
19

20 **PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING**
21 **ORDER AND PRELIMINARY INJUNCTION AND**
22 **MEMORANDUM OF LAW IN SUPPORT**
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I. INTRODUCTION

The Petitioner, Flores Millan, Marco Polo is originally from Peru and is a Peruvian citizen, and he is 40 years old. On or about June 25, 2026, the Petitioner arrived home in Pittsburg, California after going to the grocery store. At that time, three (3) ICE vehicles surrounded the Petitioner, and he was detained. The Petitioner was then transferred to Mesa Verda Detention Center in California where he is currently held.

In this regard, the Petitioner filed his Writ of Habeas Corpus Petition (“Habeas Petition”) concurrently with this Motion for a Temporary Restraining Order on or about July 3, 2026, and alleges that his detention by the Respondent(s) violates the constitutional and statutory provisions which form the basis of his Habeas Petition.

Through his Habeas Petition, Petitioner is challenging his detention. He respectfully requests immediate injunctive relief to protect him from ongoing and imminent harm caused by Respondent(s).

For these reasons, Petitioner asks this Court to provide immediate relief, enjoining Respondent(s) from transferring or moving the Petitioner, and further ordering Respondent(s) to immediately release the Petitioner.

II. LEGAL BACKGROUND

The right to file a petition for a writ of Habeas Corpus is intended to, at a minimum, provide “a means of reviewing the legality of Executive detention.” *Rasul v. Bush*, 542 U.S. 466, 474 (2004) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)).

In addition, 28 U.S.C. § 2241 is a federal statute that allows individuals in U.S. custody, including noncitizens, to file a habeas corpus petition in federal district court to challenge unlawful detention. Specifically, 8 U.S.C. § 2241(c)(3) grants district court’s jurisdiction to hear habeas corpus petitions from noncitizens claiming that they are held “in violation of the

1 Constitution or laws or treaties of the United States.

2 Moreover, 28 U.S.C. Section 2241 provides, in relevant part: Writs of habeas corpus may
3 be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge
4 within their respective jurisdictions. The order of a circuit judge shall be entered in the records of
5 the district court of the district wherein the restraint complained of is had.
6

7 III. STATEMENT OF FACTS

8 On or about April 25, 2024, the Petitioner entered without inspection ("EWI") in the USA
9 near San Diego, California. Petitioner's alien number is 

10 On or about June 25, 2026, the Petition arrived home in Pittsburg, California after going
11 to the grocery store. At that time, three (3) ICE vehicles surrounded the Petitioner, and he was
12 detained. The Petitioner was then transferred to Mesa Verda Detention Center in California where
13 he is currently held. The Petitioner has an asylum application pending and is in immigration
14 proceedings in Concord, California. The Petitioner's next hearing is February 22, 2029 (subject to
15 being placed in the detained docket).
16

17 Lastly, the Petitioner has deep roots in his community, and prior to his detention, the
18 Petitioner was working in a car wash providing for his family. His continued detention deprives
19 his family of his companionship and income.
20

21 IV. ARGUMENT

22 To obtain temporary and preliminary injunctive relief, Petitioner must demonstrate that
23 (1) he is likely to succeed on the merits, (2) he is likely to suffer irreparable harm in the absence
24 of preliminary relief, (3) the balance of equities tips in his favor, and (4) an injunction is in the
25 public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the
26 government is a party, the balance of equities and public interest merge. *Nken v. Holder*, 556 U.S.
27 418, 435 (2009). Under the circumstances presented herein, it is the Petitioner's argument that no
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security bond is required under Federal Rule of Civil Procedure 65(c).

A. Petitioner Is Likely to Succeed on the Merits.

1. As stated in his Habeas Petition, the Petitioner asserts that his detention is in violation of the Constitution or laws, such as Fifth Amendment due process violations.

Therefore, the Petitioner is ultimately likely to prevail.

2. Moreover, the Petitioner's continued detention violates the Immigration and Nationality Act and the U.S. Constitution. Therefore, the Petitioner is ultimately likely to prevail.

3. Lastly, the Petitioner has respectfully requested attorney's fees and cost under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412 and it is his argument that he will ultimately prevail in that claim, as well.

B. Petitioner Has Suffered and Will Continue to Suffer Irreparable Harm Absent Emergency Injunctive Relief.

Irreparable harm in immigration Temporary Restraining Orders (TROs) involves imminent, non-compensable injury, such as forced removal to persecution, unlawful separation from family, or detention under inhumane conditions. These harms are urgent, irreversible, and cannot be remedied by monetary damages, often requiring immediate court intervention to stop imminent deportation.

Parties seeking preliminary injunctive relief must also show they are "*likely* to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014); *see also Daniels Health Scis., L.L.C. v. Vascular Health Scis., L.L.C.*, 710 F.3d 579, 585 (5th Cir. 2013).

In this case, Petitioner, as a result of this detention, is currently suffering or will continue

1 to suffer irreparable harm resulting from his detention. As detailed above, Respondents are
2 responsible for his detention and have direct physical control over the Petitioner. These actions
3 have caused, and are causing, irreparable harm in the form of deprivation of his liberty to be with
4 his family.

5
6 In addition, Petitioner also suffers from mental anguish as a result of his separation from
7 his family, and this cannot be satisfied with monetary damages. Further, Petitioner is also unable
8 to provide for his family, as he is unable to work while he is in detention. Thus, absent injunctive
9 relief, Petitioner will continue to suffer needlessly.

10 For these reasons, Petitioner has demonstrated irreparable harm.

11 **C. The Balance of Hardships and Public Interest Weigh Heavily in Petitioner's Favor.**

12 The final two factors for an injunctive relief—the balance of hardships and public interest
13 “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009);
14 Insert citation to circuit court decision. Here, Petitioner faces weighty hardships, namely the
15 deprivation of his statutory, regulatory, constitutional rights to due process, deprivation of his
16 liberty, separation from his family and loved ones, and the denial of employment to earn money
17 to provide for his family and pay for his legal representation in his immigration proceedings.

18
19 Respondents, by contrast, face no or minimal hardships. The government does not face
20 hardship at all (e.g., lack of administrative costs associated with release) or only minimally (e.g.,
21 administrative costs associated with providing procedural due process) if the court grants the
22 injunction. “[T]he balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with
23 such a conflict between financial concerns and preventable human suffering.” *Hernandez v.*
24 *Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th
25 Cir. 1983)).

26
27 Moreover, Respondents “cannot suffer harm from an injunction that merely ends an
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1 unlawful practice . . .” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). The public
2 interest is served by the faithful execution of the immigration laws, and that interest includes
3 respect for protections Congress has enacted and to which the United States has committed itself
4 by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing “the public
5 interest in having the immigration laws applied correctly and evenhandedly”); *Leiva-Perez v.*
6 *Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting “the public’s interest in ensuring that we do not
7 deliver [noncitizens] into the hands of their persecutors”); *Lujan v. Defs. of Wildlife*, 504 U.S.
8 555, 576 (1992) (discussing “the public interest in Government observance of the Constitution
9 and laws”).

11
12 **V. CONCLUSION**

13 For the foregoing reasons, Petitioner respectfully requests that the Court grant temporary/
14 preliminary injunctive relief, enjoining Respondents from transferring the Petitioner to a location
15 outside the jurisdiction of this Court, and ordering Respondents to immediately release the
16 Petitioner, or alternatively order the Immigration court to grant a bond consideration hearing.

17 Respectfully submitted,

18 /s/Nancy Juarez

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