SCOTT E. BRADFORD, OSB #062824
United States Attorney
District of Oregon
SEAN E. MARTIN, OSB #054338
Assistant United States Attorney
1000 S.W. Third Avenue, Suite 600
Portland, OR 97204
sean.martin@usdoj.gov
Telephone: (503) 727-1000
Attorneys for Respondents

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

S.Z.D.,

Petitioner,

v.

CAMMILLA WAMSLEY; TODD LYONS; KRISTI NOEM; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; U.S. DEPARTMENT OF HOMELAND SECURITY,

Respondents,

Case No. 3:25-cv-01931-AB

RESPONSE TO PETITIONER'S MOTION FOR TEMPORARY RESTRAINING ORDER AND TO PETITION FOR WRIT OF HABEAS CORPUS

Respondents Cammilla Wamsley, Todd Lyons, Kristi Noem, U.S. Immigration and Customs Enforcement ("ICE"), and U.S. Department of Homeland Security ("DHS") respond to Petitioner's motion for temporary restraining order ("TRO") and to his petition for writ of habeas corpus. *See* ECF 2 (motion), ECF 1 (petition)

Petitioner seeks an order to halt his detention and return him to Oregon. This Court should deny this relief.

FACTUAL BACKGROUND

Petitioner is a native and citizen of Mexico who entered the United States without inspection. Declaration of Brett Booth ("Booth Decl.") ¶ 4. He has a U visa application pending with U.S. Citizenship and Immigration Services ("USCIS"). *See* ECF 1 ¶ 4. In January 2025, Petitioner was granted "deferred action" by USCIS. *See* ECF 2-2. Petitioner was informed that this "does not constitute valid U nonimmigrant status," and "may not be used to demonstrate legal immigration . . . status." *Id.* Instead, USCIS's grant of deferred action "is an act of administrative convenience to the government which gives some cases lower priority for removal." *Id.*

On October 20, 2025, Petitioner was detained and charged as being inadmissible under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i). Booth Decl. ¶ 8. Under this statute, an "alien

present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible."

Petitioner then filed a petition for writ of habeas corpus challenging his confinement under 28 U.S.C. § 2241. ECF 1. He also filed a motion for TRO. ECF 2. Later that day, Petitioner left the State of Oregon in ICE custody at approximately 3:55 pm. *See* ECF 5.

Petitioner is currently detained at the Northwest ICE Processing Center in Tacoma with an initial immigration court hearing scheduled for November 5, 2025. Booth Decl. ¶ 9. At this time, Petitioner has not requested a bond hearing with the Tacoma immigration court. *Id.* ¶ 10. ICE has no intention to place him in expedited removal proceedings. *Id.* ¶ 11.

ICE will not seek to remove Petitioner from the United States unless a final order of removal is issued. *Id.* ¶ 12. Petitioner will have a full opportunity to seek relief from removal in administrative proceedings in the immigration court. *Id.*

LEGAL AND REGULATORY BACKGROUND

A. Mandatory detention under 8 U.S.C. § 1225

Under 8 U.S.C. § 1225(a)(1), "[a]n alien present in the United States who has not been admitted . . . shall be deemed for purposes of this chapter an

applicant for admission." Such an alien "shall be detained" for immigration removal proceedings if the examining immigration officer determines that the alien "is not clearly and beyond a doubt entitled to be admitted." *Id.* § 1225(b)(2)(A). Similarly, for an alien who asserts a "fear of persecution," that individual "shall be detained" pending a final determination of credible fear. *Id.* § 1225(b)(1)(B)(iii)(IV).

B. The U visa program

Congress conferred upon DHS the authority to determine the admission conditions and processes for nonimmigrants who are admitted to the United States for a temporary period and a limited purpose. 8 U.S.C. §§ 1101(a)(15), 1184(a)(1); *see also Elkins v. Moreno*, 435 U.S. 647, 663-66 (1978).

In 2000, Congress created the U visa program as part of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386, 114 Stat. 1464, to provide nonimmigrant status to certain victims of crime who cooperate in the investigation or prosecution of a qualifying crime. *See* 8 U.S.C. § 1101(a)(15)(U).[1]

[1] In 2007, DHS published a rule giving USCIS sole jurisdiction over U visa petitions. New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sept. 17, 2007), *codified at* 8 C.F.R. § 214.14.

To seek U nonimmigrant status, an individual submits a Form I-918. 8 C.F.R. §§ 214.14(c)(1), (f)(2). If USCIS approves an individual's U visa application and the individual is in the United States, that individual will receive lawful nonimmigrant status and employment authorization for up to four years. *See* 8 U.S.C. § 1184(p)(6). After three years of continuous physical presence in U nonimmigrant status, an individual may apply to adjust status to lawful permanent resident status. *See* 8 U.S.C. § 1255(m)(1).

The U visa program has a statutory cap of 10,000 principal U-1 nonimmigrant visas per year. 8 U.S.C. § 1184(p)(2)(A). Anticipating that the 10,000 annual statutory cap would be met, USCIS created a regulatory waitlist process. *See* 8 C.F.R. § 214.14(d)(2). If a U visa application is determined to be approvable, but for the fact that a visa is not available due to the statutory cap, the applicant is placed on the waitlist. *See id.*

When USCIS places a U visa application on the waitlist, "USCIS will grant deferred action." 8 C.F.R. § 214.14(d)(2). Deferred action is an act of administrative convenience that gives some cases lower priority for removal. 8 C.F.R. § 274a.12(c)(14); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited Oct. 22, 2025). This process is authorized under 8 U.S.C. § 1184(p)(6), and provides USCIS the discretion to grant deferred action to a noncitizen who

establishes that his pending U visa petition is "bona fide" and warrants the agency's exercise of discretion. 8 U.S.C. § 1184(p)(6); USCIS Policy Manual, Vol. 3, Part C, Ch. 5, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited Oct. 22, 2025).

Ultimately, USCIS renders final decisions on U visa applications when U visas become available, with the oldest filings receiving highest priority. 8 C.F.R. § 214.14(d)(2); USCIS Policy Manual, Vol. 3, Part C, Ch. 7, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-7 (last visited Oct. 22, 2025).

U visa applicants may continue to pursue U nonimmigrant status while living outside of the United States. *See* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-1#:~:text=Aliens%20can%20file%20petitions%20for,of%20a%20lawful%20permanent%20resident (last visited Oct. 22, 2025).

C. ICE retains discretion regarding detention and removal in the context of a USCIS deferred action notice.

ICE may detain Petitioner pending his immigration removal proceedings.

Because USCIS's grant of deferred action to Petitioner is a discretionary exercise of agency policy, this Court looks to the agency for the policy's meaning. Most notably, USCIS's notice of Petitioner's deferred action does not

provide that any removal proceedings are stayed or that ICE may not detain him under federal law. Instead, the notice describes deferred action as an act of administrative convenience that gives some cases lower priority for removal. ECF 2-2. Further, as USCIS told Petitioner, his deferred-action "does not constitute valid U nonimmigrant status" and "may not be used to demonstrate legal immigration . . . status." *Id.* This is consistent with the definition of "deferred action" in the chapter in USCIS's Policy Manual concerning U visa bona fide determinations. *See* USCIS Policy Manual, Vol. 3, Part C, Ch. 5, § 7, *available at* https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5 (last visited Oct. 22, 2025).

A grant of U visa deferred action status does not equate to a bar against removal proceedings. *See Raghav v. Jaddou*, No. 2:25-cv-00408, 2025 WL 373638, at *2 (E.D. Cal. Feb. 3, 2025) ("Plaintiff obtaining a [bona fide determination] in his favor would not prevent his removal"); *see also* "New Classification for Victims of Criminal Activity; Eligibility for 'U' Nonimmigrant Status, 72 Fed. Reg. 53014, 53016 n.3 (Sept. 17, 2007) (defining "deferred action" and "a stay of deportation or removal" separately and distinctly in the U visa context); 8 U.S.C. § 1227(d)(2) (listing deferred action and a stay of removal as distinct benefits).

There is no language in the USCIS Policy Manual providing that a grant of deferred action through the U visa process stays removal proceedings or bars ICE from detaining an alien under applicable federal statutes. Instead, the granting of deferred action allows ICE discretion to grant a stay of removal. 8 U.S.C. § 1227(d)(1). If a grant of deferred action through the U visa process constituted an automatic stay of removal, this regulatory provision would be superfluous.

It is within ICE's discretion to undertake removal proceedings here. The Supreme Court has made it clear that "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

ARGUMENT

I. This Court should deny Petitioner's TRO motion.

A. Legal standard for granting a TRO.

The standards for a TRO and a preliminary injunction are "substantially identical." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an "extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008). "To obtain a preliminary injunction, a plaintiff must establish (1) a likelihood of success on the merits,

(2) a likelihood of irreparable harm in the absence of preliminary relief, (3) that the balance of equities favors the plaintiff, and (4) that an injunction is in the public interest." *Geo Group, Inc. v. Newsom*, 50 F.4th 745, 753 (9th Cir. 2022) (en banc) (citing *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)). To carry his burden of persuasion, the moving party must make a "clear showing" on each of these four required elements. *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

Because Petitioner here seeks a mandatory injunction, his burden is "doubly demanding." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). To succeed, he "must establish that the law and facts *clearly favor*" his position, "not simply that []he is likely to succeed." *Id.* (emphasis in original). Further, a mandatory injunction "is particularly disfavored" and may not be granted "unless extreme or very serious damage will result." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (cleaned up).

B. Petitioner's TRO motion should be denied because it improperly seeks final relief.

As a threshold matter, this Court should deny a TRO because the requested order goes well beyond merely maintaining the status quo pending a determination on the merits. The requested TRO improperly seeks the

ultimate relief Petitioner demands in his habeas petition. The appropriate purpose of emergency equity "is to preserve the status quo and the rights of the parties until a final judgment issues in the cause." *U.S. Philips Corp. v. KBC Bank N.V.*, 590 F.3d 1091, 1094 (9th Cir. 2010). A preliminary injunction or TRO may not be used to obtain "a preliminary adjudication on the merits," but only to preserve the status quo pending final judgment. *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

Petitioner's habeas petition seeks to halt his detention. *See* ECF 1, Prayer for Relief (e). By seeking the same relief in his TRO motion, Petitioner would circumvent the habeas proceeding. The Ninth Circuit has firmly rejected this approach, concluding that "judgment on the merits in the guise of preliminary relief is a highly inappropriate result." *Senate of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992); *see also Doe v. Bostock*, No. 24-326-JLR-SKV, 2024 WL 2861675, *2 (W.D. Wash. June 6, 2024). Petitioner's TRO motion should be denied for the same reason.

C. Petitioner makes no showing of irreparable harm.

This Court should also deny Petitioner's motion because he fails to establish a likelihood of irreparable harm. To obtain a TRO, a party "must establish" that he is "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. To do so, the party must make a

"showing on the facts" of the case and cannot rely on unsubstantiated argument and presumption. *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989, 998 (9th Cir. 2011); *see also Ovitsky v. Oregon*, No. 3:12-cv-02250-AA, 2013 WL 5253162, at *3 (D. Or. Sept. 16, 2013) (denying relief where plaintiff did not provide evidence of irreparable harm).

Petitioner makes no showing of a likelihood of irreparable harm. He speculates, without evidence, that he "is subject to being disappeared within the ICE detention system without the ability to communicate with his attorney." Mot. 4. This fails to establish any entitlement to a TRO. Indeed, showing a "possibility" of irreparable harm is insufficient for such relief. *See Winter*, 555 U.S. at 22. Further, in his removal proceedings, Petitioner will have full due process including the right to assert claims for immigration relief. *See* 8 U.S.C. § 1229a(b)(4), § 1229a(c)(4), § 1229a(c)(6), § 1229a(c)(7). Petitioner will have the right to appeal an unfavorable immigration-judge decision to the Board of Immigration Appeals ("BIA"), and there are regulatory stay provisions that prevent execution of an immigration-judge decision in the context of a BIA appeal. 8 C.F.R. § 1003.6(a).

For these reasons, this Court should deny the TRO motion.

D. Petitioner establishes no likelihood of success on the merits.

This Court should deny Petitioner's motion, in addition, because he fails to establish a likelihood of success on the merits of his habeas petition.

Petitioner argues that he is entitled to extraordinary equity because he "is likely to succeed on the merits of his claim under the Administrative Procedures [sic] Act." Mot. 5. But his habeas petition (ECF 1) does not articulate or plead any APA claim. And there is a clear distinction between a habeas case and an APA case. The role played by the courts in habeas proceedings is far narrower than the judicial review authorized by the APA. *Heikkila v. Barber*, 345 U.S. 229, 236 (1953). Petitioner is requesting extraordinary habeas relief based on a phantom APA claim not even alleged in his habeas petition.

Petitioner otherwise establishes no likelihood of success on the merits, because his habeas claim is unsupported. He argues that he is likely to succeed because 1) he was granted deferred action, 2) is "not a flight risk or danger to the community," and 3) was given "no explanation for his detention." Mot. 5. But no authority provides that ICE is barred from immigration removal proceedings regarding those in USCIS deferred action. *See supra* Legal and Regulatory Background D. As Petitioner knows from his January 2025 notice from USCIS, deferred action is "an act of administrative convenience to the

government which gives some cases lower priority for removal." ECF 2-2. Deferred action does not override removal and detention statutes and does not preclude immigration enforcement proceedings. Nor is flight risk assessment, an assessment of danger to the community, or a formal explanation a statutory or regulatory prerequisite before ICE may detain an individual and commence removal proceedings.

For these reasons, this Court should deny the TRO motion.

E. The balance of equities and the public interest disfavor a TRO.

This Court should also deny Petitioner's motion because the balance of equities and the public interest disfavor a TRO. The balance of equities and the public interest factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Courts "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). The public interest in enforcement of the United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 556-58 (1976); *Blackie's House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1221 (D.C. Cir. 1981) ("The Supreme Court has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases).

This public interest outweighs Petitioner's private interest. Petitioner argues that he meets his burden for a TRO because he is not a flight risk and not a danger to the community. Mot. 5. But he is not in the United States legally and is subject to removal proceedings and detention under federal law. *See supra* Legal and Regulatory Background A. and Argument I.C.; 8 U.S.C. § 1182(a)(6)(A)(i); 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1225(b)(2)(A).

Further, the immigration laws and regulations provide Petitioner avenues for relief through the administrative removal process. For example, Petitioner will have the opportunity to seek asylum, withholding of removal, and protection under the implementing regulations of the Convention Against Torture. *See* 8 C.F.R. 208; 8 C.F.R. § 1208.1. If Petitioner is eligible to seek adjustment of status to that of a legal permanent resident, he will also be able to submit such application to the immigration court.

Petitioner also argues that the "merits" of supposed due process violations favor emergency relief. Mot. 6. But this presupposes a due-process violation, which Petitioner fails in the first instance to establish. Petitioner's argument does not satisfy the standard for emergency relief. It only "begs the constitutional questions presented in [his] petition by assuming that [P]etitioner has suffered a constitutional injury." *Cortez v. Nielsen*, No. 19-754-PJH, 2019 WL 1508458, at *3 (N.D. Cal. Apr. 5, 2019).

For these reasons, this Court should deny the TRO motion.

II. This Court should deny the habeas petition.

In addition, this Court should deny Petitioner's petition for writ of habeas corpus. Petitioner is being lawfully detained; he is subject to removal proceedings under federal law, which also provides for mandatory detention pending the removal proceedings. *See supra* Legal and Regulatory Background A. and Argument I.C.; 8 U.S.C. § 1182(a)(6)(A)(i); 8 U.S.C. § 1225(a)(1); 8 U.S.C. § 1225(b)(2)(A).

Because Petitioner was granted deferred action by USCIS on his U visa application, he alleges that it is illegal for ICE to detain him. ECF 1 ¶ 10. But there is no authority for this proposition. *See supra* Legal and Regulatory Background C. And USCIS made clear in granting him deferred action that it "does not constitute valid U nonimmigrant status" and "may not be used to demonstrate legal immigration . . . status." ECF 2-2. Petitioner's deferred-action is, instead, "an act of administrative convenience to the government." *Id.*

Petitioner alleges that he is entitled to habeas relief because "there has been no individualized determination that [he] is a flight risk or danger to the community." ECF 1 ¶ 10. But this flight risk/danger requirement is not a prerequisite to ICE detention. Petitioner is subject to removal proceedings

under federal law, and federal law provides for mandatory detention in his circumstances.

CONCLUSION

For these reasons, this Court should deny Petitioner's TRO motion and deny his petition for habeas relief.

DATED this 22nd day of October 2025.

Respectfully Submitted,

SCOTT E. BRADFORD
United States Attorney

/s/ Sean E. Martin
SEAN E. MARTIN
Assistant U.S. Attorney
Attorneys for Respondents