

FILED

UNITED STATES DISTRICT
COURT EASTERN DISTRICT OF CALIFORNIA JUL 09 2026

DOMINGO SANTIAGO-MARCAS,

[REDACTED]
Proceeding Pro Se,
Petitioner,

v.

_____, WARDEN, Mesa Verde Detention Center;
_____, FIELD OFFICE DIRECTOR, ICE Los
Angeles Field Office; TODD M. LYONS, Acting
Director, United States Immigration and Customs
Enforcement; MARK WAYNE MULLIN, Secretary
of Homeland Security; TODD BLANCHE, Acting
Attorney General, United States,
Respondents.

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY Yms
DEPUTY CLERK

Case No.:

1:26-cv-5283 EJD

**PETITIONER'S EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

I. INTRODUCTION

Petitioner Domingo Santiago-Marcas, proceeding pro se, respectfully submits this ex parte application for a Temporary Restraining Order ("TRO"). This application is filed concurrently with Petitioner's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241. Petitioner seeks an order for his immediate release from unlawful immigration detention. In the alternative, Petitioner seeks an order enjoining Respondents from transferring him out of the Eastern District of California pending this Court's resolution of his habeas petition.

II. FACTUAL BACKGROUND

Petitioner is a young national of Guatemala, **[REDACTED]** He entered the United States as an unaccompanied minor on or about March 7, 2022. After being processed by federal authorities, the Office of Refugee Resettlement ("ORR") released him from federal custody on April 5, 2022, to the care of his brother and sponsor, Jacinto Santiago Marcos, in Fort Lauderdale, Florida.

For over four years following his release, Petitioner lived in the United States, worked in agriculture to support himself and his family in Guatemala, and maintained a clean record with no criminal

1 history.

2 Petitioner's immigration case remains pending before the Miami Immigration Court, with a Master
3 Calendar hearing scheduled for July 29, 2026, before Immigration Judge Stuart A. Siegel. There is
4 no final order of removal in Petitioner's case.

5 Despite his prior release and pending case, on or about May 31, 2026, U.S. Immigration and
6 Customs Enforcement ("ICE") agents detained Petitioner in Fort Lauderdale, Florida. His detention
7 was not the result of any criminal arrest. Subsequently, Respondents transferred Petitioner through
8 detention facilities in Florida, Texas, and Arizona, before ultimately moving him to the Mesa Verde
9 Detention Center in Bakersfield, California—thousands of miles from his family, community, and
10 support system. This prolonged and unjustified detention has caused Petitioner to suffer from severe
11 anxiety, stress, and depression. This is Petitioner's first application for habeas corpus relief.
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14 III. LEGAL STANDARD

15 Injunctive relief is an "extraordinary remedy that may only be awarded upon a clear showing that
16 the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22
17 (2008). To obtain a TRO, the moving party must show: (1) a likelihood of success on the merits;
18 (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of
19 equities tips in the moving party's favor; and (4) that an injunction is in the public interest. *Id.* at
20 20. The standard for a TRO is "substantially identical" to the standard for a preliminary injunction.
21 *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). The Ninth
22 Circuit employs a "sliding scale" approach, where a stronger showing on the balance of hardships
23 may support issuing a TRO even where the petitioner shows only "serious questions going to the
24 merits." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).
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28 IV. ARGUMENT

A. LIKELIHOOD OF SUCCESS ON THE MERITS

Petitioner has a strong likelihood of succeeding on the merits of his habeas claims.

First, Petitioner's detention violates the Immigration and Nationality Act ("INA"). Petitioner was apprehended in the interior of the country after years of residence and is subject to discretionary detention under 8 U.S.C. § 1226(a), not the mandatory detention scheme of 8 U.S.C. § 1225(b). Courts in this District have consistently held that § 1225(b) does not apply to noncitizens apprehended in the interior who have resided in the U.S. for a significant period. See, e.g., *Alvarez Maciel v. Noem*, No. 1:26-cv-01318-DC-CKD, 2026 WL 496948 (E.D. Cal. Feb. 23, 2026); *Barajas Ortiz v. Chestnut*, No. 1:26-cv-01167-DC-SCR, 2026 WL 508419 (E.D. Cal. Feb. 24, 2026); *Quichimbo-Jimenez v. Warden, California City Corr. Ctr.*, No. 2:26-cv-00739-DAD-EFB, 2026 WL 679378 (E.D. Cal. Mar. 10, 2026); *Wasef v. Chestnut*, No. 1:26-cv-01078-DAD-JDP, 2026 WL 392389 (E.D. Cal. Feb. 12, 2026). As Petitioner's detention is governed by § 1226(a), he is statutorily entitled to an individualized bond hearing. *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018).

Second, Petitioner's re-detention without notice or a hearing violates the Due Process Clause of the Fifth Amendment. "Freedom from imprisonment . . . lies at the heart of the liberty" that the Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner's prior release by ORR in 2022 created a protected liberty interest in his continued freedom. *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1032 (N.D. Cal. 2025); *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC, 2025 WL 2637503, at *6 (N.D. Cal. Sept. 12, 2025). Under the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), Petitioner's substantial private interest in his liberty, the high risk of erroneous deprivation without any procedural safeguards, and the minimal government interest in detaining him without process all weigh in favor of requiring a pre-deprivation hearing. Courts in this circuit have repeatedly held that due process requires a pre-deprivation hearing before re-detaining a previously released noncitizen. See, e.g., *Singh v.*

1 Warden, Golden State Annex Det. Facility, No. 1:26-cv-01973-DAD-CSK, 2026 WL 1328588, at
2 *2-3 (E.D. Cal. May 13, 2026) (collecting cases); Khamraev v. Warden, California City
3 Correctional Center, No. 1:26-cv-04458-DAD-AC (E.D. Cal. July 1, 2026); Lainez Escobar v.
4 Warden, No. 1:26-cv-03391-DC-AC (E.D. Cal. May 15, 2026). The typical remedy for such a
5 violation is release. *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

6 7 8 B. IRREPARABLE HARM

9 Petitioner will suffer irreparable harm if he remains in custody. The deprivation of liberty and other
10 constitutional rights “unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d
11 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). “Deprivation of
12 physical liberty by detention constitutes irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763,
13 767 (9th Cir. 2018). This harm is not compensable by damages. *Hernandez*, 872 F.3d at 999.
14 Petitioner is currently suffering severe anxiety and depression, is separated from his family and
15 sponsor, and is unable to work or effectively prepare for his immigration case. This harm is
16 ongoing, severe, and cannot be undone.

17 18 19 C. BALANCE OF EQUITIES AND PUBLIC INTEREST

20 The balance of equities and the public interest strongly favor granting the requested relief. These
21 two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435
22 (2009); *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The harm to
23 Petitioner from continued unlawful detention far outweighs any minimal burden on Respondents.
24 The public has a profound interest in upholding the Constitution and ensuring that the government
25 does not unlawfully deprive individuals of their liberty. *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th
26 Cir. 2022). The government “cannot reasonably assert that it is harmed in any legally cognizable
27 sense by being enjoined from constitutional violations.” *Zepeda v. U.S. Immigr. & Nat. Serv.*, 753
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1 F.2d 719, 727 (9th Cir. 1983).

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3 D. REMEDY

4 Immediate release is the appropriate remedy. The purpose of injunctive relief is to restore the parties
5 to the “last uncontested status which preceded the pending controversy”—in this case, Petitioner’s
6 freedom in the community. *Lepe v. Andrews*, No. 25-cv-01163-KES-SKO, 2025 WL 2716910, at
7 *1119 (E.D. Cal. Sep. 23, 2025); *Morales Flores v. Lyons*, No. 25-cv-01640-TLN-EFB, 2025 WL
8 3552841, at *7 (E.D. Cal. Dec. 11, 2025). In the alternative, to prevent further irreparable harm and
9 protect this Court’s jurisdiction, Respondents should be enjoined from transferring Petitioner out
10 of this District. See *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966).

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13 E. SECURITY

14 Pursuant to Federal Rule of Civil Procedure 65(c), the Court has discretion to waive the security
15 requirement. *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Courts in this circuit
16 regularly waive security in immigration habeas cases, and Petitioner requests that the Court do so
17 here, as there is no realistic likelihood of harm to Respondents and requiring a bond would
18 negatively impact Petitioner’s constitutional rights. *Diaz v. Brewer*, 656 F.3d 1008, 1015 (9th Cir.
19 2011).

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22 V. CONCLUSION AND RELIEF REQUESTED

23 For the foregoing reasons, Petitioner respectfully requests that this Court issue a Temporary
24 Restraining Order:

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26 1. Ordering Respondents to immediately release Petitioner from their custody under
27 appropriate conditions of supervision;
28 2. In the alternative, enjoining Respondents from transferring Petitioner out of the Eastern

1 District of California pending a final decision on his Petition for Writ of Habeas Corpus;

2 3. Enjoining Respondents from removing Petitioner from the United States during the
3 pendency of this action; and

4 4. Ordering that if the government seeks to re-detain Petitioner, it must provide no less than
5 seven (7) days' notice to Petitioner and must hold a pre-deprivation bond hearing before a
6 neutral arbiter, at which Respondents bear the burden of showing by clear and convincing
7 evidence that Petitioner is a flight risk or a danger to the community. DATED: July 7, 2026
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9 Respectfully submitted,

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11 /s/ Domingo Santiago-Marcas

12 Domingo Santiago-Marcas

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Petitioner, Pro Se

14 Mesa Verde Detention Center 425

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