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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Moises David BONILLA MEJIA,  
  
Petitioner,

v.

Cammilla WAMSLEY, Seattle Field Office  
Director, Enforcement and Removal  
Operations, United States Immigration and  
Customs Enforcement (ICE); Bruce SCOTT,  
Warden, Northwest ICE Processing Center;  
Kristi NOEM, Secretary, United States  
Department of Homeland Security; Pamela  
BONDI, U.S. Attorney General; UNITED  
STATES DEPARTMENT OF HOMELAND  
SECURITY,  
  
Respondents.

Case No. \_\_\_\_\_

**EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

Note on Motion Calendar:  
November 4, 2025

**INTRODUCTION**

Petitioner Moises David Bonilla Mejia seeks an emergency temporary restraining order (TRO) enjoining Respondents from removing him, or transferring him from this district, when he does not have a final removal order and before a full and fair hearing on his application for asylum, withholding, and relief under the Convention Against Torture. Respondents have

1 informed Mr. Bonilla’s immigration counsel that his removal is imminent, even though he was  
2 taken into custody only yesterday.<sup>1</sup>

3 **STATEMENT OF FACTS**

4 Petitioner Moises David Bonilla Mejia entered the United States with his wife and minor  
5 children on or about March 29, 2024, and they were apprehended by U.S. Customs and Border  
6 Patrol (CBP). The family was released from ICE custody with a Notice to Appear in the Seattle  
7 Immigration Court on June 11, 2024.

8 Mr. Bonilla and his family were enrolled in the Intensive Supervision Appearance  
9 Program (ISAP). To their knowledge, they have complied with all ISAP appointments, both by  
10 telephone and in person.

11 Mr. Bonilla and his family submitted I-589 applications for asylum and related relief on  
12 October 3, 2024. Mr. Bonilla appeared for all required initial hearings before the Immigration  
13 Judge.

14 On June 16, 2025, Mr. Bonilla and his family were scheduled for their individual, merits  
15 hearing on their applications for asylum, withholding of removal, and relief under the  
16 Convention Against Torture, at the Seattle Immigration Court. However, due to a number of  
17 exceptional circumstances, including the illness of one of their children the night before,  
18 unexpected lack of childcare, heavy traffic due to the influx of tourists for the FIFA Club World  
19 Cup held that week in Seattle, and the presence of community protesters outside the Seattle  
20 Immigration Court, the family arrived late to their scheduled hearing. The family asserts that  
21 they arrived 12 minutes late to the courtroom – after delays in passing through security – to find  
22 the door to the Court closed. When they sought out and talked to the Clerk of the Court, they  
23 were told they were “too late” and were instructed to file a motion to reopen. The Immigration  
24  
25

26 <sup>1</sup> Counsel certifies that they are providing notice of the habeas petition and this motion  
27 to the U.S. Attorney’s Office for the Western District of Washington via email concurrently with  
this filing.

1 Judge asserts that he started the *in absentia* hearing 16 minutes after the scheduled time and  
2 ordered the family removed.

3 On July 18, 2025, Mr. Bonilla and his family timely filed a motion to rescind and reopen,  
4 citing the exceptional circumstances that caused their tardiness and arguing that their brief  
5 tardiness should not be considered a failure to appear.

6 On July 29, 2025, the IJ denied the motion to reopen. Mr. Bonilla and his family filed a  
7 timely appeal, received by the Board of Immigration Appeals on August 20, 2025, which remains  
8 pending as of the date of this petition.

9 On November 3, 2025, Mr. Bonilla presented himself at the ISAP office at 14220  
10 Interurban Ave S, Tukwila, WA 98168 and was taken into ICE custody. Mr. Bonilla's two minor  
11 children, ages 5 and 6, were with him at the time of his arrest.

12 After being taken into custody, Mr. Bonilla and his family filed a motion to stay removal  
13 that was received at the BIA on November 3, 2025. No decision has yet been made by the BIA,  
14 though counsel has informed the Board of the imminent risk of removal.

15 On November 4, 2025, Mr. Bonilla's immigration counsel learned from ICE that Mr.  
16 Bonilla was detained at the NWIPC. In response to counsel's inquiry about whether Mr.  
17 Bonilla's removal was imminent, a deportation officer responded that there are three flights that  
18 leave regularly every week from the NWIPC, and that any legal work needed to be done as soon  
19 as possible.

20 As of the filing of the instant motion, to undersigned counsel's knowledge and belief, Mr.  
21 Bonilla remains detained at the NWIPC in Tacoma, Washington.

## 22 ARGUMENT

23 On a motion for a TRO, the movant "must establish that he is likely to succeed on the  
24 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
25 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat.*  
26 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*,  
27 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are

1 “substantially identical”). A TRO may issue where “serious questions going to the merits [are]  
2 raised and the balance of hardships tips sharply in [plaintiff’s] favor.” *All. for the Wild Rockies v.*  
3 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the “serious  
4 question” test, Petitioners must also show that they are likely to suffer irreparable injury and that  
5 an injunction is in the public’s interest. *Id.* at 1132.

6 The Federal District Court has jurisdiction over these claims because Mr. Bonilla is not  
7 contesting the validity of his order of removal, but rather the agency’s intent to remove him  
8 before the removal order is final. *See Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007) (where  
9 agency action is not encompassed within a final order of removal, the circuit court lacks  
10 jurisdiction and district court review under habeas or APA is the remedy); *Ali v. Gonzales*, 421  
11 F.3d 795, 797 n.1 (9th Cir. 2005) (District Court has jurisdiction over case so long as the actual  
12 order of removal is not challenged, even if petitioner is challenging physical removal); *see Aden*  
13 *v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (“To resolve petitioner’s arguments, the  
14 Court does not need to review the removal order.”). Federal courts may stay the status quo until  
15 the court has had adequate opportunity to assess circumstances at issue. *See United States v.*  
16 *United Mine Workers of Am.*, 330 U.S. 258, 290 (1947). These principles have been applied in  
17 the immigration context. *See Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1157 (C.D. Cal. 2018);  
18 *Nken v. Holder*, 556 U.S. 418, 434 (2009).

19 **I. Petitioners are likely to succeed on the merits of their petition.**

20 Respondents’ intent to remove Petitioner before he has a final order of removal violates  
21 the INA. It is axiomatic that a person may not be removed while a stay is in place and until his or  
22 her removal order is administratively final. 8 U.S.C. § 1231(a)(1)(B) (“The removal period  
23 begins on the latest of the following: ... (i) The date the order of removal becomes  
24 administratively final.”); *see also* 8 C.F.R. § 208.5 (no removal pending asylum adjudication).  
25 While the agency has long treated an *in absentia* order as a final order of removal when issued  
26 by the IJ, with an administrative stay only available when a motion to rescind is pending before  
27 an IJ, the Ninth Circuit in 2021 rejected the agency’s finality reasoning in a precedent decision,

1 *Cui v. Garland*, 13 F.4th 991, 996 (9th Cir. 2021). *Cui* held that an *in absentia* removal order  
2 does not become final until the 180 day period to file a motion to reopen runs or until the *Board*  
3 issues a final order.

4 The Ninth Circuit’s finality analysis in *Cui* is based on the plain language of the statute  
5 defining final orders, 8 U.S.C. § 1101(a)(47)(B). Under the statute, a removal order does not  
6 become final until either a determination by the BIA, or when the time to appeal to the BIA has  
7 run. *Id.* Because the Board has previously held that the only avenue to challenge an *in absentia*  
8 removal order, and to receive BIA review, is first on a motion to reopen and rescind to the IJ, the  
9 Ninth Circuit concluded that an *in absentia* order is not final until the 180 days to file such a  
10 motion has run, or until the Board makes a decision on a denied motion to reopen. *See Cui*, 13  
11 F.4th at 996. Because Petitioner’s motion to rescind and reopen is still pending before the BIA,  
12 his removal order is not final.

13 The Ninth Circuit’s interpretation of the unambiguous statutory language controls over  
14 the prior competing agency regulatory interpretation at 8 C.F.R. § 1241.1(e) (in absentia order  
15 final on issuance by IJ). *See Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 849 n.9  
16 (1984); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024). *Cui* did not discuss or defer  
17 to this regulation because it found the statutory language was clear and gave effect to the plain  
18 language. Thus, under *Cui*, because an *in absentia* removal order is not final until the time to  
19 reopen and appeal to the Board has run, or until the Board has decided the motion to reopen, the  
20 execution of the removal order is stayed until the BIA decides or the time to appeal has passed.  
21 *See* 8 U.S.C. § 1231(a)(1); 8 C.F.R. § 1003.6(a).

22 Respondents’ intent to remove Petitioner also violates the Due Process Clause. To  
23 determine whether a due process violation occurs in removal proceedings, a court must ask  
24 whether “(1) the proceeding was so fundamentally unfair that the [noncitizen] was prevented  
25 from reasonably presenting his case,” and whether “(2) the [noncitizen] [has] demonstrate[d]  
26 prejudice, which means that the outcome of the proceeding may have been affected by the  
27

1 alleged violation.” *Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620-21 (9th Cir. 2006) (internal  
2 quotation marks omitted). Petitioner satisfies both inquiries.

3 Respondents’ actions bar Petitioner from presenting his case. Because he cannot be  
4 granted asylum while outside the U.S. and while in hiding in his home country, absent this TRO  
5 he would be absolutely deprived of a full and fair hearing on his asylum claim. *See Colmenar v.*  
6 *INS*, 210 F.3d 967, 971 (9th Cir. 2000) (an individual “who faces deportation is entitled to a full  
7 and fair hearing of his claims and a reasonable opportunity to present evidence on his behalf.”).  
8 Petitioner is ineligible for asylum if he is not physically present in the U.S. 8 U.S.C. §§  
9 1101(a)(42), 1158(a)(1). Even if he were eligible to pursue asylum while in Honduras, his  
10 removal before a hearing on his claim would render his right to present testimony and evidence  
11 meaningless. *See Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (IJ must provide a  
12 reasonable opportunity to present evidence). Absent an order requiring Defendants to facilitate  
13 their return, Plaintiff is denied due process.

14 As this Court recently explained in *E.A. T.-B.*, the three-factor test established in *Mathews*  
15 *v. Eldridge*, 424 U.S. 319 (1976), is the controlling framework for determining what process  
16 Petitioner is due. *E.A. T.-B.*, 2025 WL 2402130, at \*3. *Mathews* requires the Court to evaluate (1)  
17 “the private interest that will be affected by the official action”; (2) “the risk of an erroneous  
18 deprivation of such interest through the procedures used, and the probable value, if any, of  
19 additional or substitute procedural safeguard” and (3) “the Government’s interest, including the  
20 function involved and the fiscal and administrative burdens that the additional or substitute  
21 procedural requirement would entail.” 424 U.S. at 335; *see also Ramirez Tesara*, 2025 WL  
22 2637663, at \*2–4 (applying *Mathews* factors to assess right to pre-deprivation hearing);  
23 *Morrissey v. Brewer*, 408 U.S. 471, 482–84 (1972) (assessing parolee’s liberty interests and the  
24 state’s interests to determine what process is due a parolee). Here, those factors strongly favor  
25 Petitioner.

26 A. Petitioner has a Weighty Private Interest.

1 Petitioner has an exceptionally strong interest in remaining in the U.S. with his wife and  
2 minor children. He also has a strong interest in his right to remain in the U.S. pending  
3 adjudication of his asylum claim, and in his right to reside here until he has a final order of  
4 removal. He also has a liberty interest in the full and fair consideration of his claim for asylum.

5 **B. The Risk of Erroneous Deprivation Is High.**

6 The risk of an erroneous deprivation of his interests is high. If denied a TRO, he will be  
7 removed to the very country from which he sought asylum, in this case without *any* hearing on  
8 the danger he faces in that country. He will be separated from his wife and children, and he will  
9 be denied an opportunity to have his asylum claim adjudicated. For these reasons, the risk of an  
10 erroneous deprivation is high.

11 **C. The Government's Interest Is Minimal.**

12 Finally, the government's interest in removing Mr. Bonilla prior to a final order is  
13 minimal. First, the government has no legitimate interest in violating the statute by removal  
14 individual before their removal is final. Second, the government's interest in the potential timing  
15 of removal is minimal. Should Mr. Bonilla ultimately be denied asylum or have his motion to  
16 rescind denied, the government may lawfully remove him at that point.

17 In sum, Petitioner is able to demonstrate that he has a protected interest in remaining in  
18 the U.S. to pursue his asylum case, and that statute and due process requires that he not be  
19 removed when he does not have a final removal order and has not been granted an opportunity  
20 for a full and fair hearing on his asylum claim.

21 **II. Petitioner will suffer irreparable harm absent an injunction.**

22 Petitioner must also show he is "likely to suffer irreparable harm in the absence of  
23 preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there  
24 is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*,  
25 757 F.3d 1053, 1068 (9th Cir. 2014).

26 Here, Petitioner's unlawful removal is an irreparable injury. If removed, he would be  
27 effectively denied the opportunity to apply for asylum – having been removed to the very

1 country from which he sought protection. His detention and removal also inflicts substantial  
2 harm on Mr. Bonilla by separating him from his wife and children. Absent a TRO, Mr. Bonilla  
3 has no hope of being reunited with his wife and children. Such separation from family members  
4 is an important irreparable harm factor. *See Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir.  
5 2017) (per curiam) (finding “separated families” to be a “substantial injur[y] and even  
6 irreparable harm[ ]”).

7 In sum, the unlawful deprivation of liberty to which Petitioner is subject causes him  
8 direct and immediate irreparable harm that warrant a TRO.

9 **III. The balance of hardships and public interest weigh heavily in Petitioner’s favor.**

10 The final two factors for a TRO—the balance of hardships and public interest—“merge  
11 when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here,  
12 Petitioners face weighty hardships: loss of liberty, deprivation of the right to remain in the U.S.  
13 pending an asylum application, deprivation of the right to apply for asylum, and separation from  
14 his family. The government, by contrast, faces no hardship as to Petitioner, as all it must do is  
15 permit Mr. Bonilla to continue to pursue his asylum application pending a decision by the BIA.  
16 What is more, “the public interest benefits from an injunction that ensures that individuals are  
17 not deprived of their liberty and held in immigration detention because of . . . a likely [illegal]  
18 process.” *Id.* Indeed, “in cases involving a constitutional claim, a likelihood of success on the  
19 merits . . . strongly tips the balance of equities and public interest in favor of granting a  
20 preliminary injunction.” *Baird*, 81 F.4th at 1048.

21 Accordingly, the balance of hardships and the public interest favor a temporary  
22 restraining order to ensure that Respondents refrain from removing Mr. Bonilla from the U.S., or  
23 transfer him outside of this jurisdiction.

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**CONCLUSION**

For the foregoing reasons, Petitioners respectfully request the Court grant their motion for a temporary restraining order.

Respectfully submitted this 4th day of November, 2025.

s/ Christopher Strawn  
Christopher Strawn  
WSBA No. 32243

NORTHWEST IMMIGRANT RIGHTS PROJECT  
615 Second Ave., Suite 400  
Seattle, WA 98104  
(206) 957-8611

*Counsel for Petitioners*

**WORD COUNT CERTIFICATION**

I certify that this memorandum contains 2,760 words, in compliance with the Local Civil Rules.

s/ Christopher Strawn

Christopher Strawn, WSBA No. 32243  
Northwest Immigrant Rights Project  
615 Second Ave., Ste 400  
Seattle, WA 98104  
(206) 957-8628  
amanda@nwirp.org