UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. EDCV 26-01402-MWF (ACCV) **Date: April 7, 2026**
Title: Osmar Sanchez Clemente v. D. Marin

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:	Court Reporter:
Rita Sanchez	Not Reported
Attorneys Present for Plaintiff:	**Attorneys Present for Defendant:**
None Present	None Present

Proceedings (In Chambers): ORDER GRANTING PETITIONER'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER [2]

Before the Court is Petitioner Osmar Sanchez Clemente's Ex Parte Application for Temporary Restraining Order (the "TRO Application") filed on March 20, 2026. (Docket No. 2). Respondents filed an Opposition on March 30, 2026. (Docket No. 8). Petitioner filed a Reply on April 3, 2026. (Docket No. 10).

The TRO Application is **GRANTED**. Petitioner has demonstrated that his current detention is likely unlawful due to ICE's failure to comply with its own regulations in revoking Petitioner's OSUP. Further, the Court will order Petitioner's return to the Central District of California.

I. BACKGROUND

Petitioner is a citizen and native of Cuba who has resided in the United States since August 28, 1993. (Petition (Docket No. 1) ¶ 13). In 1999, following a drug-related charge, Petitioner was ordered removed and held in immigration detention. (*Id.*). However, after the government of Cuba refused to accept Petitioner, Petitioner was released from immigration detention in August 2000 on an order of supervision (or "OSUP"). (*Id.*). Petitioner has remained released on an OSUP since that time, attending regularly scheduled check-ins with ICE. (*Id.*).

At the most recent check-in on February 25, 2026, Respondents revoked Petitioner's OSUP and arrested him. (*Id.* ¶¶ 3, 14). Petitioner states that the "ICE agents did not give Petitioner any documentation or any notice," but that an ICE agent told him that "Petitioner's life was not in danger anymore in Cuba." (*Id.* ¶ 14). Petitioner further states that he "complied with all conditions" of his OSUP and that "[n]o circumstances changed in 2026" justifying his OSUP revocation after over 25 years of supervised release. (*Id.* ¶ 16).

At the time of filing his Petition, Petitioner was detained at Adelanto ICE Processing Center in Adelanto, California. (*Id.* ¶ 6). However, on March 23, 2026, Respondents relocated Petitioner to an ICE detention center in El Paso, Texas. (*See generally* Declaration of Michael Gomez ("Gomez Decl.") (Docket No. 11 at 8–9)).

II. LEGAL STANDARD

A temporary restraining order is an "extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). The standard for issuing a temporary restraining order is "substantially identical" to that for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). Pursuant to Federal Rule of Civil Procedure ("Rule") 65, a court may grant preliminary injunctive relief to prevent "immediate and irreparable injury." Fed. R. Civ. P. 65(b). A party seeking a preliminary injunction must establish that: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of the equities tips in his favor; and (4) an injunction is in the public interest. *See Toyo Tire Holdings of Ams. Inc. v. Cont'l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter*, 555 U.S. at 20).

These elements — referred to as the *Winter* factors — can be balanced on a sliding scale, allowing a preliminary injunction to issue where there are "serious questions going to the merits" and the balance of hardships "tips sharply towards the plaintiff," "so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *See Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131, 1132–35 (9th Cir. 2011) (concluding that

district courts may use a sliding-scale approach but requiring all four *Winter* factors to be met).

III. DISCUSSION

A. Likelihood of Success

Petitioner seeks a TRO on the grounds that he "is likely to succeed on the merits of at least one of his claims for relief in his Petition." (TRO Application at 5). In his Petition, Petitioner claims his detention is unlawful primarily because ICE failed to follow its own regulations and the Due Process Clause in revoking his OSUP. (Petition ¶¶ 49–104). Respondents do not rebut this argument and instead contend that the TRO Application should be denied because the Application itself "does not identify a coherent legal theory." (Opp. at 1).

But the Petition sufficiently sets out the factual basis and legal rationale for Petitioner's requested relief, and the Court is mindful that Petitioner was proceeding *pro se* at the time of filing his Petition and TRO Application. Left without any meaningful opposition from Respondents, the Court agrees that Petitioner has shown a likelihood of success that his detention is unlawful.

"Once ICE releases a noncitizen on an OSUP, 'ICE's ability to re-detain that noncitizen is constrained by its own regulations.'" *Manivong v. Bondi*, Case No. CV 25-6747-JFW (KES), 2025 WL 3211455, at *5 (C.D. Cal. Sept. 3, 2025) (quoting *Roble v. Bondi*, Case No. CV 25-3196, 2025 WL 2443453, at *3 (D. Minn. Aug. 25, 2025)). Specifically, 8 C.F.R. § 241.13(i) permits revocation of an OSUP only if: (1) the noncitizen violates the conditions of release; or (2) changed circumstances indicate a "significant likelihood" that the noncitizen may be removed in the reasonably foreseeable future. 8 C.F.R. § 241.13(i)(1)–(2).

Title 8 C.F.R. §§ 241.4 and 241.13 also provide for procedural safeguards. As one court summarized in the context of OSUP revocation:

> [T]he statutory and regulatory language sets forth three requirements to protect a noncitizen's right to due process: (1) the noncitizen must be informed of the basis for revocation; (2) the noncitizen must be provided a "prompt" opportunity to present evidence and explain why revocation is not warranted; and (3) if the revocation is discretionary in nature, it must be made by an appropriate official.

Esmail v. Noem, Case No. CV 25-08325-WLH (RAO), 2025 WL 3030590, at *2 (C.D. Cal. Sept. 12, 2025).

Here, Respondents have failed to meaningfully oppose the TRO Application, and the Court accepts Petitioner's uncontested filings as demonstrating a likelihood of success that these procedural requirements were not met. Specifically, Petitioner states that Respondents failed to give him "any documentation or any notice" and did not "conduct an informal interview and afford Petitioner an opportunity to be heard." (Petition ¶¶ 14, 39). Without evidence that Respondents provided specific (and sufficient) reasons for revocation or a meaningful opportunity to rebut those reasons, Respondents have failed to comply with the mandatory procedures set forth in 8 C.F.R. § 241.13(i). *See Nazarian v. Noem*, Case No. EDCV 25-02694-KK (ADSx), 2025 WL 3236209, at *4–5 (C.D. Cal. Nov. 3, 2025).

Other courts confronted with similar facts have concluded that re-detention is unlawful and have ordered release. *See, e.g.*, *Nazarian*, 2025 WL 3236209, at *4–5; *Delkash v. Noem*, Case No. EDCV 25-01675-HDV (AGR), 2025 WL 2683988, at *5 (C.D. Cal. Aug. 28, 2025) ("These procedures are not optional or discretionary; they must be followed, and failure to do so renders the detention unlawful."); *Phan v. Noem*, No. 3:25-CV-02422-RBM-MSB, 2025 WL 2898977, at *3 (S.D. Cal. Oct. 10, 2025) ("ICE failed to comply with the required procedures, thereby violating Petitioner's due process rights."); *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *5 (E.D. Cal. July 16, 2025) ("[T]he court concludes that Petitioner has shown a likelihood of success on the merits of his claims that his re-detainment is unlawful because ICE has not complied with the controlling regulations to re-detain him.").

Accordingly, Petitioner has met his burden in establishing the first *Winter* factor.

B. Irreparable Harm

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) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Where, as here, 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) (quoting Wright, Miller, & Kane, Federal Practice and Procedure, § 2948.1 (2d ed. 2004)).

Here, Petitioner has shown evidence that he has been deprived of due process (*i.e.*, notice and an opportunity to be heard regarding the revocation of his release), likely rendering his re-detention unlawful.

Accordingly, Petitioner has met his burden in establishing the second *Winter* factor.

C. Balance of Equities and the Public Interest

Where the government is the opposing party, the third and fourth Winter factors merge. *Nken v. Holder*, 556 U.S. 418, 435 (2009); *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018) ("When the government is a party, the last two factors merge."). Further, a petitioner's "likelihood of success on the merits of a constitutional claim . . . tips [these] merged third and fourth factors decisively in his favor." *Baird v. Bonta*, 82 F.4th 1036, 1042 (9th Cir. 2023).

Here, the government "cannot reasonably assert that it is harmed in any legally cognizable sense" by being compelled to follow the law including its own regulations. *See Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983). And an injunction is in the public interest where "a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005). If any countervailing factors exist that the Court should consider in

weighing the balance of the equities and the public interest, Respondents have failed to present them.

Accordingly, Petitioner has met his burden in establishing the third and fourth *Winter* factors.

D. Bond Requirement

Under Federal Rule of Civil Procedure 65(c), the Court "may issue a preliminary injunction or a temporary restraining order 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). "Despite the seemingly mandatory language, 'Rule 65(c) invests the district court with discretion as to the amount of security required, if any.'" *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (quoting *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotations omitted)).

Under the circumstances presented here, it is unlikely that the government will incur any significant cost and requiring a bond "would have a negative impact on plaintiff's constitutional rights, as well as the constitutional rights of other members of the public." *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996) (citation omitted).

Accordingly, the Court waives the bond requirement, and the TRO Application is **GRANTED**.

E. Return Order

The Court understands that Respondents relocated Petitioner from Adelanto, California, to El Paso, Texas, during the pendency of this action. (*See generally* Gomez Decl.). It appears the relocation occurred on March 23, 2026 (*id.* ¶ 5), two days before the Court issued a no-transfer order. (*See* Docket No. 5). In light of this development, Petitioner requests that the Court order his return to the Central District of California. (Reply at 6).

The Court agrees it may order Petitioner's return to this District as an ancillary order necessary to preserve the status quo and fairly adjudicate the underlying habeas petition filed here. *See* 28 U.S.C. § 1651(a) (empowering courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"); *Ozturk v. Trump*, 779 F. Supp. 3d 462, 495 (D. Vt.) (ordering petitioner's return to the district adjudicating her habeas petition pursuant to the All Writs Act and the court's inherent equitable authority), *amended sub nom. Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025).

Accordingly, pursuant to the Court's inherent authority and its authority under the All Writs Act, Petitioner's request for an order returning him to this District is **GRANTED** to the extent set forth below and in the forthcoming separate TRO.

IV. CONCLUSION

Petitioner's TRO Application is **GRANTED**. All four *Winter* factors weigh in Petitioner's favor. The Court **ORDERS** as follows:

- Respondents shall **RETURN** Petitioner to Adelanto Detention Facility within two (2) day of this Order, if he is not already presently at Adelanto Detention Facility.

- Respondents shall then immediately **RELEASE** Petitioner from custody under the same terms of supervision that applied before his re-detention. Respondents shall file a notice of compliance to this effect by no later than **April 10, 2026**.

- Respondents are **ENJOINED** from re-detaining Petitioner unless they comply with the process required under 8 C.F.R. §§ 241.4(*l*)(1), 241.13(i).

A separate TRO will issue.

As the parties are aware, this case has been referred to Magistrate Judge Angela C. C. Viramontes. (Docket No. 4). Pursuant to General Order Nos. 05-07 and 26-05,

further proceedings on the merits of the Petition are **REFERRED** to Magistrate Judge Viramontes for decision.

IT IS SO ORDERED.