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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

H-L-P-F

Case No. 6:25-cv-01899-AA

Petitioner,

v.

CAMMILLA WAMSLEY, et al.,

Respondents.

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND RE-
PLY TO RESPONDENTS' RE-
SPONSE TO PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

**Oral Argument and Expedited
Consideration Requested**

Petitioner H-L-P-F, through counsel, moves this Honorable Court for a temporary restraining order granting the relief requested in Part IV *infra*.

I. Introduction

Petitioner's detention is illegal and unconstitutional. His detention was without lawful cause or process and thus violates the Administrative Procedure Act (APA) because the agency's detention decision was arbitrary and capricious.

The sole reason H-L-P-F was detained was because an ICE officer states that H-L-P-F moved addresses without requesting permission. ECF 7 at ¶¶ 11, 12 (Jason Weiss Declaration); ECF 6 at 7 (Respondents' Response to Petition for Writ of Habeas Corpus ("Respondents' Response")). This decision was made and H-L-P-F was detained without an attorney present to represent him. ECF 8-3 at 17 (H-L-P-F's Declaration).

This single assertion flies in the face of the evidence. H-L-P-F lives at, pays rent at, pays utilities at, buys groceries for, receives mail at, and has a next-door neighbor that swears that H-L-P-F lives at the same address as on his ICE check-in sheet and his asylum application filed with the immigration court (and thereby served on ICE):  ECF 8-3 at ¶ 6 (H-L-P-F's Declaration); ECF 8-1 (ICE Check in sheet); ECF 8-2 (Immigration court receipt of asylum application); ECF 8-4 (neighbor Sheryl Bowie's Declaration).

The plain language of 28 U.S.C. § 2243 allows the Court to grant the Writ of Habeas Corpus and order immediate release. If the Court does so, it need not adjudicate this TRO Motion. However, in the event the Court finds that further proceedings or filings are necessary to adjudicate the merits of the habeas petitions, the Court should find that Petitioner warrants interim relief and grant a temporary restraining order.

II. Factual Background

H-L-P-F is a 46-year-old Venezuelan citizen. H-L-P-F fled his country fearing for his life. ECF 8-3 at ¶ 2 (H-L-P-F's Declaration). Although he knew Venezuelans who had crossed the river or desert into the United States illegally, he was determined to seek safety in America the legal way. ECF 8-3 at ¶ 3 (H-L-P-F's Declaration). His daughter, who already lived in Oregon, told H-L-P-F about the CBP One app for scheduling an immigration appointment at the border. Once H-L-P-F made it to Mexico City, he acquired the app and sought to schedule an appointment. U.S. immigration officials scheduled an appointment for H-L-P-F for August 1, 2024. ECF 8-3 at ¶¶ 3-5 (H-L-P-F's Declaration).

H-L-P-F attended his interview. He was asked why he feared returning to Venezuela. H-L-P-F explained why his life was in danger. ECF 8-3 at ¶ 5 (H-L-P-F's Declaration). H-L-P-F was then paroled into the United States and he was placed into removal proceedings. *See ECF 7 Declaration of Jason Weiss ("Weiss Declaration") at ¶ 4.* It was in this pending removal case that H-L-P-F timely filed his asylum application. ECF 8-3 at ¶ 21 (H-L-P-F's Declaration); ECF 8-2 (Immigration court receipt of asylum application).

H-L-P-F moved to Oregon to live with his daughter, her partner, and his seven-year-old grandchild. Before moving to Oregon, he thought he was moving to Junction City, Oregon, so an address there was used in some of his documents. But by the time he arrived in Oregon, his daughter had rented an apartment on Bailey

Hill Road in Eugene, Oregon. The family was on a waiting list for a two-bedroom apartment to become available, but in the meantime, they lived together in a single bedroom apartment in the same apartment complex. The family moved into the larger apartment at [REDACTED] a little while later. ECF 8-3 at ¶ 6 (H-L-P-F's Declaration). This is the same address as on the ICE check-in sheet that H-L-P-F presents to officers at check-ins, and the same address as on his asylum application to the immigration court and served on ICE counsel. ECF 8-1 (ICE Check-in sheet); ECF 8-2 (Immigration court receipt of asylum application).

H-L-P-F befriended his next-door neighbor Sheryl Bowie who confirms that he lives in apartment [REDACTED] ECF 8-4 at ¶¶ 5, 8 (neighbor Sheryl Bowie's Declaration). Ms. Bowie plans to testify at the hearing, if any.

H-L-P-F befriended another neighbor, Saul, who is also Venezuelan. H-L-P-F is social and likes to spend time with other people. Saul and H-L-P-F share the same language and have similar interests, including watching movies and playing Play Station II, sometimes late into the night. ECF 8-3 at ¶¶ 9, 10 (H-L-P-F's Declaration). These activities, of course, are incompatible with H-L-P-F's 7-year-old grandchild's schedule, so H-L-P-F would do them at Saul's apartment. *Id.*

On the night of October 14, 2025, the evening before H-L-P-F was detained, he went over to Saul's and caught the last part of a movie, then they (along with

some other friends) played Play Station until after one o'clock in the morning. It was late, so H-L-P-F crashed on the couch. *Id.* at ¶ 10.

At around 5am or 6am in the morning, FBI agents assaulted Saul's apartment. They demanded everybody come out. Windows were smashed and H-L-P-F heard loud booms that could have been flash-bang grenades. H-L-P-F was the first person up and out the front door (he had been sleeping on the couch). He saw red dots on himself and on the apartment walls and understood those to be laser sights from the FBI's weaponry. H-L-P-F followed FBI directions, held his hands up and exited the apartment wearing only his underwear, and left all of his items behind. ECF 8-3 at ¶¶ 11-13 (H-L-P-F's Declaration). Then a drone flew into the apartment. *Id.* at ¶13.

During the harrowing events that morning, H-L-P-F was passed from the custody of the FBI to ICE and ICE officers questioned H-L-P-F. ECF 8-3 at ¶ 15 (H-L-P-F's Declaration).

ICE officer(s) asked H-L-P-F questions that led to his detention without a lawyer present. ECF 8-3 at ¶ 17 (H-L-P-F's Declaration).

Even though he was subjected to such a violent and bewildering morning, H-L-P-F believes he remembers all of ICE's questions. They asked about guns (~ I don't know), they asked if he knew the tenant at the assaulted apartment ("yes"), they asked why he was there (~to watch a movie last night), they asked how long he

knew the tenant (~ about eight or ten months), and they asked if he lived at the assaulted apartment ("No"). ECF 8-3 at ¶¶ 15, 16 (H-L-P-F's Declaration).

On the other hand, ICE officer Jason Weiss states that he asked H-L-P-F if he pays rent and resides at Saul's apartment. ECF 7 at ¶ 11 (Weiss Declaration). Officer Weiss states H-L-P-F answered "yes" to those questions. *Id.*

Whether H-L-P-F lives at Saul's apartment is the reason H-L-P-F was detained. Id. at ¶ 12.

Therefore, the key to this habeas case is whether H-L-P-F actually lives at the address on his check-in sheet and asylum application (1475 Bailey Hill Rd. Apt # 131 Eugene), next door to Sheryl Bowie; or at his friend's apartment.

Even if it turns out that H-L-P-F mistakenly answered Officer Weiss's question (in fluent Spanish?) after being woken after little sleep, assaulted, flash-banged, hand-cuffed twice, and rendered away, H-L-P-F and his next-door neighbor, U.S. citizen and Army veteran, Sheryl Bowie, desire to testify to the court his true residence at Apartment #131.

III. Law and Argument

A. *Winter v. Natural Res. Def. Council (infra)* provides the Court factors to analyze requests for Temporary Restraining Orders. Petitioner can satisfy the *Winter* factors for immediate release from ICE custody as further delay would prolong his unlawful detention which is not in the public interest.

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) (describing intermediate relief in the form of preliminary injunction). The standard for granting a preliminary injunction and a temporary restraining order are “substantially identical.” *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017). Here, each factor weighs in Petitioner’s favor and warrants ordering that Respondents release him from ICE custody, thereby returning him to the status quo that existed Tuesday evening, October 14, 2025, before his current detention.

1. ***Winters factor 1: Petitioner is likely to succeed on the merits.***

- a. **H-L-P-F is likely to succeed on the merits of his habeas petition because his detention violates 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 win 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).

The Respondents’ Response states that “an ICE officer encountered Petitioner who admitted that he now resides at” a different address than on record with ICE, and because of that new address, H-L-P-F was detained. ECF 6 at 6 (Respondents’ Response).

Even if that conversation occurred and was in fluent Spanish, it was after H-L-P-F was shocked awake after only about four hours of sleep by FBI officers yelling at him, deploying what are presumed to have been flash-bang grenades, flashing lights, weaponry with lasers aimed at him, he was handcuffed, and ordered from his friend's house into the cold morning in his underwear. ECF 8-3 at ¶¶ 11-16 (H-L-P-F's Declaration). It was also without an attorney present. *Id.* at 17.

A comment, without an attorney present, that could lead to the deprivation of liberty after such disorienting violence would render it meaningless. *See M-S-L v. Bostock*, Case 6:25-cv-01204-AA (July 10, 2025) Opinion and Order ("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, 348 (1976)").

To dispute the ICE officer's assertion about where he lives, H-L-P-F will offer testimony at an evidentiary hearing that he lived with his daughter, her partner, and grandchild at the address on record with ICE, [REDACTED] in Eugene ("Apartment # [REDACTED]"). He will testify that he receives all of his mail at Apartment # [REDACTED] shares the utility bill there, and shares buying groceries there. *See* ECF 8-1 (ICE Check in sheet); *see also* ECF 8-3 at ¶ 6 (H-L-P-F's Declaration). He will explain that he visits his friend at the location where the FBI raid occurred to watch movies and play Play Station games, which is what happened the night before the raid. *See* ECF 8-3 at ¶¶ 9, 10 (H-L-P-F's Declaration).

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Further supporting that H-L-P-F resides at Apartment #~~XXXX~~ his U.S. citizen and U.S. Army veteran neighbor Sheryl Bowie who lives next door in Apartment #~~XXXX~~ has submitted a sworn declaration about H-L-P-F's residence and she will testify at the hearing. ECF 8-4 (neighbor Sheryl Bowie's Declaration).

The evidence overwhelming supports that Officer Weiss's assertion was incorrect, and therefore H-L-P-F was improperly and unlawfully detained.

- i. **H-L-P-F was paroled at the border after he was determined not to be dangerous to the community and not a flight risk. It would be arbitrary and capricious for Respondents to decide he is now a flight risk with the slimmest of reasoning based on incorrect information.**

Section 28 C.F.R. § 236.1(c)(8) guides how Respondents release noncitizens into the United States, as they did H-L-P-F in August, 2024. In relevant part, an immigration officer must be 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.* H-L-P-F was released, so the officer must have been satisfied. *See* ECF 7 at ¶ 6 (Weiss Declaration).

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. *See* ECF 6 at 4, 7-8 (Respondents' Response).

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 and it should be

rationally related to the facts. *See ECF 6 at 7 (Respondents' Response) (citing Dep't of Comm. v. New York*, 588 U.S. 752, 773 (2019) (cite omitted)).

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.

Respondents stated that their decision was rational because H-L-P-F posed a flight risk because he changed addresses. ECF 6 at 8 (Respondents' Response). But the overwhelming evidence shows that H-L-P-F did not change addresses, he just happened to be at a friend's house when ICE showed up. ECF 8-3 at ¶¶ 6, 9-13 (H-L-P-F's Declaration); ECF 8-4 (neighbor Sheryl Bowie's Declaration).

This renders Respondents' rational for detention—solely that H-L-P-F moved addresses—incorrect and disconnected from the choices they made.

The evidence disputing Respondents' rationale for detention strongly supports that H-L-P-F is likely to succeed on the merits of his habeas case.

ii. It is uncertain whether an authorized immigration official made the detention determination

In H-L-P-F's case, the record does not make certain that an authorized official under the regulations made his detention determination. Respondents' Response quotes the list of authorized officials: "the district director [and certain other federal officers]." ECF 6 at 4 (Respondents' Response) (quoting 8 C.F.R. §§ 236.1(c)(9), 1236.1(c)(9)) (omission in original).

Those omitted officers include the “acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign).” 8 C.F.R. § 236.1(c)(9).

In his declaration, Officer Weiss stated that “Assistant Field Office Director Jeff Chan revoked Petitioner’s OREC [Order of Release on Recognizance]” ECF 7 at ¶ 12 (Weiss Declaration). What used to be called “district directors” in the regulations are now “field office directors.” 8 C.F.R. § 1.2.

But Assistant Field Office Directors *broadly* are not listed in 8 C.F.R. § 236.1(c)(9), only particular types are, those that direct “investigations” or “detention and deportation.” Respondents do not explain how Officer Chan had authority to detain H-L-P-F.

b. There are serious questions going to the merits of this habeas case.

H-L-P-F will likely succeed on the merits of his due process and APA claims given the arbitrary and capricious nature of his detention.

Alternatively, a temporary restraining order 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, Petitioner’s declaration, and Petitioner’s next-door neighbor’s declaration,

demonstrate that there are serious questions going to the merits of Respondents' claims. And as demonstrated below, the balance of the hardships tip sharply in favor of H-L-P-F who has been unnecessarily detained without a countervailing government interest in their detention.

2. *Winters* factor 2: Each day H-L-P-F spends 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.*

Petitioner’s liberty has been unnecessarily restrained since October 15, 2025, and 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.” *Cf. Rosales-Mireles v. United States*, 585 U.S. 129, 139–40 (2018) (cleaned up).

Furthermore, as H-L’s detention is a deprivation of his 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 Petitioner’s favor.

3. *Winters factors 3 &4: The balance of equities [factor 3] tips in Petitioner’s favor and the public has no interest [factor 4] in his unnecessary detention.*

Because Respondents 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 Petitioner is a danger to the community, nor is there any basis to do so. Moreover, by checking in with ICE officials each time he has been directed and earnestly pursuing asylum in this country, Petitioner has

demonstrated that he will appear at his immigration appearances, and he is motivated to do so. ECF 8-1 (ICE check-in sheet); ECF 8-2 (Immigration court receipt of asylum application).

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)”).

B. The Court has jurisdiction to issue, and should issue, the temporary restraining order 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). “[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 Petitioner as he is physically in the United States and challenging his unlawful detention. He seeks release from custody and contends that he was detained without procedural due process and based on an arbitrary and capricious agency decision which violated the APA.

IV. Relief Requested

Accordingly, H-L-P-F requests the Court:

- (1) enter a temporary restraining order requiring Respondents to release him from custody;
- (2) order Respondents not to return Petitioner to custody during the pendency of this habeas matter absent leave of this Court;
- (3) order Respondents to only refer to Petitioner as H-L-P-F, or “Petitioner” and to never anywhere disclose their name and personal identifying information in any court documents, press releases, or any statements or documents during and after this habeas action, without leave of court because public disclosure of Petitioner’s real name could expose him to harm if Petitioner is removed from the U.S. as Respondents seek;¹ and

¹ 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 Peti-

(4) order Respondents to allow Petitioners' immigration counsel to accompany him to any future immigration matters (including ICE check-ins).

If such relief is granted, Petitioner will reside with his family, in Oregon, just like he did until October 15, 2025, when ICE detained him without due process.

Dated: October 30, 2025.

s/ Robert Easton
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titioner, 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.”)