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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

Mario Cruz Bernabe,

Petitioner;

vs.

HERMOSILLA, *et al.*

Respondents.

) Case No. 3:25-cv-02411
)
)
) **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 Oregon, or 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;

b) Issuance of an order to show cause why this petition should not be granted within three (3) days.

SUPPORTING MEMORANDUM

I. LEGAL STANDARDS.

The standard for a TRO is the same as for 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 preliminary relief, a party must show (a) likelihood of succeed on the merits, (b) likely irreparable harm without preliminary relief, (c) the balance of equities tips in party, and (d) 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).

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

III. ARGUMENT.

A. Petitioner will likely suffer irreparable harm.

Without a TRO, petitioner will be imminently transferred out of the District of Oregon. This will transfer petitioner away from his lawyers, his business and his friends and family, possibly seeking to undermine this court's jurisdiction.

1. On information and belief Petitioner entered the U.S. in the early 2000, he was not detained upon his entry. Petitioner has been in the U.S. since he was seventeen years old. He has a long-term partner, who has DACA status, with whom he has two U.S. citizen children. His Children are nineteen and seventeen years old. His seventeen-year-old daughter has special needs and requires a learning plan at school. Petitioner has no criminal record. Petitioner has not left the U.S. since his entry in the early 2000s when he was seventeen years old. Petitioner owns his own landscaping business and was on his way to work in his landscaping truck when he was stopped by ICE. Petitioner's partner was notified of the arrest by a good Samaritan who dropped off a note on her door. Petitioner does not seem to have his phone in his possession and his truck was abandoned where he was arrested.

Petitioner is the main financial supporter for the family. He supports his nineteen year old son who is in college and his seventeen year old daughter along with his longterm partner, who is the mother of his children. Petitioner runs a landscaping

business. He is the sole owner and manages one employee who was also detained today. Petitioner would be eligible to file for Cancellation of removal if he were to be placed in immigration proceedings. It would be an undue hardship to his U.S. citizen children and his partner who has deferred action status to detain him, making it impossible for him to work for his family. Petitioner could apply for Cancellation of Removal while out of detention and would be in a better position to prepare the necessary documentation while supporting his family. If detained it will be much harder for him to prepare gather the evidence needed as he does not have access to his documents and the immigration court is expediting hearings for detainees, giving them and their attorneys very little time to prepare strong cases.

His family would all suffer without his financial and emotional support.

Such impacts constitute irreparable harm. See e.g., *Andrieu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir.2001), factors include separation from family members, medical needs, and potential economic hardship.”; see also As the Supreme Court has explained, “[t]he time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.” *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972); accord *Nat’l Ctr. for Immigrants Rights, Inc. v. I.N.S.*, 743 F.2d 1365, 1369 (9th Cir. 1984). Moreover, the Ninth Circuit has recognized in “concrete terms the irreparable harms imposed on anyone subject to immigration

detention” including “subpar medical and psychiatric care in ICE detention facilities, the economic burdens imposed on detainees and their families as a result of detention, and the collateral harms to children of detainees whose parents are detained.” *Hernandez*, 872 F.3d at 995.

B. Likely to succeed on the merits.

Due process requires government action not be irrational and arbitrary. See *United States v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007). Petitioner has no criminal record, has been in the U.S. over twenty years, has a family here and supports them emotionally and financially. There is no justified reason for his detention. There is no evidence that his arrest today was given the appropriate due process. Petitioner is not a flight risk and will comply with all requests of the court.

C. Balance of equities and public interest tips sharply in favor of TRO.

The balance of hardships tips substantially favors petitioner. “[I]n addition to the potential hardships facing Plaintiffs in the absence of the injunction, the court ‘may consider . . . the indirect hardship to their friends and family members.’” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017), quoting *Golden Gate Rest. Ass’n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008). Petitioner’s detention will cause significant and unnecessary hardship for him and his family. Petitioner is not a criminal. He is doing his best to provide for his family and a detention will set the back

financially and with schooling.

The merits of the petition weigh the public interest toward a TRO. “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); 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 that 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.

Dated this 26 day of December 2025

/s/ Alicia Vial Beesley

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Attorney for petitioner