District Judge Marsha J. Pechman
Chief Magistrate Judge Theresa L. Fricke

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G.S., Petitioner, v. **Cammila Wamsley**, et al., Respondents.	Case No. 2:25-cv-01255-MJP-TLF **PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER** ORAL ARGUMENT REQUESTED Noted for consideration: September 4, 2025

I. INTRODUCTION

Petitioner, an asylum applicant with no criminal history, who was in full compliance with restrictions placed on him by US Department of Homeland Security (DHS) officials since he was initially detained and released on his own recognizance on June 13, 2024, pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R. § 1236.1(c)(8), was unlawfully re-detained by Respondents on June 24, 2025,

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when he appeared at Respondent's Eugene, Oregon field office for his previously scheduled check in appointment. Dkt. #26-3 at p. 2. In re-detaining Petitioner pursuant to § 1226(a), Respondents violated Petitioner's right to Due Process by failing to make an individualized determination of flight risk or danger to the community; rather, Respondents merely noted on the form I-213 that Petitioner did not have a hearing scheduled and that Petitioner's asylum application indicated he had traveled through the United Kingdom and Canada prior to entering the United States. Dkt. #26-5 at p. 4.

Petitioner has twice sought a bond or custody redetermination hearing with the immigration court in Tacoma, Washington, and each time the immigration court has found – incorrectly in Petitioner's view – that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner has now been detained for 72 days.

In addition to the ongoing deprivation of liberty, Petitioner is scheduled for an individual hearing in immigration court on September 15, 2025, at which time an immigration judge is scheduled to consider Petitioner's asylum application. Because of his detention, Petitioner, who is not fluent in English, is struggling to meet with his attorney, who lives and works in Portland, Oregon, to prepare for his asylum hearing.

Because Petitioner is likely to succeed on the merits of the petition, is suffering irreparable harm, and the balance of equities and public interest tip strongly in his favor, the Court should order Respondents to immediately release Petitioner, return his immigration case to the Portland, Oregon immigration court, and restore the status quo ante. *See Rosado v. Figueroa*, No. 25-cv-

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2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and Order at 29-31).

II. FACTS

On June 12, 2024, Petitioner was detained by DHS officers in Stoerrs, New York. Dkt. #26-1 at p. 4. The following day, on June 13, 2024, Petitioner was served a notice to appear placing him in removal proceedings under 8 U.S.C. § 1229a, and he was released on his own recognizance pursuant to 8 U.S.C. § 1226(a) and 8 CFR § 1236.1(c)(8). Dkt. #26-2 at p. 2, and Dkt. #26-3 at p. 2. After being released from custody, Petitioner moved to Oregon, and venue for removal proceedings were changed from New York to Portland, Oregon, on September 23, 2024. Ex. A - order changing venue. On December 5, 2024, Petitioner, pro se, filed an I-589 application for asylum with the immigration court in Portland. Ex. B – I589 pg.1.

In May 2025, after Petitioner's counsel filed a notice of attorney appearance before the Portland immigration court, Petitioner's master calendar hearing was canceled and Petitioner filed written pleadings with the immigration court. Ex. C – initial scheduling order.

On June 24, 2025, Petitioner attended his scheduled appointment at the ICE field office in Eugene, Oregon. Dkt. #26-4 at p. 3. At that time, Petitioner was detained by Respondents pursuant to 8 U.S.C. § 1226(a) and transferred to Tacoma, Washington. Dkt. #26-6 at p. 2; Dkt. #26-7 at p. 2; Dkt. ##26-5 at p. 5. That same day, on June 24, 2025, Petitioner filed this petition for writ of habeas corpus with the U.S. District Court for Oregon. Dkt. #1 at p. 1. After determining

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Petitioner was physically in Washington in route to Tacoma at the time of filing the petition, the Oregon Court transferred Petitioner's case to this Court. Dkt. #12.

A custody redetermination hearing was scheduled for July 8, 2025, at which time the immigration judge determined that Petitioner was not eligible for bond, citing 8 U.S.C. § 1225(b) and *Matter of Q. Li*, 29 I. & N. Dec. 66 (BIA 2025). Dkt. #26-8 at p. 2. On August 4, 2025, the Tacoma immigration court conducted a master calendar hearing and scheduled Petitioner for an individual hearing on September 15, 2025. On August 9, 2025, Petitioner again sought a custody redetermination hearing with the Tacoma immigration court and on August 15, 2025, the Tacoma court again found Petitioner is subject to mandatory detention. Dkt. #26-9 at p. 2.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order (TRO) is the same as the standard for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO 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, Inc.*, 555 U.S. 7, 24 (2008). "The proper legal standard for preliminary injunctive relief requires a party to demonstrate: (1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (*citing Winter*, 555 U.S. at 20).

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Alternatively, a preliminary injunction is appropriate if "serious questions going to the merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby allowing preservation of the status quo when complex legal questions require further inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).

IV. ARGUMENT

A. Petitioner is likely to succeed on the merits of his habeas petition.

"No person shall be … deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V. The right to due process of law applies to all persons in the United States regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

To be lawful, civil immigration detention requires a valid purpose. In general, courts have recognized two valid purposes for immigration detention – 1) flight risk and 2) danger to the community. *See Zadvydas*, 533 U.S. at 690-691. Immigration detention may not be used as punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest quota is not a valid purpose for detaining a noncitizen. Respondents are violating Petitioner's due process rights by detaining him without a valid purpose and without a pre-detention procedure to determine flight risk or danger to the community.

Procedurally, to determine what procedures are constitutionally necessary to protect a liberty interest, courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1 (W.D. Wash. Aug. 19, 2025) (collecting cases). The *Mathews* test requires balancing the private interest

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affected by government action, the risk of an erroneous deprivation through the procedures used and the probable value of additional safeguards, and finally the government interest, including the function and the burden of additional measures. *Mathews*, 424 U.S. at 335. "[D]ue process requires the government to identify some interest beyond its own administrative practices to justify depriving an individual of her liberty without any pre-deprivation protections. Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest. *Pinchi v. Noem*, 5:25-cv-05632-PCP *10 (N.D. Cal. Jul 24, 2025).

Once a noncitizen has satisfied a DHS officer that he is not a flight risk or danger to the community and he is released from immigration custody, he may not be re-detained absent an individualized determination that circumstances have changed to such an extent that the noncitizen may now constitute a flight risk or danger to the community. *See Saravia v. Sessions,* 280 F.Supp.3d 1168, 1176 (N.D. Cal. 2017*), aff'd sub nom. Saravia for A.H. v. Sessions,* 905 F.3d 1137 (9th Cir. 2018*)*; *Ortiz Calderon v. Kaiser*, 25-cv-06695-AMO (N.D. Cal. Aug 22, 2025), https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-cand-3_25-cv-06695-1; *Panosyan v. Mayorkas*, 854 F. App's 787, 788 (9th Cir. 2021) ("Thus, absent changed circumstances … ICE cannot redetain Panosyan.").

Here, Respondents first determined that Petitioner was not a flight risk or a danger to the community and released him on his own recognizance on June 13, 2024. Dkt. #26-3 at p. 2; 8 CFR § 1236.1(c)(8). At that point, Petitioner had a protected liberty interest in being free from

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detention. *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019). In full compliance with the conditions placed upon him by Respondents, Petitioner attended his scheduled appointment at the ICE field office in Eugene, Oregon on June 24, 2025, where he was re-detained by Respondents. Dkt. #26-7 at p. 2. Respondents did not make an individualized determination that circumstances have changed such that Petitioner is either a flight risk or a danger to the community. Dkt. #26-5 at p. 4. Respondents violated Petitioner's constitutionally protected liberty interest by unlawfully detaining him on June 24, 2025. *See Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and Order at 29-31).

Petitioner is not a flight risk or danger to the community. Yet, in spite of a clear record that Petitioner is detained pursuant to 8 U.S.C. § 1226(a) – and not 8 U.S.C. § 1225(b) -the Tacoma immigration court has determined Petitioner is subject to mandatory detention and is not eligible for release from custody. Dkt. #26-8 at p. 2; Dkt. #26-9 at p. 2; Dkt. 26-6 at p. 2; Dkt. #26-7 at p. 2; *Rodriguez v. Bostock*, N. 25 Civ. 524, 2025 WL 1193850, at *12-16 (W.D. Wash. April 24, 2025). While an administrative appeal to the Board of Immigration Appeals (BIA) is permitted, it is not required for purposes of this action and it would almost certainly take months to be resolved and would come too late for Petitioner, who is scheduled for an individual hearing on September 15, 2025. *See Hernandez v. Sessions*, 872 F.3d 976, 988-989 (9th Cir. 2017) (waiving prudential exhaustion requirement for BIA appeal of bond decision).

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In short, Petitioner is unlawfully detained and there is no legal justification for his continued detention. Petitioner is likely to prevail on the merits of the petition.

B. Petitioner will likely suffer irreparable harm if not granted preliminary relief.

"Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause [Due Process] protects." *Zadvydas*, 533 U.S. at 590. Petitioner is unlawfully detained, and his constitutional rights are being violated each day he is held in immigration detention. This constitutes irreparable harm. *See Hernandez v. Sessions*, 872 F.3d at 994 ("It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *quoting Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)).

C. The balance of equities and the public interest tip sharply in favor of preliminary relief.

Petitioner has established that "the balance of the equities tip in his favor and that an injunction is in the public interest" because he is a bona fide asylum seeker, he is not a flight risk, and he is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government is a party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir. 2014) (*citing Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The merits of the due process violations that Petitioner has raised in his habeas petition further tip the public interest toward emergency relief. "Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in

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upholding the Constitution." *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that "the INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations"). In addition, "the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013); *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) ("It is always in the public interest to prevent the violation of a party's constitutional rights.").

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant his motion for temporary restraining order, order his immediate release from immigration detention, and order Respondents to return Petitioner's case to the Portland, Oregon immigration court, thereby maintaining the status quo ante pending resolution of these proceedings.

DATED this 4th day of September 2025

Respectfully submitted,

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I certify that this memorandum contains 2,356 words, in compliance with the Local Civil Rules

CERTIFICATE OF SERVICE

I hereby certify that I filed a copy of the foregoing Petitioner's Motion for Temporary Restraining Order and any attachments electronically through the CM/ECF system, which gave service to all counsel of record.

Dated this 4th day of September 2025

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