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UNITED STATES DISTRICT COURT

CASE SUMMARY

On July 23, 2008, the Immigration Judge granted Petitioner's, Mr. Jeffrey Nyamweya's application for Withholding Of Removal and relief under the US Convention Against Torture as to the country of Kenya. When the Immigration Judge granted withholding, he entered an alternative order of removal to "such country, other than Kenya, as may be legally permissible under section 241 of the Act." On August 27, 2008, Immigration and Customs Enforcement (ICE) placed Mr. Nyamweya, under an Order of Supervision (OSUP) after determining that ICE could not remove him during the period prescribed by law. By placing Mr. Nyamweya under OSUP, ICE implicitly determined that he was neither a flight risk or a danger to the community. Since being released under OSUP, Mr. Nyamweya has lived at liberty for seventeen (17) years while complying with all reporting requirements, and connecting with his loved ones, including a US citizen and lawful permanent resident brothers. He also applied for and received a work authorization document, and for years has been working and paying his taxes. For the past 5 years Mr. Nyamweya has been working for [REDACTED] as a system analyst. His team leader, and the manager and director of Electric Distribution Operations have written letters praising Mr. Nyamweya for his work ethic, skill and personal character. (Petitioner's Exhibit 1). Mr. Nyamweya has never violated any

of his conditions of supervised release and has not had any encounter with law enforcement in the last 17 years.

However, on November 4, 2025, Mr. Nyamweya was arrested and detained at his scheduled check in at the San Diego Field Office and issued a Notice Of Revocation of Release (Revocation Notice), “based on a determination that there are changed circumstances in his case,” and that “ICE had determined that [he] can be expeditiously removed from the United States”. The Revocation Notice also advised Mr. Nyamweya that he would “promptly be afforded an informal interview” at which he would be “given an opportunity to respond to the reasons for the revocation” and submit “any evidence or information” he wanted to “be reviewed in support of [his] release.” The Revocation Notice further stated, “pursuant to 8 C.F.R. § 241.13, you are to remain in ICE custody”. (Petitioner’s Exhibit 2) ICE has yet to provide Mr. Nyamweya with the reasons for his arrest, any notice of changed circumstances justifying his re-detention or any information that would indicate his removal is now reasonably foreseeable. ICE has also not held or scheduled this “prompt” interview. *See* 8 C.F.R. §§241.4(l), 214.13(i)(3) (requiring prompt interview of person re-detained).

Given that Mr. Nyamweya cannot be removed to his home country of Kenya, he is likely to be deported to a third country without notice or an opportunity to apply for fear-based relief.

On November 10, 2025, Mr. Nyamweya filed a Petition for Writ of Habeas Corpus with this court. Because M. Nyamweya is likely to succeed on the merits of his habeas petition and because his continued detention is causing and will continue to cause him irreparable harm, he hereby moves for a temporary restraining order to allow him his freedom while the court completes its adjudication of his habeas petition.

LEGAL STANDARD

A plaintiff seeking preliminary injunctive relief “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of the equities tips in his favor, and that an injunction is in the public interest.” *Am. Trucking Ass ’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2011) (quoting *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). To grant preliminary injunctive relief a court must find that “a certain threshold showing [has been] made on each factor.” *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011) (per curiam). If this threshold is met, “serious questions going to the merits and a balance of the hardships that tip sharply toward the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Here, because Mr. Nyamweya meets

both the irreparable harm and likelihood of success prongs and because the relief is not overly burdensome on Respondents, he merits such relief.

1. Petitioner Is Likely to Succeed on the Merits

Under the Due Process Clause of the Fifth Amendment to the United States Constitution, no person shall be “deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty [the Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Civil detention, including that of a non-citizen, violates due process in the absence of a “special justification” sufficient to outweigh one’s “constitutionally protected interest in avoiding physical restraint.” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)) (internal quotation marks omitted). “[T]he Due Process Clause applies to all persons within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadvydas*, 533 U.S. at 679. A person at risk of suffering a serious loss being given notice and an opportunity to be heard, in a meaningful manner and at a meaningful time, is the essence of procedural due process. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

Immediately following a final order of removal, ICE is directed by statute to detain the noncitizen for ninety (90) days in order to effectuate removal. 8 U.S.C. §1231(a)(2). This ninety (90) day period, also known as “the removal period,”

commences as soon as a removal order becomes administratively final. *Id.* at §1231(a)(1)(A); §1231(a)(1)(B). However, “[i]f the [noncitizen] does not leave or is not removed within the removal period, the [noncitizen].....shall be subject to supervision”-that is, released under conditions. *Id.* 1231(a)(3). Only where the individual is deportable or inadmissible on certain grounds, or “has been determinedto be a risk to the community or unlikely to comply with the order of removal,” the individual “may be detained beyond the [90-day] removal period. *Id.* §1231(a)(6). Mr. Nyamweya is far beyond the 90-day removal period of 1231(a).

Revocation of supervised release is governed by 8 C.F.R §§241.4 and 241.13. Under the regulations, ICE has the authority to re-detain an individual previously ordered removed *only* in specific circumstances, such as where an individual violates any condition of release or there are changed circumstances regarding the reasonable foreseeability of removal. 8 U.S.C. §1231; 8 C.F.R. §241.4(l)(1)-(2); 8 C.F.R. §241.13(i). However, ICE’s power to re-arrest a noncitizen who is at liberty following release is also constrained by the demands of due process. *See Hernandez v. Sessions*, 872 F.3d 976, 981 (9th Cir. 2017) (“the government’s discretion to incarcerate non-citizens is always constrained by the requirements of due process”). “In practice, the DHS re-arrests individuals only after a ‘material’ change in circumstances. To satisfy due process, those changed circumstances must represent

individualized legal justification for detention.” *Rios v. Noem, et al*, 25-cv-2866-JES-VET (S.D. Cal. Nov. 10, 2025) (internal citations omitted).

Under the governing regulations, upon revocation of supervised release, ICE must “afford [] [Mr. Nyamweya] an initial informal interview promptly after his.... return to Service Custody to afford [him] an opportunity to respond to the reasons for revocation stated in the notification.” 8 C.F.R. §241.13(i)(3); §241.4(l)(1). Yet, following his arrest, ICE did not provide a notice of the reason for revocation nor has Mr. Nyamweya received the “prompt” interview ICE’s own regulations requires, and ICE has never explained the basis for the “changed circumstances” justifying his re-detention, other than to claim that “[t]his decision has been made based on a review of your official alien file and a determination that there are changed circumstances in your case.” (Petitioner’s Exhibit 2).

Even had ICE provided its informal interview, however, due process would demand more. “The Supreme Court has repeatedly held that in at least some circumstances, a person who is in fact free of physical confinement – even if that freedom is lawfully revocable – has a liberty interest that entitles him to constitutional due process before he is re-incarcerated.” *See e.g., Hurd v. District Of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017) (emphasis added)


Respondents’ arrest and continued detention of Mr. Nyamweya has unlawfully deprived him of his liberty without due process of law because of ICE’s failure to

comply with its own regulations. These failures are a violation of his right to due process because agencies are required to follow their own procedures and even without the regulatory requirement, due process independently requires that Mr. Nyamweya be given an opportunity to be heard because his liberty is at stake. “It is well-settled that government agencies are required to follow their own regulations.” *Constantinovici v. Bondi*, et al, 3:25-cv-02405-RBM-AHG (S.D. Cal. Oct. 10, 2025) (internal citations omitted); *Truong v. Noem*, et al, 25-cv-2597-JES-MMP (S.D. Cal. Oct. 22, 2025) (Government failed to comply with its own regulations governing re-detention of noncitizens which, in turn, violated Petitioner's due process rights.)

Since ICE did not follow its own regulations in deciding to re-detain Mr. Nyamweya, his due process rights are violated, and he is entitled to release. Mr. Nyamweya thus will likely succeed on the merits of his case.

2. Petitioner Will Suffer Irreparable Harm If A TRO Is Not Issued

“It is well-established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Moreover, the Ninth Circuit has recognized that those subject to immigration detention incur irreparable harm due to the economic burdens they face and their separation from family members. *Hernandez v. Sessions*, 872 Fj.3d 976, 995 (9th Cir. 2017).

Mr. Nyamweya has been at liberty on supervised release for 17 years. During that time, he has been gainfully employed and supporting himself. The last five years he has been working with  and is an integral member of a team and, as his manger has stated, his “role is pivotal to multiple high impact initiatives.” (Petitioner’s Exhibit 1). More significantly, Mr. Nyamweya is scheduled for surgery on December 30, 2025, with a pre-op appointment on December 4, 2024. The surgery is to rule out the possibility of cancer. Mr. Nyamweya also has a follow-up examination for a prior procedure from December 2024. (Petitioner’s Exhibit 3) Missing these appointments is especially concerning given the significant delays associated with rescheduling. Mr. Nyamweya feels very anxious about missing these time-sensitive medical appointments, especially given the significant delays associated with rescheduling. Without a TRO, he risks significant harm, as missing these urgent medical appointments could lead to medical complications and a higher risk of death from cancer.

Further, Mr. Nyamweya will suffer irreparable harm were he to be removed to a third country without first being provided with constitutionally-compliant procedures to ensure that his right to apply for fear-based relief is protected. It is clear that “the deprivation of constitutional rights “unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Thus, a temporary restraining order is

necessary to prevent Mr. Nyamweya suffering irreparable harm by being subject to unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

For all these reasons, Mr. Nyamweya's continued detention is causing and will continue to cause irreparable harm.

3. The Balance of the Equities Tips in the Petitioners' Favor and Injunctive Relief is in the Public Interest

When the government is the opposing party, the balance of equities and the public interest merge. *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011). "The public has a strong interest in upholding procedural protections against unlawful detention, and the Ninth Circuit has recognized that the costs to the public of immigration detention are staggering: \$158 each day per detainee, amounting to a total daily cost of \$6.5 million [in 2017 dollars]." *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017); *Diaz v. Kaiser*, 2025 WL 1676854, at *3 (citing e.g., Jorge M.F., 2021 WL 783561, at *3). "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). Without injunctive relief, the harm being unlawfully imposed on Mr. Nyamweya will continue at taxpayer expense. The Respondents have clearly violated Mr. Nyamweya's Constitutionally protected liberty interest and should be enjoined from continuing to do so while this case is being adjudicated.

4. A Security Is Unnecessary Because For 17 Years Mr. Nyamweya has complied with his supervised release.

Although Federal Rule of Civil Procedure 65(c) can require a security for a temporary restraining order, a district court “has discretion as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir.2003). No security is appropriate where there is no quantifiable harm to the restrained party and where the order is in the public interest. *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir 2005), *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009). Here, for 17 years Mr. Nyamweya has complied with the terms of his supervised release and appeared for all his check-in appointments with ICE. It is unnecessary to impose a security to ensure his compliance with orders of this court.

5. Petitioners Have Complied with Civ. LR 83.3(g)

Undersigned counsel has taken efforts to ensure the Respondents are on notice of Petitioner’s Motion for Temporary Restraining Order. Petitioner’s counsel is filing this motion electronically in the Southern District of California, which automatically effects service on the U.S. Attorney’s Office.

The underlying Petition for Habeas Corpus was filed on November 10, 2025, and on November 14, 2025, AUSA Matthew Bryan Riley filed his Notice of Appearance. The electronic filing will be directed to him as he is already counsel of

record for the Respondents. Additionally, a copy of this motion was emailed directly to Mr. Riley at matthew.riley2@usdoj.gov

CONCLUSION

Petitioner Mr. Jeffrey Nyamweya respectfully requests that this Court grant His motion for a Temporary Restraining Order. In doing so, the Court should order the Respondents to release the Petitioner from detention until such time as his habeas petition can be adjudicated by the Court.

Respectfully submitted on this the 18th day of November 2025.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEFFREY MUCHACHE NYAMWEYA)

Petitioner)

v.)

CHRISTOPHER J. LAROSE, Senior)
Warden, Otay Mesa Detention Center;)
JOSEPH FREDEN, Acting Field Office)
Director, U.S. Immigration & Customs)
Enforcement (ICE); TODD LYONS,)
Acting Director, U.S. ICE; KRISTI)
NOEM, U.S. Secretary of Homeland)
Security; PAMELA BONDI, Attorney)
General of the United States)

Respondents.)

Case No.3:25-cv-03094-BJC-VET

Agency No. 

**[PROPOSED] ORDER
GRANTING
PETITIONER'S MOTION
TEMPORARY
RESTRAINING ORDER**

Judge:
Hon. Benjamin J. Cheeks

Upon review of Petitioner’s Mr. Jeffrey Nyamweya’s Motion for Temporary Restraining Order, Petition for Habeas Corpus, and all supporting affidavits and exhibits, and any response to this motion, the Court HEREBY FINDS:

1. Petitioner is likely to succeed on the merits of his claims.
2. Petitioner is likely to suffer irreparable harm in the absence of a temporary restraining order, the balance of the equities tips in his favor, and a temporary restraining order is in the public interest.

Therefore, Petitioner Jeffrey Nyamweya’s Motion for Temporary Restraining Order is GRANTED. THE COURT HEREBY ORDERS THAT:

1. Respondents release Petitioner Jeffrey Nyamweya from detention immediately.
2. No security shall be required.
4. Petitioner’s Motion for Temporary Restraining Order shall also be considered a Motion for Preliminary Injunction. Respondents are to file any opposition no later than _____, 2025. Petitioners’ Motion for Preliminary Injunction shall be heard on _____, 2025 at _____AM/PM.

Dated: _____, 2025

Time and Hour: _____AM/PM

Hon. Benjamin J. Cheeks
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was filed on November 18, 2025 through the ECF system and that it will be sent electronically to the registered participants as identified on the Notice Of Electronic Filing.

Dated: November 18, 2025

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