

**A TEMPORARY RESTRAINING ORDER
AND
MEMORANDUM OF POINTS AND AUTHORITIES**

I. EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

Petitioner, by and through counsel undersigned, hereby moves the Court pursuant to Rule 65(a) and 65(b) of the Federal Rules of Civil Procedure for a temporary restraining order and/or expedited preliminary injunction recognizing that Petitioner is a member of the class defined in *J.O.P., et al.v. U.S. Department of Homeland Security, et al.*, No. 8:2019-cv-1944-SAG (D. Md. November 25, 2024), and enjoining Defendants from removing Petitioner or transferring him from this Court's jurisdiction pending a final ruling on the Petitioner's Petition for Writ of Habeas Corpus. Petitioner asserts that despite the in absentia removal order against him, he is a class member and protected by the settlement agreement of *J.O.P., et al.v. U.S. Department of Homeland Security, et al.*, No. 8:2019-cv-1944-SAG (D. Md. November 25, 2024). Petitioner further asserts that he is also protected by the grant of Deferred Action Status which USCIS gave him when his Special Immigrant Juvenile status was recognized, and his I-360 visa petition was approved. Respondents have arbitrarily and capriciously terminated that grant of Deferred Action Status, in violation of Petitioner's constitutional right to due process of law.

II. INTRODUCTION

A. Summary of Relevant Facts

Petitioner is an unmarried 21-year-old native and citizen of El Salvador. He entered the United States alone on April 5, 2021, at the age of 15. When Petitioner entered the United States, he was detained by immigration officers at the border, issued a Notice to Appear in immigration court which did not provide a date or time of his appearance. He was transferred to the custody of the Office of Refugee Resettlement (ORR) after he was identified as an unaccompanied alien

child (“UAC”) (*see* Exhibits A & C, from the Petition for Writ of Habeas Corpus). The NTA Petitioner received did not contain the date, time, or place of his immigration court hearing. *See* Petition Exhibit C. In May 2021, Petitioner was subsequently released to his father’s custody pursuant to section 462 of the Homeland Security Act of 2002 and section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”).

B. Summary of Relevant Prior Procedure

Petitioner inadvertently missed his immigration court hearing due to a series of errors, including imputing the wrong address into GPS, and misreading the immigration court electronic public portal, which was the only source of information about the date and time of his hearing, because his Notice to Appear did not include a date or time for his initial hearing. Due to his failure to appear at the hearing, Petitioner was ordered removed *in absentia*. Petitioner did not learn about his removal order for approximately a week, when he prepared to attend what he believed to be the rescheduled court hearing. After realizing their mistake, Petitioner’s parents retained counsel. *See* Petition Exhibits D & E.

On November 22, 2022, Petitioner’s counsel filed a Motion to Reopen with the Immigration Court. However, due to a typographical error the filing was rejected. *See* Petition Exhibit H. Because the typographical error was on the Entry of Appearance, the Immigration Court did not recognize that entry of appearance, and rather than return the Motion to Reopen to Counsel’s office, the Immigration Court mailed it to an old address for Petitioner. Neither Petitioner nor his counsel learned of the rejection until May 2023. The Motion to Reopen was refiled, citing lack of notice and exceptional circumstance, but was ultimately denied by the Immigration Judge (“IJ”) on June 27, 2023. *See* Petition Exhibit I. On July 12, 2023, Petitioner’s

counsel filed an appeal of the IJ's decision with the Board of Immigration Appeals ("BIA"). That appeal remains pending. *See* Petition Exhibits J & K.

On November 4, 2022, Petitioner who was still considered eligible, filed an I-589, Application for Asylum and for Withholding of Removal with USCIS pursuant to the TVPRA. *See* Petition Exhibit F. On January 17, 2023, Petitioner was issued a Receipt Notice by USCIS for his asylum application, confirming the application "was received and is pending as of 11/04/2022," and stating explicitly: "You may remain in the U.S. until your asylum application is decided." *Id.*

On January 17, 2023, Petitioner filed an I-360 Petition for Amerasian, Widower, or Special Immigrant, with USCIS, seeking Special Immigrant Juvenile ("SIJ") status. That application was approved on June 28, 2023. *See* Petition Exhibits C & D. Together with his recognition as an SIJ, the Approval Notice also advised Petitioner that he had been granted deferred action for a period of four years.

Respondents detained Petitioner on or about November 24, 2025, ostensibly because he had been ordered removed from the United States. No mention was made of his deferred action, pending asylum application, *JOP* class membership or recognition as an SIJ. On November 26, USCIS mailed Petitioner a notice advising him that his period of deferred action had been revoked. No further explanation or reasoning was given. *See* Petition Exhibit Q. Petitioner remains in ICE custody to the present date, though it is anticipated that ICE will attempt to enforce the *in-absentia* removal order at any moment.

III. ARGUMENT

A. The Legal Standard for an Ex Parte Temporary Restraining Order

A Petitioner seeking an ex-parte temporary restraining order or preliminary injunction must "set out specific facts in an affidavit or a verified complaint, clearly showing that immediate and

irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.” Fed. R. Civ. Pro. 65(b)(1)(A). The U.S. Supreme Court has stated that the circumstances justifying the issuance of an ex-parte order are extremely limited. *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974). According to the U.S. Supreme Court, while “Ex-parte temporary restraining orders are no doubt necessary in certain circumstances...but under federal law they should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Id.* at 438-439. That is all Petitioner seeks in this case.

The government informed Petitioner at the time of his arrest that he was being detained because he had been ordered removed from the United States. It is reasonable to infer that the government intends to enforce that removal order, as dictated by 8 U.S.C. § 1231, else it would not have expended the resources to detain Petitioner. This action could be taken at any moment. Although Defendants may not move so expeditiously, it appears as though they believe there is nothing to stop them from removing Petitioner. And that potential for arbitrary removal to El Salvador, in complete disregard of the fact that Petitioner is still, as a matter of law and the explicit terms of the *JOP* settlement order, unremovable while his asylum claim is pending, leaves Petitioner with little legal recourse against removal should Defendants act against him.

B. The Legal Standard for a Temporary Restraining Order

The legal standard for issuance of a Temporary Restraining Order, like that for a preliminary injunction is “that [the applicant] 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 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Resources Defense*

Council, Inc., 129 S. Ct. 365, 374 (2008); *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006); *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 668 (9th Cir. 2021).

When the Government is a party, the last two factors merge. *E. Bay Sanctuary* at 668. The factors are evaluated on a sliding scale, so "a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011); *see also Nat'l TPS Alliance v. Noem*, 25-2120 (9th Cir. Aug 29, 2025). The "decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity . . .". *eBay Inc.*, 547 U.S. at 394.

1. Petitioner is Likely to Succeed on the Merits of his Constitutional and Class Action Protection Claims.

Petitioner has raised constitutional and legal challenges to his detention by Defendants. Petitioner's Complaint asserts that Defendants' actions (a) violate the TVPRA and the *J.O.P.* settlement agreement; (b) violate juvenile protections created by Congress; and (c) violate Petitioner's due process rights.

a. Petitioner's removal would violate the J.O.P. settlement agreement and the TVPRA

Immigration-related detention provisions are found at 8 C.F.R. § 1225(b) (detention of applicants for admission and expedited removal); § 1226 (apprehension and detention of aliens); and § 1231(a)-(b) (detention and removal of aliens ordered removed). None of the detention provisions under §1225 or §1226 apply to Petitioner. As someone who entered the U.S. as an unaccompanied child ("UAC"), Petitioner is subject to a different section of the law, one that includes the provisions of the TVPRA, as codified at 8 U.S.C. § 1232. *See R.D.T.M. v. Wofford*, No 1:25-cv-01141-KES-SKO, 2025 U.S. Dist. LEXIS 183995, 2025 WL 2686866, at *4 (E.D.

Cal. Sept. 18, 2025)(“The detention of unaccompanied minor children is governed by the TVPRA, which does not mandate detention”).

More particularly, Petitioner’s detention and removal from the United States are controlled by the class settlement agreement of *J.O.P., et al. v. U.S. Department of Homeland Security*, et al., No. 8:2019-cv-1944-SAG (D. Md. November 25, 2024). A *J.O.P.* class member is defined by the settlement as any immigrant who (1) was determined to be an Unaccompanied Alien Child; (2) filed an asylum application that remains pending with USCIS; (3) on the date he filed his asylum application with USCIS, was 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual’s asylum application on the merits. *J.O.P.*, at 2. Petitioner meets each of these criteria.

Petitioner’s *in-absentia* removal order is currently unenforceable because, “ICE will refrain from executing the Class Member’s final removal order until USCIS issues a Final Determination on one properly filed asylum application under the terms of this agreement.” *J.O.P.*, at 8. Petitioner’s asylum claim remains pending at USCIS. *See* Petition Exhibit P. Thus, Respondents’ efforts to remove Petitioner from the United States would directly violate the *J.O.P.* agreement.

b. Petitioner’s removal would also violate juvenile protections established by Congress

Petitioner was recognized as a Special Immigrant Juvenile (“SIJ”) by USCIS on June 28, 2023, when the agency granted his I-360 application. As an SIJ, Petitioner benefits from certain protections created by Congress, including “permission to reside in the country pending the outcome of [his] adjustment of status application, employment authorization, [and] exemption from certain inadmissibility grounds applicable to other aliens.” *Garcia v. Holder*, 659 F.3d

1261, 1270-72 (9th Cir. 2011). “These...benefits show a *congressional intent* to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status... Congress’s extension of certain protections to... SIJS parolees gives [that] narrow group[] of aliens *strong* claims to remain in this country.” *Id.*, at 8-9, emphasis added.

Despite the IJ’s *in absentia* order, Petitioner is specifically exempted from being found inadmissible under § 1182(a)(6) by virtue of his SIJ status, as clearly outlined by 8 U.S.C. § 1255(h)(2) (“In determining the alien’s admissibility as an immigrant, paragraphs...(6)(A)...of section 1182(a) of this title shall not apply”). Because Petitioner cannot presently be found inadmissible under §1182(a)(6), there is no valid ground of inadmissibility supporting the IJ’s order of removal. The government’s detention of Petitioner at this moment in time, in an apparent attempt to remove him from the United States, ignores congressional intent in creating both the Special Immigrant Juvenile visa and the TVPRA, would render his grant of SIJ and its accompanying protections void, would violate the *JOP* settlement agreement and would violate Petitioner’s constitutional right to due process.

c. Petitioner’s detention violates due process

“[T]he Due Process Clause applies to all ‘persons’ within the United States, including aliens, whether their presence is lawful, unlawful, temporary, or permanent.” *Zadyvdas v. Davis*, 533 U.S. 678, 693 (2001); *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (“[A]liens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law”). “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty” protected by the Due Process Clause. *Zadyvdas*, 533 U.S.

at 678. Due process also requires that government action be rational and non-arbitrary. *See U.S. v. Trimble*, 487 F.3d 752, 757 (9th Cir. 2007).

The government also acted arbitrarily in its revocation of the Petitioner's SIJ Deferred status. Petitioner was detained by ICE while in valid Deferred Action status. Subsequent to his detention USCIS mailed a notice of revocation of deferred status to his home address. Petitioner was not given an opportunity to contest USCIS' action of revocation. No reason was listed nor was there a valid process implemented in the revocation. The action by the government was simply a unilateral action done to eliminate one of the safeguards that was previously afforded, without due process of law. *A.C.R. v. Noem*, No. 1:25-cv-03962 (E.D.N.Y. Nov. 19, 2025) (Komitee, J.) In *A.C.R. v. Noem* the court stayed the Respondents' attempt to rescind the entire SIJS-based deferred action policy pending review.

Despite Petitioner's various protections under *J.O.P.*, the TVPRA, and his SIJ status, the government has detained Petitioner, with the stated intent of removing him. Given that these protections mean that Petitioner cannot lawfully be processed for removal, the sole purpose of Petitioner's detention is punitive. *See Zadvydas*, 533 U.S. at 690 (Civil detention violates due process outside of "certain special and narrow nonpunitive circumstances"). Such a detention clearly violates Petitioner's due process rights.

2. Defendants' Arbitrary Actions in Detaining and Processing Petitioner for Expedited Removal Before Petitioner's Asylum Application is Adjudicated has Caused and Will Continue to Cause Irreparable Harm to Petitioner.

"Irreparable harm is harm for which there is no adequate legal remedy, such as an award for damages." *See E. Bay v. Biden, supra*, 993 F.3d at 677 (quotation marks and citation omitted). The anticipated harm to Petitioner if a temporary restraining order is not issued is that Defendants will subject him to Expedited Removal despite the fact that Defendants are

bound by the *J.O.P.* settlement, and that settlement explicitly protects class members from enforcement of an in-absentia order of removal until their affirmative asylum application is adjudicated. That potential harm to Petitioner in the event Respondents remove him in defiance of that settlement agreement is not economic in nature. It is irreparable for purposes of temporary restraining order and injunction.

3. *The Balance of Harm and Public Interest Weighs in Favor of Petitioner.*

“Deportation is a drastic measure, often amounting to lifelong banishment or exile.” *Sessions v. Dimaya*, 138 S. Ct. 1204, 1213 (2018) (internal quotations omitted); The Supreme Court has affirmed that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). In this case, the balance of equities and the public interest strongly favor Petitioner, and the irreparable injury he faces far outweighs any burden imposed on Defendants by a temporary restraining order. A Temporary Restraining Order, even issued ex-parte, will simply preserve the status quo—restraining Defendants’ from removing Petitioner from the United States or this jurisdiction, until this Court can adjudicate the merits of Petitioner’s Motion for a Writ of Habeas Corpus

Furthermore, Petitioner contends the TRO would serve the public interest as Defendants actions violate the constitution, the law, and judicial, court monitored, settlement agreements. Permitting continued violations of federal law would serve “neither equity nor the public interest.” *Galvez v. Jaddou*, 52 F.4th 821, 832 (9th Cir. 2022). Thus, the public interest weighs in favor of Petitioner because his Removal while his application for asylum remains pending, his removal after approval of his I-360 Special Immigrant Juvenile petition, and his removal while his appeal of the IJ’s dismissal of normal Removal proceedings under 8 U.S.C. § 1229a

violates his right to due process. *See Xuyue Zhang v. Barr*, 612 F.Supp.3d 1005, 1017 (C.D. Cal.) (“Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.”)

C. No Bond Should Be Required

Petitioner respectfully request this Court exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement, or assess a minimal bond, if the court finds a bond is required. *See e.g., Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (despite the 'seemingly mandatory language' of Rule 65(c), a district court has discretion as to the amount of security required). The Defendants will suffer no damage from a Temporary Restraining Order. Petitioner, by contrast, is presently detained by Defendants with limited access to resources, as those resources are entirely donated to him by family members.

IV. CONCLUSION

Accordingly, and for the reasons set forth in this Motion and Memorandum, Petitioner respectfully requests that this Ex-Parte Motion for Temporary Restraining Order be granted until such time as briefing or a hearing may be scheduled by this Court to address Petitioner’s Petition for a Writ of Habeas Corpus. Again, the sole purpose of this Ex-Parte Temporary Restraining Order is to maintain the status quo until that date. Petitioner requests that no bond be required, inasmuch as Defendants will suffer no damage from this limited Temporary Restraining Order. Petitioner believes issues raised in this Ex-Parte Temporary Restraining Order may be fully incorporated into and addressed through the briefing deadlines and hearing date established by the Court.

Respectfully submitted this December 26th, 2025.

PARKINSON BENSON POTTER (PBP LAW)

/s/ Brett Parkinson
Attorney for Petitioner

STOWELL CRAYK PLLC

/s/ Marti L. Jones
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that, on December 26, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. The U.S. Attorney for the Southern District of California will be served with this Ex Parte Motion for a Temporary Restraining Order along with the Summons and Complaint.

/s/ Brett Parkinson