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UNITED STATES DISTRICT COURT
DISTRICT OF WESTERN WASHINGTON
SEATTLE DIVISION

Marco Antonio Barraza Enriquez,
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; Camilla 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. 25-2352

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

1 **MOTION FOR A TEMPORARY RESTRAINING ORDER**

2 Plaintiff's continued detention is a violation of his due process (right to be
3 free/right to liberty) under the Fifth Amendment of the U.S. Constitution and
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5 Plaintiff moves for an immediate temporary order restraining the Defendants
6 or any of their delegates, agents, or entities working in concert with them from
7 continuing to detain Plaintiff and/or from transferring him out of the State of
8 Washington to any other State in the United States or deportation to any location in
9 the world if his pending request for release from detention is not granted and/or if
10 he is noticed by DHS/ICE with a third country removal charge.
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1 **MEMORANDUM OF LAW IN SUPPORT OF MOTION**

2 **I. Introduction¹**

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4 Plaintiff, Marco Antonio Barraza Enriquez, is in the physical custody of
5 Defendants Northwest Immigration and Customs Enforcement (ICE) Processing
6 Center (NWIPC). Mr. Barraza Enriquez is a citizen of Mexico. He has a grant of
7 Withholding of Removal under the Convention Against Torture. Defendants have
8 held Mr. Barraza Enriquez for more than 180 days after his deportation order was
9 final on April 1, 2025.
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12 **II. Factual Background**

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14 Plaintiff has been in custody more than 180 days since his final
15 administrative deportation order. His reinstatement order of a prior deportation
16 order occurred on April 1, 2025. He is being held in violation of his U.S.
17 Constitution Fifth Amendment right to liberty and in violation of the U.S.
18 Constitution Fifth Amendment due process clause prohibiting indefinite detention
19 as held by Zadvydas v. Davis et al., 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d
20 653, 689-90 (2001).
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23 **III. Legal Standard**

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

¹ Counsel acknowledges relying in a substantial manner on the pleadings filed in Kumar v. Wamsley/Noem/Bondi/Scott, case number 2:25-cv-2055.

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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13 As an alternative to this test, a temporary restraining order or preliminary
14 injunction is appropriate if “serious questions going to the merits were raised and
15 the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing
16 preservation of the status quo when complex legal questions require further
17 inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
18 1127, 1134-35 (9th Cir. 2011).

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21 Duong v. Kaiser, No. 25-cv-07598, filed September 19, 2025 (USDC N.D.
22 California 2025) states in pertinent part:

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24 “Civil detention, including that of a non-citizen, violates due process in the
25 absence of a “special justification” sufficient to outweigh one’s
26 “constitutionally protected interest in avoiding physical
restraint.” *Id.* (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997))
(internal quotation marks omitted).

This interest in freedom from detention remains highly salient for
individuals, like Duong, whose release is subject to termination.
In *Morrissey v. Brewer*, the Supreme Court held that an individual whose
parole is revoked—who, like Duong, is re-detained after being released—

1 has a "valuable" liberty interest notwithstanding the "indeterminate" nature
2 of his freedom. 408 U.S. 471, 482 (1972). Subject to the conditions of his
3 release, a noncitizen released on bond "can be gainfully employed and is
4 free to be with family and friends and to form the other enduring
5 attachments of normal life." *Id.* The parolee's liberty therefore "includes
6 many of the core values of unqualified liberty and its termination inflicts a
7 'grievous loss' on the parolee and often others." *Id.*"

8 Doung continues:

9 "The Court finds that Doung is likely to suffer irreparable harm in the
10 absence of a preliminary injunction. "It is well established that the
11 deprivation of constitutional rights 'unquestionably constitutes irreparable
12 injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting
13 *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).
14 Moreover, the Ninth Circuit has recognized in "concrete terms the
15 irreparable harms imposed on anyone subject to immigration detention"
16 including "subpar medical and psychiatric care in ICE detention facilities,
17 the economic burdens imposed on detainees and their families as a result of
18 detention, and the collateral harms to children of detainees whose parents are
19 detained." *Hernandez v. Sessions*, 872 F.3d 976, 995-96 (9th Cir. 2017)."

20 As to the balance of equities and injunction analysis, Doung concludes:

21 "The public has a strong interest in upholding procedural protections
22 against unlawful detention, and the Ninth Circuit has recognized that the
23 costs to the public of immigration detention are staggering. . . . Without the
24 requested injunctive relief, Petitioner-Plaintiff might be abruptly taken into
25 ICE custody, subjecting both him and his family to significant hardship."
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27 IV. Argument

28 Plaintiff's Motion for a Temporary Restraining Order should be granted
29 because he is likely to succeed on the merits. He is suffering irreparable harm in
30 the absence of preliminary relief; and the balance of the equities and public interest
31 weigh strongly in favor of a restraining order pending the Court's adjudication of
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1 the complaint. Plaintiff also satisfies the alternative test for a temporary restraining
2 order.

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4 **A. Plaintiff is likely to succeed on his civil punishment (right to liberty) and**
5 **indefinite detention claims.**

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7 The Due Process Clause of the Fifth Amendment guarantees individuals
8 detained in immigration operations the right to be free from indefinite detention
9 and to be free from the equivalent of a criminal punishment for a civil offense.
10 Plaintiff is likely to show that Defendants have deprived him of his liberty interests
11 by detaining him more than 180 days after his removal order was administratively
12 final. Plaintiff is being held in unconstitutional indefinite detention. He is currently
13 subjected to irreparable harm by being in custody when he should actually be free.
14 He is neither a flight risk, nor a danger. He is not subject to deportation in the
15 foreseeable future.
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20 In the alternative, any potential removal of Plaintiff out of the United States
21 to a third country without adequate notice and without an ability to seek a fair
22 reasonable fear hearing and individual hearing contesting the propriety, if any, of
23 any proposed third country removal would be a violation of due process. Plaintiff
24 is likely to succeed on his claims.
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1. Plaintiff is likely to succeed on Count 1 (Fifth Amendment—Violation—
Plaintiff is suffering the equivalent of Criminal punishment for a civil offense)

1 Plaintiff is being deprived of his liberty interests, which is guaranteed to him
2 by the Fifth Amendment of the U.S. Constitution without due process.
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4 **2. Plaintiff is Likely to Succeed on Count 2 (Fifth Amendment—Indefinite**
5 **detention)**

6 Zadydas v. Davis et al., 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653,
7 689-90 (2001) requires Plaintiff's release.
8

9 **B. Plaintiff will likely suffer irreparable harm if not granted temporary relief.**

10 "It is well established that the deprivation of constitutional rights
11 'unquestionably constitutes irreparable injury.'" Melendres v. Arpaio, 695 F.3d
12 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)). The
13 due process clause protects against deprivations of liberty accomplished without
14 due process of law, Baker v. McCullam, 443 U.S. 137, 145 (1979).
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17 **C. The balance of the equities and public interest factors tip sharply in favor**
18 **of preliminary relief.**

19 When the alleged action by the government violates federal law, the public
20 interest factor generally weighs in favor of the plaintiffs. See Valle del Sol Inc. v.
21 Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013). As the Ninth Circuit has observed,
22 "[a] plaintiff's likelihood of success on the merits of a constitutional claim also tips
23 the merged third and fourth factors decisively in his favor." Baird v. Bonta, 81
24 F.4th 1036, 1036 (9th Cir. 2023). Moreover, "it is always in the public interest to
25 prevent the violation of a party's constitutional rights," Am. Beverage Ass'n v. City
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1 & Cnty. Of San Francisco, 916 F.3d 749, 758 (9th Cir. 2019) (quoting Melendres,
2 695 F.3d at 1002); see also Baird v. Bonta, 81 F.4th at 1036, and the government
3 suffers no harm from a court order that simply ensures that constitutional standards
4 are upheld, see Rodriguez v. Robbins, 715 F.3d 1127, 1145 (9th Cir. 2013);
5
6 Zepeda v. United States Immigration & Naturalization Service, 753 F.2d 719, 727
7 (9th Cir. 1983). The balance of the equities and public interest factors thus tip
8 sharply in favor of temporary emergency relief to prevent ongoing irreparable
9 harm to Plaintiff.
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11 **V. Conclusion**

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14 For the foregoing reasons, Plaintiff respectfully requests that this Court
15 immediately enter an order to release Plaintiff from detention, and/or restrain the
16 Defendants from transferring Plaintiff out of the district of Washington prior to his
17 release. After entering the restraining order barring Plaintiff's transfer out of the
18 State of Washington or removal to a third country, Plaintiff respectfully request
19 that the Court order Respondents to respond to this Motion by November 25, 2025;
20 allow Petitioner to file a reply by November 26, 2025; and hold a hearing by
21 December 1, 2025, subject to the Court's availability.
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24 Dated this 21st day of November, 2025
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Respectfully Submitted,

/s/Brian Patrick Conry
Brian Patrick Conry
Attorney for Plaintiff

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