

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

NEHRAL ALBERT RUIZ MALIWAT,

Plaintiffs,

v.

BRUCE SCOTT, Warden, Northwest
Immigration and Customs Enforcement
Processing Center;

DREW BOSTOCK, Seattle Field Office
Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement;

KRISTI NOEM, Secretary, United States
Department of Homeland Security;

PAMELA BONDI, Attorney General of
the United States;

TEAL LUTHY MILLER, US Attorney for
Western District of Washington
Department of Justice;

Respondents.

Case No. 2:25-cv-788

**MOTION FOR A TEMPORARY
RESTRAINING ORDER**

Oral Argument and Expedited
Hearing Requested

INTRODUCTION

1. This action arises under the Constitution of the United States and the Immigration and

1 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

2 2. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
3 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
4 (Suspension Clause).

5 3. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*,
6 the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
7 § 1651.

8 VENUE

9 4. Venue is proper because Petitioner is detained at the Northwest Immigration and
10 Customs Enforcement Processing Center in Tacoma, Washington which is within the jurisdiction
11 of this District.

12 NOTICE

13 5. Today, April 29, 2025, Assistant United States Attorney, Michelle Lambert was
14 provided notice of this filing by phone and provided with electronic and paper copies of this
15 petition for a Temporarily Restraining Order, the Petition for Writ of Habeas Corpus, the
16 Petitioner's Proposed Order, and the Appendixes of supporting records. Additionally, Ms.
17 Lambert was given notice that the Petitioner intends to move to file the Appendixes in this case
18 under seal due to the highly sensitive nature of the many records contained there in.

19 JURISDICTION

20 6. This action arises under the Constitution of the United States and the Immigration and
21 Nationality Act (INA), 8 U.S.C. § 1101 (INA § 101) *et seq.*

1 7. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
2 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution
3 (Suspension Clause).

4 8. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et*
5 *seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C.
6 § 1651.

7 **FACTUAL BACKGROUND**

8 9. The Petitioner incorporates the Statement of Fact that start on page 6 of his
9 accompanying petition for Writ of Habeas Corpus and the supporting appenexis.

10 **LEGAL STANDARD**

11 10. A TRO is an “extraordinary remedy” that should be awarded only upon a clear
12 showing that the plaintiff (or in this case, the petitioner) is entitled to such relief. See *Winter v.*
13 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The petitioner of a TRO must establish: (1) a
14 likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief;
15 (3) that the balance of equities tips in the petitioner's favor; and (4) that an injunction is in the
16 public interest. See *Id.* at 20. Alternatively, the petitioner must demonstrate “serious questions
17 going to the merits were raised,” that “the balance of hardships tips sharply in the [petitioner's]
18 favor,” and that the other two Winter elements are satisfied. *Alliance for Wild Rockies v.*
19 *Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). The “likelihood of success on the merits ‘is the
20 most important’ Winterfactor.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th
21 Cir. 2017) (quoting *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015)). *Pham v. Becerra*,
22 No. 23-CV-01288-CRB, 2023 WL 2744397, at *2 (N.D. Cal. Mar. 31, 2023)

1 In this instance Mr. Maliwat alleges his continued detention fifth amendment
2 constitutional rights to due process and he is entitled to immediate release or an individualized
3 bond hearing.

4 **I. Due Process Claim and Likelihood of Success on the Merits**

5 11. The Petitioner incorporates the Due Process analysis and argument in his Petition for
6 Habeas Corpus dated April 28, 2025 and argues that he has as strong likelihood of success on his
7 claim that his detention has been so prolonged as to violate his Fifth Amendment Constitutional
8 Due Process rights. Based on the argument outlined therein this Court will find that each of the
9 factors in the multi-factor test adopted by this jurisdiction in *Banda v. McAleenan* for
10 determining whether “prolonged detention under § 1225(b) without a bond hearing violates due
11 process” weighs heavily in the Petitioners favor and his nearly 10 month long detention pending
12 his civil immigration removal is unconstitutionally prolonged in violation of his Fifth
13 Amendment Due Process Rights. *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106-07, 1118
14 (W.D. Wash. 2019).

15 **III. Other Winter Factors**

16 11. The other Winter factors include—irreparable harm, the balance of equities, and the
17 public interest. *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal.
18 Mar. 31, 2023). The Ninth Circuit has previously found that “the deprivation of constitutional
19 rights ‘unquestionably constitutes irreparable injury.’” *Id* (citing *Melendres v. Arpaio*, 695 F.3d
20 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))).

21 12. Additionally, like in *Pham*, the Petitioner will suffer irreparable harms from
22 continued detention without a bond hearing—including the inability to be with his family,
23 provide economic and emotional support to them, and to bond with his children. The risks of

irreparable harm are especially and urgently heightened given the significant deterioration of the Petitioner's wife's mental health to the point that she is receiving more advanced mental health services from a psychiatrist and has been granted leave under the Family Medical Leave Act. The balance of the equities tips in the Petitioner favor "because the administrative burden of a bond hearing is minimal when weighed against these severe hardships." *Pham v. Becerra*, No. 23-CV-01288-CRB, 2023 WL 2744397, at *7 (N.D. Cal. Mar. 31, 2023) (citing *Hernandez v. Sessions*, 872 F.3d 976, 995–96 (9th Cir. 2017)). Additionally, "the imposition of a TRO serves the public interest because it could prevent the "unnecessary detention" of Pham, should an IJ determine that he is "neither dangerous nor enough of a flight risk to require detention without bond." *Id.* at 996.

**THIS COURT SHOULD NOT REQUIRE MR. MALIWAT TO PROVIDE
SECURITY PRIOR TO ISSUING A TEMPORARY RESTRAINING ORDER**

13. Federal Rule of Civil Procedure 65(c) provides that "[t]he 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." However, "Rule 65(c) invests the district court with discretion as to the amount of security required, if any." *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation marks and citation omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people. See, e.g., *Toussaint v. Rushen*, 553 F. Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

Wherefore, Petitioner respectfully requests this Court to grant the following:

CONCLUSION

14. Mr. Maliwat respectfully requests that the Court grant his motion for a temporary restraining order and maintain

Dated this 29th day of April, 2025.

/s/ Violetta Stringer

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