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Attorney for Plaintiff

DETAINED

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

Deng Peter Makuey,

Plaintiff,

v.

Bruce Scott, *et al.*;

Respondents.

CASE NO.: 2:25-cv-2135

**MOTION FOR TEMPORARY
RESTRAINING ORDER
AND STAY OF REMOVAL**

AGENCY FILE NO: A 

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND STAY OF REMOVAL**

I. Motion

1. Under FRCP 65 and 5 U.S.C. §705, the plaintiff moves this Court for an Temporary Restraining Order and Stay of Removal, preventing his removal from the United States to any country other than South Sudan or Ethiopia and preventing his transfer to another detention facility while these proceedings are pending.

1 **II. Basis for Motion**

2 2. The petitioner, Mr. Deng Peter Makuey (“Mr. Makuey” or “Petitioner”), is a
3 native of South Sudan, but was born in a refugee camp in Ethiopia and is therefore stateless.

4 3. In his habeas petition, Mr. Makuey seeks release from confinement and
5 protection from removal because his Order of Supervision was unlawfully revoked by ICE,
6 which failed to follow the proper procedure as set forth in the applicable regulations, and in
7 violation of Mr. Makuey’s right to due process of law under the U.S. Constitution.

8 4. Mr. Makuey was issued an Order of Supervision (“OSUP”) in July 2012, which
9 was reissued in May 2024, and had been reporting regularly to ICE for 13 years when ICE
10 suddenly revoked his OSUP without notice or cause.

11 5. Mr. Makuey has been detained at the Northwest ICE Processing Center in
12 Tacoma, Washington, since July 14, 2025. The Northwest ICE Processing Center is a
13 privately-owned and operated immigration detention center run by the GEO Group, a private
14 contractor for Immigration and Customs Enforcement.

15
16 **III. Argument**

17 ***A. Standards for Temporary Restraining Order***

18 6. To grant a Temporary Restraining Order, the plaintiff must meet one of two
19 tests. The more recent test, known as the *Winter* test, requires the plaintiff to prove as follows:

- 20 [1] that he is likely to succeed on the merits,
21 [2] that he is likely to suffer irreparable harm in the absence of
preliminary relief,

1 [3] that the balance of equities tips in his favor, and
2 [4] that an injunction is in the public interest.

3 *Sherley v. Sibelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (alteration in original, quoting *Winter*
4 *v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). “The same standard applies to both
5 temporary restraining orders and to preliminary injunctions.” *Sterling Commercial Credit-*
6 *Michigan, LLC v. Phoenix Industries I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011) (quoting
7 *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009)).

8 7. The traditional test, which remains viable in the Ninth Circuit, is known as the
9 “sliding scale” test and requires the plaintiff to prove “serious questions going to the merits”
10 and “a hardship balance that tips sharply toward the plaintiff.” *Alliance For The Wild Rockies*
11 *v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011). As under the *Winter* test, the plaintiff must also
12 show a likelihood of irreparable injury and that the injunction is in the public interest. “Under
13 this approach, the elements of the preliminary injunction test are balanced, so that a stronger
14 showing of one element may offset a weaker showing of another.” *Alliance For The Wild*
15 *Rockies*, 632 F.3d at 1131.

16 8. Mr. Makuey meets both of these tests.

17 ***B. Mr. Makuey is likely to succeed on the merits and has raised serious legal questions.***

18 9. As the Petition sets out, the revocation of Mr. Makuey’s OSUP by ICE without
19 proper notice and absent regulatory and legal processes for such revocation violated Mr.
20 Makuey’s Fifth Amendment right to substantive and procedural due process under the U.S.
21 Constitution. When Respondents revoked the order of supervision, Petitioner had complied

1 with every condition of the order and ICE had not secured necessary travel documents
2 for removal. No change in circumstances warranted the order's revocation. Petitioner's
3 detention therefore does not bear a reasonable relationship to the two regulatory purposes of
4 immigration detention: preventing danger to the community or flight prior to removal.

5 Because Respondents had no legitimate, non-punitive objective in revoking Petitioner's order
6 of supervision, Petitioner's detention violates substantive due process under the Fifth
7 Amendment to the U.S. Constitution.

8 10. The revocation of Mr. Makuey's OSUP also violated the Administrative
9 Procedure Act, it was contrary to law and Mr. Makuey's constitutional rights, and an arbitrary
10 and capricious action by the Agency. 5 U.S.C. § 706(2)(A), (B), (C). Furthermore, as Mr.
11 Makuey's petition for writ of habeas corpus explains in more detail, the revocation was done
12 by ICE in excess of their statutory authority, and is an ultra vires action by the Agency and in
13 violation of the *Accardi* doctrine.

14 11. Because his detention is unlawful, Mr. Makuey is likely to succeed on the
15 merits, as *Winter* requires, and he has raised serious legal questions, as the sliding scale test
16 requires.

17 **C. *Mr. Makuey faces irreparable harm, and a hardship balance tips sharply toward him.***

18 12. Mr. Makuey faces substantial hardships and irreparable harm if he is removed
19 from the United States to a third country where he may not speak the language, does not have
20 any family, friends or community, has not means of financially supporting himself, and could
21 face serious human rights abuses.

1 13. Mr. Makuey, who is 32 years old, has lived in the United States for most of his
2 life, since the age of 7 or 8, and continuously for about 24 years.

3 14. ICE previously found him not to be a flight risk or danger to the community,
4 and twice issued an OSUP for him, in 2012 and 2024. While he has significant criminal
5 history, ICE was fully aware of that criminal history when it reissued his OSUP in May 2024.
6 Furthermore, Mr. Makuey has been sober since June 23, 2018, the date of his last criminal
7 arrest and has, since that date done, done everything in his power to rehabilitate himself and
8 become a productive member of society, as more fully discussed in the Petition.

9 15. For 13 years, Mr. Makuey consistently complied with all conditions of the
10 OSUP, including attending periodic check-ins with ICE.

11 16. ICE re-issued Mr. Makuey's Order of Supervision on May 1, 2024, and no
12 circumstances have changed since the reissuance that make him a flight risk or danger to the
13 community.

14 17. But at a regularly scheduled check-in with ICE on July 14, 2025, ICE
15 suddenly revoked Mr. Makuey's order of supervision and arrested him.

16 18.

17 19. Despite no derogatory changes in his circumstances and his laudable efforts to
18 rehabilitate himself and build a stable life for himself, Mr. Makuey has been swept up in the
19 current dragnet to detain and deport immigrants. He has been placed in detention, forced into
20 constant fear over what his future now holds, and placed at risk of imminent removal to a
21 third country. If he is removed, he will suffer the irreparable harm of separation from his

1 family, his home, his support network, and the only life he has known for nearly than twenty-
2 four years, in addition to the hardships previously described above.

3 20. Likewise, if Mr. Makuey is transferred to another detention facility during the
4 pendency of these proceedings, he will lose contact not only with his family and support
5 network, but also with his attorneys in Seattle, Washington. Already he has been placed about
6 165 miles from his home. Any further transfer will severely impair, if not cut, his ties with his
7 legal and social supports.

8 ***D. The balance of equities tips in favor of Mr. Makuey, and an injunction is in the***
9 ***public interest.***

10 21. The remaining two factors for an injunction are the same under both legal tests,
11 and they both favor Mr. Makuey.

12 22. As to the balance of equities, although Mr. Makuey will suffer great harm if he
13 is removed or transferred, the Defendants will suffer no harm if he is not removed to a third
14 country or transferred to another detention facility. The Defendants have already twice
15 determined that Mr. Makuey is not a flight risk or danger to his community. The
16 government's only potential counterargument is that they have an interest in the law being
17 enforced, but that is the same interest Mr. Makuey has. He would like the government to
18 follow its own policies and regulations regarding revocation of OSUP. It is also in the public
19 interest for the government to follow its own laws.

20 23. Further, this administration is developing a pattern of removing individuals
21 from the United States without providing proper process and without allowing them access to

1 federal review, sometimes to third countries where the individual has no ties and which have
2 atrocious human rights records. That is exactly what Defendants will accomplish if they are
3 permitted to remove Mr. Makuey. Mr. Makuey seeks the opportunity to access the laws that
4 were passed by Congress and the regulations that were promulgated by the very agencies that
5 now seek to overstep.

6
7 **IV. Conclusion**

8 Under FRCP 65, the petitioner moves this Court to issue an Emergency Temporary
9 Restraining Order and Stay of Removal:

10 1. Enjoining and restraining the Respondents and all of their respective officers,
11 agents, servants, employees, attorneys and persons acting on their behalf in
12 concert or in participation with them from:

- 13 a. Removing or deporting Mr. Makuey from the United States to any
14 countries other than South Sudan or Ethiopia while these proceedings
15 are pending;
16 b. Transferring Mr. Makuey from the Northwest ICE Processing Center
17 to any other facility during the pendency of these proceedings.

18
19 WHEREFORE, for the reasons set forth in his Petition for Writ of Habeas Corpus, and
20 in this Motion, the Petitioner respectfully requests this Court:

21
PETITIONER'S MOTION FOR
TRO AND STAY OF REMOVAL

Case No.: 2:25-cv-2135

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- 1 1. Grant this Emergency Motion for Temporary Restraining Order and Stay of
2 Removal today, October 29, 2025;
- 3 2. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary
4 Restraining Order and Stay of Removal today; and
- 5 3. Grant such other and further relief as justice may require.

6
7 Dated this 29th day of October, 2025.

8 /s/ Minda A. Thorward

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