

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

P.T.,)	
)	Case No. 2:25-cv-2249
Petitioner,)	
)	PETITIONER’S MOTION FOR
v.)	TEMPORARY RESTRAINING
)	ORDER
)	
Laura Hermosillo, et al.,)	ORAL ARGUMENT REQUESTED
)	
)	Noted for consideration:
Respondents.)	November 11, 2025
)	

I. INTRODUCTION

Petitioner, an asylum applicant with no criminal history, who was initially detained and released on his own recognizance on January 30, 2023, was unlawfully re-detained by Respondents on November 8, 2025, in Portland, Oregon. In re-detaining Petitioner, Respondents violated Petitioner’s right to Due Process by failing to conduct a pre-deprivation hearing to determine if there are changed circumstances since Petitioner’s initial release on recognizance that would support an individualized determination that Petitioner is a flight risk or danger to the community.

1 Petitioner is not a flight risk or danger to the community. Petitioner is an asylum applicant
2 from India, with no criminal record, who is awaiting his asylum hearing, scheduled for October
3 11, 2028, in Portland, Oregon.

4 Because Petitioner is likely to succeed on the merits of the petition, is suffering irreparable
5 harm, and the balance of equities and public interest tip strongly in his favor, the Court should
6 order Respondents to immediately release Petitioner, return his immigration case to the Portland,
7 Oregon immigration court, and restore the status quo ante. *See E.A. T.-B. v. Wamsley*, No. C25-
8 1192-KKE, 2025 WL 2402130, at *2 (W.D. Wash. Aug. 19, 2025), *Rosado v. Figueroa*, No. 25-
9 cv-2157, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at
10 33); *Lopez Benitez v. Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt.
11 #14, Opinion and Order at 29-31).

14 II. FACTS

15 On January 30, 2023, Petitioner was detained by customs and border patrol officers near
16 San Luis, Arizona. The same day, Petitioner was served a notice to appear placing him in removal
17 proceedings under 8 U.S.C. § 1229a, and he was released on his own recognizance pursuant to 8
18 U.S.C. § 1226(a) and 8 CFR § 1236.1(c)(8). On February 14, 2023, Petitioner appeared at the ICE
19 office in Portland, Oregon, where he received a form I-220A order of release on recognizance and
20 personal report record. Petitioner continued to check in as instructed.

21 On November 16, 2023, Petitioner filed an I-589 application for asylum through the
22 immigration court's online system. On December 8, 2023, Petitioner attended a biometrics
23 appointment at the USCIS office in Portland, Oregon. Petitioner has no criminal record.
24

1 On October 17, 2024, the immigration court in Portland, Oregon scheduled Petitioner's
2 asylum hearing for October 11, 2028.

3 On November 8, 2025, Petitioner was detained by ICE officers in Portland, Oregon, and
4 transferred to the Northwest ICE Processing Center in Tacoma, Washington.
5

6 7 **III. LEGAL STANDARD**

8 The standard for issuing a temporary restraining order (TRO) is the same as the standard
9 for issuing a preliminary injunction. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434
10 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only be awarded upon
11 a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*,
12 555 U.S. 7, 24 (2008). "The proper legal standard for preliminary injunctive relief requires a party
13 to demonstrate: (1) 'that he is likely to succeed on the merits, (2) that he is likely to suffer
14 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his
15 favor, and (4) that an injunction is in the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d
16 1109, 1127 (9th Cir. 2009) (*citing Winter*, 555 U.S. at 20).
17
18

19 Alternatively, a preliminary injunction is appropriate if "serious questions going to the
20 merits were raised and the balance of the hardships tips sharply in the plaintiff's favor," thereby
21 allowing preservation of the status quo when complex legal questions require further inspection or
22 deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011).
23

24 **IV. ARGUMENT**

25 **A. Petitioner is likely to succeed on the merits of his habeas petition.**

26
27 PET'R'S MOT. FOR TEMPORARY RESTRAINING
ORDER - 3
CASE NO. 2:25-CV-2249
28

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 SECOND AVENUE, SUITE 400
SEATTLE, WA 98104
TEL. (206) 957-8611

1 “No person shall be ... deprived of life, liberty, or property, without due process of law.”
2 U.S. Const. amend. V. The right to due process of law applies to all persons in the United States
3 regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).
4

5 To be lawful, civil immigration detention requires a valid purpose. In general, courts have
6 recognized two valid purposes for immigration detention – 1) flight risk and 2) danger to the
7 community. *See Zadvydas*, 533 U.S. at 690-691. Immigration detention may not be used as
8 punishment. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896). Fulfilling a daily arrest quota
9 is not a valid purpose for detaining a noncitizen. Respondents are violating Petitioner’s due
10 process rights by detaining him without a valid purpose and without a pre-detention procedure to
11 determine flight risk or danger to the community.
12

13 Procedurally, to determine what procedures are constitutionally necessary to protect a
14 liberty interest, courts generally apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S.
15 319 (1976). *See E.A. T.-B. v. Wamsley*, No. C25-1192-KKE, 2025 WL 2402130, at *3 n.1 (W.D.
16 Wash. Aug. 19, 2025) (collecting cases). The *Mathews* test requires balancing the private interest
17 affected by government action, the risk of an erroneous deprivation through the procedures used
18 and the probable value of additional safeguards, and finally the government interest, including the
19 function and the burden of additional measures. *Mathews*, 424 U.S. at 335. “[D]ue process
20 requires the government to identify some interest beyond its own administrative practices to justify
21 depriving an individual of her liberty without any pre-deprivation protections. Detention for its
22 own sake, to meet an administrative quota, or because the government has not yet established
23 constitutionally required pre-detention procedures is not a legitimate government interest. *Pinchi*
24
25
26 *v. Noem*, 5:25-cv-05632-PCP *10 (N.D. Cal. Jul 24, 2025).

27 PET’R’S MOT. FOR TEMPORARY RESTRAINING
ORDER - 4
28 CASE NO. 2:25-CV-2249

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 SECOND AVENUE, SUITE 400
SEATTLE, WA 98104
TEL. (206) 957-8611

1 Once a noncitizen has satisfied a DHS officer that he is not a flight risk or danger to the
2 community and he is released from immigration custody, he may not be re-detained absent an
3 individualized determination that circumstances have changed to such an extent that the noncitizen
4 may now constitute a flight risk or danger to the community. *See Saravia v. Sessions*, 280
5 F.Supp.3d 1168, 1176 (N.D. Cal. 2017), *aff'd sub nom. Saravia for A.H. v. Sessions*, 905 F.3d 1137
6 (9th Cir. 2018); *Ortiz Calderon v. Kaiser*, 25-cv-06695-AMO (N.D. Cal. Aug 22, 2025),
7 [https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-cand-](https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695/USCOURTS-cand-3_25-cv-06695-1)
8 [3_25-cv-06695-1](https://www.govinfo.gov/app/details/USCOURTS-cand-3_25-cv-06695-1); *Panosyan v. Mayorkas*, 854 F. App's 787, 788 (9th Cir. 2021) ("Thus, absent
9 changed circumstances ... ICE cannot redetain Panosyan.").
10

11 Here, Respondents first determined that Petitioner was not a flight risk or a danger to the
12 community and released him on his own recognizance on January 30, 2023. *See* 8 CFR §
13 1236.1(c)(8). At that point, Petitioner had a protected liberty interest in being free from detention.
14 *See Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019).
15

16 In re-detaining Petitioner on November 8, 2025, Respondents did not make a pre-
17 deprivation, individualized determination that circumstances have changed such that Petitioner is
18 either a flight risk or a danger to the community. Respondents violated Petitioner's constitutionally
19 protected liberty interest by unlawfully detaining him on November 8, 2025. *See Ramirez Terra*
20 *v. Wamsley*, --- F. Supp. 3d ---, No. 2:25-cv-01723-MJP-TLF, 2025 WL 2637663, at *3-4 (W.D.
21 Wash. Sept. 12, 2025); *E.A. T.-B. v. Wamsley*, --- F. Supp. 3d ---, No. C25-1192-KKE, 2025 WL
22 2402130, at *2-6 (W.D. Wash. Aug. 19, 2025) *Rosado v. Figueroa*, No. 25-cv-2157, 2025 WL
23 2337099 (D. Ariz. Aug. 11, 2025) (Dkt. #14, Report & Recommendation at 33); *Lopez Benitez v.*
24
25

1 *Francis*, No. 25-cv-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Dkt. #14, Opinion and
2 Order at 29-31).

3 Petitioner is not a flight risk or danger to the community. While not a true remedy for a
4 constitutional violation, ordinarily an individual detained under 8 U.S.C. § 1226(a) is able to
5 request a custody redetermination (bond) hearing before an immigration judge. 8 C.F.R. §
6 1236.1(d)(1). However, on September 5, 2025, the BIA, in a precedent decision, *Matter of Yajure*
7 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), concluded that individuals like Petitioner, who have not
8 previously been inspected and admitted or paroled, are subject to mandatory detention under 8
9 U.S.C. § 1225(b), regardless of how long the person has been in the United States. *Id.* at 227-228.
10 In so holding, the BIA misconstrued the Supreme Court’s analysis in *Jennings v. Rodriguez*, 583
11 U.S. 281, 287-288 (2018), and failed to address the temporal component of the statutory term
12 “seeking admission.” *See* 8 U.S.C. § 1225(b)(2)(A); *Lopez-Campos v. Rayfield, et al.*, Case No.
13 2:25-cv-12486, Opinion and Order Granting Writ of Habeas Corpus, 2025 WL 2496379 *15-18
14 (E.D. Mich. Aug.29, 2025). The BIA’s decision in *Yajure Hurtado* forecloses any possibility that
15 Petitioner would be granted bond by the immigration court. *Yajure Hurtado*, 29 I&N Dec. at 216
16 (“Immigration Judges lack authority to hear bond requests or to grant bond to aliens who are
17 present in the United States without admission”). As a result, prudential exhaustion should not be
18 required. *See Hernandez v. Sessions*, 872 F.3d 976, 988-989 (9th Cir. 2017) (waiving prudential
19 exhaustion requirement for BIA appeal of bond decision).

20 In short, Petitioner is unlawfully detained and there is no legal justification for his
21 continued detention. Petitioner is likely to prevail on the merits of the petition.

22 **B. Petitioner will likely suffer irreparable harm if not granted preliminary relief.**

23
24
25
26
27
28
PET’R’S MOT. FOR TEMPORARY RESTRAINING
ORDER - 6
CASE NO. 2:25-CV-2249

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 SECOND AVENUE, SUITE 400
SEATTLE, WA 98104
TEL. (206) 957-8611

1 “Freedom from imprisonment—from government custody, detention, or other forms of
2 physical restraint—lies at the heart of the liberty that Clause [Due Process] protects.” *Zadvydas*,
3 533 U.S. at 590. Petitioner is unlawfully detained, and his constitutional rights are being violated
4 each day he is held in immigration detention. This constitutes irreparable harm. *See Hernandez*
5 *v. Sessions*, 872 F.3d at 994 (“It is well established that the deprivation of constitutional rights
6 ‘unquestionably constitutes irreparable injury.’” *quoting Melendres v. Arpaio*, 695 F.3d 990, 1002
7 (9th Cir. 2012)).

9 **C. The balance of equities and the public interest tip sharply in favor of preliminary**
10 **relief.**

11
12 Petitioner has established that “the balance of the equities tip in his favor and that an
13 injunction is in the public interest” because he is a bona fide asylum seeker, he is not a flight risk,
14 and he is not a danger to the community. *See Winter*, 555 U.S. at 20. When the federal government
15 is a party, the balance of the equities and public interest factors merge. *Drakes Bay Oyster Co. v.*
16 *Jewell*, 747 F.3d 1073 (9th Cir. 2014) (*citing Nken v. Holder*, 556 U.S. 418, 435 (2009)).

17
18 The merits of the due process violations that Petitioner has raised in his habeas petition
19 further tip the public interest toward emergency relief. “Generally, public interest concerns are
20 implicated when a constitutional right has been violated, because all citizens have a stake in
21 upholding the Constitution.” *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *see also*
22 *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (concluding that “the INS cannot
23 reasonably assert that it is harmed in any legally cognizable sense by being enjoined from
24 constitutional violations”). In addition, “the public interest also benefits from a preliminary
25 injunction that ensures that federal statutes are construed and implemented in a manner that avoids

1 serious constitutional questions.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013);
2 *Index Newspapers LLC v. United States Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (“It is
3 always in the public interest to prevent the violation of a party’s constitutional rights.”).
4

5
6 **V. CONCLUSION**

7 For the foregoing reasons, Petitioner respectfully requests this Court grant his motion for
8 temporary restraining order, order his immediate release from immigration detention, and order
9 Respondents to return Petitioner’s case to the Portland, Oregon immigration court, thereby
10 maintaining the status quo ante pending resolution of these proceedings.
11

12 Respectfully submitted this 11th day of November, 2025.

13 s/ Matt Adams
14 Matt Adams, WSBA No. 28287
15 matt@nwirp.org
16 NORTHWEST IMMIGRANT RIGHTS
17 PROJECT
18 615 Second Ave., Suite 400
19 Seattle, WA 98104
20 (206) 957-8611

I certify this motion contains 1,931 words in
compliance with the Local Civil Rules.

21 Philip Smith*
22 Philip Smith, OSB No. 981032
23 Philip@visaoregon.com
24 NELSON SMITH, LLP
25 1123 SW Yamhill Street
26 Portland, OR 97205
27 (503) 224-8600

28 *Application for admission pro hac vice
forthcoming

Counsel for Petitioners

PET’R’S MOT. FOR TEMPORARY RESTRAINING
ORDER - 8
CASE NO. 2:25-CV-2249

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 SECOND AVENUE, SUITE 400
SEATTLE, WA 98104
TEL. (206) 957-8611