

LAW OFFICE OF SHARA SVENDSEN PLLC
SHARA SVENDSEN, WSB: 38151
shara@svenlaw.com
16300 Mill Creek Blvd. Ste. 206
Mill Creek, WA 98012
425-361-1511

Attorney for Petitioner

UNITED STATES DISTRICT COURT
FEDERAL DISTRICT COURT OF WESTERN WASHINGTON

Juan Alfredo Cruz Garcia,

Petitioner,

v.

Laura HERMOSILLO, Seattle Acting Field
Office Director, Enforcement and Removal
Operations, United States Immigration and
Customs Enforcement; Kristi NOEM,
Secretary, U.S. Department of Homeland
Security; Pamela BONDI, U.S. Attorney
General; Todd LYONS, Acting Director of
ICE; Bruce SCOTT, Warden, Northwest ICE
Processing Center; U.S. Department of
Homeland Security; Immigration and Customs
Enforcement,

Respondents.

Case No. 2:26-cv-184-TMC

Agency No. A



**MOTION FOR EMERGENCY
TEMPORARY RESTRAINING
ORDER**

Noted for consideration January 23, 2026

I. MOTION

1. Under FRCP 65 and 5 U.S.C. §705, the Petitioner moves this Court for an Emergency Temporary Restraining Order and Stay of Removal, preventing his removal from the United States and his transfer to another detention facility while these proceedings are pending. Petitioner faces imminent, irreparable harm in the form of imminent removal from the U.S.

Respondents have informed the Court and Petitioner's counsel of the Government's intention to remove Petitioner within 48 hours of January 21, 2026, 4:29 PM. *See* Dkt. 8.

II. BACKGROUND

2. Petitioner is a 48-year old man from Mexico, who is the single father to his four U.S. citizen children, after the sudden death of his wife (the children's mother) in May 2025. Petitioner's children have significant medical and educational needs. Petitioner is the victim of trafficking, and has filed an application for a T visa on that basis.

3. Petitioner is currently held in detention at the Northwest ICE Processing Center (NWIPC), by U.S. Immigration and Citizenship Enforcement (ICE). He has been detained since January 15, 2026.

4. When Respondents arrested Petitioner, they did so with excessive force and without reasonable suspicion or a warrant. After the vehicle in which he was a passenger was stopped by Respondents, Petitioner asked whether Respondents had a warrant. Instead of providing a warrant, Respondents broke the car window, forcibly pulled Petitioner from the vehicle, threw him to the ground, and handcuffed him. After transporting Petitioner to the ICE facility in Tukwila, Respondents informed Petitioner that he had no rights, including no right to an attorney, because he was in the United States illegally. At the ICE facility, Petitioner heard Respondents yelling at others in a separate office; when Petitioner was also taken into the separate office, he was again informed that he had no rights in the United States. Respondents refused Petitioner's request to speak with an attorney, instead telling him that if he asked for an attorney ICE would detain him for a longer period of time. Finally, Respondents told Petitioner that if he refused to sign the document in front of him, that he would be denied food and water.

5. Petitioner informed Respondents that his wife had recently died of lung cancer and that his four U.S. citizen children would be left without a parent if he were detained or deported. Respondents replied that “it doesn’t matter”. Petitioner also informed Respondents that he has a pending case with U.S. Citizenship and Immigration Services (USCIS) and that he was waiting for a work permit. Respondents told him that nothing he filed would be approved because he was in the country illegally.

6. Respondents repeatedly told Petitioner that he had no rights, that he would be deported no matter what, and that signing the document they presented was the only way out of detention. Respondents threatened Petitioner that if he refused to sign, that he would remain detained for months. Respondents did not provide Petitioner with the opportunity to speak to an attorney, and instead told him again that if he did try to speak to an attorney it would result in him being detained longer. Out of fear, confusion, and hopelessness, Petitioner signed the document presented to him, although the document was not explained to him, he was not provided a copy of what he signed, and he does not know what he signed.

7. Respondents have indicated to Petitioner and Counsel that Petitioner requested voluntary departure from the Department of Homeland Security (DHS). However, to date Respondents have not provided Petitioner or Petitioner’s counsel a copy of any documents signed by him. Petitioner has only a copy of Form I-210 “Voluntary Departure and Verification of Release”, signed by Respondent Hermosillo and an unidentified “DHS Official Service Form” on January 16, 2026. This document states that on January 15, 2026, Petitioner was granted voluntary departure by the DHS and is required to depart from the United States on or before February 16, 2026 under safeguard.

8. To his knowledge, Petitioner has not been issued a Notice to Appear and he has not appeared before an Immigration Judge.

9. On Friday, January 16, 2026, Petitioner filed the instant petition for a writ of habeas corpus. His petition for habeas corpus seeks either a bond hearing or release because his detention violated his due process rights under the Fourth and Fifth Amendments.

10. At some point after his detention on January 15, 2026, Petitioner was informed that he would be imminently removed from the United States either the night of Monday, January 19, 2026, or the morning of Tuesday January 20, 2026.

11. Monday, January 19, 2026, was a federal holiday. In spite of this, present Counsel emailed Respondent Counsel with Petitioner's name and A number, to advise of the filing of habeas and that Respondents appeared to be in the process of removing Petitioner. Present Counsel also emailed the ICE outreach with this information.

12. On January 20, 2026, Petitioner's immigration counsel Steffani K. Powell, Executive Director/Attorney, Legal Immigration Services of Olympia, went in person to the NWIPC to take action on behalf of Petitioner. Ms. Powell filed Form I-246, Application for a Stay of Deportation or Removal, and Form G-28, Notice of Entry of Appearance as Attorney. In spite of filing these documents with ICE, Ms. Powell was not allowed to speak directly with an ICE officer or supervising official regarding Petitioner's pending removal. Instead, an ICE employee conveyed Attorney Powell's statements and questions to other ICE personnel, and ferried their responses back to Attorney Powell.

13. Attorney Powell was informed that an unidentified ICE supervisor or administrator had ordered that Petitioner be removed from a deportation flight, after already being shackled and seated on the plane. Although Petitioner was being returned to NWIPC, the

intermediary informed Attorney Powell that Respondents intended to deport Petitioner later in the same week.

14. Attorney Powell requested copies of the Form I-213, Record of Deportable/Inadmissible Alien, as well as the document that Petitioner is alleged to have signed during processing in Tukwila. The ICE employee informed Attorney Powell that they could not provide these documents to her at that moment, despite having filed a Form G-28 and being counsel of record for Petitioner. Instead, Attorney Powell was informed that a note would be placed in Petitioner's file stating that the documents would be delivered to him.

15. To date, neither Petitioner, nor Attorney Powell, nor present Counsel have received copies of any of the documents allegedly signed by Petitioner.

16. Also on January 20, 2026, U.S. Magistrate Judge S. Kate Vaughan issued a Scheduling Order Directing Respondents to Show Cause Why Writ of Habeas Corpus Should Not Be Granted. *See* Dkt. 2. The Order requires Respondents to provide Petitioner and Petitioner's counsel at least 48 hours' notice prior to any action to move or transfer Petitioner from the Western District of Washington or to remove them from the United States. Dkt. 2 at ¶ 3.

17. On January 21, 2026, at 3:35 PM, Attorney Powell emailed the ICE outreach email, referencing her previously provided Form G-28 Notice of Entry of Appearance as Attorney, formally requesting that ICE immediately retract and void any stipulated order of removal or voluntary departure purportedly signed by Petitioner, as the document was obtained through coercion, threats, and denial of fundamental due process. Attorney Powell included in her email a copy of the habeas petition, the death certificate of Petitioner's spouse, his four U.S. citizen children's birth certificates, a copy of his I-914 receipt, and an unsigned declaration of

Petitioner regarding his arrest. At 5:28 PM, Attorney Powell emailed a follow up email including also a signed statement from Petitioner and another copy of the signed G-28. On January 22, 2026, at 10:19 AM, Attorney Powell forwarded the email with all attachments to the Tacoma Duty Attorney (OPLA). At 5:23 PM Attorney Powell followed up with three letters of support from the Northshore School District educators regarding Petitioners' children, emailing the NWIPC supervisor and the Tacoma Duty Attorney.

18. On January 21, 2026, at 4:29 P.M., Respondents filed "Notice of Intent to Remove." Dkt. 6.

19. Petitioner seeks a TRO to prevent his imminent removal and further violations of his due process rights.

III. ARGUMENT

20. Petitioner seeks a TRO preventing transfer away from NWIPC or removal from the United States pending the resolution of proceedings.

21. On a motion for a TRO, the movant "must establish 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." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and TRO standards are "substantially identical"). A TRO may issue where "serious questions going to the merits [are] raised and the balance of hardships tips sharply in [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation modified). To succeed under the "serious question" test, Petitioners must also show that they are likely to suffer irreparable injury and that an injunction is in the public's interest. *Id.* at 1132.

22. This Court has jurisdiction over Petitioner's claims because Petitioner is contesting the agency's intent to remove him before there is a final order of removal. *See, Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007) (where agency action is not encompassed within a final order of removal, the circuit court lacks jurisdiction and district court review under habeas or APA is the remedy); *Ali v. Gonzales*, 421 F.3d 795, 797 n.1 (9th Cir. 2005) (District court has jurisdiction over case so long as the actual order of removal is not challenged, even if petitioner is challenging physical removal); *see Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) ("to resolve petitioner's arguments, the Court does not need to review the removal order."). Federal courts may stay the status quo until the court has had adequate opportunity to assess circumstances at issue. *See United States v. United Mined Workers of Am.*, 330 U.S. 258, 290 (1947). These principles have been applied in this district and elsewhere in the Ninth Circuit in the immigration context. *See, e.g., Chhoeun v. Marin*, 306 F. Supp. 3d 1147, 1157 (C.D. Cal. 2018); *Kumar v. Wamsley*, No. 2:25-cv-01772-JHC-BAT, 2025 U.S. Dist. LEXIS 182775 (W.D. Wash. Sep. 17, 2025), *Mejia v. Wamsley*, No. 2:25-cv-02196, 2025 U.S. Dist. LEXIS 220445 (W.D. Wash. Nov. 4, 2025).

23. Petitioner seeks a TRO to prevent further actions by Respondents to remove or transfer Petitioner during the pendency of these proceedings, thus preventing further violations of his due process rights.

A. Petitioner is likely to succeed on the merits of his argument that his detention is unlawful because he was not afforded a pre-deprivation custody determination, serious questions are raised, and he is not subject to mandatory detention

24. As noted above, Petitioner does not have a removal order and to his knowledge Respondents have not initiated removal proceedings against him nor do Respondents allege that he is subject to a removal order. If Respondents were to initiate removal proceedings, Petitioner

would have relief before the Immigration Court due to his lengthy presence in the United States, his good moral character, and the exceptional and extremely unusual hardship that his young four U.S. citizen children would suffer if he were removed. *See*, INA 240A(b). In addition, Petitioner has already applied for T nonimmigrant status in the United States as the victim of forced labor or trafficking.

25. Courts in this district apply the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319 (1976) to determine what process is owed to non-citizens in immigration detention. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1207 (collecting cases applying *Mathews* to the immigration detention context). (collecting cases applying *Mathews* in the immigration detention context); *see also Kumar*, No. 2:25-cv-01772 at *7-9 (applying *Mathews* balancing factors to determine a non-citizen's right to an evaluation prior to re-detention following order of removal). Courts balance three factors to determine what process is due: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Mathews*, 424 U.S. at 335. Here, all three factors strongly favor Petitioner.

26. Petitioner has a strong private interest in his freedom from detention. "Freedom from imprisonment ... lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Ninth Circuit has held that "[i]n the context of immigration detention, it is well-settled that 'due process requires adequate procedural protections to ensure that the government's asserted justification for physical confinement

outweighs the individual's constitutionally protected interest in avoiding physical restraining.” *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)).

27. The risk of erroneous deprivation is high and the government's interest is minimal. Respondent has provided no basis for their detention or intended removal of Petitioner. At the time of Petitioner's detention, instead of providing a warrant when requested, Respondents broke the windows of the car in which Petitioner was riding, dragged him out of the vehicle, threw him to the ground, and handcuffed him. After detaining him, Respondents repeatedly told Petitioner that he had no rights and did not deserve any rights. Detention “without making an individual determination as to whether such [detention] is warranted carries a high risk of erroneous deprivation of liberty, and Respondents could hardly argue that compliance with existing laws would be overly burdensome.” *See, Jimenez v. Bostock*, No. 3:25-cv-00570-MTK, 2025 U.S. Dist. LEXIS 163484 at *7 (D. Or. Aug. 22, 2025).

B. Petitioner faces irreparable harm absent an injunction

28. Petitioner must also show he is “likely to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable harm is the type of harm for which there is “no adequate legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

29. The imminent risk of removal risks irreparable harm to Petitioner. Removal would moot possible relief in this case despite the likelihood his constitutional rights were violated. Removal would also effectively deny Petitioner the right to seek immigration relief through his pending T petition.

30. Petitioner faces substantial hardship and irreparable harm if he is transferred to another detention facility. He would be separated from his four U.S. citizen children, all under the age of 13, and the support network that his family relies upon. Transfer would risk further violations of Petitioner's due process rights by interfering with his access to counsel who are helping him seek status and relief from removal. Petitioner is from Washington state, his young children reside in Washington state, and his immigration counsel operates in Washington state.

31. Petitioner also faces substantial hardship and irreparable harm if he is removed from the United States. The relief that Petitioner seeks, T nonimmigrant status, requires that he be present in the United States. 8 CFR Section 214.202(b). If he were removed from the United States he would lose this opportunity to obtain lawful nonimmigrant status. Petitioner also intends to seek cancellation of removal for certain non-lawful permanent residents pursuant to INA Section 240A(b). This relief can only be requested before an Immigration Judge, upon initiation of proceedings in EOIR. If he were removed from the United States, Petitioner would be unable to pursue this relief in court.

32. In sum, the unlawful deprivation of liberty to which Petitioner is currently subjected causes him direct and immediate irreparable harm that warrant a TRO.

C. A balance of hardship and the public interest tips sharply toward

Petitioner

33. The final two factors for a TRO – the balance of hardships and public interest – “merge when the Government is the opposing part.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardship: loss of liberty, deprivation of the right to remain in the U.S. pending his T visa application, deprivation of the right to apply for cancellation of removal, and separation from his four young U.S. citizen children. The government, by contrast, faces no

hardship as to Petitioner, as all it must do is permit Petitioner to continue to pursue his T visa application which was filed in July 2024, and pursue relief before an Immigration Judge. What is more, “the public interest benefits from an injunction that ensure that individuals are not deprived of their liberty and held in immigration detention because of ... a likely [illegal] process.” *Id.* Indeed, “in cases involving a constitutional claim, a likelihood of success on the merits ... strongly tips the balance of equities and public interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at 1048. Accordingly, the balance of hardships and the public interest favor a temporary restraining order to ensure that Respondents refrain from removing Petitioner from the U.S. or transfer him outside of this jurisdiction. It is also in the public interest for the government to follow its own laws.

CONCLUSION

34. Under FRCP 65, the petitioner moves this Court to issue an Emergency Temporary Restraining Order and Stay of Removal:

1. Enjoining and restraining the Respondents and all of their respective officers, agents, servants, employees, attorneys and persons acting on their behalf in concert or in participation with them from:
 - a. Removing or deporting Petitioner from the United States while these proceedings are pending;
 - b. Transferring Petitioner from the Northwest ICE Processing Center to any other detention facility during the pendency of these proceedings.

35. WHEREFORE, for the reasons set forth in his Petition for Writ of Habeas, and in this Motion, the Petitioner respectfully requests that this Court:

1. Grant this Emergency Motion for Temporary Restraining Order and Stay of Removal before January 23, 2026, 4:29 PM;
2. Enter the Proposed Order Granting Petitioner's Emergency Motion for Temporary Restraining and Stay of Removal before January 23, 2026, 4:29 PM ; and
3. Grant such other and further relief as justice may require.

DATED this 22nd day of January, 2026.

By: /s/ Shara Svendsen
Shara Svendsen
Law Office of Shara Svendsen PLLC
Attorney for Petitioner

*I certify that this memorandum contains
3,242 words, in compliance with the Local
Civil Rules.*