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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

JOSE LABRADOR ABADIN,

Petitioner,

v.

KRISTI NOEM, Secretary for the
Department of Homeland Security; TODD
LYONS, Acting Director, Immigration and
Customs Enforcement; CAMILLA
WAMSLEY, Field Office Director,
Immigration and Customs Enforcement
Seattle Field Office; BRUCE SCOTT,
Warden, Northwest ICE Processing Center,

Respondents.

Case No. 2:25-cv-02411-JLR-SKV



**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
SUPPORTING MEMORANDUM**

ORAL ARGUMENT REQUESTED

Expedited Hearing Requested

MOTION

Petitioner moves the Court for the following relief by way of a temporary restraining order (“TRO”):

a) Issuance of an immediate order barring the Respondents from removing petitioner from the state of Washington, should the Petitioner be in the state of Washington at the time such order is issued without notice to the Court and approval by the Court; and

b) Issuance of an order to show cause why the petition for writ of habeas corpus filed on December 1, 2025, should not be granted within three (3) days.

I. LEGAL FRAMEWORK.

The standard for a TRO is the same as for a preliminary injunction. See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977). A TRO is “an extraordinary remedy” that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

For a TRO to be granted, the movant must demonstrate (a) a likelihood of succeed on the merits, (b) a likelihood of irreparable harm without preliminary relief, (c) that the balance of equities tips in their favor, and (d) that an injunction is in the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Winter*, 555 U.S. at 20). When the government is a party to the case, the public interest and balance of equities factors merge. See, e.g., *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

The Ninth Circuit also allows the use of an alternative test if “serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff’s favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011). This allows preservation of the status quo where questions involving a “fair chance of success on the merits” require further inspection or deliberation.

1 **II. ARGUMENT.**

2 **A. Petitioner will likely suffer irreparable harm.**

3 Without a TRO, the Petitioner is at risk of an imminent transfer outside of the state of
 4 Washington. This would separate him from his attorney and his partner, potentially
 5 undermining the Court's jurisdiction. The impact would constitute irreparable harm not only to
 6 Petitioner's legal interests, but also to his and his partner's emotional and economic interests.
 7 *See e.g., Leiva-Perez v. Holder*, 640 F.3d 962, 969-70 (9th Cir. 2011) (describing "separation
 8 from family members" and the mental damage concomitant with such separation as irreparable
 9 harm); *Ching v. Mayorkas*, 725 F.3d 1149, 1157 (9th Cir. 2013) ("The right to live with and not
 10 be separated from one's immediate family is 'a right that ranks high among the interests of the
 11 individual' and that cannot be taken away without procedural due process.") (quoting *Landon v.*
 12 *Plasencia*, 459 U.S. 21, 34-35 (1982)); *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir.
 13 2017) (irreparable injury includes the economic burdens imposed on detainees and their families
 14 as a result of detention).

15 **B. Petitioner is likely to succeed on the merits.**

16 Due process requires that government action not be irrational and arbitrary. *See United*
 17 *States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Here, while Petitioner had an I-485
 18 application to adjust status pending with USCIS – which holds exclusive jurisdiction over the
 19 process – he was indiscriminately arrested by Department of Homeland Security ("DHS"). *See*
 20 8 C.F.R. § 245.2(a)(1), 1245(a)(1)(ii). The immigration court is unable to adjudicate this
 21 petition. The Department's own attorneys have failed to file Form I-213 with the Immigration
 22 Court, which would essentially summarize the cause for Petitioner's arrest, and, per Mr.
 23 Labrador Abadin, he committed no traffic violations at the time of his stop, was in possession of
 24

1 valid driver's license issued by the State of Oregon, was not shown an administrative warrant
2 signed by a DHS official, and was given no discernable reason for why he was being taken into
3 custody. *Petition for Writ of Habeas Corpus* (Exh. 1), p. 5, ¶ 18. He also had no criminal
4 history during his years spent in the United States. *Id.* at ¶ 17.

5 The act of detaining Petitioner was one taken without a "satisfactory explanation"
6 rationally connecting the facts found and the choice made. *Dep't of Com. V. New York*, 139 S.
7 Ct. 2551, 2569 (2019) (citation omitted). The DHS' choices were not based on him being a
8 danger to the community or a flight risk; he made no attempts to flee during his apprehension
9 and cooperated throughout the encounter. He was also not accruing unlawful presence at the
10 time of his arrest, which "increases the possibility of detention or deportation." *Ruiz-Diaz v.*
11 *United States*, 2008 U.S. Dist. LEXIS 79217, *7 (W.D. Wash. 2008) ("The Court is hard-
12 pressed to imagine a more traumatic and irreparable harm than being uprooted from your job,
13 home, and community for an undetermined length of time.") The actions of the Department
14 therefore constitute an abuse of discretion under 5 U.S.C. § 706(2)(A) and exceed statutory
15 authority without observance of a lawful procedure. *See* 5 U.S.C. § 706(2)(A)-(D).
16 Additionally, they violate the Petitioner's Fifth Amendment right to procedural due process.
17 *Zadvydas v. Davis*, 533 U.S. 678, 693 (2011).

18 Moreover, Petitioner's arrest constitutes a violation of the Fourth Amendment's
19 guarantee against an unreasonable seizure. Unlike illegal entry, unauthorized presence in the
20 United States is not a crime. *Martinez-Medina v. Holder*, 673 F.3d 1029, 1036 (9th Cir. 2011);
21 *aff'd by Hernandez v. Skinner*, 969 F.3d 930-939-940 (9th Cir. 2020). Petitioner has been
22 registered in the United States since his paroled entry, has not missed any hearings in
23 immigration court, and attended a required check-in with ICE while living in Tampa, Florida.

1 8 C.F.R. § 287.8(c)(2) would authorize his brief detention regarding unlawful presence, but after
2 he produced a valid Oregon Driver License and the stop became abnormally long, there was a
3 lack of reasonable suspicion to prolong the stop. *United States v. Manzo-Jurado*, 457 F.3d 928,
4 934-35 (9th Cir. 2006) (explaining the reasonable suspicion standard for believing someone is in
5 the country illegally); *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). The U.S.
6 District Court for the District of Colorado recently held that, even when there is “no doubt”
7 someone is in the United States unlawfully, they may not be subject to arrest and detention
8 without a warrant absent a “reason to believe” they will flee before one can be obtained.
9 *Ramirez Ovando v. Noem*, --- F.3d ---, 2025 WL 3293467, at *52 (D. Colo. Nov. 25, 2025). It
10 remains unclear why DHS made the decision to detain Petitioner on November 16, 2025.

11 **C. A balance of equities and public interest tips sharply in favor of TRO.**

12 The balance of hardships tips substantially in favor of Petitioner. “[I]n addition to the
13 potential hardships facing Plaintiffs in the absence of the injunction, the court ‘may consider . . .
14 the indirect hardship to their friends and family members.’” *Hernandez v. Sessions*, 872 F.3d
15 976, 996 (9th Cir. 2017), quoting *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512
16 F.3d 1112, 1126 (9th Cir. 2008). Petitioner has a two-year-old U.S. citizen daughter living in the
17 state of Texas, and his unlawful detention and risk of a swift removal from the United States –
18 when his application to register permanent residence is pending and prima facie approvable –
19 constitutes a severe, indirect hardship upon his family.

20 The merits of the petition, in terms of public interest, similarly push toward an issuance
21 of a TRO. “Generally, public interest concerns are implicated when a constitutional right has
22 been violated, because all citizens have a stake in upholding the Constitution.” *Preminger v.*
23 *Principi*, 422 F.3d 815, 826 (9th Cir. 2005); see also *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727

(9th Cir. 1983) (“INS cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.”) The public interest also benefits from a preliminary injunction that ensures the federal statutes are construed and implemented in a manner that avoids serious constitutional questions. *Rodriguez v. Robbins*, 715 F.3d 1127, 1146 (9th Cir. 2013).

III. CONCLUSION

For the above reasons, a TRO should be granted.

Respectfully submitted,

Dated: December 4, 2025

s/ Benjamin Cornell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant(s):

US Attorneys
Email: usawaw.habeas@usdoj.gov

Dated: December 4, 2025 s/ Benjamin Cornell
Benjamin Cornell, WSBA 49553