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UNITED STATES DISTRICT COURT
DISTRICT OF WESTERN WASHINGTON
SEATTLE DIVISION

Marco Antonio Barraza Enriquez,
Plaintiff

v.

Pamela Bondi, Attorney General of the U.S.,
Kristi Noem, Secretary of the Department of
Homeland Security; US Department of
Homeland Security (DHS); Todd Lyons,
Acting Director of Immigration Customs
Enforcement; Laura Herмосilla, 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; Bruce Scott, Warden of NWIPC;
and U.S. Customs and Border Protection
Defendants

Case No. 25-2352

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

1 Plaintiff notes he's seeking a Temporary Restraining Order on allegations:

2 (1) Plaintiff's re-detention was arbitrary, capricious; and, (3) Plaintiff requests a
3 bond hearing before the Immigration Judge if his immediate release is not
4 forthcoming. Additionally he seeks a needed order to bar Respondents from
5 moving Plaintiff from the NWIPC (Northwest Immigration Processing Center).
6
7

8 **MOTION FOR A TEMPORARY RESTRAINING ORDER**

9 Plaintiff moves the Court for the following relief by way of a temporary
10 restraining order (TRO):
11

12 1. Issuance of an immediate order barring the Respondents from removing
13 Plaintiff from the state of Washington (from the NWIPC in Tacoma, Washington)
14 without notice to the Court and approval by the Court;
15

16 2. Plaintiff's re-detention was arbitrary, capricious and in violation of the
17 APA (Administrative Procedures Act). He seeks immediate release due to his re-
18 detention by ICE on/about January 28, 2025 after he had been released from
19 custody by ICE on/about October 1, 2024, this detention occurred without the
20 following of processes required by 8 C.F.R. § 241.4(1), including an exercise of
21 discretion by certain authorized officials making individualized findings. Similarly,
22 this non-citizen was not promptly notified of the reasons for revocation of release,
23 or afforded an initial informal interview to respond to the reasons for revocation,
24 after a particularized finding was made, 8 C.F.R. § 241.4(1). Cf. M.S.L. v.
25
26

1 Bostock, et al, Civ No. 6:25m-cv-01204, decided August 21, 2025 (U.S.D.C. Or.
2 2025).

3
4 3. In the alternative, Plaintiff requests a bond hearing within the next five
5 days before an Immigration Judge, or his release from detention if a bond hearing
6 is not scheduled within five days.
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12 **MEMORANDUM OF LAW IN SUPPORT OF MOTION**

13
14 **I. Introduction¹**

15 Plaintiff, Marco Antonio Barraza Enriquez, is in the physical custody of
16 Defendants Northwest Immigration and Customs Enforcement (ICE) Processing
17 Center (NWIPC). Mr. Barraza Enriquez is a citizen of Mexico. He has a grant of
18 Withholding of Removal under the Convention Against Torture. Defendants have
19 held Mr. Barraza Enriquez for more than 300 days after his deportation order was
20 final on/about September 30, 2024.
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24 **II. Factual Background**

25 Plaintiff has a first deportation order from May 19, 2012. Plaintiff was
26 detained by DHS/ICE on/about September 30, 2024.

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 Plaintiff was detained by DHS/ICE on/about September 30, 2024 when he
2 first entered the U.S. after fleeing persecution/torture in Mexico. Plaintiff was
3 provided a copy of a Notice of Intent/Decision to Reinstate Prior Order. On
4 September 30, 2024, Customs and Border Protection arrested Plaintiff at or near
5 Lukeville Arizona. Plaintiff stated he has a fear of returning to Mexico. A report by
6 D.O. Obrien states:
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9
10 "BARRAZA was enrolled in the Tucson S-Site ATD program and instructed
11 to report to ERO Dallas. On December 20, 2024, BARRAZA requested to
12 relocate to Lincoln City, Oregon, and Dallas ERO approved his transfers to
13 ERO/ATD in Eugene, Oregon.

14 BARRAZA reported to the ERO Eugene office shortly before closing on
15 January 27, 2025, ERO officers instructed to return on January 28, 2025, for
16 an interview with Eugene ATD.

17 Prior to processing, I identified myself as a Deportation Officer and re-
18 affirmed BARRAZA's citizenship and immigration history. BARRAZA
19 stated he is a citizen and national of Mexico who arrived in the United States
20 at or near Lukeville, Arizona, on or about September 30, 2024, without
21 admission or parole by an immigration officer.

22 At the ICE office, officers entered BARRAZA's fingerprints and photograph
23 into the EAGLE/IDENT database, which confirmed his identity under
24 Fingerprint Identification Number (FINS) 1130986754 and his previously
25 assigned Alien Registration Number.

26 Officers took a full set of rolled fingerprints and submitted them to the
Integrated Automated Fingerprint Identification System (IAFIS) to confirm
BARRAZA's identity and criminal history. IAFIS confirmed his identity
under FBI number 581074PD6 and revealed no criminal history." Plaintiff
Exhibit 3, pages 4-5

On/about October 1, 2024, the reinstated deportation order against Plaintiff
was administratively final and the Withholding Only proceedings began, Plaintiff
Exhibit 2.

1 Plaintiff had been out of custody for approximately 120 days from on/about
2 October 1, 2024 to on/about January 28, 2025. There was no violation of any
3 supervision conditions recited in DO Obrien's report. Since then, he has been
4 detained for over 10 months.
5

6
7 It has been more than 14 months since Plaintiff's post-removal period began
8 on/about October 1, 2024.
9

10 Upon any release from the detention center, Mr. Barraza would live with his
11 wife Karla Belen Leyva Sanchez, [REDACTED] who has her asylum application
12 timely filed with the Portland EOIR Court. He would also live with his three
13 children, [REDACTED]
14 [REDACTED]
15 [REDACTED] and [REDACTED]
16

17 On June 24, 2025, Ms. Leyva Sanchez was granted a Change of Venue to the
18 Portland Oregon Immigration Court. She is scheduled for her next Master Calendar
19 hearing before the Portland EOIR Court on November 16, 2027.
20

21 On November 13, 2025, Ms. Leyva Sanchez reported to ICE in Portland,
22 Oregon and has no need to re-report there until November 2026.
23

24 Ms. Leyva Sanchez is currently employed.

25 Gilberto Acuna Garcia, Plaintiff's cousin, had lived with Plaintiff when they
26 were growing up in Mexico. He, along with his wife, Claudia Acuna Hernandez, a
U.S. citizen, have opened their home up to the Plaintiff's wife and children and
open their home to Marco Antonio when he is released from detention. They have

1 lived at [REDACTED] Oregon 97367. They have adequate
2 income to support the home and the families living there. Karla Leyva Sanchez has
3 additional income. It's also anticipated that the Plaintiff could readily obtain
4 employment if he was to be released. He has opportunity to file for an Employment
5 Authorization Document based on his withholding of removal under the CAT
6 grant.
7
8

9
10 Plaintiff is neither a danger, nor a flight risk. He has a family to care for. He
11 is a good father and a loving husband. He has no drug or alcohol abuse history. He
12 has no criminal record. He's 36 years of age and has a steady employment history
13 for 9 years as a miner in Sinaloa and Durango, Mexico. He is an able bodied and
14 capable young man.
15

16
17 On November 4, 2025, Plaintiff's counsel emailed and mailed a letter, with
18 attachments establishing that Plaintiff is neither a flight risk nor a danger if
19 released from detention, to the ICE Seattle Field Office Director (hereafter FOD)
20 requesting the release of Plaintiff. As of December 10, 2025, there's been no
21 response from the FOD office/FOD director. FOD reasonably, based on Zadvydas,
22 should have released the Plaintiff from custody as he's neither a flight risk, nor a
23 danger, Plaintiff Exhibit 1.
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26

Plaintiff's continued time in detention pending appeals, if that is the reason
for his continued detention, is unnecessary. Detention is not needed to assure his
presence if deportation actually ever becomes imminent.

1 103. While held in Tacoma, Plaintiff's case was heard via video by visiting
2 Immigration Judges from Concord, California within the NWIPC video room for
3 visiting Judge hearings. His first individual merits hearing was on May 23, 2025.
4 There was a second individual hearing on August 8, 2025. Subsequent to the grant
5 of Convention Against Torture relief, the government appealed that grant. Plaintiff
6 had also sought relief through Withholding of Removal under the Immigration and
7 Nationality Act (hereafter INA). This request was denied by the Immigration
8 Judge. Plaintiff has appealed from that denial to the Board of Immigration Appeals
9 (hereafter BIA).
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14 Plaintiff filed his Reply Brief to DHS' brief on November 6, 2025.

15 Processing time for appeals to the BIA on detained cases is approximately 4-5
16 months but varies. If appeal to the Ninth Circuit was needed, this appeal time
17 would take approximately 1-2 years after the BIA issues its decision(s).
18
19

20 **III. Legal Standard**

21 The standard for issuing a TRO is the same as the standard for issuing a
22 preliminary injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*,
23 434 U.S. 1345, 1347 n.2 (1977). A TRO is "an extraordinary remedy that may only
24 be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*
25 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "The proper legal standard
26 for preliminary injunctive relief requires a party to demonstrate (1) 'that he is
likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the

1 absence of preliminary relief, (3) that the balance of equities tips in his favor, and
2 (4) that an injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d
3 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20).

4
5 As an alternative to this test, a temporary restraining order or preliminary
6 injunction is appropriate if “serious questions going to the merits were raised and
7 the balance of the hardships tips sharply in the plaintiff’s favor,” thereby allowing
8 preservation of the status quo when complex legal questions require further
9 inspection or deliberation. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
10 1127, 1134-35 (9th Cir. 2011).

11 **IV. Argument**

12
13 Plaintiff’s Motion for a Temporary Restraining Order should be granted
14 because he is likely to succeed on the merits. He is suffering irreparable harm in
15 the absence of preliminary relief; and the balance of the equities and the public
16 interest weigh strongly in favor of a restraining order pending the Court’s
17 adjudication of the complaint. Plaintiff also satisfies the alternative test for a
18 temporary restraining order.

19 **A.**

20 **1. Plaintiff is likely to succeed on Count 1 (Fifth Amendment—Violation—** 21 **Plaintiff’s Re-detention was arbitrary and capricious)**

22
23 Plaintiff is being deprived of his liberty interests, which is guaranteed to him
24 by the Fifth Amendment of the U.S. Constitution without due process. Petitioner

1 alleges that the revocation of his release from detention was arbitrary and
2 capricious in violation of the Administrative Procedures Act (APA). The Court in
3

4 M.S.L. found that:

5 “In sum, ICE failed to follow its own regulations in detaining Petitioner by
6 (1) failing to provide a timely Notice of Revocation of Petitioner’s Order of
7 Supervision; (2) failing to provide a Notice of Revocation signed by an
8 official authorized to revoke Petitioner’s release; and (3) failing to provide
9 Petitioner with a “prompt” informal interview so that she could contest the
10 reasons for her revocation. In doing so, ICE violated Petitioner’s
11 constitutional due process rights.” M.S.L. at 26 of its Opinion and Order

12 This action by ICE was arbitrary and capricious. This Court must:

13 “Under the APA, courts must “hold unlawful and set aside agency action . . .
14 found to be—arbitrary, capricious, an abuse of discretion, or otherwise not in
15 accordance with the law” or “without observance of procedure required by
16 law.” 5 U.S.C. § 706(2). Agency action is

17 arbitrary and capricious if the agency relied on factors which
18 Congress has not intended it to consider, entirely failed to consider an
19 important aspect of the problem, offered an explanation for its
20 decision that ran counter to the evidence before the agency, or is so
21 implausible that it could not be ascribed to a difference in view or the
22 product of agency expertise.

23 *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*,
24 463 U.S. 29, 43 (1983).” M.S.L.

25 It is Respondents’ burden to “provide a reasoned explanation for [their]
26 action.” *Fox Television*, 556 U.S. at 515. “Post-hoc rationalizations cannot
justify an agency’s actions.”” M.S.L. at 29-30 of its Opinion and Order

The M.S.L. Court provided precedent granting similar cases as well as
reference to *Ceesay v. Kurzdorfer*, ___ F. Supp.3d. ___, 25 CV-267-LJV, 2025 WL
1284720, at *8 (W.D.N.Y. May 2, 2025).

“See *Ceesay*, 2025 WL 1284720, at *21 (finding that the petitioner was not
afforded even minimal due process protections when ICE failed to provide

1 petitioner with an informal interview upon his re-detainment); *Wing Nuen*
 2 *Liu v. Carter*, Case No. 25-cv-03036-JWL, 2025 WL 1696526, at *2 (D.
 3 Kan. June 17, 2025) (finding “that officials did not properly revoke
 4 petitioner’s release pursuant to § 241.13” because “most obviously . . .
 5 petitioner was not granted the required interview upon the revocation of his
 6 release.”); *Hoac v. Becerra*, No. 2:25-cv 01740-DC-JDP, 2025 WL 1993771,
 7 at *4 (E.D. Cal. July 16, 2025) (finding that the petitioner was likely to
 8 succeed on a claim that his redetainment was unlawful because “there is no
 9 indication that an informal interview was provided to Petitioner.”).
 10 Government agencies are required to follow their own regulations. *United*
 11 *States ex rel Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954); *Nat’l Ass’n*
 12 *of Home Builders v. Norton*, 340 F.3d 835, 852 (9th Cir. 2003). Courts have
 13 found that when ICE fails to follow its own regulations in revoking release,
 14 the detention is unlawful and the petitioner’s release must be ordered. *See*
 15 *Ceesay*, 2025 WL 1284720, at *20-21; *Rombot v. Souza*, 296 F. Supp.3d
 16 383, 387 (D. Mass. 2017).” M.S.L. at 25-26 of its decision

17 The Court also noted that under the APA:

18 “Under the APA, courts must “hold unlawful and set aside agency action . . .
 19 found to be—arbitrary, capricious, an abuse of discretion, or otherwise not in
 20 accordance with the law” or “without observance of procedure required by
 21 law.” 5 U.S.C. § 706(2). Agency action is

22 arbitrary and capricious if the agency relied on factors which
 23 Congress has not intended it to consider, entirely failed to consider an
 24 important aspect of the problem, offered an explanation for its
 25 decision that ran counter to the evidence before the agency, or is so
 26 implausible that it could not be ascribed to a difference in view or the
 product of agency expertise.

Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,
 463 U.S. 29, 43 (1983).”

The law in this area further provides:

“[T]he touchstone of arbitrary and capricious review under the APA is
 reasoned decisionmaking.” *Altera Corp & Subsidiaries v. Comm’r of*
Internal Review, 926 F.3d 1061, 1080 (9th Cir. 2019) (internal quotation
 marks and citation omitted). “[A]n agency’s action can only survive arbitrary
 or capricious review where it has articulated a satisfactory explanation for its
 actions including a rational connection between facts found and the choice
 made.” *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475, 493 (9th Cir.

1 2023) (internal quotation marks and citation omitted, alteration normalized).
2 A court "may not infer an agency's reasoning from mere silence." Arrington
3 v. Daniels, 516 F.3d 1106, 1112 (9th Cir. 2008)...

4 It is Respondents' burden to "provide a reasoned explanation for [their]
5 action." Fox Television, 556 U.S. at 515. "Post-hoc rationalizations cannot
6 justify an agency's actions." M.S.L. at 29-30 of its Opinion and Order

7
8 Immediate release of M.S.L. was ordered.

9 Here, the revoking Officer, Deportation Officer Obrien, Plaintiff Exhibit 3, is
10 a deportation officer, he's not an Executive Associate Director of ICE, a Field
11 Office Director or any of the other positions enumerated in 8 C.F.R. § 1.2. ICE also
12 failed to follow 8 U.S.C. § 1231(a)(2)(A). 8 U.S.C. § 1231(a)(2)(A) states:

13 "During the removal period, the Attorney General shall detain the alien."
14

15 ICE failed to do so in this case. Instead, ICE decided to release this Plaintiff
16 who complied with all release conditions. Plaintiff was then taken back into
17 DHS/ICE custody on/about January 28, 2025, 119 days after his final
18 administrative removal order was reinstated and well outside the 90 day removal
19 period.
20

21
22 **2. Plaintiff is Likely to Succeed on Count 3 (Fifth Amendment— Procedural**
23 **Due Process Requires a Bond Hearing: Plaintiff requests a bond hearing**
24 **before the Immigration Judge if his immediate release is not forthcoming)**
25

26 The due process clause of the U.S. Constitution Fifth Amendment protects
"all persons" from the deprivation of "life, liberty or property without due process
of law."

1 The factors to balance in assessing whether a noncitizen's detention violates
2 due process are:

3
4 "First, the private interest that will be affected by the official action;
5 [S]econd, the risk of an erroneous deprivation of such interest through the
6 procedures used, and the probable value, if any, of additional or substitute
7 procedural safeguards; and
8 [F]inally, the Government's interest, including the function involved and the
9 fiscal and administrative burdens that the additional or substitute procedural
10 requirement would entail." *Matthews v. Eldridge*, 422 U.S. 319, 335 (1976)

11 Plaintiff submits he is clearly not a flight risk nor a danger or he would not
12 have been released by DHS/ICE in the past. Plaintiff requests the bond hearing at
13 which the clear and convincing standard would apply, i.e., the government would
14 need to prove that Plaintiff is a danger and a flight risk and it clearly cannot and his
15 release would quickly be forthcoming if said bond hearing was indeed ordered. His
16 release, reasonably, would be forthcoming.

17
18 Plaintiff was on release for approximately 120 days and abided by all
19 conditions. He has a family in Oregon that he needs to see. He has an appeal
20 pending that the government filed that he will prevail on as the government's
21 argument is quite weak. He would have every reason to abide by any conditions of
22 release set by ICE or the Court following a bond hearing.

23
24 **B. Plaintiff will likely suffer irreparable harm if not granted temporary relief.**

25 "It is well established that the deprivation of constitutional rights
26 '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)). The

1 due process clause protects against deprivations of liberty accomplished without
2 due process of law, *Baker v. McCullam*, 443 U.S. 137, 145 (1979).
3

4 Without a TRO, petitioner's habeas case is subject to being ended, simply by
5 ICE moving him out of the jurisdiction and/or out of the country without notice to
6 either this Court or to Plaintiff's counsel. This is unacceptable. If there was an ICE
7 transfer, even within the U.S., Plaintiff would be taken away from his lawyer and
8 his family. The Court's jurisdiction would be undermined. There is an ongoing
9 threat to deport Plaintiff to a third country without notice and an opportunity to
10 defend against that "ex parte" decision made solely by the government. This is
11 offensive to due process. Separation from his family who badly needs Plaintiff
12 back in their lives, is severe hardship for his family of his wife and three minor
13 children.
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18 Such impacts constitute irreparable harm. See e.g., *Leiva-Perez v. Holder*,
19 640 F.3d 962, 969-70 (9th Cir. 2011) (describing "separation from family
20 members" and the mental damage concomitant with such separation as irreparable
21 harm) (quotation marks omitted); see also *Ching v. Mayorkas*, 725 F.3d 1149, 1157
22 (9th Cir. 2013) ("The right to live with and not be separated from one's immediate
23 family is 'a right that ranks high among the interests of the individual' and that
24 cannot be taken away without procedural due process.") (quoting *Landon v.*
25 *Plasencia*, 459 U.S. 21, 34-35 (1982)).
26

Procedural due process requires a bond hearing—

1
2 **C. The balance of the equities and public interest factors tip sharply in favor**
3 **of preliminary relief.**

4
5 When the alleged action by the government violates federal law, the public
6 interest factor generally weighs in favor of the plaintiffs. See *Valle del Sol Inc. v.*
7 *Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). As the Ninth Circuit has observed,
8 “[a] plaintiff’s likelihood of success on the merits of a constitutional claim also tips
9 the merged third and fourth factors decisively in his favor.” *Baird v. Bonta*, 81
10 F.4th 1036, 1036 (9th Cir. 2023). Moreover, “it is always in the public interest to
11 prevent the violation of a party’s constitutional rights,” *Am. Beverage Ass’n v. City*
12 *& Cnty. Of San Francisco*, 916 F.3d 749, 758 (9th Cir. 2019) (quoting *Melendres*,
13 695 F.3d at 1002); see also *Baird v. Bonta*, 81 F.4th at 1036, and the government
14 suffers no harm from a court order that simply ensures that constitutional standards
15 are upheld, see *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013);
16 *Zepeda v. United States Immigration & Naturalization Service*, 753 F.2d 719, 727
17 (9th Cir. 1983). The balance of the equities and public interest factors thus tip
18 sharply in favor of temporary emergency relief to prevent ongoing irreparable
19 harm to Plaintiff.

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26 **V. Conclusion**

For the foregoing reasons, Plaintiff respectfully requests that this Court
immediately enter an order to release Plaintiff from detention, and/or restrain the

1 Defendants from transferring Plaintiff out of the district of Washington prior to his
2 release. Plaintiff also respectfully request that the Court order Respondents to
3 respond to this Motion by December 17, 2025; allow Petitioner to file a reply by
4 December 19, 2025; and hold a hearing by December 23, 2025, subject to the
5 Court's availability.
6
7

8 Dated this 12th day of December, 2025
9

10 Respectfully Submitted,

11 /s/Brian Patrick Conry

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