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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

S.Z.D.,

Petitioner,

v.

CAMMILLA WAMSLEY, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO");TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY;

Respondents.

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

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

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested.

The laws of the United States do not authorize marauding gangs of masked ICE officers to snatch and grab noncitizens from the street and whisk them away to remote detention centers without any process or a valid, lawful purpose. U.S. Const. amend. V. This is especially true when the individual has been granted deferred action and is a member of a protected class of crime victims who have cooperated with law enforcement to help make our communities safe. *See* ECF Dkt. 1-3; 2-3.

Petitioner is a U visa applicant who has been granted deferred action by DHS. *See* 8 U.S.C. § 1101(a)(15(U) (defining U nonimmigrant status); 8 U.S.C. § 1184(p)(6); ECF Dkt. 1-3. Deferred action matters. As explained by the co-sponsor of the 2005 Violence Against Women Act, Representative John Conyers:

> [Survivors] with deferred action status should not be removed or deported. Prima facie determinations and deferred action grants should not be revoked by immigration enforcement agents. The specially trained [USCIS] unit should review such cases to determine whether or not to revoke a deferred action grant. *Immigration enforcement officials at the Bureau of Immigration and Customs Enforcement do not have authority to overrule a [US]CIS grant of deferred action* to a [survivor].

151 Cong. Rec. E2605-04, E2607, 2005 WL 3453763 (Dec. 17, 2005) (Statement of Rep. Conyers) (emphasis added).

On October 20, 2025, without warning or advance notice, Petitioner was snatched from his car by Immigration and Customs Enforcement officers (ICE), and he is presently in ICE custody in Tacoma, Washington.

In their response, Respondents acknowledge Petitioner has been granted deferred action in accordance with the U visa program but assert he is subject to mandatory detention. *See* ECF Dkt. 6 at 2-4.

I. Petitioner's detention is governed by 8 U.S.C. § 1226(a) and NOT § 1225(b)(2)(A) (mandatory detention).

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedent decision, *Matter of Yajure Hurtado*, in which it reasoned that all individuals who entered the United States without inspection or admission (EWI), regardless of how long the person has been in the United States, is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and that immigration judges do not have jurisdiction to conduct bond proceedings or grant bond to a person who is present without admission. *Matter of Yajure Hurtado, 29 I&N Dec. 216, 216 (BIA 2025).* The BIA's precedent decisions are binding on immigration judges. This drastic new interpretation of the immigration statute would render superfluous multiple statutory provisions enacted by Congress including 8 U.S.C. § 1226(c) (mandatory detention for aggravated felony convictions) and portions of the recently passed Laken Riley Act. *Laken Riley Act ("LRA"), Pub. L. No. 119-1, 139 Stat 3 (2025), codified at 8 U.S.C. § 1226 (c)(1)I(i) and (ii).* The BIA's flawed analysis has been squarely rejected by district courts throughout the country. *See, e.g., Salcedo Aceros v. Kaiser, No. 25-cv-06924-EMC, 2025 WL 2637503, at *1 (N.D. Cal. Sept. 12, 2025); Rodriguez Vasquez v. Bostock, et al. 3:25-CV-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025); Ledesma Gonzalez v. Bostock, 2025 WL 2841574 (W.D. Wash. Oct. 7, 2025); Garcia Domingo v. Castro, 2025 WL 2941217 (D.N.M. Oct. 15, 2025); Aguilar Merino v. Ripa, 25-23845-CIV (S.D. Fla. Oct. 15, 2025); Guerrero Lepe v. Andrews, 2025 WL 2716910 (E.D. Cal. Sept. 23, 2025).*

Here, Respondents seek to elide this elephant in the room by merely stating Petitioner is subject to mandatory detention without mentioning the *Yajure Hurtado* decision - but plainly Petitioner is not subject to mandatory detention – and so - even if the Court were to conclude that Petitioner's detention by ICE on October 20, 2025 was lawful – which it was not – Petitioner's

continued detention without the possibility of release is unlawful because it violates the statute, 8 U.S.C. § 1226(a), and due process. *See Rodriguez Diaz v. Garland, 53 F.4th 1189, 1196 (9th Cir. 2022)* (1226(a) governs normal arrest/detention process); *Hernandez v. Sessions, 872 F.3d 976, 993 (9th Cir. 2017).*

II. Respondents misstate the proper legal standard for evaluating Petitioner's request for injunctive relief.

In opposing Petitioner's request to be released from detention during the pendency of these proceedings, Respondent incorrectly characterizes the request as seeking a mandatory injunction, relying heavily on the Ninth Circuit's decision, *Garcia v. Google, Inc., 786 F.3d 733 (9th Cir. 2015).* ECF DKT. 6 at 9. But that case was brought under copyright law and involved a copyright dispute in which the plaintiff was seeking a preliminary injunction requiring Google to take affirmative action and continually monitor the internet to remove any uploads of the material involved in the litigation. Thus, the term "mandatory injunction." *Id. at 737.*

Here, by contrast, Petitioner is merely asking to preserve the status quo ante during this litigation. Respondent would not be required to do anything except open the jail cell. Nothing is more important than personal liberty. As Judge Reinhardt explained,

> In the context of immigration detention, it is well-settled that "due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." The government has legitimate interests in protecting the public and in ensuring that noncitizens in removal proceedings appear for hearings, but any detention incidental to removal must "bear[ ] [a] reasonable relation to [its] purpose." Zadvydas, 533 U.S. at 690, 121 S.Ct. 2491 (quoting Jackson v. Indiana , 406 U.S. 715, 738, 92 S.Ct. 1845, 32 L.Ed.2d 435 (1972)...

Hernandez v. Sessions, 872 F.3d 976, 990 (9th Cir. 2017) (cleaned up).

To be clear, Petitioner is not asking the Court to order a bond hearing – because a bond hearing is not an adequate remedy for unlawful detention for at least three primary reasons. First, a bond hearing is not instantaneous and can take weeks to arrange. Second, the lawfulness of the detention is not subject to review by an immigration judge in a bond hearing, which means frontline ICE officers have no incentive to conform their actions to the law and respect constitutional due process rights. Third, the burden of proof in bond proceedings is always on the applicant to demonstrate that they are not a flight risk or a danger to the community. For Petitioner, who has already been thoroughly vetted and granted deferred action, it is Respondents who need to demonstrate a changed circumstance sufficient to revoke deferred action and conclude that Petitioner is now a flight risk or danger to the community. *See Pinchi v. Noem, No. 5:25-CV-05632-PCP, 2025 WL 2084921, at *5 (N.D. Cal. July 24, 2025)* ("Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest.")

III. Petitioner's substantive and procedural due process rights were violated by Respondents when they detained him without cause on October 20, 2025.

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

Substantively, to be lawful, civil immigration detention requires a valid purpose. In general, courts have recognized two valid purposes for immigration detention – 1) flight risk and 2) danger to the community. *See Zadvydas*, 533 U.S. at 690-691. Immigration detention may not be used as punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest quota is not a valid purpose for detaining a noncitizen. Respondents are violating

Petitioner's due process rights by detaining him without a valid purpose and without a pre-detention procedure to determine flight risk or danger to the community.

Procedurally, to determine what procedures are constitutionally necessary to protect a liberty interest, courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1 (W.D. Wash. Aug. 19, 2025) (collecting cases). The *Mathews* test requires balancing the private interest affected by government action, the risk of an erroneous deprivation through the procedures used and the probable value of additional safeguards, and finally the government interest, including the function and the burden of additional measures. *Mathews*, 424 U.S. at 335. "[D]ue process requires the government to identify some interest beyond its own administrative practices to justify depriving an individual of her liberty without any pre-deprivation protections. Detention for its own sake, to meet an administrative quota, or because the government has not yet established constitutionally required pre-detention procedures is not a legitimate government interest." *Pinchi v. Noem*, 5:25-cv-05632-PCP *10 (N.D. Cal. Jul 24, 2025).

Petitioner has a protected liberty interest in being free from detention. *See Ortega v. Bonnar, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019); Morrissey v. Brewer, 408 U.S. 471, 482 (1972).* Much like the situation where a noncitizen who has been released on recognizance or bond is not subject to re-detention absent a finding of a changed circumstance sufficient to demonstrate flight risk or danger to the community, Petitioner has been granted deferred action after thorough vetting and background checks and is not subject to detention merely for ICE to satisfy an arrest quota. *Pinchi v. Noem, 5:25-cv-05632-PCP *10.* Respondents have not

terminated Petitioner's deferred action status. At this juncture, Respondents have no reason to detain Petitioner.

After Respondents thoroughly vetted Petitioner and determined he is eligible for and deserving of deferred action, Respondents have not made a finding that Petitioner is either a flight risk or a danger to the community. Respondents violated Petitioner's constitutionally protected liberty interest by unlawfully detaining him on October 20, 2025. *See Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and Order at 29-31).

"Freedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause [Due Process] protects." *Zadvydas*, 533 U.S. at 590. Petitioner is unlawfully detained, and his constitutional rights were violated by Respondents unlawfully detaining him without conducting a pre-detention individualized determination of changed circumstances sufficient to demonstrate Petitioner is either a flight risk or a danger to the community.

IV. Petitioner is suffering irreparable harm.

Respondents assert Petitioner has failed to establish a likelihood of irreparable harm. ECF Dkt. 6 at 10. Frankly, Petitioner does not understand this argument. Respondents' actions are violating Petitioner's constitutional right to due process every day that he is detained. Once gone, none of us can ever get a single day back. "It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017) (internal quotation omitted). Petitioner is suffering irreparable harm.

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

As discussed earlier, Petitioner is likely to succeed on his petition for habeas relief because Respondents detained him without notice and without an individualized determination of flight risk or danger to the community. Respondents' actions violate the Administrative Procedures Act (APA) and the Fifth Amendment.

Under the APA, a court shall "hold unlawful and set aside agency action" that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An action is arbitrary and capricious if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). To survive an APA challenge, the agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

Here, Petitioner is a U visa applicant who has been granted deferred action. He is not a flight risk or danger to the community and Respondents have given no explanation for his detention.

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

Petitioner has established that "the balance of the equities tip in his favor and that an injunction is in the public interest" because he is a U visa applicant who received a bona fide determination (BFD) from DHS, was granted deferred action by DHS, he is not a flight risk, and he is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government is

a party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The merits of the due process violations that Petitioner has raised in his habeas petition further weigh the public interest towards emergency relief. "Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." *Preminger v. Principi,* 422 F.3d 815, 826 (9th Cir. 2005); *see also Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that "the INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations"). In addition, "the public interest also benefits from a preliminary injunction that ensures that federal statutes are construed and implemented in a manner that avoids serious constitutional questions." *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

VII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court grant a temporary restraining order requiring Respondents to immediately release Petitioner from detention and/or issue a writ of habeas corpus, ordering Respondents to release Petitioner immediately and enjoying Respondents from re-detaining Petitioner absent a pre-deprivation process in which Respondents bear the burden of demonstrating changed circumstances sufficient to indicate Petitioner is either a flight risk or a danger to the community.

Respectfully submitted this 24th day of October 2025.

s/Philip Smith
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