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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

S-M-J, and
J-M-L,

Petitioners,

v.

DREW BOSTOCK, et al.,

Respondents.

Lead Case No. 6:25-cv-01425-MTK
Case No. 6:25-cv-01426-MTK[1]

MOTION FOR PRELIMINARY INJUNCTION

Hearing Scheduled for September 26, 2025

[1] **Note on Consolidation:** The court granted Father J-M-L's and son S-M-J's Unopposed Motions to Consolidate their cases. This single Motion for Preliminary Injunction addresses both cases. All cites to Respondents' Return are to the one filed in S-M-J's case (now the lead case), which is ECF 11 (the Return in J-M-L's case is ECF 12, but it is the same document).

I. Introduction

Petitioners J-M-L and S-M-J, through counsel, move this Honorable Court for a preliminary injunction granting the relief requested in Part II infra. The Court already granted Petitioners' motion for a Temporary Restraining Order. ECF 19. Because the standards for granting a preliminary injunction and a temporary restraining order are "substantially identical[,]" the Court should likewise grant this Preliminary Injunction. *See Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017).

Furthermore, Respondents have offered zero evidence on the record supporting Petitioners' detention.

II. This Court Should Issue a Preliminary Injunction.

Petitioners' detention is illegal and unconstitutional. They were initially released from custody over six years ago, after Immigration and Customs Enforcement ("ICE") determined that they were not a flight risk or a danger to the community. Their native language is Q'anjob'al, and although their English and Spanish is much better now that they've lived in the U.S. for over six years, it is almost certain that they were not communicated with at the border in Q'anjob'al, and did not understand what was happening. ECF 24 Tr. at 48:21-23. They feared, and still fear, returning to Guatemala; it is not known whether they were offered the opportunity to express this at the border. See J-M-L's Pet. ECF 1 at ¶ 1; S-M-J's Pet. ECF 1 at ¶ 1.

The father and son were detained most recently while checking in with Respondents as instructed. Petitioner J-M-L had consistently done this for over six years (aside from the COVID-19 pause, but he came right back for his scheduled

check-in when in-person check-ins resumed). This was S-M-J's second required check-in. ECF 24 Tr. at 39-40:25-3.

Their re-detention was without lawful cause or process and thus violates: (1) the Administrative Procedure Act (APA) because the agency's detention decision was arbitrary and capricious; and (2) procedural due process rights, because they were not given individualized determinations when re-detained despite no evidence of flight risk or danger to the community, and they have strong liberty interests, having lived with family in the United States for six years.

As argued within Petitioners' Memorandum Supporting Release from Punitive Detention to Constructive Detention, the Court may reach the merits of the Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 et. seq. J-M-L's ECF 9; S-M-J's ECF 8. In the meantime, the Court should find that Petitioners warrant interim relief and grant a preliminary injunction.

A. Petitioners can satisfy the *Winter* factors to maintain their release pursuant to the Court's TRO grant, from active ICE custody to constructive ICE custody, as detention is not in the public interest.

The standards for granting a preliminary injunction and a temporary restraining order are "substantially identical," and the Court already granted Petitioners' TRO. ECF 19, *see Washington v. Trump*, 847 F.3d at 1159 n.3. The Court may provide interim legal relief when the movant establishes four factors: "[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." *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).2 Here, each factor weighs in Petitioners' favor and warrants ordering that Respondents maintain Petitioners' release from actual ICE custody into constructive ICE custody, which maintains the status quo that existed Tuesday morning, August 12, 2025, before their detention.

1. *Winter* factor 1: Both Petitioners are likely to succeed on the merits.

a. The record includes zero evidence to justify Petitioners' detention.

When a detention is challenged using § 2241, the detainers or custodian of the petitioner's body must file a return certifying the true cause of the detention. 28 U.S.C. § 2243. Here, the Court allowed Respondents five days to submit their return to explain the detention. ECF 4. That should have been a simple matter and ample time, because immigration statutes and regulations instruct Respondents how to implement a detention, ergo, the "true cause of the detention" process should have been followed before the August 12 detention.

In other words, the return only had to document and certify the steps already taken. Yet the only evidence Respondents offered was a written statement from an employee who was not authorized to make the detention determination, and that

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[2] Because analysis of the *Winter* factors is interspersed with Petitioners' response to Respondent's Return, the *Winter* factors and headings addressing them appear in blue font for quick identification.

statement was struck from the record. ECF 24 Tr. at 34:17-21. Therefore, Respondents have admitted zero evidence into the record to justify Petitioners' detention, as required by the habeas corpus statutes.

b. S-M-J (son) is likely to succeed on the merits of his habeas petition because his detention violated his procedural due process rights and is the result of an arbitrary and capricious agency decision, or at a minimum he has raised serious questions going to the merits of these claims.

Of the factors necessary to obtain interim relief, "[l]ikelihood of success on the merits is a threshold inquiry and is the most important factor." *Simon v. City & Cnty. of San Francisco*, 135 F.4th 784, 797 (9th Cir. 2025) (cleaned up).

Respondents' Return (ECF 11 at 9) states that "the end of inquiry with respect to S-M-J" is 8 C.F.R. § 236.1(c)(8), and a case *Leonardo*, discussed below, regarding bond hearings.

Section § 236.1(c)(8) guides Respondents' discretion when releasing noncitizens, as they did S-M-J in 2019. In relevant part, an immigration officer may release a noncitizen if the immigration officer is satisfied that the noncitizen "would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *Id.* S-M-J was released, so the officer must have been satisfied that S-M-J did not pose a danger to property or persons, and that S-M-J was likely to appear for any future proceeding.

Given that prior finding, Respondents resort to misinterpreting 8 C.F.R. § 236.1(c)(8), by stating that an officer releases a noncitizen "on parole or on bond."

ECF 11 at 9. That language about parole or bond is nowhere in that regulation paragraph. Respondents then further muddle their argument with *Leonardo v. Crawford*, 646 F.3d 1157, 1160-61 (9th Cir. 2011). Their argument is further muddled because Leonardo pursued habeas review of the Immigration Judge's (IJ's) adverse bond determination. Id. at 1160. That case is irrelevant here because, because Petitioners' counsel believes that there never was a bond determination here by an IJ, and there is no evidence that any such IJ bond hearing occurred. Thus, *Leonardo* is inapposite. The issue here is revocation of release under 8 C.F.R. § 236.1(c)(9), which must not be arbitrary, capricious, or an abuse of discretion.

Again, § 236.1(c)(8) provides for a noncitizen's release if they are not dangerous and not a flight risk. That is an individualized determination. Under § 236.1(c)(8)-(9), it would be arbitrary, capricious, and an abuse of discretion to revoke that release absent changed circumstances that establish dangerousness or flight risk.

This Court is already familiar with this analysis. *See Morales Jimenez v. Bostock*, 3:25-cv-00570-MTK, (May 13, 2025) ECF 26 Tr. at 58-59 (Court making findings that "**the revocation of [the petitioner's] conditional parole without individualized determination was unlawful**" and ordering that "respondents may not detain" the petitioner "unless an authorized official under the regulations and statutes makes an individualized finding of probable cause that [the petitioner] is a flight risk or danger to the community.") (emphasis added).

In S-M-J's case, the record does not show that the "authorized official under the regulations" made any determination in his case. In fact, the record shows that an *unauthorized* official made the arbitrary decision to detain.

Here, like in *Morales Jimenez*, this court based its decision on the record that included no individualized determination of the petitioner's change of circumstances regarding dangerousness or flight risk.

> THE COURT: And there was no finding at all at any time that he was a danger to the community? MR. HICKMAN: That's correct.

Morales Jimenez, 3:25-cv-00570-MTK ECF 26 Tr. at 44;

and

> THE COURT: Well, I mean, on this record, there's no -- I mean, there's no evidence that Mr. Morales Jimenez has posed a danger to the community or would be a flight risk. I mean, and so, in fact, on April 9th, he responded to the phone call from the agent to appear voluntarily.

Morales Jimenez, 3:25-cv-00570-MTK ECF 26 Tr. at 56.

In S-M-J's case, there is likewise no evidence of dangerousness or flight risk. S-M-J appeared voluntarily at his ICE check-in, vitiating any hint of him being a flight risk.

Although Respondents released S-M-J over six years ago under 8 U.S.C. § 1226(a), they now claim a different statutory scheme controls S-M-J's release: 8 U.S.C. § 1225(b)(2). *See* ECF 11 at 13. Although this § 2241 habeas case is only about

S-M-J's unlawful detention under 8 C.F.R. § 236.1,[3] assuming *arguendo* that Respondents thought § 1225(b)(2) *did* apply, S-M-J is "entitled to notice and opportunity to be heard appropriate to the nature of the case." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1006 (2025) (cleaned up).

That did not happen here. S-M-J voluntarily showed up at the ICE office pursuant to his release under 8 C.F.R. § 236.1(c)(8); his attorney accompanied him but was not allowed inside. ECF 24 Tr. at 40:4-9; 42:2-18; 43:15-44:19. Petitioners' counsel believes that there was no notice to S-M-J about some new statutory authority for his revocation of release, and he was detained (while being denied access to counsel who was denied entry).

"The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (cleaned up). At S-M-J's ICE check-in, an aggressive officer repeatedly demanded S-M-J (a teenager) sign a "voluntary" departure agreement. ECF 24 Tr. at 43:15-44:19. S-M-J repeatedly asked for his attorney to represent him in the matter, stating that she was right outside the building while giving the officer her telephone number, but ICE denied S-M-J access to his attorney. ECF 24 Tr. at 42:3-20; 43:18-19; 44:4-6; 58:18-59:9. Being

[3] *See* ECF 11 at 9 (claiming that "the end of inquiry with respect to S-M-J" is 8 C.F.R. § 236.1(c)(8) (and a case *Leonardo*, *supra*)).

detained, stripped of rights and basic safeguards like access to readily available counsel, and removed from the country are serious losses, and here, potentially fatal.

S-M-J was denied the opportunity to be heard in a meaningful manner—as required under *Mathews*, 424 U.S. at 333, by being denied access to his attorney who was right outside but barred from entering the federal building.

Now, after consulting with his immigration counsel, S-M-J withdrew, in open court on the record, any request or agreement for voluntary departure that he signed in the Eugene ICE office under duress and without access to counsel. ECF 24 Tr. at 113:12-116:25. And the government represented at the hearing that they would respect that withdrawal. *Id.*

c. J-M-L (father) is likely to succeed on the merits of his habeas petition because his detention violated his procedural due process rights and is the result of an arbitrary and capricious agency decision, or at a minimum he has raised serious questions going to the merits of these claims.

(1) This Court has jurisdiction over J-M-L's habeas petition.

Respondents argue that this Court lacks jurisdiction in J-M-L's re-detention. ECF 11 at 9-12. But 28 U.S.C. § 2241 provides federal courts with habeas jurisdiction to determine whether a person is held in violation of the laws or Constitution of the United States. "At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest." *INS v. St. Cyr,* 533 U.S. 289, 301 (2001), *superseded on other grounds by statute as stated in Patel v. U.S. Att'y Gen.*, 971 F.3d 1258, 1270

(11th Cir. 2020). Federal courts have routinely exercised jurisdiction over claims regarding the unlawfulness of immigrant detention, including pre- and post-removal order detention and in the context of inadmissibility. *See Demore v. Kim*, 538 U.S. 510, 516-17 (2003) (federal courts have jurisdiction to hear challenges to mandatory detention under § 1226(c)); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (despite changes to immigration law, habeas remains "untouched as the basic method for obtaining review of continued *custody after* a deportation had become final"); *Clark v. Martinez*, 543 U.S. 371 (2005) (exercising jurisdiction over habeas petition of an immigrant held on inadmissibility grounds).

Furthermore, the Supreme Court recently reaffirmed that when a petitioner's "claims for relief necessarily imply the invalidity of their confinement and removal under [immigration law] their claims fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas." *Trump v. J. G. G.*, 145 S. Ct. 1003, 1005 (2025) (cleaned up).

In a creative attempt to sidestep clearly established Ninth Circuit and Supreme Court law like *Trump v. J. G. G.*, Respondents misconstrue J-M-L's habeas petition, stating "[J-M-L] may not challenge the execution of his removal order." ECF 11 at 12.[4] Petitioner is not asking this Court to review the order of removal, but

[4] Respondents' Return seems to include a typo. The section quoted here analyzes **J-M-L's** habeas petition, but it states that "**S-M-J** may not challenge..." Petitioners' counsel believes this was meant to state "J-M-L may not challenge...," so J-M-L replaced S-M-J in brackets.

instead, J-M-L asks this Court to review the means of his detention, which is the core of habeas and squarely within this Court's jurisdiction.

This Court already understands the distinction between what J-M-L requests in his habeas petition and what Respondents state in their Return, writing in its Minute Order:

> Although a United States District Court generally lacks subject-matter jurisdiction to review orders of removal, see 8 U.S.C § 1252(a)(1), (g), it does generally have jurisdiction over habeas petitions. *See* 28 U.S.C § 2241(a); *see also Hamdi v. Rumsfeld,* 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl. 2 and stating that "absent suspension, the writ of habeas corpus remains available to every individual detained within the United States").

ECF 4.

Habeas corpus means "that you have the body." Black's Law Dictionary (12th ed. 2024). The issue before the Court is precisely that: where will J-M-L *be* during his immigration matters? Either with his supportive family seeking asylum, or unnecessarily locked up in custody, far from family, community, and legal counsel.

(2) J-M-L's re-detention was arbitrary and capricious because Respondents were supposed to conduct an individual determination regarding flight risk and danger to the community but failed to do so.

J-M-L was released over six years ago pursuant to 8 U.S.C. § 1231(a)(3). ECF 11 at 7-8. That paragraph of the regulation concerns: "Supervision after [the] 90-day [removal] period." That paragraph is triggered, however, by paragraph (6), which states that if the noncitizen is not a risk to the community or not a flight risk,

they may be released, subject to the terms of supervision in paragraph (3). 8 U.S.C. § 1231(a)(6).

Therefore, the individualized determination for J-M-L's release was his non-dangerousness and his non-flight risk. That was done over six years ago, he continued to check-in with ICE as they instructed. Indeed, he was doing just that when they revoked his release. ECF 11 at 8.

Although J-M-L's release and its revocation are under different statutory schemes than his son S-M-J, **both require the same individual determination of dangerousness and flight risk.**[5]

Therefore, the same argument, *supra*, on that individual determination for S-M-J applies here to J-M-L: It would be arbitrary, capricious, and an abuse of discretion to re-detain absent changed circumstances evidencing flight risk or danger.

This Court is familiar with this analysis. *See Morales Jimenez v. Bostock*, 3:25-cv-00570-MTK, (May 13, 2025) Tr. at 58-59 (Court making findings that "**the revocation of [the petitioner's] conditional parole without individualized determination was unlawful**" and ordering that "respondents may not detain" the petitioner "unless an authorized official under the regulations and statutes makes an individualized finding of probable cause that [the petitioner] is a flight risk or danger to the community.") (emphasis added).

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[5] J-M-L is controlled by 8 U.S.C. § 1231, and S-M-J is controlled by 8 U.S.C. § 1226.

In J-M-L's case, the record does not include any evidence that the "authorized official under the regulations" made any determination in his case.

Furthermore, the Court in *Morales Jimenez*, based its decision on the record that included no individualized determination of the petitioner's change of circumstances regarding dangerousness or flight risk.

> THE COURT: And there was no finding at all at any time that he was a danger to the community? MR. HICKMAN: That's correct.

Morales Jimenez at Tr. 44;

and

> THE COURT: Well, I mean, on this record, there's no -- I mean, there's no evidence that Mr. Morales Jimenez has posed a danger to the community or would be a flight risk. I mean, and so, in fact, on April 9th, he responded to the phone call from the agent to appear voluntarily.

Morales Jimenez at Tr. 56.

In J-M-L's case, there is likewise no evidence of dangerousness or flight risk. Again likewise, J-M-L appeared voluntarily at his ICE check-in, vitiating any argument of him being a flight risk.

Respondents also state that the purpose of J-M-L's release has been served. ECF 11 at 12; 8 C.F.R. § 241.4(l)(2). But the record includes zero evidence to show what that purpose was. A common purpose for release is for noncitizens to pursue their immigration matters. Here, J-M-L has been referred to a reasonable fear interview (RFI). *See* ECF 11 at 14.

The record includes zero evidence of Respondents' detention determination. Petitioners believe that, until recently, it has been immigration agencies' pattern and practice to release noncitizens at the border to pursue their immigration matters.[6]

Although Petitioners' counsel believes J-M-L indicated his fear of returning to Guatemala when he entered the U.S. in 2019, ICE also admits that he was referred to U.S.C.I.S. for a reasonable fear interview then. ECF 11 at 14; ECF 24 Tr. at 60:21-61:10. On the record in this case, there was no individual determination regarding J-M-L's dangerousness or flight risk.

(3) It is unlikely that J-M-L will be removed in the reasonably foreseeable future.

Respondents have not submitted any record evidence — not even the notice of revocation of release, if there was one. If there were a notice of revocation of release, it may state that a reason for the revocation of release was the significant likelihood of J-M-L's removal in the reasonably foreseeable future. But such a determination would be counterfactual. Any allegation of "significant likelihood of removal" would fail as significantly diminished by ICE having referred J-M-L to U.S.C.I.S. for a reasonable-fear interview so that he can pursue withholding of removal. ECF 11 at 14.

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[6] *Compare with* Brittany Gibson, Stef W. Kight, *Scoop: Stephen Miller, Noem Tell ICE to Supercharge Immigrant Arrests*, Axios (May 28, 2025), available at www.axios.com/2025/05/28/immigration-ice-deportations-stephen-miller (last accessed August 20, 2025) ("The new target is triple the number of daily arrests that agents were making in the early days of Trump's term — and suggests the president's top immigration officials are full-steam ahead in pushing for mass deportations.").

Furthermore, J-M-L is a derivative applicant for asylum on his wife's case with U.S.C.I.S. J-M-L's Pet. ECF 1 at ¶ 4.

d. It is likely that both J-M-L and S-M-J will succeed on the merits of their claims.

Both petitioners will likely succeed on the merits of their due process and APA claims given the arbitrary and capricious nature of their detention and that they were denied access to their attorney, who was just outside the ICE facility.

Alternatively, a preliminary injunction may issue on a showing that there are "serious questions going to the merits—a lesser showing than likelihood of success on the merits" when the "balance of hardships tips sharply in the Plaintiff's favor, and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (cleaned up). At a minimum, this Motion for Preliminary Injunction, and Petitioners' Memoranda Supporting Release from Punitive Detention to Constructive Detention,[7] demonstrate that there are serious questions going to the merits of their claims. And as demonstrated below, the balance of the hardships weigh in favor of Petitioners who have been unnecessarily detained without a countervailing government interest in their detention.

[7] J-M-L's ECF 9; S-M-J's ECF 8.

2. *Winter* factor 2: Each day this father and son would spend in custody causes and exacerbates irreparable harm.

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

The subpar medical care *Hernandez* identifies bears particularly heavily on S-M-J, who has physical disabilities. S-M-J's Pet. ECF 1 at ¶ 3. "Every day that a person is detained is a significant injury." *Mahdawi v. Trump*, 781 F. Supp. 3d 214, 235 (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).

Furthermore, as J-M-L's and S-M-J's detention is a deprivation of their 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 Petitioners' favor.

3. *Winter* factors 3 &4: The balance of equities [factor 3] tips in Petitioners' favor and the public has no interest [factor 4] in their unnecessary detention.

Because Respondent are 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. Respondents have not alleged that Petitioners are a danger to the community, nor is there any basis to do so. Moreover, by checking in with ICE officials each time they have been directed and earnestly pursuing asylum and withholding of removal in this country (as derivatives in their wife's / mom's case and waiting for over six years for a reasonable fear interview) with the assistance of an attorney, Petitioners have demonstrated that they will appear at their immigration appearances, and they are motivated to do so. *See* ECF 24 Tr. at 39:25-40:9; 50:9-14.

Additionally, "'[t]he public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering.'" *Diaz v. Kaiser*, No. 3:25-

cv-05071, 2025 WL 1676854, *3 (N.D. Cal. June 14, 2025) (granting temporary restraining order enjoining respondents from detaining petitioner without notice and hearing) (quoting *Jorge M.F. v. Wilkinson*, No. 21-cv-01434, 2021 WL 783561, *3 (N.D. Cal. March 1, 2021)). The government has no legitimate countervailing interest in detaining people without due process. *Chipantiza-Sisalema v. Francis*, No. 25-cv-5528, 2025 U.S. Dist. LEXIS 132841, at *10 (S.D.N.Y. July 13, 2025) ("There is no dispute" that "ICE is required to adhere to the basic principles of due process" in exercising its "statutory, discretionary authority to detain noncitizens like Chipantiza-Sisalema under 8 U.S.C. § 1226(a)"). This is particularly true in Petitioners' cases, as they were checking in at the ICE office when they were arrested and detained without procedural due process. *See* ECF 11.

B. Petitioners have strong liberty interests in remaining out of detention, and they should not be punished for the glacial pace of U.S. immigration matters.

"'Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action'" *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992)). Furthermore, "[t]he Supreme Court has repeatedly recognized that individuals who have been released from custody, even where such release is conditional, have a liberty interest in their continued liberty. *See Morrissey v. Brewer,* 408 U.S. 471, 482 (1972) (finding a parolee had an interest in his continued liberty)*; Young v. Harper*, 520 U.S. 143, 150 (1997) (applying *Morrissey* to pre-parole); *Gagnon v. Scarpelli*, 411

U.S. 778, 782, (1973) (finding probationers have a liberty interest)." *Doe v. Bacerra*, E.D.CA. 2025 WL 691664 at 5 (cleaned up); *see also Guzman v. Andrews et. al.*, E.D. CA. 2025 WL 2617256 at 5-6 (applying similar reasoning regarding noncitizens' liberty interests); *see also Ortega v. Bonnar*, 415 F. Supp.3d 963, 969 (N.D. Cal. 2019) ("Just as people on preparole, parole, and probation status have a liberty interest, so too does [a noncitizen released from immigration detention] have a liberty interest in remaining out of custody on bond.").

Petitioners entered the United States six years ago in 2019. Petition ECF 1 at ¶ 4. Shortly then after, J-M-L was referred to a reasonable fear interview (RFI) with U.S.C.I.S. ECF 11 at 14; ECF 24 Tr. at 60:21-61:10. This family fears returning to Guatemala and they seek protection in the United States. ECF 24 Tr. at 59:17-61:23. They work with an immigration attorney to make their case to the U.S. government, but due to the glacial pace of bureaucratic processing, it has been over six years and J-M-L still has not had his interview. ECF 24 Tr. at 60:21-61:5.

Furthermore, S-M-J has been in the United States for that same six-year period. He is now 19-years old, that's about a third of his life! He graduated from an American high school and his English is becoming proficient. ECF 24 Tr. at 38:9-12. They have a strong liberty interest and strongly desire to proceed with their immigration matters consistent with U.S. law.

C. The Court has jurisdiction to issue, and should issue, the preliminary injunction promptly.

Habeas corpus is a "speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination." *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954). This speediness makes sense, because Respondents were supposed to have done all of their detention analysis *before* the detention—and before this habeas action; the Respondents' Return to the court is merely the certification of that analysis. *See* 28 U.S.C. § 2243. Here, of course, there is no evidence in the record of any detention analysis.

"[A]bsent suspension, the writ of habeas corpus remains available to every individual detained within the United States." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004) (plurality opinion) (citing U.S. Const., art. I, § 9, cl. 2). The writ is available to Petitioners as they are physically in the United States and challenging their unlawful detention. They do not seek review of any determination of their removal orders, eligibility for withholding of removal, or the merits of their family's asylum claim. Rather, they seek only release from custody and contend that they were detained without procedural due process and based on an arbitrary and capricious agency decision which violated the APA.

III. Relief Requested

Accordingly, the Court should (1) enter a preliminary injunction requiring Respondents to maintain Petitioners' release from custody; (2) order the Respondents not to return Petitioners to custody during the pendency of this habeas matter

absent leave of this Court; (3) order Respondents to only refer to Petitioners as J-M-L and S-M-J, "Petitioner(s)" or "father" and "son," and not disclose their names and personal identifying information in any public court documents, press releases, or any public statements or documents during and after this habeas action, without leave of court, because public disclosure of Petitioners' real names could expose Petitioners to harm if Petitioners are removed from the U.S. as Respondents seek;[8] and (4) order Respondents to allow Petitioners' counsel to accompany them to any future immigration matters (including ICE check-ins).

If such relief is granted, Petitioners will continue to reside with their family, in Oregon, just like they did for six years before ICE detained them without due process.

Dated: September 19, 2025.

s/ Robert Easton
Robert Easton, OR SBN 203697

s/ Kurt Hermansen
Kurt David Hermansen, CA SBN 166349

[8] In *Doe v. Garland*, 22-1824, the Ninth Circuit Changed Appellant's name to "Doe" even after its opinion was already released with his true name. http://www.metnews.com/articles/2024/johndoe_012924.htm ("According to Petitioner, public disclosure of his real name could expose him to harm upon his removal to Mexico. The panel amends the memorandum and its associated caption to remove all references to Petitioner's real name.")