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UNITED STATES DISTRICT COURT
DISTRICT OF WESTERN WASHINGTON
SEATTLE DIVISION

Napoleon Andres Magana,
Plaintiff

v.

Kristi Noem, Secretary of the Department of
Homeland Security; US Department of
Homeland Security (DHS); Todd Lyons,
Acting Director of Immigration Customs
Enforcement; Cammilla Wamsley, Seattle
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations; U.S. Immigration and Customs
Enforcement (ICE); Pete Flores, Acting
Commissioner of Customs and Border
Protection; and U.S. Customs and Border
Protection (CBP)

Case No. 25-2100

**PLAINTIFF'S MOTION
FOR A TEMPORARY
RESTRAINING ORDER
AND MEMORANDUM OF
LAW IN SUPPORT OF
MOTION**

MOTION FOR A TEMPORARY RESTRAINING ORDER

Plaintiff moves for an immediate temporary order restraining the Defendants or any of their delegates, agents, or entities working in concert with them from transferring him out of the District of Washington. Plaintiff was apprehended by Defendants without a valid judicial warrant and taken into civil immigration custody in the District of Washington on or about October 15, 2025. Plaintiff has not knowingly and affirmatively waived in writing his right to representation by counsel under the Fifth Amendment of the United States Constitution.

Plaintiff further moves for an order requiring Defendants to allow him to receive constitutionally sufficient access to counsel while in Defendants' custody.

MEMORANDUM OF LAW IN SUPPORT OF MOTION

I. Introduction

In the District of Oregon, Defendants are rounding up community members across the region, holding them incommunicado by fiat, and then moving them swiftly out of district – before they have even had a chance to make a phone call to a lawyer, let alone to consult with one. Defendants take these actions in order “to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.”

The Oregonians caught up in these violent sweeps—citizen and immigrant alike— find themselves trapped in the Defendants’ vast detention network: a network that spans from Tacoma, Washington, to Guantanamo Bay, Cuba, to Sudan to Libya to CECOT—a notorious torture center in El Salvador. Once detained by Defendants, these Oregonians are swiftly transferred away from their legal resources and their communities of support, lost in a detention-to-deportation pipeline in which they may find themselves, in the government’s view, beyond the reach of this Court’s jurisdiction and ability to remedy any unlawful detention, transfer, or removal.

Plaintiff seeks to restore a vital aspect to the rule of law: constitutionally sufficient access to his counsel in Oregon before he is swept away into Defendants’ vast and labyrinthine executive detention scheme, which includes detention centers outside the United States. Such access to counsel is guaranteed by the First and

1 Fifth Amendments to the United States Constitution, several provisions of the
2 immigration laws, and Defendants' own policies.

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4 The rule of law—and the principles embodied in the U.S. Constitution, the
5 Administrative Procedure Act (APA), the Immigration & Nationality Act (INA),
6 numerous regulations, and formal federal agency policy—demand no less.
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8 **II. Factual Background**

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10 In an effort to achieve a deportation quota for their mass deportation scheme,
11 Defendants have adopted policies, patterns, and practices that sweep people into
12 their vast executive detention scheme and outside of this district, including to
13 distant and far-away places, before an individual can access counsel and, in the
14 government's view, beyond the remedies otherwise available in the courts. See,
15 e.g., *Bonilla Alvarez v. Noem*, No. 25-cv-03136 (D.D.C. Sept. 28, 2025) (finding
16 that the court lacked jurisdiction to hear man's emergency request where he had
17 been transferred to Mexico and would be imminently sent to El Salvador, even
18 though immigration court had concluded that he was likely to be tortured in El
19 Salvador). Defendants' policies, patterns, and practices thwart individuals from
20 speaking in person with a lawyer before they are disappeared into the detention
21 system. On information and belief, the fact that people are denied access to
22 counsel, and counsel is denied access to their clients and prospective clients, is an
23 intentional feature of Defendants' current system, not a bug or unplanned collateral
24 consequence.
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1 Under the Fifth Amendment, the First Amendment, and the INA, detained
2 noncitizens have a right to hire, consult, and communicate with an attorney. On
3 information and belief, counsel represents Defendants have repeatedly denied
4 access to counsel by, inter alia, denying detained people the ability to communicate
5 with their counsel; denying detained people meetings with their attorneys or
6 counsel retained by their families, even when those attorneys are present at the
7 detention facility and requesting a client meeting; turning attorneys away when
8 they arrive to an ICE detention facility asking to speak with a detained client;
9 declining to speak with attorneys who are denied access to detained clients, even
10 when the attorney asks to speak with an ICE official; transferring detained people
11 out of Oregon before they can speak with an attorney, even when an attorney is
12 actively asking to speak with them; declining to tell detained people that an
13 attorney is trying to speak with them; failing to list accurate information in the ICE
14 Online Detainee Locator, <https://locator.ice.gov/odls/#/search>; and requiring
15 attorneys to present a signed G 28 (a DHS form used to indicate an attorney or
16 other authorized party is representing a person before the agency) before they can
17 speak with a detained person, even when the attorney is requesting a pre-
18 representational meeting with a prospective client.
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III. Legal Standard

The standard for issuing a TRO is the same as the standard for issuing a preliminary injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*,

1 434 U.S. 1345, 1347 n.2 (1977). A TRO is “an extraordinary remedy that may only
2 be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter
3 v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). “The proper legal standard
4 for preliminary injunctive relief requires a party to demonstrate (1) ‘that he is
5 likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the
6 absence of preliminary relief, (3) that the balance of equities tips in his favor, and
7 (4) that an injunction is in the public interest.’” Stormans, Inc. v. Selecky, 586 F.3d
8 1109, 1127 (9th Cir. 2009) (citing Winter, 555 U.S. at 20).

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12 As an alternative to this test, a temporary restraining order or preliminary
13 injunction is appropriate if “serious questions going to the merits were raised and
14 the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing
15 preservation of the status quo when complex legal questions require further
16 inspection or deliberation. Alliance for the Wild Rockies v. Cottrell, 632 F.3d
17 1127, 1134-35 (9th Cir. 2011).

21 **IV. Argument**

22 Plaintiff’s Motion for a Temporary Restraining Order should be granted
23 because he is likely to succeed on the merits. He is suffering irreparable harm in
24 the absence of preliminary relief; and the balance of the equities and public interest
25 weigh strongly in favor of a restraining order pending the Court’s adjudication of
26 the complaint. Plaintiff also satisfies the alternative test for a temporary restraining
order.

A. Plaintiff is likely to succeed on his access to counsel claims.

The Due Process Clause of the Fifth Amendment, the First Amendment, and the INA, all guarantee individuals detained in immigration operations the right to access counsel. Because Plaintiff is likely to show that Defendants have denied him the ability to meaningfully communicate with counsel before his transfer out of Oregon and that he is currently subject to potential further harm by transfer from the District of Washington, Plaintiff is likely to succeed on his claims.

1. Plaintiffs are likely to succeed on Count 1 (Fifth Amendment)

Individuals detained in immigration operations have a right to counsel that is rooted in the Due Process Clause of the Fifth Amendment. *Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1162 (D.Or. 2018); *Usubakunov v. Garland*, 16 F.4th 1299, 1303 (9th Cir. 2021) (“As we have stressed, the importance of the right to counsel ... cannot be overstated.” (cleaned up)); *Arrey v. Barr*, 916 F.3d 1149, 1157 (9th Cir. 2019) (“Both Congress and [the Ninth Circuit] have recognized the right to retained counsel as being among the rights that due process guarantees to petitioners in immigration proceedings.”); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) (The right to counsel in immigration proceedings is rooted in the [Fifth Amendment] Due Process Clause[.]”); see also *Torres v. United States Dep’t of Homeland Sec.*, 411 F. Supp. 3d 1036, 1060-61 (C.D. Cal. 2019); cf. *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (“[A]n alien who faces deportation is entitled to a full and fair hearing of his claims and a reasonable opportunity to

1 present evidence on his behalf.”). “The high stakes of a removal proceeding and
2 the maze of immigration rules and regulations make evident the necessity of the
3 right to counsel.” *Biwot*, 403 F.3d at 1098; see *Usubakunov*, 16 F.4th at 1300
4 (“Navigating the asylum system with an attorney is hard enough; navigating it
5 without an attorney is a Herculean task.”).
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8 To effectuate this right, individuals detained as part of immigration
9 enforcement efforts must be allowed to obtain and communicate with retained
10 counsel. The Ninth Circuit “has upheld mandatory injunctions designed to remedy
11 government practices when the ‘cumulative effect’ of such practices ‘was to
12 prevent [noncitizens] from contacting counsel and receiving any legal advice.’”
13 *Innovation Law Lab*, 310 F. Supp. 3d at 1162 (citing *Orantes-Hernandez*, 919 F.2d
14 549, 554, 565 (9th Cir. 1990)); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549,
15 554, 565 (9th Cir. 1990) (granting injunction because noncitizens “have a due
16 process right to obtain counsel of their choice at their own expense,” and affirming
17 injunction against government practices “the cumulative effect of which was to
18 prevent aliens from contacting counsel and receiving any legal advice,” including
19 the practice of denying visits with counsel); *Comm. of Cent. Am. Refugees v. INS*,
20 795 F.2d 1434, 1439 (9th Cir. 1986).
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Impediments to communication, including through detention in a difficult-to
access facility, can constitute a “constitutional deprivation” where they obstruct an
“established on-going attorney-client relationship.” *Comm. of Cent. Am. Refugees*,

1 795 F.2d at 1439. The cumulative effect of Defendants' pattern and practice is to
2 constrain Plaintiff access to his lawyer so much so that it blocked any meaningful
3 ability to provide advice and counsel before his transfer out of Oregon and
4 threatens to jeopardize Plaintiff's access to his counsel by further transferring him
5 out of the State of Washington.
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8 Additionally, Defendants have a policy, pattern, and practice of rapidly
9 transferring detained individuals before those individuals can obtain or
10 communicate with counsel. Locations to which detained individuals may be sent
11 include those outside the United States where access to U.S.-based counsel is
12 nearly impossible. See, e.g., *Dep't Homeland Security v. D.V.D.*, 145 S.Ct. 2153,
13 2156-57 (2025) (Sotomayor, J., dissenting) (describing Defendants' third country
14 removal practice); *Bonilla Alvarez v. Noem*, No. 25-cv-03136 (D.D.C. Sept. 28,
15 2025) (same).
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18 The practices described above undermine Plaintiff's ability to communicate
19 with his counsel and obstructs his attorney-client relationship in violation of the
20 Fifth Amendment. See *Vasquez Perdomo v. Noem*, No. 2:25 CV-05605-MEMF-
21 SP, 2025 WL 1915964, at *12 (C.D. Cal. July 11, 2025), stay of temporary
22 restraining order granted by *Noem v. Vasquez Perdomo*, 2025 WL 2585637 (S. Ct.
23 Sept. 8, 2025) (finding likelihood of success on Fifth Amendment claim where
24 immigration detainees alleged near total prohibition on attorney access).
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2. Plaintiff is Likely to Succeed on his First Amendment Claims

1 The First Amendment guarantees noncitizens the right to hire, consult, and
2 communicate with an attorney. See *Immigrant Defs. L. Ctr. v. Mayorkas*, No. 20
3 CV-9893 (JGB), 2023 WL 3149243, at *34 (C.D. Cal. March 15, 2023) (“The First
4 Amendment protects the right to hire and consult with counsel.”) (citing
5 *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (9th Cir. 2005), as
6 amended on denial of reh’g (9th Cir. July 21, 2005)) and *Eng v. Cooley*, 552 F.3d
7 1062, 1069 (9th Cir. 2009)); *Denius v. Dunlap*, 209 F.3d 944, 953 (7th Cir. 2000)
8 (“The right to hire and consult an attorney is protected by the First Amendment’s
9 guarantee of freedom of speech, association and petition.”); *DeLoach v. Bevers*,
10 922 F.2d 618, 620 (10th Cir. 1990) (“The right to retain and consult with an
11 attorney, however, implicates . . . clearly established First Amendment rights of
12 association and free speech.”); *Mercado v. Noem*, No. 25-cv-06568, 2025 WL
13 2658770, at *80 (S.D.N.Y. Sept. 17, 2025) (finding that plaintiffs were likely to
14 succeed in showing that ICE’s restrictions on attorney-client communications in a
15 New York detention facility violate the First Amendment); cf. *Doe v. ICE*, 490 F.
16 Supp. 3d 672, 694 (S.D.N.Y. 2020) (where ICE arrests in and around courthouses
17 prohibited legal services organizations from providing legal services to their clients
18 and engendered an “atmosphere of fear,” Defendants’ actions were the “functional
19 equivalent of a denial of access” to the courts).

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22 This right extends to all persons, including noncitizens who are detained and
23 imprisoned. See *Pell v. Procunier*, 417 U.S. 817, 822 (1974) (recognizing that all
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1 persons, including prisoners, have First Amendment rights); Torres, 411 F. Supp.
2 3d at 1061-62 (finding class of immigration detainees had adequately alleged First
3 and Fifth Amendment violation where contact with counsel was subject to
4 significant restrictions in terms of timing, duration, access to confidential space,
5 and promptness). Plaintiff was deprived of his right to consult with counsel prior to
6 his transfer out of that district. Plaintiff is now threatened with transfer out of the
7 District of Washington and seeks this Court's ruling to prohibit said transfer which
8 would further erode his right to counsel.
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12 **3. Plaintiff is likely to succeed on Count 4 (Violation of APA and INA)**
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14 In keeping with the right to counsel guaranteed by the Fifth and First
15 Amendments, the INA guarantees noncitizens the right to counsel in connection
16 with inadmissibility and deportability proceedings. 8 U.S.C. § 1362; 8 U.S.C. §
17 1229a(b)(4)(A); see also Colmenar, 210 F.3d at 971.
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19 This right— “integral to the INA's foundation,” *id.* at 1060—is “protected as
20 an incident of the right to a fair hearing under the Due Process Clause of the Fifth
21 Amendment.” *Gomez-Velazco v. Sessions*, 879 F.3d 989, 993 (9th Cir. 2018).
22 Given the “grave consequences of removal,” “[t]he right to counsel is a particularly
23 important procedural safeguard.” *Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171, 180-
24 81 (3d Cir. 2010).
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“In creating a statutory right to counsel, Congress recognized that aliens have a great deal at stake in removal proceedings and acknowledged the

1 importance of representation by an attorney in those proceedings.” Baltazar-
2 Alcazar v. I.N.S., 386 F.3d 940, 944 (9th Cir. 2004)

3 See Rios-Berrios v. INS, 776 F.2d 859, 862 (9th Cir. 1985) (requiring that
4 individuals in removal proceedings be provided reasonable time to locate counsel
5 and that counsel be provided reasonable time to prepare for any hearing).

6 For the right to counsel to be effective, access to counsel must be
7 “meaningful”— noncitizens must thus be provided “the right to contact counsel
8 and the time, space, and ability to consult with counsel safely and confidentially.”
9 Immigrant Defs. L. Ctr. v. Noem, 781 F. Supp. 3d 1011, 1050 (C.D. Cal. 2025).
10 Immigration officials have an obligation to “protect the right, including providing
11 notice of the right,” and a non-citizen’s custodians may not “effectively block
12 access to counsel.” Torres, 411 F. Supp. 3d at 1061.

13 Under the Administrative Procedure Act (“APA”), a court “shall . . . hold
14 unlawful . . . agency action” that is “not in accordance with law;” “contrary to
15 constitutional right;” “in excess of statutory jurisdiction, authority, or limitations;”
16 or “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A)-(D).
17 For all of the reasons explained above, Plaintiff is likely to succeed in showing that
18 Defendants’ policy and practice of impeding access to counsel is “final agency
19 action” that is in excess of statutory authority because it violates the INA’s right to
20 counsel. See 5 U.S.C. §§ 704, 706(2)(C).
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B. Plaintiff will likely suffer irreparable harm if not granted temporary relief.

1 “It is well established that the deprivation of constitutional rights
2 ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d
3 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
4 Similarly, “[t]he loss of First Amendment freedoms, for even minimal periods of
5 time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347,
6 373 (1976).
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9 **C. The balance of the equities and public interest factors tip sharply in favor**
10 **of preliminary relief.**
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12 When the alleged action by the government violates federal law, the public
13 interest factor generally weighs in favor of the plaintiffs. See *Valle del Sol Inc. v.*
14 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). As the Ninth Circuit has observed,
15 “[a] plaintiff’s likelihood of success on the merits of a constitutional claim also tips
16 the merged third and fourth factors decisively in his favor.” *Baird v. Bonta*, 81
17 F.4th 1036, 1036 (9th Cir. 2023). Moreover, “it is always in the public interest to
18 prevent the violation of a party’s constitutional rights,” *Am. Beverage Ass’n v. City*
19 *& Cnty. Of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019) (quoting *Melendres*,
20 695 F.3d at 1002); see also *Baird v. Bonta*, 81 F.4th at 1036, and the government
21 suffers no harm from a court order that simply ensures that constitutional standards
22 are upheld, see *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013);
23 *Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 727
24 (9th Cir. 1983). The balance of the equities and public interest factors thus tip
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1 sharply in favor of temporary emergency relief to prevent ongoing irreparable
2 harm to Plaintiff.
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4 Counsel acknowledges relying in a substantial manner on the pleadings filed
5 in case number 6-25-cv-01906-AA in Eugene District Court of Oregon in the case
6 of Clear Clinic and Pineros y Campesinos Unidos Del Noroeste in preparing this
7 Temporary Restraining order.
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9 **V. Conclusion**
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11 For the foregoing reasons, Plaintiff respectfully requests that this Court
12 immediately enter an order to restrain Defendants from transferring him out of the
13 district; and, to order Defendants to enable Plaintiff to receive access to counsel
14 while in Defendants' custody. After entering the restraining order, Plaintiffs
15 respectfully request that the Court order Respondents to respond to this Motion by
16 10/30/2025; allow Petitioner to file a reply by 11/03/2025; and hold a hearing by
17 11/04/2025, subject to the Court's availability.
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22 Dated this 26th day of October, 2025
23

24 Respectfully Submitted,

25 /s/Brian Patrick Conry
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