

The Honorable Jamal N. Whitehead
The Honorable Grady J Leupold

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FERNANDO LEDESMA GONZALEZ,

Petitioner,

v.

DREW BOSTICK, et al.,

Respondent.

No. 2:25-cv-01404-JNW-GJL

MOTION FOR TEMPORARY RE-
STRAINING ORDER

Noting Calendar Date: September 22,
2025

**Oral Argument and Expedited
Consideration Requested**

Petitioner, Fernando Ledesma Gonzalez, through counsel, 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:

I. Introduction

Petitioner's detention is illegal and unconstitutional. Petitioner was initially released from custody on an Order of Release on Recognizance ("OREC") roughly eight years ago after he and his family expressed fear of returning to Mexico and 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 detained most recently, on July 1, 2025, while checking in with Respondents as they instructed. According to Respondents, Petitioner's application for asylum was denied on June 30, 2025, the day before his check-in with ICE, and he was detained pursuant to a removal

1 order that issued that same day. Petitioner, through immigration counsel, has appealed the denial
2 of his asylum application. To date, Respondents have not provided Petitioner with notice of the
3 reasons for his detention, an opportunity to be heard regarding those reasons, or an individual-
4 ized determination that his release was no longer appropriate. His re-detention without cause or
5 lawful process violates: (1) the Administrative Procedure Act (APA) because the agency deci-
9 sion to detain him is arbitrary and capricious; and (2) his procedural due process rights because
7 he was not given notice of alleged, individualized reasons justifying his detention or an oppor-
8 tunity to address the reason that Respondents now allege justify his custodial detention.
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10 At the time of filing, Petitioner has been in custody nearly three months. Petitioner filed
11 his habeas petition on July 2, 2025. ECF 1. Respondents filed their return on September 8, 2025.
12 ECF 29. Petitioner has filed his Response in Support of the Amended Petition for Writ of Habeas
13 Corpus. ECF 35. In anticipation of the potential need for further litigation, the Court should find
14 that interim relief is warranted and grant a temporary restraining order.
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16 **A. Petitioner has made the showing necessary to warrant his immediate release**
17 **and further delay would prolong his unlawful detention which is not in the**
18 **public interest.**

18 The Court may provide interim legal relief when the movant establishes four factors:
19 “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the
20 absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an in-
21 junction is in the public interest.” *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).
22 The standard for granting a preliminary injunction and a temporary restraining order are “sub-
23 stantially identical.” *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Here, each
24 factor weighs in Petitioner’s favor and warrants issuance of a release order.
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1 **1. The Petitioner is likely to succeed on the merits of his habeas petition**
2 **because his detention violates his procedural due process rights and is**
3 **the result of an arbitrary and capricious agency decision, or at a mini-**
4 **imum he has raised serious questions going to the merits of these**
5 **claims.**

6 Of the factors necessary to win interim relief, “[l]ikelihood of success on the merits is a
7 threshold inquiry and is the most important factor.” *Simon v. City & Cnty. of San Francisco*, 135
8 F.4th 784, 797 (9th Cir. 2025) (citation and quotation omitted). For the reasons set forth in detail
9 in Petitioner’s Response in Support of the Amended Petition for Writ of Habeas Corpus (ECF 35
10 at §§ B and C), Petitioner is likely to succeed on the merits of his APA and due process claims.

11 Under the Administrative Procedure Act (“APA”), a court shall “hold unlawful and set
12 aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in ac-
13 cordance with law[.]” 5 U.S.C. § 706(2)(A). An action is an abuse of discretion if the agency
14 “entirely failed to consider an important aspect of the problem, offered an explanation for its de-
15 cision that runs counter to the evidence before the agency, or is so implausible that it could not
16 be ascribed to a difference in view or the product of agency expertise.” *Nat’l Ass’n of Home*
17 *Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass’n of*
18 *U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). Here, the Respondents’ de-
19 cision to arrest and incarcerate Petitioner was arbitrary and capricious. *See* ECF 35 at § C. Re-
20 spondents’ post-hoc justification for detention is contrary to the evidence and violative of the
21 APA. *Id.*

22 The Due Process Clause of the Fifth Amendment to the U.S. Constitution prohibits the
23 federal government from depriving any person of “life, liberty, or property, without due process
24 of law.” U.S. Const. amend. V. Due process protects “all ‘persons’ within the United States, in-
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1 cluding [non-citizens], whether their presence here is lawful, unlawful, temporary, or perma-
2 nent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Immigration detention is a form of civil
3 confinement and “civil commitment for any purpose constitutes a significant deprivation of lib-
4 erty that requires due process protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). Here,
5 Petitioner’s procedural due process rights were violated when Respondents detained him without
6 adequate notice or an opportunity to be heard. *See* ECF 35 at § B.

7
8 Courts all around the country have recently granted habeas relief for similar claims. *See*
9 *e.g.*, *E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19,
10 2025) (in a case where, like here, petitioner had originally been released under 8 U.S.C. § 1226
11 and re-arrested, the Court granted habeas relief reasoning “that Petitioner has a protected liberty
12 interest in his continuing release from custody, and that due process requires that Petitioner re-
13 ceive a hearing before an immigration judge before he can be re-detained.”); *M.S.L. v. Bostock et*
14 *al.*, No. 6:25-cv-01204-AA, 2025 WL 2430267, at *9-16 (D. Or. August 21, 2025) (granting ha-
15 beas relief when, like here, Respondents did not afford petitioner an opportunity to respond to
16 the alleged reasons for revocation of petitioner’s release); *see also Ceesay v. Kurzdorfer*, No. 25-
17 CV-267-LJV, 2025 WL 1284720, at *17 (W.D.N.Y. May 2, 2025) (same).

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19 At the very least, Petitioner has raised serious questions going to the merits of his claims.
20 A temporary restraining order may issue on a showing that there are “serious questions going to
21 the merits—a lesser showing than likelihood of success on the merits” when the “balance of
22 hardships tips sharply in the Plaintiff’s favor, and the other two *Winter* factors are satisfied.”
23 *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (cleaned up). At a mini-
24 mum, Petitioner has demonstrated that there are serious questions going to the merits of his
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1 claims. And as demonstrated below, the balance of the hardship tips sharply in favor of Peti-
2 tioner who has been unnecessarily detained for nearly three months without a countervailing
3 government interest in his detention.

4 **2. Each day Petitioner spends in custody causes and exacerbates irrepa-**
5 **vable harm.**

6 It is beyond dispute that “[d]eprivation of physical liberty by detention constitutes irrepa-
7 rable harm.” *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018) (citing *Hernandez v. Ses-*
8 *sions*, 872 F.3d 976, 994 (9th Cir. 2017)); see also *Rodriguez v. Robbins*, 715 F.3d 1127, 1144-
9 45 (9th Cir. 2013) (needless immigration detention constitutes irreparable harm). In *Hernandez*,
10 the Ninth Circuit acknowledged “the irreparable harms imposed on anyone subject to immigra-
11 tion detention” in addition to the restriction on liberty, which include “subpar medical and psy-
12 chiatric care in ICE detention facilities” and “the economic burdens imposed on detainees and
13 their families as a result of detention.” 872 F.3d at 995. As the Ninth Circuit held, in the absence
14 of interim relief, “harms such as these will continue to occur needlessly on a daily basis.” *Id.*

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16 Petitioner’s liberty has been unnecessarily restrained since July 1, 2025, and “[t]he inter-
17 est of the habeas petitioner in release pending appeal[is] always substantial.” *Mahdawi v.*
18 *Trump*, 781 F. Supp. 3d 214 (D. Vt. 2025) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 777
19 (1987)). “Every day that a person is detained is a significant injury.” *Id.*; see also *Rosales-Mire-*
20 *les v. United States*, 585 U.S. 129, 139–40 (2018) (“‘Any amount of actual jail time’ is signifi-
21 cant, and ‘has exceptionally severe consequences for the incarcerated individual and for society
22 which bears the direct and indirect costs of incarceration.’”) (cleaned up).
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1 Furthermore, as Petitioner’s detention is a deprivation of his due process rights, that too
2 “unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
3 Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). The irreparable harm factor
4 weighs heavily in Petitioner’s favor.

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

7 Because the Respondent is a government entity, “the third and fourth factors—the bal-
8 ance of equities and the public interest—‘merge.’” *Fellowship of Christian Athletes*, 82 F.4th
9 664, 695 (9th Cir. 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). “[I]t is always in
10 the public interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d
11 at 1002. “[T]he government has no legitimate interest in detaining individuals who have been
12 determined not to be a danger to the community and whose appearance at future immigration
13 proceedings can be reasonably ensured by a lesser bond or alternative conditions.” *Hernandez*,
14 872 F.3d at 994; *see also* U.S. Immigration and Customs Enforcement, Directive No. 11002.1,
15 § 6.2 (Jan. 4, 2010), [https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCred-](https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf)
16 [ibleFear.pdf](https://www.ice.gov/doclib/foia/policy/11002.1_ParoleArrivingAliensCredibleFear.pdf) (ICE directive that when a noncitizen is found to have a credible fear of future perse-
17 cution and is neither a flight risk nor danger to the community, the individual should be paroled
18 into the community “on the basis that his or her continued detention *is not in the public inter-*
19 *est.*”) (emphasis added). The Respondents have not alleged that Petitioner is a danger to the com-
20 munity, nor is there any basis to do so. Moreover, by checking in with ICE officials each time he
21 has been directed and earnestly pursuing asylum in this country and appealing the denial of his
22 asylum request with the assistance of an attorney, Petitioner has demonstrated that he will appear
23 at his court appearances, and he is motivated to do so.
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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 Petitioner’s case, as he was checking in at the ICE office
12 when he was arrested and detained for the last nearly three months without procedural due pro-
13 cess.
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15 **4. The Court has jurisdiction to issue, and should issue, the temporary**
16 **restraining order promptly.**

17 Pursuant to 28 U.S.C. § 2241, federal courts have habeas jurisdiction to determine
18 whether a person is held in violation of the laws or Constitution of the United States. “At its his-
19 torical core, the writ of habeas corpus has served as a means of reviewing the legality of Execu-
20 tive detention, and it is in that context that its protections have been strongest.” *INS v. St. Cyr*,
21 533 U.S. 289, 301 (2001), *superseded on other grounds by statute as stated in Patel v. U.S. Att’y*
22 *Gen.*, 971 F.3d 1258, 1270 (11th Cir. 2020). Habeas corpus is a “speedy remedy, entitled by stat-
23 ute to special, preferential consideration to insure expeditious hearing and determination.” *Van*
24 *Buskirk v. Wilkinson*, 216 F.2d 735, 737–738 (9th Cir. 1954). “[A]bsent suspension, the writ of
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1 habeas corpus remains available to every individual detained within the United States.” *Hamdi v.*
2 *Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion) (citing U.S. Const., art. I, § 9, cl. 2).

3 Federal courts have routinely exercised habeas jurisdiction over claims regarding the un-
4 lawfulness of immigrant detention, including pre- and post-removal order detention and in the
5 context of inadmissibility. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (federal courts have
6 jurisdiction to hear challenges to mandatory detention under § 1226(c)); *Zadvydas v. Davis*, 533
7 U.S. 678, 687 (2001) (despite changes to immigration law, habeas remains “untouched as the
8 basic method for obtaining review of continued *custody after* a deportation had become final”)
9 (emphasis in original); *Clark v. Martinez*, 543 U.S. 371 (2005) (taking jurisdiction over habeas
10 petition of an immigrant held on inadmissibility grounds).

11 Furthermore, the Supreme Court recently clarified that when a petitioner’s “claims for
12 relief necessarily imply the invalidity of their confinement and removal ... their claims fall
13 within the core of the writ of habeas corpus and thus *must* be brought in habeas.” *Trump v.*
14 *J.G.G.*, 145 S. Ct. 1003, 1005 (2025) (emphasis added) (internal quotations omitted). Although a
15 United States District Court generally lacks subject matter jurisdiction to review orders of re-
16 moval, *see* 8 U.S.C. § 1252(a)(1), (g), it does generally have jurisdiction over habeas petitions.
17 *See* 28 U.S.C. § 2241(a); *see also Hamdi*, 542 U.S. at 525.

18 The writ is available to Petitioner as he is physically in the United States and challenging
19 his unlawful detention. Petitioner is not asking this Court to review any final order of removal,
20 but, rather, is asking this Court to review the means of his detention, which is the core of habeas
21 and squarely within this Court’s jurisdiction. He does not seek review of any determination of his
22 eligibility for withholding of removal or the merits of his asylum claim. Rather, he seeks only re-
23 lease from custody and contends that he was detained without procedural due process and based
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1 on an arbitrary and capricious agency decision which violated the APA. He has been incarcer-
2 ated nearly three months and, thus, is asking for expeditious relief.

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

1 **II. Relief Requested**

2 Accordingly, the Court should (1) enter a temporary restraining order requiring Respond-
3 ents to release Petitioner from custody; (2) order the Respondents not to return Petitioner to cus-
4 tody during the pendency of this habeas matter absent leave of this Court; and (3) order that Peti-
5 tioner need not post any security related to the temporary restraining order.¹

9 Dated: September 22, 2025.

8 *s/ Kurt Hermansen*

9 Kurt David Hermansen, CA SBN 166349

10 */s/ Kara A. Sagi*

11 Kara A. Sagi, AZ SBN 032250

12 */s/ J. Leonardo Costales*

13 J. Leonardo Costales, LA SBN 35721

14 **Attorneys for Petitioner**

15 *I certify that this Motion for Temporary Restraining*
16 *Order contains 2882 words in compliance with the*
17 *Local Civil Rules.*

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24 ¹ “[Federal] Rule [of Civil Procedure] 65(c) invests the district court ‘with discretion as to
25 the amount of security required, *if any*.’” *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir.
26 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.”).