

The Honorable Kymberly K. Evanson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

E A T-B, an adult,

Petitioner,

v.

DREW BOSTICK, et al.,

Respondent.

No. 2:25-cv-01192-KKE-BAT

MOTION FOR TEMPORARY
RESTRAINING ORDER

Noting Date: August 5, 2025

Oral Argument Requested

Petitioner E A T-B moves this Honorable Court for a temporary restraining order requiring the Respondents to release him from custody and barring future arrest or detention by the Respondents, absent leave of this Court. In support of this Motion, counsel states as follows:

Introduction

Petitioner's detention is illegal and unconstitutional. Petitioner was initially released from custody on his own recognizance after Immigration and Customs Enforcement (ICE) determined that he was not a flight risk and did not pose a risk to community safety. He was arrested by plainclothes, masked ICE agents when leaving immigration court with no notice, no opportunity to be heard, and no individualized determination that his release was no longer appropriate. His re-detention without cause or process violates: (1) his substantive due process rights because there is no legitimate interest in his detention without an individualized determination that he poses a flight risk or a danger to the community; (2) his procedural due process rights because he was not given notice that he would be arrested or an opportunity to address the allegations which

1 Respondents now allege justify his jailing; and (3) the Administrative Procedure Act (APA)
 2 because the agency decision to detain him is arbitrary and capricious.

3 The Amended Habeas Petition is fully joined as the Respondents have filed their Return,
 4 and Petitioner has filed his Reply. Accordingly, as argued within that Reply, the Court may reach
 5 the merits of that Petition and order his immediate release. 28 U.S.C. § 2243; ECF 22 at 10–12. If
 6 the Court does so, it need not reach this Motion. However, in the event the Court finds that further
 7 proceedings or filings are necessary to adjudicate the merits of the habeas petition, the Court should
 8 find that Petitioner warrants interim relief and grant a temporary restraining order.

9
 10 **A. The Petitioner has made the showing necessary to warrant his immediate release**
 11 **and further delay would prolong his unlawful detention which is not in the public**
 12 **interest.**

13 The Court may provide interim legal relief when the movant establishes four factors: “that
 14 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
 15 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
 16 public interest.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008). The standard for
 17 granting a preliminary injunction and a temporary restraining order are “substantially identical.”
 18 *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Each factor weighs in the
 19 Petitioner’s favor and warrants issuance of a release order.

20 **1. The Petitioner is likely to succeed on the merits of his habeas petition because his**
 21 **detention violates his substantive and procedural due process rights and is the**
 22 **result of an arbitrary and capricious agency decision, or at a minimum he has**
 23 **raised serious questions going to the merits of these claims.**

24 Of the factors necessary to win interim relief, “[l]ikelihood of success on the merits is a
 25 threshold inquiry and is the most important factor.” *Simon v. City & Cnty. of San Francisco*, 135
 26 F.4th 784, 797 (9th Cir. 2025) (citation and quotation omitted). For the reasons set forth in detail

1 in Petitioner’s Response to the Motion to Dismiss and Reply in Support of the Amended Petition
 2 for Writ of Habeas Corpus, Petitioner is likely to succeed on the merits of his due process and
 3 APA claims. *See* ECF 22 at 20–36.

4 Alternatively, a temporary restraining order may issue on a showing that there are “serious
 5 questions going to the merits—a lesser showing than likelihood of success on the merits” when
 6 the “balance of hardships tips sharply in the Plaintiff’s favor, and the other two *Winter* factors are
 7 satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (cleaned up). At
 8 a minimum, Petitioner’s Reply in Support of his Amended Petition for Writ of Habeas Corpus
 9 demonstrates that there are serious questions going to the merits of his claim. *See* ECF 22. And as
 10 demonstrated below, the balance of the hardships tips sharply in favor of the Petitioner who has
 11 been unnecessarily detained for seven weeks without a countervailing government interest in his
 12 detention.
 13

14 **2. Each day the Petitioner spends in custody causes and exacerbates irreparable**
 15 **harm.**

16 It is beyond dispute that “[d]eprivation of physical liberty by detention constitutes
 17 irreparable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018) (*citing Hernandez v.*
 18 *Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)); *see also Rodriguez v. Robbins*, 715 F.3d 1127, 1144–
 19 45 (9th Cir. 2013) (needless immigration detention constitutes irreparable harm). In *Hernandez*,
 20 872 F.3d at 995, the Ninth Circuit acknowledged “the irreparable harms imposed on anyone
 21 subject to immigration detention” in addition to the restriction on liberty, which include “subpar
 22 medical and psychiatric care in ICE detention facilities” and “the economic burdens imposed on
 23 detainees and their families as a result of detention.” As the Ninth Circuit held, in the absence of
 24 interim relief, “harms such as these will continue to occur needlessly on a daily basis.” *Id.*
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Petitioner’s liberty has been unnecessarily restrained since June 18, 2025, and “[e]very day that a person is detained is a significant injury.” *Mahdawi v. Trump*, --- F.Supp.3d ---, 2025 WL 1243135, *39 (D. Vt. 2025); *see also Rosales-Mireles v. United States*, 585 U.S. 129, 139–40 (2018) (“‘Any amount of actual jail time’ is significant, and ‘has exceptionally severe consequences for the incarcerated individual and for society which bears the direct and indirect costs of incarceration.’”) (cleaned up).

Additionally, as Petitioner’s detention is a deprivation of his substantive and procedural due process rights, that too “‘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)). The irreparable harm factor weighs heavily in E A T-B’s favor.

3. The balance of the equities tips in Petitioner’s favor and the public has no interest in his unnecessary detention.

Because the Respondent is a government entity, “the third and fourth factors—the balance of equities and the public interest—‘merge.’” *Fellowship of Christian Athletes*, 82 F.4th 664, 695 (9th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002. “[T]he government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions.” *Hernandez*, 872 F.3d at 994. The Respondents have not alleged that Petitioner is a danger to the community, nor is there any basis to do so. Additionally, Petitioner has demonstrated that he will appear at his court appearances, and he is motivated to do so, as he is earnestly pursuing asylum in this country with the assistance of an attorney. *See* ECF 23 at Ex. 1, 2, 3, 5.

1 Additionally, “[t]he public has a strong interest in upholding procedural protections
 2 against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of
 3 immigration detention are staggering.” *Diaz v. Kaiser*, No. 3:25-cv-05071, 2025 WL 1676854,
 4 *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order enjoining Respondents from
 5 detaining Petitioner without notice and hearing) (quoting *Jorge M.F. v. Wilkinson*, No. 21-cv-
 9 01434, 2021 WL 783561, *3 (N.D. Cal. March 1, 2021)). The government has no legitimate
 7 countervailing interest in detaining people without due process. *Chipantiza-Sisalema v. Francis*,
 8 No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841, at *10 (S.D.N.Y. July 13, 2025) (“There is no
 9 dispute” that “ICE is required to adhere to the basic principles of due process” in exercising its
 10 “statutory, discretionary authority to detain noncitizens like Chipantiza-Sisalema under 8 U.S.C.
 11 § 1226(a)”). This is particularly true in E A T-B’s case, as he was in immigration court just minutes
 12 before his arrest, where he was not only represented by counsel, but where the Respondents also
 13 had all the tools necessary to provide him with procedural due process, but opted instead to have
 14 ICE officers arrest him on the street.

16
 17 **4. The Court has jurisdiction to issue, and should issue, the temporary restraining
 18 order promptly.**

19 Habeas corpus is a “speedy remedy, entitled by statute to special, preferential consideration
 20 to insure expeditious hearing and determination.” *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737–
 21 738 (9th Cir. 1954). “[A]bsent suspension, the writ of habeas corpus remains available to every
 22 individual detained within the United States.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004)
 23 (plurality opinion) (citing U.S. Const., art. I, § 9, cl. 2). The writ is available to E A T-B as he is
 24 physically in the United States and challenging his unlawful detention. He does not seek review
 25 of any determination of his eligibility for removal or the merits of his asylum claim. Rather, he
 26

1 seeks only release from custody and contends that he was detained without procedural due process,
2 in violation of substantive due process, and as a result of an arbitrary and capricious agency
3 decision which violated the APA.

4 Other courts across the country have granted temporary restraining orders or preliminary
5 injunctions for immigrant detainees who had been released or paroled and then re-arrested without
6 process or cause. *See Clavijo v. Kaiser*, 2025 WL 2097467 (N.D. Cal. July 25, 2025) (granting
7 temporary restraining order one day after arrest for immigrant who was released under § 1226 in
8 2023 and then detained without process on July 24, 2025, ordering petitioner’s immediate release
9 from custody to return her to the status quo—namely, “the moment prior to the Petitioner’s likely
10 illegal detention”); *Mata Velasquez v. Kurzdorfer*, No. 25-cv-493-LJV, 2025 WL 1953796
11 (W.D.N.Y. July 16, 2025) (granting preliminary injunction and ordering release after concluding
12 that petitioner was likely to succeed on the merits of his claim that, after having been lawfully
13 granted parole, his “about-face” detention violates his rights to procedural due process). Many
14 more courts have considered habeas petitions on a highly expedited basis for similarly situated
15 immigrant detainees. *See Benitez v. Francis, et al.*, 25-CV-5937 (DEH) (S.D.N.Y. July 28, 2025)
16 (granting habeas petition ten days after petition was filed); *Martinez v. Hyde*, No. 25-cv-11613,
17 2025 WL 2084238 (D. Mass. July 24, 2025) (granting petition two weeks after petition was filed);
18 *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841 (S.D.N.Y. July
19 13, 2025) (granting the habeas petition ten days after petition was filed); *Valdez v. Joyce*, 25-cv-
20 04627-GBD, 2025 WL 1707737 (S.D.N.Y. June 18, 2025) (granting habeas petition 16 days after
21 petition was filed).
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Relief Requested

Accordingly, the Court should (1) enter a temporary restraining order requiring Respondents to release E A T-B from custody, (2) order the Respondents not to return E A T-B to custody during the pendency of this habeas matter absent leave of this Court, (3) schedule a preliminary injunction hearing or a hearing on the merits of the petition, and (4) order that the Petitioner need not post security related to the temporary restraining order.¹

DATED: August 5, 2025.

/s/ Julie Vandiver

Julie Vandiver, AR Bar 2008285

/s/ Jessica Snyder

Jessica Snyder, OR Bar 134911

Attorneys for Petitioner

¹ “[Federal] Rule [of Civil Procedure] 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) (emphasis added) (quoting *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999)); *Innovation Law Lab v. Nielsen*, 342 F. Supp. 3d 1067, 1082 (D. Or. 2018) (“The Court has considered the relative hardships and the likelihood of success on the merits and concludes that to require any security in this case would be unjust.”).

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No. 2:25-cv-01192-KKE-BAT

TEMPORARY RESTRAINING ORDER

IT IS ORDERED that:

Petitioner E A T-B's Motion for Temporary Restraining Order is granted:

- (1) Respondents are ORDERED to release Petitioner from Respondents' custody within 24 hours, and to immediately make arrangements with Petitioner's counsel for the transportation of Petitioner to Vancouver, Washington.
- (2) Respondents are ENJOINED from re-detaining Petitioner during the pendency of this habeas matter, without leave of this Court.
- (3) The interests of justice do not require the Petitioner to post security related to this Temporary Restraining Order.

Dated this _____ day of _____, 2025.

Honorable Kymberly K. Evanson
United States District Court Judge