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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Brayan Tamarit-Ferrer,

Petitioner,

v.

David R. Rivas, Acting Warden, San Luis Regional  
Detention Center;

John Cantu, Field Office Director of Phoenix Office  
of Detention and Removal, U.S. Immigrations and  
Customs Enforcement; U.S. Department of Homeland  
Security;

Todd M. Lyons, Acting Director, Immigration and  
Customs Enforcement, U.S. Department of Homeland  
Security;

Kristi Noem, in her Official Capacity, Secretary, U.S.  
Department of Homeland Security; and

Pamela Bondi, in her Official Capacity, Attorney  
General of the United States;

Respondents.

Case No.

A-

**MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER**

Challenge to Unlawful  
Incarceration; Request for  
Declaratory and Injunctive Relief

**NOTICE OF MOTION**

Petitioner Brayan Tamarit-Ferrer ("Petitioner") respectfully applies to this Court for a  
Temporary Restraining Order enjoining Respondents Department of Homeland Security

("DHS") and U.S. Immigration and Customs Enforcement ("ICE") from continuing to detain him without statutory authority or constitutionally required process, ordering his immediate release from immigration detention, and prohibiting his re-detention absent an individualized custody determination before a neutral decisionmaker, as required by the Due Process Clause of the Fifth Amendment.

If the Court deems oral argument necessary, Petitioner requests to appear by video.

### **I. INTRODUCTION**

Petitioner Brayan Tamarit-Ferrer is an asylum seeker who has lived at liberty in the United States for more than four years while his removal proceedings remain pending. After entering the United States in June 2020 and establishing a credible fear of persecution, Petitioner was placed into full removal proceedings under INA § 240 and, on August 17, 2020, an Immigration Judge exercised custody jurisdiction under 8 C.F.R. § 236.1(c) and ordered Petitioner released on bond. ICE released Petitioner the following day pursuant to that order.

Petitioner complied with the conditions of release and remained at liberty for years. He has no final order of removal.

In 2025, Petitioner received a minor traffic citation in Miami-Dade County for crossing a median strip. The traffic matter was resolved with no incarceration, no probation, no criminal sentence, and a withhold of adjudication, and the state court imposed only a \$166.50 fine. Despite this non-custodial resolution and Petitioner's long history of compliance, ICE summarily re-detained Petitioner without providing any individualized determination that he poses a flight risk or danger sufficient to justify detention under INA § 236(a).

Because Petitioner may lawfully be detained, if at all, only under § 236(a), and because ICE failed to provide constitutionally required process, his continued detention is unlawful. Immediate injunctive relief is warranted.

## II. JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 1331. Venue lies in this District because Petitioner is detained within the District of Arizona. This motion challenges only the legality of Petitioner's present detention, not the merits of removal proceedings.

## III. LEGAL STANDARD FOR TEMPORARY RESTRAINING ORDER

A temporary restraining order ("TRO") should be granted to "preserv[e] the status quo and prevent[] irreparable harm just so long as is necessary to hold a hearing and no longer." *E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). A petitioner must show "that he 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" to receive a TRO or a preliminary injunction. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 20 (2008)

## IV. ARGUMENT

### a. The *Winter* factors weigh in favor of Petitioner.

#### i. Likelihood of Success on the Merits.

The first *Winter* factor "is a threshold inquiry and is the most important factor." *Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (quoting *Env't Prot. Info. Ctr. v. Carlson*, 968 F.3d 985, 989 (9th Cir. 2020)).

Petitioner is likely to succeed because ICE lacks lawful authority to detain him without providing constitutionally required process under INA § 236(a).

Petitioner is not detained under INA § 235. Expedited removal ended once an asylum officer found Petitioner to have a credible fear and DHS issued a Notice to Appear initiating § 240 proceedings. An Immigration Judge subsequently exercised custody jurisdiction under 8 C.F.R. § 236.1(c) and ordered Petitioner released on bond. Once DHS litigated custody under § 236 and released Petitioner pursuant to an IJ bond order, DHS could not later revert to § 235 detention.

Because Petitioner has no final order of removal, DHS may detain him, if at all, only under INA § 236(a). Detention under § 236(a) is discretionary and constrained by the Due Process Clause, which requires an individualized determination that detention is necessary because the noncitizen poses a flight risk or danger and that less restrictive alternatives are inadequate.

ICE made no such determination here. Petitioner was re-detained summarily based solely on a resolved traffic citation that resulted in no incarceration, no probation, and no criminal sentence. A minor, non-custodial traffic offense does not establish danger or flight risk, particularly where DHS previously determined for years that supervision was sufficient.

Because ICE failed to provide notice, reasons, or a meaningful opportunity to contest re-detention before a neutral decisionmaker, Petitioner is likely to succeed on his claim that his detention violates the Fifth Amendment.

## **ii. Irreparable Harm**

A party seeking preliminary relief must also make a “clear showing” of a likelihood of irreparable harm in the absence of the relief requested. *Winter*, 555 U.S. at 22; *see also All For the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“ . . . plaintiffs must establish

that irreparable harm is likely, not just possible, in order to obtain a preliminary injunction). “[I]t is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury.” *Chhoeun v. Marin*, 306 F.Supp.3d 1147, 1162 (C.D. Cal. 2018) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 994-95 (9th Cir. 2017)). Where, as here, the “alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.” *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005) (quoting Wright, Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)). Furthermore, “the Ninth Circuit has recognized the ‘irreparable harms imposed on anyone subject to immigration detention’ including ‘subpar medical and psychiatric care in ICE detention facilities’ . . .” *Hoac*, 2025 WL 1993771, at \*6 (quoting *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017) (finding irreparable harm where the petitioner was detained far from his family and was at risk of losing his job and housing)).

Petitioner was re-detained in violation of his due process rights. He has already been and continues to be irreparably harmed by the Respondents’ actions.

### **iii. Balance of Equities and Public Interest**

Finally, “[t]he balance of the equities and public interest analyses merge when the government is the opposing party, as is the case in this action.” *Hoac*, 2025 WL 1993771, at \*6. “Just as the public has an interest in the orderly and efficient administration of this country’s immigration laws, [] the public has a strong interest in upholding procedural protections against unlawful detention.” *Id.* (quoting *Vargas v. Jennings*, No. 20-cv-5785-PJH, 2020 WL 5074312, at \*4 (N.D. Cal. Aug. 23, 2020)). “A plaintiff’s likelihood of success on the merits of a constitutional claim also tips the merged third and fourth factors decisively in his favor.” *Baird*, 81 F.4th at 1042. “[I]t is always in the public interest to prevent the violation of a party’s

constitutional rights[,]” *id.* (quoting *Riley’s Am. Heritage Farms v. Elasser*, 32 F.4th 707, 731 (9<sup>th</sup> Cir. 2022), and “[t]he government [] ‘cannot reasonably assert that it is harmed in any legally cognizable sense by being enjoined from constitutional violations.’” *Id.* (quoting *Zepeda v. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983)).

Given Petitioner has demonstrated likelihood of success on the merits as to his constitutional claims, the merged third and fourth factors should be tipped in his favor.

In sum, the Winter Factors weigh heavily in favor of granting the Motion.

## V. CONCLUSION

### Prayer for Relief

For the foregoing reasons, Petitioner respectfully requests that this Court grant his motion for a temporary restraining order and:

1. Grant this Motion for Temporary Restraining Order;
2. Order Petitioner’s immediate release from ICE custody under reasonable conditions of supervision;
3. Enjoin Respondents from re-detaining Petitioner absent a constitutionally adequate custody determination under INA § 236(a); and
4. Grant such other relief as the Court deems just and proper.

Dated: December 29, 2025

Respectfully submitted,

/s/ Spencer C. Lee

Spencer C. Lee

Attorney for Reza Amiri